

**U.S Environmental Protection Agency
Negotiated Rulemaking Committee on All Appropriate Inquiry**

Ground Rules

I. Mission Statement

The U.S. Environmental Protection Agency (Agency) has established the Negotiated Rulemaking Committee on All Appropriate Inquiry (Committee) to develop a proposed rule to establish standards and practices for carrying out all appropriate inquiry as required by Section 223 of the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118).

To accomplish this mission, the Committee will work together as a team to develop all appropriate inquiry standards and practices that are protective of public safety, public health, and the environment and promote productive use of properties subject to the Brownfields Law..

The Team will work to create standards and practices that balance the concerns of all stakeholders.

Every effort will be made to complete a Notice of Proposed Rulemaking (NPRM) by December 1, 2003.

II. Participation

A. The Committee consists of the following members:

American Society of Civil Engineers
ASFЕ
Center for Public Environmental Oversight
Environmental Bankers Association
Environmental Defense
Gila River Indian Community
Illinois Environmental Protection Agency (Association of State and Territorial Solid Waste Management Officials (ASTSWMO))
International Council of Shopping Centers

International Municipal Lawyers Association
Mortgage Bankers Association of America
Maryland Department of the Environment (ASTSWMO))
National Association of Development Organizations
National Association of Home Builders
National Association of Industrial and Office Properties
National Association of Local Government Environmental Professionals
National Brownfield Association
National Groundwater Association
Partnership for Sustainable Brownfields Redevelopment
Real Estate Roundtable
The U.S. Conference of Mayors
Trust for Public Land
U. S. Environmental Protection Agency
U. S. Public Interest Research Group
Wasatch Environmental, Inc.
West Harlem Environmental Action

- B. Each Committee member shall nominate a principal negotiator and identify an alternate. Principal negotiators will represent the member for purposes of determining consensus. Alternates will serve as negotiators in the absence of the principal negotiator. Alternates will be expected to be fully knowledgeable of organizational positions related to issues under discussion.
- C. Resource groups have been identified to provide expertise in support of Committee negotiations. Resource participants may participate in Committee meetings as needed and appropriate, but are not members of the Committee for the purposes of reaching consensus. Resource groups have been identified as the American Bar Association, insurance companies, and real estate brokers. The Committee may, by consensus, invite additional resource groups and participants.
- D. The Committee may recommend that EPA add members by consensus.. EPA concurrence will be required to officially add members to the FACA Committee. Participation may begin immediately upon admission to membership.

III. Decision Making

- A. The Committee will operate by consensus, meaning that agreements will be considered reached when there is no dissent by any member. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations about the approach or solution that is proposed for consensus. Absence will be equivalent to not dissenting. Committee members who cannot be present at a meeting may provide written information outlining their concerns on issues to be discussed. Such information will be distributed to the Committee.
- B. All consensus agreements reached during the negotiations will be assumed to be tentative agreements until members of the Committee reach final agreement on regulatory language. Once **final consensus** is achieved, Committee members may not thereafter withdraw their consensus.
- C. Work groups may be designated by the Committee to address specific issues or to develop proposals. Work groups are not authorized to make decisions for the full Committee. Work groups may include Committee members, resource participants, and others designated by the Committee. Work groups may access experts, as needed.

IV. Agreement

- A. The goal of the Committee is to develop a proposed regulation that reflects a final consensus of the Committee. The preamble to the proposed rule will not be subjected to Committee negotiations, but EPA will endeavor to provide a draft preamble to the Committee at such time and in such fashion as to facilitate Committee member review and comment, and if desired by consensus of the Committee, discussion with EPA about the preamble, prior to publication.
- B. If the Committee reaches a final consensus on all issues, the Agency will use this consensus-based language in its proposed regulations, and Committee members will refrain from commenting negatively on the consensus-based regulatory language, except as provided in paragraph IV D.
- C. If the Committee reaches a **final** consensus on some but not all issues, the Agency will include the consensus-based language in its proposed regulations, and Committee members will refrain from commenting negatively on the consensus-based language, except as provided in paragraph IV D.

- D. The Agency will not alter the consensus-based language of its proposed regulations unless the Agency reopens the negotiated rulemaking process or provides a written explanation to Committee members, which contains a detailed statement of the reasons for altering the consensus-based language. This written explanation will be provided to Committee members sufficiently in advance of publication of the proposed regulations so as to provide Committee members with an opportunity to express their concerns to the Agency. If the Agency alters consensus-based language, it will identify such changes in the preamble to the proposed regulations, and Committee members may comment positively or negatively on those changes and on all other parts of the proposed regulations.

V. Committee Meetings

- A. The facilitators will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the negotiation process. After review and approval by the Committee, meeting summaries will be certified by the federal negotiator and made available to the public.
- B. The Agency will make every effort to distribute materials to Committee members and Resource participants in a timely fashion. To the extent practicable, the Agency will provide members with documents for discussion at Committee meetings at least seven days in advance of the meetings.
- C. Committee members will communicate their interests and concerns to each other and be accountable for points of disagreement. They will present proposals and counter proposals in an effort to address those interests and concerns.
- D. A Committee member may request a caucus for consultation at any time.
- E. A list of topics to be discussed at each Committee meeting will be published in the Federal Register prior to each meeting. The facilitators will be responsible for refining the agenda for each meeting in consultation with Committee members.
- F. All Committee meetings, but not caucuses, will be open to the public.
- G. Draft documents will be made available to Committee members and Resource participants. Final documents will be posted on the EPA website.

VI. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time without prejudice by notifying EPA in writing.
- B. All members shall act in good faith in all aspects of these negotiations.
- C. Each member will be represented by its principal negotiator or alternate. If a member is not represented at 3 meetings, it will be considered to have withdrawn from the Committee. A member dropped from the Committee may petition the Committee, and by consensus, be reinstated.
- D. Members will maintain contact with superiors and constituents throughout the negotiations to obtain feedback on proposals and to provide information about tentative agreements reached.
- E. Contact with the media will generally be limited to discussion of the overall objectives and progress of the negotiations. Committee members should refrain from characterizing or commenting publicly on positions taken by other members of the Committee. If an article appears that misquotes or inaccurately represents an individual, that individual will inform the Committee of it.

VII. Meeting Facilitation

- A. Facilitation services will be provided by Susan Podziba & Associates. The facilitators will serve at the discretion of the Committee. They will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing meeting summaries, which will provide a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed by the Committee.
- B. The facilitators will be available to facilitate all meetings of the full Committee and, to the extent possible, caucuses and work groups.
- C. The facilitators are obligated to keep information confidential if requested to do so.

