

## CHAPTER 6

# CAPACITY BUILDING

### Introduction

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

### Continuing Problems

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

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

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

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

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

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

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

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

## Recommendations

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

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

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

scientific, technical, policy and regulatory analyses and studies.

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

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

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

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

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

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

## II. Local Government

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

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

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

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

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

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

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

**Box 29: Nye County Formal Interactions Process**

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

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

sewage treatment, ground water and surface water protection;

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

d. Assistance in applying for funding mechanisms.

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

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

### **III. Tribal Governments**

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

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

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

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

#### **IV. State Governments**

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

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

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

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

#### **V. Federal Agencies**

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

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

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

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

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

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

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

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

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

## **VI. General Capacity Building**

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

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

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

## **Conclusion**

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



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

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



