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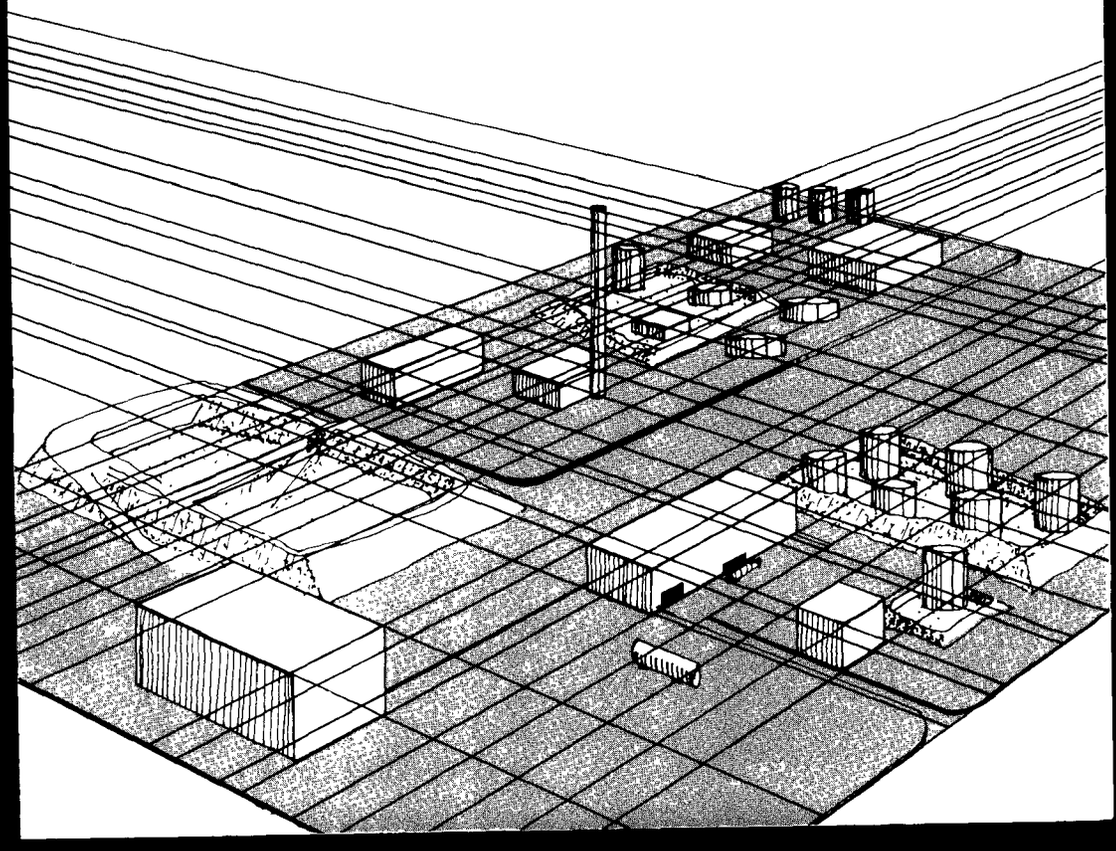
Using Mediation When Siting Hazardous Waste Management Facilities



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This handbook was prepared by the Wisconsin Center for Public Policy, Madison, Wisconsin, and the Institute for Environmental Mediation, Seattle, Washington, under grant number T-901253010

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Using Mediation When Siting Hazardous Waste Management Facilities

A Handbook

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Contents

Summary

Mediation has been successful in resolving a wide variety of environmental disputes in recent years Although developed primarily as a technique for resolving labor disputes, mediation offers a constructive method by which a prospective operator of a hazardous waste management facility and other concerned parties can identify acceptable terms, in addition to those required by governmental regulations, for the siting, design, and operation of the facility

Mediation is a negotiation process conducted by an impartial and independent mediator or "third party." Through mediation, parties to a dispute meet face to face to explore the facts, issues, and various viewpoints in the dispute and seek to settle their differences through bargaining and exploring alternative solutions. If mediation is successful, the parties jointly develop a compromise agreement, a package of specified terms that each party can endorse.

Through the use of a hypothetical case study based on a composite of successfully mediated disputes over the siting and operation of solid waste landfills, this handbook illustrates the prerequisites for effective negotiations, the appropriate timing for mediation, how parties become involved in the process, how the mediator operates, the dynamics of power in mediation, how to ensure implementation of the agreement, and how to select a mediator. This book gives particular emphasis to how each of these factors might relate to a dispute over the siting and design of a proposed hazardous waste management facility.

Appendices distinguish mediation from other conflict resolution processes and list groups and individuals involved in environmental conflict resolution.

Introduction

This is a handbook for people involved in an environmental conflict who are considering mediation It explains the environmental mediation process and helps parties identify when mediation might be suitable It is not a training manual on how to negotiate, though some insights can be gained, nor is it a guidebook on how to be a better mediator.

Specifically, this handbook is for parties to disputes over the siting of hazardous waste management facilities. To the authors' knowledge, no hazardous waste facility siting dispute has yet been mediated Indeed, many of these disputes may include elements that are not amenable to mediation Nevertheless, mediation is a possible approach to settling such disputes, and those parties who are directly affected should understand the mediation process, its application in similar circumstances, and its potentials and limitations

Contrary to what might be expected, it is not the emotional nature of many hazardous waste siting disputes that challenges the application of the process, for mediation has succeeded in many highly charged conflicts in labor relations, prisons, racial disturbances, and international affairs, as well as in other types of environmental disputes. Rather, it is that some parties may find the objective of mediation—compromise—absolutely unacceptable when it may place a hazardous waste facility in their community Mediation will not work when one or more of the parties adopts an uncompromising stance, and the dispute will be concluded, instead, in an adjudicatory or political forum. Mediation cannot overcome truly rigid positions, whether based on subjective, emotional grounds or beliefs about technical matters such as the safety of particular technologies, both of which are common in hazardous waste disputes.

Other characteristics typical of hazardous waste disputes are that there are complex and highly technical issues, government plays a strong regulatory role, there are many concerned parties, and site-specific considerations and political dynamics are very important While making resolution by any method difficult, even these complexities are within the capability of mediation to accommodate In fact, the essential nature of mediation may make it better suited to deal with such factors than adjudicatory processes because mediation enhances the exchange of information, addresses people's real concerns rather than only the issues that can be litigated, and involves the people who have the power to make or overturn decisions

Mediation is a negotiation process conducted with the assistance of an impartial and independent mediator, a "third party" who has no established or continuing relationship with the parties to the dispute It brings people together to seek resolution of their differences through bargaining and joint problem solving. Participation in mediation has traditionally been voluntary, although some States

are experimenting with requiring mediation in certain types of labor disputes It is possible that some States will include similar mandates in hazardous waste facility siting laws Massachusetts now requires negotiations in its siting process, although the law does not specify mediated negotiations

Whether mediation is voluntary or required by legislation, settlement of the dispute can never be required of the parties By definition, a "settlement" is a compromise that parties jointly develop and voluntarily enter If they fail to reach settlement through mediation, decisionmaking will revert to the appropriate adjudicatory body, such as a court, agency, or, in hazardous waste disputes in some States, a State siting board. The mediator never issues a judgment or ruling.

Through negotiations and the aid of a mediator, parties to hazardous waste siting disputes may find a variety of avenues for reconciling the expected and perceived negative effects of a proposed facility on its neighbors with society's need for the facility Many State hazardous waste control laws create a framework for negotiations by a prospective facility operator with local parties and/or the State government In effect, they are to strike a bargain Elements of that bargain may be measures to alleviate, or mitigate, adverse effects of the facility on the community, to compensate the community for impacts that are not alleviated, or to provide incentives or benefits to the community for accepting the facility.

Some States have already adopted, and others are considering, legislation that incorporates

- flexibility to localities to require, request, or negotiate agreements and to developers to approach local governments;
- establishment of a specified process through which developers negotiate with communities;
- specific compensation rates required by the State (such as fixed per-ton or per-volume fees to be paid the community by the operator) with no allowance for local negotiations,
- provisions for compensation or incentives to the community by the State instead of by the operator

In each situation, except where the exact form of compensation is defined by law, negotiations will occur to define the mitigation, compensation, and/or incentive measures to be undertaken Any point at which negotiations occur is also a point at which mediation may have a place, for mediation simply adds the assistance of an impartial person who applies the skills of a conflict resolution specialist in facilitating and conducting the negotiations.

However, one caution is in order While there are many variables in overall project design that can be negotiated, the engineering standards on which permits are granted cannot be negotiated to be more lenient than the standards established by government It is possible that additional safety precautions or environmental protection measures can be part of an agreement, but the basic engineering and safety standards must be determined by regulation and ensured through the permitting process Indeed, such regulatory standards merely provide a base below which a negotiated settlement cannot fall, in much the same manner as minimum wage rate laws provide a floor below which labor-management agreements cannot go For that reason, the permitting agency is unlikely to be a party to negotiations, though it might be on hand to act as a resource and to respond to the technical elements of any proposals. And it might be willing to

ENVIRONMENTAL MEDIATION SUCCESS: "SPIRIT OF PORTAGE ISLAND"

A major northwest tribe and the surrounding county had reached an impasse over the future use of a pristine island, one of several issues that divided them. The island, which the county had acquired in the late 1960s from a number of individual landholders for use as a park, is completely surrounded by the reservation and tribal tidelands. While the tribe had originally supported this use, a series of misunderstandings had led to the tribe's withdrawing access rights, effectively blocking public use of the land. The tribe wished to reacquire the island that they regarded as an historic part of their reservation.

The county had protested, but when two steps in the administrative appeals process upheld the tribe, the issue landed on the desk of the Secretary of the Interior for "final" adjudication. All concerned recognized that, whatever the Secretary's decision, the losing party would appeal to the Federal courts, beginning another long series of costly and divisive battles.

After 7 months of preparation and negotiations, mediators from the Institute for Environmental Mediation in Seattle assisted the tribe and county in reaching an agreement. Under the pact that was signed in April 1979, the tribe would reacquire the island but dedicate it for use as a public park. The purchase price recognized appreciation in value of the property and could be used for an additional park elsewhere in the county. The agreement provided 18 months for the tribe to accumulate the necessary funds to effect the actual transfer.

In late 1980, following a series of cooperative efforts to raise funds and to assure the continued availability of State and Federal development money that had been originally committed to the county park plan, the agreement was consummated. During the ceremonies marking the official transaction, the tribal chairman remarked that the county and tribe could resolve their remaining differences "in the spirit of Portage Island."

ENVIRONMENTAL MEDIATION SUCCESS: IDAHO LAKE AND SEWER EXPANSION

An Idaho dispute involved the expansion of an existing sewer to accommodate development around a large lake, while assuring the lake's continued integrity as a public water source. Existing homeowners were concerned about rapid condominium development and other growth around the lake. When they sought formal representation on city and county agencies for their views concerning planning, zoning, and sewer design and hookup policies, it was denied. The problem was complicated by the existence of overlapping governmental and utility jurisdictions.

The specific issue that brought the conflict between the Homeowners Association and the U.S. Environmental Protection Agency to a head related to the adequacy of an environmental impact assessment and of sewer construction engineering. Through litigation the Homeowners were able to stalemate sewer construction and raise doubt regarding the future of a $5 million EPA grant. With court dates and construction deadlines rapidly approaching, the parties faced real uncertainties, yet they all shared a mutual concern for protecting the water quality of the lake on which they all depended.

In mid-March 1980, mediators from the Institute for Environmental Mediation

were contacted and made an initial trip to meet with the parties. There followed an intensive period of telephone discussions with the parties, and negotiations were scheduled for mid-May—immediately preceding the impending court date. The week began with more meetings between the mediators and individual parties. As a result of that groundwork, a tentative agreement was reached during the first day of formal negotiations. Following further clarifications and ratification by the parties, the formal agreement was signed in July 1980. The agreement specified policies for limiting and allocating sewer connections and created a new planning and zoning body in which all parties would have proportional representation.

ENVIRONMENTAL MEDIATION SUCCESS: PORT OF EVERETT

By late 1976, the Port of Everett, Washington, had stalled in its efforts to develop and expand facilities in a major estuary. Conservation and recreation interest groups had used permitting processes and litigation since the early '70s to disrupt implementation of the port's long-range plans. In addition, Federal fish and wildlife agencies had prevented a major development by the port for 2 years. As a result of opposition from the citizens' coalition and Federal agencies, the port found itself unable to grow. And while the opponents were not totally opposed to development, they were cast in the role of constantly frustrating economic growth and faced the prospect of continuing rounds of confrontation and litigation.

In January 1977, the Port Commission turned to the Office of Environmental Mediation in Seattle (now the Institute for Environmental Mediation) for assistance, and two mediators were assigned to the case. A panel of ten citizens representing industrial, commercial, labor, environmental, and recreation interests met over a 9-month period, with technical assistance provided by Federal, State, and local agencies involved in the issues. They negotiated a series of recommendations covering the location, timing, and nature of port development, public access to the waterfront, wetlands preservation, recreational development, and public participation in project design.

In a special meeting in late October 1977, the Port Commission formally adopted these recommendations as the official comprehensive plan for port development. Relevant agencies also recognized the plan as the basis for future permitting decisions.

incorporate portions of the agreement into the permit if that is requested by all the parties

CONFLICT IS THE BASIS FOR CHANGE

A widespread misunderstanding of the role of conflict in our society makes it difficult for many people to understand or adequately consider methods for settling conflict. We tend to see conflict as an aberration, a blemish on our social complexion On the contrary, conflict, confrontation, and the public awareness they bring develop the issues, mobilize constituencies, and develop leadership. Conflict is the very basis for social change in a democratic society. Environmental mediation must not, therefore, be perceived as a mechanism for the avoidance of conflict Rather, mediation can serve both to legitimize conflict and to provide an arena within which shifting social priorities and power centers can interact to ensure that the social fabric may yield to and reflect social changes rather than resist and be torn apart

In most situations, conflict produces some form of compromise, another maligned concept in our society. Yet any agreement that resolves a dispute, except an agreement for total and unconditional surrender, is a compromise. Saul Alinsky discussed conflict and compromise in terms of their value to community organizers and local citizen organizations

> Compromise is another word that carries shades of weakness, vacillation, betrayal of ideals, surrender of moral principles . . .
>
> A free and open society is an ongoing conflict, interrupted periodically by compromises which then become the start for the continuation of conflict, compromise, and ad infinitum. A society devoid of compromise is totalitarian. If I had to define a free and open society in one word, the word would be "compromise "[1]

Environmental mediation is a method for constructively channeling conflict into compromise. Mediation relieves the need for a party to discredit and defeat its adversaries as it must do in the courtroom. Instead, it brings the differing interests and experts together face to face to collaborate on designing a solution. Its rules are the ethics of good faith bargaining Its by-products tend to be a better understanding by all the parties of each other's concerns and a clearer definition of the issues It is a highly flexible process and conducive to innovation.

Nonetheless, for various reasons that will become clear in the following chapters, mediation cannot settle every hazardous waste siting dispute. It is but one of numerous approaches available for handling disputes, some of which do not allow compromise. Whether environmental mediation is appropriate to a particular dispute is ultimately a decision to be made by the people involved after consultation with a mediator. The process itself has no apparent or legislated authority The mediator is empowered by the felt needs of the parties to settle their

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[1]Saul D Alinsky, *Rules for Radicals* (New York Random House, 1971), p 59

dispute on mutually agreeable terms. If there is an analogy, it is to the civilian who voluntarily directs traffic at the scene of an accident:

> When there is no apparent focal point for agreement . . . (the mediator) can create one by his power to make a dramatic suggestion. The bystander who jumps into an intersection and begins to direct traffic at an impromptu traffic jam is conceded the power to discriminate among cars by being able to offer a sufficient increase in efficiency to benefit even the cars most discriminated against· his directions have only the power of suggestion, but coordination requires the common acceptance of some source of suggestion.[2]

MEDIATION WORKS IN SITING SANITARY LANDFILLS

Because a hazardous waste siting dispute has not yet been settled using mediation, this handbook relies on a hypothetical composite of successfully mediated disputes over the siting and operation of sanitary landfills. Mediators from the Wisconsin Center for Public Policy achieved these settlements in 1978-80. The details in this handbook have been selected to protect the confidentiality necessary to any mediation and to respect the integrity of the individuals.

Although this handbook offers some suggestions, you must relate the discussion of environmental mediation in it to a particular hazardous waste siting dispute in which you may be involved to judge the appropriateness of its use in that dispute Look beyond the surface details of this case study, however, for they will always be unique to a particular dispute, regardless of its magnitude, complexity, or intensity. Instead, compare the conflict dynamics of the hazardous waste siting dispute to the one presented here, for it is in process, not content, that the mediator operates. People in conflict behave much the same way in any type of dispute, and it is the purpose of mediation to harness conflict behavior, together with the collective expertise of the parties, into constructive relationships and workable solutions

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[2] Thomas C. Schelling, *The Strategy of Conflict* (Cambridge, MA· Harvard University Press, 1960), p 144

Why Mediation?

A City is seriously in need of a site for a new solid waste landfill. Its existing site is under closure orders from the State Department of Natural Resources (DNR) because it has reached capacity and is threatening to pollute ground water and a nearby trout stream The City's preferred location is outside its boundary, and it annexes 150 acres in the adjacent Town (township) and proceeds with site development and permitting procedures A manufacturing company in the City vigorously supports this decision because it will be a principal user of the landfill and will profit from its proximity. The company is joined by the union of its employees and other members of the City's economic community in lobbying for this site

Unwilling to be the neighbors of the new "dump," certain residents of the Town, already resentful of the City's encroachments, wage an active campaign against the City's site Eventually they succeed in winning the support of Town officials. These officials first use informal political means to try to pressure the City to reconsider its decision However, the Town virtually stands alone when nearby towns, fearing they might be considered as alternative sites, offer only nominal support

The Town government resolves to take all available legal means to stop the project It files an appeal to DNR and a series of court appeals challenging the annexation and the environmental impact assessment for the landfill. It also passes an ordinance limiting the use of town roads needed for access to the site.

Just as landfill construction is getting under way, the Town succeeds in winning a 3-day restraining order to halt development. The judge indicates he might give favorable consideration to an injunction Meanwhile, another court denies the City's effort to invalidate the Town's road ordinance

After 2 years of antagonism between these neighboring jurisdictions, they decide to try mediation At the end of several months of on-and-off negotiations, the City, Town, and DNR reach an agreement that contains the following provisions, primarily measures to lessen the impact of the landfill on its neighbors:

- *The City agrees to specified hours for construction at the site and for operation of the landfill, when completed, in order to minimize nighttime disturbances.*
- *The City agrees to limit the number of years the landfill will be in operation and return the 150 acres to the Town after the landfill is closed and the area is reclaimed*
- *The City agrees to construct a transfer station within its original municipal boundaries so waste can be compacted and truck traffic to the landfill will be reduced.*
- *The City agrees to ban all private vehicular use of the site once the transfer station is completed and to discourage traffic prior to that time.*

- *The City agrees to provide a DNR-approved dumping box at a location in the Town for use by Town residents, so they will not have to travel to the City's transfer station*
- *The Town and City agree that the City can use the Town's existing landfill for certain purposes until the City's landfill is completed in exchange for an equivalent amount of disposal in the City's new landfill later by the Town*
- *The parties create an advisory committee of one member representing each party to monitor implementation of the agreement on a continuing basis It will select a mutually acceptable, impartial chairperson and will be free to call on the mediators again should further assistance be needed*
- *The agreement is subject to modification only upon mutual written consent of all three parties*
- *The Town and City agree to draft, with DNR assistance, companion ordinances for their respective municipalities that will enact the provisions of the settlements*
- *The Town and City agree to withdraw all petitions, motions, applications, complaints, and similar pleadings and documents filed in DNR administrative proceedings and the courts*
- *The agreement is issued as a Consent Order by the Department of Natural Resources and a Stipulation in the pending court cases.*

DISCUSSION

The provisions of this agreement provide a ready contrast between what mediation offers disputants and what is offered by such adjudicatory processes as "petitions, motions, applications, complaints, and similar pleadings " While the latter legal actions employed and protested all manner of legal technicalities in the disposition of the dispute, they were not based on the problems that brought the parties into conflict The mediated agreement, on the other hand, responds to the real concerns of people who are faced with living near a landfill Local residents opposed the landfill because they feared litter, odor, pests, traffic congestion, and other disturbances, not out of a concern for proper annexation procedures or adequate reporting of environmental impacts, the issues in litigation. The City was concerned about its citizens' needs for a disposal facility, not the powers of towns to limit road usage In this respect, this case is typical of a great many environmental disputes that are litigated and decided on much narrower grounds than the underlying environmental, economic, and political concerns that separate the parties

Through legal actions the Town sought to defeat this landfill site altogether and to force it to some other location In the settlement, the Town yielded on that ultimate goal, but it gained a voice in the design and operation of the project that it had previously lacked

Litigation might eventually have produced a winner and a loser, but probably at a greater cost of time and money to both sides. If the Town had lost, it might have had to accept the landfill plan as originally conceived, without any modifications that would make the facility more tolerable to its neighbors If the City had lost, it would have had to begin the siting and site development process anew with all the attendant costs and environmental pollution resulting from continued use of the old landfill Mediation avoided the riskiness of litigation and expedited a compromise in

which each party made some gains and some concessions And, typical of most negotiated settlements, the compromise was actually a series of agreements combined in a way not previously foreseen by any of the parties. The participants had not even discussed one provision, the building of a transfer station, prior to negotiations.

The community accepted the development, but the developer incurred some additional costs to make the project more palatable to the community Neither side was totally satisfied with the outcome, but the fact that the parties voluntarily entered into the agreement signified its acceptability in their eyes. The uncertainty and costs of further protracted litigation were removed, a benefit to all of the parties.

In this hypothetical case study, the litigation did not involve the issues of most concern to the parties In some hazardous waste siting cases, however, the parties are truly opposed to a facility because they believe it threatens the environment or violates the law, perhaps the actual issues in litigation. But resistance also may arise more from a fear of lowered property values or loss of the community's aesthetic qualities and character, effects difficult to prove or not actionable in court. In the give and take of negotiations, opponents can balance those perceived effects with the dangers of "midnight dumpers" and the economic consequences of not having a facility. They can discuss more fully how the local economy stands to benefit from a facility, the possibilities to lessen health risks and ground-water contamination by engineering techniques and careful handling of the materials accepted at the facility, and the hazards that continued use of existing facilities presents.

The critical elements of the mediation process illustrated in the hypothetical case study are as follows.

- The parties cannot be required to negotiate or agree to any particular settlement of their differences. Indeed, unless they are willing to enter into the process with some intent to reach an accommodation of their differences, the mediation effort is likely to be unproductive.
- Mediation is an adjunct to the negotiation process, and there will be a joint or face-to-face exploration of the issues.
- The mediator supports and facilitates the negotiation process by improving communications, serving as an interpreter, arranging meetings, suggesting alternatives, helping to draft language, and assisting in maintaining communication with those not at the table. In labor-management disputes, the mediator typically enters a dispute to revive lagging or severed negotiations. In environmental disputes, however, the mediator usually serves primarily to establish a negotiation relationship
- Any agreement reached is the creature of the parties and must be deemed workable and acceptable by them The mediator is not a party to the agreement

Mediation is not the only method used by third parties to assist individuals and organizations in resolving environmental conflicts. The other techniques, such as conflict assessment, conflict anticipation, facilitation, and conciliation, ordinarily occur earlier in the development of a dispute than is appropriate for initiating mediation (See Appendix A for discussion of these techniques in greater depth.) They do not require the degree of definition of issues, identification of parties, or

realization of pressures that are necessary for the negotiations that take place in mediation Rather, they often lead to a clearer definition of issues and the emergence of new participants by encouraging participation, eliciting and transmitting information, and providing a basis for developing viewpoints. Indeed, these methods enable people to share their data and views in ways that result in avoiding conflicts

It may happen, however, that although these processes can help to narrow the issues and avoid conflicts by making each person's point of view clearer, setting up better working relationships, and correcting factual discrepancies, they will still not achieve a complete settlement. Indeed, such clarification may actually serve to convince the parties of their basic differences That does not suggest the processes are inadequate These processes, in various combinations and sequences, can be complementary rather than competitive or exclusive.

When Is Mediation Right?

Each of the principal parties has an urgent need to end the dispute. The City has invested 2 years in studying various sites and developing this particular one. It faces a major setback if, through litigation, the Town succeeds in having this site rejected The weather is also a factor. It is the end of summer, and the City planned to complete construction by winter. Thus the ability to delay the project gives the Town leverage in negotiations with the City.

Urgency from the Town's standpoint comes mainly from the costs and uncertainties of further litigation It has already spent more than originally appropriated to fight the landfill While the Town has succeeded in delaying the project, it has no assurance of eventual victory. Although the Town wants to prevent the landfill from being built at this site, it recognizes that the bargaining power it gains through delaying tactics will disappear if it eventually loses in court. Furthermore, some Town officials who have vocally opposed the site are beginning to anticipate the need to change their position, as Town residents living far from the site start to criticize the amount of money being spent on litigation.

Another party to the dispute is Environmentalists in the Public Interest (EPI), a Statewide citizen organization dedicated to acting as a watchdog of the DNR's regulatory activities. EPI believes the DNR may have violated the State Environmental Policy Act in its handling of this case and is contesting the adequacy of the agency's review of alternative sites and the required documentation of that review. Although EPI has joined the Town in petitioning the Circuit Court for an order to have DNR amend its documentation, the group has been reluctant to commit its limited resources to a full-scale legal battle. It does not have reason to believe the landfill itself will cause environmental harm, and it is aware of the harm threatened by the continued use of the old facility

The DNR, too, is anxious to have the dispute resolved, both because of the pollution threatened by the City's overloaded existing landfill and because DNR procedures and decisions are the subject of legal challenges by the Town and EPI.

DISCUSSION

Conditions were right for mediation. After 2 years of controversy, the key issues were well defined and the parties at interest were known. Furthermore, each party had some leverage in the dispute. the City had strong support from the community to continue and had the resources it needed to press its case; the Town had a temporary restraining order stopping construction of the landfill and therefore might be able to delay the project past the end of the construction season; and the DNR had the licensing authority. Each party also had well-identified and reasonably loyal support in the negotiations from its constituency Each party had

a clear interest in getting the matter over with, especially since EPI and the Town had increased the pressure by their attempts to impose legal sanctions on the DNR and the City. Most important, each was willing to relinquish uncertain litigated victory in favor of certain, specified, negotiated gains.

The hypothetical case study demonstrates the conditions that, if met, help mediation work:

- *All parties must recognize the necessity of other parties' participating in the decisionmaking process* This is more than the "right to be heard" or "maximum feasible citizen participation" espoused in public participation models. In any dispute where negotiations occur, some level of recognition has been achieved among the parties—an understanding that whatever one's preference, it is necessary to work together to find some mutually acceptable solution to the issues in conflict
- *Each of the parties involved must have some power in the dispute.* This means power or influence sufficient to exercise some sanction over the ability of other parties to take unilateral action. Successful negotiations are not the result of charity or of "doing what's right." They are the product of necessity.

  The power of those challenging a facility may be based on threats of court and administrative challenges, unfavorable public notice, direct economic action such as a boycott, or some political action such as an initiative campaign. The power of a party proposing a facility might be based on some combination of legislation, regulation, and tradition. However, unless there is sufficient credible power on all sides, it is unlikely that the powerful party will consider any negotiation on the issues
- *The participants must be able to commit themselves and their constituencies to the implementation and support of any agreement reached* This, in turn, requires that interest groups have had time and opportunity to mobilize support and workable constituencies for their positions and to build some organization and structure On one hand, this mobilization provides power for groups in formative stages of organization. On the other hand, identifiable, cohesive constituencies with secure leadership mean that their representatives are not only able to negotiate and reach agreements but also to make meaningful commitments to support and abide by those agreements.
- *There must be some sense of urgency all around.* If any party can achieve its objective by delay or by waiting out the opposition, meaningful negotiations will not occur The negotiations process will become a sham and another strategy for delay This sense of urgency is not likely to be present until the opposing parties have had some chance to confront one another and the issues. Negotiations, therefore, are not a tool for avoiding conflict, but for settling it.
- *The outcome, without mediation, must be uncertain.* Bargaining power is not stable, it is transient. When a litigant is confident of success in court, the opposing party is not likely to achieve much of a settlement. However, before the result is predictable, both parties can derive power from the mystery surrounding the question of which side is going to win Once the mystery is dispelled, one of the disputants becomes relatively powerful. There is great reason for negotiating for the party for whom a loss is predictable, but there is little reason for its adversary to compromise when it can foresee complete success. Thus, while the outcome is still problematical and the parties are

motivated to compromise rather than risk losing, it makes sense to initiate mediation to expedite settlement For this reason, mediation is sometimes less an alternative to litigation than a creature of litigation, although it can be an alternative to the ultimate adjudication of the issues.

It is sometimes said that mediation becomes appropriate when the dispute appears deadlocked or at an impasse. In fact, it handicaps mediation to wait for final position-taking Mediation is a technique for supporting and assisting the parties when they are still in a position to compromise It is better, therefore, to begin negotiations before the parties feel they have reached their final positions. Once they have arrived at their final positions, the mediator is faced with having to persuade them to become more flexible, to back off a bit. Indeed, it may be true that parties can no longer compromise, that they have exhausted their ability to change their positions, and they must retain the rigid postures until the issue is resolved. If this point is reached before a mediator is called, it is unfortunate and wastes the potential contribution of mediation.

Mediated negotiations in hazardous waste facility siting need not occur only in the context of litigation There are opportunities for exchanging and accepting proposals during preliminary planning and site-selection stages. But it is frequently the urgency and fear of losing caused by litigation that generate an objective examination by each party of its position and therefore a willingness to compromise The statutory and regulatory schemes that govern hazardous waste management tend to be lengthy and complicated. There may be more boards and agencies to satisfy and more stringent tests to pass than in other types of facility sitings This undoubtedly reflects the inherent dangers of error and the politics of making decisions on such emotional issues.

It is difficult to generalize about the effect on negotiations of these more complex procedures. Perhaps there will be so many opportunities for delay and such high costs that they will overwhelmingly favor the parties that can afford to wait while the labyrinths are explored The many opportunities for the parties to argue the merits of their positions may serve to heighten the emotional factors that make settlement difficult, or they may make positions clearer and increase the opportunities for compromise

Some States allow a local veto while other States can preempt local actions. In either situation, one party may be far too sure of success to consider compromising. But there will surely be some times and places when the confluence of identifiable issues, parties, and the undesirable effects of inaction in hazardous waste siting disputes will provide settings conducive to compromise and settlement

Who Comes to the Table?

The parties learn about mediation almost by chance. Two mediators from a new environmental mediation facility attend a meeting of Department of Natural Resources (DNR) attorneys to acquaint them with the new service that is available. The same day the attorneys discuss how to proceed in the landfill case. The attorney in charge of this case decides to involve the mediators on the spot.

Many phone calls and meetings follow. In addition to the principal parties—the City, Town, Environmentalists in the Public Interest (EPI), and the DNR—numerous other parties have had some role or have taken positions in the dispute and must be consulted

The County is caught between two of its jurisdictions in a number of ways. It has zoning authority over the site in question, it owns one of the other sites EPI wants to have considered; and it is under pressure from the Town to develop a County-wide landfill The County has not yet sided with either the City or the Town, but it is currently debating action on the rezoning.

The mediators visit the Chamber of Commerce and the company and union that have lobbied for the disputed site The mediators explain their techniques, experience, and funding sources. They find that, although these organizations are vitally interested in the landfill and are in a position to influence the City's position, they believe they will be well represented by City officials in the negotiations and therefore do not feel a need to participate as negotiators.

Three local citizen groups are opposing the landfill for environmental reasons. A lake rehabilitation group composed of local landowners and a fishing club are both concerned about the landfill's potential effect on water quality, and an environmental group advocates recycling rather than building a new landfill. The mediators have discussions with each of these parties to ascertain their views and discover what they might find acceptable in a settlement. It becomes clear to the mediators and the groups that, for the most part, the groups' concerns for environmental quality are represented by EPI

The mediators decide to try first to resolve EPI's dispute with the DNR, because EPI's concerns may be resolved without actually building the facility. In two mediation sessions, EPI, the City, and the DNR review the DNR's evaluation of alternative sites, discuss two additional sites EPI thinks should be considered, and identify additional actions the City and the DNR can take to satisfy EPI that the State Environmental Policy Act requirements have been met. They reach an agreement requiring the City to take soil borings at an additional site and the DNR to provide additional information in its documentation. EPI agrees that, upon completion of these actions, it will support rezoning of the site by the County.

Next, the mediators meet with Town representatives to apprise them of the DNR-EPI-City agreement Shortly afterward, the Town requests that the mediators

facilitate direct contact between the Town and City. One meeting is held at which information is exchanged and the discussion focuses on what the City can do to meet the Town's concerns if, ultimately, the landfill is built

During the ensuing 2 months, numerous events affect the dispute. First, the Town delays further negotiations because it is busy developing its litigation against the landfill On the City's side, the County moves to rezone the site and the DNR gives its final approval for the landfill. The Town acts quickly to halt construction by seeking an injunction in the Circuit Court, causing the City to withdraw from a scheduled bargaining session However, when the judge refuses to enjoin construction for lack of jurisdiction over the DNR, but issues a restraining order and suggests that a refiling against the City might succeed, uncertainty is heightened on all sides, and the parties decide to return to the table.

DISCUSSION

The mediators' first steps upon receiving the DNR invitation to mediate were conventional. They contacted all the parties, explained the mediation process to them, learned about the issues and dynamics in the dispute from the parties, and sought to ensure that each party would participate in the process voluntarily and bargain in good faith. Meanwhile, the parties had an opportunity to become personally acquainted with the mediators and assess their independence, skills, and other qualifications.

But not all of the groups that had made their views known in the dispute became parties to the actual negotiations. Unlike public participation models, mediation does not guarantee every interested party a role in the process It happened that some of the parties—the County, three citizen groups, the Chamber of Commerce, the local manufacturing company, and the union—were peripheral to the negotiations, not because of any subjective measure by the mediators of the validity or intensity of their concerns, but because, by their own behavior, they remained outside the dynamics that determined the outcome of the dispute.

EPI and the Town had taken concrete actions that forced the City and DNR to respond to their concerns They flexed legal muscle that altered the course the landfill advocates were following. The other citizen groups had available to them the same legal mechanisms that EPI had employed but, for whatever reasons, they chose not to use them or take other forceful action Their inaction, relative to the parties' actions, restricted the role they would play in the final decisionmaking.

While the County did eventually cast a vote in favor of the landfill by approving the rezoning, it did not more actively support the landfill The manufacturing company, union, and Chamber of Commerce had been very active advocates of the site, but they decided to defer to the City when it came to actual negotiations.

Who comes to the table to resolve a particular conflict depends on the relative power of each party to the conflict, as perceived by the other parties The power relationship will also determine, in broad outline, the terms of settlement

Essentially, power is the perceived capacity to influence the actions of another plus the willingness to use that capacity, as shown in the hypothetical case study. If a challenging group has the power to force an action, but has demonstrated clearly that it will not use that power, it is not likely to be effective at the bargaining table

The other side's perception of the strength of that power is equally important Perception determines the other side's response, both in its general approach to negotiations and in specific actions or "moves " It is the appearance of power, therefore, that has the most significant effect on the outcome of negotiations, not some objective measure of power

Each group also judges its power in relation to the power it perceives the other groups have in a particular dispute If one party's power is overwhelming in relation to that of other parties, and if it is willing to exercise that power, clearly there is no need for negotiations The dispute in which meaningful negotiations will take place is one in which the outcome is in doubt and where no party perceives its own power to be overwhelming What is needed for negotiations to work is not necessarily equality but a distribution of power.

Power is not static, but can shift in response to several factors. One party may lack the capacity to maintain power over a long period of time. Events may shift power among the parties as the court's injunction and the County's rezoning approval did in the hypothetical example A group may have the capacity to influence actions, but may be unwilling or unable to exercise it unless the group feels ignored or threatened In fact, groups often develop their constituencies and increase their resolve to intervene only when they feel a process is unfair. Time may also be viewed differently by the parties, delays are costs to developers but can be a tactic for opponents Mediators and the participants in mediation must recognize the dynamics of power relationships

If all of the parties with power and the disposition to use it do not participate in the negotiations, if any such party remains aloof or excludes itself, the negotiations cannot be successfully concluded The outside power will continue to press its position despite any consensus reached among the parties in mediation Thus, it is a crucial part of the mediator's job to help determine which parties are essential to resolving the dispute, explain this to the other parties, and encourage everyone's participation If one or more of these parties refuse to participate, negotiations, with or without mediation, will be a waste of effort at best, and, at worst, a sham

By the time a dispute has matured to the point where the powerful parties are identifiable and interested in mediation, some of them may have developed very negative attitudes toward others This may surface in the form of questioning the legitimacy of certain parties' participation in negotiations The mediator, who is viewed as expert in such matters, must explain that it is necessary for the challenged parties to be involved if the conflict is to be mutually resolved and solutions are to be lasting The mediator's analysis is objective and neutral and may persuade where no other is credible

Because most mediation settlements lead to the development of the disputed facility, it is sometimes charged that mediation is biased in favor of development. If that were true, opposition groups would be making the biggest concession simply by agreeing to mediation It is important to note that the process of mediation cannot bias the outcome unless it is unethically manipulated by the mediator, and such behavior would probably become obvious before an agreement would be signed The true determinant of the outcome is bargaining power, and advocates of alternative solutions frequently lack the clout required to prevail against the proposed project. There may be no nondevelopment alternative that would serve as a true compromise and be acceptable to the other parties. Thus a party advocating such a solution would probably decide against participating in mediation from the start and press its case in some other forum

In hazardous waste disputes, the State may have a role greater than that of regulator or permitting authority Its responsibilities for developing a plan, initiating the siting process, determining that a site is necessary, assisting owners and operators, or indeed itself owning and operating the facility may cast it in various postures for negotiations It may be the case that the State is such a formidable party that the issues are limited to the design and operation of the site and there is no real opportunity for other parties to prevent a facility from being established at any particular location

In situations where there is considerable State involvement in support of a site, it will be important to identify the level of State government that has the authority to make the compromises that lead to settlement If the individuals or agencies at that level are not subject to pressures from the other parties, negotiations are not likely to be productive On the other hand, the State may have financial and other resources that enable it to make very attractive offers Perhaps a lesser entity could not afford the design or operational modifications that will satisfy the facility's opponents The State may be able to offer incentives, compensation, and mitigation measures not within the means of other types of developers, making it an attractive party across the bargaining table.

How Does the Mediator Operate?

The participants hold the final mediation sessions in a hotel. Representing the City are various officials and technical staff, including the city manager, city attorney, and a public works department engineer. The DNR is represented by an attorney and technical personnel. The Town's bargaining team consists of its attorney and two Town board members EPI is represented by a staff member. It turns out that two sessions of several hours each are needed.

At the first joint session, the individuals facing each other are, quite literally, those who for 2 years have been frustrating and threatening one another. But the mediators' presence as outsiders and their methods as neutral presiders have the effect of moderating the tone of the negotiators' statements and questions.

The mediators conduct the meeting, granting the floor to one party after another to maintain the flow of discussion and steer it toward resolution The mediators encourage full discussion of the historical development of the case and encourage each party to state clearly and specifically what it wants in a settlement. When at one point a party announces an unwillingness to compromise, the mediators remind everyone that their attendance implies an interest in settlement No one claims this is a misinterpretation. The mediators also note that their participation is at the invitation of all the parties and therefore they expect full cooperation as they determine the continuing course of the meeting. Thus, without fanfare, there is growing agreement to work toward resolution with the full knowledge that this can only be accomplished through cooperation and compromise.

Each party has a full opportunity to present its views on the technical issues and to question the views of others. Sometimes the mediators ask questions to ensure clarity or interrupt when a statement or question seems irrelevant or evasive. They allow for some relief by ventilation of built-up frustrations or hostilities, but they also try to inhibit outbursts that might exacerbate the conflict.

At one time or another, each of the parties is unable to accept another's technical analysis because its negotiators are unsure of their own expertise At those junctures the mediators encourage the parties to caucus with their own technical experts who are present Upon returning to joint session, the negotiators can then be confident of their statements and have a secure footing from which to proceed with the discussions

Gradually, the parties identify the technical data that are not controversial Where a party finds its own position has been based on a technical error, the mediators encourage correction by characterizing the change as a show of good faith and evidence of conscientiousness Eventually the technical discrepancies among the parties narrow to insignificance, opening the way to agreement on design and operational details

As the mediators listen to the parties' exchanges in joint session, it becomes clear to them that the Town's position is based mainly on its opposition to the proposed facility rather than the legal questions it has raised in litigation. This is consistent with private discussions the mediators have had with Town representatives in the preceding months The mediators choose to caucus with the Town negotiators.

In the caucus, the mediators review the status of the situation and urge the Town team to review its prospects for success privately with its attorney, who is a member of the team They hope the attorney will remind the Town of the costs of extensive litigation and acknowledge that, given the settlement of the scientific issues by EPI, the Town cannot be confident of success in court. The mediators leave the caucus and say they will return later asking for a proposal, as specific as possible, to submit to the other parties

Next the mediators meet in separate caucuses with DNR, EPI, and City negotiators. They advise DNR that they are encouraging the Town and City to exchange specific proposals and that they will be asking DNR representatives to review them for unacceptable elements They suggest the City reconsider its legal and practical positions, pointing out the passage of time, and ask the negotiators to rank the City's needs so that they will be ready to respond to a Town proposal that might be only partially satisfactory

EPI reaffirms that its principal concerns, and those of the other citizen groups it has come to represent, were largely settled in the previous round of bargaining and that its continued involvement in the talks is to safeguard its earlier agreement and generally monitor any subsequent settlements.

What follows is a series of proposals and counterproposals, developed by the City and Town in their caucuses and reviewed by DNR. When the City rejects the Town's proposal, it is asked for a proposal of its own, incorporating the acceptable elements of the Town's position. If something in a proposal is unclear or requires some elaboration, the mediators seek clarification or reconvene the joint session for questions and answers.

At one point a party says it has exhausted its ingenuity to devise new solutions. The mediators remind it of the consequences of failure, including costs, possible losses in court, and political developments. When another party repeats in caucus threats made earlier against its opponent, the mediators express doubts about the strength of such threats, implying what they have learned from the other parties about the uselessness of those threats

When the parties indicate, as they near settlement, that they fear they are exceeding the latitude granted them by their constituents or organizational superiors, the mediators adjourn the meeting so that the negotiators can reaffirm their representative status and gain the necessary authorization.

By the end of the second session, the mediators decide to offer a proposal of their own based on what they have learned. They know that, although the proposal might be acceptable all around, it is simply too close to the individual parties' outer limits for any one of them to suggest it.

Specifically, the mediators suggest measures that will directly address the Town residents' concerns about the sights, smells, sounds, and stigma of living near a "dump" The City agrees with the suggestions, and most of the provisions in the final settlement reflect the City's response.

DISCUSSION

A mediator's work commences with the first discussion with a potential party of the details of an actual case The mediator begins at that point to understand the parties' concerns and their power to affect the outcome of the dispute These insights influence the mediator's view of the dispute, and he or she questions and listens to the other parties more knowledgeably. The parties, in turn, begin to learn about one another from a disinterested expert and gain objective information. This information includes the technical data upon which the various positions are based, legal interpretations that must be considered in evaluating one's own position, and political judgments that are frequently crucial

In the sequence of interactions between a mediator and potential parties, the mediator discusses the dynamics of negotiations with people who probably are not used to that process. This discussion almost invariably refers to the particulars of the case at hand concerning power, who has it and how much, and why those parties cannot be ignored or excluded from negotiations Thus, the parties are instructed to some degree in negotiations. This should not alter the power relationships of the parties or affect the content of an eventual settlement, but it does direct the parties away from counterproductive tactics and toward realistic examination of their own positions

Once all the parties that are necessary to resolving the dispute are engaged in the mediation, the mediator will probably call a joint meeting that several parties attend The first two such sessions in our hypothetical case were those described earlier involving EPI, DNR, and the City. Because of the reasons for EPI's interest in the case, the major agenda items at those meetings were technical.

By the time of the two sessions described in this section, the parties all recognized that the issues of concern to EPI and other allies of the Town had been resolved in favor of the City's proposed site, as long as certain engineering designs would be implemented The only remaining disagreements concerned the various legal positions and the social and political considerations underlying them.

Joint sessions are usually held in neutral settings at which none of the parties feels uncomfortable or pressured They are informal, parliamentary procedure is not followed. However, it is clear that the mediator is in charge of running the meetings All of the participants receive equal and even-handed treatment.

The reliance on technical experts that occurred in the hypothetical case can also occur when the conflicting positions are legal or scientific. The mediator encourages the parties to examine fully one another's theories of the applicable law so that each can evaluate its own judgments and, if necessary, correct them. No party is required to assume a scientific or legal position until it has exhausted its own resources for expert advice. In both types of disputes, scientific and legal, the parties may discover their most trusted advisors do not necessarily disagree with all the positions of the other parties and that there are acceptable alternative approaches that allow for settlements. The mediator's role includes encouraging the sharing of detailed data and opinions and the reevaluating of positions, and directing the process so as to avoid any embarrassment or rancor.

As they listened and watched in each party's caucus, the mediators, who were the confidants of all the parties, began to identify the core issues that participants would not compromise on As the participants discussed and accepted or rejected

possible concessions, the mediators came to understand the deepest concerns of the Town and the sorts of accommodations and additional costs the City would be willing to accept, as well as the DNR's regulatory limitations. With these insights, they were able to alert the parties to avoid certain concessions that would not bring forth a valued return

The mediators understood that the negotiators might not go to the limits allowed them by their constituents when they could not be sure of achieving a settlement. The mediators also knew that such limits could be reached in the process of accepting someone else's proposal, in this case that of the neutral outsider So the mediators offered a compromise of their own. This proposal was not an independent exercise that reflected the mediators' views about the merits of the case Instead it was based on their insights into what each party might accept They hoped the proposal would be acceptable to the parties or at least act as a basis for developing settlement terms The mediators presented the proposal to the negotiators only, it was not made public It was made to all the parties on behalf of all the parties

It is difficult to imagine this settlement being achieved without a disinterested party How could one of the negotiators constantly remind the other negotiators that they were in trouble if they did not reach a settlement? What credibility would a party have in explaining to a threatening negotiator why the threat was not effective? Could the pressure toward settlement have been maintained without discussion of the consequences of not settling?

Clearly, in some cases only a trusted outsider can remind the parties that they are under pressure for a solution without bringing counterproductive attitudes to the surface. And only a neutral presider can conduct the exchanges of data and interpretation that allow the parties to identify the real discrepancies in their positions and then address those with ingenuity and concessions.

A factor that distinguishes hazardous waste siting disputes from many others faced by mediators is the crucial role played by technical experts Individuals and groups that oppose a facility may fear that the State's environmental quality standards do not provide enough protection They may be backed by experts trained in scientific and engineering disciplines, who have reached different conclusions from those of the experts employed by the site's proponents and the State Sometimes these scientific debates cannot be resolved because the state of the art is inconclusive and even the most knowledgeable expert can only speculate In other cases there are responsible grounds for reconciliation because sufficiently conclusive research has been reported, or because the parties' dispute stems from differing data and they are able to agree on one set of data to use.

Scientists and engineers supporting the negotiating parties may benefit by discussing certain technical issues among themselves because they can use mutually understandable technical shorthand to discuss complicated matters. But they may be the individuals least able to adapt to the personal interaction styles that promote such discussions Their training and experience have stressed uncompromising accuracy and precision They may not recognize when particular modes of presentation and argumentation are unnecessarily inflammatory. Therefore, mediators may be of particular assistance in these highly technical discussions, not by adding to the substantive expertise, but as presiders when the experts especially need facilitation and moderation. Mediators can, for example,

guide the discussions toward identifying correct conclusions and away from irritating charges of who has been correct and who has not. Mediators can establish ground rules that obviate personal attacks and focus discussion upon the specific issues at hand

Of course, the negotiating parties' technical experts might also participate in general negotiating sessions In that setting, their expertise may be perceived as inappropriate self-assurance and their jargon as a method for obstructing decisionmaking In particular, individuals who are frightened of environmental consequences may see the proponent's experts as attempting to denigrate their anxieties In such cases, once again, the mediator's conduct of the meetings, ensuring that explanations are understood and that presentations are moderate in tone, can alleviate such polarizing behavior.

WHAT ABOUT THE MEDIA?

Negotiations over the siting of a hazardous waste management facility will probably attract reporters from the local news media. Many States have open-meeting laws that govern when meetings involving public officials must be open to reporters and other members of the public Thus, in some situations, State law will require the negotiations to be open if a State agency or local governments are among the negotiating parties The presence of a mediator does not change openness requirements, whatever statutes govern negotiations also govern mediation

Where open-meeting laws do not apply, the decision of whether to invite or allow reporters to be present during negotiations will be made by the parties in light of the negotiations' dynamics and the parties' own views about openness. Again, because these same determinations must be made in unmediated negotiations, they are not an element in the decision of whether to use mediation

Mediators do provide some advantages to the negotiators in dealing with the media, however. When the mediator is moving among the parties with information and proposals, but there are no actual meetings of the parties, there are no events to attract reporters More importantly, if meetings are held in closed session, the mediator can serve as a press liaison on behalf of the parties. To avoid statements that may detract from the negotiations, the parties may agree to issue a joint press release to be presented by the mediator Or the mediator may give press briefings and interviews in place of the individual parties.

How Are Agreements Implemented?

As the parties reach agreement on the specific terms of the settlement and turn their attention to how to implement it, they discover the degree to which they are pioneering the new use of an old technique. They find that environmental mediation differs from labor mediation in a number of important ways that pose special challenges to them as negotiators

They realize there is no existing group that can oversee implementation because the dispute itself is unprecedented, and the agreement will require a new level of cooperation between the City and Town. They decide to create an advisory committee that will monitor implementation of the settlement and deal with any disputes over the agreement or new problems that may arise. The committee will have one representative each from the City, Town, and DNR and will select a mutually acceptable, impartial chairperson It will be free to call on the mediators again if it is unable to resolve any future difficulties

Next they must decide on the form for issuing the agreement to make it legally binding They decide to seek formal ratification by the two principal parties, the City and Town, through passage of corresponding ordinances by the two governing bodies.

Once this is accomplished, they then submit the agreement to the DNR for normal regulatory review This step is expedited by the DNR because the agency has followed the development of the agreement and has already informally evaluated those provisions requiring its approval. After formal review, the DNR accepts the agreement and issues it as a Consent Order, thereby settling the appeals pending before a department hearing examiner.

Finally, the Circuit Court accepts the agreement as a court Stipulation and the basis for out-of-court settlement of the suits pending before the court.

DISCUSSION

When the parties in our hypothetical case reached agreement, they brought the terms of their settlement to the Circuit Court and DNR and further agreed that their pending cases should be dismissed on those terms. In that way, the negotiated settlement became an enforceable order and gave the parties some assurance that the settlement would be administered. It established the court as final recourse in the event the agreement should break down in the future.

Had they simply entered a contract, as would normally follow labor negotiations, they might have encountered a variety of legal and political complications. In some States, municipalities have limited authority to enter contracts, as do State agencies. Also, if a breach of the contract is alleged, recourse becomes a political

process requiring action by the governing body. A group with a complaint would have to seek redress through its municipal government rather than directly through its own court action

In the agreement, the parties created an advisory committee to monitor administration of the settlement on a continuing basis. The committee would be free to call on the mediators again in the event of future disagreements. This reflected their interest in a continuing dialogue to prevent repeatedly turning to the court. The advisory committee became their forum for interaction for the duration of implementation. Because the parties to environmental disputes typically do not have an established and interdependent relationship, as do labor and management, it is often appropriate that the agreement create some mechanism for oversight and decisionmaking

It was reasonable, and not necessarily cynical, for the parties to anticipate some future disagreements over compliance with an agreement that is complex and long term. This brings to mind labor contracts in which unions and employers include grievance procedures with arbitration as their final step In that sector it has come to be regarded as moderate and enlightened to recognize that there may be controversy over the terms of a settlement and to provide ground rules for future disputes

The provision for continuing dispute resolution also recognizes that future disagreements might not arise only from questions of compliance, but from completely unanticipated developments, such as regulatory change, an error in design assumptions, or an unforeseen impact of the facility. In any case, a dispute during implementation of an agreement does not imply a defect in the settlement's terms or a lack of good faith Rather, it is a normal, predictable consequence of an agreement's complexity and its importance to all concerned.

An alternative to creating an advisory committee would be to designate a process for arbitrating disputes over interpretation of the agreement. This would be a more formal process as in the labor relations model of grievance arbitration. This approach might expedite dispute resolution, assuming a knowledgeable and impartial person or body can be found to arbitrate However, it would not create a forum for dealing with new or unanticipated problems that were not covered in the agreement.

Negotiated settlements in environmental conflict differ in many ways from those in collective bargaining Labor-management negotiations generally conclude with a written contract for a fixed term, and the parties can anticipate subsequent rounds of bargaining for future contracts over the same subject. This is not the case with environmental negotiations that develop the final terms of an arrangement and do not have a conventional method for preserving and enforcing those terms.

Thus, negotiators and environmental mediators must use ingenuity in anticipating the problems of implementation and devising both the form of the contract and an implementation mechanism that will be effective and make the agreement stick. All negotiations do not occur in the context of litigation, and therefore it is not always possible to achieve court issuance of a stipulated settlement. In some cases, the parties simply agree to continue to negotiate in good faith with the assistance of the mediator during the period of implementation. This is likely to be sufficient if the political realities of their relations militate against withdrawal from the basic agreement before it has completed its course. It is often understood that

each negotiating team has sold the agreement to its constituents and principals and that this process limits future general discrediting of the agreement by the negotiators

Mediators are glad to assist the parties further if they encounter problems in agreement implementation, and the mediators' own understanding of the negotiations may help resolve compliance problems. However, mediators do not serve as administrators for the agreement; nor are they responsible for compliance. The principal virtue of negotiated settlement is that it leaves responsibility with the affected parties On this basis, it can be viewed as superior to litigation, and mediation should never serve to transfer this responsibility, even after negotiations are completed.

Is Mediation Right for You?

If you are involved in a hazardous waste dispute and are considering mediation, ask yourself these basic questions

- Are you (or is your organization, governmental agency, company, unit of government) willing to consider compromise? Is there flexibility in your position? Is it in your interest, for whatever reason, to end the dispute?
- Might these be true of the other parties?
- Have you given your adversary reason to bargain with you? Have you positioned yourself to inhibit in some way unilateral action by your adversary?

or

Is there any reason why you should make concessions to your adversary? Is your adversary able to obstruct your course of action in some significant way?

If your answers to these questions are "yes" or "maybe," your next step is to consult with a mediator Start by reviewing the criteria for selecting a mediator in the next section. Then consult the list of groups and individuals involved in environmental conflict resolution (Appendix B) to find a mediator in your area or one whose description of services sounds like it will best meet your needs.

Most of the mediators and mediation organizations on the list are operating on demonstration grants from foundations or governmental agencies that cover salaries and reasonable travel expenses They can offer their services without charge to the parties and therefore mediation is no more costly than negotiations without a mediator If some or all costs are not covered, the parties will have to work out a payment plan Even in that situation, mediation should be far less costly than litigation

As an alternative to the list of practitioners included here, you can try contacting your State labor mediation service or a private mediator from labor relations or some other dispute sector whom you know and trust. You may be able to interest a local mediator in trying an environmental case and arrange to cover fees in some way

Any person who is a party to your dispute or is knowledgeable or in some way close to the dispute may make the initial contact with the mediator. Although it might at first appear that willingness to negotiate, either on the part of the initiating party or other parties that subsequently agree to participate, is a sign of weakness, willingness can also be portrayed as showing openmindedness, flexibility, and the desire to solve the problem Implicit in that portrayal is that the opposite is true of those who refuse to negotiate

It is for you to make clear to the mediator and the other parties that, while you possess these virtues, you also intend to bargain hard. True weakness will reveal itself in time through the threats and proposals each party makes and the seriousness with which the other parties regard them.

With the mediator you will explore such questions as who are the other parties, what are the important issues, what are the dynamics and power relationships among the parties, whether the parties are under sufficient pressure to be motivated to negotiate, and whether there is uncertainty as to who will win in adversarial processes In other words, you will begin to explore the key question of timing. Are conditions ripe for mediation?

A mediator cannot draw definitive conclusions by talking to just one party. However, unless mediation is clearly ruled out by some inhibiting factor (such as a party's unwillingness to compromise or the overwhelming power or likelihood of victory by a party), the mediator will probably discuss with you the best way to approach the other parties to explore the potential for mediation These contacts might be made by the mediator, by you, by other individuals who are trusted by the parties in question, or by some combination of the above.

Once all the parties have agreed to consider at least trying mediation, the mediator will meet with the parties individually to learn about their positions and perspectives of the dispute and let them question him or her about the process. These meetings will be part of the mediator's continuing evaluation of whether mediation is appropriate in the dispute and the parties' continuing assessment of the process and the mediator

At any point, the parties or the mediator may choose to abandon the process, possibly in favor of a different conflict resolution process (Appendix A), a different mediator, or to revert to the regulatory processes and/or litigation already in progress. Or mediation will progress to the negotiations stage, with its own techniques and interactions described previously.

Few parties to hazardous waste disputes are experienced in mediation The subtleties of dynamics and timing that determine when mediation is appropriate may not be readily apparent to you, despite your expertise on the issues For this reason, aside from asking yourself the basic questions listed at the beginning of this section, if you are involved or anticipate becoming involved in a hazardous waste dispute, contact a mediator early in your analysis of mediation's suitability There is no risk in exploring these questions with a mediator, while much may be sacrificed by postponing this assessment or by reaching uncounseled conclusions.

What Should You Look for in a Mediator?

The most basic criterion for selecting a mediator is acceptability to all the individuals and groups who must participate in finding the solution to a dispute. The mediator should not be *unacceptable* for any reason to any of the parties. If the mediator is unacceptable to any party (or even if a party has reservations about the mediator), he or she will be unable to serve effectively

You should be careful and critical in your selection and continued evaluation of a mediator It is your concerns, your resources, and your future that will be the subjects of the negotiations. The mediator should be an intervenor with no stake in the dispute and little or no stake in its resolution.

In the initial screening of a mediator, consider the demonstrated performance of the mediator or mediation organization and the mediator's personal skills and attributes in dealing with the parties. Judging performance or experience may require extrapolating from other mediation experience, either in another type of environmental issue or more broadly

You should recognize that selecting a mediator is an important decision that you have both the responsibility and authority to make. This is more than a one-time exercise of responsibility. It extends throughout the full mediation process, from your initial contacts with the mediator to negotiation of the issues. *If, at any point during this process, you should find the mediator to be unacceptable, you may discontinue using the mediator's services*

Following are additional concerns you should explore and suggestions on how and when to do so

DURING INITIAL DISCUSSIONS

Organizational Independence. Is the mediator part of an organization or agency that has a continuing interest in the dispute or its outcome? If so, whatever the level of personal integrity and independence the mediator may have, his or her connections with the dispute are likely, at some point, to get in the way. The parties should be aware of the mediator's source of funding, how the mediator is introduced to the situation, and any organizational relationships the mediator may have to regulatory agencies, elected authorities, or other parties at interest.

Personal Detachment. Parties should be concerned about the mediator's personal involvement—intellectual, economic, or emotional—in the issues. Detachment is a crucial attribute for a mediator; his or her primary focus must be on the process by which the parties address and reconcile their differences, not the outcome of the issues

Technical Expertise Technical expertise in the issues in dispute could be a negative factor in a mediator Experience suggests that the mediator who is expert in the content of the dispute may find it difficult to separate his or her personal assumptions, expectations, and values from those of the parties. The mediator may interpret for the parties in an inappropriate manner and may even lead them to a solution that is not theirs On the other hand, technical knowledge the mediator has gained in similar cases might be an advantage and add to the parties' resources, if it is not drawn upon excessively

Experience in Mediation There is no good substitute for experience as a basic qualification for a mediator or mediation organization. If other parties have used the same mediator more than once, that suggests an endorsement of the mediator's skill. Or if the mediator has had experience with a variety of groups, you might be able to check out the mediator with another group or individual. When first meeting a mediator, probe for possible references and sources of this kind of information.

Since there are no mediators with experience yet in hazardous waste disputes, look for the most nearly similar experience For example, a mediator should have demonstrated some facility in dealing with.

- multiple parties
- lack of a previously established relationship among the parties
- long-term, possibly irreversible, decisions
- the need for a process structure that deals with private sector organizations, government agencies, regulatory bodies, elected officials, and individuals who will be directly affected by the proposed project
- a wide variance among the parties in technical expertise, level of organization, and personal involvement
- complex issues

If the prospective mediator has not had experience in mediation *per se* but in related conflict management processes, probe for his or her understanding of the differences among different approaches to conflict resolution. In many cases, an experienced mediator will work with a less experienced or inexperienced colleague to ensure that parties receive the best possible assistance, while additional mediators are being trained.

WHILE DESIGNING THE PROCESS

As you continue your assessment by the criteria mentioned above, you will also be able to judge the mediator on a variety of personal skills and attributes.

Knowledge of the Mediation Process. Since most of the parties to hazardous waste disputes are likely to be inexperienced in mediation, the mediator must be able to articulate clearly the process and its dimensions and ultimately to coach the parties in the use of the process in a manner that does not alter their relations.

Empathy. You should not expect the mediator to agree with your positions or interpretations of the facts. However, the mediator should understand and accept all of the parties' positions and interpretations as real and legitimate. If a mediator agrees with one party on issues, he or she is likely to become unacceptable to others or to mislead eventually all the parties.

Understanding of Context. While the mediator is not a technical expert, he or she should develop a familiarity with the political and legal context of the dispute

and the language of the parties. The mediator should evidence a real concern for learning about the conflict from the perspective of each of the parties.

Concern for Integrity of the Process A mediator should display an independent concern for his or her own integrity and the integrity of the process. As discussed in this handbook, there are certain criteria that appear to determine whether or not mediation is appropriate in a given situation A prospective mediator who tries to sell the process in the face of an apparent absence of these criteria may be displaying concerns for other than the best interests of the parties.

Chemistry Mediation can bring together a difficult mix of personalities Sometimes one or more of the parties just do not feel comfortable with a prospective mediator The experienced mediator will sense this, withdraw, and assist the parties in finding someone else. If he or she is insensitive or does not withdraw, you should recognize that the process of resolving your differences will be difficult enough without this added burden and exercise your prerogative to dispense with the mediator's services

DURING NEGOTIATIONS

Even at this late date, several more criteria should be added to your continuing assessment of the mediator

Handling of Confidences The mediator's ability to assist the parties is proportional to the parties' willingness to share confidences regarding their basic concerns, possible areas of agreement, and even their willingness to cede certain positions The mediator should clearly be able to differentiate between information to be conveyed from one party to another with attribution, information to be conveyed but only as a mediator's observation or guess, and information that is given strictly for the mediator's own background and not to be conveyed to other parties. Violation or misunderstanding of such confidences is grounds for dismissal of a mediator

Willingness to Listen A mediator who does more talking than listening is unlikely to be of much assistance in helping the parties reach their own decision. A workable solution must occur within the parties' own frame of reference, and the mediator must listen to learn the nuances of their frame of reference

Adequate Time for the Parties and the Process. Mediators recognize that many hours of effort are normally required for every hour of joint meeting. This should be particularly true in hazardous waste disputes where there are many parties and complex issues. Be sure the mediator can commit sufficient time to your dispute

Relationship to Parties Not at the Table In some disputes, parties not at the table need to be kept informed or consulted during negotiations It is the mediator's job to do this without violating confidences. The mediator might give regular reports to the press, for example, or check with a regulatory agency to be sure the agreement that is taking shape is likely to satisfy regulatory requirements

Focus on Achieving a Workable Agreement Perhaps the most difficult role of a mediator is to ensure that the parties carefully consider the difficulties of implementing the agreement and ensure its technical, economic, and political workability At times in the drive to reach agreement, the parties may be tempted to agree to items they cannot implement or for which they cannot adequately guarantee the support of those they represent The mediator should draw attention to these issues to ensure the mediated results will be productive and long lasting

Appendix A

Public Consultation and Dispute Resolution Processes

This Appendix briefly describes some of the other processes that, because of their use in environmental affairs or their association with mediation in other situations, should be distinguished from "environmental mediation" as that term is used in this handbook [3]

POLICY DIALOGUES

Policy dialogues, which are conducted by a third-party convenor or a facilitator, are aimed at developing new policies for environmental affairs. They are attempts to develop consensus among some or all of the identified interest groups, and to transmit their agreements and any dissents to such policymakers as legislators, regulatory agency heads, and leaders in industry Through conferences, where views may be examined and data exchanged in a constructive atmosphere, parties can discover shared values and the legitimacy of opposing views in the search for mutually acceptable policies Policy dialogues are not usually related to specific disputes and are not tightly bound by existing statutes, administrative rules, and court decisions.

PUBLIC CONSULTATION

Public consultation or *public participation* is a process that provides regular forums for interested individuals and organizations to learn about some proposed or existing development or resource use and to have input into decisions pending by an agency or private developer Public consultation methods range from public hearings and opportunities to review official documents to more interactive techniques like workshops and citizen advisory committees. Their goal is to achieve maximum feasible participation by interested parties or, in the latter cases, more in-depth participation by representative members of interest groups in the

[3]For discussion of other processes in greater depth, see *New Tools for Resolving Environmental Disputes* by Peter B Clark and Wendy M. Emrich (Council on Environmental Quality and Resource and Land Investigations Program, Geological Survey, U.S. Department of Interior, 1980), from which parts of this discussion were drawn

community. A public consultation program may be conducted by a regulatory agency, prospective developer, consultant hired for that purpose, or, in some cases, a third party

The public input becomes a part of normal decisionmaking processes, and the degree of its influence is at the discretion of decisionmakers. Public consultation and public participation, therefore, are advisory and are often required by law.

Conflict anticipation is a term used to describe a number of methods applied by third parties at the earliest stages of a dispute. It is hoped that by convening conferences of concerned individuals and organizations before polarization or rigidity sets in, at least some of the issues in conflict can be resolved. Another advantage is that the parties' options and creativity may be greater at the early stages of a dispute, before strategies have been shaped and invested in. Attitudes based upon rumors and misinformation may be avoided.

Conflict assessment is an analysis—usually by a third party and sometimes by regulatory agency personnel—of the dimensions of a conflict, with recommendations for how to avoid or resolve conflicts. Its purpose is to provide a new perspective on the dispute from which the parties themselves can design a workable solution Done very early, this step may prevent the conflict from developing further if the parties use the recommendations to work together productively. At later stages of conflict, it can be used by an agency to decide whether to bring in an outside mediator.

Facilitation is another process that may be applied before a dispute is sufficiently defined for mediation It is effective when used by groups with similar objectives and/or functional interdependence where one cannot act without the other. A facilitator conducts informal collaborative problem-solving exercises of varying numbers of people who do not necessarily represent specific organizations. The problems and issues are often poorly defined at the outset. The group works toward consensus on the issues, but agreements may or may not be formally recognized or documented at the end

The facilitator is an impartial intermediary who helps the parties define issues and rank them for orderly discussion, while making sure all parties' opinions are heard He or she offers suggestions on the process for problem solving, but does not offer opinions on the substantive issues. The facilitator assists the parties openly in a group, but does not ordinarily meet with them privately.

Conciliation is a process in which an intermediary works to restore communications among disputing parties and foster a more cooperative attitude so that constructive discussions can resume. Conciliation as such is rarely used alone; it usually occurs as part of a larger facilitation or mediation effort.

Arbitration is a process that disputing parties may use to resolve their differences when voluntary settlement methods have failed. Typically, labor and management rely on binding arbitration to resolve grievances and questions of contract interpretation It is also used to avert a strike when contract negotiations fail to produce an acceptable compromise.

The arbitrator acts in the capacity of a judge, taking testimony and receiving exhibits from the parties. The arbitrator then makes a decision or finding intended to resolve the issues. In most States, there is a standard arbitration statute under which arbitration is made binding and appealable only on limited grounds.

Fact finding is similar to arbitration, except the fact finder's findings are advisory. The assumption underlying this process is that the judgment of an independent

third party as to questions of fact and equity will bring pressures to bear encouraging parties to accept that judgment or compromise based on that judgment

To date arbitration and fact finding have rarely been used in environmental conflicts; the concepts do, however, have some advocates It is likely that these procedures will receive at least some experimental use in the environmental sector.

Appendix B

Groups and Individuals Involved in Environmental Conflict Resolution

Following is a list of practitioners in the field of environmental conflict resolution Included are groups and individuals that use any of the various techniques described in Appendix A. These annotated entries are taken from a longer list compiled by RESOLVE, Center for Environmental Conflict Resolution, and are reprinted with permission from RESOLVE.[4] (The complete list includes some parties who are doing research in the field but are not practitioners. Those have been deleted here.) The annotations are only slightly altered from those provided by the individuals and groups themselves

Most of these groups and individuals have literature available about their experience and environmental mediation in general. For further information, write or call them directly.

American Arbitration Association
Research Institute
1700 Broadway - Suite 1702
New York, NY 10019
(212) 246-1839
Donald B Straus, President

The American Arbitration Association provides neutral auspices for dispute settlement activities of all kinds including arbitration (which is the principal caseload), mediation, facilitation, conferencing, data mediation, elections, and workshops It espouses no one process but believes that dispute settlement procedures need to be tailored to the needs of the parties and developed with their cooperation Mediators, arbitrators, facilitators, and other practitioners used by the AAA are selected with the consent of the parties and are rarely on the AAA staff.

[4] RESOLVE Center for Environmental Conflict Resolution, *Environmental Conflict Resolution Organizations, Practitioners and Researchers* (Palo Alto, CA, 1980), pp. 1-15. See new address under the Conservation Foundation

Michael Appleby, Assistant Professor
Division of Environmental and Urban Systems
Virginia Tech
Blacksburg, VA 24060
(703) 961-5506 or (703) 951-8031

Professor Appleby teaches citizen participation, community development (team-building, dealing with conflict and power, social change skills), and human services planning, consults with public agencies and community groups on planning and decision strategies; offers training workshops in citizen participation, consensus-building, and managing community conflict. The training and consultation can include skill-building in group development, the use of participatory decisionmaking methods, conflict assessment, personal communication, and third-party mediation techniques

Brooks, McAvey and Associates, Inc
Suite 520
Town Square
445 Minnesota Street
Saint Paul, MN 55101
(612) 227-3531
Ronnie Brooks and Maureen McAvey

Brooks, McAvey and Associates, Inc., provides consultant services in program planning and project management, economic development, environmental and community conflict resolution, and public and private finances.

Center for Collaborative Problem Solving
185 Berry Street
San Francisco, CA 94107
(414) 777-0395
Jane Voget, Director

The Center for Collaborative Problem Solving addresses multiparty issues in environmental and other fields Emphasis is on dispute avoidance, issues involving many parties, and policy and physical planning issues, rather than fully identified conflicts. Center practitioners have also had considerable success with late interventions

The Center presently acts as a broker between parties in conflicts or potential conflicts on one hand, and on the other, individuals trained in collaborative problem solving and other dispute resolution techniques

Clark-McGlennon Associates, Inc
148 State Street
Boston, MA 02109
(617) 742-1580
Peter B. Clark and John A. S McGlennon, Principals

Clark-McGlennon Associates assesses potential conflicts that emerge over issues of environmental impact, resource allocation, land use, plant siting, and design. CMA utilizes third-party process management techniques such as meeting facilitation and mediation to resolve disputes. CMA also designs and coordinates training workshops in conflict management techniques.

The Conservation Foundation
RESOLVE, Center for Environmental Conflict Resolution
1717 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4373
Gail Bingham

The Conservation Foundation is a nonprofit research and communications organization, based in Washington, D.C. It conducts interdisciplinary research and communicates its views and findings to policymakers and opinion leaders. The Foundation has conducted a number of efforts to bring together industry and environmental leaders to debate and try to reach agreement on aspects of national policy in areas including toxic substances, energy, and forest policy.

The Conservation Foundation also conducts research and serves as an information center for those interested in a variety of environmental conflict resolution techniques This follows an April 1981 merger with RESOLVE, Center for Environmental Conflict Resolution. The Foundation publishes *Environmental Consensus*, a quarterly newsletter, an annotated bibliography; an annotated directory, and other publications.

Institute for Environmental Negotiation
Campbell Hall
University of Virginia
Charlottesville, VA 22903
(804) 924-1970
Richard Collins, Director
Bruce Dotson, Assistant Director

The Institute for Environmental Negotiation was established at the University of Virginia in January 1981. The Institute offers a wide range of services to communities and groups desiring assistance in conflict resolution, including mediation of "mature" disputes, conflict anticipation, policy dialogues, consensus-building, and assistance and training for groups interested in using negotiation to make decisions

Environmental Mediation International
Suite 801
2033 M Street, NW
Washington, DC 20036
(202) 457-0457
Robert E Stein, President

Environmental Mediation International
60 Queen Street, 12th Floor
Ottawa, ON, CANADA K1P 5Y7
(613) 238-2296
Terence Winsor, Canadian Representative

Environmental Mediation International (EMI), with offices in the United States and Canada, offers impartial mediation services for international environmental disputes EMI carries out policy research and has examined and analyzed specific conflict situations and disputes involving Canada, Mexico, and the United States and has investigated environmental problems in Western Europe and the developing world

Federal Mediation and Conciliation Service
Office of Mediation Services
2100 K Street, NW
Washington, DC 20427
(202) 653-5320
Harold E. Davis, National Representative for New Area Development

The Federal Mediation and Conciliation Service, under the Department of Labor from 1911 to 1946, became an independent agency in 1947 Its primary foci are dispute settlement, private sector cases, and labor/management As of 1979, the Service established an experimental new area development section dealing with consumer, housing, environmental, discrimination, interpersonal disputes, etc. The Service promotes innovative actions in dispute settlement, problem solving, training, and systems development.

FORUM on Community and the Environment
540 University Avenue
Palo Alto, CA 94301
(415) 321-7347
Marge Sutton, President
Geoff Ball, Executive Director

FORUM on Community and the Environment is a nonprofit organization that provides interactive conflict resolution services among government, business, labor, and community groups. FORUM works primarily on community and environmental planning and development issues. It is also developing a conflict resolution training program

Institute for Environmental Mediation
3318 Queen Anne Avenue North
Seattle, WA 98109
(206) 285-4641
Gerald W. Cormick, Executive Director
Leah K. Patton, Director of Mediation Services

The Institute for Environmental Mediation is a national center for the study, development, and practice of mediation as applied to environmental conflicts. As successor organization to the former Office of Environmental Mediation at the University of Washington, Seattle, the nonprofit Institute continues the effort that began in 1973 as the Environmental Mediation Project at Washington University in St. Louis, Missouri

The Institute has three distinct program foci: 1) the provision of mediation services; 2) training for both potential parties to mediation and for environmental mediators, and 3) research and development, including the design of decision processes incorporating mediation, such as in siting hazardous and solid waste disposal facilities, and various cooperative research efforts with the University of Washington The Institute will also offer a program for visiting fellows from industry, environmental advocacy organizations, and government agencies.

Institute for Mediation and Conflict Resolution
116 East 27th Street
New York, NY 10016
(212) 685-4400
Laura D Blackburne, Chief Executive Officer
Jeff Jefferson, Vice President for Training

Founded in 1970, IMCR has been active in the application of mediation/arbitration to the resolution of community disputes as a trainer of individuals to act as third-party mediators in interpersonal and community disputes and as a developer of alternative dispute resolution systems for programs across the country. In addition, IMCR operates its own dispute centers, which serve the entire New York City area.

Interaction Associates, Inc.
185 Berry Street
San Francisco, CA 94107
Michael Doyle and David Straus, Principals

Interaction Associates, Inc., with offices in San Francisco and New York, offers process consultation, facilitation, and training services in collaborative problem solving and meeting planning and management The Interaction Method training programs are offered in major U S. cities and onsite at the offices of client organizations, educational facilities, and large and small companies.

Keystone Center for Continuing Education
Box 38
Keystone, CO 80435
(303) 468-5822
Robert Craig, President

The Keystone Center for Continuing Education is a nonprofit organization that organizes and conducts consensus-building conferences on issues of national concern. radioactive and hazardous chemical waste management, conservation and the utilities, the corporation and public policy, and Federal drug regulatory policy.

Conference participants are drawn from academia, industry, the environmental community, and government, and produce documents detailing conference results, which are sent to appropriate officials for action.

Laura M Lake, Assistant Professor
Department of Political Science
UCLA - Bunche Hall
Los Angeles, CA 90024
(213) 825-6629 or (213) 825-4331

Laura Lake, a political scientist, is concerned with the institutional issues associated with environmental and energy policy implementation: intergovernmental conflict, interagency conflict, public participation, and community conflict. She offers mediation activities, including conflict assessment, policy forums, participatory decisionmaking, and teaching

Richard C Livermore, J D., A.I C P
1010 Almanor Avenue
Menlo Park, CA 94025
(415) 321-4018

Dr Livermore offers arbitration, mediation, meeting facilitation, conflict analysis and mapping, statutory/regulatory/general legal counseling on environmental, land use, and natural resource matters

Jane McCarthy
29 East Ninth Street
New York, NY 10003
(212) 484-4105

Jane McCarthy is an independent mediator specializing in conflict assessment and mediation She has served as a mediator in environmental disputes in Washington, Maine, and Rhode Island Currently, she is experimenting with mediation procedures in higher education.

Debra Mellinkoff
1818 Hyde Street, Apt. 6
San Francisco, CA 94109
(415) 441-4832

Debra Mellinkoff, an independent mediator with expertise in land use conflicts and power plant siting, is completing her J.D. at the University of California, Hastings College of the Law, in 1981

National Coal Policy Project
Center for Strategic and International Studies
Georgetown University
1800 K Street, NW, Suite 622
Washington, DC 20006
(202) 833-1930
Francis Murray, Director

The Center for Strategic and International Studies is a policy and research institute affiliated with the Georgetown University. CSIS has been especially active in the energy policy area. Activities in the field of conflict resolution have concentrated on building consensus on important national policy issues. In this respect, CSIS served as the institutional home of the NCPP A course in conflict resolution will be offered at the Georgetown University Business School starting in 1981

New England Environmental Mediation Center
190 High Street
Boston, MA 02110
(617) 451-3670
William R Humm, Executive Director
David O'Connor and Susan Carnduff

The New England Environmental Mediation Center was established in July 1980 to encourage and advance the use of mediation and negotiation in resolving

environmental disputes in New England. Funded by a Ford Foundation grant to the New England Natural Resources Center, the Mediation Center has been active in many environmental areas, including hydroelectric power development, public land management, coastal zone development, wetlands protection, highway construction, and historic preservation

Francis X Quinn, S J
Mediator
Editor Ethical Aftermath Series
111 S. 16th Street
Longport, NJ 08403

Francis X Quinn, S.J , Ph.D., is an arbitrator and mediator. He is on the Board of Governors of the National Academy of Arbitrators. Currently he is the editor of the Ethical Aftermath Series—a study of major business problems in the 1980s. He is also chairman of the National Coal Policy Project and served as chairman of RESOLVE's Nuclear Waste Management Process Review Forum.

Rivkin Associates, Inc
2900 M Street, NW
Washington, DC 20007
(202) 337-3100
Malcom D Rivkin, President

Rivkin Associates is a planning consulting firm, involved in site-specific dispute resolution Malcom Rivkin is the author of several publications, including "Negotiated Development: A Breakthrough in Environmental Controversies," *Environmental Comment,* May 1977

ROMCOE, Center for Environmental Problem Solving
5500 Central Avenue, Suite A
Boulder, CO 80301
(303) 444-5080
W J D Kennedy, Executive Director
Susan L Carpenter, Associate Director

ROMCOE, Center for Environmental Problem Solving, offers a full range of conflict management services, from conflict anticipation to mediation, for resolving disputes over policy issues and site-specific controversies Our experienced professional staff also conducts training programs and provides advice and consultation about conflict management alternatives.

Scientists' Institute for Public Information
355 Lexington Avenue
New York, NY 10017
(212) 661-9110
Alan McGowan, President

The Scientists' Institute for Public Information is a nonprofit organization dedicated to providing objective information on science issues affecting public policy. This involves assessing the issues, creating task forces of disparate interests, and building consensus on the facts. SIPI also engages in public participation programs currently under EPA and, formerly, for the Tennessee Valley Authority

SIPI's Media Resource Service provides press briefings and refers journalists to reliable sources of scientific information. SIPI publishes Task Force reports, SIPISCOPE (its newsletter), and *Environment* magazine (in cooperation with the Helen Dwight Reid Foundation).

Shorett and Associates
Suite 100 - Colman Building
811 First Avenue
Seattle, WA 98104
(206) 622-1160 or (206) 283-3307
Alice J. Shorett, Principal

Shorett and Associates provides third-party mediation services to parties involved in disputes and training for mediators. It teaches courses in negotiations and conflict resolution, develops dispute resolution systems for the public and private sector, and provides facilitation and planning services for group or staff retreats.

Snider and Swift Associates
PO Box 13053
Oakland, CA 94661
(415) 531-2904 (M.S.) or (415) 527-0416 (T.S.)
Marilyn Snider and Tricia Swift, Principals

Snider and Swift Associates is a professional consulting firm, specializing in facilitation of problem solving and planning meetings They have recently worked with the Center for Collaborative Problem Solving for the BLM's California Desert Plan development They provide facilitation services, process management consultation, and training in basic communication skills, making presentations, and meeting skills.

Lawrence Susskind
Associate Professor and Department Head
Department of Urban Studies and Planning
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139
(617) 253-2026

The Laboratory of Architecture and Planning, MIT, supports several action/research projects The Environmental Impact Assessment Project explores ways of making EIA procedures more useful to decisionmakers and involving various sectors of the public in the EIA process. It also produces the *Environmental Impact Assessment Review* (Plenum Publishers, New York City). The Environmental Mediation Project monitors and evaluates environmental mediation experiments throughout the United States and has produced working papers aimed at building environmental dispute resolution theory. The Environmental Negotiation Project is examining ways in which conflict management, negotiation, and bargaining can be employed throughout the regulatory process. This project is producing a series of case studies for EPA, a textbook on environmental dispute resolution, and training materials for professionals in environmental regulatory roles.

Wisconsin Center for Public Policy
Environmental Mediation Project
1605 Monroe Street
Madison, WI 53711
(608) 257-4414
Howard S Bellman, Project Director
Cynthia Sampson, Project Coordinator

The Environmental Mediation Project of the Wisconsin Center for P primarily engages in site-specific mediation Cases have included si siting of waste disposal and other facilities, wetlands development rights, dam maintenance and operation, objectionable industr residential water supply The Center has also conducted policy dia with parallel generation of electricity and RARE II wilderness design staff have consulted with Federal and State agencies and legislatc mediation can play in siting hazardous and solid waste disp

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