Environmental Conflict Resolution and Litigation

The Influence of Environmental Conflict Resolution on Natural Resource and Environmental Policy

September 20, 2005
Outline

- Briefly review characteristics of public policy conflicts
- Review history of conflict resolution in environmental and public policy
- Review conflict resolution approaches
- Discuss how environmental and public policy conflict resolution influences public policy process
Characteristics

- Multiple Forums/Changing Incentives
- Multiple Parties/Issues
- Institutional Dynamics
- Complex Scientific and Technical Issues
- Complex power relationships and resource differences
- Public/Political Dimension
- Contrasting visions of future
- Different perceptions of risk, danger, and aesthetics
Conflict Resolution - Assumptions

- Conflict is not the problem, differences are normal.
- Improved processes for dealing w/difference are important but not sufficient, still need sound technical, legal, economic, and political analysis.
- Collaborative processes are supplements, not substitutes for public decision-making.
- Not all situations, disputes and conflicts are amenable to collaborative processes.
Environmentalism in 1970’s – new demands of government to respond to environmental issues

Government agencies wrote new laws, regulations, different requirements in land use plans, permits, enforcement actions

Some of these new actions created controversy
History cont.

- New groups arose to press demands
- New laws or interpretations granted new actors standing in courts
- Other new laws or policies encouraged public participation
- Conflict resolution professionals from community, labor, and international context interested in democracy, transparency and stewardship turned their skills to these conflicts.
By the 1980’s hundreds of site specific disputes or public policy issues had been mediated or collaboratively handled.

1990 Congress recognized the utility of collaborative and consensus based approaches with the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act.
Thousands of plans, projects developed collaboratively and thousands of problems and disputes are handled through consensus focused approaches.

All federal agencies and most states have offices and staff to handle environmental and public policy conflict resolution.
Types of Collaborative Processes

Can distinguish types of processes by desired **goal or outcome**;

- share information or solicit feedback,
- conduct fact-finding,
- define or clarify a problem or document issues,
- provide feedback to a decision maker on a proposed action,
- develop a range of options or criteria for a good decision for a decision maker,
- develop consensus advice to a decision making body,
- make decisions or reach agreements.
Collaborative Processes Can Come From Many Venues

- Legislative—involving stakeholders in drafting model legislation or frameworks for legislation, policy dialogues.
- Executive—involving stakeholders in understanding complex issues for new policies.
- Administrative\regulatory—developing resource conservation and management, land planning, habitat use and protection, through mediated or facilitated dialogue, negotiated rulemaking, policy dialogues.
- Judicial – resolving specific disputes through mediated negotiations or other processes.
## Collaborative Process Stages

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<thead>
<tr>
<th>STAGE</th>
<th>DESIRED OUTCOME</th>
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<tbody>
<tr>
<td>1. Convening</td>
<td>Agreement on:</td>
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<tr>
<td></td>
<td>- purpose</td>
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<td></td>
<td>- product</td>
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<td></td>
<td>- process (who, when...)</td>
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<td>2. Substantive Dialogue</td>
<td>- Shared understanding of the problem</td>
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<td>- Opening</td>
<td>- Full exploration of possible outcomes</td>
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<td>- Recommended solutions</td>
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<td>- Middle</td>
<td>Observable Change</td>
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<td>- Closure</td>
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<td>3. Implementation</td>
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Influence on Policy

USDA Advisory Committee on Agricultural Biotechnology (2000 - 2002)

- Organizational Sponsor: U.S. Department of Agriculture
- 35 stakeholders - academic institutions, environmental, consumer organizations, and industry (representatives of the entire food chain)
- 5 plenary meetings, many work group conference calls
- Consensus on letters to the Secretary of Agriculture on public plant breeding program, research agenda, and budget priorities.
In 2000 Ohio Statute passed - goal minimizing environmental impact of large-scale livestock & poultry farms

Ohio EPA transferred authority for permitting livestock waste to Ohio Department of Agriculture

Statute created 24 member Concentrated Animal Feeding Facility Advisory Committee

By 2002 in 16 meetings 56 new regulations in six chapters of administrative procedure received final approval by the legislative Rule Review Agency. Rules set standards for manure storage, handling and transportation; insect and rodent plans; and compliance and enforcement procedures for all large-scale livestock and poultry farms in Ohio.
Impact

- More information from different perspectives can craft more creative solutions
- Decisions can improve because incentives, barriers in implementation can be identified and negotiated
- Range of public values can be debated openly and may be able to be incorporated into policies
- Parties learn each others interests and social learning can de-escalate unproductive conflict
- Legitimacy in public institutions can increase with greater transparency and responsiveness
Principles

- Purpose driven – people need a reason to participate
- Framework that supports informed, voluntary, and good faith commitment to the process
- Balanced representation
- Group autonomy
- Informed processes
- Accountability
- Transparency
- Timeliness
- Clear implementation plans
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