

# 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.

# History

- 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.

# history

- 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.



# 2005

- 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

## STAGE

## DESIRED OUTCOME

### 1. Convening

Agreement on:

- purpose
- product
- process (who, when...)

### 2. Substantive Dialogue

#### ■ Opening

- Shared understanding of the problem

#### ■ Middle

- Full exploration of possible outcomes

#### ■ Closure

- Recommended solutions

### 3. Implementation

Observable Change

# 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



Juliana Birkhoff  
RESOLVE  
1255 23<sup>rd</sup> St, NW  
Suite 275  
Washington DC, 20037  
[jbirkhoff@igc.org](mailto:jbirkhoff@igc.org)