

STAGE 1: SITUATION ASSESSMENT—INTERNAL

Developing and implementing stakeholder involvement is a multi-stage process that begins with a situation assessment. The situation assessment consists of two components: 1) an internal assessment, which is the subject of this chapter, and 2) an external assessment, which is discussed in the following chapter (Stage 2).

During the internal assessment, you articulate what major decision the Agency is considering, your goals and concerns, and how this decision fits within the broader plan or program. As part of this assessment you make an initial determination about which stakeholder involvement outcome seems most appropriate. While the scope and rigor of this planning process will vary depending on the decisions to be made, it should precede all stakeholder involvement efforts. Identifying and acknowledging your goals, objectives, and constraints, and understanding the factors that determine success, are keys to knowing which process to use.

A. Conducting an Internal Assessment

When developing a stakeholder involvement strategy, a number of factors can help point you towards one approach or another. Ask yourself the following questions:

What Are the Issues and How Will Stakeholder Involvement Help Me Make a Decision? Before engaging in any consultative or collaborative process, it is important to carefully analyze what you hope to accomplish. What issues are you hoping to resolve or complete? Why do you or your managers think stakeholder involvement is appropriate? How will it help EPA achieve its goals? Only when you are clear on the purpose of the stakeholder involvement process should you select and design the appropriate process. If you are not clear on the purpose, then you may choose the wrong process, which might interfere with your ability to accomplish EPA's objectives.

How Controversial is the Decision? A high level of controversy could argue both for and against a particular type of process. Can you fully implement your decision without litigation or challenges? If you believe you need support outside the Agency to accomplish your goals, you should probably try to be as inclusive as possible. If you don't particularly need outside support, outreach and information exchanges might be sufficient.

In this chapter:

- A. Conducting an Internal Assessment
- B. Involving Other EPA Staff in Your Decision
- C. Determining if Agency Action Warrants Stakeholder Involvement
- D. Making a Preliminary Decision

If the Agency's goal is to:	Then consider:
Allow the affected public to raise issues of concern to provide information and opinions	Information Exchanges
Gain insight on technical issues and possible solutions without developing specific recommendations	Information Exchanges
Secure sophisticated recommendations on controversial or complex issues while making a unilateral decision	Recommendations
Secure a durable agreement on a regulation, program, or plan	Agreements
Inspire stakeholders to collaborate on own action	Stakeholder Action

If your preferred role is:	Then consider:
Deciding with limited influence from others	Information Exchanges
Deciding with a desire for fully-developed ideas from outside the Agency	Recommendations
Understanding and working through disagreements in order to make a decision	Recommendations
Implementing a decision requiring the support of others	Agreements
Serving as a catalyst to encourage stakeholders to decide on and implement a voluntary action.	Stakeholder Action

Better Decisions through Consultation and Collaboration

If you are in this stage:	Then consider:
Scoping out the issues	Information Exchanges
Seeking information from stakeholders to support selection of an option	Recommendations
Deliberating several well-defined issues on a complex topic	Agreements
Close to implementing a decision and seeking possible reactions	Information Exchanges
Considering non-regulatory or voluntary actions	Stakeholder Action

If:	Then consider:
You don't know all the parties	Information Exchanges
There are too many parties	Information Exchanges
Parties are all over the map in terms of their needs	Information Exchanges
Parties are engaged and interested but not committed	Information Exchanges
Parties are identifiable and organized in interest groups	Recommendations or Agreements
Parties are engaged and desire collaboration	Agreements
Parties have the incentive and capacity for voluntary action but need help getting organized	Stakeholder Action

What's Your Preferred Role? EPA staff plays different roles in different situations, including being a sponsor, a resource, a participant, a leader or catalyst. If playing one role or another is important, you should recognize it when designing the process. The extent to which you are open to letting others participate in the decisionmaking is important to your decision.

Do You Have Adequate Data to Proceed with the Decision? Can external resources contribute to identifying needed information? Can external resources provide additional information useful to the decision?

What Is the Timeframe? Where you are in the overall decision process can have a bearing on which type of stakeholder involvement procedure you use. If the decision is far off, you should use an information exchange to determine the level of controversy or acceptance on the issue. If a decision will be made in the near term and you expect stakeholders to challenge the Agency's information and decisionmaking, you may want to consider a recommendations or agreement process.

What Resources Are Available? Decisions vary in terms of importance, urgency, and funding available to expend in their development. Each of these has a role in determining what public involvement process to follow. Generally speaking, the more inclusive the process, the more resource-intensive it can be. In the long run, however, more inclusive processes may actually save resources if they result in better or long-lasting decisions. You should consult with your managers regarding the level of resources that might be available.

Who are the Most Likely Stakeholders and Are They Willing to Work with EPA? Where is your issue on the priority list of external stakeholders? Are external stakeholders aware of your timelines? Familiar with your data? The extent to which stakeholders are willing to discuss issues openly and participate in discussions with EPA staff and other stakeholders will affect the process.

Is EPA seeking voluntary action to address a specific issue? Some issues are beyond the reach of a single agency program, or EPA may not be in a position to implement a decision on its own. In such circumstances, the best course of action for EPA may be to encourage stakeholders to work together to take on part or all of the decision and/or its implementation. When considering a stakeholder action process, you should consider the relationships among critical stakeholders and their history of working together to make or implement decisions.

B. Involving Other EPA Staff in Your Decision

Staff and management of other EPA offices are important “internal stakeholders” in your process of drafting rules, policies, permits, or plans. You should make sure you know what these internal stakeholders need from your project and design ways to integrate them into your process. There are three general rules of thumb for working with internal stakeholders.

Tip #1: Involve Them Early. You should determine early who may be involved on what issues, and involve them as soon as possible in your planning, design, and implementation of stakeholder involvement activities. Don’t leave it up to the grapevine—you should contact stakeholders directly. If you are working on a Major or Significant Rule, or in cases where you are entering into an intensive recommendations or agreement process, you may need to inform EPA’s Office of General Counsel and the Office of Management and Budget (OMB) of your plans.

Tip #2: Get Buy-In Along the Way. The more focused your stakeholder involvement process is on producing recommendations or an agreement with diverse external stakeholders, the more important it is for your internal stakeholders to buy into the goals and the techniques you are using. You should seek management support for the level of shared decisionmaking before you begin and at every critical point during implementation. If your management and the management of other internal stakeholders do not understand the level of collaboration, they could later demand that issues be revisited, which could compromise your process.

EPA staff often use workgroups with representatives from various Agency offices. For instance, if you are working on a Tier 1 or Tier 2 rule, you will be preparing an Analytic Blueprint. The drafting of the Analytic Blueprint is an ideal time to plan for stakeholder involvement activities, to get the involvement of your workgroup and management in the planning process, and to obtain their commitment to participate in the implementation of the stakeholder involvement process.

Tip #3: Keep Them Engaged. If you are conducting outreach or information exchange activities, you may wish to invite your workgroup members to observe or participate. If they cannot for whatever reason, you should keep them up-to-date and share information through meeting summaries, handouts, bulletins, briefings, etc. If issues surface that you believe may concern

Tips for working with internal stakeholders

- #1: Involve them early.
- #2: Get buy-in along the way.
- #3: Keep them engaged.

“Having access to political leadership was essential. We had a senior agency decisionmaker participate in the meetings in order to make real-time decisions. This helped ensure the commitment and support of senior management.”

—Ward Penberthy,
Voluntary Children’s Chemical
Evaluation Program

Exhibit 3: Site and Project Specific Stakeholder Involvement References

- Public Involvement in Environmental Permits— A Reference Guide, EPA-500-R-00-007, August 2000 (<http://www.epa.gov/permits/publicguide.pdf>)
- www.epa.gov/publicinvolvement/involve.htm for a collection of guidance and resource manuals
- Superfund Guides
 - Community Involvement Handbook (http://epa.gov/superfund/community/cag/pdfs/ci_handbook.pdf)
- Early and Meaningful Community Involvement (<http://epa.gov/superfund/policy/remedy/pdfs/92-30099-s.pdf>)
- Introduction to Community Involvement (<http://www.epa.gov/superfund/contacts/sfhotline/comminv.pdf>)
- Final Supplemental Environmental Projects Policy (<http://www.epa.gov/Compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>)

your internal stakeholders, you should raise them as soon as you can. Be aware that it might take additional time for your workgroup members to elevate potential issues to their line management.

The more focused your stakeholder involvement process is on producing a set of recommendations or an agreement, the more involved internal stakeholders should be. You should consult workgroup members in the planning and design of the process and keep them informed of the information you are gaining and any recommendations or agreements you may be considering. Ideally the most essential members of your workgroup (e.g. General Counsel attorneys, economists, risk analysts) should be active players in any process likely to produce recommendations or agreements. Involving them during the whole process can prevent “late hits” and misunderstandings regarding statutory authorities, while providing information needed to justify actions based on economics, risk, or technology.

C. Determining if Agency Action Warrants Stakeholder Involvement

Many EPA activities can benefit from stakeholder involvement, and in some cases, it is required by statute. Stakeholder involvement can be especially useful in rule-making, policy-making, program development, and site-specific activities.

In 2003, EPA issued its Public Involvement Policy which reaffirmed EPA’s commitment to the involvement of the public in rulemaking, permitting, financial assistance programs, major policy decisions, and delegation of authority to other levels of government.

Rulemaking. Several statutes and executive orders affect the development of rules, as illustrated in Exhibit 4. If you are writing a rule subject to these requirements, you may wish to consult with your office’s Regulatory Steering Committee representative, the Office of General Counsel, and the appropriate resource people within EPA. For instance, if your rule may have a significant impact on a substantial number of small businesses, small communities, or other small entities under the Regulatory Flexibility Act (RFA) as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), you may wish to consult with specialists in the Regulation Management Staff as you plan your stakeholder involvement process.

Policymaking or Program Development. These activities are less prescribed by statute or executive order

Exhibit 4: If You Are Working on a Rulemaking, Consider These Statutes, Executive Orders, and Policy

<i>Executive Order (EO) or Policy</i>	<i>Whom to Consult</i>
Regulatory Flexibility Act as amended (OPEI) including Small Business Regulatory Enforcement and Fairness Act (SBREFA)	Office of Policy, Economics, and Innovations Regulatory Management Staff
Unfunded Mandates Reform Act	Regulatory Management Division (OPEI)
Paperwork Reduction Act	Office of Environmental Information (OEI)
National Technology Transfer Act	Regulatory Management Division
E.O. 12866 Regulatory Planning and Review	Regulatory Management Division
E.O. 13175 Coordination with Tribal Governments	Office of Water (OW)— American Indian Environmental Office
E.O. 13007 Indian Sacred Sites	OW—American Indian Environmental Office
E.O. 13132 Federalism	Office of Congressional and Intergovernmental Relations (OCIR)
E.O. 12898 Environmental Justice Policy	Office of Enforcement and Compliance (OECA)—Office of Environmental Justice
E.O. 13045 Children’s Health Protection	OA—Office of Children’s Health
E.O. 13211 Actions that Significantly Affect Energy Supply, Distribution, or Use	OPEI
Peer Review Policy	Office of Research and Development (ORD)

than rulemaking. While you may not be required by law to follow certain procedures, you should review the list of statutes, executive orders, and policies in Exhibit 4 to see how they might affect your project. You should also know from the beginning all of the offices who will be asked to sign-off on your policy or program plan within EPA. Consult with your managers about the need to involve the Office of Management and Budget or state or tribal agencies in your project.

Site-Specific Activities, Enforcement, or Planning. You should review existing policy and partnership agreements for your program to see if other EPA offices, states, or tribes should be involved in your stakeholder involvement activities. Negotiations to settle enforcement actions typically involve only EPA and the violator and perhaps state agencies. Many site-specific agreements (e.g., Superfund records of decisions and consent decrees) undergo public comment periods prior to be-

“EPA’s Science Advisory Board, in a near-final report evaluating stakeholder processes and how best to ensure that scientific information is fully integrated into such processes, noted that stakeholder processes can be time-consuming and expensive and therefore the types of process used must be calibrated to the importance of the issues at stake. That principle ought to apply overall so that the right tools are applied to the right job.”

—David Clarke
On-line Dialogue on Public Involvement in EPA Decisions

coming final. While enforcement settlements involving only fines rarely involve other stakeholders, it is common for neighbors, activists, and local officials to be interested in the prosecution and settlement of a case. How to involve them without compromising the integrity of the negotiations is a serious planning question. In most cases, outreach or limited information exchanges are all that is feasible. However if the facility and the Agency undertake remedial actions or modify operations as a result of a settlement, then the active involvement of the surrounding community may be necessary.

D. Making a Preliminary Decision

Once you've thoroughly examined your options and consulted with your managers and other internal stakeholders, you are ready to make a preliminary decision about the ideal outcome of stakeholder involvement for your situation. You should use the questions on the following three pages and the advice in this chapter to select a preliminary process outcome. In Stage 2, you should use the external assessment as a reality check for your proposal to pursue an information exchange, recommendations, agreement, or stakeholder action process. ■

Questions to Answer in the Internal Assessment Stage

1. What is the Agency's mandate on the issue—does it permit a range of solutions?

2. What action is the Agency considering?

3. What decisions may the Agency wish to consider?

4. How can the decision be improved by external input?

5. What goals do you want the stakeholder involvement to accomplish?

- a. Allow the affected public to raise issues of concern and provide information and opinions.
- b. Gain insight on technical issues and possible solutions without developing specific recommendations.
- c. Secure sophisticated recommendations on controversial or complex issues while making a unilateral decision.
- d. Collaborate with stakeholders on a controversial decision.
- e. Inspire stakeholders to collaborate on a voluntary action.

6. What is the role of EPA in decision making?

- a. Deciding with limited influence from others.
- b. Deciding with a desire for fully-developed ideas from outside the Agency.
- c. Mediating disagreements among stakeholders so you can make a decision.
- d. Implementing a decision requiring the support of others.
- e. Serving as a catalyst to inspire stakeholders toward voluntary action.

7. What resources are available?

- a. Money
- b. Staff
- c. Technical contractors
- d. Grants
- e. Existing committees

8. Who are the key internal stakeholders?

9. Who are the key external stakeholders?

a. What is the history and/or current state of relationships on this or related issues?

b. Where is your issue on external stakeholders' priority lists?

10. What stakeholder involvement statutes or executive orders are applicable?

11. What is your timeframe and how flexible are the deadlines?

12. What kinds of data are currently available to EPA and to all parties?

a. What other information could be useful?

b. How can external parties assist usefully in data development?

13. What stakeholder involvement process seems best matched to your needs?
