

Final Report of the
Federal Facilities Environmental Restoration
Dialogue Committee:

Consensus Principles and Recommendations for
Improving Federal Facilities Cleanup

April 1996

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ACRONYMS

ATSDR	Agency for Toxic Substances and Disease Registry
BRAC	Base Realignment and Closure
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended
DERP	Defense Environmental Restoration Program
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DSMOA	Defense State Memorandum of Agreement
EM	DOE Office of Environmental Management
EPA	Environmental Protection Agency
ER	DOE Office of Environmental Restoration
FACA	Federal Advisory Committee Act
FFA	Federal Facility Agreement
FFCA	Federal Facility Compliance Act
FFER	Federal Facility Environmental Restoration
FFPG	Federal Facilities Policy Group
FOIA	Freedom of Information Act
FUDS	Formerly Used Defense Sites
FUSRAP	Formerly Utilized Sites Remedial Action Program
GAO	General Accounting Office
IAG	Interagency Agreement
NASA	National Aeronautics and Space Administration
NEJAC	National Environmental Justice Advisory Council
NCP	National Contingency Plan
NEPA	National Environmental Policy Act of 1969, as amended
NOAA	National Oceanic and Atmospheric Administration
NPL	National Priorities List
O&M	Operation and Maintenance
OMB	Office of Management and Budget
PEIS	Programmatic Environmental Impact Statement
PRP	Potentially Responsible Party
RAB	Restoration Advisory Board
RCRA	Resource Conservation and Recovery Act of 1976, as amended
REO	Regional Environmental Officers
RI/FS	Remedial Investigation/Feasibility Study
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act of 1986
SSAB	Site-Specific Advisory Board
SVTC	Silicon Valley Toxics Coalition
TAG	Technical Assistance Grant
TCE	Trichloroethylene
TKC	The Keystone Center
TRC	DOD Technical Review Committee
UMTRA	Uranium Mill Tailings Remedial Act
USDA	U.S. Department of Agriculture

EXECUTIVE SUMMARY

Introduction

Statement of the Committee

The Federal Facilities Environmental Restoration Dialogue Committee (the Committee) believes cooperation and trust must permeate our nation's efforts to meet the challenge of cleaning up environmental contamination at federal facilities. Protection of our environment and the health of our communities requires individuals from federal agencies, state, tribal and local governments, communities, and active organizations to work together to seek solutions to address the environmental contamination existing at federal facilities or as a result of federal activities. Cooperation is needed to ensure cleanup decisions are made in an open and fiscally responsible manner. We believe this philosophy is consistent with democratic principles, and fundamental to our quality of life and the responsibility we have for the well being of future generations.

The Committee, because it represents a diversity of perspectives and experiences, has helped lay the foundation for cooperative relationships and partnerships through its own interactions, and the publication of its recommendations in an Interim Report in 1993. Through its efforts, and the efforts of many others working at or concerned about Federal Facilities cleanup, the Committee has witnessed more meaningful and collaborative stakeholder involvement in the cleanup decision-making process. Relationships among regulated and regulating agencies and affected communities have begun to improve. However, these relationships are still fairly tenuous and fragile. Particularly in light of increasing fiscal constraints, these relationships must provide the basis for setting priorities at federal facilities. The Committee is publishing this Final Report to assist the on-going efforts necessary to ensure federal facility cleanup decisions protect human health and the environment for current and future generations, are cost effective, and reflect the values of affected communities.

Nature of the Problem

Based on federal agency estimates, the U.S. government is responsible for addressing environmental contamination at approximately 61,155 sites nationwide.¹ The cost of cleaning up these sites is expected to be between \$230 billion and \$390 billion over the next 75 years. Many different types of sites are contaminated including, but not limited to, abandoned mines, former weapons production facilities, underground tanks, and landfills. These sites contain

¹ Throughout the Final Report, the Committee uses the term "site" to refer to an area of contamination, and the term "facility" to refer to the broader geographic area within which a contaminated site is located or with which it may be associated. Not all "sites" or "facilities" discussed in this document may be considered "federal facilities" under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

contaminants such as radioactive waste, mining waste, unexploded ordnance, fuels, and solvents.

Department of Energy (DOE) and Department of Defense (DOD) activities are responsible for most of the federal facility contamination. For the most part, these facilities served and continue to serve national security objectives, which have often taken primacy over environmental stewardship objectives and sometimes promoted a general resistance to external oversight. Contaminated sites found on lands managed by U.S. Department of Agriculture (USDA) and Department of the Interior (DOI) generally resulted from the activities of private parties and other government entities. USDA and DOI believe that abandoned and inactive mines on public lands are not generally "federal facilities" under Section 120 of CERCLA. The Committee did not spend time discussing this matter, therefore, the views of other Committee members may differ.

Due to the magnitude of the contamination and the huge cost of clean up, priorities must be set regarding where and how to spend available funds. Priority setting and funding allocation must be done in a fair manner that stakeholders perceive as legitimate. Historically, approaches to public involvement associated with federal facilities have created significant mistrust among stakeholders, particularly those in communities of color, low-income communities, and local government agencies.

The Federal Facilities Environmental Restoration Dialogue Committee

In 1992, the Federal Facilities Environmental Restoration Dialogue Committee ("the Committee") was federally chartered under the U.S. Environmental Protection Agency (EPA) to address these and other issues. The goal of the Committee was to develop consensus policy recommendations aimed at improving the process by which federal facility environmental cleanup decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. This Final Report sets forth the Committee's consensus recommendations.

Committee members included individuals from EPA, USDA, DOI, DOE, DOD (and its Military Services), the National Oceanic and Atmospheric Administration (NOAA), and the Agency for Toxic Substances and Disease Registry (ATSDR); state, tribal and local governments; and numerous other nationally, regionally and locally based environmental, community, environmental justice, Native American and labor organizations. Committee members participated as individuals, not as official representatives of their agencies or organizations. All of the signatories to this report have agreed to work proactively toward the implementation of the recommendations.

The Committee's Interim Report

The Committee published an Interim Report in February 1993, that focused on recommendations for improving the dissemination of federal facilities cleanup information;

stakeholder involvement in key federal facilities cleanup decisions, particularly through the use of advisory boards; and consultation on federal facilities cleanup funding decisions and setting priorities in the event of funding shortfalls. Since the publication of the Interim Report, there have been significant changes in the way federal facility cleanup decisions are made. For example, most federal agencies established information dissemination policies and central points of contact for public stakeholders to obtain information about environmental contamination, as recommended in the Interim Report. Over 200 facilities established advisory boards that provide input from a wide diversity of public stakeholders affected by the facilities' operations and cleanup actions.

Overview of the Final Report

In producing this Final Report, the Committee has attempted to build on the recent successes of agency and community efforts to involve stakeholders and include recommendations that consider the lessons learned from these efforts. The Committee clarifies the intent of recommendations in the Interim Report where misunderstandings have developed and offers new recommendations to address the changing environment in which federal facilities cleanup decisions are being made. These recommendations attempt to create an open, public consultative process that originates at the facility level and extends through the entire hierarchy of the federal government. The Committee recognizes that all facilities, agencies and communities have unique structures, histories and concerns, and thus encourage flexible approaches based upon the principles of inclusiveness, openness, and accountability.

This executive summary briefly outlines the major recommendations set forth in the Final Report. The executive summary follows the structure of the report, which is organized into the following chapters:

- Chapter 1: Introduction
- Chapter 2: Principles for Environmental Cleanup of Federal Facilities
- Chapter 3: Community Involvement
- Chapter 4: Advisory Boards
- Chapter 5: Funding and Priority Setting
- Chapter 6: Capacity Building

The report also contains appendices that include information on the history of the Committee, a list of Committee members, the Committee's charter, and guidance documents and agency points of contact for advisory boards.

Chapter 2: Principles for Environmental Cleanup of Federal Facilities

In August 1995, the Committee released a document of fourteen principles it felt should be the basis for making federal facility cleanup decisions and should apply to all persons and institutions involved in this process. Chapter 2 contains elaboration and clarification of each

of the principles, which are listed below. The Committee offers the principles as a foundation for the recommendations stated in the remainder of this report. The principles are designed to be complementary of one another. They are listed here in an order that strengthens their reinforcing nature rather than in an order of priority.

1. Nature of the Obligation—The federal government has caused or permitted environmental contamination. Therefore, it has not only a legal, but an ethical and moral obligation to clean up that contamination in a manner that, at a minimum, protects human health and the environment and minimizes burdens on future generations. In many instances, this environmental contamination has contributed to the degradation of human health, the environment, and economic vitality in local communities. The federal government must not only comply with the law; it should strive to be a leader in the field of environmental cleanup, which includes addressing public health concerns, ecological restoration, and waste management.

2. Sustained Commitment to Environmental Cleanup—The federal government must make a sustained commitment to completing environmental cleanups at its facilities at a reasonable and defensible pace that is protective of human health and the environment and allows closing federal facilities to return to economic use as promptly as possible.

3. Environmental Justice—The federal government has an obligation to make special efforts to reduce the adverse impacts of environmental contamination related to federal facility activities on affected communities that have historically lacked economic and political power, adequate health services, and other resources.

4. Consistency of Treatment between Federal Facilities and Private Sites—Federal facilities should be treated in a manner that is consistent with private sector sites, especially in terms of the application of cleanup standards.

5. Cleanup Contracting—Federal facility environmental cleanup contracts should be managed as efficiently as possible by using contract mechanisms that specify, measure, and reward desired outcomes and efficiencies rather than simply reimburse for effort or pay for an end product. Federal agencies should strive to ensure that cleanup contracts and employment opportunities benefit local communities, particularly those that are lacking economic resources and have been disadvantaged by contamination. Contractors and agencies responsible for cleanup should work in partnership with local communities to achieve cleanup goals.

6. Fiscal Management—Funding mechanisms for cleanup should provide flexibility in the timing of expenditures and ensure that cleanup activities are conducted in a manner that is as efficient as possible.

7. Interdependent Decision-Making Roles and Responsibilities—Numerous institutions and people play very distinct and important roles in the decision-making process for federal facility cleanups. These include: facility level managers, national program managers, financial officers, and cabinet officials within the agencies responsible for conducting the cleanup; federal, state and tribal regulators; tribes as sovereign nations; local governments; local, state, tribal, and federal health officials; public stakeholders; and the President, Office of Management and Budget; and Congress. These roles are highly interdependent, reflecting both the site-specific and national dimensions of the federal facility environmental cleanup problem. The decision-making process must ensure that all of these roles are preserved and balanced if our nation is to complete the mission of cleaning up federal facilities in an efficient, equitable, and timely manner.

8. The Role of Negotiated Cleanup Agreements—Negotiated cleanup agreements in many instances play a critical role both in setting priorities at a site and providing a means to balance the respective interdependent roles and responsibilities in federal facilities cleanup decision making.

9. Consideration of Human Health and Environmental Risk and Other Factors in Federal Facility Environmental Cleanup Decision Making—Risk to human health and the environment is an important and well established factor that should continue to be a primary consideration in federal facility cleanup decision making, including setting environmental cleanup priorities and milestones. However:

a) **Human Health and Environmental Risk**—Risk assessments and other analytical tools used to evaluate risks to human health (including non-cancer as well as cancer health effects) and the environment all have scientific limitations and require assumptions in their development. As decision-aiding tools, risk assessments should only be used in a manner that recognizes those limitations and assumptions. Moreover, risk assessments ought not be used by any party as a basis for unilaterally setting aside legal requirements that embody public health principles and other important societal values.

b) In addition to human health and environmental risk, other factors that warrant consideration in setting environmental cleanup priorities and milestones include:

- cultural, social, and economic factors, including environmental justice considerations;
- short-term and long-term ecological effects and environmental impacts in general, including damage to natural resources and lost use;
- making land available for other uses;
- acceptability of the action to regulators, tribes, and public stakeholders;
- statutory requirements and legal agreements;
- life cycle costs;
- pragmatic considerations, such as the ability to execute cleanup projects in a given year, and the feasibility of carrying out the activity in relation to other activities at the facility;
- overall cost and effectiveness of a proposed activity; and
- actual and anticipated funding availability.

The Committee believes that fiscal constraints do not justify failing to take actions to protect human health and environment, but may result in the need to set priorities about what cleanup actions can occur in any given year.

10. The Importance of Pollution Prevention and Pollution Control Activities—Effective pollution prevention and pollution control activities are essential to prevent future environmental cleanup problems. Therefore, in carrying out their mission, federal agencies should view such activities as a cost of doing business and fully comply with environmental laws and regulations that are designed to accomplish these objectives.

11. The Role of Future Land Use Determinations in Making Cleanup

Decisions—Reasonably anticipated future land uses should be considered when making cleanup decisions for federal facilities, provided that at the time of any land transfer there are adequate safeguards to protect land holders, those who will receive or lease the land, and surrounding communities. The communities that are affected by federal facility cleanups, along with their local governing bodies and affected Indian Tribes, should be given a significant role in determining reasonably anticipated future use of federal property that is expected to be transferred, and in how future use determinations will be used in making cleanup decisions.

12. The Role of Studies in the Cleanup Process—The identification and characterization of contamination and the evaluation of health impacts on human populations are essential parts of the cleanup process. Efforts to streamline the cleanup process should focus on reducing paperwork and moving away from adversarial relations toward cooperation, not the arbitrary capping of funding for studies.

13. The Need for a Systematic Approach to Decision Making and Priority

Setting—Federal facility priority-setting decisions should be made in a manner that recognizes their interconnectedness to other environmental problems.

14. Stakeholder Involvement—Public stakeholders and local governments historically have not been involved adequately in the federal facility cleanup decision-making and priority-setting process. Agencies responsible for conducting and overseeing cleanup and related public health activities must take steps to address this problem, with the overall goal of ensuring that federal facility cleanup decisions and priorities reflect a broad spectrum of stakeholder input from affected communities including indigenous peoples, low-income communities, and people of color. Like pollution prevention and pollution control measures, meaningful stakeholder involvement has in many instances resulted in significant cleanup cost reductions. It should therefore not only be considered as a cost of doing business but as a potential means of efficiently determining and achieving acceptable cleanup goals.

Chapter 3: Community Involvement

Since its inception, the Committee has stressed that government agencies should not conduct their business and public interactions in a "Decide, Announce, and Defend" fashion. Involving communities early and often in the decision-making process enables public stakeholders to help agencies make cost-efficient decisions leading to faster cleanups. The Committee's Interim Report included several recommendations about community involvement, primarily regarding information dissemination and exchange. Building on these recommendations and Principle 14 (above), the recommendations in Chapter 3 are aimed at improving community involvement processes to more actively engage those most affected by federal facilities.

The Committee believes that all community involvement processes must be transparent, open, interactive, inclusive, and responsive. Committee members also stress that agencies need to develop a communications structure in which public concerns are communicated to both headquarters and field office levels. Toward these ends, the Committee recommends that federal agencies draft or revisit current policies and guidance documents on community involvement to ensure that field staff are encouraged to:

- conduct assessments of public stakeholders' needs and communities' existing resources prior to initiating community involvement programs;
- actively seek out and solicit the full diversity of public stakeholders in communities, particularly communities of color, indigenous peoples, low-income communities, and local governments;

- utilize appropriate methods of communication, that are culturally sensitive and relevant to the specific community, such as local media outlets and local government activities;
- inform the local communities, including communities of color and low-income communities, of cleanup employment opportunities; and
- involve local communities in future land use planning efforts, particularly as it relates to the cleanup of a facility.

Chapter 4: Advisory Boards

Chapter 4 of this report includes recommendations that have emerged through the collective experience of the first two years of implementation of the Committee's original recommendations regarding advisory boards. The Committee wishes to make clear, first, that advisory boards should be used to complement rather than duplicate or supplant broader site-level cleanup public involvement initiatives. With that in mind, the Committee makes the following specific recommendations regarding advisory boards:

Establishment of Advisory Boards—Federal agencies should establish advisory boards to provide independent policy and technical advice to the regulated and regulating agencies with respect to key cleanup decisions. Boards should be formed when an affected local, state, tribal or federal government entity requests the establishment of such a board, or when at least fifty residents of the community or region in which a facility is located sign a petition requesting an advisory board. When more than one advisory group exists for a facility or region, agencies should consider consolidating their activities, or establishing clear communication between the groups to determine if and how their scope of issues overlaps.

Federal Advisory Committee Act (FACA)²—Whether or not agencies charter their advisory boards under FACA, the Committee recommends that boards and agencies comply with the spirit of FACA regarding maintaining balanced membership, holding open meetings, and providing public notice for the meetings in manners that are appropriate for the facility's community. For agencies that do charter their advisory boards under FACA, the Committee encourages agencies to make very judicious use of FACA authorities and do so in consultation with board members. Finally, chartering agencies should seek to reduce the bureaucratic burden of the law on the board members to the greatest extent possible.

Scope—Advisory boards should focus on protection of human health, cleanup, waste management, and technology development issues that are clearly relevant to the cleanup of

²FACA, Public Law No. 92-463, 5 U.S. Code Appendix 2.

the facility. Boards should have the discretion to hear about the social, economic, cultural, aesthetic, public health, and worker health and safety effects of cleanup and waste management and technology development issues related to cleanup. Advisory boards should remain separate from local reuse authorities, but should work together with them wherever possible. Advisory boards should only address anticipated future land uses when they relate to cleanup decisions, and when efforts are made to involve stakeholders sufficiently with key interests in land use, such as local governments, in the discussions.

Agency Roles—The regulated agency should serve as the host of the advisory board and should provide administrative assistance, meeting facilities, and other logistical support as necessary. Regulated and regulating agencies roles should be defined in three ways. First, the most senior-level person available at the facility from the regulated agency should participate in board meetings. Second, participants from the regulated and regulating agencies should be responsive to the concerns and advice of the advisory board or provide a reasonable explanation for not adhering to the advice. Third, representatives from regulating and regulated agencies should serve as information sources to the board, providing updates and background as needed. Agencies should consider including contractor representatives as a part of their team particularly to help in this last function. However, contractor participation should never serve as a substitute for the participation of senior representatives of the regulated agency.

Membership—Advisory boards should reflect the full diversity of views, ethnicity, race, and distribution of income in the affected community and region and be composed primarily of people who are directly affected by facility cleanup activities. An open and fair membership selection process that leads to the creation of a diverse and balanced board should be used. Boards should develop procedures for adding, replacing, or removing members.

Operations—At the outset of the advisory process, the board should determine explicitly how it will make decisions about what advice and recommendations it should give, who should give the advice and, in particular, how to ensure that dissenting views are addressed. Advisory board members should develop appropriate ground rules and operating procedures to allow for the efficient and productive operation of the group. (The chapter outlines a number of specific rules and procedures to be considered.) Advisory boards should establish a self-evaluation process to address the goals of the board at the various stages of its development. Federal agencies are also encouraged to support efforts that will assist communication between public stakeholders in various advisory board efforts across the country.

Education and Training—An advisory board training needs assessment should be conducted for each advisory board. It should take into account needs for technical assistance notification, orientation, team building, and ongoing education.

Public Interaction—Members of the public must be given opportunities to be kept adequately informed of and involved in cleanup decisions affecting them.

Funding—The regulated agency should provide advisory board funding for both administrative support and technical assistance. Technical assistance funding should be used to complement, rather than duplicate, the technical programs of both regulated and regulating agencies. Boards must demonstrate a clear need to be eligible for technical assistance. (The chapter outlines, in detail, the general principles the Committee agreed to regarding each type of funding, as well as funding implementation issues.)

Chapter 5: Funding and Priority Setting

The 1993 Interim Report contained a number of recommendations regarding funding and priority setting in the context of limited federal budgets. Since that time, however, federal budgets have shrunk even faster than anticipated. To compound the problem, many federal facilities are now shifting efforts from the study and assessment phase of cleanup to the more expensive remediation work itself. The recommendations in this chapter seek to clarify and revise the recommendations in the Interim Report, taking into account the current budget situation. In order to define the nature of the problem, the chapter also explains: the important elements of the federal budgeting process; the role of Executive Order 12088 and negotiated cleanup agreements; and the importance of strategic planning, life-cycle cost analysis, and project baselines.

The recommendations focus strongly on building consensus at the local facility level on cleanup priorities and budgets at early stages of the budget process, rather than relying solely on the expectation that the agencies responsible for conducting the cleanup will ask for sufficient funds to meet their cleanup obligations and, if Congress does not appropriate sufficient funds, the possibility of enforcement relief for missed milestones. These issues are discussed under the "Pre-appropriation Priority Setting" heading below. In addition, the Committee called, and continues to call for, a flexible "fair share" approach to the allocation of funding shortfalls under certain circumstances, rather than an inflexible pro-rata allocation of funding shortfalls, as many have interpreted the Committee's previous recommendations. These issues are clarified and discussed under the "Flexible Fair Share Allocation" heading below.

In general, the Committee strongly recommends the active engagement of all stakeholders in important cleanup decisions, the use of advisory boards where possible and useful, and a high degree of cooperation and communication between all involved agencies. These partnerships and relationships are critical because they allow for public stakeholder and regulator support of cleanup priorities and schedules during the early stages of the budget cycle. This support is essential, particularly in the event that a funding shortfall occurs and priorities need to be reestablished.

The general concepts in Chapter 5 are designed to apply where negotiated agreements are or should be used as well as in instances where negotiated agreements are not appropriate.

Pre-appropriation Priority Setting of Cleanup Activities—The Committee recommends three actions that should occur in pre-appropriation priority setting: 1) prioritize activities rather than site risks, 2) use of a "risk plus other factors" approach to priority setting, and 3) where appropriate, a particular approach to budget consultation and milestone setting.

Prioritize Activities Rather than Sites or Risk—Priority setting at the facility level should not be limited to prioritizing the relative risks posed by site contamination but should go further to include prioritizing the activities that are designed to cleanup the contamination. Relative risks will no doubt have a bearing on the setting of priorities, but relative risks should not become the de facto priorities.

"Risk Plus Other Factors" Priority Setting—The term "risk plus other factors" is used by the Committee to refer to the consideration of risk to human health and the environment along with other important factors in setting cleanup priorities. The Committee supports efforts of the regulated agencies to use risk-based priority setting to build their cleanup budgets, as long as priorities are set with the agreement of the regulators and in consultation with other stakeholders and in accordance with Principle 9 of Chapter 2. The assignment of priority levels to all agreed-upon activities or sites should provide the basis for reconsidering out year milestones and altering programmatic plans when appropriated funding does not match requested levels.

The Committee notes that either human health or environment (or both) may serve as a starting point in priority setting, and recommends numerous other factors that should be considered as well. The Committee also describes conditions that must be met for a "risk plus other factors" system to work, including (but not limited to): the application of standards to remedy selection and the actual selection of remedies independent of the risk ranking; and, confidence amongst all parties in the approach to categorization based on relative risk and the methodology used for priority setting. Ultimately, the Committee believes that stakeholders at each facility must decide the mix and relative importance of each factor in setting priorities. Also, each regulated agency should establish, in consultation with other stakeholders, procedures for re-opening rankings and priorities outside of the normal cycle, should significant new information be discovered.

Budget Consultation and Milestone Setting—In this section, the Committee sets forth recommendations for a budget consultation and milestone setting process that the Committee believes will help improve federal facility cleanups. In making these recommendations, the Committee is not recommending that all existing negotiated cleanup agreements should be renegotiated. However, where all parties agree that existing agreements may benefit from this approach, or where agreements are not yet established the Committee believes a process such as that recommended in Chapter 5 should be considered for inclusion in the agreement at the option of the parties to the agreement. Moreover, the recommended process reflects a delicate

balance and also must be carefully balanced with other elements of the agreements (to be negotiated for each facility), which are intended to work together as a whole.

Two of the important features of this process are: 1) for the regulated and regulating agencies to determine the cleanup work that is required to be performed in consideration of, but not necessarily "driven by," budget targets; and, 2) to do so in a timeframe that coincides with the federal budget process.

The recommended process includes setting project end dates, out year milestones, and near term milestones. Project end dates are for the completion of major portions of the cleanup or completion of cleanup of the entire facility. The Committee recognizes that many of these dates will be a number of years in the future. By nature, these dates have the most degree of uncertainty. Nonetheless, project end dates serve an important function in establishing the overall pace of cleanup including the setting of near term milestones. Out year milestones are for the completion of major cleanup activities critical to the completion of the project for the time period beyond the budget planning year until the project end date. Since these milestones are beyond the "planning" year of the federal budget cycle, they are not included in the current budget request, but are important to out year fiscal planning. Near term milestones are critical for both budget development and to show commitment by regulated agencies for cleanup activities that will occur in the next fiscal year (i.e., the "budget" year of the federal budget cycle) and the year for which the budget is being developed (i.e., the "planning" year of the federal cycle).

The chapter goes on to describe in detail the process that should be used to ensure that the project end dates, out year milestones, and near term milestones are met, and the procedures to use if they are not. In making its recommendations, the Committee recognizes that the regulators will retain their authority to determine whether or not to approve a request to modify or extend the near term milestones; and the regulated agencies retain their right to invoke dispute resolution under terms of the negotiated cleanup agreement. One of the important features of the recommended process is full disclosure of any discrepancies between budget targets and cleanup requirements.

Flexible Fair Share Allocation of Appropriations Shortfalls—The Committee believes the above recommendations will greatly facilitate the ability of all stakeholders to subsequently reset priorities and allocate resources in an understandable, timely and equitable manner in the event of an appropriations shortfall. For either facility-level or national/regional-level of decision making regarding funding allocation, the Committee recommends that the original proportion in the proposed cleanup budget should be the starting point for allocating appropriations shortfalls at these various levels, assuming that the budget was built: a) in consultation with stakeholders; b) in consideration of regulatory agreements; and c) in consideration of risk plus other factors. However, the Committee is not recommending a single unitary approach be taken to address appropriation shortfalls. Rather, each agency or appropriate subset of an agency, in consultation with regulators and other stakeholders,

should establish and document an approach that adheres to flexible fair share features, which are detailed in the chapter.

When Shortfalls Threaten the Ability to Meet Milestones—The Committee anticipates that its recommendations in this chapter will significantly reduce the number of situations in which budget building shortfalls are likely to lead to missing milestones in negotiated cleanup agreements. It also recognizes that it is impossible to develop detailed solutions that address all such conflicts in advance. Nevertheless, the Committee believes that the best way to resolve these conflicts is to continue, as much as possible, with the same approach and spirit recommended for earlier stages of the budget process. Therefore, the Committee expects regulating agencies will consider in good faith the adjustment of milestones and other requirements and regulated agencies will explore the availability of additional funds within their agency budgets. This is often the case now, particularly where regulated and regulating agencies have developed working partnerships and when shortfalls are large and unexpected. The Committee recognizes that its recommendations to mitigate conflicts between budget building shortfalls and milestones might be interpreted, within both the Executive Branch and Congress, as eliminating the legal pressure to complete cleanup activities. It is important, therefore, to remind budget decision makers that budget decisions that "test the envelope" of such "safety-valve" approaches threaten the operation of the entire federal facilities cleanup process, and in particular the growing level of trust resulting, in part, from the Committee's previous recommendations.

The Importance of Stable, But Not Necessarily Level, Funding—The Committee believes that a stable funding base over the life of cleanup projects could greatly facilitate pre-appropriation priority setting because it would provide regulated and regulating agencies, as well as other stakeholders, with a greater degree of certainty and the ability to efficiently plan and sequence cleanup activities and projects in a manner that is consistent with agreed upon priorities.

In recognition of the fact that facility level managers must comply with predetermined budget constraints, the Committee believes that if the regulators and other stakeholders have made a good faith effort but have not succeeded in accommodating federal fiscal constraints in setting cleanup priorities, as the process moves forward, Executive Branch decision makers above the facility level should request full funding for the environmental cleanup requirements that cannot be accommodated within the predetermined budget constraints. If the funding gap between the cleanup requirements and the budget target for a given year cannot be bridged, the Committee recommends full disclosure, within the limits of existing laws and Office of Management and Budget (OMB) regulations and policies, so that all stakeholders and key decision makers in the budget process can make informed decisions.

Chapter 6: Capacity Building

The effectiveness of the earlier recommendations in this report, which seek to improve federal facility cleanup decision making by increasing stakeholder involvement, are dependent on the various stakeholder groups having the capacity to participate effectively. The Committee thus makes recommendations on how to build and maintain stakeholder participation capacity.

In general, the Committee recommends that special efforts be undertaken to consult with those groups that have been commonly excluded from decision-making processes—including communities of color, indigenous peoples and low-income communities—and to expand and develop their capacities to participate effectively in such processes. The Committee also recommends that local, tribal, and state governments be supported in an effort to maintain, and in some cases increase, their capacity to be effective participants. Federal regulated and regulating agencies need to expand their capacities to communicate and work with the wide diversity of stakeholders affected by federal facilities cleanups. Specifically, the Committee recommends the following:

Communities of Color, Indigenous Peoples, and Low-Income Communities—Where there is a need, federal agencies should assist these communities in developing the technical and analytical expertise needed to be effective participants. This may include, among other activities: supporting or developing training and technical assistance programs; involving historically black and hispanic colleges and universities, tribal colleges and other special emphasis educational institutions in environmental restoration technology research and development; and supporting national and regional forums for representatives of such communities to share ideas and approaches for involvement in decision-making processes.

Local Government—At the national level, each of the regulated agencies should work with representatives of local governments to determine general principles to guide agency-local government relationships, and the best appropriate national mechanisms for establishing and maintaining the capacities of local government. This consultation process should begin as soon as possible. The regulated and regulating agencies should also undertake similar consultative processes at the local level.

Tribal Governments—Consistent with the government-to-government relationship that exists between the federal government and Indian tribes, the Committee recommends that specific tribal capacity-building programs be negotiated by the relevant federal agencies and Indian tribes. Consistent with the federal-Indian tribe trust relationship, the identification of relevant, federally recognized Indian tribes should be made using broad criteria.

State Governments—In order to maintain the capability of the states in their role of oversight and insuring protection of human health and the environment, the Defense State Memoranda of Agreement (DSMOA) grant program should continue to be fully funded. If funds to support state participation in federal cleanups through DSMOA are significantly reduced or eliminated, states will be forced to find other sources of funding to continue their activities. Unless other state or federal funds are available, state regulators may have to drop

out of the DSMOA program and pursue cost recovery through other means, which may be time-consuming and costly.

Federal Agencies—The Committee recommends that federal agencies expand and improve upon their current efforts to ensure that field staff working in low-income communities and communities of color are effective at communicating and partnering with these communities. Community members should be considered for participating in and conducting some of the training activities.

General Capacity Building—The Committee recommends that EPA fund the development of a public stakeholder's guide to federal facility cleanups which communicates the basic concepts of the Committee's recommendations within the greater context of explaining the federal facility decision-making process.

Conclusion

Building on the recommendations from the Committee's 1993 Interim Report, this report recommends that federal agencies undertake more expansive and meaningful community involvement in general, and make more effective use of advisory boards. It also recommends that agencies use a combination of approaches to priority setting and the allocation of funding shortfalls. Finally, because federal facilities cleanup issues are so complex, federal agencies, state tribal and local governments, communities and other stakeholders must forge partnerships that will enable our nation to make the best decisions possible to address environmental contamination at federal facilities. Through the collaborative processes recommended in this report, the Committee hopes that the federal government and its stakeholders will rise to the challenge posed by federal facilities cleanups by establishing a model for responsible democratic decision-making resulting in reasonable and credible cleanup programs.

CHAPTER 1

INTRODUCTION

The Nature of the Problem

Based on a 1995 report, the U.S. government is responsible for addressing approximately 61,155 contaminated sites. Current cost estimates for cleaning up environmental contamination at these sites range from \$230 billion to \$390 billion over the next 75 years. During the most recent fiscal year, the federal government spent \$9 billion on efforts to identify, address, and clean up this contamination.¹ The contamination includes many types of sites ranging from abandoned mines in remote locations to major weapons production facilities adjacent to urban areas. Cleanup at many of these sites will require both new technologies and creative applications of existing technologies.

Although most federal agencies face some degree of environmental contamination at their facilities, the estimated number and magnitude of these problems are greatest at DOD and DOE facilities (see Figure 1). Most of the environmental contamination associated with federal facilities is the result of DOE or DOD activities. For the most part, these facilities served and continue to serve national security needs. Historically, the national defense mission often took primacy over other objectives, including environmental stewardship. It also promoted a general resistance to external oversight. As a result, the full nature and extent of the environmental contamination caused by the operations of these facilities only recently has begun to be realized.

Unlike DOD and DOE, the USDA and DOI directly caused only a small percentage of environmental contamination on lands they manage. Laws such as the Mining Act of 1872 authorized nonfederal activities to take place on public lands that resulted in active, inactive and abandoned mines, municipal and county landfills, and shooting ranges, all of which have significant environmental contamination associated with them. "Midnight dumping" of hazardous waste, illegal "drug labs," pipeline breaks, and releases of petroleum products and hazardous substances associated with transportation accidents have also contributed to the environmental contamination present on these federal lands. USDA and DOI believe that many of these sites are not "federal facilities" under CERCLA. They are included as part of these agencies' cleanup programs where appropriate to protect human health and the environment. The Committee did not spend time discussing this matter, therefore, the views of other Committee members may differ.

¹*Improving Federal Facility Cleanup*, Report of the Federal Facilities Policy Group, October 1995.

Figure 1: FEDERAL FACILITIES PROFILE*

	DOE	DOD	DOI	USDA	NASA
Nature of Contamination	Radioactive, hazardous and mixed waste and fissile material	Fuels and solvents, industrial waste and unexploded ordnance	Mining, municipal and industrial wastes	Hazardous, mining and chemical waste	Fuels and solvents and industrial waste
Number of potentially contaminated sites and major site types	10,000 sites - former weapons production facilities	21,425 sites - underground tanks - landfills - spill areas - storage areas	26,000 sites - abandoned mines ** - oil & gas production - landfills	3,000 sites - abandoned mines ** - landfills	730 sites - underground storage tanks - spill areas
Number of potentially contaminated facilities	137	1,769	NA	NA	17
Number of active sites	10,000	11,785	26,000	3,000	575
Current estimate to complete cleanup	\$200 to \$350 billion ***	\$30 billion	\$3.9 - \$8.2 billion	\$2.5 billion	\$1.5-2 billion
Estimate being revised	Released March 1995	Yes	None scheduled	Yes; due FY 1996	Yes; due FY 1995
Estimate of years to finish cleanup	30-75+ yrs	20 yrs	NA	10 yrs - landfills 40 yrs - mines 50 yrs - NRD ***	25 yrs
Annual budget: 1994 actual 1995 enacted 1996 request	\$6.1 billion *** \$5.9 billion *** \$6.6 billion ***	\$2.5 billion ***** \$2.0 billion ***** \$2.1 billion *****	\$61 million \$65 million \$66 million	\$16 million \$16 million \$45 million	\$34 million \$21 million \$37 million
Current funding source	Federal	Federal	Federal	Federal	Federal
Responsibility for contamination	Agency	Agency	Agency, private parties and local governments	Agency, private parties and local governments	Agency

* Adapted from *Improving Federal Facilities Cleanup* Report of the Federal Facilities Policy Group, October 1995.

** The DOI and USDA believe that abandoned and inactive mines on public lands are not generally "federal facilities" under Section 120 of CERCLA.

*** DOE's budget includes waste management, facility stabilization, technology development, and associated support costs that include many unique operational, safety, and national security costs in addition to environmental cleanup.

**** Natural Resources Damage.

***** DOD includes only Defense Environmental Security Cleanup budgets.

While DOE and DOD cleanups must be publicly funded, USDA and DOI must ensure that responsible parties conduct cleanup actions and/or recover public funds used for cleanups on their lands, if a viable responsible party or parties can be located. Where USDA and DOI are responsible parties they must contribute an appropriate share of the cleanup costs. In the cases in which environmental contamination has resulted from DOD or DOE activities on land USDA and DOI now manage, DOD and DOE funds are sought. Further, as federal trustees under the natural resource damage provisions of CERCLA, USDA and DOI, as well as other federal agencies, must, as appropriate, seek performance by responsible parties, public funds, and/or recovery of public funds, to address natural resource damages.

Priorities for cleanup activities must be established because of the magnitude of environmental contamination at federal facilities, the responsibility of the federal government to address the contamination it caused or permitted to occur, and resources needed to conduct cleanup. The federal government must nonetheless sustain its commitment to address the contamination it caused or permitted to occur. The Departments of Defense and Energy, in particular, face significant challenges to set priorities and allocate funding in a fair manner that stakeholders perceive as legitimate. As a nation, we will be making difficult decisions regarding the nature of these cleanups and the priorities of actions to be taken at federal facilities into the next century.

Past approaches to public involvement associated with the national defense missions of DOD and DOE facilities bred significant mistrust among stakeholders. The federal government has an opportunity to address this mistrust by making cleanup information publicly available and involving more public stakeholders in the decision-making process. The Committee recognizes and commends federal agencies for their actions taken so far to seize this opportunity. However, work still needs to occur to ensure that the full range of public stakeholders are meaningfully involved in cleanup decision-making processes.

The problem of mistrust is of particular concern where federal facility environmental problems affect communities of color and low-income communities that have historically lacked economic and political power, adequate health services, and other resources. Efforts have not always been made to address the specific environmental and associated impacts to these communities. Therefore, federal agencies' credibility in such communities is particularly tenuous. Strategies for cleanup are inextricably linked to economic development, future land use, public health, education, housing transportation, and cultural development of communities. By meaningfully involving public stakeholders from these affected communities in cleanup decisions, agencies can begin to address their cleanup needs and build more positive relationships.

Executive Order 12898 requires federal agencies to address environmental justice concerns in all of their programs, policies, and activities. Building on this, this report contains recommendations regarding special efforts that should be made to ensure that affected communities, particularly communities of color, indigenous peoples, and low-income communities, understand and participate in the cleanup process, and that their values are reflected in the actions taken.

In some cases, local governments have not been adequately involved in the cleanup decision-making process. Local governments play a critical role because they interact with federal facility cleanups on many different levels, including as the regulating agency of certain wastes, as the emergency responder, and as the responsible authority for land use planning.

Several factors limit local government participation in federal facilities cleanup decision making. Because federal agencies often are not fully aware of local government functions and responsibilities, there is a lack of guidance and formal mechanisms for interactions between local governments and federal agencies. As a result, local governments' role in cleanup advisory boards, and other stakeholder involvement mechanisms is sometimes unclear. Local government participation has also been hampered because communities sometimes mistrust local governments' ability to integrate environmental and economic objectives, and because local governments' capacity and willingness to participate in cleanup decisions in some instances has been limited. Addressing these barriers is important, because local governments, in many cases, are the institutional authority that will address the effects of cleanup decisions long after the federal cleanup agency has withdrawn from the community. This report also contains recommendations regarding the role that local governments play in the federal facility cleanup decision-making process.

The History and Goal of the Federal Facilities Environmental Restoration Dialogue Committee

The Committee is an advisory committee federally chartered under the U.S. Environmental Protection Agency. Participants also include individuals from the U.S. Departments of Agriculture, Defense (and its Military Services), Energy, and the Interior, the National Oceanic and Atmospheric Administration, and the Agency for Toxic Substances and Disease Registry; state, tribal, and local governments; and numerous other nationally, regionally and locally-based environmental, community, environmental justice, indigenous peoples, and labor organizations. Further information on the Committee members, charter, ground rules, members, history is included in Appendices A-C.

The members of the Committee participate as individuals, not as official representatives of their agencies and organizations. The goal of the Committee is to develop consensus policy recommendations aimed at improving the process by which federal facility environmental cleanup decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders.

With this goal in mind, the Committee published an Interim Report in February 1993 that focused on recommendations for improving: the dissemination of federal facilities cleanup information; stakeholder involvement in key federal facilities cleanup decisions, particularly through the use of advisory boards; and consultation on federal facilities cleanup funding decisions and setting priorities in the event of funding shortfalls.

The Interim Report has had a significant impact on the way federal facility cleanup decisions are made. Most federal agencies have established information dissemination policies and central points of contact for public stakeholders to obtain information about environmental contamination. The Committee estimates that over 200 facilities have established advisory boards that represent a wide diversity of public stakeholders affected by the facilities' operations and cleanup actions. These boards are providing advice to agency personnel on issues such as the use of innovative cleanup technologies and setting goals and priorities for cleanup activities. Examples of how these boards have helped agencies better involve a broad range of public stakeholders to make more informed and cost-effective cleanup decisions are included throughout this report.

The Nature of the Committee's Consensus

The principles and recommendations in this report reflect a consensus on the part of all Committee members listed in Appendix A. As defined by the Committee's ground rules, consensus was reached when there was no dissent from any Committee member. Although the dialogue process was not intended to bind any of the organizations, agencies, or associations of the Committee members and alternates, all of the signatories to this report have agreed to work proactively toward the implementation of the recommendations contained in this report.

The Committee hopes that this report will help improve the federal facility cleanup decision-making process, as its Interim Report did. In proactively working toward the implementation of these recommendations, the Committee expects participating agencies, particularly EPA, to support activities designed to ensure that the broad spectrum of people and organizations with an interest in federal facilities cleanup are aware of and understand the essence of this report.

Overview of the Report

Since the publication of the Interim Report, the Committee has witnessed a fundamental change in the way federal agencies approach cleanup. In producing this report the Committee has attempted to build on the successes of agency efforts to involve stakeholders, and to include recommendations that consider the lessons learned from these efforts.

In this report, the Committee has included all relevant recommendations from its Interim Report. The Committee clarifies the intent of recommendations in the Interim Report where misunderstandings have developed, and offers new recommendations developed to address the changing environment in which federal facilities cleanup decisions are being made. The principles and recommendations elaborated upon in this report are intended to improve the overall decision-making and priority-setting process. The content of every chapter in the report is integrally linked, and it should be approached in a holistic manner.

The recommendations in this report attempt to create an open, public consultative process that originates at the facility level and extends through the entire hierarchy of the federal government. However, the Committee recognizes that all facilities, agencies, and communities have unique structures, histories, and concerns. Accordingly, the Committee encourages flexible approaches based upon the principles of inclusiveness, openness, and accountability.

CHAPTER 2: PRINCIPLES FOR CLEANUP In August 1995, the Committee released *Principles for Environmental Cleanup of Federal Facilities* to benefit then-current policy making on federal facility cleanup matters, and to provide a stepping stone for this Final Report. These principles provide an overall context for the federal facility cleanup decision-making process. They are stated and elaborated upon in Chapter 2.

CHAPTER 3: COMMUNITY INVOLVEMENT Building on the principles, the recommendations in this chapter are aimed at improving overall community involvement processes to more actively engage public stakeholders. Because agencies have for the most part developed guidance documents on how to implement the recommendations of the Interim Report, the recommendations in this chapter focus on what these guidance documents should address in the future.

CHAPTER 4: ADVISORY BOARDS One of the Committee's specific recommendations in the Interim Report for improving community involvement was the creation of advisory boards. While many agencies have established advisory boards at their facilities and developed guidance for their operation, the Committee has identified some continuing problems with the establishment and operations of advisory boards. The recommendations in this chapter reiterate how advisory boards should be established, and they focus on improving the quality of boards' interactions with the federal agencies and other stakeholders. New recommendations include processes for education and training of board members, evaluation of boards, and networking boards on a national level.

CHAPTER 5: FUNDING AND PRIORITY SETTING The recommendations in this chapter update and revise those contained in Chapter 4 of the Interim Report. The primary objectives of the recommendations contained in this chapter are to promote a credible process for planning and undertaking federal facility cleanup activities at a reasonable pace that is protective of human health and the environment and to deal with funding shortfalls in an equitable, timely, open, understandable, and cost-effective matter. To accomplish these objectives, the Committee has developed a set of recommendations for a process whereby stakeholders are informed of, and to the greatest extent feasible, participate in important decisions that will affect the scope and schedule (i.e., pace) of work to be performed at federal facilities. The recommendations in this chapter focus more strongly than those in the 1993 Interim Report on building consensus at the local facility level on cleanup priorities and budgets at early stages of the budget process.

CHAPTER 6: CAPACITY BUILDING The recommendations in this chapter focus on building the capacity of stakeholders to participate effectively in the federal facility cleanup

decision-making process. The recommendations address the need to build the capacity of agencies to involve affected communities of color, indigenous peoples and residents of low-income communities in the decision-making processes. They also address building the capacity of local, state, and tribal governments to effectively participate in federal facility cleanup decisions.

CHAPTER 2

PRINCIPLES FOR ENVIRONMENTAL CLEANUP OF FEDERAL FACILITIES

Introduction

In August 1995, the Committee released fourteen principles it felt should be the basis for making federal facility cleanup decisions and should apply to all persons and institutions involved in this process. The Committee offers further clarification and elaboration of its fourteen principles for environmental cleanup of federal facilities in this chapter. The Committee offers the principles as a foundation for its specific recommendations stated in the subsequent chapters of this report. The principles are designed to be complementary of one another. They are listed here in an order that strengthens their reinforcing nature rather than in an order of priority.

The Principles

1. Nature of the Obligation—The federal government has caused or permitted environmental contamination. Therefore, it has not only a legal, but an ethical and moral obligation to clean up that contamination in a manner that, at a minimum, protects human health and the environment and minimizes burdens on future generations. In many instances, this environmental contamination has contributed to the degradation of human health, the environment, and economic vitality in local communities. The federal government must not only comply with the law; it should strive to be a leader in the field of environmental cleanup, which includes addressing public health concerns, ecological restoration, and waste management.

The federal government's duty to clean up environmental contamination at federal facilities rests on widely shared moral and ethical values. These values form the basis for the legal requirements in statutes, regulations, treaties, and other governmental acts and agreements. In developing principles guiding the cleanup of federal facilities, the Committee felt it was important to go beyond the reliance on current legal structures; it was necessary to affirm the shared moral and ethical beliefs that provide the foundation both for our society's legal framework and for the Committee's recommendations.

First, governments have an obligation to protect the general welfare, including public health and safety. A government's legitimacy rests on providing security which would otherwise be lacking in its absence. Pollution threatening public health and the environment creates an

obligation for the federal government to ensure threats are addressed. The federal duty to act is heightened when the threat is a result of activities at or associated with a federal facility.

The federal government also has a stewardship responsibility to protect the lands that it owns or manages on behalf of the nation. Such stewardship means short and long term management of federal facilities to protect natural resources. The federal government is given such land in trust on behalf of the nation, and where threats to the environment exist on federal land or are posed by federal activities, the contamination should be addressed.

Stewardship also means protecting the land for future generations. Delaying the environmental cleanup at federal facilities passes on an environmental debt to future generations that threatens their security. The federal government must be responsible for the consequences of its actions, particularly when the threats of those actions extend into the future. It would be unethical to pass problems onto our children if we can reasonably resolve those problems today.

The cleanup of federal facilities raises an issue of fairness with regard to the cleanup of private property. The federal government must live up to the same environmental standards it requires of the private sector. Since the federal government requires cleanup of environmental contamination, it would diminish the moral authority of the federal government not to be bound by the same laws and cleanup requirements.

Finally, the federal government bears an ethical burden on behalf of the communities that host federal facilities. Some of the most significant contamination is at facilities that contributed to the national security during World War II and the Cold War period that followed. Activities such as weapons production and testing were characterized by secrecy and urgency. As a result, communities made sacrifices they were not even aware of at the time. These communities served the nation and cannot be ignored now. The powers of the federal government must be used to remedy these past actions. The obligation to the communities is especially important where the government closes the facilities, potentially creating economic hardship in addition to whatever environmental impacts have been imposed on the community.

2. Sustained Commitment to Environmental Cleanup—The federal government must make a sustained commitment to completing environmental cleanups at its facilities at a reasonable and defensible pace that is protective of human health and the environment and allows closing federal facilities to return to economic use as promptly as possible .

The federal government should meet its obligations by making a sustained commitment to a credible program of environmental cleanup. A sustained commitment can be measured by an unwavering effort to fund and efficiently manage programs reducing human health risks and restore damaged environments.

The Committee recognizes that many of the risks posed by federal facility contamination are long-term risks. Substantial fiscal impacts may be associated with trying to achieve

permanent cleanup goals in the short-term. Thus, the Committee agrees it may be necessary to take time to complete the job, provided containment, isolation and life cycle costs are properly considered.

In instances where a technological solution has not emerged, a sustained commitment can be measured by the ability to achieve quickly interim containment measures that are protective of human health and the environment and, at the very least, prevent a problem from developing, getting worse, or increasing future costs. The commitment is also measured by programs that include significant resources devoted to technology research and development aimed at finding long-term solutions.

A sustained commitment is necessary to build and maintain partnerships among the agencies that caused or are responsible for cleaning up the contamination, regulators responsible for overseeing the cleanup, and affected communities. In the absence of a sustained commitment, regulators and communities may believe they have no choice but to insist upon expensive remedies now, instead of interim remedies, monitoring with contingency plans, and focus on developing new technologies.

A sustained commitment is contrasted with the boom/bust inefficiencies resulting from major swings in the rate of expenditures for cleanup obligations (e.g., layoffs and rehiring of workers, inability to complete jobs that have already begun, need for ongoing maintenance of facilities or buildings that could be decommissioned after being cleaned up).

3. Environmental Justice¹—The federal government has an obligation to make special efforts to reduce the adverse impacts of environmental contamination related to federal facility activities on affected communities that have historically lacked economic and political power, adequate health services, and other resources.

For many communities of color, indigenous peoples, and low-income communities, federal facilities and their environmental impacts present additional burdens on communities struggling for social, economic, and political viability. Therefore, in order to achieve environmental justice, efforts should be made to identify and address adverse human health or environmental effects from federal facility contamination on communities of color and low-income communities.

At the core of an environmental justice perspective is the recognition of the interconnectedness of the environment to the overall economic, social, human, and cultural health of a community. To this end, cleanup in these communities is fundamental to addressing a broader set of community needs.

¹See Box 27 for a definition of "environmental justice" and information regarding Executive Order 12898.

4. Consistency of Treatment Between Federal Facilities and Private Sites—Federal facilities should be treated in a manner that is consistent with private sector sites, especially in terms of the application of cleanup standards.

Many environmental contamination problems found at federal facilities are similar to private sector sites, with the notable exception of some of the technical problems being faced at former nuclear weapons production facilities. Although federal facilities are similar in many respects to private sector sites, it is important to recognize that no company has Congress, the President, or the Office of Management and Budget determining the appropriate level of funding for its cleanup activities as well as the requirements for conducting cleanups. Although this creates a unique situation, in that the federal government can change the laws, it does not mean that the federal government and its facilities are above the law. Federal facilities should be subject to the same treatment and cleanup standards for similar situations as private sector sites. In other words, cleanup standards should be neither lower nor higher at federal facilities than at private sector sites.

The federal government should take federal cleanup and compliance responsibilities seriously (e.g., by not lowering standards for federal facilities), or the worst possible signal will be sent to the private sector and local and state governments facing similar cleanup responsibilities. It would be tantamount to the federal government declaring, "Do as I say, not as I do."

5. Cleanup Contracting—Federal facility environmental cleanup contracts should be managed as efficiently as possible by using contract mechanisms that specify, measure, and reward desired outcomes and efficiencies rather than simply reimburse for effort or pay for an end product. Federal agencies should strive to ensure that cleanup contracts and employment opportunities benefit local communities, particularly those that are lacking economic resources and have been disadvantaged by contamination. Contractors and agencies responsible for cleanup should work in partnership with local communities to achieve cleanup goals.

More efficient approaches to cleanup and to the contracting and funding arrangements used by the federal government for conducting environmental cleanup, in particular, are needed. Given the significant role that contractors play in federal facility cleanups for some agencies, especially in developing proposals for specific cleanup activities, agencies should, whenever and wherever possible, provide adequate resources to improve management oversight of contracts and reform contracts so they provide incentives for efficient, safe, and cost effective approaches to cleanup. So far as permitted by federal acquisition law and policy, the government must track key measures of past performance and use past performance in the selection of future contractors.

Of the various contracting mechanisms available, contracts that specify, measure, and reward desired outcomes and efficiencies are preferable to those that simply reimburse for effort or pay for an end product. Contract language should provide clear incentives to complete cleanup projects early and under budget and to use innovative technology.

In striving to ensure that cleanup contracts and employment opportunities benefit local communities, especially those that are lacking economic resources and have been disadvantaged by the contamination, contractors and federal agencies responsible for cleanup should consider working in partnership with local communities to achieve cleanup goals. Such partnerships may include but are not limited to job training, career development activities, business development and mentoring, and contract and job awards.

6. Fiscal Management—Funding mechanisms for cleanup should provide flexibility in the timing of expenditures and ensure that cleanup activities are conducted in a manner that is as efficient as possible.

Limitations and constraints currently placed on how the funds allocated to environmental cleanup can be used also foster inefficiency and waste. In general, funds must be spent within the year or years of their appropriation. Even when appropriations span several years, as with the DOD's Base Realignment and Closure Account, or when appropriations are made on a "no year" basis (i.e., they are available until expended), as is the case with the DOE's environmental management appropriations, agencies are pressured to "use it or lose it." In addition, agencies are pressured to expend "end-of-the-year" money in order to avoid receiving less funds in the next cycle. Agency staff therefore sometimes feel an urgency to spend all appropriated money. As a result, agencies and others, including Congress, tend to measure performance by obligation rates rather than cleanup results. This results in putting funds "on contract" simply to create favorable obligation rates. Contractors then may produce bids to match allocated funds, which may result in a higher use of labor and material than is absolutely necessary to complete the project.

Cleanup differs from other agency programs in at least two key ways. First, for major sites it is almost impossible to know the full or precise extent of requirements at the time budgets are built, since investigation and remediation activities frequently result in additional knowledge that often significantly affects the course and timing of future activities. Second, since regulators and the public are consulted at each step in the process, timetables are subject to continued but legitimate revision based on input received. Consequently, when pressured to obligate funds when high-priority projects are not quite ready for action, departments fund lower-priority activities or face funding cutbacks. To promote sound management, funding schemes for cleanup should recognize the need for flexibility in both the quantity and timing of actual expenditures.

7. Interdependent Decision-Making Roles and Responsibilities—Numerous institutions and people play very distinct and important roles in the decision-making process for federal facility cleanups. These include facility level managers, national program managers, financial officers, and cabinet officials within the agencies responsible for conducting the cleanup; federal, state and tribal regulators; tribes as sovereign nations; local governments; local, state, tribal, and federal health officials; public stakeholders; and the President, Office of Management and Budget, and Congress. These roles are highly interdependent, reflecting both the site-specific and national dimensions of the federal facility environmental cleanup problem. The decision-making process must

ensure that all of these roles are preserved and balanced if our nation is to complete the mission of cleaning up federal facilities in an efficient, equitable, and timely manner.

The Committee believes it is necessary to recognize that federal facility cleanups involve several important and distinguishable, yet interdependent, decision-making roles that reflect both the site-specific and national dimensions of the problem. In many instances, they can be characterized as shared decision-making roles. In this section the Committee outlines its view of the appropriate role that we believe all key stakeholders should play.

Facility level managers need to exercise judgments about the relative priority and timing of cleanup activities at the facility level, but it must be recognized that they cannot do so in a completely independent fashion. In exercising such judgments, their primary concern should be to develop and maintain a credible, cost efficient environmental program aimed at completing cleanups at a reasonable and defensible pace. In particular, prior to completing negotiations on enforceable agreements with federal, state and tribal regulators, facility managers must be confident that the commitments they are entering into are implementable and are likely to achieve the desired goals and contribute significantly to the cleanup effort. Second, it should be acknowledged that the level of resources made available to facility managers is largely, although not completely, beyond their control. Nevertheless, facility managers have the primary responsibility, consistent with the requirements of Executive Order 12088², to advance and advocate proposals within their department and with other key decision makers and stakeholders, about what constitutes a reasonable, credible and legally compliant environmental cleanup program at the facility for which they are responsible.

National program managers from within the federal agencies responsible for conducting cleanups have at least three important roles. First, prior to signing or approving enforceable agreements with federal, state and tribal regulators, national program managers must carefully consider the impacts of each of the agreements on their program from a national perspective. They have the primary responsibility for ensuring that the cumulative commitments in facility level agreements are manageable from a programmatic perspective that includes the budgetary aspects of national programs.

Second, after signing or approving enforceable agreements, as with facility level managers and consistent with the requirements of Executive Order 12088, national program managers are responsible for advancing funding proposals that will ensure their agencies can meet their obligations and commitments. National program managers should advocate these proposals both within the Executive Branch and with other stakeholders. However, the Committee acknowledges that although national program managers have more influence over the level of resources that are made available to accomplish their mission compared to facility level managers, such decisions are still not completely within their control.

²Executive Order 12088, among other requirements, requires federal agency department heads to submit budget requests to the President that will allow them to meet their legally mandated pollution control requirements, including cleanup.

As discussed in Chapter 5, national program managers play an important role in addressing the tension existing between the requirements of Executive Order 12088 to submit budget requests allowing their agencies to meet their legal obligations and the requirement to submit funding requests within the limits of specified budget targets.

Third, after appropriations are made by Congress, national program managers are responsible for apportioning funding to intermediate organizational levels where appropriate (e.g., military commands), and facilities within their program in a manner that sustains the protection of human health and the environment. The allocation for cleanup should be made in a manner consistent with the approaches recommended in Chapter 5.

Agency Financial Managers and Comptrollers play an important role in some agencies in balancing the mission and other requirements of their agency with the resources available. In particular, financial managers wield great influence, and in many cases, the authority to determine the level of resources to be applied to agency cleanup programs. These financial managers are usually not very visible to stakeholders. In many cases, such managers believe that if their agency's primary mission requirements exceed the current and projected resources available, it is their job to determine and recommend to agency heads which requirements should not be funded. In addition, financial managers have become understandably alarmed at the continued growth of cleanup requirements as a percentage of agency budgets. Nonetheless, it should be recognized that cleanup programs are somewhat different from many other programs in that such requirements are often externally driven and therefore a top down priority system does not sufficiently account for such requirements. It is understood that risk assessments or relative risk evaluations are only one factor in building agency budgets for cleanup projects. Thus, most but not all projects funded first will be of high priority.

Cabinet-level officials at federal agencies responsible for conducting cleanups, consistent with the requirements of Executive Order 12088, are responsible for submitting funding requests that will permit their departments to meet the legally binding commitments they have entered into through negotiated agreements or are otherwise required by statutes and treaties. These officials should advocate proposals that constitute a credible environmental cleanup program aimed at completing the cleanup mission at a defensible and reasonable pace while protecting human health and the environment.

Similarly to national program managers, the Committee recognizes that cabinet officials are increasingly faced with the tension between the requirements of Executive Order 12088 and the requirement to submit funding requests within the limits of specified budget targets. The Committee agrees that Cabinet level officials have a critical role to play in attempting to balance federal facility cleanup obligations with other important societal needs and obligations that fall within their departmental programmatic purview. However, such balancing must always consider the nature of the federal facility environmental cleanup obligations in terms of its legal basis, ethical dimensions, and the effect of federal facility priority-setting decisions may have on cleanup decisions taking place in the private sector.

The President and the Office of Management and Budget (OMB) play a role that is separate and distinct from the roles that the various agencies of the federal government play as either responsible parties or as regulators. The principal feature of this role is to ensure that the nation as a whole maintains a sustained commitment to a credible program aimed at achieving cleanup objectives over a reasonable period of time and in a manner that is protective of human health and the environment. In so doing, the President and OMB play a critical role in attempting to balance federal facility cleanup needs and obligations with other important societal needs and obligations. Such balancing must always consider the nature of the federal facility cleanup obligations, in both their legal and ethical dimensions, as well as the impact of federal facility priority-setting decisions on cleanup activities taking place in the private sector. Both the President and OMB play essential roles in recognizing that federal facilities are subject to the same laws and regulations as private sector sites. Finally, in keeping with the spirit of executive orders applying to the departments of the Executive Branch, the President and OMB play perhaps the most essential role in ensuring that department-specific budgets and budget targets are set in a manner that allows departments to meet the legally binding commitments they have entered into through negotiated agreements or are otherwise required by statutes and treaties and sufficient to sustain a reasonable and defensible pace of cleanups that is protective of human health and the environment.

Congress, similar to the President, plays a critical role in ensuring the nation as a whole maintains a sustained commitment to a credible environmental program aimed at achieving federal facility cleanup objectives over a reasonable period of time and in a manner that is protective of human health and the environment. This role includes the oversight responsibilities Congress has in monitoring the performance of federal agencies. In addition, in authorizing and appropriating agency budgets, Congress must also balance federal facility environmental cleanup needs and obligations with other important societal needs and obligations. In so doing, Congress must also recognize the critical importance of treating federal facilities in a manner that is consistent with how private sector sites are treated, especially as it relates to any changes contemplated in the laws that define the decision-making authorities of other levels of government, as well as the consistent application of cleanup standards.

State, tribal³, and federal regulators need to exercise judgement about whether the federal cleanup actions being proposed or taken to address site-specific problems are protective of human health and the environment and result in a reasonable pace of progress toward completing the overall goal of cleaning up the site. Regulators have primary responsibility for setting cleanup standards, concurring with or selecting remedial actions, and determining whether the cleanup effort is proceeding at a pace protective of human health and the environment. In determining the appropriate pace of cleanup, regulators should consider the risk plus priority-setting factors discussed in Chapter 5. Regulators also have an obligation to work together with other regulators and regulated agencies to minimize imposing differing,

³ Tribal regulatory authority stems both from inherent tribal sovereignty as it relates to environmental contamination caused by the federal government on affected tribal lands and in some instances, through delegation of federal regulatory programs to tribes.

inconsistent, or conflicting requirements and to encourage efficient and cost effective cleanups. Regulators should participate proactively in the community involvement process to improve the overall federal facility cleanup program. In addition, regulators have an important role in exercising their enforcement authorities.

Tribal governments, in addition to their possible role as regulators, have a distinct decision-making role to play as that is derived from rights that are specified in treaties with the U.S. Government. In some instances, these treaty rights may result in legally binding obligations on the part of the U.S. Government that must be accounted for during the conduct of federal facility cleanup activities. Typically these interests will pertain to hunting, fishing, and religious freedom rights on ceded lands upon which there exists a federal facility. Tribes may also have a role that is derived from the rights and privileges that are specified in such statutes as the Historic Preservation Act, the Antiquities Act, the American Indian Religious Freedom Act, and other aspects of the trust relationship between tribes and the U.S. Government. This may include the rights and privileges of individual Americans, including urban Indians, indigenous peoples, and members of unrecognized tribes. With regard to advisory boards, The Committee believes that these government-to-government relationships are consistent with and should encourage participation of Tribes in advisory boards, and recognizes the right of each Tribe to make its own determination on this matter.

Local governments, including counties, cities, towns, special assessment districts, municipal utility districts (such as water and sewage), have at least three important roles to play in the context of federal facility environmental restoration. The first is similar to federal, state and tribal regulators in so far as local governments have a general obligation to protect the health, safety and welfare of their citizens as well as the environment where they live. One of the primary manifestations of this role is the fact that local governments very often serve as first responders in emergency response situations. The second role is as an institution of government that has historically had primary responsibility for land use determinations for lands within their jurisdiction. Therefore, in instances where federal land is transferred to a non-tribal local community, local governments are usually the institutional authority that will determine and regulate the land use. Third, local governments have a general responsibility to ensure the overall economic and social well being of their citizens. The participation of local governments in cleanup decision-making processes should be accommodated through direct inter-governmental consultations, exercise of local regulatory authority such as land use planning, and through participation with and involvement in advisory boards. Consistent with Principle 11, local government authority for land use decisions should be exercised independently of cleanup standards.

Because a facility may affect several local governments, expectations for their role in the cleanup decision-making processes should be discussed at the facility level among the regulated agency, the regulating agencies, local government officials and public stakeholders, consistent with the recommendations in Chapter 6.

Local, state, tribal, and federal health officials need to evaluate, make recommendations, and where necessary take appropriate actions to respond to the human health impacts of past,

present, and potential future releases of contaminants. These officials should recognize that, in some instances, the environmental/ecological impact of contaminants may be the determining factor in cleanup actions.

Public stakeholders have a central and independent role to play at the core of the decision-making process. This role should be addressed by the establishment of such mechanisms as advisory boards, as well as by other effective and meaningful approaches to community involvement. While public stakeholders play many important roles, it should be explicitly stated that such stakeholders must play an important role in remedy selection and overall priority setting of cleanup activities. It is important to ensure, not merely allow, meaningful participation by affected people and communities of color and other historically disempowered stakeholders. Indigenous peoples, urban Indians, grass roots tribal organizations and unrecognized tribes who are affected by federal facility contamination have an important role to play as public stakeholders that is independent from Tribal governments in that the federal government's trust obligations extends to individual members of tribes and not just the Tribal government.

8. The Role of Negotiated Cleanup Agreements—Negotiated cleanup agreements in many instances play a critical role both in setting priorities at a facility and providing a means to balance the respective interdependent roles and responsibilities in federal facilities cleanup decision making.

Federal facility cleanup is changing from an adversarial situation riddled with mistrust that slowed, if not paralyzed, cleanup progress, to a dynamic arrangement in which different stakeholders work together to achieve common goals. The Committee believes that negotiated cleanup agreements can and should continue to play an important role in this shift and thereby increase consideration of the concerns of both local and national level stakeholders.

Recently, reports have been issued criticizing the role of negotiated agreements in cleaning up federal facilities. These criticisms have asserted that they are "unwieldy" and frequently contain "unrealistic schedules" with cleanup milestones extending years or decades into the future. The Committee recognizes that developing an integrated cleanup plan for a huge facility like the DOE's Hanford facility is a monumental task. Rejecting a cleanup agreement as an approach to managing cleanup for such a facility because the agreement is "unwieldy" does nothing to simplify the task of cleaning up the facility. While the Committee acknowledges some agreements have worked better than others, and improvements can be made in implementing some of the agreements, the Committee disagrees with the view that negotiated agreements are, on the whole, unworkable. Therefore, the Committee attempts to address criticisms of negotiated cleanup agreements and the tension between the importance of negotiated cleanup agreements and the requirements of the federal budget process in the recommendations on "Budget Consultation and Milestone Setting" that are found in Chapter 5. When negotiated and executed in good faith, the Committee believes negotiated agreements can provide a good vehicle for setting cleanup priorities at individual facilities. To achieve this goal, negotiated cleanup agreements should be developed in consideration of

risk plus other factors described in Chapter 5, including the anticipated availability of cleanup funds. The Committee believes that these agreements typically are not and should not be developed in an unconstrained manner.

The Committee believes that the level of external regulatory oversight of federal facility cleanups necessary to ensure a credible and effective cleanup program will depend on the nature and extent of environmental contamination or hazard at any site. In addition, federal facilities on the Superfund National Priorities List (NPL) are required under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) to enter into "interagency agreements" setting out schedules for cleanup. The Committee also recognizes not all federal facilities are required to enter into such agreements in all circumstances, nor would it make sense for them to do so.

Negotiated agreements can provide an effective means to integrate state and federal cleanup authorities without resorting to expensive and lengthy litigation. Where a state's RCRA and EPA's CERCLA regulatory authorities overlap, as they do at many federal facilities, a negotiated agreement can provide a mechanism to coordinate those authorities to minimize differing, inconsistent, or conflicting requirements over matters within their jurisdiction, and, where appropriate, to identify a lead regulatory agency. As noted in Principle 13, the Committee believes an integrated approach to cleanup can greatly improve the quality and implementation of cleanup plans.

The very process of negotiating an agreement allows the parties to the negotiation to ensure their concerns and priorities are raised and addressed in the agreement. For example, federal agency negotiators can raise concerns about proposed schedules, their impact on agency budgets, and any other concerns they may have. The Committee believes it is the responsibility of each party to an agreement to raise and resolve such concerns prior to signing an agreement. This includes the responsibility of the regulated agency to provide information as fully as possible to the regulators and public stakeholders regarding budget and out year funding availability.

The Committee believes it is the responsibility of the parties to an agreement to ensure the schedules they negotiate are achievable and implementable before signing the agreement. In this regard, the Committee believes the parties to a cleanup agreement should consider several factors when negotiating cleanup schedules, such as:

- a) the logical progression of work at the facility;
- b) changing priorities resulting from new information;
- c) regulator and federal agency resources; and
- d) the likely availability of funding in any given year.

Finally, the processes and structures established in negotiated agreements offer opportunities for meaningful public involvement in cleanup decisions (see Principle 14). These processes can and should serve as a vehicle for reconciling competing public stakeholder values and concerns.

9. Consideration of Human Health and Environmental Risk and Other Factors in Federal Facility Environmental Cleanup Decision Making—Risk to human health and the environment is an important and well established factor that should continue to be a

primary consideration in federal facility cleanup decision making, including setting environmental cleanup priorities and milestones. However:

A) Human Health and Environmental Risk—Risk assessments and other analytical tools used to evaluate risks to human health (including non-cancer as well as cancer health effects) and the environment all have scientific limitations and require assumptions in their development. As decision-aiding tools, risk assessments should only be used in a manner that recognizes those limitations and assumptions. Moreover, risk assessments ought not be used by any party as a basis for unilaterally setting aside legal requirements that embody public health principles and other important societal values.

The Committee believes that a primary goal of federal facility cleanups is the protection of human health and the environment. Given this goal, one of the principal benefits of cleanups is the reduction of risk to human health and the environment. The Committee further believes that risk assessments and other analytical tools that evaluate the human health and environmental risks posed by contamination, as well as the human health and environmental risk reduction potential of proposed cleanup actions, are useful. However, these tools all have limitations that must be recognized in their utilization.

All Committee members acknowledge the shortcomings of risk assessments and related analytical tools. Some Committee members feel that affected communities in general, and low-income communities and communities of color in particular, have been adversely affected by the use of risk assessments. For example, in some cases, exposure assessments have not accounted for the unique dietary habits and lifestyles of native peoples and communities of color. These Committee members believe that the scientific and technical limitations of risk assessments are so severe that they should be used sparingly, if at all. These Committee members believe risk assessments are so fraught with ambiguity that they have often been misused or abused.

Furthermore, these same Committee members believe that the identification of arbitrary risk-based human health and environmental "protection" levels (i.e., so-called "acceptable" risk levels), which often provide the justification for undertaking risk assessments to begin with, can be criticized on both moral and ethical grounds. These Committee members believe when used in this manner, risk assessments tend to result in the imposition of risks to human life on specific populations while the benefits tend to be more widespread and usually do not accrue to the populations that are placed at risk.

Other Committee members have more faith in the utility of risk assessments when used consistently across an agency, in a manner that recognizes their limitations and when public stakeholders understand their proper use and function. These Committee members believe although not perfect, risk assessments provide valuable information that can help determine both whether and when a cleanup action should be taken. These Committee members believe that without this information, efforts to set priorities for cleanup actions would be chaotic.

Notwithstanding these differing views, all Committee members recognize risk assessments are currently being used, and will continue to be used, in cleanup decision making. All Committee members believe some of the more significant limitations of risk assessments include the failure to recognize multiple and cumulative exposures or distinguish between voluntary and involuntary risks, and man-made and natural risks. The Committee also believes risk analysts tend to focus on the probabilities of harm, whereas affected communities tend to focus on the nature and consequences of that harm. The outcome of these different approaches is often disagreements about the meaning of risk assessment results, as well as the implications of such results for public policy decisions.

The current focus on the use of risk assessments as a policy-making tool has left the impression it is a powerful tool based on scientific evidence and good data. This is often not the case. Risk assessments therefore often create an illusion of scientific knowledge and certainty. The data used to produce risk assessments are often limited and, in any case, must be subjected to interpretation. Moreover, the assumptions used are often the subject of intense scientific debate. The manner in which risk assessments are developed, communicated and utilized often does not consider that many individuals do not have, or are not provided with, information about how the assumptions are developed, the quality of the data used, and how the data and assumptions are used to produce the estimate of risk.

Risk-based cost benefit analyses, sometimes referred to as risk benefit analyses, often fail to capture all of the possible future economic costs and benefits associated with various levels of remediation efforts. For example, partial or inadequate remediation efforts can impose long-term costs that are passed on to an affected community in the form of lost future economic and social potential. This lost potential can be manifested not only in the loss of direct development of the affected areas but in the overall perception that the community's quality of life has been permanently compromised—thus discouraging a variety of activities important to the vitality of communities (e.g., siting new businesses, recreation, tourism). In addition, it is not possible to reduce all of these values to a monetary value as risk benefit analysis requires. All stakeholders should take responsibility, through the advisory board and other mechanisms, to ensure that costs and benefits are identified and included in the analysis to the extent possible.

The Committee is concerned about the implication of the misapplication of risk assessments and risk benefit analyses in federal facility cleanup decisions and the problem it could create for the credibility of the cleanup process. All stakeholders should ensure that cleanups are protective of human health and the environment and reflect as broad a consensus as possible by placing risk assessment process in its proper perspective.

The Committee believes the various approaches one can take to evaluating, analyzing and assessing human health risk and risk reduction potential are tools that can help inform stakeholders as they make or participate in priority-setting decisions. However, the results of risk evaluations, analyses and assessments should not themselves be considered the defacto priorities.

When using risk assessment tools to help inform federal facility cleanup decisions, all key decision makers (i.e., not just the national program managers of the agencies responsible for conducting cleanups) should carefully distinguish between the following types of decisions:

- whether an environmental contamination problem poses a sufficient threat to human health or the environment to warrant action; and, if so,
- what type of action is warranted; and
- when it should be accomplished.

All of these decisions are a form of priority setting and all of them will be based on consideration of multiple factors. With the exception of emergency response situations, the Committee believes direct measures and estimates of human health and environmental risk are relatively more important in deciding whether to take action and, if so, what action should be taken, than in the case of deciding when the action should be accomplished. In using risk evaluation methodologies to determine the timing and sequence or, in the opposite case, delay of cleanup activities or projects, the primary focus should be on the relative risk reduction potential of those actions rather than the relative risk posed by the contamination. The relative risk is more appropriate to consider when deciding whether to take action and if so, what action.

As noted, the Committee believes the analytical tools that are currently available to evaluate human health and environmental risk have scientific uncertainties that are often not well understood or acknowledged by policy makers. Because of this, the Committee recommends that all key decision makers should adhere to the following when using risk assessments:

- a. There are scientific uncertainties associated with the myriad of assumptions imbedded in these analytical tools. Moreover, it should be recognized that there are often limitations on the availability and quality of data necessary to make effective use of such tools. Risk assessment reports should clearly delineate these limitations in laymen's terms as part of the analysis.
- b. Stakeholders should be involved in both the analysis of risk and risk reduction potential at the front end, including exposure assessments, as well as the risk management and broader priority setting decisions that flow from such analyses. Such involvement should be accomplished in a way that does not overly complicate the nature of the data and methodologies being used or the decisions being made on the basis of these analyses. This involvement should be encouraged to focus the effort and maximize the benefit of the study.
- c. The assumptions used in conducting risk assessments should be communicated at the front end so the results may be better understood. Overly certain or emphatic statements concerning the results of any effort to analyze or compare

risk or risk reduction potential such as those offering unqualified numerical precision should be avoided.

- d. Risk assessments should analyze appropriate carcinogenic and non-carcinogenic effects when evaluating the human health effects resulting from expected exposures.

If and when risk assessments are used, they should be used as a tool to help assess the risk to diverse populations (rather than averaging risks across the general population) including:

- a. communities of color and low-income communities historically subjected to environmental, social, and economic injustice;
- b. particularly susceptible sub-populations such as pregnant woman, children, the elderly, and populations exposed to multiple hazards; and
- c. risks to workers, as well as the general population.

It should be recognized that it is impossible to develop useful ordinal rankings of sites or cleanup activities based solely on risk or risk reduction potential. At best, the Committee believes risk assessments can be used to categorize environmental contamination problems into broad groupings such as those that pose high, medium, or low risk. It may also be possible to group and compare cleanup actions into those that may result in high, medium or low risk reduction per dollar of expenditure. Further ranking of contaminated areas or actions using risk assessments makes consideration of other important factors (described in Principle 10b below and Chapter 5) difficult if not impossible.

The effort involved in evaluating human health and environmental risk should be tailored to the decision or decisions at hand. Highly quantitative and technically complex risk assessments should be avoided when less involved analytical methods will meet the need. Such resource-intensive efforts can serve only to complicate, delay, and increase paperwork and costs without any clear value added.

Some components of the federal government, as well as stakeholder involvement groups, are beginning to make progress in balancing the careful consideration of risk and risk reduction potential with other important factors. Actions to force the consideration of risk to become the only factor in setting federal facility cleanup priorities will detract from this progress and should be avoided. As discussed in Chapter 5, the Committee recommends that a "risk plus other factors" approach be used to determine the sequencing and priority of cleanup activities.

B) Other Factors—In addition to human health and environmental risk, other factors warrant consideration in setting environmental cleanup priorities and milestones. These factors include:

- cultural, social, and economic factors, including environmental justice considerations;
- short-term and long-term ecological effects and environmental impacts in general, including damage to natural resources and lost use;
- making land available for other uses;
- acceptability of the action to regulators, tribes, and public stakeholders;
- statutory requirements and legal agreements;
- life cycle costs;
- pragmatic considerations, such as the ability to execute cleanup projects in a given year, and the feasibility of carrying out the activity in relation to other activities at the facility;
- overall cost and effectiveness of a proposed activity; and
- actual and anticipated funding availability.

The Committee believes that fiscal constraints do not justify failing to take actions to protect human health and environment, but may result in the need to set priorities about what cleanup actions can occur in any given year.

As discussed further in Chapter 5, risk to human health or its corollary, protection of human health is, at many sites, only a starting point for establishing cleanup funding priorities. The Committee also believes that in many other instances protection of the environment is the appropriate starting point for establishing cleanup funding priorities. Furthermore, in other cases, protection of human health and the environment is the appropriate starting point for establishing funding priorities for cleanup. The Committee strongly recommends that in those instances where protection of the environment is not used as a starting point for establishing cleanup funding priorities, it should be considered as one of the factors that are listed below.

Thus, while the Committee believes the comparison of human health and environmental risk and risk reduction potential is appropriate in setting priorities for federal facility cleanups, they are not the only factors, and risk must be viewed in the context of other social values, environmental goals, and economic benefits. Some of the other factors that should be considered in setting priorities for federal facility environmental cleanup include, but are not limited to:

- a) cultural, social, and economic factors, including environmental justice considerations;
- b) potential or future use of the facility, its effect on the local communities' economy, vitality, livability and environmental quality;
- c) the ecological impacts of the contamination and the proposed action to address it (in those instances where protection of the environment is not used as the primary basis for establishing cleanup funding priorities as further explained in Chapter 5);

- d) intrinsic and future value of affected resources (e.g., groundwater and fisheries);
- e) pragmatic considerations such as availability and continuity of skilled workers, labs, and cleanup contractors to complete the activity or the feasibility of carrying out the activity in relation to other activities at the facility (i.e., capacity and work flow logic), or both;
- f) the overall cost and cost effectiveness of a proposed activity and especially the relative risk reduction value obtained by the proposed expenditure;
- g) making land available for other uses, recognizing land uses may change over time;
- h) the importance of reducing infrastructure costs (e.g., \$300 million is spent each year to monitor tanks at Hanford and \$130 million is spent each year at Rocky Flats to safeguard special nuclear material);
- i) the availability of new or innovative technologies that might accelerate or improve the ability to achieve a permanent remedy;
- j) Native American treaties, statutory rights (e.g., American Indian Religious Freedom Act), and trust responsibilities;
- k) regulatory requirements and the acceptability of the proposed action to regulators and other stakeholders;
- l) supporting accomplishment of other high priority agency objectives;
- m) life-cycle costs; and
- n) actual and anticipated funding levels, as explained in Chapter 5.

These, as well as other factors that emerge should be considered by all key decision makers. This may occur concurrently with discovery of site-specific information and the recognition of stakeholder viewpoints. Care should be taken to ensure that the factors to be used are identified in advance of the need to make priority-setting decisions at the site-specific and national levels. Efforts to develop weights for each of these factors or to convert the priority-setting decision-making process into an overly quantitatively driven process should be avoided. Rather, the Committee believes we as a nation should find ways to improve participation in the federal facility priority-setting decision-making process such that the decisions made reflect as broad a consensus as possible as to the appropriate path forward. As noted above, negotiated agreements and meaningful stakeholder involvement can, and should continue to play an important role in carefully balancing the respective roles,

responsibilities, needs and interests of key decision makers and public stakeholders, especially as it relates to giving due consideration to all relevant decision-making factors.

10. The Importance of Pollution Prevention and Pollution Control Activities—Effective pollution prevention and pollution control activities are essential to prevent future environmental cleanup problems. Therefore, in carrying out their mission, federal agencies should view such activities as a cost of doing business and fully comply with environmental laws and regulations that are designed to accomplish these objectives.

The cost of cleanup is due, in part, to the historic lack of effective pollution controls prior to the passage of environmental laws during the last two or three decades and agencies' failure to comply with the pollution prevention and pollution control provisions of environmental laws such as RCRA, the Clean Water Act (CWA), the Clean Air Act (CAA), and the Atomic Energy Act. For this reason, the Committee believes that pollution prevention and pollution control measures should always be considered a cost of doing business, in contrast to cleanup measures, that the Committee acknowledges may sometimes need to be prioritized due to funding constraints. This principle is not intended to preclude or supersede the need for an integrated, systematic approach to setting priorities for cleanup actions. A systematic approach (as described more fully in Principle 13) is useful to determining appropriate time frames for cleanup and waste management activities.

The Committee recognizes that the line between pollution prevention and pollution control and cleanup measures may not always be clearly drawn. However, the following are examples of pollution prevention and pollution control measures that should be considered costs of doing business and funded together with the underlying activity. Persons who generate hazardous waste are required to comply with a set of regulations designed to minimize risks to communities, workers, and the environment. The regulations apply from the time the waste is generated, through its storage, treatment, and ultimate disposal. The pollution prevention and pollution control measures required under these regulations include such requirements as: a) training of workers who have to handle the wastes in their proper management; b) preparation, implementation and training related to a contingency plan governing what to do in case of an accident; c) periodic inspections; and d) more specific management practices related to the particular form of waste handling (e.g., the manager of a hazardous waste container is required to keep a container closed, except when waste is being added to or removed from the container).

The Committee acknowledges that not all pollution prevention and pollution control activities are legally required. Nevertheless, because pollution prevention actions are generally very cost-effective means of protecting human health and the environment, the Committee strongly supports implementation of pollution prevention actions.

To the extent that funding can be isolated from other decision-making factors in determining the appropriate timing of an activity, funding should not be a reason to delay or avoid undertaking a preventative pollution control action. Rather, funding of preventative pollution

control activities should be viewed as a cost of doing business and funded in conjunction with the activity causing the pollution.

11. The Role of Future Land Use Determinations in Making Cleanup Decisions —

Reasonably anticipated future land uses should be considered when making cleanup decisions for federal facilities, provided that at the time of any land transfer there are adequate safeguards to protect land holders, those who will receive or lease the land, and surrounding communities. The communities that are affected by federal facility cleanups, along with their local governing bodies and affected Indian Tribes, should be given a significant role in determining reasonably anticipated future use of federal property that is expected to be transferred, and in how future use determinations will be used in making cleanup decisions.

The future use of land is currently considered as a factor in making cleanup decisions under federal law as well as many state laws. Future land use has relevance to the issue of funding and priority setting for federal facility cleanups in that many view the possibility of cleanup based on future uses more restrictive than residential use (e.g., industrial use) may result in less costly remedies, at least in the short-term.

Although the Committee views future land use as an appropriate factor in making cleanup decisions and setting priorities, decisions about future use are separate from decisions about cleanup. These decisions are often made by different bodies and although there clearly is, and should be a relationship between these decisions, it does not follow that a future use decision should automatically determine the cleanup remedy.

To meet the needs of impacted communities and budget-conscious federal agencies, the conditions under which future use should be considered need to be clarified. In particular, the Committee recommends that:

- a) Reasonably anticipated future use, not just current or immediately anticipated use, should be considered in cleanup decisions.
- b) For properties being transferred from federal ownership, future use determinations should be made by the state, tribal, or local authorities that will have jurisdiction over the land to be transferred, with appropriate forms of stakeholder involvement. The federal government should provide stakeholders with all relevant information on cleanup alternatives, including implications of land use choices and corresponding cleanup levels and remedies. Regulated agencies should remain neutral with respect to appropriate land use choices.
- c) When property is transferred from federal ownership, the federal agency should, after timely and reasonable investigation, fully disclose all hazards known or suspected to be present on the property.

- d) Cleanup for property remaining in federal ownership should consider the anticipated federal use of the property and the need to continue the cleanup process even if the property is transferred from one federal agency to another federal agency. If such property is subsequently transferred from federal ownership, the cleanup decision should be re-evaluated in light of the land use selected by the state, tribal, or local authorities that have jurisdiction over the land to be transferred.
- e) For property expected to be transferred, at the time of transfer the transferring agency should fully disclose who will be financially responsible if the land use changes to one that would require additional cleanup. Furthermore, financial responsibility should be addressed explicitly in the negotiation of the transfer agreement.
- f) When making cleanup decisions for properties remaining in federal ownership, cleanup advisory boards, local planning and reuse authorities, and the public stakeholders should be consulted about reasonable anticipated future use assumptions.
- g) If there is a danger that contaminants and other hazards will migrate to adjacent lands, the migration should be contained or the source eliminated. If such migration has already occurred, the contamination should be addressed in accordance with the risk plus other factors priority-setting process in Chapter 5.
- h) Where appropriate, the designated groundwater use should have a greater impact on cleanup standard decisions than the future use of the facility.
- i) In circumstances where reasonably anticipated future use includes mixed uses such as child care centers, medical facilities, and parks mixed with industrial or office areas, the implications for all uses should be evaluated when making cleanup decisions.
- j) The cost and delay associated with determining and evaluating the impact of future use may, in some cases, mean that selecting the most stringent cleanup standard or remedy (e.g., one based on a unrestricted use) is the most cost effective and least time consuming approach to moving forward with the cleanup process when compared to the marginal savings that may result from using a less stringent cleanup standard or remedy. In other cases, this will not be true.
- k) Land not cleaned up to standards permitting unrestricted use should be subjected to appropriate enforceable institutional controls (e.g., deed restrictions, zoning, physical controls, and/or monitoring for the life of the hazard). Such controls are necessary not only to protect human health and the environment, but also to preserve the integrity of the cleanup remedy. The cost

of such monitoring and controls should be considered in evaluating the savings achieved by implementing the less stringent cleanup standard. The significant problems and costs posed by maintaining institutional controls over the extremely long life of contaminants such as certain radionuclides merit serious consideration in the decision on what action to take.

- l) In those limited instances where there are long-term, persistent, and high-level risks to human health and the environment, and the technological capability does not yet exist to permanently remove those risks, or where the cost of the technology that would permit unrestricted use or even some limited uses is extraordinarily high, land use restrictions may allow for interim actions that are protective of human health and the environment. However, the responsible federal agency, with the involvement of regulatory authorities and other stakeholders, should commit to undertake pilot testing, technology demonstration, or research and development aimed at establishing the technological capability to address the problem. Furthermore, it must be recognized that such actions are indeed interim actions and do not absolve the responsible agency from taking a final action.

Building on Principle 1, some Committee members believe that additional recommendations are necessary to achieve the principle of minimizing burdens on future generations. Specifically, some Committee members believe that cleanups should be designed to ensure that the treatment, disposal and isolation of the contamination itself, as well as the cleanup wastes and all other wastes from the facility, occur in such manner that the contamination/wastes will not pose a threat to human health and the environment within a specified period of time (e.g., 100 - 500 years), thereby allowing for unrestricted use of previously contaminated lands and disposal sites within the specified period. Other Committee members believe that in most cases existing laws and regulations are adequate to achieve the principle of minimizing burdens on future generations and/or that unrestricted use is not an appropriate goal in some cases. Still other Committee members believe that while the above views represent a laudable goal, it is impracticable in some cases. In particular the characteristics of the waste (e.g., half-lives of thousands of years), the cost and cost effectiveness of current technologies, and/or political realities (e.g., disposal facility siting disputes) will make it difficult if not impossible to achieve unrestricted use of contaminated lands or disposal sites within a specified period such as 100 - 500 years.

12. The Role of Studies in the Cleanup Process—The identification and characterization of contamination and the evaluation of health impacts on human populations are essential parts of the cleanup process. Efforts to streamline the cleanup process should focus on reducing paperwork and moving away from adversarial relations toward cooperation, not the arbitrary capping of funding for studies.

There is a great deal of frustration across the country over the slow pace of cleanup at non-federal as well as federal facilities. Historically, in too many instances regulated agencies and regulators have prepared and reviewed documents with a view toward building a potential

legal case rather than promoting timely cleanup. The Committee supports efforts to eliminate or reduce unneeded paperwork, accelerate document reviews, and promote frequent consultation among the parties.

Arbitrary funding limits on study, however, could actually delay cleanup and undermine priority setting. Many facilities have not yet been fully surveyed or had their sites characterized. Limits on study could prevent contamination at those facilities from even being recognized. Funding limitations also prevent the conduct of human health studies necessary to inform cleanup decisions.

At large, complex hazardous waste sites—often the very sites that are considered a high priority by all stakeholders—caps on funding for study may prevent completion of work necessary to move forward with the "moving of dirt" or other treatment. For example, in remediating groundwater contamination, extraction wells cannot be sunk effectively, or the determination that "pump and treat" is an appropriate remedy cannot be made, without first characterizing where contamination exists in the ground water.

If arbitrary limits are placed on study, agencies would be pressured to move forward with activity at low priority sites that require less study rather than complete much more complex projects at sites that pose very serious, but more complex threats to public health and the environment. The Committee believes that increased cooperation between all stakeholders is necessary to better focus and use cleanup studies that result in action rather than a justification for more study.

13. The Need for a Systematic Approach to Decision Making and Priority Setting
—Federal facility priority-setting decisions should be made in a manner that recognizes their interconnectedness to other environmental problems.

In addition to the consideration of multiple factors when setting federal facility cleanup priorities, it is often very important to consider priority-setting decisions from a systems-oriented perspective. This means holistic and systematic methods should be applied in deciding cleanup actions and other related federal actions intended to reflect public stakeholder values. Such methods must consider the different values of public stakeholders and resolve conflicts in a fair and equitable manner.

A systems-oriented perspective is especially pertinent in the context of cleanup at DOE's former nuclear weapons production facilities. At such facilities it is critically important to consider the interrelationships between issues such as safeguarding special nuclear materials; treatment, storage and disposal of all the various forms of waste found at such sites; restoration and remediation of contaminated environmental media; and technology research and development. None of these issues should be considered in isolation of the other. The same can be said of federal facility sites and programs managed by agencies other than DOE, on perhaps a smaller and less technically complex scale.

14. Stakeholder Involvement—Public stakeholders and local governments historically have not been involved adequately in the federal facility cleanup decision making and priority-setting process. Agencies responsible for conducting and overseeing cleanup and related public health activities must take steps to address this problem, with the overall goal of ensuring that federal facility cleanup decisions and priorities reflect a broad spectrum of stakeholder input from affected communities including indigenous peoples, low-income communities, and people of color. Like pollution prevention and pollution control measures, meaningful stakeholder involvement has in many instances resulted in significant cleanup cost reductions. It should therefore not only be considered as a cost of doing business but as a potential means of efficiently determining and achieving acceptable cleanup goals.

As defined by the Committee, "stakeholders" are those affected by or who otherwise have an interest or "stake" in or the ability to influence the outcome of, in this case, federal facility environmental cleanup decisions. Using this definition, all of the interdependent decision makers described above in Principle 7, as well as those affected by their decisions, can be considered stakeholders—the public, regulators, and the regulated agencies.

In the remainder of this section, however, the Committee focuses on those individuals and groups who do not have a formal or statutorily defined decision-making role. It was these public stakeholders that were the primary focus of the Committee's recommendations regarding the establishment of advisory boards, as well as other improvements to community involvement processes. In addition, local government involvement is usually not formally or statutorily defined, and it should be considered as a part of stakeholder involvement. Meaningful local government involvement, particularly the involvement of officials from affected communities, is essential given that the future of these communities is integrally linked to the outcome of cleanup decisions.

The Committee believes continued improvements aimed at even more meaningful and effective public stakeholder involvement will provide a solid foundation for finding a credible and reasonable path forward. Public stakeholders can and should continue to play a critical role in providing input on:

- the consideration of risk and risk reduction potential in relation to other relevant priority-setting factors and in determining what those factors are;
- the determination and consideration of reasonably anticipated future site use as it relates to cleanup standards and remedy selection;
- how to keep the cost of accomplishing the cleanup mission as low as is reasonably possible;
- the sequencing of cleanup activities;

- the priorities that should be included as milestones in negotiated agreements; and
- what constitutes a credible environmental cleanup program, particularly at a facility level, that is protective of human health and the environment and achieves satisfactory progress in site cleanup over a reasonable period of time.

Properly designed and executed community involvement processes can help to resolve the legitimate dynamics of the simultaneous need to make decisions and set priorities at both the facility level and the national level. In recognition of this, the Committee believes that any efforts to improve stakeholder involvement in the federal facility cleanup decision-making process should strive to:

- create a process in which communities and agencies are seen as equal partners in the dialogue on cleanup issues;
- establish productive working relationships among the community, local facility managers, and regulators;
- increase the accountability of federal agencies to local communities, including those who have historically been subject to social, economic and environmental injustice;
- produce results that restore the environment while meeting local community needs;
- harness and build upon local and indigenous leadership and expertise;
- demonstrate an enduring commitment to the Environmental Justice Executive Order (Executive Order 12898, February 11, 1994);
- develop linkages among communities and public stakeholders across the nation to share information about how priorities are being set and decisions are being made at federal facilities;
- recognize that an open process that involves public stakeholders can help promote efficiency and hold down costs;
- ensure environmental regulations are implemented equitably; and
- provide access to resources, information, and training so all stakeholders are able to participate in decision making.

Conclusion

In offering these principles, the Committee hopes to improve the overall process of federal facility cleanup decision making. They are intended to apply broadly to all aspects of that process, and all individuals and institutions involved in that process. The following chapters offer more concrete recommendations for some of the concepts embodied above. In

particular, the Committee has focused on improving overall community involvement in this process; the use of advisory boards and funding and priority-setting processes which were the focus the Interim Report; and building the capacity of all stakeholders to effectively participate in the process.

CHAPTER 3

COMMUNITY INVOLVEMENT

Introduction

Since its inception, the Committee has stressed that government agencies should not conduct their business and public interactions in a "Decide, Announce, and Defend" fashion. Examples from communities around the nation demonstrate that involving communities early and often in the decision-making process enables public stakeholders to help agencies make cost-efficient decisions that lead to faster cleanups. Community involvement is a vital part of any cleanup program and requires a sustained commitment of finances and resources from federal agencies and public stakeholders alike, even during times of budget constraints. Building on Principle 14 of the previous chapter, the recommendations in this chapter are aimed at improving community involvement processes to more actively engage those most affected by federal facilities.

Since the publication of the Interim Report, significant progress has been made in the implementation of the Interim Report recommendations and principles. For details regarding these efforts, see Boxes 1-7.

Interim Report Recommendations

In its 1993 Interim Report, the Committee identified the need for good information dissemination programs as an essential step in effective community involvement. The Interim Report identified three weaknesses in how federal agencies disseminate information regarding federal facilities cleanups:

- Stakeholder's opinions are often solicited late in the process after the governmental entities have concluded their investigatory work;
- The extent and the effectiveness of agency information dissemination and exchange efforts are inconsistent

Box 1: U.S. Environmental Protection Agency

In order to make information on federal facility cleanup publicly available, EPA maintains several databases including CERCLIS, RCRIS, the Hazardous Waste Docket and the Federal Facilities Bulletin Board. In addition, EPA works directly with federal facility advisory boards to provide them with any technical or regulatory information they need.

EPA has established federal facility coordinators in each regional office. The coordinators work with EPA regional programs to provide assistance, training and outreach for federal facilities, providing a central point of contact for both the public and the federal facilities. They assist in implementing federal facility enforcement programs; manage tracking, oversight, and compliance planning activities; coordinate and train federal facilities in developing environmental management program plans; and encourage pollution prevention at federal facilities. For more information regarding Superfund, call EPA's RCRA/CERCLA Hotline, (800) 424-9346 or (703) 412-9810.

between facilities and between agencies; and

- Stakeholders perceive that requests for information are treated by government officials as burdensome and an impediment to management rather than as a right of citizenship.

Box 2: Department of Energy

DOE published a public participation policy on July 29, 1994. This policy commits the department to candid information exchanges and ongoing two-way communication using a variety of mechanisms. Key aspects of this policy include a commitment to the following:

- Whether formal or informal, all public participation activities will be conducted in a spirit of openness, with respect for different perspectives and a genuine quest for a diversity of information and ideas.
- The Department will work to establish, announce, and manage topical data bases of reliable, timely information available to the public via telephone and computer.

In keeping with these commitments, the Office of Environmental Management (EM) has established an EM information center to provide quick and convenient access to all program information. The center maintains an 800 number, electronic bulletin board with e-mail access to all DOE employees, and an extensive library of program information. The 800 number receives approximately 1500 inquiries a month while 2000 citizens regularly use the electronic bulletin board.

All major DOE sites have established a Public Participation Coordinator who serves as the central point of contact for all public participation activities. This person is responsible for ensuring that public participation activities provide meaningful, timely opportunities for citizens to influence EM's policies.

On the national level, in 1994 EM established the Office of Public Accountability to coordinate EM public participation efforts. This office maintains an on-going public participation training program for senior and mid-level managers, oversees an EM information center, and manages 11 site-specific advisory boards, the national EM Advisory Board, and a national dialogue with State and Tribal leaders. For more information, contact Don Beck, Office of Public Accountability, DOE, (202) 586-7633.

To address these concerns, the Committee recommended three principles to guide the exchange of information:

- Federal agencies have an obligation to ensure that information is provided to all interested parties within applicable regulatory, resource, and budgetary constraints.
- Well developed information dissemination and exchange processes should ensure the timely release of information to public stakeholders and provide the basis for informed involvement in decision making. This should hold true for any facility, whether it is on the National Priorities List (NPL) or not.
- The information dissemination and exchange process must be consistent with Freedom of Information Act (FOIA) principles, providing full disclosure of available information. Classification of information on the basis of national security concerns should not be used to bar the flow of relevant cleanup information where security/classification issues no longer exist. Such information should be declassified.

In addition to the above principles, the Committee recommended three specific actions in the Interim Report, including:

- developing agency dissemination policies;

- encouraging public stakeholders to portray accurately the draft status of documents or other preliminary information that they receive in draft form; and
- establishing a central point of contact within agencies for assisting in disseminating information.

Continuing Problems

The Committee reaffirms the importance of the principles and recommendations regarding information dissemination originally stated in the Interim Report. The members generally applaud the changes that have occurred in the past years allowing and even encouraging citizens to play more active and dynamic roles in the federal facility cleanup decision-making process. However, in identifying continuing problems with information dissemination, the Committee recognizes that this is only one, albeit important, component of an overall community involvement program. In the following recommendations, the Committee addresses the range of general issues regarding community involvement efforts in federal facility cleanups.

In current community involvement efforts, federal agencies often do not seek to include the full range of interested and affected parties and when they do, they sometimes do not provide appropriate or adequate information. This contributes to the continued mistrust that exists among some public stakeholders. In particular, concerns include:

- Community involvement programs have not consistently attempted to reach out to the full range of stakeholders, particularly communities of color, low-income communities, and in some cases local government officials;

Box 3: Department of Defense

DOD policy on information dissemination for the restoration program emphasizes the need to provide information early so that the public can be informed about program activities and provide input during the planning process. Specifically this policy requires installations to make available to the public, in a timely manner, information on program activities such as draft final and final technical documents, proposed and final plans, and status reports. Documents that are considered deliverables under agreements with regulatory agencies are to be made available to the public at the same time that they are provided to regulatory agencies.

In order to make information accessible to the community, installations are required to keep information centers/repositories in a convenient location, often in a public library. Most installations maintain a mailing list which they use to reach community members who have expressed interest in the program directly. Announcements and fact sheets are typically distributed to mailing listees.

Installations are developing summaries of the documents that are brief and readable. This is intended to help citizens understand results and findings, and to make it easier for them to comment. Also, DOD technical personnel are available to explain and interpret documents at Restoration Advisory Board meetings and other forums so that RAB members and other interested citizens have a better understanding of the contents.

DOD installations typically establish points of contact for providing information on cleanup activities. These individuals are knowledgeable about cleanup activities and can respond to or refer citizen questions to appropriate information sources. Their names and phone numbers are widely published.

DOD is in the process of creating regional environmental coordination offices that would serve a number of coordinating functions among the Services. A DOD Service will take the lead role in each region. This regional environmental coordinator could help resolve information dissemination problems by ensuring that issues are brought to the attention of the appropriate Service representative for resolution at the local level. For more information, contact Marcia Read, Environmental Security/Cleanup, DOD, (703) 697-9793.

Box 4: Department of the Interior

The DOI bureaus have responsibility for information dissemination and for establishing central points of contact for their environmental cleanup programs. Each bureau has an office with primary responsibility for the program, usually located in their headquarters organization. In addition, the Office of Environmental Policy and Compliance serves as an information clearinghouse and contact point, both in the headquarters and in the eight regional offices, which are located in Boston, Philadelphia, Atlanta, Denver, Albuquerque, San Francisco, Portland, and Anchorage. For more information, contact John Craynon, Office of Environmental Policy and Compliance, DOI, (202) 208-3891.

Box 5: U.S. Department of Agriculture

USDA agencies with relatively small programs, such as the Agricultural Research Service, have designated an individual as Environmental Pollution Control Coordinator at their headquarters level to be the contact point for cleanup activities. USDA-Forest Service policy requires each region and research station to designate an individual as a CERCLA coordinator to be the primary point of contact with the headquarters level. The CERCLA coordinator is responsible for coordinating all aspects of response actions initiated under CERCLA. At the project level, it is likely that technical responsibility for a specific project will be delegated to an On-Scene Coordinator or Remedial Project Manager and the unit Public Affairs Specialist will be the designated Spokesperson for community relations as described in the NCP. For more information, contact Harry Kringler, Environmental Engineer, USDA (202) 260-6565.

- Federal agency personnel are not always aware that the information requirements of communities of color and low-income communities may be broader than those of the regulatory community and may include information needs on the entire range of environmental impacts of proposed actions, employment, business development, and educational opportunities;
- Federal agencies do not always include local government decision makers early enough to ensure that local officials can identify issues of concern related to cleanup, downsizing and closure;
- Public stakeholders often do not have the technical understanding of the issues and are not prepared for participation in public activities. This limited ability hampers the ability of public stakeholders to provide relevant substantive input that can influence the decisions being made;
- Public stakeholders cannot effectively participate in the decision-making process when the field offices and headquarters of agencies are not communicating effectively with one another;
- Public stakeholders, especially communities of color and low-income communities, often do not have sufficient resources to translate the information provided by federal agencies into forms and formats that are useful, easily understandable, and informative for effective participation in agency decision making;

- Some federal agencies continue to apply the Freedom of Information Act (FOIA) exemptions in an overly broad and cautious manner. The withholding of an entire document because portions of it are confidential—such as internal advice, recommendations and proposals—fails to recognize that other portions containing factual information may not be exempted from release;
- In some cases, information dissemination programs and community involvement programs are perceived to be public-relations efforts designed to present the agencies' actions in the best light and to gloss over problems;
- The number of agency personnel with expertise in involving public stakeholders in the decision-making process is limited; and
- Where financial and personnel resources are constrained, community involvement programs may be disproportionately affected.

Box 6: National Oceanic and Atmospheric Administration

NOAA has four Regional Environmental Compliance Officers (RECOs) responsible for implementation of NOAA environmental compliance programs in the field. The RECOs provide advice and guidance to field managers and staff on environmental matters, complete audits, respond to emergency situations and assist with development of assessment and remediation actions. The RECOs complete the A-106 process for their region and submit to the NOAA Environmental Officer for consolidation and development of budget requests. Assessment and remediation documents are shared with all involved stakeholders in any cleanup effort (e.g., regulators, other agencies, the impacted community). RECOs respond to FOIA requests in coordination with NOAA General Counsel. Complete project files are maintained at each RECO office. For more information, contact Sam Higuchi, Environmental Compliance and Safety Officer, NOAA, (301) 713-0845.

Recommendations

In addition to the recommendations proposed in the Interim Report and summarized above, the Committee recommends that federal agencies draft or revisit current policies and guidance documents directing community involvement activities to ensure that the following items are incorporated to address the above concerns.

I. Fundamentals of Community Involvement

The Committee recognizes that there are many different and viable mechanisms for effectively incorporating community concerns in the cleanup decision-making process. However, the Committee believes any community involvement effort must be:

- transparent;
- open;

- interactive;

Box 7: Agency for Toxic Substances and Disease Registry

The Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services, has a number of public health responsibilities under CERCLA, RCRA, and other environment statutes. The mandated programs for ATSDR include the development or conduct of: toxicological profiles; exposure and disease registries; medical surveillance; community health studies; public health assessments of Federal and non-Federal National Priorities List (and petitioned) sites; health consultations; emergency response activities; and other public health programs.

Information from community members regarding health concern, health outcomes, and environmental factors is a central component of ATSDR site-specific activities. ATSDR also considers the effective communication of risk, as well as health and scientific information, a significant part of its public health management programming. The following are some community involvement activities that ATSDR uses to dialogue and interact with communities around Superfund sites: public availability sessions; public meetings; small group briefings; Federal Advisory Committees at Department of Energy sites; Community Assistance Panels at Department of Defense sites; public information and education materials; health education and training; press releases; Federal Register Notices; and open public comment periods for draft health and exposure studies (and many other reports).

For example, in July, 1994, the *Citizen's Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites* was chartered as a Federal Advisory Committee to advise ATSDR (and the Centers for Disease Control and Prevention [CDC]) on their health activities around up to six DOE hazardous waste site communities. To date, four DOE sites have been selected: Hanford (Washington State), Savannah River (Georgia & South Carolina), Idaho National Laboratories (Idaho), and Fernald (Ohio). For more information, contact Mark Bashor, ATSDR (404) 639-0730.

- inclusive; and
- responsive.

For these characteristics to be truly effective, agencies need to develop a communications structure in which public concerns are communicated to both headquarters and field office levels. This structure should facilitate public stakeholder input into all levels of the decision-making process. Processes embracing these characteristics will encourage public support of cleanup decisions, and they are likely to lead to a more efficient and cost effective cleanup program.

II. Assess Current Community Needs

Community involvement guidance documents should encourage field staff to conduct assessments of public stakeholders' needs and communities' existing resources prior to initiating community involvement programs. Such efforts will help to ensure a proposed program is appropriate for the community and does not lead to overlap or waste in relation to other on-going public involvement efforts. During this assessment, public stakeholders have a responsibility to raise issues and concerns regarding their involvement in the cleanup process. Agencies must be willing to invest the resources and staff expertise necessary

to conduct a proper assessment and to implement effective community involvement efforts.

III. Identify Public Stakeholders

Agency policy should direct field staff to actively seek out and solicit the full diversity of public stakeholders in communities and specifically incorporate information on the importance of and effective approaches for informing communities of color, low-income communities, and local governments.

General guidance from the headquarters of a federal agency should raise awareness regarding the importance of including a broader diversity of public stakeholders. However, Committee

members warn against the potential for field staff to implement "cookie-cutter" community involvement programs. There is no good, single implementation program appropriate for all Latino/Chicano communities, all African-American communities, all Asian/Pacific Islander communities, or all tribal reservations. For example, the culture, history, and resources of the Yakama Indian Nation are so different from the Hopi Tribe that any generalizations regarding information exchange programs for Indian Nations are likely to be incorrect. Any guidance must stress the importance of field staff learning about and understanding the specific community at hand.

IV. Use Appropriate Methods to Provide Information to Public Stakeholders

Agency community involvement policies and guidance documents should encourage field staff to use diverse methods of communication. Potential approaches include:

- Utilizing local media outlets such as local cable TV access and government channels, newspapers, and local internet service providers to get citizens involved;
- Ensuring materials for public participation are culturally sensitive and relevant to the specific area, including providing information in appropriate languages and at a variety of scientific levels;
- Using local government and other institutional community involvement mechanisms (i.e., zoning meetings, environmental boards, public health departments, and citizen advisory boards and local re-use authorities) for information exchange regarding cleanup activities. Local governments can establish and maintain information repositories that make documents available to the public at the same time as they are made available to regulators;

Box 8: EPA Region VI's Community Economic Partnership Seminar

On December 3, 1994, EPA Region VI, in cooperation with the Louisiana, Department of Environmental Quality and the City of New Orleans sponsored a "Community Economic Partnership" seminar in New Orleans. This minority business contracting seminar was developed to promote opportunities for local communities by providing practical tools needed for businesses to become eligible to participate in federal contracting, particularly when the government is involved in cleanup efforts.

Planning and coordination at the local, state, and federal level helped ensure the community had a stake in the seminar, the right audience was targeted and the right organizations participated to provide the tools and information needed. The evaluation feedback indicated that participants found the workshops, the expertise of the exhibitors, and the quality of the informational material the most important.

Region VI has developed a "How to Tips" paper and a "Time Line for Planning" to assist other organizations in implementing similar seminars.

- Designating locations for access to information appropriate and convenient for the affected communities, and make copies available for public stakeholders; and
- Applying FOIA exemptions narrowly; consistent with FOIA, any reasonably segregable portion of a document should be provided to the requesting stakeholder

after deleting portions of the document which are exempt.

V. Communicate Economic Opportunities

Because the economic well being of communities is often integrally linked to its overall environmental health, appropriate agency guidance documents should encourage field staff to inform the local communities, including communities of color and low-income communities, of cleanup employment opportunities. At a minimum, guidance documents should direct staff to advertise such opportunities afforded by the cleanup effort, including the skills required and risks inherent in the opportunities. In addition, regulated and regulating agencies should provide notices of educational and scholarship opportunities in all relevant languages. Boxes 8 and 9 provide examples of ways that government agencies are working to inform communities of such opportunities.

VI. Future Use Planning and Institutional Controls

In Principle 11 in Chapter 2, the Committee recognizes the relationship between cleanup and future land uses, and in those instances where federal land is to be transferred from federal ownership, the importance of maintaining institutional control when cleanup does not allow for unrestricted use. The Committee recognizes that the mechanisms for community involvement in determining future land use and its relationship to cleanup is an important issue. We reiterate the following recommendations regarding involving communities in this matter:

Box 9: DOD's Environmental Cleanup Small Business Work Group

In an effort to promote environmental cleanup opportunities within the DoD to small disadvantaged businesses (SDBs), the office of Environmental Security along with the Small and Disadvantaged Business Utilization office established the Environmental Cleanup Small Business Work Group. Small business experts from the Army, Navy, and Air Force also participate.

The work group initially agreed that promoting existing programs to the small business community would be more beneficial to SDBs than creating entirely new programs. One of their first initiatives was to make procurement information more accessible and simple to locate. The solution was an electronic bulletin board geared specifically for small businesses. By joining forces with the Defense Technical Information Center (DTIC), the group successfully implemented an environmental restoration bulletin board featuring long range acquisition estimates from the Services, all in one place. In addition, the bulletin board features environmental and small business publications; upcoming conferences; points of contact for small business offices; and Internet sites that contain information related to the DOD restoration effort.

The work group also established the first small disadvantaged business awards for DOD environmental cleanup. Four SDB firms specializing in environmental cleanup at DOD sites were each presented with a plaque and recognized for their contribution to the program at a national conference of professional contract managers.

The environmental cleanup small business work group is the first of its kind. The establishment of realistic goals designed to benefit both small and small disadvantaged businesses who work with the Department has helped the group move forward. This effort will continue to grow as each goal is met and new initiatives are identified. For more information, contact Marcia Read, Environmental Security/Cleanup, DOD (703) 697-9793.

- For properties being transferred from federal ownership, the federal role in the determination of future land use is generally limited to a review of the determination made by the state, tribal or local authorities that will have the responsibility to make the determination. There should be the appropriate forms of stakeholder involvement in these state, tribal, or local government determination processes.
- When making cleanup decisions for properties remaining in federal ownership, cleanup advisory boards, local planning and reuse authorities, and the public stakeholders should be consulted about reasonably anticipated future use assumptions.
- Cleanup decisions that have previously taken into account the anticipated future use of properties remaining in federal ownership should be re-evaluated if the land is to be transferred. In this circumstance, previously made cleanup decisions may need to be reexamined in view of the land use selected by the state, tribal, or local authorities that will have jurisdiction over the land to be transferred.
- Federal land to be transferred that is not cleaned up to standards that would permit unrestricted use should be subjected to the appropriate institutional controls exercised by the transferor/transferee and/or appropriate state, tribal, or local authority (e.g., deed restrictions, zoning, physical controls, or monitoring for the life of the hazard).

Conclusion

In general, community involvement processes should provide opportunities for the general public both to get information about cleanup activities and to affect decisions. These efforts are an integral part of cleanup programs, and should be considered a basic cost of doing business. Community involvement efforts should reach out to the broadest range of stakeholders possible and seek their involvement through a variety of effective and innovative methods appropriate to their community.

One particularly effective method of involvement is to establish advisory boards at the community level for the purpose of actively educating and engaging a diverse set of stakeholders in the cleanup decision-making process. Such advisory boards can play a unique role in an overall community involvement process. Through these boards, community members and agency representatives are asked to commit to open and regular dialogue and work together to find ways of expediting the cleanup process. Because of the key role advisory boards have taken in enabling community involvement, the following chapter outlines recommendations for the establishment and operation of these boards. Although the Committee agrees that these boards play an important role in the community involvement process, the Committee emphasizes that such boards are only one component of the community involvement process and should be used to complement other involvement activities discussed in this chapter.

CHAPTER 4

ADVISORY BOARDS

Introduction

As more information has become available to public stakeholders through community involvement programs as described in Chapter 3, some stakeholders have requested a greater role in the decisions that affect the health and environment of their communities. In its Interim Report, the Committee recommended that facilities establish advisory boards to meet this need. Since the publication of the Interim Report, the Committee estimates that over 200 advisory boards addressing federal facility cleanup have been established either at the initiative of the regulated or regulating agencies, or the request of public stakeholders. For example, DOE has established 11 site-specific advisory boards (SSABs) and DOD has established over 200 Restoration Advisory Boards (RABs). This overwhelming response to the Committee's recommendations has initiated a new way to approach community and federal agency partnerships at these facilities.

In this chapter, the Committee restates its recommendations for the establishment and operation of advisory boards. It also includes new recommendations that have emerged through the collective experience of the first two years of implementing the Committee's original recommendations.

Interim Report Recommendations

In the 1993 Interim Report, the Committee recommended that federal agencies establish advisory boards to provide independent policy and technical advice to the regulated and regulating agencies with respect to key cleanup decisions. The Interim Report proposed a model approach for implementing the boards and included recommendations for when boards should be established and how they should be formed, operated, and financed.

Box 10: Department of Energy

As of December, 1995, the DOE Environmental Management program (EM) has established eleven site-specific advisory boards at the Hanford, Idaho, Nevada, Monticello, Fernald, Los Alamos, Sandia, Savannah River, Pantex, Oak Ridge, and Rocky Flats sites. These boards were established by DOE in close cooperation with state environmental agencies and regional EPA offices.

The site-specific advisory boards (SSABs) were established to provide site specific advice. The board chairs, however, do meet several times a year on an "ad hoc" basis to discuss site-related and national issues and concerns.

EM also established a national EM advisory board (EMAB). This board provides broad national advice that complements the advice from our SSABs. Greater interaction between the SSABs and the EMAB is anticipated in the future.

In addition, the State and Tribal Government Working Group (STGWG), established in 1989, gives affected states and Indian nations a voice in the DOE decision-making process. For more information, contact Don Beck, Office of Public Accountability, DOE, (202) 586-7633.

Box 11: Department of Defense

DOD is establishing Restoration Advisory Boards (RABs) at all closing installations and at operating installations where there is sufficient, sustained interest on the part of the community. RABs are generally consistent with the concepts found in the Interim Report. Policy and implementing guidelines on RABs were published in 1994, and each of the Services has promulgated guidance. (See Appendix D)

As of January, 1996, approximately 200 RABs have been established. RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information among the affected community, the DOD installation and the regulatory agencies. The RAB complements other community involvement efforts, but does not replace them. DOD's policy is that community members of RABs should reflect the diverse interests within the local community and should live or work in the affected community or be impacted by the restoration program. The member selection process is designed to be unbiased and open, and is conducted in cooperation with regulatory agencies and the community. Once the RAB has been formed, the installation selects a DOD co-chair and the community members select a community co-chair. The co-chairs serve as equal partners and establish meeting agendas. Both co-chairs are responsible for ensuring members have the opportunity to raise issues and concerns and that their representatives participate in an open and constructive manner.

Installations are charged with providing administrative support to the RABs such as meeting facilities, preparation of minutes, copying/printing of documents, mailings, public notices, outreach material and meeting facilitation. Citizen groups can apply for Technical Assistance Grants through the EPA. In addition, the National Defense Authorization Act for Fiscal Year 1995 provided new authority for DOD to provide up to \$7.5 million in technical assistance funding to members of RABs. DOD is in the process of identifying options for providing this assistance. For more information, contact Marcia Read, Environmental Security, DOD, (703) 697-9793.

A brief description of how agencies are implementing the boards can be found in Boxes 10-14. In institutionalizing the boards, most of the agencies have issued guidance documents for how these boards should be established and run. To obtain copies of these guidance documents refer to Appendix D which includes points of contacts for each agency.

The Committee applauds the massive effort undertaken by the regulated agencies to implement the advisory board recommendations. At the vast majority of facilities, community participants appreciate the opportunity to take part in the cleanup decision-making process. Similarly, agency officials are realizing the merits of stakeholder participation. Although it is too soon to evaluate the overall effect of the advisory boards in the cleanup process, it appears that the successful formation of advisory boards is fostering or supporting a more cooperative approach among regulators, regulated agencies, and communities.

Continuing Problems

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In implementing any major new concept such as establishing advisory boards at hundreds of facilities of several different

agencies, challenging issues will arise. In implementing the Interim Report recommendations for advisory boards, agencies and public stakeholders have learned many lessons about establishing and operating advisory boards. Below is a list of concerns that the Committee has identified, as problems that have either continued despite the establishment of advisory boards, or arisen through implementation:

- Mistrust among some stakeholders persists at some facilities.
- Orientation to the advisory board process can be frustrating and time consuming.
- The amount of technical information necessary to understand cleanup options and their implications can be overwhelming.

Box 12: U. S. Environmental Protection Agency

Carrying out both its oversight and technical assistance responsibilities, EPA participates on advisory boards established by other federal agencies. EPA has worked with DOD and DOE to develop policy and guidance on the creation and functioning of advisory boards at their facilities. In addition, EPA has piloted advisory boards at 10 non-federal facility NPL sites. Through its Technical Assistance Grant (TAG) program, EPA provides funds to community groups to provide more effective community involvement. As of November 1995, TAGs have been awarded at 29 federal facilities. For more information, contact Sven-Erik Kaiser, OSWER/FFRO, EPA (202) 260-1606.

- There is, in many cases, a lack of sufficient representation from affected communities of color. The membership serving on advisory boards does not always reflect the diversity of communities in which the facilities are located.
- There is a lack of clarity regarding local governments' role in the advisory board process.
- Advisory boards are often considered the sole focus for agency outreach efforts to affected and surrounding communities.
- There is a lack of clarity with respect to the advisory board's role and expected interaction with other advisory groups addressing related issues such as reuse.
- There needs to be a process by which advisory boards can be evaluated.
- To date, some agencies have made little effort to share information among advisory boards. The wealth of information that has been gained at some sites with effective boards has not been readily shared with sites establishing new boards.
- Lack of clarity about who and what bodies the advisory board should advise.

Box 13: ATSDR

Community Assistance Panels (CAPS) - ATSDR has established CAPS operating at Otis Air Force Base (Massachusetts), the McClellan Air Force Base site (California), and the Cornhusker Army Ammunition Plant Site (Nebraska). These panels inform the public about site-specific scientific findings and provide a means for community participation in ATSDR activities. It is ATSDR policy to either convene a CAP meeting or provide a written update to the community on its activities at 90-day intervals. For more information, contact Mark Bashor, ATSDR (404) 639-0730.

Recommendations

Based upon the lessons learned during the past two years of establishing advisory boards and the recent concerns noted, the following recommendations build upon the proposed model for advisory boards found in the Interim Report. In many cases, the following recommendations duplicate the 1993 model. However, some ideas are new or are a revision of the old recommendations.

Box 14: Departments of the Interior, and Agriculture, and National Oceanic and Atmospheric Administration

USDA, DOI, and NOAA have not yet established advisory boards. At this point, there has not been sufficient interest at these agencies' facilities. However, if and when advisory boards are established by one of these agencies in the future, they will benefit from the lessons learned and information provided by DOE and DOD from their experiences with the role, authority, membership, and evaluation of advisory boards.

In many cases, these agencies have participated in the advisory board process. They have served as interested stakeholders on advisory boards established by other agencies and have worked with the advisory boards at others to provide input and expertise on natural resource management and other technical issues involving the work of their agencies.

The following model approach to the formation of advisory boards is intended to serve as an example for how to establish advisory boards at facilities where they do not currently exist and as guiding principles for improving existing advisory boards. The Committee believes that its recommendations are sufficiently broad to permit flexibility for each agency and the affected communities to adapt them to their own circumstances.

I. Overview and Scope

The Committee recommends that federal agencies establish advisory boards to provide independent policy and technical advice to the regulated and regulating agencies with respect to key cleanup decisions.

The Committee believes such boards can improve the decision-making process by:

- Providing a setting for direct, regular contact between agencies and a diverse set of public stakeholders;
- Providing a forum for public stakeholders, local governments, and agencies to understand the competing needs and requirements of the government and affected communities;
- Providing a forum for discussing citizen issues and concerns, thus enabling the development of a more complete and satisfactory plan or decision;
- Enabling citizen review and the evaluation of plans and their technical adequacy in more depth than is possible in single opportunity public participation efforts;
- Permitting a more detailed consideration of issues than is possible as a result of the minimal legal requirements identified in various state and federal laws; and

- Allowing cleanup decisions to consider values as well as technical data.

There have been some instructive examples of how advisory boards have served to improve the decision-making process at their respective facilities dramatically. The information in Boxes 15-17 provides examples of such efforts at Moffett Naval Air Station, Charleston Naval Base, and Fernald.

The Committee wishes to make clear that advisory boards should be used to complement rather than duplicate or supplant broader site level cleanup public involvement initiatives. Current guidance documents by DOE and the Department of the Navy, for example, mirror this Committee recommendation. DOE's guidance notes that "advisory boards comprise only one facet of a total public participation program at a site."¹ The Navy's guidance document states that "Restoration Advisory Boards will not take the place of community outreach and participation activities required by law, regulation, or policy."² Not every public stakeholder will have the time or inclination to participate in advisory boards and the Committee believes it is vitally important that all members of the public be afforded their full rights and privileges with respect to public involvement. Agencies should ensure opportunities exist for individuals who are not members of advisory boards to participate in discussions regarding cleanup.

Box 15: The Fernald Advisory Board

Thus far, one of the more successful public involvement initiatives in the DOE's nationwide network of nuclear materials facilities has occurred at DOE's Fernald site near Cincinnati, OH. A decade ago, relations between Fernald and its neighbors were so strained that 14,000 area residents filed a class action lawsuit against the agency and its prime contractor seeking damages for exposures to off-site pollution and loss of property values. After the lawsuit was settled in late 1988, the dialogue between plant operators and neighbors continued to be an uneasy one even as the mission at Fernald changed from uranium processing to environmental cleanup in 1990. Still, the public involvement initiatives that coincided with the Fernald site's change in mission have already gathered strong support from both agency officials and citizens. A Fernald Citizens Task Force, formed in 1993, was the first formally organized site specific advisory board in the DOE system and is cited by both citizens and agency officials as an important success story. Among the innovative public involvement approaches at Fernald is a so-called "partnering" experiment where individual members of the citizens task force are matched with individual site officers and managers to improve communication and expedite problem solving.

The recommendations contained in this section are intended to apply broadly to all federal facility cleanup activities, regardless of the statute under which they are conducted.

II. When Advisory Boards Should be Established

The Committee recommends that agencies form advisory boards at facilities where no advisory committee currently exists and where there is a need evidenced by:

¹ DOE, Site-Specific Advisory Board Guidance, November 14, 1994, page 2.

² Department of the Navy, Implementing Guidance for the Establishment of Restoration Advisory Boards, February 9, 1994, page 2.

- an affected local, state, tribal, or federal government entity requesting the establishment of an advisory board; or
- at least fifty residents of the community or region in which a facility is located signing a petition requesting an advisory board. Petitions should be submitted to the facility manager, installation commander, or other lead official at the facility. Copies of the petition should also be provided to state, tribal, and regulatory agencies.

Box 16: The Moffett Field Advisory Board

Moffett Field, former Pacific headquarters for the Navy's subchasing P-3C "Orion" aircraft, sits in the heart of Silicon Valley, at the southern edge of the San Francisco Bay. Its 26 Installation Restoration Program sites include a massive plume of shallow groundwater contaminated with TCE and other volatile organic compounds. The plume, shared with electronics industry Superfund sites just to the south, threatens local drinking water supplies as well as the Bay and its wetlands.

In early 1990, the base commander, Captain Tim Quigley, established a Technical Review Committee (TRC), composed of Navy personnel, regulators, and representatives of the local community, including the Silicon Valley Toxics Coalition (SVTC). Quigley established an active community relations program, disseminated fact sheets, and shared more detailed technical information upon request.

Through the TRC and other community relations activities, local residents and their representatives gained respect for the Moffett cleanup program, but the SVTC and others remained critical of the remediation schedule. They took their case to the press, elected representatives, and Defense Department officials. Informed by participation in the TRC, they focused on the so-called "regional" TCE plume.

In 1994, the Navy turned over responsibility for the Naval Air Station to other federal agencies, but it continues to operate the facility's restoration program. Also in 1994, the Navy began the process of converting the TRC into a restoration advisory board.

The RAB meets monthly. At meetings and informally between meetings, public stakeholders and local government representatives on the RAB discuss proposed cleanup remedies with the Navy, other responsible parties, and the regulatory agencies. As a result of the RAB's discussions, the Navy has more than once revisited its proposals. For more information, contact Lenny Siegel, Pacific Studies Center (415) 969-1545.

Prior to initiating the establishment of a board, state and federal agencies should evaluate existing public involvement programs to determine the community's need and desire for a new board. Such an assessment process should solicit the input of local governments, community groups, local citizens, workers, and other stakeholders. If an assessment is made that an advisory board is not requested or required, the regulated agency should consider ways to inform the public of cleanup activities through other available fora periodically, as discussed in the more general community involvement sections of Chapter 3.

III. Existing Advisory Boards

Where advisory boards already exist, the Committee intends for its recommendations to build upon existing groups and not to supplant them, particularly where they have proven successful. For example, where an advisory board, committee, or group currently exists for addressing cleanup issues, agencies may need to increase the scope of issues to be addressed by the group, add members to ensure representation of a wider constituency, or change the way in which the group interacts with the general public in order to be

consistent with these recommendations.

When more than one advisory board exists, agencies should consider consolidating their activities, or establishing clear communication between the groups to determine if and how

their scope of issues overlaps. For example, DOD guidance specifically directs installations to expand or modify existing Technical Review Committees to become Restoration Advisory Boards, which allow for greater community representation.³

Federal agencies must also consider that some advisory board-type organizations were established as features of federal facility oversight agreements signed between some states and federal agencies. When there is a lack of consensus regarding the need/desirability of additional boards or groups, the development of Memoranda of Understanding should be considered in order to clarify the roles of existing and proposed entities.

IV. Advisory Board Mission Statement

A statement outlining the mission and duties of the advisory board should be developed. At a minimum, it should provide for the advisory board to advise both the regulated and regulating agencies on key policy and technical issues and decisions related to cleanup at the facility. If an advisory board is not yet formed, a regulated or regulating agency may solicit the assistance of a small, diverse group to assist with the initial drafting of the mission statement.

Any such draft should later be approved by the full board. Advisory boards should also develop comprehensive by-laws and groundrules that establish common understanding about advisory board procedures.

V. Federal Advisory Committee Act⁴ Charter

FACA is a public law that was enacted to outline operational guidelines for boards, committees or similar groups that are established by federal agencies to provide advice to the federal government. FACA requires agencies to follow certain formalized procedures including chartering, maintaining balanced memberships, providing public notice of meetings, and holding meetings open to the public. In addition to the statutory requirements, agencies

Box 17: The Charleston, SC Station and Shipyard Restoration Advisory Board

The Charleston Naval Station and Shipyard has served as an economic cornerstone in the Charleston, SC area for nearly one hundred years. Notice of the base closure generated a great deal of concern about the impact closure would have on the community. The establishment of the Restoration Advisory Board (RAB) provided a critically important communications link between the installation, the community and those state and federal agencies involved in with the closure process. Recognizing that base reuse was dependent upon base cleanup, the RAB immediately focused its efforts on moving the cleanup forward as quickly and smoothly as possible. This has been accomplished by working with each of the various agencies toward the end of ensuring that the needs of the community are consistently a primary consideration in the decision-making process.

One of the strengths of the RAB is that the membership reflects the diversity which exists within the greater Charleston community. This strength in turn ensures that those with an interest in the base closure will have the opportunity to be heard. The Navy and the several state and federal agencies do their work competently but their goals are different from that of the RAB. The mission of the RAB is to focus the competence found in the other agencies for maximum benefit to the community. The Charleston RAB has consistently, functioned as a cohesive group with shared common interests without acrimony. For more information, contact Arthur Pinckney, Grassroots Conversion Coalition (803) 884-2646.

³DOD and EPA, Restoration Advisory Board Implementation Guidelines, September 27, 1994, page 2.

⁴FACA, Public Law No. 92-463, 5 U.S. Code Appendix 2.

establishing advisory boards must comply with their own implementing regulations, the administrative guidelines of the U.S. General Services Administration (GSA), and the approval of OMB.

In the Interim Report, the Committee stated that it "does not believe it is necessary or prudent to charter all SSABs as federal advisory committees." The Committee supported its recommendation by pointing out that the recommended approach to the establishment and operation of boards is consistent with the spirit of FACA to create advisory committees that are balanced and subject to an open process. Furthermore, the Committee wished to avoid unnecessary burdens that may hamper the creation of such boards.

Since the release of the Interim Report, the Clinton Administration has placed limits on the creation of new FACA committees. Partly in response, agencies have approached FACA charters for their advisory boards in at least two different ways. DOD, building on the approach it had taken with its Technical Review Committees (TRCs), which were a precursor to RABs, has not chartered their RABs as federal advisory committees. DOE has established a single FACA charter for all of its SSABs. Regardless of whether agencies charter their advisory boards, the Committee recommends that boards and agencies comply with the spirit of FACA regarding maintaining balanced membership, holding open meetings, and providing public notice for meetings in manners that are appropriate for the facilities' community.

The Committee notes that many of the administrative provisions in both the FACA statutory language and its implementing regulations are burdensome at best and intrusive in many cases. FACA includes several provisions that are not always helpful when applied to community advisory boards. For example, FACA requires agencies with advisory boards to provide public notice of meetings in the Federal Register; for local advisory boards, mechanisms such as publication in local papers or notice by mail may be more effective. It also empowers the chartering agency with the authority to adjourn meetings and approve agendas—powers which some communities believe could be abused. The Committee encourages agencies that charter boards to make very judicious use of FACA authorities and to do so in consultation with board members. Finally, chartering agencies should also seek to reduce the bureaucratic burden of the law on board members to the greatest extent possible.

VI. Scope of Advisory Boards

The Committee believes the boards should focus on protection of human health, cleanup, waste management, and technology development issues that are clearly relevant to the cleanup of the facility. In focusing on cleanup, these boards may provide independent advice on issues identified in their mission statements such as:

- ensuring that appropriate measures (both interim and permanent) to protect human health and the environment against substantial and imminent risks are implemented as early as possible;
- identifying cleanup activities and projects;

- tracking progress on those activities/projects;
- providing information and perspectives on cleanup priorities;
- tracking possible implications for other communities along transportation corridors and in areas of waste storage facilities when discussing final waste disposition possibilities;
- evaluating possible employment opportunities and associated risks, local economic benefits provided by the cleanup process, and appropriate vehicles for providing this information to the public;
- addressing important issues related to cleanup, such as land use, level of cleanup, risk management strategies, waste management, technology and economic development issues related to cleanup; and
- developing cleanup strategies.

The advisory boards should have the discretion to hear presentations on the social, economic, cultural, aesthetic, public health, and worker health and safety effects of cleanup and waste management and technology development issues related to cleanup. In addition, the Committee agrees that advisory boards should hear presentations on other environmental management decisions that advisory board members regard as relevant and appropriate.

At many facilities there are separate boards or groups whose primary mission is to address re-use issues at the facility. In addition, there may be other community groups addressing similar cleanup issues at the same, or another nearby facility. If there is more than one advisory board addressing similar federal facility issues, the Committee recommends that the boards should make all efforts to communicate with one another.

The Committee believes advisory boards should remain separate from redevelopment authorities, but they should work together wherever possible. Issues relating to redevelopment, such as determining future land uses, may require involvement and representation of different public stakeholders and agency personnel from those involved with boards established to provide advice regarding cleanup decisions. The Committee suggests advisory boards as described in this report should only address anticipated future land uses when it relates to cleanup decisions. When future land use is addressed, efforts should be made to sufficiently involve stakeholders with key interests in land use, such as local governments, in the board's discussions.

VII. Role of Regulated and Regulating Agencies

As stated above, the advisory board is intended to be a forum through which advice can be given to both regulated and regulating agencies on cleanup and waste management and technology development related to cleanup. The regulated agency should serve as the host of the advisory board and should provide administrative assistance, meeting facilities, and other logistical support as necessary. The Interim Report recommended that senior representatives of both regulated and regulating agencies should serve as "ex-officio" participants of the advisory board. The term ex-officio was used to imply that representatives of these agencies should attend advisory board meetings and participate actively in advisory board discussions by making their views known. However, because the advice from the advisory boards will be directed at their agencies, the Interim Report recommended that agency representatives should not take part in final decisions about what recommendations are made.

Since the publication of the Interim Report, DOE and DOD have established advisory boards that involve regulated and regulating agencies in different ways. DOE's SSABs essentially follow the model outlined in the Interim Report. DOD has directed RABs to include regulated and regulating agency representatives as regular board members and for the installation commander or his or her designee to serve as co-chair along with a community representative. (For copies of DOD and DOE guidance documents on this issue see the points of contact in Appendix D).

Because both models seem to be working, the Committee remains silent in this report regarding whether regulated and regulating agencies should serve as ex-officio or full members. Nonetheless, experience from RABs, SSABs, and advisory boards in the private sector proves that community members may stop participating actively in boards because senior managers do not come and actively participate in board meetings, or senior managers ignore the advice of board members without providing an explanation. Regardless of their title, the Committee strongly recommends that regulated and regulating agencies' role be defined in three ways. First, the most senior level person available with site-specific cleanup responsibility from the regulated and regulating agency should participate in board meetings. Second, the participants from the regulated and regulating agencies should be responsive to the concerns and advice of the advisory board or provide a reasonable explanation for not adhering to the advice. Third, representatives from regulating and regulated agencies should serve as information sources for the board, providing updates and background as needed.

VIII. Advisory Board Membership

The Committee recommends that advisory boards should reflect the full diversity of views in the affected community and region and be composed primarily of people who are directly affected by facility cleanup activities. Boards should also attempt to maximize participation from public stakeholders in a manner that reflects the ethnicity, race, and distribution of income within the affected communities. The Committee recommends the following public stakeholders, where they exist, be given the opportunity to be included as board members:

- individual residents that live in or own property around the communities or regions in which a facility is located;

- representatives of citizen, environmental, and public interest groups whose members live in the communities or regions affected by the environmental contamination and related cleanup efforts at a facility;
- workers or representatives of workers involved in or affected by cleanup operations at the facility, with a priority for cleanup and production workers who are currently employed at the facility;
- representatives of Tribes and other indigenous peoples that have treaty or statutory rights that are affected by environmental contamination and related cleanup activities at the facility; and
- representatives of local government.

Appropriate qualities for an advisory board member include an ability to focus on cleanup issues and a willingness to devote the time over an extended period necessary to serve effectively on a board. Public stakeholders should not be disqualified because they are critics of activities at the facility. Every effort should be made to include divergent interests and viewpoints, regardless of technical expertise.

In addition, representatives of other federal, state, and local government agencies should be included on the board, as appropriate, to represent their interests as natural resource trustees, managers of adjacent or impacted public lands or recipients of lands. In some cases, potentially responsible parties (PRPs) from the private sector directly involved in or affected by facility cleanup activities could participate at the discretion of the advisory board. Advisory boards, in conjunction with their host agency, should clarify the specific role that each of these entities play, particularly in the board's decision-making process.

The Committee recommends that in order to address environmental equity concerns, special efforts should be made to provide notice and opportunity to participate for people who are or have historically been disproportionately impacted by site contamination.

The Committee recommends that the size of the boards should be limited to promote efficiency and encourage participation, while also ensuring that the major public stakeholders or groups of public stakeholders are adequately represented. The Committee recommends that the size of the advisory board should be determined by the community in collaboration with the agencies.

IX. Membership Selection Processes for Advisory Boards

Box 18: FFERDC Interim Report Member Selection Process

The Committee's Interim Report provided the following guidelines for the membership selection process:

Regulating agencies shall actively and publicly solicit nominations for advisory board membership from interested individuals and organizations, ensuring that ample notification is given to those with an active interest or obvious stake in cleanup activities at the site. Such notification should also be given to national organizations that have expressed an interest in that agency's cleanup program and by publication of a notice in the Federal Register. Interested organizations and individuals, including those whose nomination has not been solicited by the regulating agencies, should submit nominations for advisory board membership to the regulating agencies. Furthermore, the regulating agencies shall solicit nominations from the governor, local congressional representative(s), state legislators, and affected county, city, and tribal governments. In addition, the regulating agencies have a responsibility to inform and solicit the interest of potentially affected community members who initially appear uninterested or unaware.

Based on the above criteria, the regulating agencies should review all nominations, submit a proposed list of advisory board members to the regulated agency, and make this list publicly available. This list should be mailed to all who were nominated or submitted nominations and published in the Federal Register.

The regulated agency shall accept the recommended list of advisory board participants unless it determines that the list does not ensure a sufficient diversity of viewpoints or an appropriate balance of affected interests. Decisions of the regulated agency to accept or reject the proposed list must be made and explained openly and publicly. Once again, all who have been nominated or submitted nominations in the first step should be notified of the decision of the regulated agency.

If the regulated agency rejects the proposed list, the regulating agencies, with the advice of federal, state, tribal, and local government representatives, shall propose, and make publicly available, an alternative list that addresses the specified imbalance or lack of diversity.

If advisory board membership selections issues have not been resolved after step 4, the regulating and regulated agencies will refer the matter to higher levels of authority within their agencies for final resolution. For more information, contact The Keystone Center (970) 468-5822.

In its Interim Report, the Committee recommended very specific procedures for choosing members to serve on the advisory board. A description of this process can be found in Box

18. Since this time, some communities have followed this exact set of procedures with success. However, other communities have chosen very different methods that have typically been equally successful. An example of one of these processes can be found in Box 19. In addition, several agencies, and military services have established specific guidance documents for choosing board members that differs from the Committee's recommendations. Examples of this language can be found in Appendix E. Although these guidance documents provide general direction to field staff, specific implementation of advisory boards is intended to be adapted to the needs of the individual facilities. Given the above, the Committee recognizes that there are many ways to effectively select individuals to serve on advisory boards. Regardless of the specific process used, the Committee stresses the importance of using an open and fair process that leads to the creation of a diverse and balanced board.

Advisory boards, once established, should develop procedures for adding, replacing, or removing board members. In doing so, the advisory board should consider carefully the need to assure that the board does not become too large so as to be unmanageable and that the full diversity of views in the community/region are fairly represented. Procedures for adding new members should

give special emphasis to:

- interests that, in the view of the advisory board, are not adequately represented at the time of the initial formation of the advisory board; and

- expressions of new interests that may not have existed or were not considered at the time of the initial formation of the advisory board.

Although the process by which board members are initially chosen is extremely important in regard to the credibility of the board, allowing established boards to add, replace, and remove board members should help provide an effective safety valve for correcting unfair selection processes. Notwithstanding the recommended role of the advisory board on these matters, it remains the obligation of all participants—including the regulated and regulating agencies—to ensure that the membership of the advisory board is composed of a manageable number of people, is properly balanced, and adequately represents the diversity of views within the affected community.

X. Role of Contractors

Agencies should consider including contractor representatives as a part of their team because of the important role contractors often play in actually planning and conducting cleanup activities on behalf of regulated agencies. However, because contractors support the regulated agency, the Committee agrees that contractor participation in advisory board discussions should never serve as a substitute for the participation of senior representatives of the regulated agency. Contractor employees in decision-making capacities should not serve as regular members of advisory boards.

XI. Role of Local Government Officials

Because of the diverse services local governments provide, ranging from land use planning to managing water and sewer systems, it is essential that local government officials be consulted and given the opportunity to be closely involved in the advisory board process from the beginning. Local governments have traditionally filled a broad set of responsibilities that are relevant to federal facility cleanups in their jurisdiction, including: 1) protecting public health

Box 19: Selection Process for DOE Pantex Plant

In the Spring of 1993, community members requested that DOE establish a citizens' advisory board for the Pantex Plant in the Panhandle of Texas, near Amarillo. In response, DOE, EPA Region 6, and the Texas Governor's Office sponsored two public meetings to discuss procedures for setting up an advisory board, and DOE hired a neutral third party facilitator to assist with the process. In addition to putting advertisements in the local media, organizational lists from groups such as the Chamber of Commerce, The Peace Farm, NAACP, and unions at the plant were obtained and individuals were sent invitations. Approximately 200 community members attended.

During the two workshops, full consensus was reached by all parties in attendance (including DOE, EPA, the Texas Attorney General Office, and other state regulatory agencies in addition to a multitude of community members and plant workers) regarding the scope of issues the advisory board should address, the accountability of agencies to the board and the board to the public, the size of the board, and the membership selection process. In brief, the selection process included a group of six representatives (a representative from the Governor's Office and the Office of the Attorney General, plus four local residents) chose a 16 person selection committee, including two from each of the following categories: area resident, regional resident, labor, Pantex worker, agricultural sector, business community, environmental organization, and local government). The selection committee then sorted through more than 80 applications, conducted interviews, and selected the first eight nominees for the advisory board. This core group then selected 12 more names and submitted the slate of 20 names to the Secretary of Energy. Secretary of Energy Hazel O'Leary reviewed the list to ensure balance and diversity and approved it.

Although the process was cumbersome and slow, it involved the full diversity of community members and helped to establish trust between DOE and the community and between the widely varying groups within the community. It also produced an advisory board that looks like the community in regard to race, ethnicity, sex, income levels, and perspectives regarding the Pantex Plant. For more information, contact The Keystone Center, (970) 468-5822.

and safety through services, education, and regulations; 2) protecting or enhancing the community's quality of life through community comprehensive planning; and 3) securing a viable economic future. Therefore, they may provide advisory boards with information regarding local comprehensive plans, laws and regulations, history, culture and demographics, and may assist in community involvement activities. In many cases, local government is the institutional authority that will address the effects of cleanup decisions long after federal decision makers have withdrawn from the community.

As part of the formation of an advisory board, federal agencies should meet with and sponsor workshops for local government officials to explain the advisory board process. Recognizing that facility cleanups often affect the jurisdictions of several counties and towns, federal conveners should focus their primary efforts on consulting with local governments most directly affected by the federal facility cleanup.

In practice, local government involvement in federal facility decision making varies from facility to facility. Local government officials should have the opportunity to decide, taking into account local laws and community preference, if and how they will participate in a federal agency-sponsored advisory board. Local government options for participation may include: 1) full member; 2) ex-officio participant; or 3) advisory board convener. In addition, the local government may decide not to participate in the advisory board.

Box 20: Moffett Field Restoration Advisory Board Decision-Making Process

Most Defense Department-sponsored Restoration Advisory Boards conduct much of their business without formal votes. Many, however, have written their own charters establishing voting procedures to fall back upon should the normal give-and-take prove insufficient. For example, the "voting table" of the Moffett Field Restoration Advisory Board includes the following rules among sixteen separate contingencies:

Issue	Who Votes	Required Number of Votes
Set Agenda	Whole RAB	Majority
Elect Community Co-Chair	Community members only	Majority
Form Committee	Community members only	Two thirds

For more information, contact Lenny Siegel, Pacific Studies Center, (415) 969-1545.

XII. Decision-Making Process

At the outset of the advisory process, the board should determine explicitly how it will make decisions about what advice and recommendations it should give, who should give the advice, and in particular, how to ensure that dissenting views are addressed. In general, DOE boards tend to operate by consensus with regulating and regulated agencies not taking part in the decision making. In general, DOD boards tend to provide individual advice with all parties participating in the discussion. Box 20 shows an example of how one advisory board makes decisions.

XIII. Operating Procedures

At the establishment of each advisory board, advisory board members as a group should develop appropriate groundrules and

operating procedures to allow for the efficient and productive operation of the group. Each advisory board should consider establishing procedures regarding the following:

- Naming a chairperson, hiring a coordinator, or appointing an independent facilitator, as deemed necessary by the advisory board, whose principal role would be to ensure:
 - advisory board meetings are run effectively and in a manner that is consistent with the advisory board's agreed upon groundrules;
 - the board maintains its focus on cleanup issues and waste management and technology development issues related to cleanup; and
 - whatever logistical and administrative tasks that the advisory board determines are necessary to play its advisory role effectively are accomplished.
- Forming subcommittees where and when it is appropriate;
- Determining what type of public record is kept of meetings (video, minutes, general summary, etc.);
- Establishing procedures for adding, replacing, and removing advisory board members;
- Determining how to provide advance public notice for meetings effectively;
- Deciding what, if any, terms, rotational schedule, term limits, or use of alternates are appropriate to help ensure a balance of interests and continuing opportunity for access to advisory board participation; and
- Determining when the work of the advisory board is complete or the overall interest in participating has diminished to such a level that the advisory board should be dissolved.

Box 21: Department of Defense RAB Training

DOD has provided orientation training for RAB community members to help them prepare for the technical and operational issues addressed by the RAB. The training also provides skills for acting as communications conduits for the community. Topics in the training sessions have included: the purpose and responsibilities of the RAB; regulatory background information; facility status and tour; the base mission; and communication skills. Typically, RAB members have received 10-15 hours of training. These efforts have proven to be most effective when accomplished early on in the process of establishing a RAB. For more information, contact Marcia Read, Environmental Security/Cleanup, DOD, (703) 697-9793.

The regulated and regulating agencies should also establish and make public operating procedures that, to the extent possible, attempt to ensure continuity in the availability of the staff who are principally responsible for interacting with the advisory board.

IV. Education and Training

A comprehensive orientation at the outset of the advisory board's work followed by a continuing education program tailored to the needs of both citizen and agency participants can considerably aid in the formation and growth of advisory boards. Examples of some training efforts are included in Boxes 21-22. Particular attention should be given to education for board members from communities or other stakeholder groups that have traditionally not been engaged in discussions regarding environmental issues at the facility. Although at the outset agencies have a vital, participatory role in the education process, it is the board members themselves who should ultimately decide on the process and direction of education efforts. Contained in this section is an extensive listing of topics that should be considered in the educational needs assessment of the advisory board. Advisory boards are cautioned that it will likely not be practical to obtain in-depth education on all of these topics, especially in a short period of time; topics should be prioritized based on the needs of the board members.

Because the technical issues and level of public understanding of these issues can vary dramatically from facility to facility, the Committee recommends that an advisory board training needs assessment be conducted for each advisory board. Among other factors, the needs assessment should elicit input on training topics, the incorporation of training into the broader mission of the advisory board, and ideas and preferences for finding and enlisting qualified trainers or instructors.

A. Technical Assistance Notification

Immediately upon forming an advisory board, members should be notified with regard to the options available for receiving technical assistance in the review of environmental issues at the facility. The options should include those offered by the U.S. Environmental Protection Agency, the facility operator, and any other relevant program offered by federal, state, or private entities. The notification should include the opportunities and procedures for utilizing independent experts in addressing relevant problems and issues.

Box 22: Training Workshops

Many organizations are undertaking efforts to educate community members about the issues surrounding federal facilities cleanups. The following are a few examples of efforts that have occurred to date. For more information on these efforts, please contact the people listed.

Xavier University's Deep South Center for Environmental Justice

has spearheaded an effort of community leaders to strengthen citizen's right to know and encourage the participation of community persons in military cleanup activities. Specifically, the project is aimed at preparing community members to serve on DOD advisory boards and continues through October, 1996. Bev Wright (504) 483-7340.

San Francisco State University has held workshops to provide members of advisory boards with the background information necessary to effectively serve as advisors on their boards. Aimee Houghton (415) 904-7750.

Council of Energy Resource Tribes has conducted workshops for affected tribes on both the local and national level about DOD cleanup issues. The workshops provide information on the regulatory framework, community involvement, remediation, and the federal grant process. Merv Tano (303) 296-2378.

The League of Women Voters Education Fund assists its local chapters with many on-going education efforts about DOE cleanup issues. For information on these efforts contact their national office. Division of Natural Resources (202) 429-1965.

The Department of Defense has held seven regional workshops designed to familiarize DOD, EPA, states, tribes, and community members with DOD's RAB policy. Topics in the workshops included: RAB purpose, RAB establishment, member selection process, and agency roles. Marcia Read (703) 697-9793.

B. Orientation

Creating a successful advisory board involves building a new relationship between facility managers and the people affected by environmental issues at the facility. Based on experiences at federal facilities that have created or are in the process of creating advisory boards, it is clear that a well-crafted and thorough initial orientation for prospective board members and agency participants can provide a valuable foundation for this relationship. Member orientation, which may take several meetings to complete, should help provide a better and more common understanding of the facility and its environmental needs, and the communities and their environmental needs. It should also help ensure that advisory board members have the knowledge and tools they need to begin the process.

Although the structure and pace of orientations should be arranged to fit the particular needs and circumstances at each facility, the process may include but not be limited to such elements as:

- team building;
- facility tour and orientation to current mission(s);
- facility history, including agency and public perspectives;
- natural resources overview;
- cultural history and sensitivity to cultural issues;
- overview of federal operations, past and present;
- overview of past and present agency environmental policies and practices;
- overview of applicable state and federal environmental regulations, including federal facility agreements;
- the relationship between policies, regulations and agreements and the current environmental management agenda at the facility.
- responsibilities of agencies to the public and to the advisory board;
- expected role of the advisory board in facility environmental decision making, including scope of issues to be addressed by the board;
- present and future land use issues and their effect on cleanup decision making;
- the impact of the facility upon public health and the environment;
- the agencies' budget process;
- the agencies' procurement process;
- the role and interests of local government in land-use planning and other relevant issues; and
- citizen right-to-know laws.

C. Team Building

Since it is important for advisory boards to function as effectively as possible, the orientation ought not to focus purely on the exchange of information. It should also encourage an element of team building for advisory board members. This is based on the premise that all

advisory board members will need to expend some time and effort toward forming a cohesive unit, identifying common goals and expectations and laying mutually accepted ground rules for conducting advisory board's activities. This process might include voluntary participation in facilitated team-building exercises and/or workshops involving all board members, including regulated and regulating agency participants.

D. Ongoing Education

The preparation and continuing education of advisory board members is vital to the quality and substance of their advisory role. Likewise, the ability of agency personnel to communicate intelligibly and responsively with advisory board members is vital to both the health and efficiency of the advisory process. For these reasons, the Committee recommends that agencies work with advisory boards to develop a slate of options for technical training for advisory board members, while at the same time pursuing communication and other such training that can enable agency personnel to interact more effectively with advisory board members and the public at large.

In determining who should conduct training for advisory board members, agencies should consider:

- the expressed preferences of advisory board members;
- the history of the relationships between the community and the agency, and the resultant trust level between the two;
- the ability of agency or contractor personnel to express concepts in an understandable manner to advisory board members; and
- the ability of presenters to exercise cultural sensitivity.

Technical education options might include such things as:

- Periodic technical workshops for advisory board members and alternates on specific technical issues affecting the facility's environmental management.
- The development of specific educational materials (i.e., maps, toxicity profiles, risk assessment processes, cultural and archaeological histories, applicable laws and regulations) that assist board members as they move toward recommendations on key issues. Included in these materials should be any reports, summaries, issue papers, etc., developed by the board or board subcommittees on specific issues.
- One-on-one tutorials where board members could have direct access to agency specialists who would be assigned to cooperate in such a manner.

Boards should make a special effort to consider training programs that could be provided by advisory board members or local community members. Particularly in instances where mistrust between the agency(ies) and community is an obstacle, consideration should also be given to involving advisory board members in the training of other members as part of a mentoring program. Another approach to consider in such circumstances is the development of a partnering program involving advisory board members and agency personnel in which trust and communication building activities are incorporated into the work and function of the advisory board.

To the extent practicable, training and education opportunities should be open to members of the community who are not members of advisory boards. Options include registration for workshops and sessions by interested individuals with the sponsoring agency, and video-taping sessions for viewing by interested individuals and groups. By doing so, agencies make better use of limited resources and provide training materials for new members of advisory boards.

XV. Accountability

First and foremost, all advisory board members have a responsibility to work in a manner that promotes efficient and effective cleanup that protects human health and the environment. Federal agencies and regulators have a responsibility to respond to recommendations and advice from advisory board members by providing information on:

- recommendations or advice that can or will be implemented;
- recommendations that need to be modified in order to be implemented; and
- recommendations that cannot be or will not be implemented and why.

The advisory boards may request a written response to any recommendation or advice made by its members. Advisory boards and agencies should maintain a record of recommendations or advice made by the board and the status and substance of all responses. Advisory boards also have the responsibility to respond to issues raised by the regulated agencies. A log of such issues and responses should be kept.

Members have an obligation to attend all advisory board meetings to the extent possible. Members also have a responsibility to portray data accurately or information provided to them as members of the advisory board. If members distribute draft documents to others outside of the advisory board, they must indicate the preliminary or draft nature of the document.

Advisory board members representing an organized interest have a responsibility to share information with and provide feedback from the constituencies they represent. Members of the advisory board also have a responsibility for bringing community issues and values to the discussion, particularly from the constituency they are representing.

VI. Interaction with the Public

Members of the public, who may not have the time, resources or inclination to participate on an advisory board, must nonetheless be given opportunities to be kept adequately informed of and involved in cleanup decisions affecting their lives and their communities. As such, advisory boards should conduct their activities in a manner that complements rather than duplicates or supplants broader public involvement efforts, some of which are legally required. To this end, members of the advisory board, along with the participating regulated and regulating agencies, should make every effort to coordinate the timing and focus of advisory board activities with the need for broader public involvement activities as identified in the comprehensive community involvement plan for the facility. The Committee encourages regulated and regulating agencies to use the advisory board as one of many methods to obtain information to be included in the comprehensive community involvement plan about how and when such broader public involvement activities should be conducted. In addition, in order to maintain trust and accountability, interested members of the public should be notified of advisory board meetings, advisory board meetings should be open to the public, and some type of record documenting the meetings should be made available to the public. Finally, advisory boards should provide opportunity for public comment at their meetings and should make every effort to respond to both written and oral comments that are submitted in a timely manner.

XVII. Advisory Board Input on Negotiated Cleanup Agreements

The Committee believes the public should be informed of any efforts to negotiate formal cleanup agreements between regulated and regulating agencies (e.g., Interagency Agreements as per Section 120 of CERCLA). In addition, the agencies conducting the negotiations should make an effort to ensure that their negotiators are kept informed of community concerns and issues. In many cases, advisory boards offer regulated and regulating agencies a good opportunity for focused and meaningful input into the negotiations because of their background knowledge of issues at the facility, and their ability to respond quickly to negotiator's concerns and questions. Appropriate information exchange includes any risk assessments having bearing on the negotiated cleanup, schedules for cleanup activities and their associated costs, priorities for cleanup that should be considered for enforceable milestones, and provisions for interaction with the public and the advisory board in future decisions.

Under ideal circumstances, the advisory board may develop priorities and timeframes related to cleanup efforts at the facility that can be used as input into the cleanup agreement negotiations. Agency negotiators should communicate directly with advisory boards on issues of mutual concern. For example, the Rocky Flats Citizens Advisory Board co-sponsored public workshops on the draft Rocky Flats Cleanup Agreement. In addition, the agencies conducting the negotiations have used an information liaison as well as an on-line bulletin board system to keep the public informed.

XVIII. Administrative and Technical Assistance Funding

The Committee recommends that the regulated agency should provide advisory board funding for both administrative support and technical assistance in order to ensure meaningful public involvement. The first two sections that follow outline the general principles the Committee agrees to regarding each type of funding. The last section discusses a number of funding implementation issues.

A. Administrative Funding

The Committee recommends that regulated agencies serving as "hosts" of the advisory board should provide funding to cover the routine administrative needs of advisory boards that will allow them to operate efficiently and effectively, such as meeting space, document duplication, and mailings. The Committee agrees that funds should be provided for food, lodging, and travel expenses of local advisory board members who must travel overnight to attend meetings, hiring a coordinator or independent facilitator (where deemed necessary by the advisory board), and other similar expenses necessary for advisory board business.

The Committee recommends that regulated agencies should work with advisory boards to establish a limit or ceiling on administrative costs for each advisory board. Advisory boards should be responsible for establishing priorities and allocating the administrative funding provided.

B. Technical Assistance Funding

The Committee supports providing advisory boards with technical assistance funding in cases where there is a clear need. In many instances, citizen members serving on advisory boards lack the technical resources to monitor and comment effectively on the technical aspects of investigation and cleanup at these facilities. Also, some advisory members lack trust and confidence in the governments' technical advisors due to past environmental and health problems in their communities. Investing such funds in developing the knowledge and the expertise of the community can lead to more cooperative efforts and improved cleanups.

Therefore, to help ensure more effective and meaningful participation, the Committee recommends that advisory boards receive technical funding support in cases where there is a clear need. Specific examples of uses of such funding include: providing travel, per diem, and compensation for an outside expert to make a presentation to the board, hiring a consultant to assist board members in reviewing documents, and providing local training courses to educate advisory board members regarding relevant regulatory processes.

The Committee agrees that technical assistance funding should be used to complement, rather than duplicate, the technical programs of both the regulated and regulating agencies. Therefore, regulated and regulating agencies first have the responsibility to produce technical documents that are clear and concise, to the extent feasible. Further, to avoid duplication, advisory board technical assistance funds should not be used for performing additional sampling. In addition, the Committee agrees that technical assistance should not be used to underwrite legal actions in any way, including the preparation of testimony or the hiring of

expert witnesses. The work of any advisory board technical consultant should occur concurrently with the on-going efforts of the regulated and regulating agencies so as not to slow down or impede the process. It is the responsibility of the regulated agency to help coordinate this review process and to provide information to expedite the ability of the board to provide timely input.

C. Implementation of Administrative and Technical Assistance Funding

The following section includes recommendations on who should be eligible for the funding, determining the appropriate amount of funding, and finding potential mechanisms for channeling funding to advisory boards.

Potential Recipients

The Committee recommends that advisory boards should demonstrate a clear need to be eligible for assistance. The Committee recommends that regulated agencies with advisory boards, such as DOD, DOE, NOAA, and ATSDR, in consultation with other stakeholders, develop specific national criteria for demonstrating need. To accelerate the implementation of this program, the Committee urges the regulated agencies to begin this process of consultation as soon as possible.

In addition to establishing need, the Committee recommends three other criteria in regards to who should receive funding. First, the Committee intends for the technical assistance funding to be used primarily for the education and support of community members, in particular those who serve on advisory boards. Although some activities may be directed at the entire board, such as group training sessions or presentations to the board, the Committee agrees that the intended audience of these funds is not the regulated or regulating agencies, private sector responsible parties, or contractors who may be participating in the advisory board. Recipients of such funds, however, should ensure that any funded activities are open to other interested members of the community, where possible and appropriate.

Second, the Committee recommends that such funding should be available to advisory boards at both NPL and non-NPL facilities.

Third, the Committee recommends that technical assistance funding provided to advisory boards under this program should be coordinated with any future grants at these sites provided by EPA under the Technical Assistance Grants (TAG) program. EPA and regulated agencies should work together to ensure that recipients of technical assistance through an advisory board do not duplicate or compete with TAG recipients. Overall, the Committee recommends that EPA give strongest consideration to providing technical assistance funding to an advisory board that represents the diverse community. In cases where a community seeks both a TAG grant and advisory board technical assistance at the single facility, the burden should be upon the group requesting the TAG grant to demonstrate unique and special circumstances justifying a second grant to a community.

Amount of Funding

In conjunction with the above effort by regulated agencies to establish criteria for demonstrating need for technical assistance, the Committee recommends that regulated agencies work with other stakeholders to establish guidelines for targeted amounts of funding. Although circumstances differ widely between the regulated agencies that have advisory boards, including DOD, DOE, NOAA, and ATSDR, the Committee recommends the following factors be considered in determining the appropriate amounts of administrative and technical funding:

- The Committee anticipates that advisory board technical assistance funding needs will be proportional to the level of cleanup assessment activities occurring at a facility in a given year, assuming no significant new technical challenges emerge.
- Greater amounts of funding should be provided in the early phases of the federal facility cleanup process in recognition of the fact that technical assistance needs will be greater during these early phases of the decision-making process. Funding levels should be reassessed after site remedies have been selected.
- Funding levels should fall as advisory board members become more knowledgeable about the cleanup activities of the regulated and regulating agencies.

Potential Funding Mechanisms

A number of federal statutes and regulations tightly control methods for regulated agencies to provide funding to advisory boards. At a minimum, the rules require monies be carefully tracked and accounted for through an established legal entity. The Committee recommends that individual advisory boards and the regulated agency providing the funds should work together to determine an appropriate mechanism for making administrative and technical assistance funds available to the advisory board. Possible mechanisms identified by the Committee include:

- Channeling the funds through a member of the advisory board that represents a public interest and/or citizen-based organization that has nonprofit legal status who would administer the funds in a timely and accountable manner;
- Channeling the funds through a nonprofit organization that is or has been created for the explicit purpose of serving as a legally responsible fiduciary and administrator of the funds;

- Channeling the funds through an independent entity, such as a university or accounting firm, that is mutually agreed upon by the citizen members of the advisory board and the regulated agency that is providing the funds;
- Channeling the funds through a state or local government agency that is both capable and willing to administer the funds in a timely and accountable manner; and
- Using a regulated or regulating agency, or their contractor to oversee the direct disbursement of administrative and technical funds.

Under each of these options, the participating, newly created, independent, or local, state, federal governmental entity would serve in a legally responsible fiduciary capacity, administering the funds in a manner to be decided by the advisory board in collaboration with the regulated agency.

XIX. Evaluating Advisory Boards

As advisory boards become more established, there is a need on the part of all those involved in the advisory board process to evaluate the boards' effectiveness in enhancing the decision-making process at federal facilities. An example of DOE's advisory board evaluation process can be found in Box 23. The Committee encourages boards and those interacting with the boards to first set realistic expectations during the early stages of their development. Some boards have expressed a concern that before they are effectively able to participate in the decision-making process at their facility, they must go through an education period and trust-building process. This is similar to the

Box 23: Evaluation of DOE's Site-Specific Advisory Boards

DOE's Office of Environmental Restoration and Waste Management (EM) is currently finalizing its design for evaluating the Site-Specific Advisory Board (SSAB) Initiative. The purpose of this early evaluation is to enable the SSABs, facilities and DOE to capitalize on the processes that are working well and to identify for improvement the processes that are not working well. The evaluation will be conducted at the eleven facilities where SSABs have been established: Fernald, Hanford, Idaho, Los Alamos, Monticello, Nevada, Oak Ridge, Pantex, Rocky Flats, Sandia, and Savannah River.

The technical team responsible for the evaluation includes three social researchers from Pacific Northwest Laboratories and three independent consultants with expertise in public involvement and evaluation. In keeping with the spirit of public participation, the team has worked in close consultation with the SSAB Evaluation Steering Committee that includes the Federal Coordinator and a SSAB representative from each facility.

The Committee has worked to develop agreement on a consolidated list of goals, on which the evaluation will be based, and on the measures that will be used to assess performance.

The proposed evaluation will include two components: 1) A survey of board members, DOE Site Area/Field Office representatives, representatives from other regulatory agencies involved with site activities, and some members of the public; and 2) A self-evaluation of SSAB Initiative activities and accomplishments (i.e., performance) specific to each site.

DOE envisages both components of the evaluation—the survey and the self-evaluation—as an iterative process to be linked to the boards' annual planning process. The survey, conducted by DOE/HQ in the near term, will use a mail-out questionnaire to gather information on the perspectives of the various participants on SSAB processes, relationships, and outcomes and provides an independent assessment of the initiative across all sites. The self-evaluation, conducted by each SSAB, provides a means for each board to tailor the evaluation to its own site context and needs through assessment of its previous year's achievements and identification of issues and goals for the upcoming year. Each component of the evaluation is intended to contribute to the board's planning process so that information from both can be used to identify problems and successes and enable the boards to benefit from their experience. For more information, contact Don Beck, Office of Public Accountability, DOE, (202) 586-7633.

contentious and difficult start-up processes of advisory boards that advise private sector companies on cleanup issues. It should be noted that some of those boards have been productive and valuable to the community and companies, after having gone through a similar learning period.

Once a board is up and functioning, the Committee suggests that it establish a self evaluation process to address the goals of the board at the various stages of its development.

The Committee acknowledges that facility level federal staff have strong incentives for demonstrating the success of their advisory boards to headquarters and Congress. Setting aside this need, however, or in addition to it, advisory boards should conduct their own honest evaluation. The Committee suggests some general guidelines for developing an evaluation process, recognizing that the advisory boards have varying specific goals that they and the agencies they advise have set out for them, depending on what stage they are in the development process.

In designing a specific evaluation process, it should be recognized that there are several parties interested in the advisory board's work: the regulated and regulating agencies; the board members themselves; and public stakeholders. Each interested party should be represented in formulating the evaluation exercise.

Generally, the model approach outlined in the Interim Report put forth the following goals for the boards: to improve the quality of and public support for environmental decisions at the facility. The human and fiscal resources devoted to the establishment and functioning of an advisory board should be viewed as an investment in accomplishing these two basic goals. Beyond these two basic goals, it is important to evaluate the board's progress towards meeting the site-specific goals identified by the individual advisory board.

The Committee believes that a three-step process may be useful in evaluating the progress towards these goals. This process includes:

- Articulating the goals the boards and agencies have identified for themselves;
- Identifying the actions and associated milestones necessary to achieve those goals; and
- Assessing the board's progress in taking those actions and achieving its goals.

Beyond this basic process, the boards may individually decide to evaluate their work on a more substantive basis. This is a decision that should be made on a case-by-case basis, by those involved in designing the evaluation process. The following are types of specific questions that may be useful.

- Are members knowledgeable about major issues, community views, and the decision-making process? Is the community knowledgeable about and supportive of the actions of the board?

- Has the advisory board process contributed to agreement about the cleanup process? Were the recommendations useful in terms of resolving disputes between the public stakeholders? Or is the advisory board itself useful for resolving disputes?
- What major factors are impeding the progress of the advisory board? What can be done to address these impediments?
- Were the recommendations useful in terms of facilitating effective cleanups that ensure protection of public health and the environment?
- Can the advisory board point to cost reductions or other efficiencies resulting from their recommendations?
- Have agencies responded and adequately communicated actions to implement recommendations and/or reasons for not implementing recommendations?

Box 24: Communication Efforts Among DOE SSABs

Communication among EM SSAB members is encouraged and strengthened through three vehicles: EM Progress, Internet access and EM SSAB Chair meetings. On a quarterly basis various EM SSAB members submit stories to be published in the newsletter EM Progress. The stories are printed in a distinct SSAB section of the newsletter for distribution to over 6,500 internal and external EM customers, including SSAB members and chairpersons. Many SSABs choose to share information on obstacles met and overcome, Board operation, and Board recommendations that have influenced EM decisions and achieved significant cost savings. In an effort to encourage electronic communication, EM recently established an EM SSAB Home Page on the Internet's World Wide Web. Individuals with Internet access can use the page to find the latest information on SSAB activities. Lastly, the Chairpersons of each local board meet biannually with Headquarters and field representatives to share lessons learned, resolve potential conflicts, review upcoming actions, and plan for the future needs. For more information, contact Don Beck, Office of Public Accountability, DOE, (202) 586-7633.

- Does board membership continue to reflect adequate diversity among interested stakeholders?
- Are education and training opportunities for board members adequate for the number and type of issues that are coming before the board?
- Has the board accomplished its goals such that termination of the advisory board is appropriate?

- Has the advisory board interacted with other public stakeholders, and if so how?

In addition to considering the above evaluation process, the Committee recommends that boards pursuing an evaluation process consider the evaluation process developed by DOE, in conjunction with advisory board members from all of its facilities.

XX. Networking Advisory Boards

The Committee believes that linking public stakeholders and agencies across the country may allow public stakeholders to share the burden of extensive technical and legal research that currently overwhelms many public stakeholders. When advisory boards, agencies, and regulators share information, solutions can arise more quickly than when parties work in isolation. Often, this exchange of information can save time and money for all involved. A network may also be used as a resource for communities and site level agency personnel looking for new cleanup remedies and clarification on environmental laws and regulations, pending legislation and budget updates.

Some efforts are already underway to establish communications between facilities in regions of the nation, as well as across federal agency complexes. Examples of these efforts are included in Boxes 24-26.

Specifically, the Committee encourages federal agencies to support efforts that will assist communication between public stakeholders at a national level. For example, DOE guidance suggests that DOE headquarters may play a role in establishing communication among

Box 25: Bay Area Community RAB Caucus

With close to twenty federal facilities, there is a high density of advisory boards in the San Francisco Bay Area. Each RAB has its own individual challenges to address, however, all share common concerns and in some cases, problems.

In the Spring of 1994, Arc Ecology convened the San Francisco and Monterey Bay Area RAB Community Member Caucus to address shared concerns, provide support for one another, monitor the activities of RABs within the region and provide general information sharing. The Caucus is a voluntary network of cooperating community members from the Restoration Advisory Boards of NAS Alameda, Oakland Fleet Industrial Supply Center, Mare Island Shipyard, Hunters Point Shipyard, Treasure Island Naval Station, Moffett Field Naval Air Station and Fort Ord.

The Caucus is facilitated by Arc Ecology, a San Francisco headquartered nongovernmental organization with over a decade of experience in the area of defense cleanup and conversion. While meetings occur mostly in Arc's offices, they occasionally rotate among the participating RAB communities. The agenda is set by the RAB Caucus itself with technical support, legislative and budgetary analysis provided by local nongovernmental organizational resources like the San Francisco Bay Area Base Closures Environmental Network (reuse), CAREER/PRO (national policy), and Arc Ecology (technical & legal). Minutes are taken at each monthly meeting and mailed to Caucus members. Caucus members report back meeting discussions and decisions at their individual RAB meetings. Caucus members have begun to identify regionally shared RAB concerns and are developing projects to address them. The Bay Area RAB Community Member Caucus has formed a strong collaborative community spirit to address federal facility cleanup in the San Francisco and Monterey Bay region and in October, 1995 began to reach out to other RABs in the state to form a California-wide RAB Caucus. For more information contact Arc Ecology 415-495-1786.

advisory boards across facilities, through the use of an electronic bulletin board.⁵ Efforts to increase communication across facilities might include:

- Providing information to existing networks;

Box 26: "cpro.military" Conference on Military Base Closure, Cleanup and Conversion

This electronic clearinghouse was set up as a support system for advisory board members. The goal of the conference is to provide a "place" where people who work on the many issues of federal facilities cleanup can carry an ongoing dialogue, build alliances and discuss solutions to the complex problems that surround this procedure.

Since its inception in October of 1994, the cpro.military conference has developed a list of subscribers that include advisory board members, grassroots environmental organizations, educators, regulators, federal agencies and people involved in cleanup in Panama, Germany, and Canada. Conversation topics include the workings of advisory boards, military RAB guidance, environmental law, budget cuts, legislative process, toxic substances, and other general information sharing.

For example, in January of 1995 a conference participant posted his concerns about the apparent backsliding of the local base commander. The RAB and local base had worked hard at establishing a relationship where information was shared, concerns could be voiced and trust was beginning to build. Within hours of his posting he was contacted by a Navy official in Washington, also a subscriber to the cpro.military conference. The potential conflict was resolved within a day or two and what might have been an incident that could have brought everyone back to square one was averted. Both the RAB members and Navy personnel benefitted, saving time and money. For more information, contact Aimee Houghton, San Francisco State University Urban Institute, (415) 904-7750.

- A national electronic clearinghouse where information is posted almost as it is happening;
- A newsletter that addresses the vast array of issues in federal facility cleanup;
- Making effective use of the media, including the Internet, World Wide Web, local access television, local print media, and radio stations; and
- Other communication methods, such as networks formed at national meetings.

In creating any network, the network should develop a charter that articulates its scope and responsibilities. In addition, these networks should be publicly accessible.

Conclusion

The Committee is encouraged to see that its recommendations for the establishment of advisory boards have been successful to date. It is hoped that boards will continue to be established and operate in a manner consistent with the spirit of these recommendations.

Advisory boards provide an important forum for stakeholders and agencies to explore the complex problems associated with federal facility cleanups. In the next chapter, the Committee has updated its recommendations on one of the more complex issues facing federal facilities, that of setting priorities and allocating funding in a manner that is fair and consistent with public stakeholder values.

⁵DOE, Site-Specific Advisory Board Guidance, November 14, 1994, page 14.

CHAPTER 5

FUNDING AND PRIORITY SETTING

Introduction

As federal agencies continue to implement cleanup programs at an increasing number of sites, and as these sites proceed through the cleanup process, the scope of the federal government's cleanup obligations will mount. As sites proceed through the cleanup process and there is a shift from cleanup studies into the more costly remedial construction phase, the government's annual cleanup funding needs will also increase. The ability of each agency to obtain sufficient funds to ensure execution of projected environmental cleanup activities in a given year will be an important factor in determining the overall success of the federal government's cleanup program.

The question of how to best set priorities and ensure adequate funding for federal facility cleanups was on the forefront of the Federal Facilities Environmental Restoration Dialogue Committee's agenda before it was even chartered as a federal advisory committee (see Appendix C). When the Committee released its Interim Report in February 1993 an entire chapter, "Recommendations for Improving Accountability Through Enhanced Stakeholder Involvement Throughout the Federal Budget Process," was devoted to this subject.

At the time the Interim Report was released it was anticipated that the overall federal budget context would become increasingly constrained as the pressure to reduce the deficit mounted. This expectation has come to pass and the federal budget will likely become even more constrained in the future. As many agencies shift from a study and assessment mode to actually conducting cleanups, the need for reconciliation between budget realities and constraints and ever increasing cleanup needs and desires is now ever more apparent and necessary.

The recommendations contained in the other chapters of the Committee's 1993 Interim Report that addressed information dissemination and public stakeholder involvement, particularly those that called for the establishment of SSABs, have been widely accepted and implemented. In contrast, at least some of the recommendations contained in Chapter 4 of the Interim Report were more controversial. These recommendations addressed two subjects: **consultation** between the lead or regulated agency that is the recipient of cleanup funds and responsible for conducting cleanup, and the regulating agencies and other stakeholders on budget and funding matters; and **allocation** of cleanup funds in the event of a funding shortfall.

The recommendations that addressed consultation issues were far less controversial than those that addressed allocation issues. In fact, these recommendations have, with some exceptions, been accepted and are in the process of being implemented, similar to the recommendations

contained in the other sections of the Interim Report. The Committee believes that the recommendations that addressed allocation issues, while admittedly complex, have been widely misunderstood. As described more fully below, the Committee called, and continues to call for, a flexible "fair share" approach to the allocation of funding shortfalls under certain circumstances, rather than an inflexible pro-rata allocation of funding shortfalls as many have interpreted the Committees recommendations.¹

The recommendations contained in this chapter update and revise those contained in the Interim Report. The primary objectives of the recommendations contained in this chapter are to:

- promote a credible process for planning and conducting federal facility cleanups at a reasonable pace that is protective of human health and the environment; and
- address funding shortfalls in a timely, open, understandable and cost-effective manner.

In order to meet these objectives, this chapter includes recommendations for a process whereby stakeholders are informed of, and to the greatest extent feasible, participate in important decisions that will affect the scope and schedule (i.e., pace) of work to be performed at federal facilities.

In contrast to the recommendations contained in the 1993 Interim Report, these recommendations focus even more strongly on building consensus, at the local facility level on cleanup priorities and budgets at early stages of the budget process, rather than relying solely on the expectation that the agencies responsible for conducting the cleanup will ask for sufficient funds to meet their cleanup obligations and, if Congress does not appropriate sufficient funds, the possibility of modifying cleanup schedules.

Background on the Nature of the Problem

Funding and priority setting for federal facility cleanups involve a dynamic and complex interplay between:

- cleanup studies and remedy selection decision making, including:
 - initial site identification and assessments;
 - remedial investigations and feasibility studies;
 - future use determinations; and
-

¹ *Improving Federal Facility Cleanup*, Report of the Federal Facilities Policy Group, October, 1995., pages 41-42.

- interim and final remedy selection;
- federal budgeting and appropriations;
- negotiation and implementation of formal cleanup agreements; and
- the stakeholder involvement process.

Several of the principles set forth in Chapter 2 address elements of this complex interplay, including the role of negotiated cleanup agreements (Principle 8), risk assessments (Principle 9), future use determinations (Principle 11), cleanup studies (Principle 12), and stakeholder involvement (Principle 14). The sections that follow explain aspects of the federal facility funding and priority-setting process that were not addressed in the principles and are necessary to understand the recommendations contained in this Chapter.

The Federal Budget Process

The connection between the federal budget process and the need to set priorities for federal facility cleanups is an obvious one—funding constraints in combination with other factors, as described below, require the sequencing of cleanup activities. Even if the resources available for federal facility cleanups were unlimited, there would still be a need to set priorities. However, the availability of funds plays an obvious and ever increasing role in determining how cleanup priorities are established. Notwithstanding the obviousness of the connection between budgeting, funding, and priority setting, it is a connection that is fraught with a high degree of controversy and complexity.

The "Top-Down" Dimension

The federal budget includes both entitlement programs, such as Medicare, and discretionary programs under which all federal facilities cleanup programs are funded. In the context of the overall federal budget, the resources that are made available for federal facility cleanups are often seen as competing for a shrinking pool of discretionary resources.

Discretionary funding is controlled through annual appropriations bills. The Balanced Budget and Emergency Deficit Control Act of 1985 limits discretionary spending by placing caps on budget authority and spending for each fiscal year. If appropriations would exceed the budget cap, the Act establishes a procedure for across-the-board budget cuts. In recent years, Congressional action, through adherence to budget caps on appropriations bills, has limited the funding available for cleanup, as well as for many other needs of the Federal government. Congress makes funding decisions among many priorities, including the amount of funding to comply with Congressional mandates to agencies to meet environmental cleanup requirements. Thus, unlike non-Federal and private sector entities, the financial ability of Federal

facilities to comply with Congressional mandates is determined by the President and Congress.²

This "top down" dimension to the overall federal facility cleanup decision-making and priority-setting process manifests itself in the issuance of agency, department, or program budget "targets" and out year budget projections by OMB. These OMB budget targets and projections play a very important role in the overall federal facility cleanup decision-making and priority-setting process.

The top-down dimension is made even more complicated by virtue of the fact that each Administration handles the budget building process differently. Furthermore, even within a given Administration, OMB may treat one agency differently than another, or treat the same agency differently over the course of an Administration, in terms of the level and scope of cleanup programs and activities to which budget targets apply.

The Cyclical Dimension

In addition to the top-down dimension, another important feature of the federal budget process is the highly complex cyclical nature of the process. At any one moment in time, three budget cycles are occurring in an overlapping and simultaneous fashion. This includes the current execution fiscal year (FY), the upcoming fiscal year (FY+1), sometimes referred to as the budget year, and the following fiscal year (FY+2), sometimes referred to as the planning year. When all goes well, each cycle takes approximately two years to complete from beginning to end. When there are continuing resolutions, such as is the case for the FY96 budget, the process can take longer. The President's budget also includes budget projections that cover the five-year period beyond the year for which the budget is being produced.

The federal budget process when viewed in its totality is a highly complex process, but it can be simplified to its most basic features, as is done in Figure 2. As this chart shows, the fall of any given year marks the beginning of the budget cycle for FY+2, the middle of the budget cycle for FY+1, and the end of the budget cycle for the immediately upcoming fiscal year (FY). As will be discussed later, the cyclical nature of the budget process has implications for regulator and public stakeholder involvement in budget related decisions.

The "Bottom-up" Dimension

Added to these top-down and cyclical dimensions is a very important "bottom-up" dimension. This dimension starts at the local facility and affected community level and includes not only budget formulation and submission, but the site assessments and remedy selection decisions that form the basis of budget estimations and submissions. It is also important to note that

²*Improving Federal Facility Cleanup* Report of the Federal Facilities Policy Group, October, 1995, page 32.

INSERT FIGURE 2 -- Lotus Chart

the "top-down" dimension comes full circle and completes itself when execution occurs at the local facility and affected community level. In its 1993 Interim Report, the Committee spent a considerable amount of time addressing the "bottom-up" dimension of the overall federal facility cleanup decision-making and priority-setting process. The Committee's recommendations on improving information dissemination, stakeholder involvement through the use of SSABs and other means, and improved consultation and sharing of information on federal facility cleanup budget matters were all intended to build the "infrastructure" that is necessary to support and enhance this "bottom-up" dimension and to improve execution at the conclusion of the "top-down" dimension.

Environmental Requirements and the Role of Executive Order 12088 and Negotiated Cleanup Agreements

Federal agencies must comply with certain laws and rules and regulations when implementing cleanup programs and activities. The laws that most frequently come into play include CERCLA (popularly known as Superfund), RCRA and applicable state law, and the Federal Facility Compliance Act (FFCA) which waives the sovereign immunity of federal facilities for enforcement actions under RCRA. In contrast to a budget-driven, top-down perspective, compliance with these laws is required but the pace of this compliance may be negotiable.

Executive Order 12088

In the development of the consensus that led to the 1993 Interim Report, as well as the consensus that led to the production of this Final Report, the Committee has spent considerable time discussing the role of Executive Order (EO) 12088 in the overall federal facility cleanup decision-making and priority-setting process. This executive order has, both a "bottom-up" and, because it is an executive order, "top-down" quality.

EO 12088, which was issued by President Carter in 1978, requires the heads of federal agencies to request sufficient funds in their budget submissions to OMB to meet all "pollution abatement" requirements. It is commonly understood that this executive order was intended to ensure that OMB was fully cognizant of such requirements as the President's budget was being developed and finalized.

Since this executive order was issued before the passage of CERCLA and before most federal agency cleanup programs were put into place, it was necessary to clarify its relationship to federal facility cleanup activities. In a 1983 letter to Congressman John Dingell, and then again in a 1991 letter to DOE, Department of Justice (DOJ) officials stated that EO 12088 can be extrapolated to cleanup requirements. Since this order cannot be subjected to judicial review and the President has not issued any orders that countermand the DOJ opinion, the Committee acknowledges that this executive order applies to federal facility cleanups, including those requirements that are specified as milestones set forth in negotiated cleanup agreements.

All of the major pieces of federal environmental legislation which have been created over decades of bipartisan effort (Clean Air Act, Clean Water Act, RCRA, CERCLA, Safe Drinking Water Act) contain provisions waiving the federal government's sovereign immunity from the application of analogous state laws, which are typically required for a state to be delegated federal authorities. EO 12088 is a Presidential directive that helps to ensure that Executive Branch decision makers are informed of the cost of complying with these laws. This is consistent with the principle that the federal government should comply with environmental laws in the same manner as private entities, as is recommended by the Committee in Principles 1 and 4 of Chapter 2.

The Committee recognizes, however, that federal agencies are also required by OMB directives to submit budgets that do not exceed predetermined funding levels (i.e., budget targets). In addition many of the requirements that compete with cleanup funds are also required by executive orders, and federal law, as well as domestic and foreign policy objectives established by the President.

Although there are differing views on the Committee of the relative standing or importance of EO 12088 compared to these other requirements, the Committee acknowledges that federal agencies are finding it increasingly difficult to satisfy all of these requirements within either OMB funding targets or the amounts appropriated by Congress. In crafting the recommendations that follow, the Committee has tried to provide some balance between the pressures on federal agencies to satisfy the myriad of policy objectives and legal requirements.

These conflicting requirements come to a head at the level of the agency head. This is the person who is required to submit budgets within the budget targets established by OMB that comply with all legal environmental cleanup requirements, and other federal laws, executive orders, and domestic and foreign policy objectives established by the President. Agency heads often pass this conflict on to agency comptrollers and national program managers, upon whom they must rely when formulating and executing their agencies' budgets.

In addition to OMB targets, agencies have direct relationships with the Congressional committees that ultimately appropriate the funds to meet their cleanup obligations. These relationships typically entail communications between the relevant committee and agency at the early stages of the budget process as to expected funding levels, as well as decisions at the end of the budget process which actually set the funding levels. Members of Congress expect agency heads and national program managers to take these projected funding levels seriously.

Negotiated Cleanup Agreements

In the case of sites or facilities that are on the CERCLA National Priorities List (NPL), legally mandated cleanup requirements manifest themselves in negotiated cleanup agreements that are required by Section 120(e) of CERCLA. Although enforceable cleanup agreements are not required under CERCLA until after a Record of Decision (ROD) has been signed, in Principle 8 of Chapter 2, the Committee recognizes the important role that negotiated

agreements play in establishing and maintaining a credible federal facility environmental cleanup program, and as a mechanism for setting cleanup priorities and schedules even before an issuance of a ROD. The Committee also acknowledges that where regulatory authorities of states and EPA overlap, as they do at many federal facilities (e.g., the so-called RCRA/CERCLA "interface"), negotiated cleanup agreements can play a very important role in coordinating those authorities to minimize differing, inconsistent or conflicting requirements (see Principle 8 in Chapter 2).

While the Committee believes that negotiated cleanup agreements can play an important role in establishing and maintaining a credible federal facility environmental cleanup program, it is aware of criticisms about negotiated cleanup agreements. These criticisms include statements that negotiated cleanup agreements are "unwieldy" and frequently contain "unrealistic schedules" with cleanup milestones extending years or decades into the future. The Committee believes most of these criticisms to be unwarranted and based on misperceptions of the agreements. The Committee attempts to address these criticisms and the tension between the importance of negotiated cleanup agreements and the requirements of the federal budget process in the recommendations on "Budget Consultation and Milestone Setting" that are found below.

The Importance of Strategic Planning, Life-Cycle Cost Analysis, and Project Baselines

Notwithstanding the criticisms of negotiated cleanup agreements, the Committee believes that significant progress has been made in recent years to establish credible environmental cleanup programs and agreements that are based on:

- facility-specific strategic plans that are developed and agreed upon by regulating and regulated agencies, and other stakeholders;
- life-cycle cost analysis of cleanup projects and activities; and
- "baselines" that reflect the agreed upon technical requirements, schedule, and cost of cleanup projects.

Strategic plans typically include a "vision" that guides cleanup efforts at individual facilities toward the achievement of statutory, regulatory and other agreed upon goals that have been developed through consultation with regulators and participation of other stakeholders.

At most facilities, life-cycle cost analysis is applied to a project baseline that is based not only on cost information, but technical and schedule considerations as well. The technical component of the project baseline considers factors such as design requirements and performance standards. The schedule component of the project baseline considers factors such as the logic used for sequencing activities, constraints, assumptions, duration and resources. The cost component of the project baseline considers factors such as direct and indirect costs, management reserve, and cost contingency. The project baseline is established

according to a set of planning assumptions that should be developed in consultation with public stakeholders and agreed to by regulators and regulated agencies.

The Committee believes that the use of these three tools have significantly improved the quality of the cleanup decisions in general and provided for improved consultation with regulators and involvement of other stakeholders. This belief has affected the Committee's recommendations that follow.

The Importance of Stakeholder Involvement

The importance of adequate and meaningful stakeholder involvement has been stressed throughout both the Committee's 1993 Interim Report and this Final Report. Success for improved decision making and building crucial public support hinges on involvement of public stakeholders in the decision-making process. For the purposes of this chapter, suffice it to say that without the support of regulators and affected communities on cleanup priorities and schedules, the agencies responsible for conducting cleanups are not likely to succeed in accomplishing the cleanup tasks that are needed, nor in obtaining the funds that are necessary to accomplish the task.

It is important to note, however, that similar to negotiated cleanup agreements, stakeholder involvement is at different stages of development at different facilities. This is especially true with regard to the establishment and utilization of advisory boards. It is also true that trust issues are more pronounced at some facilities in comparison to others. Notwithstanding these differences, the recommendations that follow are premised on proactive and strong efforts to involve regulators and other stakeholders in the intricacies of the federal budget process as it relates to the establishment and implementation of agreed-upon cleanup priorities.

Summary of the Problem

In summary, the basic problem that is addressed in this chapter of the Committee's report is that a tension exists among the requirements of the federal budget process and the federal facility cleanup decision-making and priority-setting process. The recommendations outlined below include a number of checks and balances that the Committee believes will help reconcile the potential conflict between budget targets on the one hand and cleanup requirements and schedules on the other.

Given the complexities inherent in the nexus between the various steps in the cleanup decision-making process, the federal budget process, the negotiated cleanup agreement negotiation and implementation process, and the stakeholder involvement process, the following recommendations are not intended to specify a detailed or prescriptive approach to priority setting. Instead they point to some key principles, features and options that the Committee believes will help to enhance trust, establish reasonable, credible and successful environmental cleanup programs, and reconcile the inherent conflict between "budgets versus requirements."

Recommendations

I. Overview

In recognition of the important linkage between funding availability and work to be performed, the Committee strongly recommends the active engagement of public stakeholders in the cleanup decision-making process. This applies to all decisions regarding scope, timing, and priority of activities to be performed, and to the greatest extent feasible, budgetary and funding matters. Where public stakeholders cannot provide direct input to the decision-making process because of timing constraints or other reasons, they should be advised of relevant decisions so that they retain confidence in federal agencies' efforts.

To involve public stakeholders in a meaningful manner, advisory boards at federal facilities should be used wherever they exist. In all instances, broad community involvement efforts, as described in Chapter 3, should be used.

In addition to meaningful stakeholder involvement, federal facility cleanups depend upon a high degree of communication, cooperation, and consultation between regulated and regulating agencies. Furthermore, the success of federal facility cleanups requires that where multiple regulators exist (e.g., state, federal, tribal) they work together to eliminate or minimize imposing differing, inconsistent, or conflicting requirements.

The partnerships and relationships that have evolved during recent years are critical because they allow for public stakeholder and regulator "buy-in" to cleanup priorities and schedules during the early stages of the budget cycle. This early buy-in can be critical during later stages of the budget process in the event that a funding shortfall occurs and priorities need to be reestablished.

The recommendations contained in this chapter are designed to apply where negotiated agreements are required by law or otherwise should be used, as well as in instances where negotiated agreements are not appropriate.

II. Pre-appropriation Priority Setting of Cleanup Activities

Prior to appropriation of funds by Congress to an agency and the allocation of those funds to facilities and/or sites, a complex set of activities and interactions occurs that involve regulated and regulating agencies, and other stakeholders. These activities and interactions, which result in the development of cleanup budgets for sites, facilities and agencies, involves prioritizing and scheduling cleanup activities.

The Committee has developed a set of recommendations for a process to set priorities in a consistent, equitable, and understandable manner prior to appropriation and allocation of funds. These recommendations are intended to allow stakeholders to be informed of, and to

the extent feasible, participate in important decisions that will affect the scope and timing of work to be performed at federal agency facilities.

A. Prioritize Activities Rather than Sites or Risk

The Committee recommends that priority setting at the facility level should not be limited to prioritizing the relative risks posed by site contamination but should go further to include prioritizing the activities that are designed to clean up the contamination. Thus, any effort to sequence cleanup priorities as needing to be done now, sooner, or later, or as being of high, medium or low priority, or whatever other priority-setting scheme is utilized, should ultimately focus on setting priorities for cleanup action rather than setting priorities based on the relative risks posed by site contamination. Relative risks will no doubt have a bearing on the setting of priorities for cleanup activities but, as described more fully below as well as in Principle 9, relative risk rankings should not become the de facto priorities. Other factors warrant careful consideration in addition to risk. Furthermore, as current law provides [CERCLA 120(e)(3)], required activities should not be put off indefinitely. Thus, even "low" ranking activities will require action as soon as practicable.

B. "Risk Plus Other Factors" Priority Setting

For some people the term "risk management" is understood to mean the consideration of factors in addition to risk to human health and the environment when making decisions about how to best manage or reduce such risks. For others, risk management still connotes too strong of an emphasis on human health risk. In other words, in certain instances factors that may have very little to do with human health risk may become the overriding factors in setting cleanup priorities. For this reason, the Committee has come to use the term "risk plus other factors" to refer to the consideration of risk to human health and the environment along with other important factors.

The Committee supports efforts of the regulated agencies to use risk-based priority setting to build their cleanup budgets, as long as priorities are set with the agreement of the regulators and in consultation with other stakeholders. In general, high-priority activities should be funded before medium-priority activities, and those should be funded before low-priority activities.

The assignment of priority levels to all agreed-upon activities or sites should provide the basis for reconsidering out year milestones and altering programmatic plans when appropriated funding does not match requested levels and when the affected facility has demonstrated it is developing and implementing cost savings measures. This applies to increases as well as decreases. Thus, even when agencies must respond quickly to Congressional actions, their changes should reflect regulator and public stakeholder input, to the greatest extent possible.

Even within the realm of human health and environmental risks, one of the most important functions of consultation and stakeholder involvement is to weigh the relative significance of dissimilar health impacts. For example, even if the "experts" agree that a specific chemical,

as delivered to a specific population, cause N cancers, M miscarriages, and Q learning disabilities, there needs to be a process by which the seriousness of each problem is agreed upon. While the risk evaluation may indicate potential impacts, it does not indicate what action to take.

As stated in Principle 9, the Committee believes that in many circumstances "risk to human health and the environment is an important and well-established factor that should continue to be a primary consideration in federal facility cleanup decision making, including setting environmental cleanup priorities and enforceable milestones." Principle 9 goes on to state that "other factors warrant consideration in setting cleanup priorities and enforceable milestones."

In this section, the Committee wishes to elaborate on these points by stating that risk to human health, or its corollary, protection of human health is, at many sites, only a starting point for establishing cleanup funding priorities. The Committee also believes that in many other instances protection of the environment is the appropriate starting point for establishing cleanup funding priorities. Furthermore, in other cases, protection of human health and the environment is the appropriate starting point for establishing funding priorities for cleanup. The Committee strongly recommends that in those instances where protection of the environment is not used as a starting point for establishing cleanup funding priorities, it should be considered as one of the factors that are listed below.

Regardless of whether protection of human health or the environment (or both) is the starting point for establishing cleanup funding priorities, the Committee affirms that numerous other factors must be considered in setting priorities for sites and projects. As set forth in Principle 9 in Chapter 2 the factors listed below should be considered in setting cleanup priorities:

- a) cultural, social, and economic factors, including environmental justice considerations;
- b) potential or future use of the facility, its effect on the local communities' economy, vitality, livability, and environmental quality;
- c) the ecological impacts of the contamination and the proposed action to address it (in those instances where protection of the environment is not used as a primary basis for establishing cleanup funding priorities);
- d) intrinsic and future value of affected resources (e.g., groundwater and fisheries);
- e) pragmatic considerations such as availability and continuity of skilled workers, labs, cleanup contractors to complete the activity or the feasibility of carrying out the activity in relation to other activities at the facility (i.e., capacity and work flow logic), or both;

- f) the overall cost and cost effectiveness of a proposed activity and especially the relative risk reduction value obtained by the proposed expenditure;
- g) making land available for other uses, recognizing that land uses may change over time;
- h) the importance of reducing infrastructure costs (e.g., \$300 million is spent each year to monitor tanks at Hanford and \$130 million is spent each year at Rocky Flats to safeguard special nuclear material);
- i) the availability of new or innovative technologies that might accelerate or improve the ability to achieve a permanent remedy;
- j) Native American treaties, statutory rights (e.g., American Indian Religious Freedom Act), and trust responsibilities;
- k) regulatory requirements and the acceptability of the proposed action to regulators and other stakeholders;
- l) supporting accomplishment of other high priority agency objectives;
- m) life-cycle costs; and
- n) actual and anticipated funding levels (the congressional budget appropriation, OMB apportionment, allotments of funds to agencies or departments and the facilities, and out year funding targets).

With regard to anticipated funding levels, the Committee recognizes the constraints on federal agencies to submit budget within OMB target levels, and also recognizes that there may be circumstances that warrant challenging those constraints.

The Committee believes that there is no widely accepted mechanism for integrating human health and environmental risk with other important factors. However, the Committee recommends, for a risk plus other factors prioritization system to work, the following conditions must be met:

- For the prioritization of cleanup actions or studies, the application of standards to remedy selection and the actual selection of remedies should occur independent of the risk ranking. That is, prioritization should only relate to the timing of the action, not how protective the remedy will be.
- There must be confidence, among all stakeholders, in the approach for categorizing sites based on relative risk and, similarly, the risk reduction potential of proposed cleanup activities.

- There should also be confidence, among all stakeholders, in the methodology used to assign priorities once risk rankings are made.
- As part of priority setting, the general range of costs associated with a cleanup activity should be known and generally agreed upon.
- The system of assigning risk levels and setting priorities should be transparent and easily understood. That is, it should not only be understood by "experts" and others who are fully immersed in the process, but by members of the public, the press, and elected officials.

While the Committee believes that agencies should issue general guidance on the types of factors to be considered and how they should be applied to priority setting, ultimately, these agencies, in consultation with public stakeholders at each facility, must decide the mix and relative importance of these factors in setting priorities. Each agency should ensure that its approach is understood and utilized within the agency, by regulators and public stakeholders, and by all facilities in a similar manner to provide for comparability among facilities. In many cases, the best way to ensure that everyone is playing by the rules is to review or evaluate rankings after they are made but before funding allocation decisions are made. In short, the Committee does not believe there is a single best methodology for applying the factors outlined above. Rather, regulating and regulated agencies and public stakeholders at facilities must determine what approach will work best for them.

The Committee does recommend, where possible, agencies and other stakeholders should define, up front, the factors in addition to protection of human health and/or environment that might influence priority setting. Then, when priorities are set, participants in the process should identify which specific factor or factors have caused a site or activity to be assigned a priority category. Participants in the decision-making process might also consider whether each factor moves or "bumps" activities from one priority level to the next level, or are so significant that they "trump" the risk determination.

The evaluation of risk and the establishment of temporal priorities is a dynamic process. Both risk rankings and priorities should be reviewed regularly by all participants, to take into account new information and even new attitudes and perspectives. Each regulated agency should establish, in consultation with other stakeholders, procedures for reopening rankings and priorities outside of the normal budget cycle, should significant new information be discovered.

No matter what specific prioritization scheme an agency adopts, its success depends upon agreement on the process, up front, by all stakeholders. If there is broad confidence in the process, then cleanup progress will be much less subject to delays and other transactional costs historically characteristic of major federal facility cleanup projects.

C. Budget Consultation and Milestone Setting

As the Committee has stated elsewhere in this report, stakeholder confidence in agency cleanup programs is contingent upon continued progress on cleanups and an understanding that an agency has made every effort to plan for, seek funding for, and execute its cleanup obligations. In Principle 8 of Chapter 2, the Committee recognizes the importance of negotiated cleanup agreements in accomplishing this objective.

In this section, the Committee sets forth recommendations for a budget consultation and milestone-setting process that the Committee believes can help accomplish this objective. In making these recommendations, the Committee is not recommending that all existing negotiated cleanup agreements should be renegotiated. However, where all parties agree that existing agreements may benefit from this approach, or where agreements are not yet established, the Committee believes a process such as that recommended below should be considered for inclusion in the agreement at the option of the parties to the agreement. Moreover, the recommended process below reflects a delicate balance and also must be carefully balanced with other elements of the agreements (to be negotiated for each site), which are intended to work together as a whole.

Two of the important features of this process, which is sometimes referred to as a "rolling milestone" process,³ are: 1) for the regulated and regulating agencies to determine the cleanup work that is required to be performed in consideration of, but not necessarily "driven by," budget targets; and 2) to do so in a timeframe that coincides with the federal budget process.

While implementation of the budget consultation and milestone concept described below will vary to some extent from one site to the next because identification and review of milestones is a "bottom-up" process that involves public stakeholders, regulators and site personnel in setting site-specific priorities, the Committee believes that the following recommendations are generally applicable:

- 1) When milestones are first being established using the process recommended below, the regulating and regulated agencies, in consultation with other stakeholders, should use the strategic plan, life cycle cost analyses, and project baselines to establish agreed upon project end dates, out year milestones, and near term milestones:
 - **Project end dates** should be established for major portions of the cleanup or completion of cleanup of the entire facility. The Committee recognizes that many of these dates will be a number of years in the future. By nature, these dates have the most degree of uncertainty. Nonetheless, project end dates serve an important function in establishing the overall pace of cleanup, including the setting of near term milestones.
 - **Out year milestones** should be established for completion of major cleanup activities critical to the completion of the project for the time period beyond the

³ The Committee has purposely not used the term "rolling milestone" process because there have been many proposals that are called rolling milestone processes that differ from the Committee's recommendation.

budget development year until the project end date. Since these milestones are beyond the "planning" year (FY+2), they are not included in the current budget request, but are important to out year fiscal planning.

- **Near term milestones** are critical for both budget development and to show commitment by regulated agencies for cleanup activities that will occur in the next fiscal year (i.e., the "budget" year — FY+1) and the year for which the budget is being developed (i.e., the "planning" year — FY+2).

In order to ensure a sustained commitment to a credible environmental cleanup program that is protective of human health and the environment, and a reasonable and defensible pace of cleanup, the Committee agrees that all parties should work together to achieve the agreed upon near term milestones, out year milestones, and project end dates. This includes making good faith efforts to obtain sufficient funds to accomplish the agreed upon milestones, target dates, and end dates.

The parties expect that projected end dates, out year milestones, and near term milestones will be established in full consultation with public stakeholders, and will consider the best available site information and projected funding levels. The Committee recognizes that near term milestones have more significance in building a budget. Therefore, the Committee believes that near term milestones, out year milestones and project end dates should not be changed without the agreement of the parties, in consultation with public stakeholders. Disagreements on proposed date changes for any milestones will be subject to any agreed upon dispute resolution process.

2) On an annual basis, thereafter:

- a) Prior to the end of a fiscal year, evaluate the status of all activities that were expected to be completed during the current FY, with particular emphasis on those activities that are critical to meeting near term milestones for the upcoming two fiscal years (FY+1 and FY+2);
- b) As soon as possible after Congress appropriates, OMB "apportions," and agencies "allot" cleanup funds (typically at the start the new fiscal year in October or November), the parties to the negotiated agreement should determine if planned work can be accomplished with allotted funds. In the

event of an appropriation shortfall, the parties should, before modifying or extending milestones, determine if planned work can be accomplished through:

- rescoping or rescheduling cleanup activities in a manner that does not cause previously agreed upon near term milestones and out year milestones and project end dates to be missed;
- developing and implementing new cost-saving measures.

A determination by the parties to modify or extend a near term milestone should be based upon consultation with public stakeholders, and if necessary, negotiation between regulating and regulated agencies in light of risk plus other factors, which include consideration of funding allocations. If agreement cannot be reached:

- regulators will retain their authority to determine whether to approve a request to modify or extend existing milestones; and
- regulated agencies retain their right to invoke dispute resolution under the terms of the negotiated cleanup agreement.

c) After OMB issues budget targets to agencies, and agencies issue budget guidance to intermediate levels and/or facilities, in light of the FY and FY+1 milestones, funding circumstances, and all of the other "risk plus other factors" listed above, determine whether the previously agreed upon project end dates and out year milestones for FY+2 (i.e., what was FY+3 and has become FY+2) should become near term milestones. The Committee agrees that all previously agreed upon out year milestones and project end dates should become near term milestones unless otherwise agreed to by all parties in consultation with public stakeholders. The Committee also agrees that the regulating and regulated agencies should make every effort to maintain a credible environmental cleanup program within FY+2 budget targets. This may call for:

- rescoping or rescheduling cleanup activities in a manner that does not cause previously agreed upon near term milestones and out year milestones and project end dates to be missed;
- developing and implementing new cost-saving measures.

However, as with step 2b:

- regulators will retain their authority to determine whether or not to approve a request to modify or extend the near term milestones; and

- regulated agencies retain their right to invoke dispute resolution under the terms of the negotiated cleanup agreement.
- d) If the regulating and regulated agencies, in consultation with public stakeholders, are able to agree on FY+2 milestones that are achievable within budget targets, the regulated agency will submit a cleanup budget to its headquarters that reflects the agreement and the budget-consultation and milestone-setting process has been completed for that year.
- 3) If the regulating and regulated agencies do not agree on the near term milestones that should be established for FY+2, and this disagreement is the result of a discrepancy between the cost of compliance with near term milestones required by the regulatory agency and the budget targets imposed upon the regulated agency, this constitutes a potential **budget building shortfall**. Under these circumstances, the Committee recommends that there be **full disclosure** of this outcome at all levels of decision making. The principles that should guide the regulated agencies in their efforts to achieve full disclosure include:
- a) All information to be provided in the effort to achieve full disclosure will be provided in a manner that is consistent with existing laws⁴ and OMB regulations and policies concerning the disclosure of budgetary information.
 - b) The regulated agency should prepare and make publicly available in a timely manner supplemental reports that will accompany the cleanup budgets that the agency submits from the facility level through the successive levels of its organizational structure (if they exist) up to its headquarters, and from its headquarters to OMB. "In a timely manner" means that this information is made publicly available in a timeframe that to the greatest extent possible allows for regulators and public stakeholders to influence each successive step of the federal budget process.
 - c) The Committee agrees that the precise content and level of detail that is contained in supplemental reports may vary from agency to agency, among the successive layers of any particular agency, and from an agency to OMB. The regulated agency in consultation with regulators and public stakeholders should determine what information is needed to clearly communicate the consequences of policy choices at these various levels by, at a minimum, identifying the types of requirements and estimated costs associated with the

⁴The Committee notes that an agency's cleanup costs are currently disclosed in its: (1) annual financial statement required under the Chief Financial Officers Act of 1990 (131 U.S.C. 3515) as contingencies - unfunded environmental cleanup liabilities, (2) annual report to Congress required under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(e)(5)) as cost estimates and budgetary proposals for interagency agreements. However, the type of cost information and level of cost detail found in these documents varies with each agency.

requirements that could not be accommodated within the budget submission. (It should be noted that the Committee does not intend that full disclosure of information regarding disagreements on cleanup priorities between regulating and regulated agencies should result in Congressional earmarking of cleanup funds for specific cleanup projects.)

- 4) If the disagreement over the milestone or milestones covered in the supplemental reports described above persists, the Committee acknowledges that both the regulated and regulating agencies reserve their rights to invoke dispute resolution or take enforcement action. Following any final decision that establishes enforceable milestones that the regulated agency believes cannot be met due to lack of funding, in order to enhance the possibility of meeting near term milestones, the regulated agency should make a good faith effort to comply with such milestones by taking such actions that may include but are not limited to:
- additional rescoping or rescheduling of other activities in a manner that does not cause near term milestones, out year milestones, and project end dates to be missed; and
 - developing and implementing additional cost-saving measures.

If the regulated agency subsequently fails to meet a near term milestone, it retains the right to assert any and all relevant defenses in response to an enforcement action taken by the regulating agencies.

In combination with "risk plus other factors" priority setting, sound strategic planning, life cycle cost analysis, and the use of project baselines, the Committee believes the budget consultation and milestone-setting process described above will provide greater accountability through consideration of fiscal constraints and full disclosure of any discrepancy between budget targets and requirements. The Committee believes it will result in resources being focused on high priority activities, despite fiscal and technical uncertainties.

As noted above, meaningful and effective stakeholder involvement in the establishment of regulatory milestones is critical. Regulated and regulating agencies must be fully knowledgeable of public stakeholder priorities and desires to establish milestones that are supported. Public stakeholders, like regulators, must also be fully informed as to the budget targets and constraints that are faced by the agency and facility managers who are responsible for conducting the cleanup. Public stakeholders need to be provided with access to budget, planning and risk information and the opportunity to participate in the program development process. The means of accomplishing meaningful and effective stakeholder involvement in setting cleanup priorities and milestones are described more fully in Chapter 3.

III. Flexible Fair Share Allocation of Appropriations Shortfalls

As noted above, the recommendations contained in the Committee's 1993 Interim Report called for a "flexible fair share" approach to the allocation of funding shortfalls caused by insufficient appropriations. These recommendations were frequently misinterpreted as calling for an inflexible pro-rata allocation of such funding shortfalls.

In this report, the Committee has recommended that priorities for cleanup activities be set early in the federal budget building process and, where appropriate, be reflected as enforceable milestones in negotiated cleanup agreements based on new and emerging information and the balancing of a variety of important priority-setting factors (i.e., risk plus other factors). The Committee believes these recommendations will greatly facilitate the ability of all stakeholders to subsequently reassess and reset priorities and allocate resources in an understandable, timely and equitable manner in the event of an appropriations shortfall. The Committee believes that appropriation shortfalls necessarily result in at least two and, in some cases, several significant levels or types of decision making. First, national program managers and, for some agencies, agency personnel who have responsibility for multiple facilities within a region or some other intermediate organizational level (e.g., major commands, bureaus, etc.) need to allocate such funding shortfalls among facilities, regions, or other organizational levels. Second, once funding shortfalls have been allocated to facilities, regulating and regulated agencies, in consultation with public stakeholders, must determine how best to allocate the shortfall at their facility.

For either of these types or levels of decision making, the Committee recommends that the original proportion in the proposed cleanup budget should be the starting point for allocating appropriations shortfalls at these various levels assuming that the budget was built: a) in consultation with stakeholders; b) in consideration of regulatory agreements; and c) in consideration of risk plus other factors. However, given the tremendous variation that exists between agencies and agency cleanup programs with respect to their organizational structure, the nature of the environmental problems that they are addressing, the stage of development of their programs, etc., the Committee is not recommending a single unitary approach be taken to address appropriation shortfalls. Rather, the Committee is recommending that each agency or appropriate subset of an agency, in consultation with regulators and other stakeholders, should establish and document an approach that adheres to the flexible fair share features identified below.

The Committee recommends that a flexible fair share approach should:

- 1) to the greatest extent possible, rely on the preappropriation priorities established by regulated and regulating agencies in consultation with stakeholders that are often set forth as enforceable milestones in negotiated cleanup agreements;
- 2) continue to use the "risk plus other factors" approach at the local level when making changes to previously agreed upon priorities;

- 3) strive to reward performance based on preestablished performance criteria or standards (e.g., reward facilities that use resources efficiently and wisely);
- 4) be completed in a timely and efficient manner;
- 5) be conducted in consultation with public stakeholders at the earliest stages possible;
- 6) strive to reconcile the inherent tension between the "bottom up" and "top down" dimensions of the federal facility funding and priority process;
- 7) strive to enhance credibility, trust, and productive working relationships;
- 8) result in equitable and fair allocations (which does not necessarily mean an equal or pro rata allocation); and
- 9) include documentation of the allocation decisions that were made at each significant organizational level.

IV. When Shortfalls Threaten the Ability to Meet Milestones

The Committee anticipates that the processes described in this chapter will significantly reduce the number of situations in which budget building shortfalls are likely to lead to missing milestones in negotiated cleanup agreements. It also recognizes that it is impossible to develop detailed solutions that address all such conflicts in advance. Nevertheless, the Committee believes that the best way to resolve these conflicts is to continue, as much as possible, with the same approach and spirit recommended for earlier stages of the budget process. Therefore, the Committee expects:

- 1) Regulating agencies will consider in good faith the adjustment of milestones and other requirements. This is often the case now, particularly where regulated and regulating agencies have developed working partnerships.
- 2) Representatives of regulated agencies will explore the availability of additional funds within their agency budgets. Again, this is often the case now, particularly when shortfalls are large and unexpected.

The Committee recognizes that its recommendations to mitigate conflicts between budget building shortfalls and milestones might be interpreted, within both the Executive Branch and Congress, as eliminating the legal pressure to complete cleanup activities. It is important, therefore, to remind budget decision makers that budget decisions that "test the envelope" of such "safety-valve" approaches threaten the operation of the entire federal facilities cleanup process, and in particular the growing level of trust resulting, in part, from the Committee's previous recommendations.

V. The Importance of Stable, But Not Necessarily Level, Funding

The Committee believes that a stable funding base over the life of cleanup projects could greatly facilitate pre-appropriation priority setting because it would provide regulated and regulating agencies as well as other stakeholders with a greater degree of certainty and the ability to plan and sequence cleanup activities and projects in an effective manner that is consistent with agreed upon priorities.

The budget-consultation and milestone-setting process described above attempts to balance fiscal constraints with the federal government's obligation to comply with environmental requirements. It does so by first encouraging regulators and public stakeholders to factor federal fiscal constraints into their priority-setting decisions at the facility level, both in terms of establishing cleanup requirements initially, and in considering revisions to these requirements in light of changing circumstances (including fiscal circumstances). The Committee expects that initial efforts to close any gap between cleanup needs and funding availability will be accomplished through the identification and implementation of cost savings.

In recognition of the fact that facility level managers must comply with predetermined budget constraints, consistent with Principles 1, 2, and 4 in Chapter 2, the Committee believes that if the regulators and other stakeholders have made a good faith effort but have not succeeded in accommodating federal fiscal constraints in setting cleanup priorities, Executive Branch decision makers above the facility level should request full funding for the environmental cleanup requirements that could not be accommodated within the predetermined budget constraints. Thus, while the process described above endorses full disclosure of any discrepancy between the OMB budget targets and the funding needed to meet an agency's cleanup obligations, the Committee believes the Executive Branch should make every effort to prevent such a discrepancy from existing in the first place. As noted above, the presentation of such information will be made in a manner that is consistent with laws and OMB regulations and policies concerning the disclosure of budgetary information.

Conclusion

Building on previous chapters, this chapter contained a detailed set of recommendations about how regulated and regulating agencies and other public stakeholders should set cleanup priorities both in advance of and during the budget building process and how to allocate funding shortfalls in the event of insufficient appropriations. All of these recommended processes, as well as the more general community involvement recommendations contained in previous chapters, will require enhanced and expanded capacity on the part of the key participants in federal facility cleanup decision making. The next and final chapter of this report provides specific recommendations on how to enhance the capacity of key stakeholders in order to ensure effective implementation of the Committee's recommendations and, through

implementation, the development of reasonable and credible federal facility cleanup programs.

CHAPTER 6

CAPACITY BUILDING

Introduction

The basic premise of this entire report is that federal facility cleanups will be more effective and efficient if there is a working partnership between the regulated agency, the regulating agencies, and the vast number of other stakeholders that are affected by environmental contamination at these facilities. However, the effectiveness of most of the earlier recommendations in this report regarding community involvement, advisory boards, and including the other stakeholders in the budgeting and priority-setting process are dependent on the various stakeholder groups having the capacity to participate effectively. This chapter addresses the need to establish and maintain a level playing field to the greatest extent possible. The Committee believes that the provision of resources for this purpose, particularly if provided in a cost-effective manner, is likely to reduce overall cleanup costs in the long run.

Continuing Problems

Despite the major changes during recent years in how the federal government involves members of the public in the decision-making process, some groups frequently continue to be left out of the process. In particular, the opinions and concerns of communities of color, indigenous peoples, low-income communities, and local government officials often have not been solicited, even though they have a substantial stake in the thoroughness and success of the cleanup activities. The Committee recommends that federal, state, tribal, and local governments take special efforts to consult with groups that have been commonly excluded and to expand and develop their capacities to participate effectively in such processes, where needed.

Further, many states and tribes, particularly in their regulatory roles, have expanded their capacities tremendously in recent years to serve as partners in the federal facilities cleanup process. In order for states and tribes to continue to play their important oversight role, it is necessary to provide support to maintain this capacity. Also, many tribes in particular, need to expand their capacities beyond current levels. Overseeing cleanup activities places a large burden on many tribes that do not have the technical and financial resources available.

Finally, in some cases, the federal regulated and regulating agencies need to expand their capacities to communicate and work with the full diversity of stakeholders affected by federal facilities cleanups. In particular, some agency personnel have difficulty partnering with

communities of color and low-income communities due to unfamiliarity with social and cultural values, as well as communication channels important to these community members.

Box 27: The Definition of Environmental Justice and Executive Order 12898

During its discussions, the Committee referred to the following definition of environmental justice, which was draft language of the National Environmental Justice Advisory Council (NEJAC): The fair treatment and meaningful involvement of all people regardless of race ethnicity, culture, incomes and educational level with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Fair treatment means that no population, due to political or economic disempowerment, is forced to shoulder the negative human health and environmental effects of pollution or other environmental hazards. The incorporation of environmental justice strategies at the local, agency, and national levels in respect to the cleanup process at federal facilities strives to: a) further define and empower affected communities; b) level the playing field in cases where communities of color and low-income communities have had to bear a disproportionate share of environmental and economic degradation; and c) provide an effective vehicle for historically disenfranchised communities to promote an integrated and sustainable strategy for community development.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" directs federal agencies to develop environmental justice strategies that identify and address disproportionately high exposure and adverse human health or environmental effects of their programs, policies and activities on communities of color and low-income populations. Strategies must consider enforcement of statutes in areas with minority and low-income populations, greater public participation, improvement of research, and identification of differential patterns of subsistence use of natural resources.

For further information regarding the history of the environmental justice movement and organization contacts across the country, the Committee recommends the following reference Ann Bastian and Dana Alston, "Writing Our Own History: New Developments in the Environmental Justice Movement," *Race, Poverty, and the Environment*, Volume V, Number 2/3, Fall 1994/Winter 1995, pp. 8-12. This document can be obtained by calling Earth Island Institute at (415) 788-3666.

Recommendations

I. Communities of Color, Indigenous Peoples, and Low-Income Communities

The Committee encourages federal agencies to seek the participation of the affected communities of color and low-income communities (including communities and organizations of indigenous peoples) in their cleanup activities for several reasons: first, communities of color and low-income communities have a right to participate in federal facility cleanup decision making on an equal footing with other public stakeholders; second, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires it; and third, addressing or integrating environmental justice concerns will make decision-making more fair, equitable, and therefore, more publicly acceptable. These communities and associated organizations may need assistance from federal agencies to develop the technical and analytical expertise. They may also work in partnership with state and local governments. Methods for developing this support include:

- Supporting or developing training and technical assistance programs to improve the capability of community and environmental justice organizations, historically black colleges and universities, tribal colleges, and other minority institutions to conduct health,

scientific, technical, policy and regulatory analyses and studies.

- Involving historically black colleges and universities, the Hispanic Association of Colleges and Universities, tribal colleges, and other special emphasis educational institutions in environmental restoration technology research and development.
- Establishing education programs including internships, fellowships and scholarships for students from communities of color and low-income communities at federal research institutes and laboratories.
- Supporting national and regional forums for representatives of such communities to share ideas and approaches for involving communities of color and low-income communities more effectively in the decision-making process during federal facility cleanups. The precise structure and design of such meetings should be determined through a cooperative effort between regulated and regulating agencies and representatives of communities of color and low-income communities.

Box 28: Building Local Government Capacity: The Oak Ridge Reservation Local Oversight Committee

The Tennessee Oversight Agreement—a formal agreement between the State of Tennessee and DOE signed in 1991—includes a provision to improve public understanding of issues regarding the Oak Ridge Reservation through a contractual agreement with local governments.

In response, the City of Oak Ridge, and the Counties of Anderson, Roane, Meigs, and Rhea formed the Local Oversight Committee (LOC) as an independent nonprofit corporation in 1992. Since then, the LOC has extended membership to officials from the Counties of Knox and Loudon to serve on the LOC Board of Directors, and it has established a 17-member Citizens Advisory Panel (CAP).

The mission of the LOC is "to ensure, in a manner consistent with a wise and effective use of public funds, that the best interests of those local communities adjacent to and downstream of the United States DOE's Oak Ridge Reservation are protected to the maximum extent possible during the continued operation of Oak Ridge Reservation facilities and the environmental restoration of the reservation and associated off-site areas, such interests to include human health, the environment and the local economic and social well-being."

Through regional cooperation the LOC strives to accomplish its mission four ways: as an education organization, an advisory and oversight group, a mechanism for community input into DOE decision making, and as an entity to provide in-depth study of salient issues. For more information, contact Amy Fitzgerald, Executive Director, LOC, (423) 483-1333.

II. Local Government

Local governments should have the opportunity to engage in a direct consultative relationship with the regulated agency and with federal and state regulators. The value of the consultation will be greatly enhanced if local governments maintain a capacity to understand and track the complex issues involved in cleanup and waste management. This capability will also be a resource to the advisory board that may be established for the community and facility.

The Committee notes that local governments play an important role in the federal facility cleanup process, which often stretches or exceeds the capacities of their communities. Local governments in communities undergoing federal facility cleanup efforts often incur added responsibilities because of the extensive and complex nature of these facilities and the potential for transfer of federal property to local communities. Local government

responsibilities for federal facility cleanup include such tasks as analyzing and addressing the impacts of federal actions on public safety and health; planning for and responding to possible community-wide emergencies such as explosions or fires; developing local sewage systems that are able to manage the very unique waste streams of many of these sites; and managing transportation routes and ground and surface water resources. Local governments also play a key role in planning for the reuse of property that is expected to be transferred from the federal government to the local community.

The Committee recommends that the capacities of local government be established and maintained to address these additional responsibilities. The Committee finds the need particularly great for small, rural communities, which often do not have full-time, paid political officials or technical staff, and may lack capacity for technical review given the complex nature of these sites. It is hoped that increasing the capacities of local governments will result in more effective and efficient clean-ups. An example of current efforts to build local government capacity is noted in Box 28.

Due to the different nature of problems at federal agency facilities, the Committee recommends that regulated agencies and states work with representatives of local governments to determine general principles to guide agency-local government relationships, and the best appropriate national and state mechanisms for establishing and maintaining the capacities of local government. To accelerate the implementation of this effort, the Committee urges the regulated agencies, particularly DOE and DOD, to begin this process of consultation as soon as possible.

Such a consultation process might include a discussion of the following issues:

- a. General principles guiding consultative relationships with local governments.
- b. Eligibility. Establish clear criteria for justification of need for assistance. For example, small communities are more likely to need such assistance.
- c. Sources of assistance. Where need is established, local governments might seek the following types of assistance:
 - from federal agencies when those agencies are requesting services from local governments to provide public health and safety, support emergency services,

Box 29: Nye County Formal Interactions Process

Nye County, Nevada and DOE's Office of Civilian Radioactive Waste Management entered into a formal agreement that lays out the objectives and procedures for interactions between the two parties. Nye County is the host government for the characterization of Yucca Mountain as a potential deep geologic repository for high-level waste.

The key elements of the process agreed to in the four-page April, 1991 *Framework for Formal Interactions* are: regular interaction; senior management involvement; and documentation of discussions. This approach clarifies substantive expectations of both parties in a simple, straightforward manner. It also provides a process for addressing and resolving any potential disputes between the two parties. The substantive issues addressed under the framework included: information sharing; socio-economic analyses; on-site representation; and independent scientific investigations. For more information, contact Phil Niedzielski-Eichner, Energy Communities Alliance (703) 818-2434.

sewage treatment, ground water and surface water protection;

- from economic development agencies for local government planning assistance when facilities are expected to be transferred from federal ownership;
- from regulated agencies accomplishing cleanup for local government technical review and analysis; and
- from state agencies.

d. Assistance in applying for funding mechanisms.

The Committee recommends that regulated and regulating agencies undertake similar consultative processes at the local level. Such processes could address topics such as the role of local government; assistance the local government might provide in informing the community of health and safety concerns; and on-going mechanisms for consultation among the local government, regulating agencies, and the regulated agency. One approach that has proved useful is to have a written or formal agreement that documents a process for interactions. See Box 29 for an example of where this approach has been successful.

Through examining methods for improving consultation with and enhancing the capacities of local government at both the national and community levels, the Committee believes that local government officials can contribute to the development of broadly accepted solutions, thus resulting in cost savings.

III. Tribal Governments

The federal facility cleanup efforts will continue to place significant demands on the regulatory, administrative and management infrastructure of Indian tribes. In particular, the cleanup of the nuclear weapons complex and DOD facilities in Indian country require tribes to establish or strengthen systems to protect their treaty interests; to regulate the transport of hazardous materials through their lands as provided by current laws and treaties; to ensure access to and protection of sacred and cultural sites; and to protect the people, lands and resources of the tribes from the effects of the federal facility cleanup activities.

However, the federal facility cleanup effort also presents opportunities for tribes to reclaim their lands, for employment in cleanup activities, and for other business and institutional participation in all phases of the federal facility cleanup program. DOE and EPA have promulgated tribal policies that acknowledge that treaties, statutes and federal Indian policy obligate those agencies to consult and work with Indian tribes on a government-to-government basis. The Committee recognizes that, consistent with Executive Order 12875, such treaty and trust obligations extend to all agencies of the federal government.

An additional obligation is that such consultation and participation by Indian tribes should be knowing and informed. These obligations form the basis for building tribal capacity.

Consistent with the government-to-government relationship that exists between the federal government and Indian tribes, the Committee recommends that specific tribal capacity building programs be negotiated by the relevant federal agencies and Indian tribes. The Committee further recommends that, consistent with the federal-Indian tribe trust relationship, the identification of relevant, federally recognized Indian tribes should be made using broad criteria.

IV. State Governments

Generally, state government regulators are responsible for overseeing cleanup activities on a day-to-day basis and have a fundamental interest in the cleanup and reuse of federal facilities. The communication and consultative role of the states exists with both federal facilities and local communities. Historically, states have been involved with, or assisted in, many aspects of the very complex development of cleanup standards, corrective action, and approval of cleanup decisions. States are also instrumental in establishment of advisory boards and their operation. In addition, some states also approve or certify the "finding of suitability to lease or transfer" federal property at non-NPL sites.

As protectors of human health and the environment, states provide guidance and assistance to the federal agencies responsible for conducting cleanup and assurance to local communities that sites have been safely cleaned up. In many instances consultation with states has resulted in significant financial savings in federal cleanups while still being protective of public health.

While there has been litigation between states and the federal government in the past, many issues have been resolved through open communication and consultation. Even under enforcement situations the consultative nature of the state role is still important. However, in fiscally conscious times, it cannot be assumed that states will be able to continue to participate in this process unless they are adequately funded. In non-federal cleanups the state role is typically funded through cost recovery in enforcement action, direct payment or user fees in voluntary programs, and federal program grants in such as RCRA. Defense and State Memoranda of Agreement (or DSMOA) grants serve a similar purpose for DOD cleanups.

The Committee recommends that in order to maintain the capability of the states in their role of oversight and ensuring protection of human health and the environment that the DSMOA grant program continue to be fully funded. If funds to support state participation in federal cleanups through DSMOAs are significantly reduced or eliminated, then states will be forced to find other sources of funding to continue their activities. Unless other state or federal funds are available, state regulators may be forced to drop out of the DSMOA program and pursue cost recovery through other means, which may be more time consuming and costly.

V. Federal Agencies

Federal agencies have undertaken some training efforts to ensure that their field staff can effectively communicate with public stakeholders, including local government officials. Building on these activities, the Committee recommends that federal agencies expand and improve upon their current efforts to ensure that field staff working in low-income communities and communities of color are effective at communicating and partnering with these communities. Community members should be considered for participating in and conducting some of the training activities. Such training should include items such as the following:

- provide an awareness and respect for the unique culture, history, and knowledge of the community;
- educate agency staff regarding the history of the environmental justice movement;
- discuss the importance of utilizing cross-cultural formats and providing documents in languages and terms appropriate to the community;
- create an awareness of how community conditions of human health, vitality, social and cultural development, and the environment are inextricably related to one another;
- encourage cleanup plans that coordinate cleanup with planning for the reuse of facilities. For tribal lands, communities of color, and low-income communities, this is critical to ensuring that restoration activities are linked to reuse activities that address existing and future community needs;

Box 30: DOE Public Participation, Stakeholder, and Environmental Justice Training

One of the Office of Environmental Management's (EM) most essential efforts is to institutionalize training in public participation principles for managers, technical staff, and the stakeholders with whom EM interacts. Three forms of training are intended to create more meaningful public participation opportunities for EM external customers: 1) Public Participation Planning for Managers (2-day course) and Public Participation Planning for Senior Managers (one-half day briefing); 2) Stakeholder Training; and 3) Environmental Justice Training.

The Public Participation Planning courses are offered to Department of Energy (DOE) program/project managers and their technical and public participation support staff from two to 10 times each year. These courses are intended to train managers and staff to recognize their responsibilities to stakeholders; to plan and manage public involvement; and to become personally involved in interacting with stakeholders. Over 600 people have been trained in public participation skills acquired through the above courses.

Stakeholder training consists of a one-day workshop featuring presentations and class activities designed and presented by DOE stakeholders. This course offers DOE employees the opportunity to meet stakeholders from the field and learn from their experiences. Nearly 170 people have completed stakeholder training.

Considerable progress has been made in the development of a DOE-wide Environmental Justice training course--it will be tested as a pilot program in Spring of 1996. The training is intended to provide instruction and implementation guidance for use by numerous internal DOE stakeholders. The objective of the training is to develop or increase awareness and knowledge of the environmental justice mandate, associated issues, and technical methodology and procedures to meet environmental justice requirements. DOE plans to offer training approximately six times each year. For more information, contact Don Beck, Office of Public Accountability, DOE, (202) 586-7633.

- ensure that personnel working in Alaska and Hawaii, and the island territories of the Caribbean and Pacific understand the unique characteristics of these States, including their native communities and their distinct geographic and climatological features;
- explain the importance of providing cleanup employment opportunities and information regarding any risks associated with those opportunities to local and impacted residents; and
- encourage decision-making processes that seek to harness and build upon local and indigenous leadership and expertise.

In many cases, federal agencies already provide such training efforts. A DOE example of some efforts are discussed in Box 30.

VI. General Capacity Building

To establish and maintain a level playing field in the area of federal facilities cleanup, it is essential that all stakeholders have a common understanding, as complete as possible, of the existing processes for cleanup decision making. In addition, the Committee notes that many stakeholders, throughout the country, have read carefully through the Interim Report. It believes, however, that its recommendations will be more widely and quickly disseminated if a public stakeholders' guide is produced which communicates the basic concepts of the Committee's recommendations within the greater context of explaining the federal facilities cleanup processes.

The Committee recommends that EPA develop the public stakeholders' guide to federal facilities cleanup. The guide, which might be a written document, a video, or some other appropriate media, should convey the concepts in a manner that is understandable to the average person, and it also provides resource suggestions for people who want to pursue an issue in greater depth. The guide should include basic information regarding the regulatory and legal processes for pursuing cleanup, important scientific terminology and concepts, and appropriate mechanism for public stakeholders to receive information and contribute input into the decision-making process. The guide should also summarize the work of this Committee, introducing the recommendations contained in this report.

The Committee recommends that EPA solicit public stakeholder input during the development of this guide and encourage its completion as rapidly as possible.

Conclusion

The Committee believes that the ability of all stakeholders to participate effectively in the federal facility cleanup decision-making process is essential to efficient, viable cleanup programs. Enhancing the capacity of stakeholders to participate will help establish working

partnerships among regulated and regulating agencies and other stakeholders that will result in cost-effective cleanup decisions.

Building on the recommendations from the Committee's 1993 Interim Report, this report recommends that federal agencies undertake more expansive and meaningful community involvement in general, and make more effective use of advisory boards. It also recommends agencies use a combination of approaches to priority setting and the allocation of funding shortfalls. Finally, because federal facilities cleanup issues are so complex, federal agencies, state tribal and local governments, communities and other stakeholders must forge partnerships that will enable our nation to make the best decisions possible to address environmental contamination at federal facilities. Through the collaborative processes recommended in this report, the Committee hopes that the federal government and its stakeholders will rise to the challenge posed by federal facilities cleanups by establishing a model for responsible democratic decision making resulting in reasonable and credible cleanup programs.

APPENDIX A

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APPENDIX B

FFERDC Charter and Ground Rules

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ADVISORY COMMITTEE CHARTER

FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE COMMITTEE

1. PURPOSE. This charter renews the Federal Facilities Environmental Restoration Dialogue Committee, which was originally established on April 29, 1992, in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 §9(c).
2. AUTHORITY. It is determined that renewal of this Committee is in the public interest and supports EPA in performing its duties and responsibilities under Section 120 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Section 6001 of the Resource Conservation and Recovery Act (RCRA), and other authorities pertaining to the environmental restoration of Federal facilities.
3. OBJECTIVES AND SCOPE OF ACTIVITY. The Committee will provide a forum to refine and further develop issues related to environmental restoration activities at Federal facilities. The forum will facilitate the exchange of ideas and information among interested parties. It is hoped that consensus may be possible on these issues, but at a minimum, EPA would like to ensure that issues are thoroughly refined and that differing positions, as well as the reasons for those differences, are identified. At this time, and during the upcoming two years of our deliberations, the Committee does not plan to produce a final report, but may decide to supplement, amend, or expand upon the Interim Report.
4. FUNCTIONS. As indicated above, the Committee's function is to assist directly in the development of EPA and Federal agency efforts to address Federal facility environmental restoration programs. With the participation of knowledgeable and affected parties, EPA expects to develop a practical approach to Federal agency environmental restoration efforts that will best protect human health and the environment within guidelines and principles that have broad public support and national applicability.
5. COMPOSITION. The Committee will consist of approximately fifty (50) members, appointed by the EPA Deputy Administrator. Members will represent the following interests in an appropriate mix and balance:

Categories of Members:

- Public interest/environmental groups
- Tribal governments and Native American representatives
- State government representatives

- Local government representatives
- Federal agency representatives
- Environmental justice representatives
- Other interested and Affected Parties

Appropriate members shall be selected and appointed for the duration of the Committee's charter. A full-time salaried official or regular employee of the Agency will serve as the Designated Federal Officer and will be present at all meetings. The Designated Federal Officer is authorized to adjourn any meeting whenever it is determined to be in the public interest to do so. The Committee is authorized to form work groups for any purpose consistent with this Charter. Such work groups shall report back to the full Committee. Work groups have no authority to make decisions on behalf of the full Committee nor can they report directly to the Agency.

Under the Federal Advisory Committee Act, EPA may pay travel and per diem expenses when necessary and appropriate. The Committee's estimated annual operating cost is approximately \$200,000, which includes .5 work years of staff support. EPA's Office of Solid Waste and Emergency Response will provide administrative and process support to the Committee.

6. MEETINGS. Meetings shall be held as necessary, at the call of the Chair, with an agenda for each meeting approved in advance by the Designated Federal Officer. Committee meetings will be called, announced, and held in accordance with the EPA Committee Management Manual. This manual contains the Agency's policies and procedures for implementing FACA. Among other things, FACA requires open meetings and an opportunity for interested persons to file comments before or after meetings, or to make statements to the extent that time permits.
7. DURATION. The Committee charter is hereby renewed for two years from the date it is filed with Congress. The charter may be renewed as authorized in accordance with Section 14 of the FACA.

Agency Approval Date

Robert M. Sussman
Deputy Administrator

Date Filed with Congress

GSA Consultation Date

**GROUND RULES
FEDERAL FACILITIES ENVIRONMENTAL RESTORATION
DIALOGUE COMMITTEE**

I. Objective of the FFER Dialogue Committee

As stated in its charter, the FFER Dialogue Committee will provide a forum to refine and further develop issues related to environmental restoration activities at Federal facilities. The forum will facilitate the exchange of ideas and information among interested parties. The goal of the FFER Dialogue Committee is to develop consensus policy recommendations aimed at improving the process by which federal facility environmental restoration decisions are made such that federal facility cleanups better reflect the priorities and concerns of all stakeholders.

It is hoped that consensus may be possible on how to address these issues, but at a minimum, EPA would like to ensure that issues are thoroughly refined and that differing positions, as well as the reasons for those differences, are identified. A final report describing the results of the dialogue will be prepared. The output of the FFER Dialogue Committee will be made available to various decision-makers who are concerned with federal facility environmental restoration issues.

II. Membership in the FFER Dialogue Committee

Membership on the FFER Dialogue Committee will be limited to:

- three from the U.S. Environmental Protection Agency;
- one each from the Department of Defense, Army, Navy and Air Force;
- three from the Department of Energy;
- one each from the Department of Interior, Department of Agriculture, National Oceanic and Atmospheric Administration, National Aeronautics and Space Administration, and the Agency for Toxic Substances Disease Registry;
- ten state government and/or state government association representatives;
- six Native American/Tribal government representatives;
- four local government representatives; and
- fifteen environmental, citizen, environmental justice, and labor representatives.

Committee members may identify alternates who may participate in Committee meetings in their absence or in work groups that are established by the full Committee. To the degree possible Committee membership should not change once it has been announced. A representative of the Office of Management and Budget will participate as an ex-officio member of the Committee.

III. Decision-making

The Committee will operate by consensus with regard to any recommendations that are made by the Committee on substantive policy issues. However, if consensus on specific substantive proposals is not possible, the Committee will make every effort to articulate in writing in its final report both the areas of agreement and disagreement and the reasons why there continues to be differences. The term consensus means that a proposal can be considered to have achieved consensus if there is no dissent by any member of the Committee. Major procedural issues, including but not limited to whether to add new members to the Committee and whether to issue a final report, will also be made by consensus. For routine procedural matters, the Committee's facilitator will make every effort to find a consensus solution.

IV. Meetings of the FFER Dialogue Committee

The FFER Dialogue Committee will operate as a federal advisory committee under the provisions of the Federal Advisory Committee Act. Accordingly, all meetings of the FFER Dialogue Committee will be open to the public, subject to the exemptions granted in the Government in the Sunshine Act. Adequate notice of the time and location of future PDC meetings will be published in the Federal Register and meeting summaries will be kept and made available to the public. At the very least, at each Committee meeting, a half-hour at the end of the meeting and, if possible, at the end of each meeting day, will be reserved to provide an opportunity for members of the public to comment on the deliberations of the Committee.

V. Use of Work Groups, Subcommittees and Caucuses

The FFER Dialogue will generally operate as a committee of the whole. When necessary and appropriate, the Committee may create work groups and subcommittees to pursue certain topics. Decisions on the creation of work groups and subcommittees will be made by consensus. Every effort will be made to ensure that all work groups that are officially formed by the Committee reflect roughly the same balance that has been achieved in the Committee as a whole. When necessary and appropriate, Committee members may request a break in the deliberations in the Committee to meet for a reasonable period of time in a private caucus with other Committee members.

VI. Issuance of a Final Report

Subject to final consideration by the FFER Dialogue, it is envisioned that the Committee will issue a report separate from the individual meeting summaries that will be prepared to summarize the outcome of the Committee's deliberations at each full Committee meeting. This report will include any consensus agreements that are reached by the group and their associated recommendations, as well as any remaining areas of disagreement and the substantive reasons for these disagreements. This report will be prepared by the facilitator with assistance from Committee members and will be issued in draft form to the Committee, with ample time for comments and revisions, prior to being issued as a final report. As noted above, the decision of the Committee as to whether to issue a final report will be made by consensus.

APPENDIX C

History of the FFERDC Process

In February 1989, the House Armed Services Committee's Subcommittee on Procurement and Military Nuclear Systems conducted a hearing on the process used by DOE to set priorities for conducting environmental restoration activities at its nuclear weapons facilities. The hearing, which included testimony by DOE, the General Accounting Office (GAO), and the Natural Resources Defense Council, addressed many aspects of DOE's priority setting methodologies.

In April 1989, the Governors of ten states sent the Secretary of Energy a letter calling for decisive federal action on the establishment of a comprehensive national program for the cleanup of all DOE defense and research facilities. The proposal put forth by the Governors contained a discussion of several key elements for a national program. One element was the need to develop a national priority system for ensuring that appropriate priorities for DOE cleanups were established.

Shortly thereafter, the Administrator of the U.S. Environmental Protection Agency (EPA), sent to the Director of the Office of Management and Budget (OMB) a letter summarizing the concerns of several federal departments regarding the need to establish national environmental and funding priorities for the cleanup of federal facilities. In this letter, the Administrator proposed that EPA convene a conference with representatives of other federal and state agencies to begin discussing the issue. Subsequently, EPA proposed convening a formal dialogue on the issues related to the establishment of federal facility cleanup priorities. Further support for a national dialogue on priority-setting for federal facility cleanups came in July 1989 when 49 Attorneys General sent an open letter to the U.S. House of Representatives. This letter expressed support for a dialogue on federal facility cleanup issues as a means of strengthening state-federal relationships.

Based on these public indications of support for a dialogue, EPA asked The Keystone Center (TKC), a non-profit environmental conflict management group located in Keystone, Colorado, in late 1990 to convene a national policy dialogue on federal facility environmental restoration priority-setting. As is typically done in such circumstances, Keystone Center staff conducted a series of interviews and discussions with key stakeholders to confirm support for the idea of a national policy dialogue and to determine what specific policy issues should be the focus of the proposed dialogue and who should participate.

These convening assessment activities led to the formation of a small ad hoc planning group that consisted of representatives of several federal agencies, state agencies and state governmental associations, national environmental groups, and others. This ad hoc planning group, which met in January 1991, was designed to give The Keystone Center advice as to whether and, if so, how to proceed with the proposed dialogue. At the time that The Keystone Center was asked to convene a dialogue to address federal facility priority-setting, an important issue was congressional debate over the proposed Federal Facility Compliance Act. This Act would authorize states to impose fines and penalties on federal agencies for

violations under the Resource Conservation and Recovery Act. Federal agencies were concerned that they would now be subject to fines for failure to meet schedules in enforcement agreements for cleanup where insufficient funds were appropriated. Federal agency representatives believed that there was a need for a "system" that would establish how to set priorities in the event insufficient funds are appropriated to meet all federal cleanup obligations.

After addressing concerns about any links that might be created between the proposed dialogue and pending federal facility environmental compliance legislation, the diverse interests attending the January 1991 meeting agreed that a dialogue on federal facility environmental restoration decision-making and priority-setting issues would be worthwhile. They agreed that the proposed dialogue should not be linked to pending legislation or be used by any dialogue participant as a reason to delay congressional debate on pending federal facility legislation.

The assembled advisory/planning group agreed that the dialogue should, at the outset, have as its objective the exchange of information and perspectives on federal facility environmental management and priority-setting issues rather than the development of consensus agreements on these issues. Furthermore, the group agreed that the initial focus of the dialogue should be issues related to the need to set priorities for the cleanup of federal facilities, with the possibility of addressing other critical federal facility environmental management issues in the future.

The first meeting of the National Policy Dialogue on Federal Facility Environmental Management occurred in June 1991. This meeting included representatives of tribal governments and Native American organizations and local citizen groups, as well as the interests that were represented at the January 1991 planning meeting. The June 1991 meeting included presentations from DOD, DOE and EPA officials on a variety of environmental remediation related priority-setting mechanisms, models, systems, and processes that are currently being used by these agencies. The group then had a general discussion of federal facility priority-setting issues and identified some topics to address at its next meeting.

In October 1991 the Dialogue Group met again to discuss the role of health assessments and the consideration of risk in setting priorities for federal facility cleanup; how Native American cultural issues should be factored into the priority-setting process; and the role that various governmental and non-governmental entities should play in setting priorities for federal facility cleanups. At its October 1991 meeting the Dialogue Group agreed that if they were to continue meeting they should not simply exchange information and perspectives but adopt an objective of developing consensus policy recommendations on how to improve upon the federal facility environmental restoration decision-making process.

In February 1993, the Committee published an interim report entitled "Recommendations for Improving the Federal Facilities Environmental Restoration Decision-making and Priority-Setting Process." The Committee's recommendations focused on:

- improving the dissemination of cleanup related information;
- improving stakeholder involvement in key cleanup decisions, with special emphasis on the use of advisory boards; and
- improving the consultation on cleanup funding decisions and setting priorities in the event of funding shortfalls.

After its publication, the Committee held eight regional briefings to discuss the contents of the report and solicit feedback. For the most part, the Interim Report was well received by both those in the government and those affected by cleanup at federal facilities. Many agencies have made major changes in response to the Committee's recommendations, particularly those related to public involvement. For many government employees and citizens living near facilities, the recommendations provided a new blueprint for how government and citizens should interact in cleanup decision making.

Since 1993, EPA and The Keystone Center have distributed thousands of copies of the report in response to requests from citizens living near facilities, agency personnel and a wide variety of others.

A concern was consistently voiced during the regional briefings that the views of local government and the environmental justice community had not been adequately included the Interim Report's recommendations. In response to this concern, the FFERDC added new members in the Fall of 1993, and then again in January 1995, bringing the Committee's total membership to fifty persons. Through these steps, as well as replacing Committee members who have changed jobs or moved on to other pursuits, the Committee believes it has obtained an even greater degree of balance in terms of the diversity of interests represented, as well as the geographic diversity of FFERDC participants.

During its deliberations in 1994, the Committee received presentations from individuals representing local government and environmental justice experiences, interests and concerns. During this period the Committee tracked implementation of its recommendations and interacted with Clinton Administration officials who are members of the newly formed Federal Facility Policy Group. In January 1995, the Committee decided to produce a Final Report.

APPENDIX D

Agency Guidance Documents for Advisory Boards

Points of Contact

To receive the most up-to-date guidance documents on establishing and operating advisory boards contact:

Department of Defense

Marcia Read
Office of the Assistant Deputy Under
Secretary of Defense (Environmental
Security)/Cleanup
3400 Defense Pentagon
Washington, DC 20301-3400
703-697-9793

Alan Waite
Environmental Restoration Program
Manager
USAF/CEVR
Office of The Civil Engineer
Department of the Air Force
1260 Air Force Pentagon
Washington, DC 20330-1260
703-697-3445

Department of the Army

Greg Mahall
Public Affairs Specialist
U.S. Army Environmental Center
ATTN: SFIM-AEC-PA, Building E-
4460
APG, MD 21010-5401
410-671-2556

Department of Energy

Don Beck
Deputy Office Director
Office of Public Accountability
U.S. Department of Energy (EM-4)
1000 Independence Avenue, SW
Washington, DC 20585
202-586-7633

Department of the Navy

David Olson
Head of Installation Restoration
Chief of Naval Operations
Department of the Navy
200 Navy Pentagon
Washington, DC 20350-2000
703-602-2571

Environmental Protection Agency

Sven-Erik Kaiser
Environmental Protection Specialist
OSWER/FFRRO
U.S. Environmental Protection
Agency
401 M Street, SW (5101)
Washington, DC 20460
202-260-5138

Department of the Air Force

APPENDIX E

Membership Selection Processes

DEPARTMENT OF THE AIR FORCE

RAB Membership

The wing commander ensures the RAB member selection process is a cooperative effort with the regulatory agencies and affected community. The process will be conducted in an open, unbiased manner to ensure a diverse community and regulator representation. It is generally recommended the RAB be no larger than 20 individuals and no smaller than is necessary to adequately reflect the diverse interests of the community regarding the cleanup of the installation. If RAB membership significantly exceeds 20, efforts should be made to consolidate any duplicate representation of similar view points.

Selecting Air Force Installation Members

The wing commander appoints the installation co-chair. Additionally, other base functions may include, but not be limited to, the base environmental coordinator, and the BRAC Environmental Coordinator (at BRAC installations), or the public affairs officer, legal counsel, and the bio-environmental engineer providing support to the RAB.

Selecting Regulatory Agency Members

The wing commander will contact and request the participation of EPA and state regulatory agencies, and local government agencies. At installations with TRCs, representation by current regulatory members is strongly encouraged.

Selecting Community Members

The wing commander in consultation with the state and EPA identifies diverse community interests affected by the cleanup of the installation. Diverse community interests may include, but not limited to, local residents, the business community, homeowners associations, local environmental groups, environmental justice groups, local officials, and civic groups. At BRAC installations, a local reuse committee representative will be included.

A selection panel of community members representing the diverse interest groups is organized by the wing commander to nominate interested people to serve on the base RAB. The individuals should reflect a cross-section of the diverse interest groups.

The selection panel identifies 1) the diverse community interest groups which should be represented on the RAB, 2) selection criteria to achieve community diversity, and 3) a solicitation process to induce nominations from and the diverse community interest groups.

The Air Force, in concert with the selection panel solicits nominations for the RAB through a

series of public notifications which may include, but not be limited to, an initial formation meeting, community interviews, direct mailings, publication of fact sheets and community interest forms, posters displays in prominent locations (libraries, meeting halls, etc), advertisements in the local media (radio, television, and newspapers) and through telephone surveys. Nominations are accepted for a specified period as identified in the public notices.

The selection panel reviews the nominations and submits a proposed list of RAB members to the wing commander for approval. The selection panel should state their belief that the proposed RAB reflects the diverse interests of the community as identified in the selection criteria. The wing commander in consultation with the state and EPA either approves or rejects the proposed list based on a determination the proposed list represent the diverse interest of the community. A rejected list is returned to the selection committee for further consideration and the development of a new list.

Upon selection of the RAB members, the installation will notify the individuals of their selection and to the date of the first RAB meeting. Additionally, the installation will publish in local newspapers paid announcements of the RAB members names and the date of the first RAB meeting.

Reassessment of Community Interest

The wing commander establishes a program for assessing community interest where sudden and/or evolving changes at the installation may affect the cleanup program. Installations where initially no sustained, sufficient interest was observed, will establish a program to regularly reassess community interest. Both programs will be identified in the installation's community relations plan.

RAB Training

The wing commander ensures RAB members are provided the opportunity for additional training in areas which influence the cleanup program. Training may include, but not be limited to, the purpose and function of the RAB, the relative risk program, the DoD mechanism for planning, programming, and budgeting system of cleanup requirements, applicable federal and state laws and regulations, and mechanisms for assessing human/ecological health risk.

DEPARTMENT OF DEFENSE AND ENVIRONMENTAL PROTECTION AGENCY JOINT GUIDANCE

Ensuring Membership Diversity and Balance

RAB members should be identified by a selection panel, see "Selecting Community Members." The RAB should be comprised of members from the local community and representatives from DOD, the state, and EPA, as appropriate. Community members selected

for RAB membership should reflect the diverse interests within the local community. RAB members should live/work in the affected community or be impacted by the restoration program. The following list of potential interests should be considered for representation on the RAB. This list is illustrative and not all inclusive. Each RAB should be developed to reflect the unique mix of interests and concerns within the local community.

- local residents/community members (including minorities and low income)
- local reuse committees
- Technical Assistance Grant (TAG) recipient
- current TRC members
- local government officials/agencies
- business community
- school districts
- installation employees/residents
- local environmental groups/activists
- civic/public interest organizations
- religious community
- other regulatory agencies
- local homeowners organizations
- medical community
- Native American tribes

DOD, the state, and EPA, as appropriate, will generally have one member each on the RAB. While it is anticipated that other members of the installation and regulatory agencies will regularly attend and participate in RAB meetings as resources, the majority of RAB members should be from the local community.

Soliciting Community Members

For an effective RAB to be established quickly, the DOD installation, in coordination with the EPA, as appropriate, and the state, needs to inform and educate the local community about the formulation of the RAB, its purpose, and the opportunities for membership. The public outreach effort should be tailored to the individual community at each installation and may include letters to local government officials and community members. This is especially important at installations where there has been limited community involvement opportunities or where there has been minimal community and media interest in the installation.

Every effort should be made to ensure that individuals or groups representing the community's interest are informed about the RAB and given the opportunity for RAB participation. Based on the results of member recruitment efforts, it may be necessary to directly solicit some groups or organizations. A sample RAB member recruiting letter is included as Enclosure 3 and may be useful in such efforts. For ease in tracking community interest, a community interest form, Enclosure 4, can be developed and distributed at the initial meeting, made available at local information repositories of other suitable locations, and mailed to persons who write or call.

Determining the Size of RAB

The initial size of the RAB will be determined by the RAB selection panel. Once the RAB is operational, procedures should be developed to address the addition and removal of RAB members. The RAB may want to re-evaluate the current RAB size, diversity and balance and add members. To facilitate constructive dialogue, the RAB should generally be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diversity of community interests regarding installation restoration. If RAB membership significantly exceeds 20, efforts should be made to consolidate and eliminate any duplicate representation of similar view points. If the RAB is larger than 20, the use of subcommittees should be considered.

Selecting RAB Members

The transition period between the meeting to initiate RAB formulation and the implementation of a fully functioning RAB will likely be a busy, challenging period. Although the length of time required to complete the transition to a RAB will vary from installation to installation, most RABs should set a goal to be in full operation within six months from the meeting to initiate RAB formulation. During this period of time the following key activities should be completed to ensure successful development and implementation of the RAB.

Selecting Community Members

Selection Panel: The installation Commanding Officer (CO) in consultation with the state and EPA, as appropriate, should identify community interests and solicit names of individuals who can represent these interests on the selection panel. Once the selection panel nominees have been provided, the CO in consultation with the state and EPA, as appropriate, should review the selection panel nominations to ensure balance and diversity. If nominations represent the diversity of the community, they will become the selection panel.

- procedures for nominating community RAB members
- process for reviewing community interest forms
- criteria for selecting community RAB members
- list of RAB nominees

Final Selection: RAB membership selection should be in an open and fair manner using the panel. The panel will evaluate interest forms and develop a nomination list for the CO. The CO, in consultation with the state and EPA, as appropriate, should review the list to ensure that nominees represent the diversity of the community. If the list lacks diversity, the CO will ask the selection panel to provide a revised list. A lack of diversity or balance is the only reason a list can be rejected.

The selection panel may want to contact those who expressed interest but not selected for RAB membership to thank them for their interest and willingness to participate in the RAB. A letter to them should explain selection criteria, why they were not chosen and should encourage them to attend and participate at the RAB meetings as members of the general public. Their interest forms should be kept on file for consideration when future membership openings occur.

Additions to and removals from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures.

NOTE: DOD contractor personnel should not be RAB members. However, for community RAB members who have business interests, membership on the RAB should not limit ability to compete for contracts. All information provided the RAB members should also be made available to the general public.

Selecting Government Members:

The DOD installation, state and local governments, and EPA, as appropriate, should be represented on the RAB. Members may include the Remedial Project Manager (RPM) from the service, state, and EPA, as appropriate, and representatives from local agencies. Representatives should dedicate the time necessary and have sufficient authority to fulfill RAB responsibilities. Whenever, possible, each entity should be represented by one individual. Other government officials such as public health officials from the Agency for Toxic Substances and Disease Registry (ATSDR) may attend RAB meetings as their expertise may be needed.

In the case of closing military installations, the Base Realignment and Closure (BRAC) Cleanup Team (BCT) will be a member of the RAB. The BCT consists of representatives from the DOD service, EPA, and the state.

DEPARTMENT OF THE ARMY

Selection of Members

The installation commander/Army co-chairperson should ensure that the selection process is a cooperative effort with the regulators and affected community. Regardless of which process an installation chooses to use, it should be conducted in a fair and open manner.

This section describes a recommended process for selecting Army installation, regulatory agency and community members of the RAB. This guidance complies with the intent and direction of DOD policy while providing flexibility for different circumstances that may exist at individual installations.

It is recommended that RAB be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diverse community interests regarding installation cleanup and

closure.

Selection of Army Installation Members

In addition to the Army co-chairperson, the installation commander may select an additional installation representative to serve on the RAB. The additional installation representative could be the BRAC Environmental Coordinator (BEC), environmental coordinator, public affairs officer, base transition coordinator, legal counsel, etc. If not selected to be the installation's representative, these individuals may still be required to attend the RAB meetings and provide support.

Selection of Regulatory Agency Members

The installation commander of Army co-chairperson will contact the EPA and state regulatory agencies to request that they appoint their respective members to the RAB. For installations where TRCs already exist, representation by current regulatory members should be strongly encouraged to preserve continuity.

Selection of Community Members

Selection of the community members can be performed in a five-step process:

- | | |
|-------------|--|
| Step One: | The installation commander (in consultation with the EPA and state) identifies the diverse community interests, which may included, but are not limited to, local residents, the business community, homeowners associations, local environmental groups, environmental justice groups (low income and minority groups), local officials, civic groups, etc. For BRAC installations, a representative(s) of the local reuse committees should be included. |
| Step Two: | The installation commander (in consultation with the EPA and state) organizes a selection panel of community members from the diverse interest groups identified in Step One, to nominate RAB members who reflect a cross-section of the diverse interest groups. (See paragraph III.D. for options on forming a selection panel.) |
| Step Three: | The selection panel identifies the diverse community interest groups that need to be represented by the RAB. The panel then develops a solicitation process and establishes criteria for selection of RAB members. |

Recommended Solicitation Process: The following process is designed to solicit for members from the diverse interest groups identified by the selection panel and to allow any other interested community members to be considered for RAB membership:

- announce participation opportunities through news releases and paid public notices (sample is at attachment 1);
- develop a community interest form to determine community concerns and participation interest (sample is at attachment 2);
- establish a time period for receipt of the community interest forms;
- mail letters of invitation (sample at attachment 3), fact sheets (sample at attachment 4) and community interest forms to those on the installation's existing mailing list as well as to the groups identified by the selection panel;
- place fact sheets and community interest forms in information repositories;
- hold an initial meeting about RABs to discuss purpose, member solicitation process, membership responsibilities; provide fact sheets and community interest forms.

After the designated solicitation period ends, the selection panel convenes to develop a list of suggested RAB members which reflect the diverse interests of the community. The community interest forms submitted will be used in developing this list. The selection panel submits the list of suggested RAB members to the installation commander for approval.

Step Four: The installation commander (in consultation with EPA and state) will review and accept the list unless he/she determines that it is not representative of the diverse community interests. If the list is not an accurate representation, the installation commander will specify the weaknesses to be corrected. The selection panel will be instructed to develop a new list for review/approval. Once the list is approved, the selection panel will disband.

Step Five: The installation should do the following to announce the RAB members:

- send letters to the selected RAB members to notify them of their

selection, the names of all the RAB members, and the date of the first RAB meeting;

- send letters to those who submitted community interest forms, announcing the names of the RAB members, thanking them for their interest, encouraging them to attend future RAB meetings;
- send news releases to the local newspapers and place paid public notices in the local newspapers announcing the names of the RAB members and date of the first RAB meeting.

Options for Forming the Selection Panel

It is recommended that the selection panel be made up of community members and reflect the diverse interests identified in Step One of paragraph III.C. Options which can be used for forming the selection panel include the following:

- installation commander (in consultation with EPA and state) organizes a selection panel of community members to nominate RAB members;

or

- installation commander (in consultation with EPA and state) has neutral facilitator establish the selection panel;

or

- installation commander (in consultation with EPA and state) has community representatives choose the members of the selection panel;

or

- installation commander (in consultation with EPA and state) places paid public notices in the local newspapers asking for volunteers to serve on the selection panel;

or

- installation commander (in consultation with EPA and state) asks existing community members of the TRC to act as the selection panel;

or

- installation commander, EPA and state representatives each nominate community members to serve on the selection panel.

RAB Membership Additions and Resignations

Additions and resignations to the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures. It is recommended that once the RAB members have been selected, the Army co-chairperson should keep the remaining community interest forms on file for future reference. If selected RAB members resign in the future, the original community interest forms could be used as a potential source for new members.

DEPARTMENT OF THE NAVY

Membership of RAB

- (1) Shall include at least one representative of the installation on cognizant EFD, EPA, and appropriate state and local authorities and members of the local community. Whenever appropriate, natural resources trustees should be invited to have representatives on the RAB. EPA and the state should be encouraged to provide the RAB with representatives on who have the authority to make decisions concerning implementation of specific proposals. At Base Realignment Closure (BRAC) installations, the Navy's BRAC Transition Coordinator (BTC) and BRAC Environmental Coordinator (BEC) will be members of the RAB. BRAC Cleanup Team members from EPA and the State would be encouraged to participate
- (2) Shall include a diverse group of individuals representing a broad cross section of the community including established groups and interested individuals.

Selecting Community Members

- (1) Determine the size of the RAB on a case by case basis and establish how many community members (3-12) need to be added to the correct TRC to accomplish RAB goals without limiting individuals or groups that would affect the diversity of the RAB. It may be necessary to set a limit on how many community representatives will be invited to join the RAB. All significant community groups and diverse interests should be represented, but the number of members should be kept to a minimum.
- (2) Announce responsibilities of RAB membership, selection procedure, and number of community members to be selected. (See sample RAB Fact Sheet and RAB Membership notice.)
- (3) Identify potential new members by asking members of the current TRC and/or BRAC Cleanup Team, at closing installations, to make recommendations. Potential members should want the job, be willing to participate on a voluntary basis, and live in the vicinity of the installation
- (4) Obtain nominations:
 - a) Re-contact citizens interviewed during the development of the Community

Relations Plan (CRP) and ask for recommendations. If the CRP is not yet completed, interviewees can be asked to recommend names of potential candidates during community relations interviews.

- b) Solicit nominations through announcements in newspapers and sent to parties on the mailing list. If this method is used to recruit members, it is important to describe the process which will be used in selection and to advertise the number of positions to be filled. (See sample RAB Membership Application.)
- (5) Create a slate of candidates and determine who should be asked to join the RAB. Individuals who represent a cross section of the community should be chosen for RAB membership by the current TRC. If there is no TRC, the installation and state and federal agencies with cognizance over the cleanup should choose the community members to the RAB.
- (6) Announce new members upon their selection. Their names and phone numbers should be made available to the community to assure access and communication.

Selecting Co-Chairs:

- (1) Navy Co-Chair:
 - a) Appointed by the installation CO.
- (2) Community Co-Chair:
 - a) Selected by the community members.
 - b) Use a process established by the community members of RAB.
 - c) Have the community members establish the terms and conditions for the Community Co-Chair's service.

DEPARTMENT OF ENERGY

As stated in the EM SSAB FACA charter, all board members must be officially appointed by the Assistant Secretary for EM. Once a site has a complete list of nominations, this list and information on the individuals should be provided to and will be considered by EM-5. An example of the approved Idaho membership package is appended as Appendix A.

As stated in DOE Order 1130.6 "Advisory Council Committee Management," advisory board members will usually be appointed for a period of two years. Membership terms should be staggered so that at least one-third of the membership is retained for continuity.