

Interim Report Of The Federal Facilities Environmental Restoration Dialogue Committee

Recommendations For Improving
The Federal Facilities Environmental
Restoration Decision-Making And
Priority-Setting Processes

February 1993



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INTERIM REPORT
OF THE
FEDERAL FACILITIES ENVIRONMENTAL RESTORATION
DIALOGUE COMMITTEE

RECOMMENDATIONS FOR IMPROVING THE FEDERAL FACILITY
ENVIRONMENTAL RESTORATION DECISION-MAKING PROCESS
AND SETTING PRIORITIES IN THE EVENT
OF FUNDING SHORTFALLS

February, 1993

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ACRONYMS

A list of acronyms used throughout this document is provided below, along with the full name or term that the acronym represents.

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

EXECUTIVE SUMMARY

The federal facility environmental restoration challenge is enormous. The environmental legacy of the federal government's mission-oriented activities is felt in communities throughout the country. Environmental clean-up of the 24,000 sites on federal facilities in the United States may ultimately cost as much as \$400 billion and will extend well into the next century. From a technical perspective, these clean-ups are likely to be particularly complex and challenging. Equally challenging is the process by which federal facility clean-up decisions are made. From the perspective of many participants, the current process has been unnecessarily hampered by feelings of mistrust and conflict over the appropriate roles, responsibilities, and authorities of regulated and regulating agencies and other affected stakeholders. Reinvigorating the process will require a fundamental change in the way the clean-up process is managed. The cornerstone of this change must involve a shift from the decide, announce, and defend mode of public involvement to a new partnership between all of the affected stakeholders.

The Federal Facilities Environmental Restoration (FFER) Dialogue Committee, which includes forty representatives of federal agencies, tribal and state governments and associations, and local and national environmental, community, and labor organizations (see Appendix A for a list of Committee members and alternates), was established by EPA to develop consensus policy recommendations aimed at improving the FFER decision-making process to ensure that clean-up decisions reflect the priorities and concerns of all stakeholders.

In an era of increasing concern over federal budget deficits, the FFER Dialogue Committee believes that it is essential for federal facility clean-up decisions to be broadly supported if the nation is to accomplish its clean-up goals in a timely and efficient manner. Technical breakthroughs and scientific models alone, as important as they are to ensuring progress, will not overcome the current problems with FFER decision-making. Indeed, the future viability of federal facility clean-ups depends on the ability of the federal government to incorporate the divergent views of all concerned stakeholders into the decision-making process such that all stakeholders can become true partners in ensuring that clean-ups are conducted in the safest, most efficient, and most cost-effective manner possible.

Unless otherwise noted, the recommendations contained in this report reflect the consensus views of the members of the FFER Dialogue Committee, all of whom participated as individuals rather than as official spokespersons of their respective agencies, organizations, or associations.

The Committee's recommendations focus on:

- improving the dissemination of FFER related information (Section 2);
- improving stakeholder involvement in key FFER decisions, with special emphasis on the use of site-specific advisory boards (Section 3); and
- improving consultation on FFER funding decisions and setting priorities in the event of funding shortfalls (Section 4).

What follows is a brief summary of the detailed recommendations that are found in each major section of the report. It should be noted that the language in the report was debated word-by-word by the

Committee. Due to the detailed and, in many instances, mutually interdependent nature of the recommendations, the Committee encourages readers to refer to the full text of the recommendations instead of relying solely on the Executive Summary.

INFORMATION DISSEMINATION AND EXCHANGE

The Committee makes three recommendations regarding the current process for disseminating and exchanging information to affected stakeholders including:

- developing agency-wide information dissemination policies on information that is related to environmental restoration;
- encouraging public participants to portray accurately the status of documents or other information that they receive in draft form; and
- developing a central point of contact within each agency for assisting in FFER information exchange.

To help facilitate the implementation of these recommendations, the Committee recommends that agencies consider such options as establishing an "800" number for citizens to call for information on environmental restoration activities, and establishing a mailing list of citizens interested in such activities.

INVOLVING AFFECTED STAKEHOLDERS

The Committee's recommendations for involving affected stakeholders more directly in FFER decision-making focus on the creation and use of site-specific advisory boards (SSABs). The role of the SSABs is to actively involve representatives of the local community and others in the clean-up decision-making process. The Committee recommends that SSABs be used to streamline and complement, rather than supplant, broader site level FFER public involvement initiatives. The intended scope of the SSABs is to address federal facility environmental restoration issues, as well as waste management and technology development issues that are related to environmental restoration.

The report describes when SSABs should be established and proposes a model approach to implementing these recommendations, including:

- the appropriate SSAB charter and scope and roles of regulated and regulating agencies;
- a method for determining SSAB membership; and
- appropriate operating procedures and methods for ensuring accountability.

The Committee recommends that SSABs should be provided support for administrative needs. Most Committee members also agree that regulated agencies should provide funding for technical assistance to non-governmental SSAB participants to help ensure more effective and meaningful participation. The

report describes recommended levels, appropriate uses, and implementation options for providing administrative and technical assistance funding.

The Committee's recommendations for involving affected stakeholders are provided for consideration by those who will be responsible for implementation at the site level. The Committee believes that it is essential for the federal agencies to work closely with local communities to ensure that SSABs reflect and are responsive to local community needs and concerns. The Committee recognizes that the recommendations in this Interim Report will need to be tailored to meet the needs of each federal site and its local stakeholders.

CONSULTATION ON FFER FUNDING MATTERS

In assessing the concern that federal clean-up programs are likely to experience funding constraints, the Committee believes that extensive and meaningful stakeholder involvement is the key to reducing the impacts of such conditions. As such, the Committee recommends that federal agencies communicate in a timely manner site-specific or programmatic decisions affecting the ability of a site to meet its legally binding clean-up obligations to stakeholders. In addition to such ongoing consultations, the Committee recommends that information be shared during several discrete points in the FFER funding and decision-making process, including:

- at the time of initial field-level development of site-level requirements;
- after submission of the President's budget to Congress;
- after Presidential/Congressional appropriation and during agency allocation; and
- after budget-year execution.

Such consultation should revolve around what FFER activities or projects are being considered for execution and what FFER activities or projects have been executed. The information exchanged should be at a sufficient level of detail to enable verification that an agency's budget request package includes the activities and projects that are necessary to meet budget year obligations and milestones contained in enforceable agreements and other documents as well as to ensure adequate progress toward out-year obligations and milestones.

SETTING PRIORITIES IN THE EVENT OF FUNDING SHORTFALLS

The Committee agrees that existing milestones describe a set of obligations that should be honored to the fullest extent possible. However, given the practical limitations of the federal budget process, even the most arduous efforts may not ensure full funding for all FFER obligations. As a result, there may be times when insufficient funds will prevent full implementation of all FFER obligations.

In light of the growing concern that federal facility clean-up activities may face funding shortfalls, the Committee recommends a flexible strategy for applying "fair share" principles to allocating funding shortfalls. The Committee recommends a detailed process for applying fair share principles in the event

of funding shortfalls caused by insufficient appropriations and a more general set of principles for use when shortfalls occur due to unanticipated program growth.

The Committee recognizes that it is not appropriate to use health risk as the single criterion to guide the allocation of FFER resources. Other factors, such as environmental risk, indigenous peoples' rights, and environmental equity, must also be considered. Even though health and environmental risks are not the sole factors that should determine the allocation of FFER dollars, it is important to obtain more and better information on environmental and human health exposure and risk from federal facility contamination. The Committee strongly supports increased efforts to develop such information.

Where funding shortfalls result from insufficient appropriations, the Committee recommends that, to the greatest extent possible, all sites subject to outside supervision should share equally in the total amount of the funding shortfall. This is defined as the "fair share" allocation. The Committee recommends that a process of consultation between regulated agencies, state and federal regulators, affected tribes, and other affected stakeholders, take place in an effort to reallocate funds among FFER projects and activities within a site without missing legally binding obligations. However, if this is not possible or appropriate, given the criteria summarized above and specified in more detail in the report, the Committee recommends that regulating agencies renegotiate legally binding clean-up obligations, rather than undertake punitive enforcement actions, so long as:

- the fair share allocation is adhered to;
- the regulated agency implements the recommendations contained in this report in a responsible and good faith manner; and
- the funding requested for that agency's FFER budget represents the Executive Branch's best estimate of the amount of funding that is necessary to meet that agency's legally binding clean-up obligations.

Regulated agencies may suggest a reallocation of FFER resources in a manner that is not consistent with the fair share principles specified in this report. However, the agency may be subject to punitive enforcement action if such reallocation causes a legally binding obligation to be missed.

Where the funding shortfall is caused by unanticipated program growth, the Committee recommends a greater emphasis on absorbing the shortfall at those sites where it arose. A consultation process would still occur, but the Committee did not recommend granting enforcement relief for program growth funding shortfalls.

The Committee recognizes that in certain cases an appropriation bill may specify or "earmark" precise funding levels for particular sites. The Committee strongly recommends that Congress refrain from such site-specific earmarking as it will detract from the principles of fairness that are built into the process described herein, as well as diminish the value of stakeholder involvement in FFER programs.

CONCLUSIONS AND NEXT STEPS

This report is being issued as an Interim Report to communicate the results of the Committee's deliberations at this critical stage of transition and to provide an opportunity to begin the process of

implementing the recommendations where consensus exists among Committee members. The Committee intends for its recommendations to be implemented with common sense consideration of the needs, interests, and concerns of those who live near and, therefore, are most directly impacted by site-level clean-up efforts. As such, the recommendations contained in this report are intended to serve as a model that should be utilized and tested at both the field level and the national policy making level.

The FFER Dialogue Committee will be undertaking a variety of efforts to communicate its recommendations and receive feedback from those who did not participate directly in its deliberations. The Committee will continue to meet to assess the progress that is being made and address concerns that emerge with the implementation of its recommendations.

The Committee believes that the recommendations contained in this report represent a new approach for conducting federal facility clean-ups. It is based on the premise that all stakeholders should participate in a meaningful manner in the FFER decision-making process. It is the view of the Committee that only through such active involvement of all affected stakeholders can a true partnership develop that will lead to broadly supported clean-up decisions.

It is the sincere hope of the FFER Dialogue Committee that the process it has gone through to develop its recommendations, as well as the recommendations themselves, will usher in a new era of trust and consensus-building that allows all parties to get on with the job of cleaning up federal facilities in a manner that reflects the priorities and concerns of all stakeholders.

1.0. INTRODUCTION

1.1. BACKGROUND ON FEDERAL FACILITIES ENVIRONMENTAL RESTORATION

Over the past decade it has become increasingly clear that environmental contamination at federally owned and operated facilities poses a significant challenge for the nation. Over this period, it has also become clear that there are many interests that have a stake in and are concerned about what is occurring at these facilities.

With the passage of statutory provisions under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹ and the corresponding increased attention that has been placed on identifying environmental contamination at federal facilities, the immense magnitude of this problem has become clear. Estimates for clean-up of the approximately 24,000 currently identified sites at federal facilities range from \$100 billion to upwards of \$400 billion. Clean-up efforts are projected to continue well into the 21st Century.²

By any measure, the cost of cleaning up the environmental contamination that is currently known to exist at federal facilities is enormous. Such costs must be borne by taxpayers because of the public purposes served by these facilities. More significantly, these costs must be borne by taxpayers in an era of increasing concerns over the growing federal budget deficit.

Many who are involved in managing federal facility clean-up programs, as well as those who are regulating or affected by these programs, are becoming increasingly concerned with the ability of the nation to maintain the necessary level of funding to meet current clean-up goals. Because of these concerns, there has been an increasing amount of attention paid to the need to establish publicly supported priorities as the study and actual clean-up of these facilities proceed.

As the sheer magnitude of federal facility environmental contamination has become clear, so have the technical complexities of these problems. In many instances federal facility environmental contamination problems pose threats to human health and the environment that are similar to those that are found at private sector sites. However, in numerous other situations, especially those found at the major defense production facilities owned and operated by the DOE, the technical dimensions of the environmental contamination problems are perhaps as complex as those found anywhere in the world.

Environmental contamination confronts federal agencies with challenges that are often fundamentally different from those of their primary missions. Although clean-up problems exist at facilities owned by most federal agencies, the number and severity of these problems are greatest at sites managed by DOD and DOE. The facilities that are owned by these agencies were built and operated primarily to serve the nation's defense needs. As in the private sector, many of the environmental contamination problems at these facilities had their genesis in an era when there were few laws or regulations to address the disposal

¹ See Section 6001 of RCRA and Section 120 of CERCLA.

² Sources include: Milton Russell, et al., Hazardous Waste Remediation: The Task Ahead. University of Tennessee, Dec. 1991. pg. 22; U.S. Department of Defense, Installation Restoration Program Cost Estimate Sept. 1991; Congressional Budget Office, Federal Liabilities Under Hazardous Waste Laws, May 1990.

DEPARTMENT OF DEFENSE

It is estimated that there are over 15,000 sites where hazardous substances may have been released at nearly 1,900 facilities owned or operated by the Department of Defense (DOD). DOD estimates its clean-up cost to be in the range of \$25 billion.

DEPARTMENT OF ENERGY

The Department of Energy (DOE) has identified 9,000 sites for clean-up. In many instances, DOE is in the early stages of site assessment to determine the nature and extent of the contamination. As a result, the costs and time to complete remediation are difficult to ascertain. DOE estimates, however, that clean-up costs may be in the range of tens of billions of dollars, and has set year 2019 as the goal for cleaning up the inventory of sites identified by 1989. As DOE moves from the assessment phase into implementing remedial actions, actual costs and time frames necessary to clean-up will become more clear.

DEPARTMENT OF THE INTERIOR

The Department of the Interior (DOI) currently has 422 sites listed on the Federal Agency Hazardous Waste Compliance Docket and two sites that are listed on the National Priorities list (NPL). The sites on DOI-managed lands and facilities are generally not the result of DOI activities, but rather activities conducted on those lands illegally or under various statutes authorizing use of public lands. The DOI has not yet completed inventories of the 440 million acres of land that it manages, so the total number of clean-up sites on DOI-managed lands is still unknown. Thus, the costs and time frames necessary to clean up these sites are difficult to determine given the preliminary state of evaluation of DOI-managed lands.

U.S. DEPARTMENT OF AGRICULTURE

The U.S. Department of Agriculture (USDA) currently has 96 sites listed on the Federal Agency Hazardous Waste Compliance Docket. None of these sites are identified on the NPL as a USDA responsibility. However, USDA agencies currently are involved with cleanup at two locations listed on the NPL.

In general, USDA agencies have completed an inventory and discovery process for federally owned facilities or managed lands with two notable exceptions. The Forest Service has not completed an inventory of potential problems on the 190 million acres of land it manages with respect to abandoned mining sites or closed sanitary landfills. Most of these sites are the result of third party activities on National Forest lands that have occurred in the past under authorizing statutes, regulations, or permits. Thus, the total estimated cost of the Department's hazardous waste cleanup program and the time frame for implementation has not been determined at this time.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The National Oceanic and Atmospheric Administration (NOAA), within the Department of Commerce, has one site with an estimated clean-up cost of \$50 million and a clean-up time frame of at least 10 years. This site is currently not on the NPL. NOAA is just beginning to do environmental audits, so it may discover more sites. The Department of Commerce has responsibility for more clean-up sites which belong to other agencies, via lawsuits, with an estimated clean-up cost of approximately \$150 million over a 10-20 year period.

of hazardous and radioactive wastes. Furthermore, the national defense missions of these facilities were seen as paramount. Often this mission required a high degree of secrecy (and in some instances still does) regarding the precise nature of the activities that were taking place at these facilities.

With increased knowledge of environmental contamination at these facilities, there has been an ever increasing level of public demand to clean them up. DOD and DOE have often tried to deal with rising public interest and concerns, as well as increased regulatory oversight, through traditional command and control approaches that have worked well in the context of their national defense missions. Although much progress has been made toward bringing federal facilities into compliance with state and federal environmental laws, there remain significant management and public credibility problems which jeopardize efforts to prioritize clean-up efforts to prioritize clean-up projects and form strategies for reaching long term environmental restoration objectives.

Federal agencies other than DOD and DOE also have significant environmental contamination problems, although most of these agencies do not have a national defense mission and the technical dimensions of their contamination problems are typically much less complex than DOE's or DOD's. Nevertheless, there are management and public credibility problems related to the clean-up programs at these agencies that are similar to those at DOE and DOD.

The Committee believes that public involvement is essential for achieving publicly supported priorities for clean-up. Federal agencies recognize and support the legitimate and important role the public has in helping to identify clean-up priorities. The recommendations of this report, therefore, are aimed at creating a more effective public participation process.

1.2. THE FFER DIALOGUE COMMITTEE: ITS MEMBERSHIP, PURPOSE, AND GOALS, AND THE IMPLICATIONS OF THIS REPORT

1.2.1. Background on the FFER Dialogue Committee

In April of 1992, the U.S. Environmental Protection Agency established the Federal Facilities Environmental Restoration (FFER) Dialogue Committee as an advisory committee under the Federal Advisory Committee Act. As stated in its charter, the purpose of the FFER Dialogue Committee is to provide a forum to identify and refine issues related to environmental restoration activities at federal facilities. The Committee was intended to be a forum for the exchange of ideas and information among individuals representing organizations and agencies that have an interest in or responsibility for managing or overseeing environmental restoration activities at federal facilities. The Committee was formed with the hope that such diverse parties might reach consensus on how to address issues related to improving the manner in which decisions are made and priorities are established for the clean-up of federal facilities. However, at a minimum, EPA, the chartering agency, wanted to ensure that issues were thoroughly defined and that differing positions, as well as the reasons for those differences, were identified.

The FFER Dialogue Committee includes representatives of:

- Several federal agencies, including the
 - Environmental Protection Agency (EPA),
 - Department of Defense (DOD),
 - Department of Energy (DOE),
 - U.S. Department of Agriculture (USDA),
 - Department of the Interior (DOI),
 - National Aeronautics and Space Administration (NASA),
 - National Oceanic and Atmospheric Administration (NOAA), and
 - Agency for Toxic Substance Disease Registry (ATSDR);
- National and local environmental, citizen, and labor organizations;
- Tribal governments and Native American organizations; and
- State government and state government associations.

Although each member of the FFER Dialogue Committee is affiliated with an agency, organization, or association that is either responsible for or actively involved in federal facility environmental restoration issues, Committee members were not asked to represent formally, or make binding commitments on behalf of, their home organizations.

Appendix A includes a complete listing of FFER Dialogue Committee members and alternates. Appendix B includes additional background information on the Committee, including a copy of the Committee's charter and its agreed upon ground rules.

The impetus behind the creation of the FFER Dialogue Committee was an informal information exchange and consensus-building dialogue that was initiated in early 1991. In the beginning, this informal dialogue focused on exchanging information on the variety of approaches that federal agencies are using to help set priorities for cleaning up their facilities. In exchanging such information, the Dialogue Group soon recognized that other fora had already been established which were more appropriate for critiquing the technical attributes of these various priority-setting models. Furthermore, the Dialogue Group agreed that there was a much broader set of issues that needed to be addressed regarding the overall context within which any particular priority-setting model might be utilized. These general agreements helped form the basis of the discussions that then took place under the auspices of the FFER Dialogue Committee. (See Appendix C for a detailed description of the events that led up to the formation of the Federal Facilities Environmental Restoration Dialogue Committee.)

The FFER Dialogue Committee met four times, in April, July, November, and December of 1992. In addition, the Committee formed two separate work groups, which met numerous times between Committee meetings to produce draft documents for full Committee consideration.

1.2.2. The Goal of the FFER Dialogue Committee and the Implications of this Report

Soon after the FFER Dialogue Committee was formed, its members agreed upon the following goal statement:

The goal of the FFER Dialogue Committee is to develop consensus policy recommendations aimed at improving the process by which federal facility environmental restoration decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders.

This report describes the outcome of the deliberations of the FFER Dialogue Committee. The Committee wishes to emphasize that this report contains recommendations for policy changes rather than official policy pronouncements. Unless otherwise stated in the report, the recommendations contained herein are the consensus policy recommendations of the FFER Dialogue Committee. As defined in the Committee's ground rules, proposals were considered to have achieved consensus when there was no dissent from any member of the Committee.

In many instances, the language contained in the report was debated word-by-word and there was considerable give and take between Committee members. Thus, some Committee members believe the recommendations could have gone further or could have been more strongly worded and others believe they go further than is necessary to bring about needed changes. In still other instances, policy recommendations were proposed and strongly advocated, but are not included in this report because they did not achieve consensus. Finally, in three instances, each of which is clearly noted, the Committee did

not reach a full consensus. In two of these instances, some Committee members agreed with the recommendations contained in the report but thought these recommendations did not go far enough to address their concerns. In the other instance, an agency is taking the recommendation of other Committee members under advisement. Because these issues were still considered to be important, the outcome of the Committee's efforts are included in this report in order to characterize accurately the Committee's deliberations and help inform future efforts that are aimed at resolving these issues. Even where consensus was not possible, however, Committee members agree that the language contained in the report accurately characterizes the outcome of its discussions.

Although the FFER Dialogue Committee process was not intended to bind any of the organizations, agencies, or associations with whom Committee members and alternates are affiliated or employed, all of the signatories to this report have agreed to work proactively toward the implementation of the consensus policy recommendations within their respective agencies and organizations.³ Furthermore, Committee members have agreed not to undermine the implementation of the consensus policy recommendations by others who may or may not have been members of the FFER Dialogue Committee.

As such, this report is intended to serve as a chronicle of the FFER Dialogue Committee's deliberations and as a set of agreements and milestones that Dialogue participants (and others who read this report and agree with its recommendations) will use to assess the progress that is being made towards "improving federal facility environmental restoration decision-making processes such that they reflect the priorities and concerns of all stakeholders."

1.3. GENERAL PROBLEMS WITH THE CURRENT FFER DECISION-MAKING PROCESS

Committee members believe there are two general problems that are currently preventing rapid improvements to the decision-making processes for federal facility clean-ups -- a high level of distrust among some affected stakeholders and ongoing disputes over the interpretation of critical statutory provisions related to the respective authority of state and federal regulators and federal facility program managers.

These barriers range from subjective and perceptual differences to more complex and controversial distinctions involving legal interpretations of statutes. But, real or imagined, the members of the FFER Dialogue Committee believe these barriers must be eliminated in order to improve the current inadequacies in site clean-up decision-making and priority-setting.

1.3.1. The Problem of Mutual Distrust

FFER Dialogue Committee members believe that the most visible and common impediment to effective FFER decision-making results from a long history of deep-seated mutual distrust among some affected stakeholders and some decisionmakers.

³ In the case of Committee members who are staff of state associations such as the National Governors' Association, National Association of Attorneys General, and Association of State and Territorial Solid Waste Management Officials, this means that they will bring this report to the attention of the members of these associations (i.e., Governors, Attorneys General, and Department Heads). Other Committee members, who are employed by the members of these state associations, agree to work proactively within those associations toward implementation of the recommendations of this report.

Some state and tribal government representatives, as well as affected citizens closest to the contaminated federal sites, feel ignored and overwhelmed by a seemingly insensitive national bureaucratic structure that appears to be making even the most fundamental decisions in isolation. Facility neighbors in particular are often suspicious of federal agencies and feel excluded from important environmental restoration decisions that may affect their future, the health of their families, and the value of their property. Moreover, where a public involvement process is mandated by law -- whether in the National Environmental Policy Act (NEPA) or federal and state clean-up laws -- the public often perceives that the process is used to defend decisions already made without meaningful dialogue with the affected public.

Some regulators and citizens also question the sincerity and commitment of some federal agencies and their facility managers to rapid and effective clean-ups. These feelings are based on negative experiences in gaining public access to site information, failures on the part of federal agencies to deliver results or meet agreements, and lack of feedback about the dynamics of initiating and funding clean-up at a particular site.

Some federal agency representatives, on the other hand, see an apparently insatiable and unorganized mix of groups and governments with often conflicting and sometimes unachievable expectations, demanding action without regard to cost, risk, or priorities. Some federal stakeholders also question the motivations of other stakeholders. From experience, they believe that these motivations can range from political ambitions on the part of public officials, to the perceived desire to raise state revenues through fines and penalties, to agendas moving beyond environmental restoration, per se, toward broader national disarmament issues.

Furthermore, federal agency officials believe that public participation processes, unless carefully designed and implemented, often are an impediment to efficient, cost-effective, and scientifically sound clean-ups. Many federal officials stress the importance of balancing the scientific expertise and knowledge of the government with the desires of the local citizens. Finally, public officials have numerous statutory obligations that they must fulfill and these responsibilities, by law, cannot be delegated away to local citizens or other governmental entities.

Through hearings and reports, Congress has registered its concern with the inability of those involved in federal facility restoration to reach agreement over clean-up priorities. Congress did pass the Federal Facility Compliance Act of 1992 (PL 102-386), which was signed into law by the President on October 6, 1992. While the focus of this Act is clarification of EPA and state RCRA enforcement authorities regarding federal facilities, its long legislative history is replete with criticism of the delays and inefficiencies frequently caused by on-site gridlock among federal agencies, regulators, and the public. Although Congress has expressed concern and frustration with the inability of affected parties to resolve their differences, it has so far stopped short of extensive intervention or preemption.

Obviously, the effects of such pervasive mutual distrust are not limited to the inhibition of effective dialogue and decision-making at the local level. Rather, these dynamics can affect the relationships of stakeholders at national levels of regulatory review, decision-making and program management as well.

The result of this mistrust is that the current decision-making process is often slow, convoluted, and inefficient for all involved. All FFER Dialogue Committee members are concerned that the increasing transaction costs of the current FFER decision-making process may jeopardize our nation's ability to achieve its collective clean-up objectives. Even where agreements are reached, a polarized atmosphere

sometimes remains that leads to a series of conflicts instead of a consultative, cooperative process that allows for flexibility and promotes efficiencies and, ultimately, the building of public trust.

1.3.2. Ongoing Disputes Over Statutory Authorities

Another significant barrier arises from differing views of the authorities of state and federal government as they relate to FFER decision-making. The most fundamental issues in disagreement arise from the evolutionary dispute over whether or not federal facilities are subject to state authority under RCRA or other state environmental laws that affect restoration, as well as the relationship of those statutes to ongoing clean-ups being conducted under CERCLA.

Without attempting to specify the details or merits of these legal disputes, states and citizen groups contend that RCRA and other state legal authorities entitle state regulators to impose specific informational and procedural requirements, as well as substantive clean-up requirements, where clean-up agreements or permits are in place. This includes participation in funding decisions where federal funds are insufficient to meet legally binding agreements. Federal agency decisionmakers dispute such broad statutory authority. Further, they contend that their departmental secretaries are personally responsible for both the clean-up of facilities and the proper expenditure of appropriated monies (or in not spending when monies are not appropriated). Consequently, while others may be involved in advice and consultation, only the federal agency in question has the authority to make the final decisions on spending for environmental restoration activities at a site.

FFER Dialogue Committee members agreed not to attempt to resolve these fundamentally different legal interpretations. However, the Committee believes that the recommendations it has developed will help to address some of the mistrust and inefficiencies that surround the FFER decision-making process. And, in particular, the Committee believes that its recommendations on how to set FFER priorities in the event of a funding shortfall are an attempt to balance carefully the legitimate needs, concerns, and authorities of all stakeholders. When implemented, these processes may go a long way toward lessening the significance of, if not resolving, these legally based disagreements.

1.4. OVERVIEW OF THE RECOMMENDATIONS AND SCOPE OF ISSUES ADDRESSED IN THIS REPORT

1.4.1. FFER Priority-setting and Decision-making

Federal facility environmental restoration priorities are established and refined at numerous stages and levels in the FFER decision-making process. Because of this, the Committee believes that the establishment of more widely supported federal facility environmental restoration priorities can be accomplished by improving the overall process by which federal agencies share information and involve affected stakeholders in FFER decision-making. Based on these views, the Committee determined that its discussion of priority-setting issues should focus on improving the overall process by which FFER decisions are made, as well as an explicit discussion of how to set FFER priorities in the event of a funding shortfall.

Committee members recognize that there is probably only a relatively narrow window of opportunity to find some resolution to the inability of FFER stakeholding interests to deal effectively with each other before future national fiscal constraints slow down current progress in federal clean-ups. Agencies in charge of federal facility clean-ups are concerned that while they generally enjoy adequate funding for

immediate environmental restoration needs, there is no guarantee that adequate funding will be available for all necessary future clean-up efforts. Not all participants agree that fiscal constraints should inhibit clean-ups rather than affecting other federal priorities, but all agree that eventually these constraints will restrict choices and affect clean-up.

With this limited time for progress in mind, the FFER Dialogue Committee analyzed and dissected the various phases and specific problems that must be addressed in order to improve FFER decision-making. In addition to an inhibiting aura of distrust, numerous more specific problems became apparent as Committee members examined the path of decision-making from the individual contaminated site through the labyrinth of decisions affecting the selection and implementation of clean-up remedies and the timing and funding of clean-ups that must take place as part of the national authorization and appropriations processes. These more specific problems are described below, as they relate to the particular policy recommendations that have been designed to remedy those problems.

The recommendations found below in their totality reflect an attempt to create an open, public, consultative process that originates at the "local" or facility level and extends through the entire federal hierarchy of departments, agencies, and offices of the Executive Branch. The Committee's recommendations describe a consultative process and provide an outline of the procedures and ground rules necessary to involve all stakeholders equitably in such a process.

The Committee also intends that its recommendations for improving the FFER decision-making process should be implemented within all agencies that are responsible for regulating and cleaning up federal facilities in as consistent a manner as possible, taking into account the unique structural and organizational attributes of each agency, as well as the unique types of environmental restoration problems faced by each agency.

Where necessary and appropriate, this document describes the Committee's views as to how the recommendations should be implemented with specific departments and agencies. In addition, the document contains recommendations that are addressed to stakeholders other than the federal agencies responsible for clean-up, including state and federal regulators, local and national public interest organizations, and the members of the general public who are concerned about federal facility clean-up issues.

The Committee's recommendations revolve around three distinct problem areas, including:

- improving the overall process for disseminating and exchanging information with affected stakeholders (Section 2);
- improving the process for soliciting and obtaining input from affected stakeholders (Section 3);
- exchanging information in the context of the federal budget process and set priorities in the event of funding shortfalls (Section 4).

The recommendations contained in Section 2, which address ways for improving the process by which the general public can stay informed about the activities at a particular site, are the most broad. These recommendations form the foundation for subsequent recommendations. Section 3 focuses on setting up fora for stakeholders who want to be actively involved in providing input into the decision-making process

as it relates to environmental restoration at a particular site. Section 4 contains recommendations that will ensure that stakeholders who so wish will receive information on FFER funding decisions which are made in the context of the federal budget process. The last section also describes an approach for setting priorities in the event of FFER funding shortfalls, which builds upon and makes use of the consultative mechanisms that flow from the recommendations contained in the previous sections.

1.4.2. Federal Facility Environmental Restoration

The phrase "federal facility environmental restoration" (FFER) is generally used to refer to the clean-up of contaminated sites at currently and previously used or owned federal facilities.⁴ Except in Section 4.6, this includes clean-up activities that are conducted under CERCLA, as well as those that are conducted pursuant to the corrective action provisions of RCRA, federal facility agreements, and other state and federal regulatory requirements. In addition, the Committee believes that sites that are being cleaned up under the Base Realignment and Closure (BRAC) Act should be subject to these recommendations, once again with the exception of Section 4.6. Although the specific authority under which a clean-up is conducted may result in significant differences in emphasis with regard to the needs and responsibility of the various affected interests, this report addresses federal facility clean-up issues in general. Elsewhere in this document, the term clean-up is used interchangeably with environmental restoration.

Each of the major sections that follow addresses a discreet FFER policy area, including: 1) the general process by which FFER information is exchanged with affected stakeholders; 2) the general process by which affected stakeholders can become involved in FFER decision-making; and 3) the manner by which information should be exchanged and priorities established in relation to FFER funding decisions. In each of these sections the Committee states explicitly the scope of issues that it intended to address.

NOTE: The representatives of the Yakima Indian Nation support the recommendations of the Committee regarding the scope of issues covered by Sections 2, 3 and 4 of the report. However, they believe that the scope of issues that should be addressed in implementing the Committee's recommendations at DOE's Hanford site should include all activities conducted under DOE's Environmental Restoration and Waste Management Program. Specifically, they believe that the scope should include waste disposal activities at Hanford including those that are not traditionally associated with a RCRA corrective action or CERCLA remediation.

In the case of the Committee's recommendations regarding the dissemination and exchange of information with affected stakeholders, the Committee uses the same general definition of federal facility environmental restoration that is used above. Thus, the authority under which clean-ups are conducted is not particularly important as it relates to these recommendations. In addition, the Committee recommends that its recommendations regarding information dissemination and exchange with affected stakeholders should cover waste management and technology development issues related to environmental restoration, as well as environmental restoration issues as defined above.

⁴ Within the DOD, previously owned federal facilities are those sites that are managed under the Formerly Used Defense Sites (FUDS) program. Within DOE, previously used or owned sites are managed under the Uranium Mill Tailings Remedial Action (UMTRA) program and the Formerly Utilized Sites Remedial Action Program (FUSRAP).

The Committee's recommendations for involving affected stakeholders more directly in FFER decision-making includes recommendations for the creation and use of site-specific advisory boards (SSABs). For a variety of reasons, including practicality and efficiency, the Committee believes that it is important that such site-specific advisory boards should not only be used to address federal facility environmental restoration issues, once again regardless of the authority under which such clean-ups are conducted, but waste management and technology development issues that are related to environmental restoration as well.

In the final section of the report, the Committee addresses two major issues: 1) consultation with affected stakeholders in relation to FFER funding decisions; and 2) how to set FFER priorities in the event of a funding shortfall. In the case of the former, the Committee recommends that its recommendations should cover waste management and technology development issues related to environmental restoration, as well as environmental restoration issues as defined above. However, in the case of the recommended process for setting allocation priorities in the event of a funding shortfall, because of the nature of these recommendations, the Committee decided it was critical to identify the specific FFER programs within federal agencies under which these recommendations are intended to be applied.

These distinctions regarding the scope of issues addressed in this report are explained in more detail below as they pertain to each of the major sections of the Report.

1.4.3. Clarification of Commonly Used Terms

Throughout this document recommendations are made regarding the roles and responsibilities of various affected parties, including the regulated agency, the regulating agencies, affected tribes, other affected stakeholders. It may be helpful at the outset to clarify what each of these terms signifies.

Regulated Agency - The term "regulated agency," refers to the agency that has the lead responsibility for cleaning up the site including such agencies as DOD, DOE, DOI, USDA, NASA, NOAA, etc.

Regulating Agency(ies) - The term "regulating agencies," unless otherwise noted, refers to the state and federal agencies that provide regulatory oversight of clean-up activities at a site. Typically, this will include a combination of the state's hazardous waste agency and/or the office of the attorney general, and EPA and the Department of Justice (DOJ). Two other governmental entities may also play regulatory roles -- tribes and local/municipal governments. In the case of localities, since local regulations typically do not relate directly to federal facility environmental clean-ups, the Committee recommends that local governments be treated like any other affected stakeholder, rather than as a regulator. To the extent that local regulations do pertain to site-level federal facility environmental restoration activities, local governments should be considered to be subject to the same recommendations for state and federal regulators (see especially the discussion of model approach to the formation of site-specific advisory boards in Section 3 and the allocation process in Section 4).

Affected Tribes - In the case of tribes, the Committee's recommendations attempt to account for a complex set of relationships that includes at least four distinguishable bases for tribal interests in federal facility environmental restoration activities. These include:

- 1) Instances where tribes serve as regulators of FFER activities that take place on tribal lands through their own laws, which they establish as sovereign nations, or as a result of the delegation

of federal statutory authority to the tribe through such statutes as RCRA, Clean Water Act, Clean Air Act, etc.⁵

- 2) Instances where tribes have an interest in FFER activities that is derived from rights that are specified in treaties with the U.S. Government. In some instances, these treaty rights may result in legally binding obligations on the part of the U.S. Government that must be accounted for during the conduct of federal facility environmental restoration activities. Typically these interests will pertain to hunting, fishing, and religious freedom rights on ceded lands upon which there exists a federal facility.
- 3) Instances where the interest of tribes in FFER activities are derived from the rights and privileges that are specified in such statutes as the Historic Preservation Act, the Antiquities Act, the American Indian Religious Freedom Act, and other aspects of the trust relationship between tribes and the U.S. Government.
- 4) Instances where tribes do not have any special interests that are derived from their status as sovereigns, or through treaties, or any federal statute, but nevertheless are still impacted by and concerned about federal facility environmental restoration activities. In these instances tribes and tribal members have interests that are equivalent to those of any other affected stakeholder.

As discussed in Sections 3 and 4 of the report, if tribes have interests in FFER activities that are derived from their laws as sovereign nations, the delegation of federal regulatory authority, or from treaty or trust relationships, their role in FFER decision-making should reflect the nature of these special relationships. To the extent that tribes and tribal members interests are not derived from any such special relationship (as per #4 above), tribes and tribal members should be treated the same as any other affected stakeholder.

Other Affected Stakeholders - There are a wide variety of other affected stakeholders who are impacted by or concerned about federal facility environmental restoration activities. Although such stakeholders exist at both the national and local levels, this report focuses primarily on those affected stakeholders that exist at the local, site-specific level (particularly with the recommendation for the establishment of site-specific advisory boards). These local stakeholders are defined as individual residents that live in the communities or regions within which a site is located or representatives of citizen, environmental, and public interest groups whose members live in the communities or regions within which a site is located. It also includes workers or representatives of workers involved in or affected by site clean-up operations and elected and appointed local government officials to the extent that they do not serve as regulators of site-level federal facility environmental restoration activities.

⁵ Although the delegation of federal regulatory authorities to tribes for overseeing environmental restoration activities has not yet occurred, it may occur in the near future.

2.0. RECOMMENDATIONS FOR IMPROVING THE PROCESS OF DISSEMINATING AND EXCHANGING INFORMATION WITH AFFECTED STAKEHOLDERS

2.1. BACKGROUND AND STATEMENT OF NEED

From the public's perspective, there has been some reluctance in the past on the part of federal agencies to provide information on federal facility environmental contamination problems and restoration efforts. Issues of access to information, including relevant classified information, the lack of clear ground rules for gaining access to information, and the cumbersome and time-consuming processes to retrieve requested information have all exacerbated the problem. Additionally, information dissemination and exchange efforts have sometimes been perceived as more of a one-sided public relations approach rather than the interactive dialogue that stakeholders in the decision-making process desire.

From the agencies' perspective, the public has sometimes requested such voluminous quantities of information that it would have been difficult, if not impossible, to provide an adequate response, particularly given limited resources. This desire for information and involvement on the part of the public was often seen as interfering with the agency's ability to meet its mission objectives.

Today, it is generally recognized that federal agencies have important environmental obligations in addition to their other missions and that disregard for these obligations is shortsighted and often expensive in the long run. In response, these agencies have implemented public participation and information dissemination and exchange efforts. In many cases, these efforts have been successful and the recommendations in this report attempt to promote and build upon these successes. In other cases, there are still improvements to be made in promoting information such efforts. In particular, stakeholder concerns regarding current agency information dissemination and exchange efforts fall into three areas:

- Stakeholders' opinions are often solicited late in the process after the governmental entities have concluded their investigatory work;
- The extent, timing, and scope of current information dissemination and exchange efforts are inconsistent between sites and between agencies; and
- Stakeholders perceive that requests for information are treated by government officials as burdensome and an impediment to management rather than as a right of citizenship.

2.2. DEMONSTRATED SUCCESSES AND PRINCIPLES OF EFFECTIVE INFORMATION DISSEMINATION AND EXCHANGE

In the last several years, many agencies have dramatically changed the way they do business by making environmental restoration data widely available to the public early enough to ensure stakeholders the chance to have an impact on decision-making. For examples of this, see the box below.

In reviewing the successful use of methods for promoting information dissemination and exchange, the Committee believes there are several important principles for ensuring the success of these efforts. These include:

- 1) Federal agencies have an obligation to take the initiative in ensuring that information is provided to all interested parties within applicable regulatory, resource, and budgetary constraints.

- 2) Well developed information dissemination and exchange processes should ensure the timely release of information of interest to stakeholders and provide the basis for informed involvement in decision-making. This should hold true for any environmental restoration site, whether it is on the National Priorities List (NPL) or not.
- 3) The information dissemination and exchange process must be consistent with Freedom of Information Act (FOIA) principles, providing full disclosure of available information. Classification of information on the basis of national security concerns should not be used to bar the flow of relevant environmental restoration information where security/classification issues no longer exist. Such information should be declassified.

Overall, an open, free flow of information will enhance the credibility of environmental restoration actions proposed by federal agencies and may allow the stakeholders to gain a sense of ownership of the final decisions.

DOE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT AND THE DOSE RECONSTRUCTION PROJECT

The public participation program for the DOE Programmatic Environmental Impact Statement (PEIS) exceeded the procedural public involvement requirements mandated by NEPA. Some of the innovative public participation activities undertaken in the PEIS program included the release of documents not usually distributed for public comment (e.g., the Implementation Plan), the distribution of information sheets on particular topics, and the use of innovative interactive workshops in addition to the traditional public hearings mandated by NEPA.

In another case, the director of DOE's Pacific Northwest Laboratory announced an open-door policy for anyone interested in information related to the Hanford Environmental Dose Reconstruction Project. The decision was made in response to stakeholder demands for greater access to preliminary information. This open door policy includes the opportunity for stakeholders to visit laboratory offices in order to review environmental computer codes and any other related project information.

2.3. RECOMMENDATIONS

2.3.1. Overview and Scope

The Committee recommends three improvements to the current process for disseminating and exchanging information with affected stakeholders including:

- 1) developing agency information dissemination policies;
- 2) encouraging affected stakeholders to portray accurately the status of documents or other information that they receive in draft form; and

- 3) establishing a central point of contact within agencies for assisting in disseminating information.

The recommendations contained in this section are intended to apply broadly to all FFER activities, regardless of the statute under which they are conducted. For example, the recommendations that are presented in this section could be applied to clean-ups conducted under CERCLA, RCRA, BRAC, FUDS, UMTRA, and FUSRAP, as well as other state and federal requirements, as described in Section 1.4.2.

2.3.2. Information Dissemination Policy

To address deficiencies and inconsistencies in the present process, the Committee agrees that federal agencies need to take proactive measures to involve stakeholders and to respond effectively to requests for information. To this end, the Committee first and foremost recommends that each agency work with stakeholders to develop policies or procedures delineating the process and timetable for disseminating environmental restoration related information, including information prepared by contractors and government employees.

All Committee members agree that the policies should include, at a minimum, detailed language to implement the following provisions:

- a) Make environmental restoration documents that are considered deliverables under CERCLA Federal Facility Agreements (FFAs), RCRA corrective action permits, or other regulatory instruments available to the public at the same time that the agency submits these documents for formal review to state, tribal, and/or federal regulators.
- b) Regarding the release of all other FFER related information, define the different types of data and information that the agency produces and relies upon in the FFER decision-making process and establish definitive time frames for release of each category of data.
- c) On a timely basis, provide information that federal agencies use in, or that is pertinent to, environmental restoration decision-making. To the extent that the release of such information is restricted because it is classified or exempted from FOIA, the agency will either promptly declassify or reclassify the material such that it can be released, or explain why it cannot be released.
- d) Disseminate information, interpretations, and proposed direction to advisory groups such as site-specific advisory boards (SSABs), Technical Review Committees (TRCs), and recipients of Technical Assistant Grants (TAGs) to ensure effective involvement in the evaluation of options.
- e) Inform agency personnel responsible for environmental restoration of the agency policy on information flow. The policy should emphasize the importance of public participation and the need for timely, substantive responses to maintain public credibility.

The Committee recommends that such guidance be sufficiently detailed to: 1) ensure that individuals at all levels in the departments clearly understand the guidance; 2) provide the public with the support necessary to clarify the scope of their information requests in the event that any conflicts arise; and 3) include a mechanism to ensure that the established time frames and policy provisions are met.

2.3.3. Citizen Use of FFER Information

The Committee recommends that public participants should portray accurately the status of documents or other information that they receive in draft form. In particular, the public has an obligation to recognize and note the preliminary nature of draft materials and to use and distribute these documents within this context only.

2.3.4. Central Point of Contact Within Agencies

The Committee recommends that regulated agencies should designate central points of contact to serve as visible and accessible advocates of the public's right-to-know. The role of this contact is twofold. The first is to investigate and attempt to resolve complaints promptly from individuals or groups who assert that the agency is not responding to their requests for information in a timely or complete manner. The second purpose is to identify -- through the effort to resolve citizen grievances -- deficiencies in the information-handling functions and policies of the agency and, when appropriate, suggest changes to improve both the timeliness and quality of responses.

Agencies may choose to implement this recommendation in different ways to account for the differences in the magnitude of clean-up problems and the different structures of the organizations. Please refer to the boxes below regarding proposed implementation techniques at various agencies.

NOTE: Although all Committee members agree that the proposal to establish a central point of contact within agencies is a positive step, several members expressed concern that the Interim Report does not go far enough to ensure that this central point of contact plays a productive role. In particular, many participants support the idea that the larger agencies instead establish an independent ombudsperson. These Committee members advocate that an ombudsperson who would serve as an independent public advocate could offer more accountability to the agencies in a manner that is quicker, more comprehensive, and more credible than having an internal agency official serve this role.

DEPARTMENT OF DEFENSE

DOD is in the process of creating regional environmental coordination offices that would serve a number of coordinating functions among all the military services and DOD installations within an area that corresponds to the EPA regional offices. These "offices" are intended to streamline duplicative functions and improve communication on environmental related matters not only among the services, but also with environmental regulatory agencies and the public. They would serve as central points of contact to raise and resolve matters related to the inability to gain access to relevant data associated with clean-up actions.

DEPARTMENT OF ENERGY

The Office of Environmental Restoration and Waste Management (EM) has recently developed a public participation policy to ensure that EM provides opportunities for meaningful, substantive, and early participation in its activities by stakeholders and interested members of the public. To help implement this policy, assistant managers for EM, or their designees, are being identified as EM public participation liaisons. Their responsibilities include: coordinating site public participation activities to ensure a coherent, comprehensive, coordinated program so that the public is not confronted with multiple, overlapping, disconnected participation opportunities; identifying resource and training needs; helping to ensure that site public information and education materials support and are compatible with public participation activities; and interacting and coordinating with headquarters on public participation activities.

To respond to the recommendation of the FFER Dialogue Committee, DOE proposes to expand the role of the public participation liaisons to serve as the central point of contact for EM information requests at the field-level, and be charged with the responsibility to provide stakeholder groups with requested information in a timely fashion to facilitate their involvement in EM decision-making. Should stakeholder groups experience problems with accessing information through the field EM public participation liaisons, the director of the EM Office of Policy and Program Information should be notified and he or she would then take the necessary steps to ensure that DOE fulfill all reasonable information requests given regulatory, budgetary, and policy constraints.

DEPARTMENT OF THE INTERIOR

DOI has nine Regional Environmental Officers (REOs) located throughout the United States who serve to coordinate with field offices of the nine DOI bureaus, the EPA, state and local governments, and the public. These REOs serve as field representatives of the Office of the Secretary of the Interior to help resolve disputes, including dispute over FFER information dissemination issues, and to elevate issues to senior DOI management.

DEPARTMENT OF AGRICULTURE

The USDA-Forest Service has environmental engineers located at nine Regional Offices throughout the United States who have designated responsibility for environmental pollution prevention, control, and abatement. The Forest Service is in the process of designating an individual in each Region who will have specific responsibility for coordinating CERCLA clean-up activities. Other USDA agencies with smaller programs, such as the Agricultural Research Service, have designated an individual at their headquarters level as the contact point for environmental restoration activities.

2.4. IMPLEMENTATION STRATEGIES

To provide an effective, responsive means of ensuring that public information needs are met, agencies should consider implementing some combination of the following options:

- 1) With regard to providing a single point of contact at each agency for FFER related questions, establish an "800" number for citizens to call and request information on environmental restoration projects may help in this process.
- 2) Develop and maintain a mailing list of interested parties for each facility.
- 3) Hold meetings to inform the public about the initial discovery of contamination at a facility.
- 4) Where substantial public interest exists, hold meetings at the formative stages of FFA negotiations when the first conceptual outline of the technical requirements is developed. Agencies may also hold additional meetings at later stages in the negotiations when public involvement can still provide useful input to the negotiations. These meetings should also be used to update citizens on negotiations and clean-up activities. In addition to announcing public meetings in the local paper, individuals on the mailing list should be notified.
- 5) Develop annual bulletins that provide updated information on progress at a site or group of sites. Bulletins should be distributed to individuals on the mailing list and in response to requests for information from the public. Depending upon the particular public interest at an installation, the facility may develop special, more in-depth "reports" for significant events or milestones. In some cases, a regular newsletter may be appropriate.
- 6) Make technical documents available on loan from the agency, when possible. Administrative records should also be available through public reading rooms in local libraries. If a large number documents exist in the administrative records for a site, indices, along with microfiche and/or computer disk storage and access, should be available in public reading rooms.
- 7) Where practicable, have the government employees responding to requests for information contact the requesting parties to facilitate the process. A direct conversation should help refine and focus the request. This will help ensure that the requesting party receives the actual information they are seeking and may help minimize the disruption and demands upon government resources.

The above recommendations are intended to improve the current processes for exchanging information with interested parties. The Committee notes that these measures should ensure that any citizen or stakeholder can receive a base level of information at any site, regardless of its size or potential hazard, on a timely basis.

The following section focuses on establishing fora for stakeholders who desire to receive more detailed information on the events at a site and to be actively involved in providing input into decision-making. The Committee intends for these recommendations to be most crucial at large or particularly controversial or difficult sites where citizens want to be intimately involved with the ongoing clean-up efforts.

3.0. RECOMMENDATIONS FOR IMPROVING THE PROCESS OF SOLICITING INPUT FROM AFFECTED STAKEHOLDERS

3.1. BACKGROUND AND STATEMENT OF NEED

As federal agencies have instituted massive environmental restoration programs designed to investigate and remediate contamination at their facilities, there has been a growing desire by those affected by these clean-up efforts (who are referred to here as affected stakeholders) to have a greater role in the clean-up decision-making process. This desire for a greater role is a result of many factors, including an increased awareness of the environmental and health effects of contamination at federal facilities sites, a recognition of the complexity and scientific uncertainty surrounding many decisions at sites, and a mistrust of the government's intentions to consider the concerns of local citizens sufficiently.

In response to this concern for a greater role in the decision-making process, various statutory, regulatory, and other mechanisms have been established to help solicit input from affected stakeholders. Historically, however, these opportunities for citizen involvement have been inconsistent and have not necessarily provided for a meaningful dialogue between participants. Among the issues of greatest concern to these stakeholders are:

- 1) Affected stakeholders have not been substantively consulted in the early stages of decision-making. At sites where FFAs have been negotiated, for example, public comment has typically been solicited only after the signing agencies have agreed to circulate a draft agreement. The perception is that the public is consulted only after the key decisions have been negotiated by the agencies.
- 2) The laws governing the generation and disposal of wastes did not contemplate problems of the complexity and scale that exist at federal facilities. The public involvement mechanisms in these laws tend to focus on the specific proposal at issue, and do not allow consideration of how that proposal may relate to other proposed or existing activities.
- 3) Compounding the problem of late public involvement in decision-making is the lack of opportunity for meaningful dialogue in the formal comment and response process used in the regulatory decision-making process. Some perceive there is a strong tendency for this process to serve the needs of agencies to defend decisions rather than incorporate common or insightful concerns into decision-making. Likewise, it does not allow for an interactive and substantive exchange that promotes better understanding and consensus-building.
- 4) Finally, the burgeoning number of public involvement opportunities -- including NEPA, those required by regulators in permitting, FFA processes, and other voluntary and required facility-sponsored events -- is in many instances overwhelming and dissipates the public's ability and interest to participate effectively. There is a need to focus, coordinate, and streamline, where possible, the public involvement process especially at larger sites involving literally dozens of permitted units.

The net result is that many stakeholders consider the current methods for soliciting input to be too late in the process, inefficient due to overlap with other efforts, and ineffective because the result is often a one-way communication instead of a two-way dialogue.

3.2. DEMONSTRATED SUCCESSES OF SITE-SPECIFIC ADVISORY BOARDS

Site-specific advisory boards (SSABs), as the term is used in this report, are independent public bodies established to provide policy and technical advice to the regulated and regulating agencies with respect to key clean-up decisions. The Committee believes that such boards can improve the decision process by:

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

For these reasons, both citizens and federal agencies will benefit from the creation of SSABs. Such boards provide unique opportunities for public participation in the decision-making process for environmental restoration, either not found or not fully available in more traditional fora such as public hearings or public meetings. There have been some exceptional examples of circumstances where the public has been successfully allowed and encouraged to advise the decision-making process. The information in the box below provides an example of the effective use of a site advisory board.

3.3. RECOMMENDATIONS REGARDING THE ESTABLISHMENT OF SITE-SPECIFIC ADVISORY BOARDS

3.3.1. Overview and Scope

In order to realize the benefits of citizen/federal agency interaction, the Committee believes a process is needed that accomplishes the following goals:

- consistent opportunity for involvement;
- regular, early, and effective public participation in federal clean-up programs; and
- consolidation of the many public involvement initiatives addressing clean-up.

THE MOFFETT MODEL

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

The Navy first discovered contamination in 1983, and the base was added to the NPL in 1987. In 1989-1990, when Moffett first negotiated its interagency agreement with state agencies and the EPA, community groups, area newspapers, and the other Superfund parties called the Moffett timetable too slow.

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

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

In late 1991, after Moffett was approved for closure, the Navy proposed dividing Moffett into six distinct operating units. Clean-up of the main plume, the highest priority operating unit, was accelerated three years. This solution has won praise from all parties. The SVTC believes that the Moffett experience shows that if you give activists a "seat at the table," they can participate effectively in the setting of clean-up priorities. SVTC has applied to EPA for a Technical Assistance Grant to aid in its involvement in the clean-up process.

The Committee recommends that, as an important step toward achieving these goals, the agencies should establish and make use of SSABs, where appropriate and practicable. The Committee believes that SSABs will improve the effectiveness and consistency of public involvement at federal facility sites by providing focused and timely advice to the regulated and regulating entities on environmental restoration activities occurring at the site level. The recommendation is to have, at most, one SSAB at any facility or group of facilities to help coordinate advisory efforts and decision-making initiatives.

The Committee wishes to make clear that SSABs should be used to complement rather than duplicate or supplant broader site level FFER public involvement initiatives. Nor is it the Committee's intent that SSABs should be established at all federal facilities or sites where clean-up activities are taking place. Rather, such boards should be established on an as-needed basis, as is described below. In addition, such boards should in no way hinder or impede the effectiveness of broader public involvement activities, including those that are required by law and those that are not. Not every affected stakeholder will have the time or inclination to participate in SSABs and the Committee believes that it is vitally important that all members of the public be afforded their full rights and privileges with respect to public involvement.

The following recommendations detail when SSABs should be established and propose a model approach to implementing this recommendation. The Committee believes that it is essential for the federal agencies to work closely with local communities to ensure that SSABs reflect and are responsive to local community needs and concerns. The Committee recognizes that the recommendations in this Interim Report will need to be tailored to meet the needs of each federal site and its local stakeholders.

The recommendations contained in this section are intended to apply broadly to all FFER activities, regardless of the statute under which they are conducted. For example, the recommendations that are presented in this section could be applied to clean-ups under CERCLA, RCRA, BRAC, FUDS, UMTRA, and FUSRAP, as well as other state and federal requirements, as described earlier in Section 1.4.2.

3.3.2. When Site-Specific Advisory Boards Should be Established or Restructured

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

- an affected local, state, tribal or federal government entity requesting the establishment of an SSAB; or
- at least fifty residents of the community or region in which a site is located signing a petition requesting an SSAB.

Where site advisory boards already exist, the Committee intends for its recommendations to build upon existing groups and not to supplant them, particularly where they have proven successful.⁶

State and federal agencies will need to assess their existing public participation initiatives addressing environmental restoration issues to determine the extent to which they operate according to the model described below, and then implement the recommendations where needed. For example, where an advisory board, committee, or group currently exists for addressing clean-up issues, agencies may need to increase the scope of issues to be addressed by the group, add members to ensure representation of a wider constituency, change the way in which the group interacts with the general public, etc., in order to be consistent with these recommendations. When more than one group exists, agencies should consider consolidating their activities.

Regardless of whether or not a site advisory board currently exists at a site, the Committee does not intend for the implementation of SSABs to be a replacement or substitute for current public involvement activities such as community relations plans under CERCLA or the legally required public involvement in the Record of Decision (ROD) process. SSABs would be complementary to existing public

⁶ Currently, only the DOD is required by law to establish site advisory boards. See Appendix D for more detailed information regarding these statutory requirements.

involvement requirements. As such, they are not intended to hinder the continued ability of citizens to comment and participate individually or in groups of their own selection.

3.3.3. Model Approach to the Formation of SSABs

The following model approach to the formation of SSABs is intended to serve as an example for how to establish SSABs at sites where they do not currently exist and as guiding principles for how existing advisory groups should be revised to be consistent with these recommendations. These recommendations build upon the lessons learned from both the successes and failures of other site advisory boards. In addition, the Committee believes that its recommendations are sufficiently broad to permit flexibility for each agency and the affected communities to adapt them to their own circumstances.

a) Charter

A charter outlining the mission and duties of the SSAB should be developed at each site. It should provide for SSABs to advise both the regulated and regulating agencies on key policy and technical issues and decisions related to environmental restoration at the site. The Committee discussed the potential application of the Federal Advisory Committee Act (FACA) to the recommended SSABs. The Committee believes that the approach that it has taken is consistent with the spirit of FACA to create advisory committees that are balanced and subject to an open and fair process. Because of this, and in order to facilitate the implementation of these recommendations and avoid unnecessary administrative burdens, the Committee does not believe that it is necessary or prudent to charter SSABs as federal advisory committees. This is consistent with the current practice with DOD's Technical Review Committees and numerous other site-level efforts where advice is given to federal agencies.

b) Scope

In all federal departments, environmental restoration issues are often integrally linked with waste management issues. Also, the people within the communities surrounding federal facilities that are concerned about environmental restoration issues are also likely to be the same people who are concerned about other environmental management issues at that site. The Committee recognizes there may be pressure to use SSABs as a "sounding board" for site-level environmental issues that go beyond environmental restoration. The Committee believes it is vitally important that SSABs not become the general community advisory board for any and all environmental or other issues of concern to communities that surround federal facilities. For example, the Committee believes SSABs should not be used to address land and wildlife management issues that are not related to environmental restoration. However, the Committee does recommend such Boards be used to address waste management and technology development issues that are related to environmental restoration.

In focusing on environmental restoration, the boards should provide advice on issues related to:

- identifying clean-up activities and projects (including those necessary to meet regulatory requirements such as milestones in FFAs);
- tracking progress on those activities/projects (as per the recommendations contained in Section 4);
- providing information and perspectives on clean-up priorities;

- addressing important issues related to clean-up, such as land use, level of clean-up, acceptable risk, and waste management and technology development issues related to environmental restoration; and
- developing clean-up strategies.

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

c) Role of Regulated and Regulating Agencies

As stated above, the SSAB is intended to be a forum through which advice can be given to both the regulated and regulating agencies on environmental restoration and waste management and technology development issues related to environmental restoration.⁷ As such, senior representatives of both regulated and regulating agencies should serve as "ex-officio" members of the SSAB. The term ex-officio is used here to imply that representatives of these agencies should attend SSAB meetings and participate in SSAB discussions. However, because the advice to be given by the SSAB will be directed at their agencies, these agency representatives should not take part in any decisions about what advice should be given.⁸

The regulated agency should serve as the host of the SSAB and should provide administrative assistance, meeting facilities, etc., as necessary. Also, because of the important role that operations and maintenance (O&M) and environmental restoration contractors often play in actually conducting environmental restoration activities on behalf of regulated agencies, agencies should include contractor representatives as part of their team. However, because contractors serve as subordinate agents of the regulated agency, the Committee agrees that contractor participation in SSAB discussions should never serve as a substitute for the participation of senior representatives of the regulated agency. Contractor salaried employees (i.e., those in managerial positions) should not serve as members of SSABs.

d) Membership and Membership Selection Process

The Committee recommends that SSABs should reflect the full diversity of views in the affected community and region and be composed primarily of people who are directly affected by site clean-up activities. Thus, in addition to regulated and regulating agencies serving as ex-officio members, the

⁷ As used here and elsewhere in this document, the terms regulated and regulating agencies refer to those agencies that are either regulated or serve as regulators regarding site level environmental restoration activities. In the case of regulating agencies, the Committee assumes that this will principally include state and federal regulators and, where applicable, tribal regulators.

⁸ Similar to the recommended role of state and federal regulators of environmental restoration activities, where any other government agencies participate on SSABs they should operate in an ex-officio capacity (by not taking part in SSAB decisions about what advice should be given) on matters in which they serve as regulators.

Committee recommends the following affected stakeholders be given primary consideration for SSAB membership:

- individual residents that live in the communities or regions in which a site is located;
- representatives of citizen, environmental, and public interest groups whose members live in the communities or regions in which a site is located;
- workers or representatives of workers involved in or affected by clean-up operations at the site, with a priority for clean-up and production workers who are currently employed at the site; and
- representatives of Indian Nations and other indigenous people that have treaty or statutory rights that are affected by clean-up activities at the site.

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

In some cases, potentially responsible parties (PRPs) from the private sector that are directly involved in or affected by site clean-up activities could be added as ex-officio (non-voting) members at the discretion of the SSAB. The Committee believes that participation on an ex-officio basis is appropriate because PRPs may stand to benefit or gain financially from decisions of the SSAB. For example, at Moffett Field (which is described above) contamination from sites owned by private sector PRPs has mixed with the ground water plume from Moffett Field. Because clean-up activities at these private sites, from a technical perspective, must be addressed in conjunction with Moffett Field clean-up activities, these PRPs can be said to be "affected by" the federal facility clean-up efforts. In other cases, companies have been named as PRPs for the actions they took on federal facilities, such as in the case of Shell Oil at the Rocky Mountain Arsenal. In these cases, such PRPs can be said to be "directly involved in" the clean-up activities at the site. In both cases, these private sector PRPs should be distinguished from the O&M and environmental restoration contractors for the regulated agency, whose proper role is described in Section 3.3.3.c) above.

The Committee recommends that the size of the boards should be limited to promote efficiency and encourage participation, while also ensuring that the major stakeholders or groups of stakeholders are adequately represented. With some exceptions, given the wide variety of circumstances, the Committee believes the optimum size for SSABs will typically be 10-20 people, not including the ex-officio members. Every effort should be made to include divergent interests and viewpoints, regardless of technical expertise. The Committee recommends that appropriate qualities for an SSAB member include:

- an ability to focus on environmental restoration issues irrespective of any interest in or concern over other issues that are unrelated to environmental restoration; and
- a willingness to devote the time necessary to serve on a board.

In order to ensure confidence and trust in the establishment of SSABs that represent the full diversity of views within a community on FFER issues, the Committee recommends an SSAB membership selection process that has the following features:

- 1) Regulating agencies shall actively and publicly solicit nominations for SSAB membership from interested individuals and organizations, ensuring that ample notification is given to those with an active interest or obvious stake in environmental restoration activities at the site.⁹ Such notification should also be given to national organizations that have expressed an interest in that agency's environmental restoration program.¹⁰ Interested organizations and individuals, including those whose nomination has not been solicited by the regulating agencies, should submit nominations for SSAB membership to the regulating agencies. Furthermore, the regulating agencies shall solicit nominations from the governor, local congressional representative(s), state legislators, and affected county, city, and tribal governments.
- 2) Based on the criteria set forth above, the regulating agencies should review all nominations, submit a proposed list of SSAB members to the regulated agency, and make this list publicly available. Furthermore, this list should be mailed to all who were nominated or submitted nominations.
- 3) The regulated agency shall accept the recommended list of SSAB participants unless it determines that the list does not ensure a sufficient diversity of viewpoints or an appropriate balance of affected interests. Decisions of the regulated agency to accept or reject the proposed list must be made and explained openly and publicly. Once again, all who have been nominated or submitted nominations as per Step 1 should be notified of the decision of the regulated agency.
- 4) If the regulated agency rejects the proposed list, the regulating agencies, with the advice of federal, state, tribal, and local government representatives, shall propose, and make publicly available, an alternative list that addresses the specified imbalance or lack of diversity.
- 5) If SSAB membership selections issues have not been resolved after step 4, the regulating and regulated agencies will refer the matter to higher levels of authority within their agencies for final resolution.

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

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

⁹ The Committee believes that ample notification can best be accomplished by the regulated, regulating, and affected agencies and institutions jointly pooling their resources to develop a contact list for purposes of soliciting nominations for SSAB membership.

¹⁰ Notification of national organizations is for the purpose of allowing those organizations to themselves notify any local members who may have an interest in participating on an SSAB.

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

Notwithstanding the recommended role of the SSAB on these matters, it remains the obligation of all participants -- including the regulated and regulating agencies -- to ensure the membership of the SSAB is composed of a manageable number of people, is properly balanced, and adequately represents the diversity of views within the affected community.

e) Interaction with the Public

As noted above, SSABs operate in a larger context in which members of the public, who may not have the time, resources or inclination to participate on an SSAB, must be kept adequately informed of and involved in clean-up decisions that affect their lives and their communities. As such, SSABs should conduct their activities in a manner that complements rather than duplicates or supplants broader public involvement efforts, some of which will be legally required. To this end, members of the SSAB, along with the participating regulated and regulating agencies, should make every effort to coordinate the timing and focus of SSAB activities with the need for broader public involvement activities. The Committee encourages regulated and regulating agencies to use the SSAB to obtain advice as to how and when such broader public involvement activities should be conducted. In addition, in order to maintain trust and accountability, interested members of the public should be notified of SSAB meetings, SSAB meetings should be open to the public, and some type of record documenting the meetings should be made available to the public. Finally, SSABs should provide opportunity for public comment at their meetings and should make every effort to respond to both written and verbal comments that are submitted to it in a timely manner.

f) Operating Procedures

At the establishment of each SSAB, SSAB members as a group should develop appropriate ground rules and operating procedures to allow for the efficient and productive operation of the group. Each SSAB should consider establishing procedures regarding the following:

- Determining explicitly how the SSAB will make decisions about what advice and recommendations it should give and, in particular, how to ensure that minority or dissenting views are addressed;
- Naming a chairperson, hiring a coordinator, or appointing an independent facilitator, as deemed necessary by the SSAB, whose principal role would be to ensure that:
 - SSAB meetings are run effectively and in a manner that is consistent with the SSAB's agreed upon ground rules;
 - the board maintains its focus on environmental restoration issues and waste management and technology development issues related to environmental restoration; and
 - whatever logistical and administrative tasks that the SSAB determines are necessary to play its advisory role effectively are accomplished.

- Forming subcommittees where and when it is appropriate;
- Providing training to SSAB members regarding relevant regulatory processes;
- Determining what type of public record is kept of meetings (video, minutes, general summary, etc.);
- Establishing procedures for adding, replacing, and removing SSAB members;
- Deciding what, if any, terms, rotational schedule, term limits, or use of alternates are appropriate to help ensure a balance of interests and continuing opportunity for and access to SSAB participation; and
- Determining when the work of the SSAB is complete or the overall interest in participating has diminished to such a level that the SSAB should be dissolved.

In addition to the above, the regulated agency shall establish and make public operating procedures that, to the extent possible, attempt to ensure continuity in the availability of the staff who are principally responsible for interacting with the SSAB.

g) Accountability

Federal agencies and regulators should respond to recommendations and advice from SSAB members by providing information on which recommendations or advice can be implemented, which need to be modified in order to be implemented, and which cannot be implemented. The SSABs may request a written response to any recommendation or advice made by its members. SSABs and agencies should maintain a record of recommendations or advice made by the board and the status and substance of all responses. SSABs also have the responsibility to respond to issues raised by the regulated agencies. A log of such issues and responses should be kept.

Members of the SSAB have a responsibility to share information with and provide feedback from the constituencies they represent. In addition, members have an obligation to attend all SSAB meetings to the extent possible. Finally, members of SSABs have a responsibility to portray accurately data or information provided to them as members of the SSAB. If members distribute documents to others outside of SSAB, they must indicate the preliminary or draft nature of the document.

h) Administrative and Technical Assistance Funding

NOTE: Representatives of DOD have indicated that they wish to take the recommendation of all other Committee members that are specified in 3.3.3.h) under advisement. For this reason, any references to the "Committee" in this section of the report do not include DOD representatives. When and if DOD accepts the general recommendation of other Committee members to provide administrative and technical assistance funding to SSABs, the Committee agrees that it will revisit the more specific question regarding appropriate funding levels for DOD sites and that these funding levels should address both the large number of and greatly varied conditions that are found at DOD-managed sites.

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

(i) Administrative Funding

The Committee recommends that regulated agencies provide funding to cover the routine administrative needs of SSABs that will allow them to operate efficiently and effectively, such as meeting space, document duplication, mailings, etc. The Committee agrees that funds should be provided for per diem and travel expenses of local SSAB members who must travel to meetings, hiring a coordinator or independent facilitator (where deemed necessary by the SSAB), and other similar administrative expenses necessary for SSAB business. The Committee does not support providing funding for SSAB members' salaries or honorariums.

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

(ii) Technical Assistance Funding

Committee members agree that neighbors of major hazardous waste sites often lack the technical resources to monitor and comment effectively on the technical aspects of investigation and clean-up at their sites. Thus, the Committee supports providing funding for technical assistance to the non-governmental SSAB participants to help ensure more effective and meaningful participation, especially as it relates to SSAB review and comment on technical reports and documents being developed by the federal facility managers and their contractors. In addition, the Committee recommends that SSABs' technical assistance funding should be used to provide local training courses to educate SSAB members regarding relevant regulatory processes.

The Committee agrees that it would be appropriate for SSABs to use technical assistance funding to provide travel, per diem, and compensation to technical experts and researchers from national public interest organizations, universities, or private consulting firms to attend one or more SSAB meetings to assist the board in discussions and deliberations involving technical issues.

The Committee also agrees that technical assistance funding should be used to complement, rather than duplicate, the technical programs of both the regulated and regulating agencies. Therefore, SSAB technical assistance funds may not be used to perform additional sampling, to underwrite legal actions in any way, including the preparation of testimony or the hiring of expert witnesses. Also, the work of any SSAB technical consultants must occur concurrently with the on-going efforts of the regulated and regulating agencies so as not to slow down or impede the process. It is the responsibility of the regulated agency to help coordinate this review process and to provide information willingly to expedite the soliciting of input from the SSAB and SSAB technical consultants.

(iii) Funding Implementation

The administrative and technical assistance funding support recommended by the Committee is intended to build upon the principles of the existing Technical Assistance Grant (TAG) program under CERCLA

by: 1) connecting the use of such funds to the activities of the SSAB and, in particular, to the technical assistance needs of the citizen participants in the SSAB;¹¹ 2) linking funding amounts to the magnitude and complexity of clean-up at each site; 3) providing funding for administrative support and technical assistance; and 4) providing funding for non-NPL sites that have established SSABs, as per the procedures specified above, as well as at NPL sites with SSABs.

The Committee recommends that individual SSABs and the regulated agency providing the funds should work together to determine an appropriate mechanism for making administrative and technical assistance funds available to the citizen members of the SSAB. Whatever approach is selected should ensure that decisions regarding the administration and use of such funds be made by the citizen members of the SSAB, in accordance with the guidelines specified above. Possible mechanisms identified by the Committee include:

- 1) Channeling the funds through a member of the SSAB that represents a public interest and/or citizen-based organization that has non-profit legal status who would administer the funds in a timely and accountable manner;
- 2) Channeling the funds through a non-profit organization that is or has been created for the explicit purpose of serving as a legally responsible fiduciary and administrator of the funds;
- 3) Channeling the funds through an independent entity, such as a university or accounting firm, that is mutually agreed upon by the citizen members of the SSAB and the regulated agency that is providing the funds; and
- 4) Channeling the funds through a state or local government agency that is both capable and willing to administer the funds in a timely and accountable manner.

The above options should not preclude the possibility of the citizen members of the SSAB negotiating procedures with the regulated agency for direct disbursement of administrative and technical assistance funding. The Committee expects that in some cases, it may be necessary -- if only on an interim basis -- for the regulated agency to oversee the direct disbursement of administrative and technical assistance funds while the SSAB decides on how to receive funds over the long-term. For the other long-term options, the participating, newly created, independent, or local/state governmental entity would serve in a legally responsible fiduciary capacity, administering the funds in a manner to be decided by the citizen members of the SSAB, in accordance with the guidelines specified above.

In order to avoid duplication of effort, the Committee recommends that after an SSAB is established it will not be necessary to award grants under the existing CERCLA TAG program. In particular, the Committee recommends that TAGs should not be awarded to organizations that choose not to participate in SSABs. The Committee wishes to make absolutely clear, however, that in situations where SSABs are established and organizations have received TAGs in the past, such organizations would not only be

¹¹ The Committee does not intend for control over this technical assistance funding to be shared by private sector responsible parties or contractors who may be participating in the SSAB. Also, consistent with the TAG program, no group (other than the SSAB) created or sustained by a PRP or the regulated federal facility shall benefit from the technical assistance funding to be provided as a result of these recommendations.

eligible for participation on the SSAB, they are likely to be prime candidates for SSAB participation because they have already evidenced an active interest and involvement in clean-up issues at the site. Furthermore, where SSABs have not been established, it is the Committee's view that community groups would still be eligible to receive TAG awards.

The recommended levels and factors to be considered in providing administrative and technical assistance funding to SSABs are as follows:

- The Committee also anticipates that SSAB technical assistance funding needs will be proportional to the level of environmental restoration assessment activities at a site in a given year.
- The Committee believes that typical funding needs will be \$50,000 per year, and normally will not exceed \$250,000. Need will be determined based on an application from the citizen members of the SSAB, and on the approval of the regulated and regulating agencies. This approval will be based on criteria developed by the regulated agencies in consultation with stakeholders. To accelerate the implementation of this program, the Committee urges the regulated agencies to begin this process of consultation as soon as possible.
- Greater amounts of funding should be provided in the early phases of the FFER clean-up process in recognition of the fact that technical assistance needs will be greater during these early phases of the decision-making process. Funding levels should be reassessed after site remedies have been selected.
- Although the Committee anticipates a typical funding need of \$50,000 per year, it is likely that funding needs will be greater at the larger, more complex DOE sites and, in some cases, may exceed \$250,000 per year.
- It is likely that technical assistance funding at the levels cited above will not be necessary at minor sites with small clean-up budgets. The level of administrative and technical assistance funding at such sites, if any, should be determined by the regulated agency in consultations with the regulating agency and the SSAB. The Committee notes that few, if any, NPL sites should be considered minor and that many non-NPL sites are major sites.
- Agencies are encouraged to group together small sites with similar technical concerns, especially if they are in the same region, to provide common technical assistance funding.

The Committee recommends that the above approach to providing funding for administrative and technical assistance be reassessed in the early phases of the SSAB program.

3.4. IMPLEMENTATION STRATEGIES

The Committee recommends that each agency, working with affected stakeholders, should develop agency-wide policies to ensure that administrative and technical assistance funding levels not be arbitrarily changed or adversely affected by whatever advice the SSABs choose to give.

At agencies where site advisory boards already are mandated by law, the Committee recommends building upon existing structures to implement the recommendations outlined here. Also, the Committee recognizes that some agencies have efforts underway to implement the use of site advisory boards. In either case, the Committee recommends that the provisions outlined above be adopted and grounded in policy or guidance whenever possible. Options for implementing these recommendations are suggested below:

- 1) At DOD sites, the regulations which implement TRCs could be amended to account for the additional provisions outlined above, making it clear that SSABs fulfill the SARA Section 211 requirements for TRCs.
- 2) At non-DOD sites with existing FFAs, the community relations plans included in agreements could be amended to provide for the establishment of SSABs upon request or petition. Also, any party to the FFA could initiate efforts to amend each of the FFAs pursuant to the procedures outlined in those agreements.
- 3) At non-DOD sites where FFAs are pending, the establishment of SSABs may be incorporated into the community relations plans for these sites. Negotiations on the FFA should not, however, preclude the earlier establishment of SSABs. Prior to conclusion of the negotiation of the FFA, EPA and the other parties to the pending FFA should initiate efforts to notify the public of the option to establish SSABs.
- 4) At federal facilities or groups of facilities of significant public concern, but not on the NPL, the Committee suggests that facility operators work in coordination with EPA, states, and tribal governments to notify the public regarding the potential establishment of SSABs and designate a contact at the regional or local level for those who may be interested in preparing a petition for establishing a SSAB.

4.0. RECOMMENDATIONS FOR IMPROVING ACCOUNTABILITY THROUGH ENHANCED STAKEHOLDER INVOLVEMENT THROUGHOUT THE FEDERAL BUDGET PROCESS

4.1. BACKGROUND

As federal agencies continue to implement FFER programs at an increasing number of sites, and as these sites proceed through the clean-up process, the scope of the federal government's clean-up responsibilities will mount. As sites proceed into the more costly remedial construction phase, the government's total clean-up funding needs will also increase. The ability of each agency to obtain sufficient funds to ensure execution of projected environmental restoration activities in a given year will be an important factor in determining the overall success of the federal government's environmental restoration efforts.

Executive Order 12088 requires federal agencies to request sufficient funds in their budget submission to OMB to meet all environmental restoration obligations.¹² To date, federal agencies have generally been successful in obtaining sufficient funds to carry out all such obligations, as well as certain additional essential activities.¹³

Stakeholder confidence in each agency's environmental restoration program is contingent upon continued progress on clean-ups and an understanding that the agency has made every effort to plan for and execute its clean-up obligations. These obligations are usually expressed in some form of a legally binding obligation, which contains detailed time frames and milestones for required activities. While federal agencies are indeed committed to meeting these time frames, the practical limitations of the federal budget process indicate that even the most arduous efforts may not ensure full funding for all FFER obligations. As a result, there may be times when insufficient funds will prevent full implementation of all FFER obligations or related, but not required, activities.

The Committee has developed a process that should ensure that such funding shortfalls do not create an undue burden upon individual sites or stakeholder expectations. By building upon the principles of open and active involvement described earlier, the Committee hopes the consultation and allocation process described below will ameliorate the effects of funding shortfalls on FFER programs.

4.2. OBJECTIVE

The primary objective of this section is to establish a credible process for planning and undertaking FFER activities and dealing with funding shortfalls in an equitable and cost-effective manner. In order to meet this objective, the Committee has developed a set of recommendations for a process whereby affected stakeholders are informed of, and to the extent feasible, participate in, important decisions that will affect the scope of work to be performed at federal agency sites.

¹² The term environmental restoration obligations means all legally enforceable or otherwise applicable federal, state, tribal, or local requirements as those terms are used in the Interagency Review of the DOE ERWM Program, April 1992. These are usually expressed in statute, treaties, regulation, permit, order, or Interagency Agreement.

¹³ For example, though generally not legally required, DOD and DOE have initiated extensive RI/FS investigations at non-NPL sites. These studies have been essential in managing a comprehensive clean-up program.

4.3. PRINCIPLES

In recognition of the important linkage between funding availability and work to be performed, the Committee endorses the active engagement of stakeholders in important FFER decisions. This applies to all decisions regarding the scope, timing, and priority of activities to be performed, and, to the extent feasible, budgetary matters. Where affected stakeholders cannot actually be involved in the decision-making process, they should be advised of relevant decisions to the extent practicable so that they retain confidence in the federal agency's efforts.

Many aspects of the federal budgetary process are deliberative and are therefore confidential. These include many aspects of the budget formulation process. However, the Committee recognizes that there are essential aspects of establishing budgetary requirements that are not confidential and that are subject to disclosure. This includes most of the information relating to the scope of activities to be performed. This is fortunate, as it is the activities that will be performed, and not the amount of funds being requested, that are of greatest interest to the stakeholders. Accordingly, the process that has been developed is intended to emphasize communication regarding the scope of activities that the federal agencies expect to perform.

4.4. OVERVIEW OF THE CONSULTATION AND ALLOCATION PROCESSES

What follows is an introduction and overview of the consultation and allocation processes that have been developed by the Committee. The recommendations and discussion of these two interrelated subjects are presented in separate sections of this report, but each bears upon the other and the Committee's recommendations with regard to each are intended to operate in conjunction with one another.

The consultation process provides for extensive input by the affected stakeholders into the FFER process. By actively consulting and communicating with stakeholders in the decisions that affect the scope of activities to be performed, federal agencies will enhance their FFER programs.

In addition to describing a process for timely communication, the Committee has developed a methodology for allocating funds in the event of FFER funding shortfalls. Described as a "fair share" allocation, the methodology provides a process for distributing funding shortfalls in an equitable manner. There are several important variations and caveats to the process, and these are described in much greater detail below.

Prior to further discussion of the consultation and allocation processes, there are several important terms that warrant explanation in order to provide the reader with maximum clarity. Terms that are not described below retain their plain language meaning.

Activity/Project: In order to ensure consistency and accountability for the consultation and allocation processes, it is important to retain a consistent "unit of analysis." The term "activity/project" is one or a collection of activities, projects, tasks, or work items that are conducted pursuant to a federal agency's ER program. These may range from an individual task to the restoration of a collection of individual hazardous substance sites that are in close proximity.

It is impossible to prescribe a size or scope for activities/projects that will be consistent throughout all FFER programs. However, the term should define units that will enable accurate tracking and sufficient accountability of FFER programs. As such, the process of site-level consultation, which is described

herein, should be utilized to reach consensus on the activities/projects at each site that will meet the goals of accurate progress tracking and accountability.

Ideally, the identification of appropriate activities/projects at the site level should be at a sufficient level of detail to enable verification that the agency's budget request package and the President's budget request to Congress for that agency includes the activities/projects that are necessary to meet budget year obligations and milestones (required by FFAs, other regulatory documents or the agency's own planning documents), as well as to ensure adequate progress toward out-year obligations and milestones. Indeed, the principal purpose of utilizing a unit of analysis at the activity/project level is to enable consistent evaluation of each facility's ER program progress over time.

Field-Level Manager and National Program Manager: The terms "field-level manager" and "national program manager" are used throughout this section of the report to connote two distinct levels or types of decision-making that take place within federal agencies. It is recognized that for some agencies, particularly DOD and DOI, this nomenclature may vastly oversimplify complexities in the FFER decision-making process related to the multiple organizational layers within such agencies. Nevertheless, the terms "field-level manager" and "field-level decisions" are meant to connote decisions and interactions that take place at the local site/facility/field office level. "National program managers" refer to the level of management and decision-making that relates to the overall management of a FFER program. In some departments there may be a multitude of such programs and program managers.

Programmatic Versus Site-Specific Decisions: The Committee is aware of the extremely dynamic nature of the federal facility environmental restoration decision-making process. Sometimes decisions are made at the local level (i.e., the site/facility/field office level) that could affect the scope or schedule of an FFER activity/project. Other times decisions are made within agencies or within the Executive Branch that are of a programmatic or policy nature. When these types of decisions are made it is sometimes possible to ascertain whether they will affect the scope or schedule of a particular FFER activity/project. However, it is probably more typical, because of the nature of these decisions, that it is not possible to ascertain their potential impact on site-specific FFER activities/projects until such time as the President's budget is submitted. This is particularly true with programmatic and policy decisions that are made in the context of the federal budget cycle.

Affected Stakeholders: The terms affected stakeholders or stakeholders will be used throughout this section in a manner consistent with the intent of the previous sections of this report. Accordingly, where stakeholders are affiliated with an SSAB, the terms should be used interchangeably. Where no SSAB exists, then the term stakeholders is intended to refer to the federal agency, regulatory agency, tribal, public, and other affected parties who are most interested and concerned with the FFER activities/projects to be performed.

4.5. CONSULTATION PROCESS

4.5.1. Introduction and Scope

Regular and extensive communication and consultation amongst the affected stakeholders is essential to ensuring that all parties are active participants in the FFER process. Throughout this continuous consultative process, there are several key points that are important opportunities for the stakeholders to confer on matters related to the availability of resources to carry out environmental restoration activities.

The Committee has identified four distinct points within the FFER process at which enhanced communication among stakeholders is recommended:

- Point #1: Initial field-level development of site-level requirements.
- Point #2: Submission of the President's budget to Congress.
- Point #3: Presidential/Congressional appropriation and agency allocation.
- Point #4: Completion of the budget-year execution.

Additional communication regarding resources should also occur, to the extent feasible, throughout the process, but the Committee has not identified distinct times for consultation other than those listed above. Rather, the principle stated above, timely and continuous communication of important decisions, should serve as a guideline for use throughout the entire FFER process, as recommended in Section 4.5.2.

The communication process that is described in this report is intended to enhance stakeholder understanding and participation in the FFER decision-making process. It is envisioned that the consultation and communication that is described herein will be conducted primarily at the local level among representatives of the federal facility and affected stakeholders, such as the SSABs and the regulators. It is not envisioned that this communication will occur often at the national level.

It is noted that the federal budgetary process is both a multi-year and cyclical process. For the sake of efficiency, the Committee encourages agencies to coordinate their efforts to implement these recommendations, such that information on two or more separate budget development and implementation cycles can be shared at the same time, where practicable and appropriate. This suggestion for coordinated review and consultation of budget-related information is in no way intended to diminish the importance of the ongoing and continuous consultation between affected stakeholders, regulators, and site managers that is recommended in Section 4.5.2. and elsewhere in this report.

The recommendations contained in section 4.5. are intended to apply broadly to all FFER activities, regardless of the statute under which they are conducted. For example, the recommendations that are presented in this section could be applied to clean-ups conducted pursuant to CERCLA, RCRA, BRAC, FUDS, UMTRA, and FUSRAP, as well as other state and federal requirements, as described earlier in Section 1.4.2. However, as explained below, the applicable scope of the allocation process, which is described in Section 4.6., is narrower than that which applies to the other recommendations contained in this report.

4.5.2. Consultation During Program Development and Execution

Recommendation

The Committee recommends that when site-specific or programmatic decisions are made that affect the ability of a site to meet its clean-up obligations, federal agencies should communicate these decisions to stakeholders in a timely manner.

Discussion

The Committee recommends that at any time site-specific or programmatic decisions are made that will affect the ability of an individual facility to meet its clean-up obligations, these decisions, regardless of when or in what context they are made, should be communicated in a timely manner to affected stakeholders at the facility. This recommendation is intended to focus on communicating decisions that result in changes to the scope or schedule of proposed FFER activities/projects, which in turn affect the ability of federal facility managers to meet their FFER obligations. The Committee is especially concerned that decisions that affect the ability of an individual facility to meet FFER obligations that are specified in legally enforceable agreements, permits, orders, etc., be communicated in a timely manner.

This recommendation builds upon the recommendations and principles contained in the previous two sections of this report, which address information exchange and the establishment of SSABs. This recommendation also forms the broader context within which the remainder of the recommendations contained in this "Consultation Process" subsection (all of which focus on consultation at discrete points in the FFER budget development and implementation process) should be considered.

It is intended that this recommendation should apply to any site-specific or programmatic decisions, including those that are made in the context of the budget process. However, this recommendation does not apply to the numerous deliberative, predecisional considerations and discussions that occur within the federal government during the development of the President's Budget.

These recommendations are not intended to detract from or diminish the importance of the Committee's recommendations regarding early and ongoing consultation with affected stakeholders (see Sections 2 and 3). Rather, the focus on communication of decisions in this recommendation is intended to complement these other recommendations and serve as a means of maintaining trust and credibility, particularly in those situations where local field-level managers are not directly involved in decisions that may affect their ability to meet FFER milestones.

4.5.3. Consultation During the Initial Field-Level Development of Site-Level Requirements

Recommendations

The Committee recommends that:

- a) Field-level managers should work with stakeholders to define the appropriate unit of analysis¹⁴ and to identify the activities/projects for inclusion in the budget request package for the national program manager;
- b) Field-level managers should share planning cost estimates where practicable; and
- c) Stakeholders should treat and portray such planning cost estimates appropriately and accurately.

¹⁴ As discussed above, once an appropriate unit of analysis is identified, the agreed upon activities/projects should be utilized from that point forward as a means of tracking those same activities/projects through time.

Discussion

These recommendations reflect the Committee's recognition of the important contribution stakeholders can make in advising federal agencies about proposed clean-up activities/projects and their related scope and priority. The first step in this consultation is the establishment of a common unit of analysis. As noted, the precise activity/project descriptions that are agreed upon should be at a sufficient level of detail to enable verification and tracking over time of those activities/projects that are critical to the ability of the site manager to meet established milestones. The level of detail should also be sufficient to enable stakeholders to ensure that adequate progress is being made toward meeting out-year obligations and milestones.

Regarding the type of information that is shared at this time, it is understood that information on the actual dollar amounts that are included in the activity request package that is submitted by field-level managers to national program managers for the purposes of developing the President's budget cannot be provided. This is due to restrictions on the availability of federal budget information prior to submission to Congress and concerns about providing sensitive information on cost estimates for specific projects not yet released for competitive contract bids. Thus, this recommendation focuses on the sharing of information on FFER activities/projects at this early stage of the federal budget cycle rather than the actual dollar amounts that are being requested by field-level managers as part of their budget request package.

Although this recommendation focuses on sharing information on the activities/projects that will be included in field-level submissions, federal agencies, as part of the activity/project planning process, should share planning cost estimates, to the extent possible. In a number of instances, legislation and negotiated agreements (particularly pertaining to DOE and DOD) currently require the sharing of final planning cost estimate information. As noted above, it is agreed that there is an affirmative obligation on the part of those who receive such planning cost estimates, which may not be of budget quality (i.e., the agency has not verified their accuracy), to portray this information as still being in the planning stage.

4.5.4. Notification after the President's Budget Submission

Recommendation

The Committee recommends that as soon as possible after the President submits the budget to Congress, federal agencies should provide information to stakeholders that disaggregates the budget to an activity/project level consistent with the level of disaggregation utilized during the initial field-level development of requirements. Information provided at this point should address both the scope and dollar amount of proposed activities/projects and should identify which activities/projects are or are not included in the President's budget in comparison to the activities/projects specified in the initial field-level consultation.

Discussion

To implement this recommendation, regulated federal agencies should provide information to affected stakeholders that disaggregates the President's budget to an activity/project level. Disaggregated information provided at this point in time will enable stakeholders to understand which activities/projects are still included in the President's budget, as compared to the activities/projects that were identified during the initial field-level consultation (as per Section 4.5.3. above).

Information on the proposed funding level for each activity/project that is included in the President's budget will normally be provided at this stage. There may be exceptional circumstances where this practice cannot be followed in detail. For example, concerns about providing information on budget amounts and cost estimates for specific FFER activities/projects not yet released for competitive contract bids may limit a federal agency's ability to provide information at the level of disaggregation specified by the agreed upon site-level FFER activities/projects. It is also recognized that it may be difficult to provide disaggregated information immediately after the submission of the President's budget, but federal agencies should make every effort to do so in a prompt manner which would allow other stakeholders to participate in the congressional authorization and appropriation debates.

In addition to providing the information on the activities/projects described above, federal agencies should provide information to stakeholders, when requested and to the extent such information is available, on the basis of any changes in the activities/projects that have been requested in the President's budget in comparison to the initial field-level requirements identification. As noted above, the consultation process described in this subsection is intended to be performed primarily at the local level, and not in a centralized manner at the agency headquarters level. However, in order to ensure that the rationale for changes to the scope or schedule of FFER activities/projects are communicated to affected stakeholders in a timely manner, this information should be provided by agency representatives at whatever organizational level within the agency it is available.

4.5.5. Consultation after Presidential/Congressional Appropriation and OMB Apportionment

Recommendation

Field-level managers should communicate the results of agency allocation decisions to stakeholders. In cases where there is no funding shortfall, the field-level manager should inform stakeholders of the results of agency FFER budget allocation decisions. In cases where there is a funding shortfall, consultations and negotiations, as appropriate and as described in Section 4.6 below, should occur.

Discussion

After Congress approves and the President signs a bill to appropriate FFER funds, and the Office of Management and Budget (OMB) completes its apportionment of the approved budget, national program managers should allocate funds to the field-level in a manner that is as consistent as possible with the FFER activities/projects that were included in the President's budget. If the appropriation from Congress was insufficient or there has been significant unanticipated program growth between the time the President's budget was developed and appropriations are finalized, agencies should allocate FFER funds in accordance with the recommendations contained in Section 4.6. below.

The agency should inform affected stakeholders of the actual funds allocated, as well as the projected scope of activities the agency expects the allocated funds to achieve at each facility. As with the other discrete points of consultation process described in this section, the information provided should be disaggregated to an activity/project level. This should include information about which activities/projects are included in the facility's budget, as compared to the activities/projects that were identified during the initial field-level consultation, along with information on the budgeted dollar amounts associated with

these activities/projects. The consultation at this step should be performed in a timely manner to enable prompt initiation of agreed upon activities/projects.

In the allocation process described below, the Committee has developed a method for allocating funds in cases where there are insufficient funds to meet all FFER obligations. The recommendation in this subsection is intended to operate in conjunction with the subsequent recommendation on allocation strategies by ensuring that, as allocation decisions are made that affect the scope or budget of activities to be performed, stakeholders are informed or consulted with, as appropriate.

4.5.6. Consultation After Budget Execution

Recommendation

The Committee recommends that federal agencies should provide stakeholders with a status report on clean-up activities that have been conducted and on funds expended at the end of the fiscal year following budget execution.

Discussion

At the end of the budget year, the federal facility should communicate to the affected stakeholders the amount of funds that have been obligated and spent and the work that has been performed. This information should be disaggregated at the same activity/project level as has previously been described in order to ensure continuous activity/project tracking. This will ensure a common understanding of the progress the site is making in meeting its current and future FFER obligations.

4.6 ALLOCATION PROCESS

4.6.1. Introduction and Scope

Federal facility environmental restoration priorities are established and refined at numerous stages and levels in the FFER decision-making process. The Committee believes that the establishment of more widely supported federal facility environmental restoration priorities can be accomplished by improving the overall process by which affected stakeholders are involved in FFER decisions. It is for this reason that the Committee has included recommendations in this report related to both improving the exchange of information and involving affected stakeholders in FFER decision-making. However, even with these improvements there is a need to establish an agreed upon approach to setting FFER priorities in the event of a funding shortfall.

The Committee believes that the recommendations that follow establish a FFER priority-setting system that balances the respective interests, responsibilities, and authorities of FFER program managers, state and federal regulators, tribes, and other affected stakeholders.

The Committee believes that the allocation process it is recommending will establish a competent, efficient, and cost-effective approach to the allocation of federal facility environmental restoration resources in the event of a funding shortfall. Such an approach should instill congressional and public confidence in the management of FFER programs and, thereby, support for these programs. This

confidence will help promote the federal government's overall goal of enhanced environmental protection and restoration.

What follows is an explanation of certain concepts that are critical to understanding the recommended approach to priority-setting and allocation contained in this section. The reader should note that the applicable scope of the recommendations contained in this section is, for purposes of practicality, more narrowly defined than that of the previous sections of this report.

Two Different Types of FFER Funding Shortfalls: The Committee identified two different types of funding shortfalls that warrant different responses. The first are those shortfalls that are caused by a failure on the part of Congress to appropriate the amount of FFER funds that were requested in the President's budget for a particular agency's FFER program. This circumstance is referred to below as an "insufficient appropriations shortfall."

The second are those funding shortfalls that are caused by a variety of circumstances, including: a) unanticipated events, new circumstances, or new data; and b) underestimated FFER costs. These types of funding shortfalls are referred to below as "program growth shortfalls." Although the Committee recognized that it will often be difficult to distinguish between these two major types of funding shortfalls -- insufficient appropriations and program growth -- as well as between the different causes of program growth shortfalls -- unanticipated events and underestimated costs -- it is nevertheless important to maintain these distinctions for reasons that are specified below.

Applicable Scope and Focus of the Allocation Process: In order to understand fully and implement the Committee's recommendations regarding a process for making FFER allocation decisions in the event of a funding shortfall, it is necessary to specify the precise programmatic parameters within which these recommendations are intended to be applied.

The "fair share" allocation process, which is described below, focuses primarily, but not exclusively, on funding shortfalls caused by insufficient appropriations. This process can only be implemented if all who are involved in its implementation are clear about the programmatic budget from which the fair share allocation is to be derived.

The Committee recognizes that some environmental restoration activities take place under the "operation and maintenance" (O&M) portions of agency budgets. However, the Committee believes that at this time it would simply be too complicated to include all ER activities that are now funded through O&M budgets in its recommended allocation process. Thus, the Committee recommends that the allocation process described below should be applied only to the specified ER program budgets within agencies. In the case of DOE, the allocation system described below would be applied to the Office of Environmental Restoration budget¹⁵ and would not apply to other budget accounts such as the Office of Waste Management, the Office of Technology Development, and the Office of Facilities Transition; for DOD, the Defense Environmental Restoration Program budget, which is under the managerial control of the Office of the Assistant Secretary of Defense (Environment) and the operational control of the DOD components (i.e., the Military Services and the Defense Logistics Agency)¹⁶ and would not apply to

¹⁵ As it existed in December 1992.

¹⁶ As it existed in December 1992.

other budget accounts such as BRAC and FUDS; for all other agencies it would be the specific program or portion of their budget under which environmental restoration activities take place.

The Committee recommends that at some later date, after the allocation process described below has been tested, agencies should consider using this process to address shortfalls for environmental restoration activities/projects that are funded through other parts of the agency's budget, as well as for waste management and technology development activities that are related to environmental restoration.

The limitation regarding the applicability of the allocation process described below is not intended to be determined by the authority under which a clean-up is conducted, but rather by whether the funds for conducting the clean-up are included in the portions of agency-wide budgets that are specified for environmental restoration activities. Depending on the agency, these programs typically include clean-up activities that are conducted pursuant to a variety of laws and regulatory requirements including CERCLA, RCRA corrective action, federal facility compliance agreements, permits, orders, etc.

Inter- versus Intra-site Allocations: As noted in the introduction to this report, in grappling with the perceived need for "national" federal facility priority-setting, the Committee agrees that this need should not result in the establishment of a single, unitary priority-setting process or system whereby federal facilities from all departments are considered together. Rather, the term "national" federal facility priority-setting is used in this report to refer to the question of how best to set clean-up priorities at the national level within each department (i.e., between sites within each federal department).¹⁷ The allocation of FFER funds between sites but within a department is referred to below as "inter-site allocations."

Another important level of priority-setting occurs between activities/projects within a site.¹⁸ This level of priority-setting and allocation of FFER resources is referred to below as "intra-site allocations." See Figure 1 for a graphic depiction of inter- versus intra-site allocations.

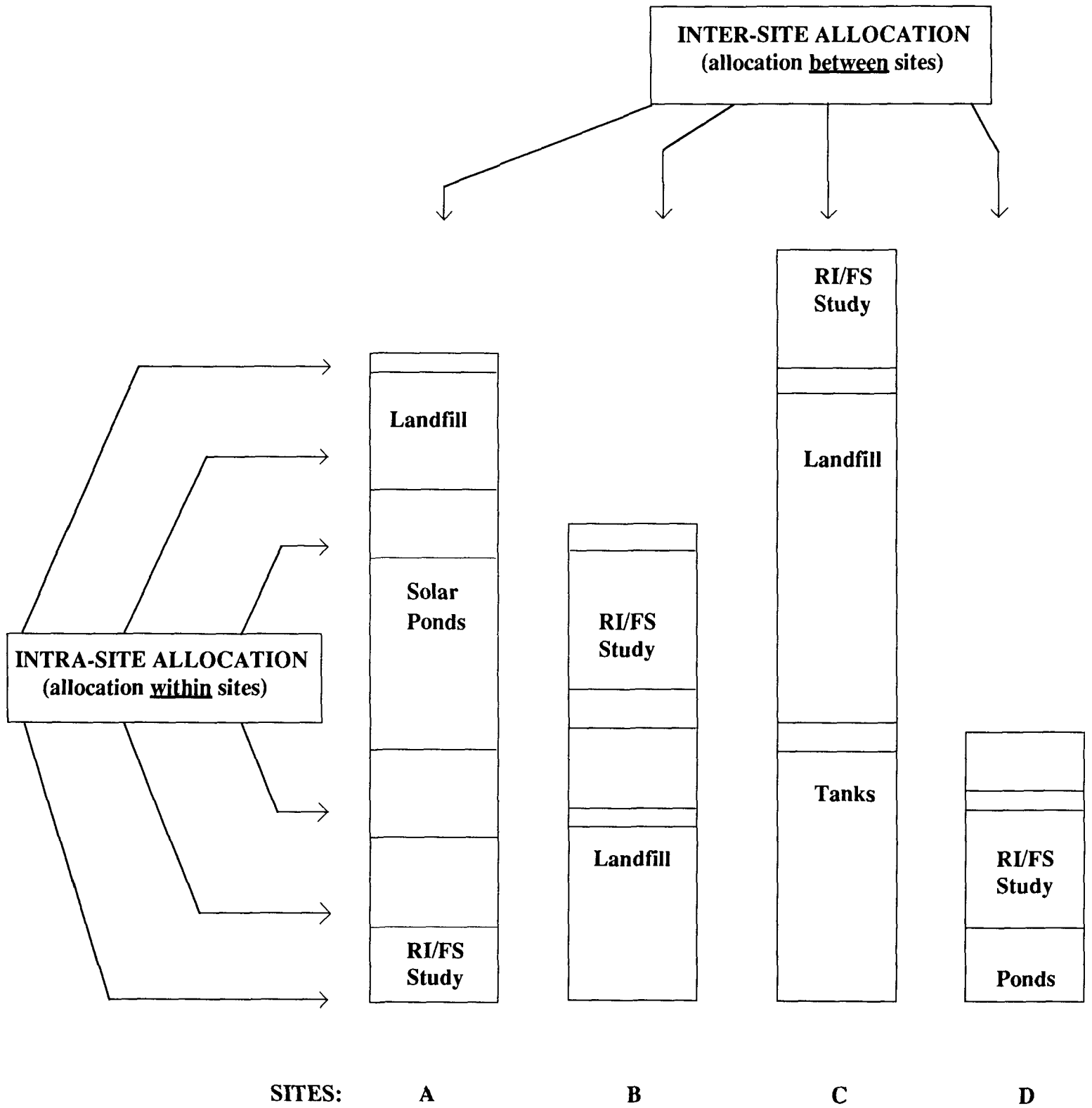
Sites That Are Subject to Outside Supervision Versus Sites That Are Not: Federal facilities are subject to numerous clean-up requirements that are specified under or result from federal, state, and local laws, and treaties with Indian Nations. These requirements are generally applied to a facility through a Federal Facility Agreement (FFA), order, permit, or some other legally binding instrument. In general, the application of external requirements coincides with heightened external interest from regulators, tribes, and other affected stakeholders. When such external requirements are applied, the regulating agencies, tribes, and other affected stakeholders will become more actively involved with the facility, especially in tracking whether the regulated agency is meeting its legally binding FFER obligations. It is in recognition of the heightened concern of stakeholders and the special role that regulating agencies, and possibly tribes, will play under these circumstances that the allocation process described below differentiates between sites that are, versus sites that are not, subject to external supervision. This distinction is especially relevant to the parts of the recommended allocation process that are described in Sections 4.6.3. and 4.6.4. below.

¹⁷ For example, within DOE (Rocky Flats vs. Hanford, etc.).

¹⁸For example, landfill A vs. lagoon B, etc. at "Fort Moosebreath."

Figure 1

TWO LEVELS OF FUNDING ALLOCATION



4.6.2. Important Considerations in the Allocation of FFER Funds

The Committee believes that the major consideration in establishing and implementing a system for setting priorities in the event of any type of funding shortfall is to adhere to the fair share concept that is described below and, whenever possible, to the scope and schedule of existing legally binding obligations (e.g., FFAs, permits, administrative and court orders, etc.) and the milestones they establish. Such obligations, aside from being legally binding, are the currently recognized and agreed upon clean-up priorities for a particular site and have often been established at great effort. These obligations often reflect consensus agreements among regulated agencies, regulators, tribes, and other affected stakeholders on the most appropriate approach to clean-up at that site. These agreements are often renegotiated based on current site conditions and are considered a reflection of all of the affected stakeholders' best professional judgement. As such, these obligations should be honored to the fullest extent possible.

The Committee recognizes, however, that it may not always be possible to adhere to established obligations and milestones and has developed a flexible system for distributing funding shortfalls based on a set of fair share principles, outlined in detail below. This system relies on the judgments of the regulated and regulating agencies and affected tribes, and the input of other affected stakeholders.

As described in Section 1.4.3., in the case of tribes, legally binding FFER obligations may derive from treaty and statutory rights, including fishing, hunting, gathering, and subsistence rights. In some instances, such rights will have a bearing upon FFER related activities and may result in binding agency or obligations to protect those rights. It is in these circumstances that this section of the Committee's report uses the term "affected tribe" to indicate that tribes should participate on an equal basis with regulators in any negotiations which involve potential changes to binding obligations to tribes. It is understood that this role does not grant tribes any rights or justiciable claims that they heretofore have not had, but simply recognizes existing rights.

The Committee believes that: 1) existing data and science are currently inadequate to determine objective consensus clean-up priorities; 2) factors other than environmental and human health risk deserve consideration in allocating clean-up resources; 3) broadly acceptable and objective methods for evaluating some of the criteria relevant to the allocation of clean-up priorities do not currently exist, and, in some cases, may never exist and may even be inappropriate; and 4) regardless of any party's opinion about the quality of available data and science, it is appropriate in a democracy to allow a variety of affected interests to provide input on decisions that affect them.

In order to help guide the collective decision-making of the various participants, the Committee believes that certain factors, in addition to the need to adhere, to the fullest extent possible, to established obligations and milestones, should be considered by all participants in the implementation of the flexible, fair share allocation system described below. These factors include:

- protection of human health, including occupational health considerations as well as the health of the general population;
- risk reduction;
- cultural and socioeconomic factors, including environmental equity considerations;

- protection of and trustee/stewardship responsibilities related to significant natural resources;¹⁹
- the degree to which past management practices and/or new requirements imposed by state and federal regulators affect the ability to meet established milestones;
- the availability of new or innovative technologies or technological constraints that affect the ability to meet established milestones; and
- other factors that may be unique to a particular site or articulated at the site level by affected stakeholders.

4.6.3. Fair Share Allocation Process to Address Insufficient Appropriations for Sites That Are Subject to Outside Supervision

Recommendations

The Committee recommends that:

- a) If Congress appropriates less than what an agency requested for its FFER program, then representatives from that agency, regulators, affected tribes, and other affected stakeholders should make every effort to ensure that all sites that are subject to outside supervision within that program share equally in the amount of the funding shortfall. For example, if Congress only appropriates 90% of what was requested, then all sites subject to outside supervision would be expected to receive 90% of what was requested for that site. This is designated the fair share allocation.
- b) Within the constraints of the fair share allocation, and upon consultation of regulators, affected tribes, and other affected stakeholders, if national or field-level program managers develop an intra-site allocation scheme that does not affect the scope or schedule of established, legally binding obligations, they are free to implement such a decision without further consultation.
- c) If, in considering the application of the fair share allocation, national or field-level program managers believe it is not possible to develop an intra-site allocation scheme without affecting the scope and schedule of a legally binding obligation, a process of negotiation with state and federal regulators and affected tribes, and consultation with other affected stakeholders, must ensue. In these circumstances, the Committee strongly recommends that state and federal regulators and affected tribes should renegotiate obligations and milestones, rather than undertake punitive enforcement actions, so long as:

¹⁹ "Significant natural resources" are resources of special concern such as wetlands and fish and wildlife habitat, especially for threatened and endangered species, wilderness areas, park land resources, cultural resources, and other biological resources.

- a federal agency implements the recommendations contained in this report in a responsible and good faith manner; and
- the funding requested for that agency's FFER budget represented the Executive Branch's best estimate at the time of submission of the amount of funding necessary to meet that agency's legally binding clean-up obligations.

As long as these conditions are met and the agency adheres to the fair share allocation, negotiations with regulators and/or affected tribes for a particular site should be limited to the question of which obligations or milestones should be renegotiated, if necessary (i.e., how to absorb the fair share cut), rather than the more basic question of whether any obligations or milestones should be renegotiated.

- d) If national or field-level program managers, in considering the decision-making factors described above in 4.6.2., believe that it would not be good public policy to rely strictly on a fair share allocation for a particular site, they can suggest an alternative allocation scheme that deviates from the fair share allocation. However, in this circumstance, state and federal regulators and affected tribes would be free to question whether that site should accept more than its fair share cut, as well as how such a cut might be absorbed in relation to established obligations and milestones. In the event a consensual agreement cannot be reached on an acceptable reallocation scheme, existing dispute resolution processes (e.g., those specified in FFAs) would be honored. Where FFAs do not exist or are not relevant, a similar process of appeal to progressively higher levels of authority to resolve disputes should be used.

Discussion

The system recommended by the Committee for addressing funding shortfalls caused by insufficient appropriations at sites that are subject to outside supervision is intended to recognize and balance the legitimate rights, responsibilities, and decision-making authorities of state and federal regulators, affected tribes, and FFER national program managers, as well as the legitimate consultative role of other affected stakeholders. The system is intended to be an equitable and efficient system for reallocating funds in the event of an insufficient appropriation. It is also intended to be a system that has sufficient flexibility to account for the variety of factors that all key players must consider while making, or participating in the making of, what are sure to be very difficult decisions.

In implementing this system, the Committee recommends that national program managers who are faced with a funding shortfall caused by insufficient appropriations should immediately notify field-level managers, who, in turn, should immediately initiate a process of consultation with regulating agencies, affected tribes, and other affected stakeholders about what can be done to absorb that site's fair share portion of the shortfall. If this process of consultation reveals that it is possible to absorb the fair share cut without adversely affecting the scope or schedule of any established, legally binding obligations, then such a decision should be implemented without further consultation or negotiation.

If federal agency representatives, in consultation with regulators, affected tribes, and other affected stakeholders, determine that the fair share cut cannot be absorbed without affecting their ability to meet established clean-up obligations, negotiations with state and federal regulators and affected tribes will be necessary. An important feature of the recommended system is that as long as the agency adheres to the

fair share allocation, such negotiations would be limited to resolving questions of how to absorb this cut, rather than whether the presumed fair share cut should be absorbed at that site.

The Committee believes that all who are involved in such negotiations over which projects/activities should be changed should make every effort to avoid missing established obligations and milestones, taking into consideration the balancing factors and considerations identified in 4.6.2 above. However, in the event that it is clear that missing obligations and milestones cannot be avoided, the Committee strongly recommends that state and federal regulators renegotiate milestones, rather than undertake punitive enforcement actions. In the case of affected tribes, such "punitive enforcement action" would generally be oriented toward protection of treaty and statutory rights, such as those described above, and would find its application through the courts rather than through administrative orders.

This recommendation for "relief" from punitive enforcement actions is contingent upon federal facility managers: 1) adhering to the fair share principle; 2) showing that they have attempted to implement the recommendations contained in this report in a good faith and responsible manner; and 3) showing that the funding requested for their agency's FFER budget represented the Executive Branch's best estimate as of the time of the budget submission of the amount of funding necessary to meet that agency's legally binding clean-up obligations for that site.

If federal program managers, after consideration of the factors suggested above and consultation with regulators, affected tribes, and other affected stakeholders, suggest an inter-site allocation scheme that requires a site to absorb more than the presumed fair share cut, negotiations with state and federal regulators, and consultations with other affected stakeholders, could include whether such a higher cut should be absorbed by that site, as well as how to absorb such a cut on an intra-site basis. As noted above, existing dispute resolution processes would be utilized if such negotiations do not yield agreements as to how to proceed with restoration activities at that site.

4.6.4. Fair Share Allocation Process to Address Insufficient Appropriations for Sites That Are Not Subject to Outside Supervision

Recommendations

In the event of a funding shortfall caused by insufficient appropriations for sites that are not subject to external supervision (i.e., where the federal agency does not have any legally binding obligations), the Committee recommends that:

- a) The funding shortfall for all such sites, taken as a whole, should reflect the fair share cut.
- b) Using the factors outlined above in Section 4.6.2, national program managers should have discretion to determine how to allocate the overall cut for all such sites on an inter-site basis.
- c) Federal agency representatives should consult with affected stakeholders about how to absorb the assigned cut at a particular site or group of sites.

Discussion

The Committee believes that sites that are not subject to external supervision are not likely to have the same level of concern and interest on the part of regulators or large numbers of affected stakeholders, as will sites that are subject to external supervision. However, the Committee also recognizes that many such sites may have affected stakeholders, even if they are few in number, who are vitally concerned about what happens at these sites. Thus, the Committee recommends that the fair share principle be applied to the combined request for all such sites. Furthermore, the Committee recommends that the actual site specific (inter-site) distribution would be at the discretion of the national program manager, using the above referenced decision-making criteria to help guide his/her decisions. Finally, the manner in which each facility's (intra-site) funding would be utilized after the inter-site allocation has been determined should be developed in consultation with all affected stakeholders.

4.6.5. Allocation Process to Address Funding Shortfalls Caused by Unanticipated Program Growth

Recommendations

As is noted above, the Committee recognizes that funding shortfalls can result from unanticipated program growth that takes place between the time field-level submissions initiate the budget cycle and appropriations are finalized, typically a two-year process. In contrast to shortfalls caused by insufficient appropriations, the Committee is not recommending any sort of "enforcement protection" when a federal agency is unable to meet its legally binding obligations due to unanticipated program growth. However, the Committee did develop recommendations which it believes will reduce the impact of such funding shortfalls.

To address funding shortfalls caused by unanticipated program growth, the Committee recommends:

- a) Federal agency representatives should inform affected stakeholders as soon as it is known that a funding shortfall has been caused by an unanticipated event, new circumstances, new information, or an underestimation of the costs of scheduled FFER activities/projects.
- b) Program growth funding shortfalls should, to the greatest extent possible, be absorbed at the site where the shortfall exists. This preference is based on the view that such shortfalls arise at the facility level, so they should be resolved there.
- c) Federal agency representatives should consult with regulators, affected tribes, and other affected stakeholders to determine how to absorb the shortfall considering the importance of legal obligations and milestones and the other decision-making factors outlined above. Because of the preference for intra-site reallocation, federal agency representatives, regulators, affected tribes, and other affected stakeholders should give serious consideration to modifying the scope of clean-up activities/projects or establishing new priorities among clean-up activities/ projects in order to absorb the program growth shortfall within the site.

The preference for intra-site reallocation of priorities is especially strong if the program growth funding shortfall has been caused by new regulatory requirements that are being imposed at the site in question and/or past management practices that may have

contributed to the program growth shortfall. As noted above, however, the Committee is not recommending any sort of "enforcement protection" when a federal agency is unable to meet its legally binding obligations due to unanticipated program growth, especially if the unanticipated program growth funding shortfall is perceived to have been caused by past management practices.

- d) If it is determined that the program growth shortfall cannot be absorbed at the site without causing undue hardship, federal agency representatives should attempt to shift discretionary funds from other sites to help absorb the program growth shortfall.
- e) If shifting discretionary funds from other sites to the site where the program growth shortfall exists does not rectify the shortfall, federal agency representatives should consider the following options (which are listed in no particular order of preference):
 - (i) Shift non-discretionary funds (i.e., funds that are necessary to meet legally binding obligations and milestones) from another site or sites to the site where the program growth shortfall exists. This option will require renegotiation of legally binding obligations with all sites that are asked to share the burden of shifting non-discretionary funds.
 - (ii) Petition Congress to reprogram appropriated funds to cover the cost of the unanticipated program growth.
 - (iii) Petition Congress for a supplemental budget request to cover the cost of the unanticipated program growth.

Discussion

Although the Committee hopes that implementation of the recommendations contained throughout this report will lead to an enhanced process of consultation and communication with affected stakeholders that will minimize the possibility of funding shortfalls caused by unanticipated program growth, such shortfalls may continue to affect FFER programs.

The Committee also recognizes that, in any given year, FFER funding shortfalls are likely to be caused by a combination of factors, such as insufficient appropriations and unanticipated program growth. While the Committee recognizes that it may be difficult to distinguish between the various types of funding shortfalls, such distinctions are of vital importance if the Committee's recommendations for a fair share allocation process are to be implemented. As such, the recommendations contained in this subsection should be seen as creating the additional parts of a total system for setting priorities in the event of FFER funding shortfalls of any type.

The Committee has an especially strong preference for absorbing program growth funding shortfalls caused by underestimating costs on an intra-site basis. If the preference for absorbing cuts on an intra-site basis places an undue burden on the site or sites where the shortfall exists, federal program managers should, in consultation with affected stakeholders, first attempt to shift funds from discretionary FFER activities/projects from other sites to the site or sites that caused the shortfall.

If relying on intra-site allocations or shifting discretionary funds from other sites proves to be infeasible, federal program managers would then have the option of petitioning Congress either to "reprogram" appropriated funds or to approve a supplemental budget request to cover the costs associated with the unanticipated program growth. Another option would be to attempt to shift funds from non-discretionary FFER activities/projects at various sites to the site or sites that caused the shortfall. This option would, however, require negotiations with state and federal regulators and consultations with other affected stakeholders. The Committee recommends that federal program managers, in consultation with affected stakeholders, should attempt to share the burden of covering the costs of a program growth shortfall on a "fair share" basis similar to that described above. Regulators and affected stakeholders will be more willing to consider this option if it can be shown that the program growth shortfall is truly caused by unanticipated events and new information rather than underestimated costs without technical justification.

Building on the example posed in the previous section, if Congress and the President only appropriate 90% of the funds requested for a particular FFER program, the agreed upon fair share distribution would be 10%. If, on top of this there was an additional shortfall caused by unanticipated program growth that could not be fully absorbed by the site that caused the shortfall, national and field-level program managers could suggest that the remaining funding shortfall be distributed amongst all sites on a fair share basis. However, state and federal regulators and other affected stakeholders would be free to question whether they should willingly absorb such an additional "fair share" cut on top of the agreed upon fair share of the shortfall caused by an insufficient appropriation. Once again, if it can be shown that the program growth shortfall is truly caused by unanticipated events and new information rather than unjustified underestimating of costs, for example, regulators and citizens will be more likely to agree to such an inter-site reallocation of appropriated resources.

The Committee acknowledges that, in many ways, the recommendations in this subsection do not differ greatly from the existing approach that federal agencies take to reallocating appropriated resources in the event of a funding shortfall caused by unanticipated program growth. The one exception might be the use of the fair share concept as a way to open up more dialogue and equitable considerations related to the shifting of program resources at an inter-site level without incurring tremendous transaction costs.

4.6.6. Recommendation Against Congressional Earmarking

The allocation system recommended by the Committee is designed only for those allocation and/or reallocation decisions that are within the purview of national program managers. The Committee recognizes that in certain cases an appropriation bill may specify or "earmark" precise funding levels for particular sites. The Committee strongly recommends that Congress refrain from such site-specific earmarking as it will detract from the principles of fairness that are built into the process described herein, as well as diminish the value of stakeholder involvement in FFER programs. If an appropriation bill does include a specific funding level for an individual site and an aggregate funding level for all other sites, the Committee recommends that any shortfall be distributed, as described above, among sites for which there is no site-specific appropriation.

5.0. CONCLUSION

Much has been learned over the past decade or so regarding methods for involving the public and other stakeholders in the decision-making process of environmental restoration activities. In part because of the size and type of sites, DOE and DOD in particular have been at the forefront of these activities. The recommendations above are intended to institutionalize the effective methods learned at agencies, to advise agencies that are just initiating clean-up programs, and to forewarn and prepare agencies that have not yet realized the extent of their environmental restoration obligations.

These recommendations will require time and resources to implement. In addition, they may not be easy to implement and will demand trust among all parties. Through implementation of these recommendations, the Committee hopes that federal agency representatives will come to trust that the public and special interest groups will treat draft reports and preliminary data appropriately and not misrepresent the information shared with them. The Committee further hopes that, for their part, public interest groups will come to trust that the agencies will share information willingly, not because they have to but because they genuinely want the public's input into their decisions.

Over the long run, the Committee believes that the recommendations set forth in this document will reduce the time and money spent developing remediation strategies and will promote efficiency and safety at sites. The Committee recognizes that some recommendations may require high-level policy changes, acts of Congress, or time to implement effectively. The Committee's final recommendation is that each agency and party to this Dialogue Committee commit to outlining its intentions for acting upon the above recommendations as a first step in developing the spirit of cooperation that we all seek.

Committee members firmly believe that the types of improvements in the federal facility environmental restoration decision-making and priority-setting process that are recommended in this report will have immediate and direct benefits in relation to the pace, timing, reduction in the overall costs, credibility and effectiveness of federal facility environmental restoration activities.

APPENDIX A

LIST OF FFER DIALOGUE COMMITTEE MEMBERS AND ALTERNATES

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APPENDIX B

FFER DIALOGUE COMMITTEE CHARTER AND GROUND RULES

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ADVISORY COMMITTEE CHARTER**

FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE COMMITTEE

1. **PURPOSE.** This charter establishes the Federal Facilities Environmental Restoration Dialogue Committee, in accordance with the provisions of the Federal Advisory Committee (FACA), 5 U.S.C. App. II § 9(c).
2. **AUTHORITY.** It is determined that establishment of this Committee is in the public interest and supports EPA in performing its duties and responsibilities under Section 120 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Section 6001 of the Resource Conservation and Recovery Act (RCRA), and other authorities pertaining to the environmental restoration of Federal facilities.
3. **OBJECTIVE AND SCOPE OF ACTIVITY.** The Committee will provide a forum to refine and further develop issues related to environmental restoration activities at Federal facilities. The forum will facilitate the exchange of ideas and information among interested parties. It is hoped that consensus may be possible on these issues, but at a minimum, EPA would like to ensure that issues are thoroughly refined and that differing positions, as well as the reasons for those differences, are identified. A final report describing the results of the dialogue will be prepared.
4. **FUNCTIONS.** As indicated above, the Committee's function is to assist directly in the development of EPA and Federal agency efforts to address Federal facility environmental restoration programs. With the participation of knowledgeable, affected parties, EPA expects to develop a practical approach to Federal agency environmental restoration efforts which will best protect human health and the environment within guidelines and principles that have broad public support and national applicability.
5. **COMPOSITION.** The Committee will consist of not more than forty (40) members, appointed by the EPA Deputy Administrator, plus a facilitator who will serve as Chair. Members will represent the following interests in an appropriate mix and balance:

Categories of Members:

- Public interest/environmental groups
- Tribal Government and Native American representatives
- State Government representatives
- Federal Agency representatives
- Other Interested and Affected Parties

Appropriate members shall be selected and appointed for the duration of the Committee's charter. A full-time salaried official or regular employee of the Agency will serve as the Designated Federal Officer and will be present at all meetings. The Designated Federal Officer is authorized to adjourn any meeting whenever it is determined to be in the public interest to do so. The Committee is authorized to form work groups for any purpose consistent with this Charter. Such work groups shall report back to the full Committee. Work groups have no authority to make decisions on behalf of the full Committee not can they report directly to the Agency.

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

6. **MEETINGS**. Meetings shall be held as necessary, at the call of the Chair, with an agenda for each meeting approved in advance by the Designated Federal Officer. Committee meetings will be called, announced, and held in accordance with the EPA Committee Management Manual. This manual contains the Agency's policies and procedures for implementing FACA. Among other things, FACA requires open meetings and an opportunity for interested persons to file comments before or after meetings, or to make statements to the extent that time permits.
7. **DURATION**. The Committee will terminate by June 30, 1993, unless the Deputy Administrator determines that the Committee will finish its work within 30 days of the original termination date. If the Deputy Administrator makes such a determination, he may extend the termination date by 30 days without further consultation with GSA. In the event more time is needed, EPA may seek an extension under Section 14 of FACA.

March 13, 1992
Agency Approval Date

F. Henry Habicht II
Deputy Administrator

April 29, 1992
GSA Consultation Date

April 29, 1992
Date Filed with Congress

GROUND RULES

FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE COMMITTEE

I. Objective of the FFER Dialogue Committee

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

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

II. Membership in the FFER Dialogue Committee

Membership on the FFER Dialogue Committee will be limited to:

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

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

III. Decision-making

The Committee will operate by consensus with regard to any recommendations that are made by the Committee on substantive policy issues. However, if consensus on specific substantive proposals is not possible, the Committee will make every effort to articulate in writing in its final report both the areas of agreement and disagreement and the reasons why there continues to be differences. The term consensus means that a proposal can be considered to have achieved consensus if there is no dissent by

any member of the Committee. Major procedural issues, including but not limited to whether to add new members to the Committee and whether to issue a final report, will also be made by consensus. For routine procedural matters, the Committee's facilitator will make every effort to find a consensus solution.

IV. Meetings of the FFER Dialogue Committee

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

V. Use of Work Groups, Subcommittees and Caucuses

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

VI. Issuance of a Final Report

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

APPENDIX C

HISTORY AND DESCRIPTION OF THE FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE PROCESS

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

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

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

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

These convening assessment activities led to the formation of a small ad hoc planning group that consisted of representatives of several federal agencies, state agencies and state governmental associations, national environmental groups, and others. This ad hoc planning group, which met in January 1991, was designed to give The Keystone Center advice as to whether and, if so, how to proceed with the proposed dialogue. At the time that The Keystone Center was asked to convene a dialogue to address federal facility priority-setting, an important issue was congressional debate over the proposed Federal Facility Compliance Act. This Act would authorize states to impose fines and penalties on federal agencies for violations under the Resource Conservation and Recovery Act. Federal agencies were concerned that they would now be subject to fines for failure to meet schedules in enforcement agreements for clean-up where insufficient funds were appropriated. Federal agency representatives believed that there was a need for a "system" that would establish how to set priorities in the event insufficient funds are appropriated to meet all federal clean-up obligations.

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

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

The first meeting of the National Policy Dialogue on Federal Facility Environmental Management occurred on June 12-13, 1991 in Washington, D.C. This meeting included representatives of tribal governments and Native American organizations and local citizen groups, as well as the interests that were represented at the January, 1991 planning meeting. The June 1991 meeting included presentations from DOD, DOE and EPA officials on a variety of environmental remediation related priority-setting mechanisms, models, systems, and processes that are currently being used by these agencies. The group then had a general discussion of federal facility priority-setting issues and identified some topics to address at its next meeting.

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

The Dialogue Group, met again in December, 1991 and February, 1992 operating with its new consensus objective. At these meetings, the group identified several distinct phases in the federal facility environmental restoration decision-making process that could be used as specific references to help focus their discussions. Based on these distinctions, work groups were formed to develop recommendations for consideration by the larger plenary group.

During the course of its discussions, the Dialogue Group noted that: 1) existing data and science are currently inadequate to determine objective consensus clean-up priorities; 2) factors other than environmental and human health risk deserve consideration in allocating clean-up resources; 3) broadly acceptable and objective methods for evaluating some of the criteria relevant to the allocation of clean-up priorities do not currently exist, and, in some cases, may never exist and may even be inappropriate; and 4) regardless of any party's opinion about the quality of available data and science, it is appropriate in a democracy to allow a variety of affected interests to provide input on decisions that affect them.

At the February 1992 meeting of the Federal Facility Environmental Management Policy Dialogue Group, representatives of EPA, the lead federal agency for the project, suggested that the entire effort should be chartered as an advisory committee under the auspices of the Federal Advisory Committee Act (FACA). The dialogue group agreed and EPA began taking steps towards this end.

APPENDIX D

STATUTORY PROVISIONS FOR TECHNICAL REVIEW COMMITTEES

DOD is required by law to establish site-specific advisory boards. The Defense Environmental Restoration Program (DERP), which has been in existence since the late 1970s, was codified by the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA Section 211 amended Title 10 of the United States Code by creating a new Chapter 160. These amendments contain Section 2705 (c) which reads, in its entirety:

Technical Review Committees - Whenever possible and practical, The Secretary shall establish a technical review committee to review and comment on DOD actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate state and local authorities and shall include a public representative of the community involved.

While the law only requires that other federal agencies meet the community relations requirements that are spelled out in the National Contingency Plan (NCP) and EPA guidance (i.e., preparation of Community Relations Plans, public comment periods on proposed plans, and availability of TAGs), DOD must additionally meet the requirements of SARA Section 211. This section provides for DOD to establish TRCs at both NPL and non-NPL sites. At this time, there does not appear to be any national guidance by DOD or EPA on the establishment of TRCs.