

Case Study

Montana Legislature Collaborates to Reimburse Liable Parties for Cleanup Costs

The Problem

Hazardous waste cleanup is a complex, emotionally charged issue that can result in time consuming conflicts and expensive litigation. Often, disputes arise because the laws governing cleanup liability are viewed as unfair by parties held financially responsible.

Communities feel threatened and businesses feel stifled, as government agencies struggle to maintain balance and fulfill their mandated responsibilities.



Prior to 1997, Montana's Comprehensive Environmental Cleanup and Responsibility Act (CECRA) prescribed a strict, "joint and several" liability format. Under this law, any and all parties who were potentially responsible for contamination of CECRA sites could have been held liable for all cleanup costs - whether they were at fault or not.

The law helped secure funds for environmental cleanup, but industry questioned its fairness and fought diligently for reform. Faced with this pressure on one side, and pressure from environmental groups and agencies on the other, the Montana Legislature directed the Department of Environmental Quality (DEQ) to develop recommendations for improving current legislation.

Because the issue was contentious and the conflict long-standing, the legislature mandated that DEQ use a collaborative process to determine an appropriate and effective response.

The Policymakers

The Montana legislature convened the process, directing DEQ to use collaboration to study the provisions of Montana's CECRA liability regulations. DEQ officials contracted the Montana Consensus Council to help design and implement the process.

Other Players

The Consensus Council did an initial conflict assessment and identified the following stakeholder groups as the primary segments of the population affected by CECRA legislation: potentially responsible parties (business and industry); state and federal agencies; public and environmental interest groups; and local governments. These four groups formed the foundation of the study and were charged with building consensus on recommendations for new CECRA liability and funding laws.

Process

The process was divided into two segments. First, the four stakeholder groups held separate caucuses to build an understanding of the complex legal, policy, and technical issues. These issues included identifying the concerns and interests of each group, investigating other possible liability schemes, and identifying evaluation criteria for the possible alternatives.

Next, after intensive issue exploration and information gathering, the study group formed a coordinating committee that included representation from each of the

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four caucuses. Over a nine-month period, the committee met and gradually built consensus on recommendations for legislative alternatives.

After months of meetings and methodical consensus building, the group's efforts paid off. The committee signed an agreement and produced two consensus-based documents, one outlining the liability standards and the other describing program funding. Based on those documents, the committee drafted proposed legislation, secured legislative sponsors, and developed a strategy to present the bills to the 1997 General Assembly. From beginning to end, the study group maintained its commitment to the process - reaching consensus at every step.

The Product

The group fulfilled the legislature's directive and produced two bills, SB 377 and HB 584. Together, the proposed bills provided for an orphan fund to reimburse liable parties for cleanup costs that exceeded their apportioned share, and for a new liability scheme called "controlled apportionment."

Under "controlled apportionment," potentially liable parties would select an "allocator" who would distribute shares of liability according to 12 predetermined factors. Participation in the new scheme would be voluntary, but parties who were unwilling to participate would be subject to the "joint and several" liability laws. Moneys for the orphan fund would come from various mining taxes and environmental enforcement penalties and fines collected by DEQ.

Throughout the consensus process, group members built the trust and developed the relationships necessary to produce a mutually satisfactory solution to an ongoing problem. Unlike previous committee hearings on Superfund legislation, which were characterized by contentious debate and combative dialogue, no one spoke out in opposition of either bill. Both bills received impressive support from the House and the Senate and were enacted into law - a remarkable end to a long-standing conflict.

For more information about this case contact the Montana Consensus Council:

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