

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.

