Memorandum

TO: Residents of the area community, County Government, University Faculty and Research Staff, State Department of Environmental Protection, and the U.S. Environmental Protection Agency

FROM: SEDN Consulting

DATE: July 23, 2004

RE: Regional Dispute Resolution Process

NOTES:

Approaches to Waste Facility site closure shall be made open for public discussion. A plan has been created in response to general concerns. Aggrieved parties are invited to submit letters of intent to our attention within 15 days of the date of this notice. An advisory committee shall be formed to conduct a consensus building meeting promptly thereafter.

A public forum shall be offered the morning before the meeting in order to provide guidance, information and training to those who desire to participate.
The Regional Dispute Resolution Process:
An Approach to Government Waste Facility Closure

Many factors affect government waste facilities. These span the spectrum from regulatory issues to neighborhood complaints. It has been found that landfill regulatory agency staff and boards fail to properly implement the environmental protection requirements of the US EPA Subtitle D regulations for municipal solid waste (MSW) landfilling. Recent dealings have indicated a discontent towards environmental regulatory bodies and the business of solid and hazardous waste collection. Almost any action can be blocked by governmental or political challenge, identification of new sites, closure of existing sites, and monitoring. Regulatory agencies are beholden to the law, while local government officers are more beholden to their respective elected leaders. When dealing at the local level, the residents will have much more influence in the process as a result of direct access to and significance for the elected municipal leaders. It is also possible that from a research standpoint, efficiency is challenged; therefore frustration with the government and state regulatory bodies may ensue.

This Regional Dispute Resolution Process (RDRP) was created to address the issue of inefficiency when dealing with site closure. A neutral setting with a facilitator designated by the Conflict Resolution Consortium (CRC) is to be provided. This facilitator can provide an objective assessment and suggest appropriate steps to get participation in a more structured manor. The facilitator may include interviews with all parties involved including decision-makers and will document meetings with each group. An assessment report will indicate whether proposed mediation efforts are feasible. A typical report might state that a negotiation could be organized around a broader set of issues related to site closure in the county. The conflict can then be successfully mediated as a site closure forum that will develop consensus recommendations for consideration. Having a mediator allows the participants to focus more on the issues while a neutral party will facilitate the communication and manage the progress of the conflict into a mutually acceptable agreement.

A consensus building meeting is the core of the process. Therein, interests and constraints are discussed and explored to create mutually acceptable agreements. Providing that the parties are willing to negotiate in good faith, collaborative negotiation is more likely to produce positive results with less ancillary damage than avoidance or participating in an adversarial forum (e.g. court or administrative hearing).

Definitions

1. **Government Waste Facility** - system of waste disposal in which the waste is buried between layers of earth at standards set by the US EPA.
2. **Mediation** – procedure in which a neutral party attempts to provide intervention between conflicting parties to promote reconciliation or settlement
3. **Litigation** – typically occurs when the mediation process fails, or no consensus is obtained. Parties involved will be involved in formal court action or lawsuit.
4. **Aggrieved Party** – group that brings claim against organization or agency; may be a county claim, other organization, governmental agency, group or individual
5. **County** – will be active participant in any mediations involved
6. **Consensus** - general agreement of opinions, based on reports, the judgment arrived at by most of those concerned
7. **Initiation letter** – letter formally identifying a dispute and asking named parties to engage in the resolution process and attend initial consensus building meeting
8. **Response letter** – letter that formally notifies initiating party that they will participate in the resolution process and attend initial consensus building meeting
9. **Facilitator** – one who assists in bringing about resolution in consensus building meeting.

**Acronyms Used**

1. **U.S. EPA** – United States Environmental Protection Agency
2. **MSW** – Municipal Solid Waste
3. **RDRP** – Regional Dispute Resolution Process
4. **RPC** – Regional Planning Council
5. **CRC** – Conflict Resolution Consortium

**Ground Rules**

- Establish general guidelines of how the group will work
- Provide a code of conduct and create cooperative environment
- Length of meetings
- Who has authority
- When will new information be brought into the process
- Who will facilitate and who will record
- Consensus of decisions
- Should the media/public be invited?
- How are results reported
- How meetings are convened

This RDRP is recommended for use when:

1. different perceptions of the problem exist
2. there is a reluctance to negotiate
3. hostility occurs
4. lengthy decision-making processes are predicted
5. voluntary support and consent are required
6. concerns other than legal issues exist
7. there are time constraints

This RDRP will identify the following: how challenge is to be mediated, notification of parties and how each is to be mediated, selection of neutral party facilitator, how decisions will be made and finalized, how and when challenges can be made, and how
implementation will occur. This RDRP cannot be used when it is too late to do anything, key parties have opted not to participate, and informal negotiations have not been attempted.

**Steps to the RDRP**

There are three parts of the RDRP. This includes the initiation/response letters, a public workshop to prepare the citizens and the consensus building meeting/advisory committee.

- Initiating (aggrieved) party will be responsible for contacting all parties involved and provide details surrounding the dispute. They will submit letters to all of the parties involved and to the Regional Planning Council (RPC) requesting to schedule a consensus building meeting.
- Fifteen days will be allotted to respond to the initiation letter. Responses must include if parties are willing to attend and express their opinions regarding the issues at hand.
- Upon completion of the fifteen day period, RPC will schedule a consensus building meeting at a location and time most convenient to all parties who have responded to initiation letter.
- The scheduled meeting will provide a place for all parties to voice their opinions and constraints so that mutually acceptable agreements can be obtained.
negotiations can proceed. The first meeting will be scheduled in afternoon so it may follow a public forum in the morning which will serve to train and prepare the citizenry for their inclusion in the upcoming process.

- If consensus is not obtained on any or all of the issues, follow-up meeting will be scheduled. These meetings will consist of addressing issues previously brought up and identifying pros and cons of each party’s concern. A neutral party/facilitator selected by the CRC will assess the situation and provide neutral feedback. A consensus should contain an integration of each party’s input.
- If consensus is still not obtained, administrative or judicial determination will be made. This is done by the EPA making the call to send conflict to the courts.
- If conflict in any of the parties is not resolved, the injured party can then take conflict to appellate court in efforts to overturn the previous decision.

Prior to Meeting

Are the issues important enough for all the parties to justify the effort needed for resolution?

If any party does not agree to have a consensus building meeting, they can request an interview with the Regional Planning Council (RPC) to discuss the process and any possible alternatives. The RPC will not make decisions regarding disputes, but will serve as neutrals and as supporters to the process.

Participation

The entire process can be completed in approximately 60 days. The first fifteen days are allotted for the response period to the initiation letter. The remaining time can be used for scheduling the consensus building meeting, no later than fifteen days following response time. In this, a follow-up meeting can be held within ten days of the first meeting if consensus is not reached. Specified times may be shortened or lengthened depending on the nature of the dispute. Parties may need more time to discuss all possible alternatives. Any public or private group can participate, but at specific times during the process. This timeline will work well to coincide with the EPA’s 60 day process specific to permitting. Representative groups will also be delineated by CRC in such a way that they are not prohibitively large or cumbersome. Minimal costs are involved in the RDRP. Paper processing for letters submitted are the only cost to initiators. All other costs including meeting location expense and facilitators hired are shared amongst all parties participating in the RDRP.

Successful participation will result if the process is initiated before positions are hardened and relationships are crossed. Desired outcomes must be clearly stated in all letters submitted. If some parties opt not to participate, the aggrieved party should attempt to encourage by reiterating the fact that if no consensus is reached, no action will take place. They must not take a positional outlook, but must instead come to a
consensus building meeting with the intent to assess the situation from all points of view and to find the most acceptable agreement to all parties.

The CRC facilitator will identify when consensus has been reached as indicated by mutual acceptance and agreement on solutions by a unanimous vote of the representative leadership.

**Conclusion**

The RDRP will offer an effective way to settle disputes regarding site closure. Situation constraints permit adequate time for negotiation. Reasonable deadlines will encourage the settlement. Costs and frustration can be reduced when the RDRP is used. Agreements reached can be of better quality allowing all parties to be fairly satisfied.