



United States
Environmental Protection
Agency

Office of Policy, Economics
and Innovation
Washington DC 20460

EPA 240-R-00-005
December 2000
www.epa.gov/stakeholders

Engaging the American People

A Review of EPA's Public Participation Policy and Regulations with Recommendations for Action

**Prepared for the EPA Administrator
by
the EPA Public Participation Policy
Review Workgroup**

December 2000

“In all its programs, EPA must provide for the most extensive public participation possible in decision-making. This requires that we remain open to all points of view and take affirmative steps to solicit input from those who will be affected by decisions. Our willingness to remain open to new ideas from our constituents, and to incorporate them where appropriate, is absolutely essential to the execution of our mission. At the same time, we must not accord privileged status to any special interest, nor accept any recommendation or proposal without careful, critical examination.”

Carol M. Browner, August 1993 memo to all employees

Engaging the American People

A Review of EPA's Public Participation Policy and Regulations with Recommendations for Action

**Prepared for the EPA Administrator by
the EPA Public Participation Policy Review
Workgroup**

“Democracy is not a matter of entertainment, it’s a matter of engagement.”

John Hebers and James McCartney in *American Journalism Review*

Table of Contents

Executive Summary v

EPA’s Public Participation Terminology vii

1. Introduction 1

2. The Review Process 3

3. Summary of Workgroup Activities 4

 3.1 Evaluation of the 1981 Public Participation Policy and Part 25 Regulations 4

 3.2 Inventory and Cross-walk Review of Statutes, Regulations,
 Executive Orders, and EPA Policies Concerning Public Participation 5

 3.3 Summary Analysis of Public Comments 10

 3.4 Review of Sample Public Participation Experiences and “Lessons Learned” 12

4. Overall Conclusions 18

5. Overall Recommendations 18

 5.1 Short-term Recommendations (3-12 months) 18

 5.2 Long-term Recommendation (1-3 years) 22

6. Suggested Actions for Implementing Recommendations 25

Appendices

Appendix A: Charts of Public Participation Requirements in Key Agency Programs

 Table A-1: Public Participation Requirements for Air Programs

 Table A-2: Public Participation Requirements for Statutes Affecting Programs of the
 Office of Prevention, Pesticides and Toxic Substances

 Table A-3: Public Participation Requirements by Associated Regulations Affecting
 Programs of the Office of Prevention, Pesticides and Toxic Substances

 Table A-4: Public Participation Requirements Affecting the Superfund Program

 Table A-5: Public Participation Requirements by Policies Issued by the Office of
 Regulatory Enforcement in the Office of Enforcement and Compliance
 Assurance

 Table A-6: Public Participation Requirements by Policies Issued by the Office of
 Federal Activities in the Office of Enforcement and Compliance Assurance

Appendix B: List of Commenters

Appendix C: List of Public Participation Policy Workgroup Members

Appendix D: Existing Public Participation Policy and Regulations

Appendix D-1: EPA’s 1981 Policy on Public Participation

Appendix D-2: Title 40 Part 25 of the Code of Federal Regulations

“Thomas Jefferson once pointed out that if the people appeared not enlightened enough to exercise their control of government, the solution was not to take away the control but to “inform their discretion by education.” The cooperative processes that are springing up around the country are doing just that, giving to large numbers of citizens a new comprehension of the complexity involved in government decisions, out of which has got to come a heightened appreciation of, and tolerance for, the necessary work of government. If these processes work, if they spread, if they become an indispensable part of government at all levels, we may take it as a sign that we, as a people, have moved up a grade in democracy’s school. It holds out the hope that, eventually, the United States will be ready for self-government.”

William Doyle Ruckelshaus, “Restoring Public Trust in Government: A Prescription for Restoration”
(November 15, 1996, Webb Lecture, National Association of Public Administration)



EXECUTIVE SUMMARY

Engaging the American People is the product of a cross-program EPA Workgroup, and creates the framework for a Strategic Plan for Public Participation. The Workgroup evaluated existing public participation practices and policies and provided recommendations.

In October 1999 EPA formed the Public Participation Policy Review Workgroup to evaluate the Agency's public participation policies and regulations in light of current practices, relevant statutes, regulations, and Executive Orders. The Workgroup consisted of individuals representing major EPA program offices and regions. The Workgroup chose to conduct four primary activities:

1. Evaluate the Agency's *1981 Public Participation Policy* and the *40 CFR Part 25 Regulations*;
2. Conduct a cross-walk analysis of Agency statutes, regulations, Executive Orders, and relevant policies;
3. Request and evaluate public comment on the need for and interest in revising/updating the *1981 Policy*; and
4. Review Agency practices and activities that have occurred in the last 20 years to identify successful practices, new techniques, and new technologies that the Agency may want to follow formally in a new or revised *Policy*.

Based on its review, the Workgroup reached five conclusions:

1. The *1981 Policy* and *Part 25 Regulations* are still valid but do not incorporate new statutes or public participation innovations.
2. The *1981 Policy* and the *Part 25 Regulations* have not been adequately publicized internally or externally; EPA and its co-regulators have not consistently implemented them. Across the Agency and among co-regulators there are opportunities to improve consistency.

3. New participation techniques and information technologies provide the Agency with opportunities to involve the public and challenges to reach both those who have and those who lack Internet access.
4. Few centralized tools or resources are available to aid EPA staff and Agency partners in engaging the public.
5. Streamlining decision-making should not preclude meaningful public participation.

These conclusions led to the following five recommendations:

Short-term: 3-12 months:

- 1a. Revise the *1981 Public Participation Policy* to reflect the additional statutes EPA now administers, technological changes, and procedural advances since 1981.
- b. Have EPA Administrator: issue a draft version of the *Policy* for comment and send a memo to EPA senior managers and staff reaffirming the importance of the new *Policy, Part 25 Regulations*, and other statutory and regulatory public participation requirements, and directing that they:
 - give increased attention to implementing and enforcing associated procedures and requirements;
 - use the *Draft 2000 Policy* as guidance pending final action following public review and comment;
 - ensure that the *Part 25 Regulations* and other statutory and regulatory public participation requirements are being fully implemented;
 - measure progress; and
 - evaluate the effectiveness of public participation programs.
2. Enhance EPA's Regulatory Agenda as posted on the Agency's web site; explore ways to make the Regulatory Agenda a better tool for public participation; provide an

Engaging the American People

Internet gateway to public participation information useful to EPA's regulatory partners and potential and current stakeholders; develop tools to help overcome barriers to the use of computer technology in under-served communities.

3. Develop database and list tools:

- a. Develop a prototype stakeholder database for Agency use;
- b. Maintain a centralized, shareable "key national stakeholders" database for Agency use;
- c. Explore options for developing a secure, Web-facilitated process for qualified stakeholders to "sign-up" for the centralized list; and
- d. Streamline process for centralized sign-on to Agency listserves.

4. Issue and promote the "Public Involvement in Environmental Permits: A Reference Guide" and the "Better Decisions Through Consultation and Collaboration Manual"; provide and promote training to support them and to better prepare communities to participate in environmental decision-making.

Long-term: 1-3 years:

5. The Administrator should charge the Reinvention Action Council, through a cross-agency workgroup, with developing a Strategic Plan in 2001. That Plan should be designed to:
 - a. Ensure full implementation of the revised *Public Involvement Policy*,
 - b. Enhance Agency-wide public participation;
 - c. Track and report progress to the Agency and to the public; and

- d. Ensure that actions recommended in this strategy are consistent with, and complement, the Public Access Strategy.

The Strategic Plan should reflect progress in five critical activities:

- Build public participation skills in EPA staff, co-regulators and stakeholders through training, greater access to and wider distribution of existing and new materials on public participation and decision-making, with particular emphasis on core processes such as permitting.
- Improve public participation in delegated programs, with particular emphasis on core processes such as permitting, through work in program offices, and with states, tribes and other co-regulators.
- Decide whether to update/modernize the *Part 25 Regulations* or repeal them and rely on other program related regulations and the *2000 Policy*.
- Coordinate dissemination of equipment and training to enable under-served communities to have access to, and receive benefits from, EPA web-based information.
- Using the Public Access Strategy (in development at release of this document) as a guide, enhance public participation through public access to environmental information.

EPA's Public Participation Terminology

In the course of their review of the Agency's public participation practices, EPA Public Participation Policy Review Workgroup developed the following definition of public participation, viewed as a progression of actions involving the public.

"*Public participation*" encompasses the full range of actions that EPA uses to engage the American people in the Agency's work.

Every person living in the United States is a *potential customer* of the Agency, and all are ultimate beneficiaries of our actions to protect public health and the environment.

Only those who are dependent on the Agency for or choose to use our products, services and processes are *direct customers* of the Agency.

Some of these direct customers are *stakeholders*, people who have a strong interest in the Agency's work and policies.

Stakeholders may interact with EPA on behalf of another person or group, and may seek to influence the Agency's future direction.

Some stakeholders are also *affected parties*, individuals or groups who feel the impact of EPA policies or decisions.

Public participation, as EPA envisions it, is a progression. It starts with outreach and information exchange, and progresses through collaboration and recommendation to agreement and decision-making. The process begins when people seek information from EPA about a topic or issue, or when they receive information from EPA because the Agency identifies them as a

potentially affected party. EPA's outreach activities serve and engage these people. Information exchange is the next step. Here, EPA staff and management and members of the public share data, options, issues and ideas. In the next step of the progression, individuals and groups collaborate with each other and the Agency to provide EPA with recommendations for action. Some continue on to engage with EPA management in reaching agreement by consensus. Access to information is crucial throughout the progression. As individuals and groups move through the steps in the progression, they seek more detailed

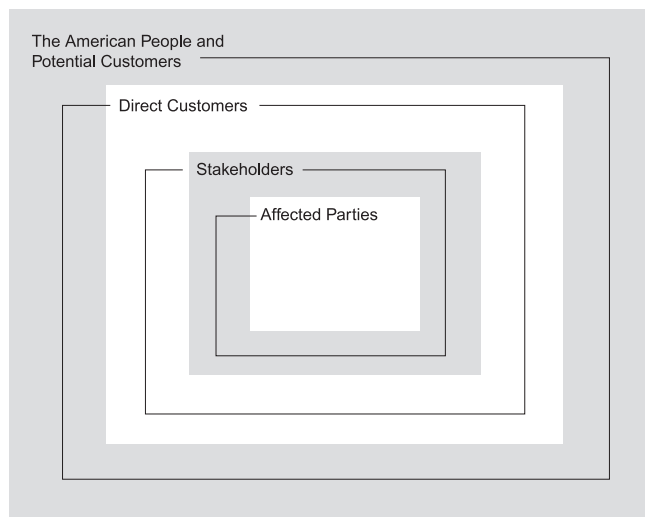
information, increased access to decision makers, and more influence on the ultimate decisions.

Not everyone will choose to be an active participant in policy or regulatory decisions of the Agency. EPA's goal is to provide opportunities for people to engage at every point along the progression.

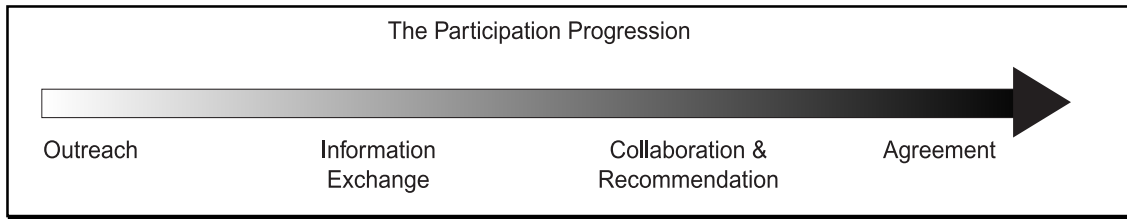
Individuals and groups decide for themselves whether, when and how to participate.

For the individual or group who takes part in the **outreach** phase of the progression, EPA provides or makes information available through: hot lines, web sites, newsletters, e-mail list servers, distribution lists, Federal Register notices, exhibits, documents, electronic bulletin boards, fact sheets, brochures, briefings, formal public meetings, news releases, radio or television public service announcements, news conferences and press kits, visitor centers, libraries, cooperating organizations, and more.

The purpose of **information exchange** activities is to build and share a broad set of knowledge of all interested parties' interests and needs. Examples of information exchange activities



Engaging the American People



include: workshops, forums, small interactive public meetings, round tables, focus groups, question and answer sessions, and availability/listening sessions; surveys, polls, interviews and door-to-door canvassing; joint fact finding; on-line dialogues; and interactive radio and television talk shows.

Recommendation activities consist of stakeholders either individually or collectively urging specific actions for the Agency to pursue. Stakeholders can submit recommendations through formal written comments or through **collaboration**, which involves a smaller number of individuals who work with each other and with Agency staff to reach consensus on a set of recommendations. Though recommendations are made to EPA (many times through an advisory committee established under the Federal Advisory Committee Act [FACA]), EPA is not bound to implement them nor are the parties necessarily bound to accept them. Examples of recommendation activities stem from most FACA committees, external technical committees such as committees of the American Society for Testing and Materials, and many citizens advisory groups or citizens advisory panels.

Agreement activities involve EPA management and stakeholder representatives actually reaching an agreement by consensus to which all parties agree. Examples of agreement activities include negotiated rulemaking committee efforts, settlement agreements, mediated agreements, and memoranda of understanding. Many enforcement activities also result in agreements such as consent orders and consent decrees. In some cases, parties other than those involved in the enforcement action may have an opportunity to provide input to these types of agreements.

Successful agreement or recommendation processes occur only with significant information access, exchange and outreach. Progressing to a recommendation process or agreement process is not necessary, practical or affordable in all decision-making processes. The importance of access to information and decision makers increases from one level of the progression to the next.

Another way to look at the levels of engagement is to outline the purpose of the person or group that chooses to participate and that of the Agency at each level (with credit to Sherry Arnstein for her 1969 concept “the ladder of participation”).

Phase	Participant Objective	EPA Objective
Agreement	Help determine decision	Achieve mission and implementable decision
Recommendation	Influence decision	Make a fully informed decision
Information Exchange	Provide input to decision	Understand more about issues, problems, values, perceptions; gather new information and data; better identify affected parties and their needs
Outreach	Learn; become informed enough to determine whether to take more active interest or personal action (such as recycle)	Build public awareness of environmental issues; provide materials that meet the needs of individuals and organizations

1

INTRODUCTION

In September 1994 EPA identified the American people as our primary customer and issued the following policy statement: “We are committed to providing the best customer service possible. We aim to achieve this through increased public participation, increased access to information, and more effectively responding to customer needs.” In “Putting Customers First: EPA’s Customer Service Plan” (EPA publication number 230-B-95-004), the Agency adopted three principles as the foundation for implementing its policy:

- **Encourage Public Participation:** Increase customer involvement in EPA’s policy and decision-making processes. Improve our understanding of what motivates customers and how we can best provide the environmental products, services and information they value. Use public roundtables, focus groups, and formal surveys to listen to what our customers think about the quality and value of the products and services we provide.
- **Provide Access to Information:** [Recognizing budgetary constraints] Make sure our customers can obtain the kinds of information they need. Provide our customers with reliable environmental information to make a wider variety of decisions – including regulatory, investment and health decisions.
- **Respond to our Customers’ Needs:** Make timely, appropriate changes to our products, services and processes to respond to the comments and suggestions of our customers, without compromising environmental outcomes.

The link is clear: Only when we listen to the American people – our primary customers – and understand what they tell us, can we engage them in environmental decision-making and thereby better accomplish our mission.

One way EPA listens to the American people is through public participation. Active public

participation in EPA decision-making processes is critical to ensuring that the Agency bases its decisions on the most pertinent information and creates workable long-term solutions for affected communities, industries, public health and the environment.

EPA will continue to seek the public’s input as we adapt our systems of environmental protection to the needs of the 21st century. Though traditional command and control approaches still have their place, the issues are getting ever more complex (e.g., cross-media and cross-border issues, runoff, global warming, environmental justice). While enforcement remains an important and vital tool, full and meaningful public participation can also help achieve environmental objectives through both regulatory and voluntary means.

To engage the public in this new century, EPA will need to reach out to a more diverse society, enhance participation practices, and work closely with our co-regulators. EPA must strengthen and build partnerships in order to increase focus on the equity of environmental burdens. By using more collaborative processes we can form new partnerships and enable stakeholder groups and the public to leverage expertise and resources. EPA has delegated many programs to tribes, states and local governments, so we rely on these partners to deliver our programs, including public participation, and we rely on the public to participate in their decision processes.

EPA recognized the importance of public participation in our decisions, policies and procedures as early as 1979, when we promulgated regulations at 40 CFR Part 25¹ (referred to in this document as *Part 25 Regulations*) governing public participation in the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Safe Drinking Water Act (SDWA). EPA then began developing a public participation policy which was first published for comment in the Federal Register in April 1980.

¹ The 40 CFR part 25 (Code of Federal Regulations), initially proposed in 1979, provide public participation requirements and suggestions for EPA in implementing water and waste management programs under the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act.

Engaging the American People

The Agency actively sought public input on the public participation policy, sending copies of the policy to a nationwide list of diverse interest groups, individuals and the media. EPA regions also distributed the policy extensively to their constituent lists and the Agency held ten public meetings. On January 19, 1981, we issued the EPA's Public Participation Policy² (referred to in this document as the *1981 Policy*). Plans to publicize and implement the *1981 Policy*, including training EPA staff and staff of our regulatory partners, were not carried out following the transition to a new administration.

Even though the *1981 Policy* was not emphasized, the Agency and its co-regulators (state, local, and tribal governments) implemented the spirit and intent of the *Part 25 Regulations* to varying degrees. During the intervening years, knowledge of the *1981 Policy* diminished externally and even within the Agency until 1999.

In July 1999, the EPA Innovations Task Force issued "Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress (EPA 100-R-99-006)." In this report, EPA pledged to evaluate its public participation policies and regulations in light of current practices, relevant statutes, regulations, and Executive Orders.

In October 1999, the U.S. Environmental Protection Agency's Office of Policy and Reinvention formed a cross-agency Public Participation Policy Review Workgroup (hereafter referred to as the Workgroup). The Workgroup's task was to support implementation of Action 9 of the Action Plan in "Aiming for Excellence."

Action 9 states: "Build leadership capacity in communities to participate in local environmental problem solving." Task 5 of Action 9, reads: "Evaluate and update EPA's public participation requirements. We will assess how well our regulations and policies ensure public participation in decision-making. We will report on what we find and develop an action plan to upgrade requirements and fill gaps."

² 46 FR, page 5736, January 19, 1981.

The Workgroup's assessment focused on reviewing EPA's *1981 Policy on Public Participation* and the *Part 25 regulations*. These documents have been the basis for many of EPA's public participation requirements and therefore were crucial to evaluating and updating EPA's public participation requirements. Since the Agency has significantly changed since the early 1980s, the Workgroup also compared many of the numerous statutes and regulations enacted or revised in the last two decades. *Engaging the American People* is the resulting report from the Workgroup. In addition to the review of existing public participation mechanisms, it contains recommendations for further actions to enhance public participation in the Agency's decisions.

The field of public participation, in its infancy in 1981, has greatly expanded in activities and techniques. Many academic studies and real-world experiences demonstrate the value of engaging and collaborating with the public and segments of it. Studies and experience of the past twenty years show that a "one size fits all" approach to public participation can limit the ability of many groups to participate fully in the decision-making process. For public participation to be meaningful, we must recognize and address differences among knowledge, cultures, experience, and technical and financial resources.

According to most experts, the "information" revolution is still in its early stages. EPA can take advantage of this technology to increase public participation and information access and enhance the role of the public in Agency actions and decision-making. For example, through the Internet EPA can provide very timely information to the public. The Internet can also enable the Agency to obtain information and opinions related to programs and policies. In the future, more citizens will use the Internet and other electronic communications (e.g., Envirofax, public access television, Web-TV, etc.) to interact on both a professional and personal level.

Significant change has occurred both within the Agency and within the country in the nearly two decades since 1981. Specifically, two key factors drove the changes: 1) new statutes and regulations; and 2) an increased awareness and understanding of the processes associated with engaging the public. For example, in the nearly 20 years since the *1981 Policy*, EPA has acquired a better understanding of matters associated with environmental justice; of the distinct nuances associated with protecting children’s health as compared with adults’ health; and of the need to recognize and value other differences associated with culture, economic, and educational factors. In addition, new statutes and executive orders have emphasized EPA’s working relationship with state, local, and tribal governments, as well as with small businesses. Furthermore, since 1979 most programs have adopted more specific and extensive public participation practices for major functions such as permitting, and these, rather than the *Part 25 Regulations*, now govern Agency activity.

Though EPA will continue to identify methods for using such technologies, the Agency also must recognize that for nearly half the population Internet access is limited. Even as these advances create new opportunities to obtain information and data for those with access to the technology, many communities have neither the equipment nor the training to take advantage of it. Unless EPA, in conjunction with other federal, state and private sector partners, takes proactive steps to increase access to training and the new technology, these communities will fall further behind in the capacity to participate in decision-making processes just as others become more fully involved. The “digital divide” that separates those with Internet access from those without it could widen, and environmental and health consequences could follow. Such opportunities and needs did not exist in the early 1980s, when personal computers were just coming into use. EPA’s Public Access Strategy will address this topic.

The Workgroup considered these societal changes and influences in their effort to identify methods for enhancing public participation.

2

THE REVIEW PROCESS

The Workgroup completed the following activities, which are described in more detail in section 3 of this report:

- **Activity 1: Review, analyze, and compare the 1981 Public Participation Policy and the 40 C.F.R. Part 25 Regulations:**
 1. determine the applicability of the *1981 Policy* and the *Part 25 Regulations*;
 2. identify areas that could be clarified or expanded; and
 3. determine if the *Policy* and *Regulations* need to be updated.

- **Activity 2: Inventory and conduct a cross-walk review of all statutes, regulations, Executive Orders, and relevant policies that influence EPA actions to identify public participation requirements, recommendations, and obligations:**
 1. identify requirements that are different from those established in the *1981 Policy* and the *Part 25 Regulations*; and
 2. identify similarities and differences among the varying statutes, regulations, Executive Orders, and policies; and assess how these similarities and differences affect the ability of the Agency to involve the public.

- **Activity 3: Solicit and analyze public comments on the 1981 Policy to:**
 1. identify opinions from the public about what is working and public concerns regarding participation in EPA decision-making;
 2. gather new and innovative ideas to assist the Agency in improving methods for engaging the public; and
 3. enable the public to provide input on

policy that will directly affect their relationship with the Agency.

- **Activity 4: Examine sample public participation experiences and lessons learned from them** to capture EPA's "successful practices" and innovative methods that may support the Workgroup's efforts.
- **Activity 5: Compare information generated and evaluated during the first four activities and identify opportunities for improvements and, based on this comparison, develop a series of recommendations and an action plan for the Administrator's consideration.**

3

SUMMARY OF WORKGROUP ACTIVITIES

The following sections describe each of the Workgroup's activities in more detail.

3.1 Activity 1: Evaluation of the 1981 Public Participation Policy and the Part 25 Regulations

Purpose of the 1981 Policy:

"To strengthen EPA's commitment to public participation and to establish uniform procedures for participation by the public in EPA's decision-making process. This in turn will assist EPA in carrying out its mission by giving a better understanding of the public's viewpoints, concerns and preferences. It should also make the Agency's decisions more acceptable to those who are most concerned and affected by them."

EPA designed its 1981 Policy to provide public officials who manage and conduct EPA programs with guidance and direction on reasonable and effective means to involve the public in program decisions. It is important to recognize that

the 1981 document is a policy, and as such, it does not impose any binding legal requirements or establish any rights under law.

The 1981 Policy also provides a process for engaging the public by identifying five "procedures," or activities, for EPA, states or tribes³ to follow when making decisions or implementing EPA programs that impact the public. These five procedures are:

- *Identification* — Determining who needs to or should be informed, interested, or affected by a forthcoming action and performing associated actions;
- *Outreach* — Conducting activities to provide information to the public;
- *Dialogue* — Ensuring opportunities for the public to provide input, comment, ideas, opinions, and information and to obtain feedback and information from the Agency on a forthcoming action, decision, or other matter that may have an impact;
- *Assimilation* — Ensuring that public concerns and opinions have an impact on the decisions made by the Agency; and
- *Feedback* — Providing explanations of decisions and how the Agency (or delegated program organization) used public input in the decision-making process.

The 1981 Policy assigns responsibility for its implementation to EPA managers in headquarters and regions. The Policy also suggests (but does not require) that the Agency (or states or tribes, in implementing an EPA program) develop public participation work plans for each activity identified under the scope of the Policy. For the most part, the Policy remains applicable today (see Activity 3).

"Public participation lies at the heart of the Agency's credibility with the public. It affords the best tested recipe for citizens to influence government decisions that affect their lives and pocketbooks."

*Responsiveness Summary and Preamble on Public Participation Policy,
Federal Register Notice, January 19, 1981*

³ While the 1981 Policy does not specifically mention tribes, it mentions delegated programs. Tribes are now eligible for delegated programs.

Purpose of the 1979 Part 25 Regulations

EPA promulgated *Part 25* to provide the basic requirements and recommendations for public participation in programs under the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and the Clean Water Act (CWA). Today they also form the foundations that program offices use to implement programs under other statutes. *Part 25* specifies the objectives that should be achieved through public participation:

1. To ensure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns;
2. To ensure that the government does not make any significant decision on any activity covered by *Part 25 Regulations* without consulting interested and affected segments of the public;
3. To ensure that government action is as responsive as possible to public concerns;
4. To encourage public participation in implementing environmental statutes;
5. To keep the public informed about significant issues and proposed project or program changes as they arise;
6. To foster a spirit of openness and mutual trust among EPA, states, tribal, and local agencies and the public; and

- (7) To use all feasible means to create opportunities for public participation, and to stimulate and support participation.

Part 25 covers procedures that the Agency (or state, tribe, etc.) should or must follow. Like the *1981 Policy*, these procedures include matters associated with information, notification, consultation responsibilities, public hearings, public meetings, advisory committees, responsiveness summaries, permit enforcement, rulemakings, and work elements in financial assistance agreements.

In its review, the Workgroup found that most EPA programs have developed their own regulations for public participation in their activities and decisions. These program-specific regulations and procedures are generally used in the place of *Part 25*.

3.2 Activity 2: Inventory and Cross-walk Review of Statutes, Regulations, Executive Orders, and EPA Policies Concerning Public Participation

EPA made a conscious effort to ensure compatibility between the *1981 Policy* and the *Part 25 Regulations*, and, if there were inconsistencies between the two, the *Part 25 Regulations* were to prevail. Based on its review, the Workgroup generally agreed that essential aspects of the *1981 Policy* and the *Part 25 Regulations* are consistent and summarized them in Exhibit 1.

Exhibit 1:
Similarities Between *1981 Policy* and *Part 25 Regulations*

Under both the *1981 Policy* and the *Part 25 Regulation* the Agency is to:

- Provide for and encourage public participation programs;
- Notify the public of upcoming meetings or hearings, generally at least 30 days prior to the meeting;
- Establish processes for convening advisory groups when necessary to provide a forum for the public to assist in providing recommendations to EPA;
- Prepare Responsiveness Summaries to provide feedback to the public on comments received on specific issues or activities;
- Prepare public participation work plans that summarize how the Agency will provide for public involvement; and
- Provide for the evaluation by EPA of its compliance with public participation programs.

Engaging the American People

In addition to reviewing the *1981 Policy* and the *Part 25 Regulations*, the Workgroup also conducted a cross-walk analysis of statutes, regulations, Executive Orders, and other relevant policies concerning public participation. The Workgroup reviewed twenty-two separate Acts and their corresponding regulations, and analyzed six Executive Orders to identify public participation requirements. Exhibit 2 presents a list of those statutes and Executive Orders. The list is not comprehensive.

Based on their review of the statutes and executive orders, the Workgroup identified six general categories of notice and public participation activities:

- *Public Notification* Providing information to the public about a decision or action that will be or has been made or performed;
- *Public Comment* Providing methods to enable the public to provide opinions, information, or positions;

Exhibit 2 List of Statutes (and Corresponding Regulations) and Executive Orders Reviewed for Public Participation Implications*

Statutes and Corresponding Regulations

Food Quality Protection Act (FQPA) (1996)
Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (1996)
Administrative Dispute Resolution Act of 1996 (ADRA)
Negotiated Rulemaking Act of 1990 (NRA)
Pollution Prevention Act (PPA) (1990)
Oil Pollution Act of 1990 (OPA)
Emergency Planning and Community Right-To-Know Act (EPCRA) (1986)
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (1980) as amended by Superfund Amendments and Reauthorization Act (SARA) (1986)
Clean Water Act (CWA) (1977)
Toxic Substances Control Act (TSCA) (1976)
Resource Conservation and Recovery Act (RCRA) (1976)
Safe Drinking Water Act (SDWA) (1974)
Endangered Species Act (ESA) (1973)
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (1972)
Federal Advisory Committee Act (FACA) (1972)
Clean Air Act (CAA) (1970)
Occupational Safety and Health Act (OSHA) (1970)
National Environmental Policy Act of 1969 (NEPA)
Freedom of Information Act (FOIA) (1966)
Administrative Procedure Act (APA) (1946)
Federal Food, Drug, and Cosmetic Act (FFDCA) (1938)

Executive Orders

12856: Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements
12862: Setting Customer Service Standards
12866: Regulatory and Planning Review
12875: Enhancing the Intergovernmental Process
12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
13045: Protection of Children from Environmental Health Risks and Safety Risks

* *This list is not comprehensive; it merely notes the items reviewed.*

- *Public Meetings* Providing the public the opportunity to meet with EPA, state, tribal, local, or other officials to discuss issues; raise questions, opinions and positions; provide input into the decision-making process; and request information and explanations;
- *Public Access to Information* Providing information through a wide range of media, such as through dockets, reports, outreach materials, and electronic media (via CD-ROM, Internet, etc.);
- *Advisory Groups* Requiring or recommending the establishment of advisory groups; and
- *Public Assistance/Other* Providing access to grants, funding, technical/expert advice or the ability to take civil/legal or alternative dispute resolution actions based on EPA's decisions.

While specifics varied, virtually all of the reviewed documents required or recommended the above actions. For example, of the 22 statutes reviewed, 18 had some requirement to provide public notification, although the acceptable forms of notification varied. Likewise, 16 statutes provided for public comment, though the minimum number of days varied from one regulation to another.

The Workgroup recognizes that other statutes and Executive Orders also need to be reviewed, either because of changes since the initial review (e.g., Executive Order 12875 has been replaced by Executive Order 13132: Federalism), or because they were not part of the initial list of items for review. This inventory and review should continue.

Over the past 20 years, EPA's Administrators have underscored the need for public participation. Administrator Carol M. Browner's August 1993 memo to all employees stressed the increasing importance of public participation in rulemaking efforts. This memo encouraged staff to solicit views from the broadest possible spectrum of interested parties in arriving at final rules and urged that all interests have equal

opportunity to meet with EPA. The memo noted that: "In rulemaking proceedings under the Administrative Procedures Act, the basis for decisions must appear in the public record. Therefore, after a rule is proposed, be certain that: 1) All written comments received from people outside the Agency (whether during or after the comment period) are entered in the public record of the rulemaking; and, 2) A brief memorandum summarizing any significant new data or information likely to affect the final decision that is received during a meeting or other conversation is placed in the public record."

Appendix A describes the extensive required and voluntary actions the Agency performs to involve the public in its decision and rulemaking processes. Since rulemaking is a central function of the Agency, Exhibit 3 contains summaries of the most important statutes and executive orders affecting public participation.

In 1998 Ellen Levin, a graduate student from the University of Wisconsin working as an intern for the Consensus and Dispute Resolution Program of the Office of Policy, conducted a study of the use of stakeholder participation processes used in rulemaking at EPA. Using the Regulatory Agenda as a source of rules under development or recently proposed, Ms. Levin interviewed more than 70 chairs of rulemaking workgroups and classified the activities conducted into one or more of the following categories: outreach, information exchange, advisory recommendations or negotiations. She found that more than 90% of rulewriters conducted significant outreach activities such as distributing fact sheets, providing information on web sites, and making presentations. More than 70% conducted additional information exchange activities such as workshops, joint fact finding, conference calls and public meetings. Most of these activities were conducted significantly prior to publication of the Notice of Proposed Rule which initiates a mandatory formal notice and comment period. She also found that the use of a stakeholder involvement process to build consensus recommendations or agreements was much less frequent.

Exhibit 3
Summaries of Administrative Statutes and Executive Orders Affecting
Public Participation in EPA Rulemaking

The Federal Advisory Committee Act (FACA) governs the establishment of and procedures for advisory committees that provide advice or recommendations to the federal government. When EPA establishes or utilizes a committee for advice or recommendations, the Agency must charter the committee with approval from the Office of Management and Budget, notify the public of meetings via a notice in the Federal Register, allow public participation in the meetings, appoint public representatives on FACA committees, and allow the public access to all committee documents and reports. [Note: Several exemptions are applicable. For example, when the Agency seeks the advice of individual meeting participants without seeking consensus, the gathering is not subject to FACA.]

The Regulatory Flexibility Act (RFA), as amended by **the Small Business Regulatory Enforcement Fairness Act (SBREFA)**, generally requires agencies to assess the impacts on small entities, including small businesses, small governmental jurisdictions, and small organizations, of rules subject to notice and comment rulemaking requirements. For rules that may impose significant economic impacts on a substantial number of small entities (SISNOSE), agencies must prepare a regulatory flexibility analysis of the potential adverse economic impacts on small entities, participate in a Small Business Advocacy Review Panel (a proposed rule stage), and prepare a Small Entity Compliance Guide (a final rule stage). For rules that may impose a SISNOSE, public participation requirements include: opportunity for public comment on the agency's initial regulatory flexibility analysis; opportunity for participation by small entities through the reasonable use of techniques including, among other things, open conferences, public hearings, and solicitation and receipt of comments over computer networks; and solicitation of advice and recommendations from small entity representatives identified by the agency after consultation with the Chief Counsel for Advocacy of the Small Business Administration.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires agencies to assess the effects on state, local, and tribal governments and the private sector of rules subject to notice and comment rulemaking requirements. Public participation requirements include: for rules containing significant federal intergovernmental mandates, agencies must develop an effective process to allow elected officers of state, local and tribal governments (or their designated, authorized employees) to provide meaningful and timely input in the development of the regulatory proposal; and for rules that may significantly or uniquely affect small governments, agencies must develop a small government agency plan that provides for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," generally requires each federal agency, to the greatest extent practicable and permitted by law, to make achieving environmental justice part of its mission by ensuring meaningful public participation of minority and low-income populations, including identifying potential effects and mitigation measures, and improving accessibility of public meetings, documents, and notices to affected communities.

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,”

requires most federal agencies to develop and utilize an effective process that allows elected officials and other representatives of Indian tribal governments to provide meaningful and timely input on regulations, legislative comments, proposed legislation, and policies that have substantial direct effects upon one or more Indian tribes, and to appoint a federal official to oversee the implementation of that process.

Executive Order 13132, “Federalism,” generally requires agencies to develop an accountable process to ensure meaningful and timely input by state and local elected officials or their representative national organizations in the development of regulatory policies that have federalism implications. “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

Executive Order 12866, “Regulatory Planning and Review” says that wherever feasible, agencies shall seek views of appropriate state, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of federal regulations on state, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize federal regulatory actions with related state, local, and tribal regulatory and other governmental functions.

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” requires each federal agency to examine the services it provides, and then identify, develop and implement a system by which limited-English-proficient persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. The order also requires that each federal agency draft guidance pursuant to Title VI of the Civil Rights Act of 1964, as amended, to ensure that recipients of federal financial assistance take reasonable steps to provide meaningful access to their programs and activities.

The Administrative Procedure Act (APA) standardizes administrative procedures for all government agencies. For actions subject to the APA’s informal rulemaking requirements (most EPA rulemakings), the APA generally requires agencies to publish a general notice of proposed rulemaking in the Federal Register, and to give interested persons an opportunity to participate through submission of written data, views, or arguments. For actions subject to the APA’s formal rulemaking or formal adjudication requirements, the APA prescribes additional procedures for agency hearings, which include, among other things, requirements for notice and an opportunity for interested parties to submit facts and arguments, proposed findings and conclusions, or exceptions to agency decisions.

3.3 Activity 3: Summary Analysis of Public Comments

On November 30, 1999, EPA published a Federal Register notice requesting public comment on the 1981 Public Participation Policy. By January 13, 2000, the Workgroup had received and reviewed 25 comments from federal and local government organizations; businesses; environmental, trade, policy, and advocacy organizations; and private citizens. Complete comments are available at the web site [<http://www.epa.gov/stakeholders>]. Appendix B lists the commenters.

Several commenters stated that EPA, as a whole, is a leader in the federal government in supporting public participation. However, comments overall suggest that there are varying levels of implementation, compliance, and resource provision for public participation programs across the Agency and through delegated programs. Some programs or activities appear to be proactive in using innovative approaches and techniques to engage the public, focusing not only on what is required, but also on what works for all involved. Others meet only the baseline requirements established in statutes, regulations, or policies. Comments suggest that in some cases baseline requirements of the *Policy* and *Regulations* may not be achieved. Commenters stated that the following items in the *1981 Policy* and the *Part 25 Regulations* are not implemented consistently: early notice and participation of the public, use of plain language or appropriate languages other than English, stakeholder identification, and adequate length of public comment periods.

The Federal Register notice requested comments on two sets of questions. The first set of questions asked: *What changes need to be made to the 1981 Policy on Public Participation? What is working well, and how does the experience of the past nineteen years suggest the need for improvements in the general procedures for involving the public in EPA programs and decisions?* Responses focused on the following:

- **Just Do It!** - Several commenters stated that while the *1981 Policy* can be updated and improved, it is basically sound and workable. However, commenters urged EPA to improve consistency in the implementation of the *1981 Policy* at EPA national and regional levels, and within programs delegated to states, tribes and local government units. Comments encouraged EPA to focus not just on what is required, but what works for all parties involved.
- **Increase efforts to identify groups or individuals interested in or affected by an issue and who represent a balance of views** — Commenters suggested: make it easier for individuals and organizations to be placed on EPA contact lists; work with county and city public health officials; use cable TV and radio to distribute information and reach interested groups and individuals; post notices in newspapers and magazines, and in supermarkets, malls, community centers, churches, and laundromats if that is where interested and/or affected people are likely to see it.
- **Provide notices and outreach materials in plain language (“Plain English”)** — Distribute easy-to-understand materials in other languages when appropriate.
- **Listen for, seek to understand, and involve special interest groups in issues of critical importance to them** — Specific comments suggested that EPA involve the animal welfare community in matters which involve the potential use of animals in testing, and include the National Association of Home Builders on contact lists for water issues. Animal protection organizations suggested that EPA publish a notice of every meeting held with people outside the Executive Branch of the federal government.
- **Match the forum to the fuss** — Help Agency personnel learn to select the most appropriate intensity of, and mechanisms for, public participation in any specific circumstance. Early planning is vital. Public

hearings are often not good forums for constructive dialogue.

- **Incorporate Environmental Justice (EJ) considerations in public participation activities** — Use the National Environmental Justice Advisory Council Model Plan for Public Participation (<http://es.epa.gov/oeca/oaj/nejac/pdf/modelbk.pdf>); fully implement Executive Order #12898; present web site data and materials in formats and languages relevant to those at the local level; provide resources for community technical assistance; and use Environmental Justice grants for Clean Air Act Title V permitting.
- **Inform and involve the public earlier** — Early involvement creates opportunities to provide technical information, consider locally relevant information, address key community concerns, help build trust, and sometimes broaden the range of options to be considered.
- **Lengthen public comment periods** — Allow the public sufficient time to conduct their own review of the issue and provide comments to the Agency. [Note: Executive Order 12866 requires 60 day comment periods which EPA adheres to unless statutory or other deadlines preclude such notice.]
- **Use the Internet** — Develop electronic list services; establish electronic mechanisms for posting comments and ongoing bulletin boards for on-line dialogue on permitting and regulatory proposals; post Title V documents relating to individual facilities; establish on-line dockets; and encourage/help public libraries and community centers to get and expand Internet access services, particularly in rural, remote or low-income areas.
- **Think in broad environmental concepts (holistically) and act collaboratively** — Rather than just focusing on specific issues (e.g., a facility's effluent discharge permit), the Agency should think broadly about the environmental issues in an area (e.g., a

watershed) and how all stakeholders can work together to reach consensus solutions, whenever possible (e.g., plan together to attain or exceed the water quality standards for the watershed, and be accountable for the results). One example: the National Governors' Association's "Enlibra: A New Shared Doctrine for Environmental Management," which is a set of eight principles for collaborative environmental management.

- **Advance the concept of stewardship** — Emphasize that environmental protection is everyone's job, from government organizations that set standards, to businesses and citizens who make daily choices. (The EPA Office of Air Quality Planning and Standards Plan for Public Involvement in the Title V (permitting) Program embodies this concept.)
- **Evaluate EPA public participation policies and practices** — The Environmental Law Institute, Resources for the Future and the Sierra Club Great Lakes Program evaluate public participation programs. [Note: In the Responsiveness Summary of *the 1981 Policy*, EPA committed to evaluating the *Policy* for such matters as the effectiveness of the requirements, public reaction, reporting requirements, resource expenditures, alternative methods and enforceability. EPA did not perform such an evaluation of the *1981 Policy* and does not regularly examine the Agency's public participation processes.]

The second set of Federal Register questions asked: *How can we further engage the public in the effort to revise the 1981 Policy and other EPA regulations and policies which may need to be updated in regard to public participation? What are suggested elements of a strategy to further engage the public in updating requirements and filling gaps in EPA's regulations and policies concerning public participation?* While only a few of the 25 public comments addressed this question directly, specific suggestions include:

- **Hold focus groups** — in each region or state with members of the public who have had experience working with the Agency.

Engaging the American People

- **Allow oral comments** — over a toll-free line.
- **Have trained local environmental analysts** — available to collaborate with local residents on interpreting scientific data and environmental statutes and regulations.
- **Establish public access ombudsmen in each regional Office** — to perform research and assist those who inquire to the Agency about participation processes.
- **Use the National Association of County and City Health Officials' Protocol for Assessing Community Excellence in Environmental Health** — to learn more about a community's environmental health concerns and inform residents about opportunities for participation in EPA decision-making.
- **Create a zip code data base** — to enable interested individuals and organizations to learn about potential environmental actions affecting their respective areas.

3.4 Activity 4: Review of Sample Public Participation Experiences and “Lessons Learned”

Summary of Review

The Workgroup examined existing public participation practices across the Agency, and found that in most EPA programs and projects, the decision currently is *how* and *when*, not *if*, to involve the public. The need to involve stakeholders and the public to help address today's complex and controversial environmental issues is growing increasingly apparent. When EPA increases meaningful public participation opportunities, the public can better leverage expertise and resources to help the Agency and its partners formulate solutions to environmental problems.

The Workgroup found that for public participation to be meaningful, the public needs to have an opportunity to:

- obtain easily accessible, understandable background information;
- review proposed actions both early in decision-making processes and at other critical decision points when their input can be useful;
- understand how the decision-making processes work;
- understand how their comments will be used in the decision process;
- learn, after the decisions are made, how their input was used; and
- understand their real potential to influence decisions.

Public participation at EPA is no longer defined as a single process. Most experts now see it as a range of participation techniques, from those that simply inform to those meant to reach a joint agreement. In the course of conducting its review of public participation practices at EPA, the Workgroup identified four categories of activities that should be used to involve stakeholders in environmental decision-making: *outreach*, *information exchange*, *collaboration and recommendations*, and *agreements*. (See EPA's Public Participation Terminology, page vi.) These activities do not stand alone. They are part of a communications and participation progression that can and should be used as a systematic approach to accomplishing the Agency's work.

EPA staff use **outreach** activities to identify people who are interested or potentially affected by the Agency's actions and to keep them informed about what we are planning, what we are doing and why. Through **information exchange**, EPA staff and management share data, options, issues and ideas with the affected public in an interactive way in order to gather information and learn from them. **Recommendation** activities involve a smaller number of stakeholder representatives who collaborate with each other and with Agency staff to reach consensus on a set of recommendations for action. Through **agreement** activities, EPA management works with stakeholder representatives to reach an agreement by consensus to which all parties agree. Successful agreement

or recommendation processes occur only with significant information access, exchange and outreach. Progressing to a recommendation or agreement process is not necessary, practical or affordable for all decision-making processes. The importance of access to information and to decision makers increases from one level of the progression ladder to the next.

New and emerging technologies enable the Agency to develop added ways to carry out the public participation progression. Communications avenues such as Internet chat rooms, virtual meetings, the use of E-mail and the Internet were not available when the Agency adopted the *1981 Policy*. In addition, the field of consensus and dispute resolution, often called alternative dispute resolution (ADR), provides new ways to engage the public in addressing and resolving issues.

As a result of these new methods and techniques, the Agency has enhanced public participation opportunities. Some EPA offices and programs use alternative dispute resolution practices to expedite decisions and reduce the costs of compliance. Other offices use chat rooms, electronic message/bulletin boards, and computer accessible databases to enable citizens and stakeholders to provide input or obtain information. Most offices provide for electronic submissions of comments on proposed rules. Some offices and programs have tailored outreach programs to address differences in culture, economics, age, and education among target audiences.

Through its assessment of existing practices, the Workgroup found that many of the Agency's public participation advances have not been prompted by legislative changes. Instead, EPA programs and regions had the necessary flexibility to take actions, develop projects, and make innovations to promote and encourage public participation, thus enabling staff to work more efficiently and effectively. Lessons learned from the Agency's experiences in customizing public participation processes to meet the needs of particular circumstances provide a potential framework for enhancing the existing *Policy* or for developing a new one.

Some Examples of Innovative Approaches

Negotiated Rulemaking — In 1983 EPA piloted a procedure recommended by the Administrative Conference of the U.S. called “negotiated rulemaking” or “regulatory negotiation” - reg neg for short. During a reg neg, the Agency establishes a Federal Advisory Committee of interested and affected stakeholders who negotiate either the outline or the text of a proposed rule. While such negotiations are difficult and time consuming, EPA conducted reg negs on 20 rules from 1983 to 2000. Most of the committees were able to reach full or substantial agreement on the outline or text of a rule. EPA found that the rules resulting from reg negs are more practical and implementable and less likely to be challenged in court than those developed through traditional means. The U.S. Congress passed the Negotiated Rulemaking Act in 1990 and renewed it indefinitely in 1996. The Act is based heavily on EPA's experiences and procedures from the first seven reg negs it conducted. More information is available at [<http://www.epa.gov/stakeholders/factsrn.htm>].

Professional Facilitation of Stakeholder Involvement Activities — The Agency obtains professional facilitation and mediation support for public participation, consensus building and dispute resolution activities via contracts with outside organizations. These include Superfund support contracts and various program office mission support contracts. Since 1986, a series of contracts managed by the Consensus and Dispute Resolution Program has been a primary source of consensus and dispute resolution assistance. Demand for these services has grown exponentially. The first contract in 1986 had four work assignments; the third, which expired in 1999, had 206 over a five-year period. The current five-year contract has a ceiling of more than \$41 million. These figures reflect the changes in EPA's attitude about stakeholder involvement over the past 20 years - from very few activities to numerous activities in every program and regional office.

Community-Based Environmental Protection (CBEP) — Between 1995 and 2000, the Agency

Engaging the American People

built partnerships with more than 200 communities and their state and tribal government partners to integrate approaches that protect and restore local natural resources in ways that help ensure long-term ecological, economic, social, and human health benefits for ourselves and future generations. CBEP's goals are to:

- Achieve environmental results consistent with EPA's mission and base program goals, as stated in EPA's authorizing statutes and Strategic Plan;
- Address environmental concerns not amenable to traditional federal regulatory approaches, such as urban sprawl, urban and agricultural runoff, and loss of biological diversity;
- Help communities develop the tools and capacity necessary to be stewards of their human and natural resources; and
- Coordinate and integrate EPA's programs and activities to increase the Agency's effectiveness in supporting sound community environmental decision-making.

Additional information on CBEP is available at [<http://www.epa.gov/ecocommunity/>].

The Common Sense Initiative — This was a four-year experiment to address environmental management by industrial sector rather than by environmental medium (air, water, land). Using a Federal Advisory Committee structure, EPA brought together representatives from industry, environmental, environmental justice and labor organizations, and federal, state, and local governments to address environmental issues facing six industry sectors. The stakeholders provided more than two dozen consensus recommendations on industry-specific issues. In response to concerns raised by the printing sector subcommittee and other stakeholders, the CSI Council formed a workgroup in November 1997 to address concerns about Agency-wide stakeholder involvement issues. The resulting Report included three recommendations concerning needs to: develop common understanding of the goals and roles of stakeholder involvement processes; do early planning of these processes, and build internal

and external capacity to participate effectively in these processes. In response to these recommendations, in December 1998, the Agency developed a 20-point Action Plan for Improving Stakeholder Involvement. The Agency has made substantial progress in implementing this plan. The two documents noted above, as well as a progress report on the 20 action items, are available at [<http://www.epa.gov/stakeholders>]. One of the action items was creating this web site. Another action item notes the development of program-specific tools such as the Project XL Process Improvements that provide the latest information regarding stakeholder involvement in XL (Excellence and Leadership) projects, and the "Constructive Engagement Resource Guide: Practical Advice for Dialogue Among Facilities, Workers, Communities, and Regulators" ([<http://www.epa.gov/stakeholders/pdf/resolve1.pdf>]; EPA 745-B-99-008).

National Community Involvement Conference

— Since 1998, EPA program offices collaboratively organized and held the annual conferences. These events enable community involvement practitioners, managers, and policymakers at EPA and partners in federal, state, tribal, and local agencies to share their successes and expertise in public participation activities. Presentations emphasize the broad range of EPA's community involvement efforts. Nationally recognized experts in such areas as cross-cultural issues, conflict resolution and negotiation skills, crisis communications, public meeting planning and facilitation, media relations, and other community and public participation skills or approaches offer training.

Superfund Public Participation Support

The Superfund program has succeeded in increasing public participation in cleanup decision-making through a variety of techniques and approaches. At 53 sites, EPA used Community Advisory Groups (CAGs), which provide community members with a forum for learning about and assessing cleanup alternatives and giving input to site managers. Technical Assistance Grants (TAGs) provide money to community nonprofit groups so that

they can obtain technical assistance in interpreting information about their Superfund sites. This assistance enables the groups, and the community as a whole, to participate more effectively in site decision-making. EPA has awarded 210 TAGs since the inception of this program. The Technical Outreach Services to Communities project has provided independent university-based scientific and engineering expertise to 115 communities dealing with hazardous substance contamination questions. Additional information about these Superfund programs and resources is available at [<http://www.epa.gov/superfund/tools/cag/resource.htm>].

Increased Transparency of Stakeholder Involvement in Pesticide Decisions — Based on advice obtained from many outside groups through the Tolerance Reassessment Advisory Committee (TRAC) meetings held during 1998 and 1999, EPA created more opportunities for information sharing and public involvement in its development of risk assessments and risk management decisions for the organophosphate pesticides (OPs). By obtaining and including real-world information from a variety of outside interests and groups, EPA hopes to arrive at the fairest and most informed decisions possible for the OPs. To provide ample opportunity for public participation in these reassessments, EPA piloted a more extensive, inclusive, public review and comment process. On March 15, 2000 (65 FR 14199), EPA proposed to expand the pilot by establishing a similar public participation process for pesticide tolerance reassessments and reregistrations. This process should increase the transparency of, and stakeholder involvement in, the development of pesticide risk assessments and risk management documents and decisions. Additional information is available at [<http://www.epa.gov/pesticides/op/involve.htm>].

Public Involvement in Permitting — Stemming from the Second Generation of Environmental Permitting Action Plan, the Office of Solid Waste and Emergency Response (OSWER) guided an Agency workgroup to improve public participation in all the permitting programs in the Agency. The first product is

“Public Involvement in Environmental Permits: A Reference Guide” (<http://www.epa.gov/permits/publicguide.htm>; EPA 500-R-00-007) The Guide, which describes the current permitting processes and the opportunities for public participation for all permitting programs, is an excellent tool for the public, permitted facilities, and the regulating agency (EPA/states/tribes/local governments). The primary audience is the state, tribal and local governments that are permitting authorities. The Guide is intended to be their toolkit of resources and best practices in public involvement. The public and industry will also be able to use this document as an educational resource to help them fully understand their opportunities for participation in each permitting program.

The Model Plan for Public Participation of the National Environmental Justice Advisory Council (NEJAC) — The Council, a federal advisory committee to EPA, developed a model plan for conducting effective public meetings, “The Model Plan for Public Participation,” (<http://es.epa.gov/oeca/oej/nejac/pdf/modelbk.pdf>; EPA publication number 300-K-96-003). Plan principles now appear in various public participation guidances and documents including the RCRA Public Participation Guidance and Project XL guidance. In addition, the Agency used the Model Plan in preparation and facilitation of meetings involving the use of federal facilities. Further, state and tribal agencies, industry, and community organizations have endorsed and use the Model Plan in conducting public participation activities. Recently, the International Association of Public Participation endorsed the plan and encouraged its members (over 1000 individuals and organizations) to use it. The State of Louisiana's Department of Environmental Quality modeled a public participation process after the plan. The NEJAC also recently developed a draft “Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Citizens.” It explains how EPA, and other environmental justice stakeholders, can more effectively work with tribes and tribal communities to address their environmental justice

concerns. A final draft is expected to be completed by December, 2000.

Federal Core Water Quality Standards in Indian Country — The Office of Water (OW) is considering establishing federal core water quality standards in Indian country. OW organized extensive outreach, held initial discussions, and used formal consultation. OW promoted meetings and met with different groups to explain the rationale for these standards, to explain what they might look like, and to solicit initial reactions. This included meetings with EPA's Tribal Operations Committee, tribal organizations such as the National Tribal Environmental Committee, EPA regional Tribal Operations Committees, and regional meetings with tribes. Using their input, OW drafted a concept paper which it used during a formal three-month consultation period. The process included the Regional Administrators' sending a letter to each federally-recognized tribe seeking each tribe's reactions to the proposal. Additionally, EPA regions sponsored forums, meetings, and conference calls with tribes in their regions to discuss the standards and again solicit tribal feedback. OW staff and senior managers participated in many of the regional meetings. EPA had extensive dialogue with over 200 tribes during the formal consultation period. The ideas and concerns expressed during this time are being considered in EPA's approach to setting federal water quality core standards in Indian country.

Improved Federal Advisory Committee Activities — The Office of Cooperative Environmental Management (OCEM) provides policy, oversight, and national program management for EPA's Federal Advisory Committees (FACAs). EPA has 23 FACAs, with 38 subcommittees using 1,355 citizen volunteers. These committees give EPA expert advice and citizens' perspectives in developing a wide variety of environmental policies and programs, and are an essential part of the Agency's public participation effort. OCEM has been working to build the capacity of both the Designated Federal Officials (DFOs) who run the FACAs, and the general public. For the DFOs, capacity building efforts include: a week of

public participation training; monthly meetings with speakers addressing elements of public participation; development of a directory of contacts within and outside the Agency that will find diverse committee members, and surveying DFOs to find out their needs relative to public participation. The major initiatives to help the public prepare to be members of EPA's FACAs include: developing an OCEM website that is a "one stop shop" for information on all EPA's federal advisory committees, and partnering with the General Services Administration to include extensive information on EPA's FACAs to GSA's government-wide, web-based federal advisory committee data base. Committees are exchanging information with each other so they can better advise the Agency.

Scientific Advisory Panel on the Federal Insecticides, Fungicides and Rodenticides Act (FIFRA) — The Panel provides independent scientific advice regarding the impact on human health and the environment of proposed regulatory actions concerning pesticides and pesticide-related issues. The Administrator solicits from the Panel advice, evaluations, and comments for operating guidelines to improve the effectiveness and quality of staff scientific analyses that are the bases for regulatory decisions. The Administrator also asks the panel to provide peer review of major scientific studies.

Brownfields Initiative — EPA launched the Brownfields Initiative to help state, local and tribal governments, communities, and other stakeholders work together to assess, clean up, and reuse brownfields. Brownfields are abandoned, idled, or under-used industrial and commercial facilities where real or perceived environmental contamination complicates expansion or redevelopment. EPA is building partnerships with states, tribes, cities, and community representatives, and among federal agencies, to develop strategies for promoting public participation and community involvement in Brownfields revitalization projects. Additional information is available at [<http://www.epa.gov/swerosps/bf/>].

Environmental Monitoring for Public Access and Community Tracking (EMPACT)

— The EMPACT Program specifically addresses the lack of current and reliable local environmental information that is available to people. EMPACT helps communities provide their residents with current and accurate information about local environmental conditions. Local governmental agencies are key partners in all EMPACT projects, which also include partners from many levels of government, the private sector and academia. The 34 projects in 84 cities had over 225 partners as of January 2000. The program funds projects that provide people with the local environmental information they want, requires local governmental agencies to be full partners in every funded project, and requires projects to develop and implement strategies for local stakeholder participation in every project. EMPACT also fosters public participation by engaging local partners in all technical meetings and by convening meetings specifically focused on their needs. Additional information is available at [<http://www.epa.gov/empact/index.htm>].

Four recently initiated activities have the potential to improve the Agency's public participation efforts:

Community Involvement University — The EPA Superfund program is one of the Agency's programs that has regional staff who work directly with citizens in communities. The growing sophistication of communities around Superfund sites challenges the skills of these staff members every day. If they have difficulty communicating and establishing positive relationships with the communities, the fallout can be very stressful for all concerned, affecting not only a community's views of EPA, but also the cost and pace of clean-up. To develop a more coordinated and comprehensive approach to training community involvement staff members, the Superfund program is establishing "Community Involvement University" (CIU) to provide EPA Superfund staff with meaningful, professional training in the art and science of working with communities. The curriculum will include building and enhancing skills in such

areas as communications/outreach, organizing/conducting/facilitating public meetings, dealing with difficult people, establishing rapport, working with diverse populations, negotiating, and a variety of technical topics. This program should ensure that community involvement staff members nationwide have the same opportunities to develop and enhance their community involvement related skills as they do to increase their technical knowledge. The two skills sets will enable them to better explain technical issues to the public and should improve participation opportunities for the public.

Science in Environmental Decision-Making

— Because members recognized the Agency's increased emphasis on stakeholder involvement in decision-making, the Executive Committee of EPA's Science Advisory Board (SAB) is currently conducting a series of workshops to learn how science can best be used in stakeholder involvement processes. The Board also is examining whether the Agency is providing the infrastructure to support needed science. The workshops feature reports on recent uses of science in stakeholder processes and structured discussions with Agency staff and members of the public about how science is actually reviewed and used in stakeholder processes. Based on the workshops and their experience, the SAB may provide the Administrator with a report identifying best practices and research needs associated with the use of science in stakeholder decision processes.

Community Risk Assessment Workshops

— The Office of Research and Development's Office of Science Policy continues to hold workshops designed to bring together scientists, community practitioners, and EPA risk assessors to discuss complex multi-source assessments conducted in community settings, such as urban environments. The workshops provide an opportunity (1) to develop a better understanding of how community assessments are different from traditional risk assessments; (2) to identify existing Agency experience through case studies and scientific tools and databases that support community assessments; and (3) to preliminarily outline where

improvements could be made. Three workshops have been conducted since March 1999. The first examined Agency experiences to identify and clarify community assessment issues, i.e., questions asked in a community. The second workshop inventoried and evaluated existing Agency tools and methodologies that might be used to address the questions in community assessments. The third explored focusing the tools to serve communities and evaluated potential Community Assessment products. Based on information gathered in the workshops, the steering committee is now developing products to help integrate science to support community risk assessments.

Information Products Bulletin (IPB) — In May 2000, a workgroup began developing a list of upcoming significant information products in development at EPA – the IPB. The workgroup includes representatives from major program offices, regions and the states. The workgroup's task is to ensure that EPA information products are useful, that data are incorporated into these products and those data are presented in an appropriate context. The IPB will provide pre-publication notification of information products, and, in some cases, identify opportunities for stakeholder involvement.

4 OVERALL CONCLUSIONS

After conducting its review, the Workgroup developed five general conclusions:

1. The *1981 Policy* and *Part 25 Regulations* are still valid but do not incorporate new statutes or public participation innovations
2. The *1981 Policy* and the *Part 25 Regulations* have not been adequately publicized internally or externally; EPA and its co-implementors have not consistently implemented them. Across the Agency and among co-implementors there are opportunities to improve consistency.
3. New participation techniques and information technologies provide the Agency with

opportunities to involve the public and challenges to reach both those who have and those who lack Internet access.

4. Few centralized tools or resources are available to aid EPA staff and Agency partners in engaging the public.
5. Streamlining decision-making should not preclude meaningful public participation.

These conclusions led to a series of recommendations which are the basis for a list of suggested actions. The recommendations and suggested actions are described in the following two sections.

5 OVERALL RECOMMENDATIONS

The Workgroup identified five recommendations for Agency consideration. Some of the recommendations are resource-dependent. With continued reductions in budgets, the Agency will need to consider whether the recommendations are viable within today's fiscal realities, and with the availability of management and staff to design, implement, and manage projects or programs. The conclusions listed above and the recommendations provided below do not have a "one-to-one" correlation. Several recommendations address numerous issues/observations listed in the conclusions. A description of associated benefits follows each recommendation.

5.1 Short-Term Recommendations (3-12 months)

- 1a. Revise the *1981 Policy* to reflect the additional statutes EPA now administers, technological changes, and procedural advances.**

The *Policy* should reference statutes and recognize the new technological and participation techniques now available. It should also address more explicitly the issue of "matching the forum to the fuss" by incorporating the range of public participation processes and stressing the importance of early notification and good

planning for public participation programs. A key element to making the *Policy* viable will be to structure the text so that managers and officials have the flexibility to encourage stewardship, promote voluntary and incentive-based efforts, use reward-based compliance, and encourage public participation during all phases of a decision, from the beginning stages to project close out.

1b. When issuing the *Draft 2000 Public Involvement Policy* for comment, the Administrator should direct that all offices and regions begin immediately to:

1. give increased attention to implementing and enforcing associated procedures and requirements;
2. use the *Draft 2000 Policy* as guidance pending final action following public review and comment;
3. ensure that the *Part 25 Regulations*, and other statutory and regulatory public participation requirements are being fully implemented;
4. develop means to track and measure progress; and
5. evaluate the effectiveness of public participation activities.

EPA can enhance public participation by raising awareness of the details within the *Policy*, *Part 25* and other regulations, and making greater efforts to ensure that the procedures contained within these documents are followed. The EPA as a whole, and each program office, needs to establish performance measures for public participation activities and evaluate performance. They should also take additional steps, if necessary, to assure compliance with associated procedures and requirements.

The Administrator should underscore the *Policy's* importance by regularly highlighting participation activities during senior staff sessions. The Administrator's *2000 Draft Public Involvement Policy* transmittal memo to EPA senior managers and staff should:

- direct that each region and office with programs requiring public participation establish measures and evaluate performance against those measures at least annually, beginning September 30, 2001;
- encourage National Program Managers to include public participation measures in Memoranda of Agreements with regions and to discuss with regions how to encourage delegated program officials (states, tribes and local governments) to implement public participation requirements;
- establish responsibility in the Office of Policy, Economics and Innovation for gathering information and annually reporting implementation of the *Policy* and *Regulations* to the Deputy Administrator, beginning October 31, 2001, to ensure tracking of the public participation activities;
- be copied to all employees via electronic mail.

Benefits: Having a revised *Policy* presents the opportunity to stress the expectations for and importance of public participation in future environmental and public health decisions. These actions would reinforce the Agency's commitment to public access and participation and ongoing improvements, and enable the Administrator to demonstrate a personal investment in promoting effective public participation. Successes can be documented and applied to GPRA requirements.

Lead Office: Office of Policy, Economics and Innovation in cooperation with the General Counsel's Conflict Prevention and Resolution Center and the public access organizations within the Office of Environmental Information.

- 2. Enhance EPA's Regulatory Agenda on the Agency's web site; explore ways to improve it so it becomes a better tool for public participation; provide an Internet gateway to participation information useful to EPA's regulatory partners and potential and current stakeholders.**

The Regulatory Agenda is the Agency's primary communications tool for informing the public

Engaging the American People

about regulations which are under development in the near term. Some people feel it is a difficult tool for citizens groups, small businesses and less Internet-knowledgeable stakeholders to access and understand. The entries in the Agenda do not inform the public about what type of public participation the Agency might be considering or when that process would occur. The Office of Management and Budget controls the content and format of the bulk of the Agenda which is now posted on EPA's web site in a searchable format. [<http://yosemite1.epa.gov/smallbus.nsf>]

EPA prepares a preamble to part of the Federal Regulatory Agenda. The Office of Policy, Economics and Innovation can use the preamble to explain to stakeholders how best to read and understand the Regulatory Agenda. The preamble should help the public understand how to identify those rules that are likely to:

- have the most significant impact nationwide (i.e., be most costly to implement);
- have the most significant impact on small entities (i.e., impose a significant impact on a substantial number of small entities);
- impact specific industrial sectors in a direct way; and
- impact state, local, and tribal governments.

The preamble can note that annually the Regulatory Agenda includes the Agency's Regulatory Plan which provides more detail regarding economically significant (i.e., rules anticipated to have an annual impact in excess of \$100 million) and other priority rules, including a discussion of risks, alternatives under consideration, and the costs and benefits of the rules in the Plan. This action could also provide better opportunity for early resource planning and research on the part of stakeholder groups.

Those exploring how they might become involved in environmental decision-making in EPA programs, state or local decisions have no centralized place to start their search. Enhancing the [<http://www.epa.gov/stakeholders>] website to become a gateway to participation related information would serve the public's need for a road map to point them to appropriate

opportunities and contacts for the specific issues of interest.

Benefits: These improvements would make it easier for the public to understand the rules under development and which of those rules are the most significant or important to them. The public could then communicate with the program contacts to obtain information about specific rules and to identify appropriate opportunities for involvement. These actions would demonstrate EPA's leadership and initiative in providing useful information to the interested and directly affected public. A well-publicized Internet gateway site to environmental and public health data and information and participation tools of federal, state and tribal agencies would enhance stakeholders' ability to participate in related decisions.

Lead Office: Office of Policy, Economics and Innovation.

3. **Develop database and list tools: a) create a prototype stakeholder database for Agency use; b) maintain a centralized, shareable "key national stakeholders" database for Agency use; c) explore options for developing a secure, Web-facilitated process for qualified stakeholders to "sign-up" for the centralized list; d) develop process for centralized sign on to Agency listserves.**

- a. Create a prototype stakeholder database for Agency use - A frequent complaint of commenters was that the Agency does not have a centralized means of accessing key national stakeholders for a variety of public participation efforts. Agency technical staff have limited time, expertise and resources for identifying stakeholders without such a list. A centralized database that can be accessed Agency-wide is a proposed solution. Access to the database could be limited to ensure compliance with the Privacy Act and related concerns. The Office of Communications, Education

and Media Relations (OCEMR) is currently developing such a database.

- b. Maintain a centralized, shareable “key national stakeholders” database for Agency use - OCEMR, which incorporates public liaison functions for the Office of the Administrator, is the appropriate organization to maintain and assure appropriate internal access to a centralized national key stakeholder database. At the same time, each program office and region will need to continue to maintain the specialized lists of stakeholders and contacts appropriate to their functions and responsibilities. However, to facilitate list sharing and merging on a case by case basis, list owners would be encouraged to use the database program developed centrally.
- c. Explore options for developing a secure, Web-facilitated process for qualified stakeholders to “sign-up” for centralized list - To ensure that the Agency’s stakeholder lists are current, broad and inclusive, EPA should provide an opportunity on EPA’s website for organizations to sign-up. For example, on the website applicants might see a note informing them that inclusion on the list is not automatic-- there will be a verification process after sign-up to ensure that the information provided is complete and correct and to ensure that the organization represented by this individual is a stakeholder in the issues indicated. It may also be possible to enable organizations to access their information for “updating” purposes. If an appropriate process can be established, the list could include self-identified stakeholders who might otherwise be overlooked. Those listed could share some of the burden for keeping the list current.
- d. Streamline process for centralized sign on to Agency listserves - The Agency maintains an impressive array of newsletters and listserves on a host of

critical topics. To ensure that all appropriate parties know about these information venues, they will be prominently listed on the Agency Web pages with a clear and simple explanation or form for applying to receive the desired information.

Benefits: Agency personnel would be able to quickly identify stakeholder organizations to inform, contact or involve in Agency grants, projects, decisions or actions. Centralized lists could enable staff to speed participation process planning. Stakeholder organizations would more easily find the information and opportunities for participation that they desire and be able to register their interest(s) easily in one place on-line.

Lead Office: Website content and database maintenance: Office of Communications, Education and Media Relations; List Serve & Newsletters updates in all appropriate program/ regions with list serves.

4. Issue and promote “Public Involvement in Environmental Permits: A Reference Guide” and The “Better Decisions Through Consultation and Collaboration Manual;” provide and promote training to support them and to better prepare communities to participate in environmental decision-making.

Commenters and EPA Workgroup members noted the need for consistency in implementing the *2000 Policy* and *Part 25 Regulations*. These new tools should be widely distributed, shared on the Internet, and used as the basis for training both staff and delegated program partners. They can then move EPA and its program partners toward more consistent processes and clearer understanding of what is required and what is optional in public participation. Establishing a train-the-trainer effort to share the information in the two new manuals could speed delivery to staff across the Agency, and simplify delivery to delegated programs’ staff.

Engaging the American People

Benefits: EPA staff and delegated program partners would understand that a wide array of options is available for involving the public, know more about how to “match the forum to the fuss,” and know when public participation is required and when it is not. The training would enhance the Agency’s (and partners’) capabilities, timeliness, effectiveness, and efficiency when engaging the public. Stakeholders and the public at large would have more consistent opportunities to participate nationwide.

Lead Offices: Office of the General Counsel’s Conflict Prevention and Resolution Center/Office of Policy, Economics and Innovation, in cooperation with permits staff in all media programs and regions.

5.2 Long-Term Recommendations (1-3 years)

5. The Administrator should charge the Reinvention Action Council (RAC), through a cross-agency workgroup, with developing a Strategic Plan in 2001, and leading its implementation.

That Plan should be designed to:

- ensure full implementation of the revised *Public Involvement Policy*;
- enhance Agency-wide public participation;
- track and report progress to the Agency and to the public; and
- ensure that actions recommended in this strategy are consistent with and complement the Agency’s Public Access Strategy.

This document provides suggested actions that the group should consider and recommendations that the group’s Plan should carry out.

Benefits: Having an in-place infrastructure that encourages and supports effective public access to and participation in the Agency’s decision-making processes will build and reinforce public trust in those decisions. It will also reduce time, staff and budget resources needed to resolve confusion, complaints, disputes and litigation.

Lead Office: Supporting the RAC’s workgroup – Office of Policy, Economics and Innovation

Additional Information for the RAC’s Workgroup:

- a. During development of the Strategic Plan for Public Participation, specific and critical cross-agency services and program-based activities will continue as resources allow. The status of the following activities should be reflected in the Plan:
 1. maintaining and promoting Agency-wide access to a network of trained neutral parties to assist in dispute resolution and public participation facilitation (Office of the General Counsel’s Conflict Prevention and Resolution Center lead);
 2. building and implementing a coordinated program for EPA and delegated program staff development in public participation awareness, tools and techniques, using current training services and materials and, if required, developing new materials and enlisting new services;
 3. continuing support for research and pilot testing of innovative participation techniques and sharing results of such research (Office of Policy, Economics and Innovation lead);
 4. developing or expanding mechanisms and using technology to build the capacity of organizations, individuals and communities (particularly low income and minority) to effectively participate in EPA decision-making processes (Office of Environmental Justice lead);
 5. establishing and maintaining mechanisms for EPA staff to share participation information, success stories, training opportunities, research on new or improved techniques and generally provide assistance to one another;

6. implementing current and planned public participation activities; and
 7. supporting implementation of the Public Access Strategy.
- b. The RAC's cross-agency workgroup developing the Strategic Plan for Public Participation should ensure that the Plan addresses continuing actions to:
1. Build capacity in public participation skills in EPA staff, co-regulators and stakeholders through training, greater access and wider distribution of existing and new materials on public participation and decision-making.

While the RAC's workgroup develops the Strategic Plan, all practicable internal and external capacity building activities should continue. Ideally, specific public participation skills training can be offered widely to EPA and co-regulators' staff. The Agency and its partners would learn how to work more effectively with the public and use public input to promote environmental well-being and equity. However, since resources are scarce for this type of activity, the RAC's workgroup should work with the originating offices to promote and distribute existing and newly developed training materials (such as the "Public Involvement in Environmental Permits: A Reference Guide" the "Better Decisions Through Consultation and Collaboration Manual," and "The Constructive Engagement Resource Guide"), case studies, lessons learned, guidances and resource materials to Agency training programs (the National Enforcement Training Institute, the Watershed Academy, Community Involvement University, the Environmental Justice Training Collaborative, and other EPA and co-regulator training programs) and to EPA, state, local and tribal partners. The RAC's workgroup can work across EPA to help promote and coordinate training offerings and to improve access to these informational materials within EPA, its co-regulators and stakeholders. In 1999 the Office of Policy and Reinvention established a

"Stakeholders" page on EPA's Internet and Intranet sites to provide information to Agency employees and the public. These sites can be used to provide all available training materials directly or through links to other sites. (also see recommendation 3).

To expand individual and community capacity, EPA could assist local libraries and others serving rural, remote, or low-income communities by providing expanded access to EPA web-based materials and publicizing the stakeholders website. In September 2000, EPA's Office of Policy, Economics and Innovation sponsored an online dialogue to examine whether and how partnerships with libraries might serve to improve communities' and individuals' access to and use of web-based environmental information for related decision-making. The "conversations" that occurred during this event will remain accessible at [<http://www.network-democracy.org/epa>] and the results will be shared across the Agency.

Lead Office: Office of Policy, Economics and Innovation in cooperation with the Office of the General Counsel's Conflict Prevention and Resolution Center, Office of Environmental Justice, and the Office of Environmental Information.

2. Work in program offices, and with states, tribes and other co-regulators to improve public participation in delegated programs, with particular emphasis on core processes such as permitting.

As the RAC's workgroup develops the Strategic Plan, EPA media programs should urge and assist delegated programs to implement public participation requirements of the Agency consistently. Better coordination and a more consistently applied policy will result in across-the-board improvements in environmental decision-making as a result of good public participation. EPA must continue to identify methods and opportunities for enhancing participation and ensuring greater consistency among those managing Agency programs. Release of "Public Involvement in Environmental

Engaging the American People

Permits: A Reference Guide” late in the summer of 2000 provided an opportunity to develop pilot projects involving states, tribes, and local governments with delegated permitting authority in efforts to improve public participation.

The Permitting Action Plan commits the Agency to evaluating public participation procedures related to permits, and to assessing the need for changes in related policies, procedures, rules and statutes. Pilot projects with partners in permitting would inform the assessment/evaluation. The Agency needs to identify and use performance measures which encourage collaboration with the public. The Offices of Intergovernmental Activities, General Counsel and Inspector General, as well as representatives of delegated programs should participate in methods and measures development and piloting. To enhance accountability for public participation, EPA should share the agreed-upon performance measures with all programs, regions, co-regulators and the public. Such efforts will need funding and will require strong management support to gain and retain the cooperation of co-regulators to fully implement public participation.

Lead Office: Office of Policy, Economics and Innovation with the Office of The General Counsel’s Conflict Prevention and Resolution Center and the Office of Regional Operations.

3. Determine whether to update/modernize *Part 25 Regulations* or repeal them and rely on the *2000 Policy*.

The *Part 25 Regulations* are procedures, not regulations in the true sense. New statutes and changes to existing statutes have been adopted since EPA issued *Part 25* in 1979. Today, many programs rely on other program-specific public participation rules for many of their activities. Likewise, new procedures, programs, and tools have become available to the Agency that may need to be captured as requirements or suggested actions to create a consistent but flexible process for engaging the public across all EPA programs. The RAC’s workgroup and Regulatory Steering Committee should jointly

determine whether having the *2000 Policy* and new capacity building efforts in place will preclude need for *Part 25* revision. (The “Next Generation in Permitting” action plan commits the Agency to such an evaluation of procedures, policies, rules and statutes related to permits.)

If the workgroup and Committee determine that revision is necessary, they should work to obtain the staff and funds necessary to support a workgroup charged with thoroughly reviewing the regulations and determining whether each of the statutes since 1979 should be covered by the *Part 25 Regulations*. Based on these more detailed analyses, the Agency may conclude that other regulations and policies should be revised or amended, as necessary and appropriate, to provide consistency with the *Part 25 Regulations*. The status and schedule for *Part 25* related actions should be reflected in the Strategic Plan.

Lead Office: Office of Policy, Economics and Innovation in cooperation with the Office of the General Counsel and its Conflict Prevention and Resolution Center.

4. Coordinate dissemination of equipment and training to enable under-served communities to have access to, and receive benefits from, EPA web-based information.

If EPA develops and continues to extend web-based information technology and capacity to participate without addressing technology deficits in low-income and/or minority communities, then these communities will find themselves at an even greater information disadvantage while others move ahead. Increasing the availability of equipment, on-line and other training, and information to stakeholders would leverage existing Agency and other federal resources, improve opportunities for communities to participate in the decision-making process, and help close the digital divide. The workgroup may be able to explore new means to coordinate the process of surplussing equipment to schools and libraries. Further, the workgroup may be able to build on

the efforts of the Environmental Justice Training Collaborative (EJTC), a national network of EPA staff working in partnership with stakeholders to develop environmental justice education tools, meet critical information needs, and facilitate dialogue to advance environmental justice.

During the Strategy development process, it may be possible to explore means to develop and establish a program of volunteer assistance by EPA computer-literate employees. These employees could volunteer to provide training in the use of surplus computers, EPA web-based materials, and other environmental/public participation-focused software in libraries and schools in low income and/or minority communities and for tribes. Another option would be to seek private sector partners that develop, distribute or maintain computer hardware and software systems to work with such communities and tribes.

Lead Office: Office of Environmental Justice with the Office of Policy, Economics and Innovation.

5. Through the Public Access Strategy (once released), improve public access to environmental information and enhance public participation.

In the Public Access Strategy, the Agency will be defining approaches for identifying stakeholders and gathering feedback from them as crucial elements of public access. The Strategy will identify major issues associated with impediments to timely and open public access (e.g., data security and confidentiality, data quality, technology capabilities and the “digital divide”) and guide the Agency in approaching these issues. Outlined within the Strategy will be the internal roles and responsibilities on public access and methods for coordinating cross-Agency efforts. Implementing the Public Access Strategy will be an important Agency-wide effort requiring cooperation and leveraging of available resources. A clear and innovative Public Access Strategy will be a strong foundation on which to build the Public Participation Strategy recommended in this report.

Lead Office: Office of Environmental Information.



SUGGESTED ACTIONS FOR IMPLEMENTING THE RECOMMENDATIONS

To ensure coordinated action and the ability to leverage that action across the Agency, it is critical that the Administrator charge the Reinvention Action Council, through a cross-agency workgroup, with developing a Strategic Plan for Public Participation. Through that group the following specific actions should be considered for inclusion in the Strategic Plan:

- a. building and implementing a coordinated program for staff development in public participation awareness, tools and techniques, using current training outlets (NETI, Watershed Academy, Learning Institute) and materials (“Better Decisions Through Consultation and Collaboration Manual,” “Public Involvement in Environmental Permits: A Reference Guide,” “The Constructive Engagement Resource Guide,” Suggested Actions in Report to the Administrator on Public Participation, fact sheets/tips, etc) and, if required, developing new outlets and materials;
- b. making such staff development training available to delegated program partners;
- c. providing clarification for staff and the American people on when public participation in EPA decision-making is a requirement and when it is at the Agency’s discretion (completion of summaries of all statutes, regulations, executive orders, and associated materials – OGC lead);
- d. providing clarification for state, tribal and local government partners and the American people on when public participation in EPA’s delegated programs’ decision-making is a requirement and when it is at the partners’ discretion (OGC lead);
- e. if necessary after revising the *Policy* and expanding training in its implementation,

Engaging the American People

- coordinating revision of the *Part 25 Regulations* to reflect technology improvements, the enhancement of participation tools and programs, and the expansion of EPA's regulatory authority (OGC/OPEI led workgroup);
- f. advocating the benefits of early, clearly defined, and easily accessed participation opportunities for stakeholders and interested citizens (OPEI lead);
- g. establishing and maintaining a network of internal and external public participation practitioners and delegated program partners through:
1. centrally updating internal and external network lists on a continuing basis (OCEMR and OGC/CPRC leads);
 2. convening annual meetings of the network, with rotating lead responsibility, through the EPA Community Involvement Conference;
 3. documenting successful practices and procedures, and sharing them through the Stakeholder web site;
 4. sharing participation tools developed in any EPA program with all programs through the EPA Intranet and, as appropriate, the Internet (OGC-CPRC/OPEI lead);
- h. maintaining and promoting appropriate Agency-wide access to a network of trained neutral parties to assist in dispute resolution and early involvement facilitation through a contract (OGC-CPRC);
- i. maintaining for internal use, a centralized and searchable database of organizations and individuals involved in EPA public participation activities (OPEI/OCEMR/OGC lead);
- j. continuing to support testing of innovative participation techniques and sharing results of such research (OPEI lead);
- k. establishing a public participation innovations award to be given at the National Awards Ceremony only when an office or region meets rigid criteria;
- l. developing a plain language handbook to serve as a road map for the public on how to participate in EPA decision-making, including statutory and regulatory provisions that specifically address public participation, as well as the various other ways in which someone could get involved in an Agency decision-making process;
- m. developing a public participation "tool-kit" to help ensure full implementation and compliance of the *Public Involvement Policy, Part 25 Regulations* and other requirements for EPA staff and co-regulators;
- n. developing or expanding mechanisms to build the capacity of organizations, individuals and communities to effectively participate in EPA decision-making processes through:
1. cataloging and sharing both internally and externally the in-place mechanisms (EMPACT, TAG model, XL communities model, CBEP, tribal multimedia grants, sustainable development, National Estuary Programs, etc.) and funding for capacity building;
 2. ensuring that criteria and processes for obtaining technical assistance or funding are in plain language and made available in a variety of formats (electronic, fax, print by written or toll-free telephone request);
 3. increasing opportunities for low-income and/or minority communities and tribes to benefit from EPA web-based information by:
 - exploring ways to surplus equipment so that one-half of all EPA deaccessioned computers (meeting set specifications) can be serviced, donated, and delivered to schools/libraries or nonprofit organizations that serve such communities and tribes;
 - enabling the Office of Environmental Justice to coordinate with other federal

- agencies, including the Departments of Agriculture, Interior, Commerce and Education, and private entities to provide Internet access to communities and tribes and to enhance participation in environmental decision-making;
- encouraging EPA program and regional office staff who are computer-literate to volunteer to provide and/or develop appropriate training in the use of computers, EPA web-based material, and other environment/public participation focused software and curricula in libraries and schools in low income and/or minority communities and tribes; and
 - assisting in the development of partnership agreements with leading private sector software and computing equipment companies for providing technical assistance to enhance training and equipment surplussing and maintenance.
4. providing written summaries of participation options and making them available on the web site, through partners, public libraries and direct requests, and in other languages, when appropriate (e.g., in linguistically isolated populations, neighborhoods where English is not the dominant language, or when there is an imminent health or environmental hazard.);
 5. providing communities with tools to assess their own environmental and public health needs, and to access and analyze EPA decision-making processes to determine those which may assist them and how to effectively participate in those processes;
 6. establishing a national award to be given to an organization or community for effective public participation that makes a difference in EPA decision-making (criteria to be developed);
 7. highlighting results of an on-line dialog with librarians, community organizations and others to determine the potential for libraries to become partners in information provision on environmental decision-making (OPEI lead - September 18-29, 2000);
 8. supporting pilot projects in communities that wish to test the EPA-libraries partnership envisioned in (7) (OPEI lead)
- o. compiling and reviewing past evaluations of EPA initiatives that have included significant public participation/stakeholder involvement components to determine:
 1. what the Agency has been doing effectively;
 2. what the Agency should be doing more of; and
 3. the special issues various program offices should consider before developing or revising public participation/ stakeholder involvement initiatives.
 - p. enhancing the Stakeholder website so it will become a gateway to information that can assist individuals and organizations to participate in environmental decision-making by providing links to:
 1. EPA program and information resource sites;
 2. glossaries of environmental terminology;
 3. data sites with local information (such as TRI, Airlinks, Surf Your Watershed);
 4. state environmental and health agencies;
 5. other federal sites with data or information;
 6. Federal Register Notices and Regulatory Agenda;
 7. EPA and other environmental education materials;
 8. federal government's local governments gateway and nonprofit gateway.
 - q. review and evaluate the effects of streamlining and reinvention efforts on public participation.

"The challenge for watershed planning efforts and community based environmental protection is to invigorate local support by addressing local problems, but doing so in a coordinated manner that enhances mutual benefits and makes progress on regional problems."

Thomas Webler, Social and Environmental Research Institute