



Resolving Issues Before Formal Dispute

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FEDERAL FACILITIES RESTORATION AND REUSE OFFICE


The purposes of this course are: to identify options to address disagreements before initiating formal dispute, and to provide attendees with a walkthrough of the formal dispute resolution process at federal facilities listed on the National Priorities List (NPL) in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

**Group Poll: What type of
conflict have you
experienced at federal
facilities?**

Group Poll: What are some examples of conflict that you have experienced in the past at federal facilities? Has it slowed down progression of the project? Was it resolved formally or informally? Whether you have experienced conflict or not on a site, it is bound to come up eventually, due to the nature of interests for each federal facility and the number of people working on these projects. It is important to keep in mind that it is never too late to resolve conflict, and it is better to address issues earlier than later in the process. It is also critical to remember the big picture and ensure that the health and safety of the community and environment involved are protected.

Overview

- Introduction
- Preparing for Dispute
- Communication
- Resolving Disagreements
- Beyond Informal Dispute Resolution
- Formal Dispute Resolution Process



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In this course, we will go over the nature of disagreement, how to help prepare for dispute, communication tips and techniques, how to resolve disagreements, and how to go beyond informal dispute resolution to formal dispute and the associated resolution process as it relates to federal facilities.

Introduction

- ❑ Disagreements are bound to arise when different agencies with different missions come together to clean up contaminated sites
- ❑ Acknowledge that disagreements will happen and ensure a plan to work through issues is established
- ❑ Informal dispute is an option that allows Project Managers to attempt to resolve a dispute without further elevation



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Disagreements can arise when agencies with different missions are working together on cleanup of contaminated sites. Acknowledging that disagreements will happen and having a plan to work through issues is key to keeping cleanup work moving forward.

Due to the complexity and scope of many federal facility cleanups, it can take decades to complete, meaning there will be staff turnover during the course of the cleanup. If there is no plan in place to address disagreements, this turnover can have a negative effect on the project schedule.

Informal dispute is a specific dispute stage provided for in Federal Facility Agreements (FFAs) that allows the Project Managers and their supervisors to try to resolve the dispute without elevation or the initiation of a formal dispute.

Introduction

- ❑ Resolving disputes in a timely and collaborative manner may promote:
 - Fewer work stoppages
 - Faster cleanup timeframes
 - Reduced delays in meeting milestones



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Resolving disputes in a timely and collaborative manner can have positive impacts on cleanup schedules. The parties should meet as many times as necessary in an effort to resolve disputes early, if possible.

Nature of Conflict

- ❑ Different reasons for conflict
- ❑ Differing agency missions
 - Each federal, state, or other agency has different missions they are charged with meeting.
 - Affected by cost, agency mission scope, resources available, timelines to meet goals, and final cleanup goals.

Conflict can at times be inevitable. Each federal, state, or other agency likely has different missions they are charged with meeting. These missions can be affected by items such as cost, agency mission scope, resources available, timelines to meet goals, and final cleanup goals.



Artwork by surrealist painter Octavio Ocampo

Nature of Conflict

- Disagreement on interpretation of scientific data
 - Different groups can look at the same data set and reach different conclusions when analyzing that data
- Miscommunication
 - Use of varied jargon/terminology
 - Impacts from communication styles and personalities
 - Understand what each group means and identify how the general needs of all can be addressed

Conflict can also arise from disagreement on interpretation of scientific data. As is common with data, different groups can look at the same data set and reach different conclusions when analyzing that data. There are many instances where people may have the same goals, but the use of varying jargon and terminology results in misunderstanding. -Keep in mind that people also have different communication styles and personalities that can also increase miscommunication. It's important to understand what each group means and identify how each's needs can be addressed.



Preparing for Dispute

Preparing for Dispute

□ Federal Facilities Agreements (FFAs) generally:

- Describe who can invoke a dispute
- State that parties must make a reasonable effort to resolve the dispute informally
- Describe the procedure to resolve a dispute
- Provide elevation timelines for informal and formal disputes
- Define committees involved in resolving the formal dispute



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Each Federal Facilities Agreement (FFA) describes the process for dispute resolution. The FFA describes who can invoke a dispute (for example, the EPA, The federal facility or the State). A commitment that the parties will try to informally resolve the dispute at the technical (Remedial Project Manager or immediate supervisor) level. If resolution cannot be achieved informally the FFA describes the procedure to resolve a dispute. The FFA describes the timeline and who participates in the Dispute Resolution Committee (DRC). Different FFAs may use different terms, but the levels for dispute resolution are similar.

Example: Dispute Resolution Language from Travis Air Force base FFA (Pg. 27)

TIP: Each FFA is unique. Be sure to become familiar with your site's FFA.

12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. This dispute resolution procedure may be invoked by EPA, by the Air Force, or collectively by the Parties representing the State of California as a unit. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Remedial Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the receipt of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

12.3 Prior to any Party's issuance of a written statement of a dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Remedial Project Manager and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

This is a snapshot of Section 12, Dispute Resolution, of the Travis Air Force Base (AFB) Federal Facility Agreement (FFA) (Page 27). As mentioned, FFAs describe the process for dispute resolution. This section primarily discusses the steps for formal dispute resolution but does begin by encouraging informal resolution in Section 12.1: “All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Remedial Project Manager or immediate supervisor level.” As such, we will spend a majority of the time discussing informal methods and will end briefly discussing formal dispute.

Informal vs. Formal Dispute

INFORMAL	FORMAL
<ul style="list-style-type: none">❑ Begins with discussion at the project level (typically the EPA RPM level)❑ May include discussions by project level team members with their immediate supervisors (typically first line supervisors, but may depend on the agency’s organization)❑ May include preliminary discussions with legal representatives❑ Can continue as long as team members agree progress is being made, <u>but should be elevated promptly when progress has stalled</u>	<ul style="list-style-type: none">❑ Dispute Resolution Committee (typically at Superfund Division Director level)<ul style="list-style-type: none">▪ Forum for resolution of the dispute▪ DRC timeline and written decision▪ If resolution is not unanimous, elevated to next level❑ Senior Executive Committee (typically at the Regional Administrator level)<ul style="list-style-type: none">▪ Work may stop if affected by the dispute once it is invoked at the SEC level❑ If not resolved at SEC level, can be elevated to the EPA Administrator

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The FFA describes the timeline and who participates in the Dispute Resolution Committee (DRC). Different FFAs may use different terms, but the levels are similar. In formal dispute, the DRC serves as the first level of formal dispute resolution for which agreement has not been reached through informal dispute resolution. Following elevation to the DRC, the DRC is given a schedule in which to unanimously resolve the dispute and issue a written decision. This committee is typically at the Superfund Division Director level. If the decision is not unanimous it is elevated to the Senior Executive Committee (SEC) defined by the FFA which includes the EPA, the lead cleanup agency and state senior executives—typically the RA level. It includes a timeline and work on the issue is discontinued until the dispute is resolved.

The 1988 EPA issued a memo on the Agreement with the Department of Energy -- Model Provisions for CERCLA Federal Facility Agreements. In 2009, EPA and the Department of Defense (DoD) agreed that the Fort Eustis FFA would serve as the model for all future EPA/DoD FFAs. The Fort Eustis model language says, "All elements of the Work required by this Agreement that are not affected by the dispute, shall continue to be completed in accordance with the applicable Schedule." So, the work only stops if affected by the dispute, and it happens, presumably, as soon as the dispute is invoked, not at the SEC level. 1998 EPA Memo:

<https://www.epa.gov/fedfac/agreement-department-energy-model-provisions-cercla-federal-facility-agreements>

Ft. Eustis FFA: <https://www.denix.osd.mil/references/dod/policy-guidance/epa-and-department-of-the-army-agreement/>

Apply Your Understanding

Which of these are examples of an informal dispute?



A. A difference of opinion when the parties are determining how to implement institutional controls to limit groundwater use until the aquifer is restored



B. Resolving disagreement between the lead cleanup agency and EPA on determination of applicable and relevant and appropriate requirements (ARARs) at the director's level



C. One party wants to use certain technology in a cleanup while the other parties want to use different technology



D. A disagreement between the parties over identifying a preferred alternative in a proposed plan

Preparing for Dispute - Relationships

Identifying your project team in advance

- Federal agencies and possibly state, tribal, and other team members
- May also be helpful to bring technical/subject matter experts into the conversation before the situation becomes tense

Build relationships across the team

- Meet regularly and interact: can you meet in person?
- Encourage all groups to speak openly about their agency's needs
- Create a clear agenda in advance so each member is prepared
- Do key people need to be present? Does it need to be briefed up the chain of management?

Your dispute resolution team should be identified early in the process. Informal disputes may be resolved at the project level without proceeding to formal dispute. Think of these as part of a continuum of dispute resolution. When preparing for a disagreement, there are a few things to keep in mind and work on from the get-go. These include, but are not limited to:

- A majority of issues can be resolved at the Remedial Project Manager/Supervisor or technical level.
- Knowing and identifying the team that can help in resolving issues.

- Your team will generally consist of the lead cleanup agency, EPA RPM, other involved federal agencies, and may include state, tribal, and other team members.
- There may also be situations where it is helpful to bring technical experts or other subject matter experts into the conversation when there is a disagreement.

For example, a hydrologist could provide insight on contaminant transport or an attorney could clarify legal requirements. If there are differing opinions, bringing in a facilitator to assist with discussing differences and may help with understanding the different perspectives.

Build relationships across the team, Meeting regularly and interacting with your team is important. During these interactions, each group should be encouraged to speak openly about their agency's desired outcomes and goals. It's also important that each person be respected and show respect for others in these interactions. When meeting in person, develop a clear agenda with input from the various parties in advance so that each team member can be prepared and know that they are an active participant in the process. It can be unfair to start what seems to be a regular meeting with a discussion that one may not be prepared for. It is also helpful to determine key people that are needed to reach a decision or if the results of the meeting will need be elevated to management before a decision can be made. These early steps in preparing for conflict should not be a surprise to the members of the group. Meeting in person, when possible, can also help to facilitate discussion and reduce misunderstandings and issues caused by dueling drafts of documents.

Preparing for Dispute - Communication

- ☐ Maintain regular communication
 - Outside of meetings, via phone calls and email
 - Goal: each team member is comfortable picking up the phone and calling another to ask a question or provide input
- ☐ Work within the flexibility available
 - Acknowledge that there are multiple ways to achieve desired results
 - There is no single "silver bullet" remedy that is fully protective of human health and the environment

Maintaining regular communication can be a great way to prepare for conflict. Conversing cordially outside of meetings can be a great way to promote camaraderie and reduce the likelihood of conflict. The ideal scenario would be that every team member would feel comfortable picking up the phone and calling another to ask a question or provide input.

Additionally, being flexible can be very useful. This can be achieved by the acknowledgement that there are multiple ways to achieve desired results, staying too rigid in a certain belief

system can cause tension. Keep in mind that there is no single “silver bullet” remedy that can ever be fully protective of human health and the environment. Compromise and flexibility can be a helpful tool.

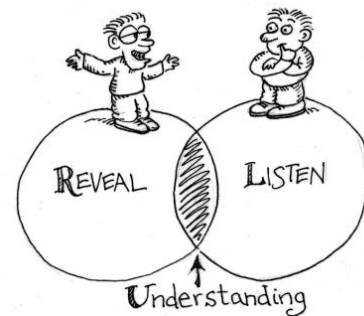
Preparing for Dispute – Teamwork

- Promote teamwork
 - Practice acknowledging others when they provide ideas
 - Encourage out-of-the box ideas
 - Identify areas where compromise is possible



Teamwork works best when everyone acknowledges each other after something is said or an idea is thrown out to the group. Encouraging out of the box ideas and offering alternative solutions to ideas that may not be the best (in your opinion) can save a group from getting too wrapped up in an issue.

Communication



Communication - Listening

- Listen to others' input – “Active Listening”
 - Try not to assume what someone else is going to say or instantaneously form rebuttals
 - Regularly practice acknowledging others with a nod or verbal cues that indicate that you are following
 - All should have the opportunity to speak and be heard
 - Do not interrupt each other



<https://www.lynda.com/Communication-tutorials/Implementing-active-listening-skills/410330/461489-4.html>

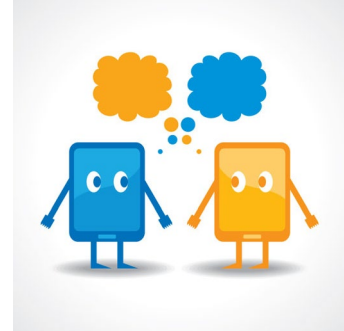
Communication is critical to understanding the root of a disagreement and working towards resolving issues. “Active listening” is when you make a conscious effort to hear and most importantly, understand, what another person is saying. It requires focusing on the person speaking and not being distracted or by immediately forming counter arguments. It requires listening to other’s input prior to assuming you know what they are going to say. Each team member should have the opportunity to speak and be heard, especially when there is a disagreement.

Research suggests that we remember between 25-50% of what we hear, meaning a lot of disagreements can arise from not fully grasping the message another person is trying to say. Active listening can be a proactive way to combat misunderstandings. Information taken from <https://www.mindtools.com/CommSkill/ActiveListening.htm>

Communication - Repeating

- ❑ Repeat what you have heard another person say
 - Solidifies a mutual understanding
 - Creates an opportunity for discussion and clarification
 - Signals to the speaker you are actively listening

- ❑ Reducing the issue to writing may help the parties reach an understanding



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<https://www.mindtools.com/CommSkill/ActiveListening.htm>

Another excellent communication tactic is “Repeat,” as in repeating another’s statement and/or opinion. Reiterating another’s statement and/or opinion can solidify understanding amongst parties by opening a discussion of interpretation. Repetition in the form of putting their statement in your own familiar terms can be a way to see if there is a mutual understanding and possibly provide constructive feedback. It is important to use this tactic without condescension. Misunderstanding can occur during verbal discussion. Having the parties write their concerns and stance on issues may also help clarify the situation.

Communication - Behavior

- ❑ Focus on the core issues
 - Avoid creating a “laundry list” of issues
 - Let go of issues already resolved in the past and those not relevant to the current dispute
 - Highlight those that currently need to be addressed

- ❑ Etiquette
 - Be respectful
 - Make an effort to take a fresh look at the problem, letting go of past baggage and moving forward

Communication is critical to understanding the root of conflict and working towards resolving issues. Focusing on the pertinent issues at hand can be a good starting or correction point for a dispute. Often times, one issue can spiral into another thrown on the table. At this point, focus has been lost and it is likely that any efficient resolution will be postponed. Thus, it is important to avoid creating lists of issues that may or may not be related to the current issue at hand. Let go of issues addressed in the past, regardless of how you felt about their resolution, and focus on those that need to be addressed.

Apply Your Understanding



Which of the following is not an example of practicing good communication across a site team?



A. Providing a written summary of my agency's understanding of an issue and out stance



B. Asking clarifying questions once another team member has presented their thoughts on a topic

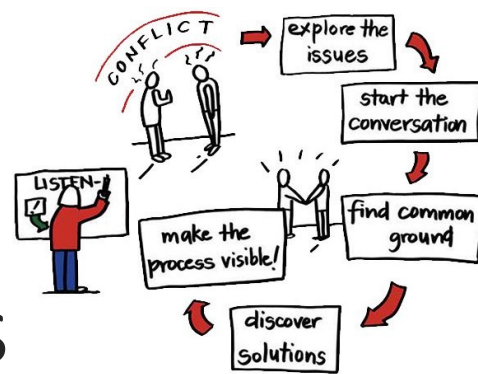


C. Raising issues that are not relevant to the current discussion



D. Disagreeing with someone from another group and explaining why I disagree

Resolving Disagreements



Resolving Disagreement Step 1: Prepare for Resolution

- Acknowledge the disagreement
- Discuss the impact
- Agree to a cooperative process
- Agree to communicate



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https://www.mindtools.com/pages/article/newTMM_79.htm

The disagreement has to be acknowledged before it can be managed and resolved. People often ignore the first signs of a disagreement, as it can seem trivial or seems similar to the normal debate that groups often experience. If you are concerned about conflict amongst agencies or any working group, discuss it with other members. Recognizing the issue can start the process of resolution.

After recognizing that a conflict exists, it is critical that the team discusses the impact of the conflict. The conflict can affect the working dynamic, efficiency, performance, among other aspects of the work at hand. Everyone involved must agree to cooperate to resolve the conflict. This means putting the overall mission first and may involve setting aside opinions, ideas, and pride for the time being. To prepare for a resolution, everyone must keep communication open.

Resolving Disagreements Step 2: Understand the Situation

- ❑ There will likely be varying points of view
- ❑ Each group should clarify their positions
- ❑ Avoid assuming there is a single correct way at this point

Scenario: Remedy Selection

Alpha believes a groundwater plume should be remediated through pump and treat.

Beta believes the contaminated groundwater should be addressed through monitored natural attenuation.

Gamma believes more data is needed.

https://www.mindtools.com/pages/article/newTMM_79.htm

Once it seems that a majority are ready to move from argument to resolution, the next stage is to understand the situation and the varying points of view that exist. Clarifying positions can help everyone see the facts more objectively and with less emotion. While it can seem that there are obvious factions for the support or rejection of an idea, everyone holds their own unique position and should be clearly identified and articulated.

The example in the green box to the right provides some general examples of team members clarifying their positions on which remediation approach should be used to treat contaminated groundwater.

Resolving Disagreements Step 2: Understand the Situation

- Clarify the issue in dispute
- List facts, assumptions, beliefs
- Separate alliances and analyze in smaller groups
- Convene and discuss

Scenario: Remedy Selection

Alpha believes pump and treat is best because it has worked well in other areas of the site with similar contamination.

Beta believes MNA is appropriate due to relatively low concentrations of contaminants.

Gamma believes more data would be helpful.

https://www.mindtools.com/pages/article/newTMM_79.htm

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Listing the facts, assumptions, and beliefs underlying each position can also help understand the situation. Questions to ask include, what does each person or group believe? What is their motivation? What information is being used to base these beliefs?

Going further, breaking into smaller groups and separating alliances can help dissect the various positions. Questions to ask include: Which facts and assumptions hold true to this issue? Which are more important to the outcome? Does additional, objective information need to be brought into the discussion to clarify points of uncertainty? Is additional analysis required?

Ideally, after the small group dialogue, assumptions, and facts used to support the various opinions should be uncovered. This can allow people to step away from their emotional attachments and see the issue more objectively.

For example, the same parties in the previous example are having a meeting. They sit down and begin listing the facts, assumptions, and/or beliefs of their stances on the remediation approaches and data needs. In a larger or more divisive setting, groups may need to be split first into smaller discussion groups, then brought together at the end.

Resolving Disagreement Step 2: Understand the Situation

- Identify minimum needs and where there is no flexibility
 - Critical to identify absolute deal-breakers for your agency based on laws and regulations
 - Remember – personal views are not always the same as the agency's position
- Identify issues and offer constructive suggestions
 - Each agency is responsible for clearly identifying what its issues are
 - Should propose ways those issues can be addressed



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In addition to listing the facts and assumptions of one's stance, a good discussion will require all agencies involved to identify their minimum needs and where flexibility is not possible. Justifiable reasons for limits can be, but are not limited to, laws, regulations, and/or budget. Personal belief should not be a deal-breaker or flexibility issue, as this can be conflicting with the agency's position. Reaching an agreement will also require identifying issues and offering suggestions. It is helpful if all agencies involved participate and propose ways that issues can be addressed.

Resolving Disagreement Step 3: Reach Agreement

- Be creative
 - Negotiate
 - Most things are negotiable
 - Avoid getting stuck in your views to the point that you fail to identify other options
 - Discuss
 - Talk about your stance on an issue with people you trust and respect within your agency
 - Their input may be a worthwhile reality check
 - Consider expertise of different members (technical, scientific, legal)



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There are many ways to reach an agreement. It is possible that reaching this step may require you to be creative or move away from traditional ideas you may have. Negotiation can be a good way to reach an agreement and should be as fair as possible to the agencies involved.

Discussion can be a useful tactic, so long as everyone is willing to participate. It may require you to discuss your stance with a third party within your agency to get their opinion and get a reality check on your viewpoint.



Resolving Disagreement Step 3: Reach Agreement

- Use a facilitator if necessary
 - Be willing to bring in a facilitator if communication issues cannot be overcome
 - Neutral facilitators can assist in communication and identify a path forward

- Celebrate agreement!

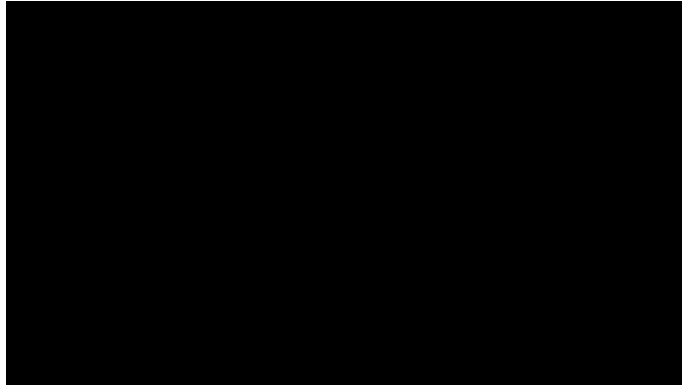
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At times, it may be necessary to use a facilitator when disagreements cannot be overcome. Neutral facilitators can assist in communication and identify a path forward.

Other times, all agencies and participating parties may be able to come to a resolution. Don't forget to celebrate agreement when it happens!

Video Clip Activity

- Can you identify the “Do’s” and “Don’ts” in this clip of a TV show?



<https://www.youtube.com/watch?v=Xg3dAmhFJdE>

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The 1:52 minute clip is from an NBC television show called, “The Office” in which the manager, Michael Scott (Steve Carell), is trying to help resolve a conflict between his employees. Video at: <https://www.youtube.com/watch?v=Xg3dAmhFJdE> . How could this have been approached differently? What would you do to help guide the situation towards resolution?

Beyond Informal Dispute Resolution

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Elevation: From Informal to Formal Dispute

- If substantial tangible progress has not been made during informal dispute, then the dispute needs to be elevated to formal dispute
- The standard timeline for an informal dispute is 30 days but can vary depending on the FFA.
- Both formal and informal disputes are anticipated parts of the process- that's why there is a procedure for them in the FFAs.
- Initiating a formal dispute is the appropriate action when no further progress can be made at the informal level

Sometimes disputes cannot be resolved informally or at the RPM level and require elevation for successful resolution. Remedial Project Managers and the project team should use their best judgment to confirm the parties share a consistent understanding of the exact issue in dispute and make an informed decision as to whether substantive progress is being made to resolve the disputed issue. The Parties should also consider how far beyond the standard 30-day timeline the Parties have been in informal dispute.

Questions to Ask Before Formal Dispute

- Does this issue merit the involvement of upper management?
- Is this a technical issue that is better resolved by subject matter experts and at the team's level?
- Has all flexibility in selecting a path forward been considered?
- Is there a key disagreement on how this dispute would affect selection of a remedy that would be protective of human health and environment?

Before moving towards the formal dispute route, consider the listed questions. These can help the group determine if substantive progress is being made towards resolving the issue. If progress has stalled, it is time to elevate the dispute.

Elevation to Formal Dispute

If a decision is made to initiate formal dispute, note:

- ❑ FFAs generally require this to be done in writing
- ❑ This is an opportunity for progress!
 - The party will clarify the dispute and provide its rationale, helping the other party/parties to understand its position

The exact terminology for the dispute resolution process will vary depending on the language used in a site's FFA. The required written statements will also be described in the FFA.

Step 1: Dispute Resolution Committee (DRC)

- ❑ Generally comprised of:
 - ❑ EPA Waste Management Division Director (or equivalent),
 - ❑ Federal facility manager
 - Official from the State's environmental program
 - (if the state is a party—see your FFA for details)
- ❑ The DRC has 21 days (in most FFAs) to unanimously resolve the dispute and issue a written decision which all parties sign. If no resolution, DRC has 7 days to forward to the Senior Executive Committee.

Step 2: The Senior Executive Committee (SEC)

- ❑ Written statement of dispute forwarded from DRC
- ❑ The SEC is generally a group of senior executives from the parties
- ❑ Generally composed of:
 - EPA Regional Administrator (RA)
 - An appropriate official from the federal agency responsible for the facility
 - The director of the State's environmental program (if applicable)
- ❑ The SEC has 21 days (in most FFAs) to unanimously resolve the dispute and issue a written decision which all parties sign. If there is no resolution the FFAs provide for further actions.

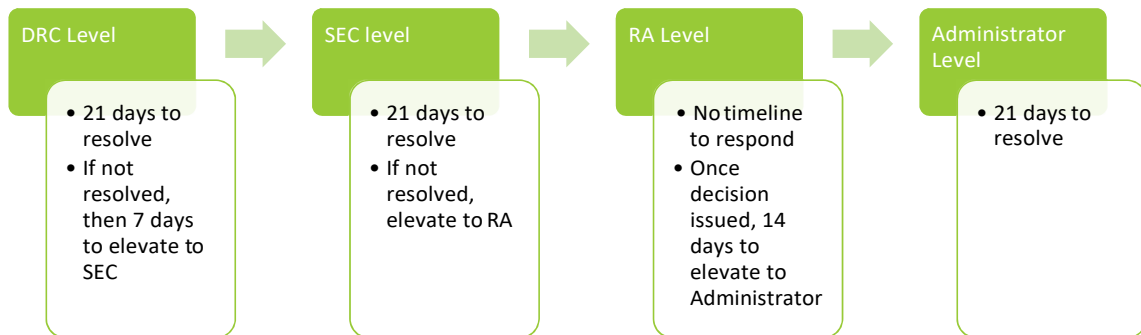
Steps 3 and 4: EPA Regional Administrator (RA) and Administrator

- ❑ If the dispute is not resolved by SEC, it goes to the EPA Regional Administrator and the RA issues a written position on the issue
- ❑ If the other parties don't object within 14 days, this becomes the decision
- ❑ EPA Administrator is the final arbiter of a dispute
 - If the RA's decision is opposed by a disputing party(s), then the issue can be raised to the EPA Administrator for a final decision

There have been only about 11 disputes that have been raised to the Administrator's level in the history of the federal facilities program.

Resolution Process Timeline Summary

- ❑ Check the language in your site's FFA and adhere to those timelines to the extent practicable.



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It is not always possible to adhere to the timelines identified in the FFA, particularly when trying to schedule briefings with upper management. However, all efforts should be made to adhere as closely as possible to avoid lengthy delays.

Formal Dispute Examples

- ❑ Some examples of situations where formal dispute occurs:
 - Use of MCLs as cleanup levels (argument over whether groundwater is a potential source of drinking water)
 - Request for extensions to deadlines (argument over if based on good cause)
 - Disagreement on which ARARs should be included in a ROD

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The following are examples of formal disputes. The use of MCLs as cleanup levels can be disputed when there is disagreement over whether groundwater is a potential source of drinking water. If it is not a source of drinking water, one party may argue that there is no need to restore the aquifer to drinking water levels. If another party disagrees that the source is a potential source of drinking water, then the parties will need to work together to reach resolution.

Disagreement over request for extensions to deadlines can occur if there is disagreement over whether the request is based on good cause. If a regulatory agency believes the lead cleanup agency did not make genuine effort to meet the milestone deadline, there may not be agreement on justifiable delays. Disagreement on which ARARs should be included in a ROD can also become a formal dispute if the parties are unable to resolve the issue at the project level.

Role of States

- ❑ States can play a role in the Dispute Resolution Process by:
 - Invoking a formal dispute under language in the FFA
 - In some FFAs, collecting stipulated penalties as a result of a violation (e.g., Rocky Flats, CO)
 - Making EPA aware of issues that may result in Dispute Resolution

- ❑ The affected state is represented at each level of the Dispute Resolution Process

http://www.astswmo.org/Files/Meetings/2007/2007-Annual_Meeting/FedFacRappold_000.pdf

Case Study

STATE PERSPECTIVE FROM SOUTH CAROLINA AT THE SAVANNAH RIVER
SITE (SRS)

Superfund Task Force and Principles Memorandum

- ❑ Superfund Task Force convened by Administrator Pruitt in 2017
- ❑ Several recommendations came out of task force
- ❑ Task Force Recommendation 18 called for reinforcement of the FFA Informal and Formal dispute timelines, and for better tracking of those timelines

Recommendation 18 of the Superfund Task Force (SFTF) report called for reinforcement of the FFA Informal and Formal dispute timelines, and for better tracking of those timelines.

The SFTF recommendations paper states that each of the FFAs at federal facility NPL sites includes timelines for moving through the dispute process. These timelines were developed in order to ensure that work at Federal Facility (FF) NPL sites moved efficiently even in the case of disagreements between the parties. The dispute resolution process includes a commitment by the parties to make reasonable efforts to resolve disputes informally before invoking formal dispute procedures. Informal disputes and each of the stages of formal dispute have specific timeframes built into the FFAs.

Reinforcing these timelines to ensure that the dispute resolution timelines are more closely adhered to will ensure that cleanup work is not unreasonably slowed when a disagreement between the FFA parties arises.

Information on the EPA SFTF is available at <https://www.epa.gov/superfund/superfund-task-force>.

Superfund Task Force and Principles Memorandum

- In response to Recommendation 18, EPA's AA's for OECA and OLEM issued a Principles Memorandum in Sept. 2018.
- Document describes the following general principles:
 - Disputes are natural part of the process
 - All parties should have a common understanding of dispute resolution procedures and should resolve disputes informally when possible
 - Informal disputes should be elevated when progress has stalled
- Dispute resolution timelines should be followed to the greatest extent practicable, and each party to the FFA has a role in this.

In response to Recommendation 18, Assistant Administrator's for EPA's Office of Environmental Compliance Assurance (OECA) and Office of Land and Emergency Management (OLEM) issued a Principles Memorandum in Sept. 2018. EPA sought participation from gov't agencies, the Environmental Council of the States (ECOS), and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) when developing Principles.

Principles document describes six general principles [always subject to the particulars of the situation and the particular FFA], including:

1. Disputes are natural part of the process
2. All parties should have a common understanding of dispute resolution procedures and should resolve disputes informally when possible
3. Resolving disputes informally when possible is an effective dispute resolution tool
4. Informal disputes should be elevated when progress has stalled
5. Dispute resolution timelines should be followed to the greatest extent practicable
6. Each party to the FFA has a role in this.

The Principles document is available at <https://www.epa.gov/enforcement/principles-reinforcing-federal-facility-agreement-informal-and-formal-dispute-timelines>. Documents like this are on the FedCenter website, fedcenter.gov. FedCenter is a great resource for federal environmental compliance information.

Conclusion

- Read your FFA—it provides direction for resolving issues
- Resolve issues at the project/lowest level when possible
- Promote teamwork
- Prepare to handle disagreement
- Move on to formal dispute if substantive progress is not being made in informal dispute, as appropriate
- Celebrate agreement

Questions



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