

Reaching Consensus in Ohio on Water Quality Standards

The Problem

Ohio is rife with water. It has 29,000 miles of streams and rivers, a 451-mile border along the Ohio River, 5,000 lakes, ponds, and reservoirs and, not the least, 236 miles of shoreline along Lake Erie. This latter fact qualifies Ohio as one of the eight Great Lake states and, thus, subject to the Great Lakes Water Quality Initiative.

In 1995, six years after the start of negotiations to create uniform pollution limits in the eight states, the U. S. Environmental Protection Agency issued its far-reaching initiative that caused a great deal of conflict with the Great Lakes governors. EPA gave the state two years to implement rigorous standards for waste disposal and put in place strict limits on what can be discharged into the Great Lakes. In doing so, however, US EPA gave the states flexibility in determining how to meet the uniform water quality standards for the Great Lakes basin.

Ohio's approach to developing standards was to create a 25-member group of diverse stakeholders who would seek to reach consensus on new water quality rules and recommend them to the Ohio Environmental Protection Agency (OHIO EPA). Members of what was designated the Great Lakes Initiative External Advisory Group (EAG) included representatives of statewide and Lake Erie-area environmental groups, business and industry, local government, higher education, and the Ohio EPA.

The EAG had to resolve a total of 99 issues that could potentially divide the group. To make matters even more complicated, the issues were laden with technical complexity, according to Fred Bartenstein, one of two facilitators for the group. They involved establishing numerical levels (parts per million or billion) of chemical and biological agents that could be present in waters discharged into Lake Erie. These levels have to be met by industry and all other waste-



Dredging on Lake Erie

water dischargers. Deciding on these parameters involved considering matters such as the relative level of presumed cancer-causing agents in water; the required number of fish or water bugs that would need to be present to determine whether water could support aquatic life; and the rate of water flow in streams and tributaries necessary to dilute pollution from, for example, the outflow pipe of a water treatment or power plant.

The Process

At its first meeting, Ohio EPA Director Donald Schregardus gave the EAG a powerful incentive to succeed, according to co-facilitator Roberta F. Garber: "If the group achieved consensus on an issue, and if the recommendation was consistent with state and federal law, he would implement it. If the group could not reach consensus, he would make a decision after weighing Ohio EPA staff recommendations and the recommendations of the major interests groups on the EAG."

Garber describes the EAG's work using a four-phase framework developed by G. Aubrey Fisher in his book *Small Group Decision Making*. In the first "forming" or orientation phase, the group adopted ground rules to govern their interactions based on a consensus decision-making model proposed by the two facilitators. Members began their work on water quality rules, but at that point were unwilling to

"Industry and environmental groups in Ohio reached agreement on 81 of 99 issues involved in setting rigorous water quality rules."

When Should Consensus Approaches Be Used

Consensus-based approaches for resolving environmental conflicts are more likely to be successful when the following factors are present:

- The issues are of high priority and a decision is needed.
- Relevant laws are flexible enough to permit a negotiated agreement.
- The outcome is genuinely in doubt and the parties at interest do not have better options for getting the outcome they want.
- The public is frustrated with how government has handled the situation.
- Representatives of all key interests are willing to negotiate.

Even though they can be effective, consensus processes are not always the best choice for every situation. Mediated approaches should not be used when:

- It is important to get legal clarification or set legal precedent.
- The situation does not allow time for negotiation and consensus building.
- The issue is so polarized that face-to-face discussions are not possible, or negotiations will substantially affect parties who cannot be effectively represented.

break into small groups because their “trust level was not high enough to rely on secondhand reports from small groups,” Garber writes.

In the second “storming” or conflict phase, groups typically begin to express strong opinions and feelings. But in the EAG’s third meeting, facilitators observed that none of that was happening because members of the group did not want to speak openly in front of the “opposition.” The facilitators suggested that the group divide into caucuses for facilitated discussions. The caucus groups were able to make progress and when the whole group reconvened, Garber reports, “those issues on which the caucuses agreed with Ohio EPA staff were crossed off the list as areas of group consensus. From then on, group time was spent on the non-consensus areas.”

In the third “norming” or emergence phase, groups typically develop cohesion. At a two-day meeting in August 1996, group members recognized that they had fallen behind schedule if they were to meet a March 1997 EPA deadline for establishing standards. So the group accelerated its efforts and from that time forward the “EAG was making progress in both completing its work and building relationships among group members,” Garber reports.

The fourth “performing” or reinforcement phase is one in which members achieve consensus on decisions. Over the last six months, the EAG achieved consensus on 81 of the 99 issues. For issues on which the group members agreed to disagree, the Ohio EPA staff had the sensitive task of taking the viewpoints of both caucuses under advisement in crafting applicable rules.

The Result

Garber sums up the outcome of the two-year EAG process:

“When the rules were taken before the Joint Committee on Agency Rule Review for legislative approval, there were no surprises. All perspectives had been thoroughly aired, and the interest groups were

confident that they had been heard.... The groups ultimately determined that it was not in their interest to protest the rules, because a better outcome was not possible.” The legislature has since adopted the new rules.

Lessons Learned

Participants in negotiations often start off mistrustful and thus unable to collaborate. But with assistance from an impartial, skilled facilitator, they can learn how to work toward achieving mutually agreeable solutions.

The presence of a fixed deadline can promote reaching agreements in a timely fashion.