

The Role of Consensus Building and Conflict Management in Contaminated Site Remediation and Redevelopment

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Public Participation in Brownfield Remediation and Redevelopment

- Public demand for meaningful involvement in decisions re. contaminated sites has increased steadily over the past three decades.
- The important role of the public is well recognized by most brownfield legislation and policy, yet consultation is seldom well executed.
- In many cases, only minimal involvement opportunities are afforded to citizens and other stakeholders, and they often have little real influence on key decisions.

Benefits of Public Participation in Brownfield Cleanups

- Effective public participation lends legitimacy to a brownfields decisionmaking process.
- The public may provide valuable information and ideas re. site, surroundings and past land uses.
- Opportunity to educate local public, and improve their perception of the site and the process.
- May identify benefits to local community of brownfield cleanup and redevelopment.

Benefits of Public Participation in Brownfield Cleanups

- Can address issues early and reduce risk of future conflict and opposition – saving time and money.
- Brownfield solutions that incorporate community interests and concerns are more likely to be accepted and more easily implemented.
- Stakeholders are more accepting and supporting of outcomes of decision making processes they played a meaningful role in, even if not all of their interests are met.

Public Consultation Builds Capacity Within the Local Community

- 1. Establishes or improves community's trust of brownfield owners and government agencies.**
- 2. Fosters effective communication with community.**
- 3. Allows citizens to contribute information and ideas about the site and its remediation and redevelop't.**
- 4. Allows a greater range of stakeholders to be identified and included in the planning process.**
- 5. Builds community support for the project and facilitates its implementation.**



Obstacles to Effective Public Participation in Brownfield Cleanups

- May be difficult to identify all relevant stakeholders, and site owners may be absent.
- Broader public interest may not be represented, so concerns such as quality of life, health and equity may not be adequately addressed.
- In some cases, the number of stakeholders is large and represents diverse interests.
- Site owner and/or developers may shun publicity.
- Public may need to be excluded from certain negotiations dealing with

Obstacles to Effective Public Participation in Brownfield Cleanups

- Some stakeholders may be reluctant to address sensitive environmental equity issues.
- The public's greater interest in site *redevelopment* often overshadows its important role in decision making regarding site *cleanup*.
- May be difficult to get essential political buy-in.
- Providing technical information to stakeholders in a useful form may be difficult.
- Process may take many years, during which

Typical Key Stakeholders in Brownfields

- Public consultation must include all of the following types of stakeholders that exist:
 1. Current and past property owners (liability).
 2. Developer wanting to remediate/redevelop site.
 3. Municipal officials (promoting remed./redev't).
 4. Other levels of government (provincial, federal).
 5. Lenders.
 6. Local and regional residents.
 7. Local business interests.

Common Contentious Issues About Brownfields and their Remediation

- Parties often raise these real or perceived issues:
 1. Cost of remediating and/or redeveloping site.
 2. Allocation of liability for contamination.
 3. Stigmatization of the site and surroundings.
 4. Depression of property values in neighbourhood.
 5. Property taxes owing and/or tax relief programs.
 6. Demolition issues.
 7. Access to, and cost of financing for



Use of Community Involvement in U.S. Superfund Site Cleanups

- Can learn a great deal from the longer and more extensive history of the U.S. with brownfields.
- U.S. EPA has considerable experience using “community involvement” (CI) and conflict management processes for “Superfund” sites.
- CI is neither a PR exercise nor merely the communication of information to the public.
- Superfund legislation requires specific CI activities at many defined points in decisionmaking process.
- EPA policy goes far beyond CI legal

U.S. EPA Objectives for Community Involvement in Brownfields

1. The CI process seeks out and encourages the involvement of stakeholders who are potentially affected by decisions and actions.
2. Stakeholders involved in the process must have significant influence on key decisions (specified at the start and accountable after).
3. Stakeholders should define *how* they participate, and be provided the information and expertise they need to do so in a meaningful way.

U.S. EPA Objectives for Community Involvement in Brownfields

4. Each stakeholder should communicate its interests and needs, and these are paid heed by EPA and all other stakeholders.
5. The public must be kept informed of ongoing and planned activities.
6. Public concerns must be identified and dealt with responsibly.



Six Factors Contributing to the Success of Public Participation for Brownfields

- The U.S. experience with brownfields suggests six key conditions whose presence increases the likelihood of success using public participation.
 1. In order to have a broad range of stakeholders, community interests and viewpoints represented, public participation methods must be multiple, diverse and inclusive.
- This may come at the expense of cost, efficiency and administrative ease.

Six Factors Contributing to the Success of Public Participation for Brownfields

- 2. Public participation needs to be fully interactive, involving multi-directional communication and dialogue among all stakeholders.**
- 3. Government agency commitment to the public participation process must come from the highest level, and agency representatives must have authority to make key decisions.**
- 4. The purpose and objectives of the participation process, and how input will be incorporated into decisions must be clear to**

Six Factors Contributing to the Success of Public Participation for Brownfields

5. Government agencies must demonstrate respect for diverse viewpoints and values, as well as anecdotal and non-scientific information.
6. Agencies must make a great effort to earn and maintain (and often restore) the trust of the community.

4 Lessons Learned by U.S. EPA About Public Participation in Brownfields

1. Establishing trust between the EPA and the public is an essential feature of stakeholder involvement, yet can take a long time to develop.
 - Trust can be enhanced by:
 - a. Meeting with the community early in planning process.
 - b. Addressing community concerns with specific actions.
 - c. Directly involving senior agency officials in the process.
 - d. Maintaining a presence in the community.
 - e. Making stakeholders equal partners in the process, especially in data gathering and decisionmaking.

4 Lessons Learned by U.S. EPA About Public Participation in Brownfields

2. Sources of data must be seen by stakeholders as reliable and credible, which often requires their confirmation by an agreed-to outside expert.
- Stakeholders, especially those lacking technical expertise, cannot be expected to accept complex and scientific data at face value.
 - In 1988, the U.S. EPA started giving Technical Assistance Grants to community groups to allow them to hire their own technical experts to review and interpret data.
 - Participants must have a common understanding of the process and technical issues, and may require education.



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4 Lessons Learned by U.S. EPA About Public Participation in Brownfields

3. EPA must be clear about how the process will unfold, what its objectives are, how stakeholder input will be used, and what are reasonable expectations.
 - At the end of the process, an EPA “responsiveness summary” must explain to participants how decisions were made and how they used information and opinions obtained from stakeholders.
4. Agency staff require specialized training in planning and managing public participation and conflict management processes.
 - In the absence of this training, outside expertise must be sought, such as a trained and experienced facilitator.

Alternative Dispute Resolution

- Often, conflict is an inevitable result of decision making re. contaminated sites.
- Does not mean public consultation process failed.
- ADR is a spectrum of voluntary, negotiation-based processes in which the parties to a dispute meet together to build consensus, with the goal of reaching a mutually acceptable resolution.
- Negotiation is simply face-to-face bargaining.
- Facilitation and Mediation are *assisted*



Using ADR in Brownfield Site Remediation and Redevelopment

- Sometimes, the decision making process can benefit greatly from the involvement of a neutral, independent facilitator or mediator.
- U.S. EPA and many states have detailed requirements for the use of various forms of ADR at different stages in the brownfield decision making process.
- EPA has many success stories of its effective use.

My Research on ADR in Contaminated Sites and Other Environmental Cases

- I published a series of studies based on 54 environmental disputes in Ontario and Massachusetts.
- Many of these were contaminated site cleanups (mostly in Massachusetts), and had similar results to other types of cases.
- 26 cases used formal, structured negotiation; 16 were facilitated; and 12 were mediated.
- Data were collected from case documents and from phone interviews with 123 key parties.

Top 10 Incentives for Disputant Participation in ADR

1. Perceived probability that the conventional process will be used in lieu of ADR.
2. Perceived probability that ADR will result in a desirable outcome (compared to the most likely conventional process).
3. Quality of the relationships between the parties.
4. Degree of perceived urgency to resolve the conflict.
5. Degree of perceived neutrality of the facilitator / mediator.

Top 10 Incentives for Disputant Participation in ADR

6. Party's degree of confidence that its participation in ADR will be effective.
7. Extent of perceived power balance between parties.
8. Extent to which the choice to participate is voluntary.
9. Perceived appropriateness of the timing of ADR initiation.
10. Degree of confidence that ADR will result in a final settlement.



Recommendations

- A mediator is especially useful if:
 - There are poor interparty relationships.
 - A party is unsure about its effectiveness in negotiation.
- Relationships between private proponents, local / regional governments and citizens' groups may require particular attention.

Recommendations

- **Final deadlines should be:**
 - **Enforced.**
 - **Clearly understood and agreed to by all participants.**
 - **Tight, yet realistic.**
- **Affluent parties should provide impoverished stakeholders with funding for legal and technical expertise.**

Recommendations

- **Information should be shared openly, in a useful form.**
- **Government should strongly encourage the use of ADR and emphasize its capabilities.**
- **No party should be coerced or forced into using ADR.**
- **Any party should be able to resort to a conventional process.**

Recommendations

- **ADR is best applied after:**
 - **Informal negotiations have reached an impasse.**
 - **All of the stakeholders have been identified.**
 - **All parties have a good understanding of the dispute and ADR.**

Recommendations

- **ADR is best applied before:**
 - **Parties have adopted inflexible positions.**
 - **Procedural disputes have arisen.**
 - **Key regulatory decisions have been made.**

Thank you!

Questions?

Comments?

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