Community Involvement In Scheduled Waste Management

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COMMUNITY INVOLVEMENT IN SCHEDULED WASTE MANAGEMENT

ABSTRACT

National Advisory Body on Scheduled Waste (NAB)

The cooperative development of management plans for the scheduled wastes, PCBs, HCBs and organochlorine pesticides is a positive example of the benefits of community participation in environmental decision making. The problem of Australia's intractable waste had remained unresolved through over a decade of committees, investigations and panels. In 1992, acting on the advice of an Independent Panel on Intractable the Commonwealth and State Environment Ministers as ANZECC announced they would abandon any further attempt to establish a centralised high temperature incinerator. In 1994, ANZECC formed the National Advisory Body on Scheduled Waste (NAB), comprised of representatives from community, industry and environment groups as well as local government. While the negotiation and consultation process was arduous and intense, this consultative forum provided ongoing opportunities for input from interested groups and the general community and as well, a safe venue for open and honest dialogue between industry and environment groups. The relative success of the NAB process was due to its inclusiveness, its transparency ands its commitment to equity.

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Introduction

Throughout the 1970s and 1980s, there were many unsuccessful attempts[1] to establish a high temperature incinerator for destruction of toxic wastes in Australia. In July 1992, acting on the advice of an Independent Panel on Intractable Waste set up after the last proposal to establish a high temperature incinerator had failed, the Commonwealth and State/Territory Environment Ministers announced they would abandon the proposal to establish a centralised high temperature waste disposal facility"[2]. Instead, the focus would be on the emerging, alternative destruction technologies to treat Australia's stockpile of toxic waste. In 1992, with Australia's ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Waste & their Disposal, the option of export to an overseas HTI was closed. In 1993, the intractable wastes were listed on a schedule and have since been known as 'scheduled wastes'. Schedule waste was defined as :

- organic in nature,
- resistant to degradation by chemical, physical or biological means,
- toxic to humans, vegetation or aquatic life, and bioaccumulative in humans, flora and fauna, including likely carcinogenic and mutagenic properties.

[1] Joint Taskforce on Intractable Waste (1988), *Preliminary Report, Part 2 -Appendices*, pp A9/1-A9/23, Commonwealth, New South Wales and Victorian Governments, April.

[2] ANZECC (1992), *National Strategy for the Management of Scheduled Waste - Draft*, 6 November 1992. (Note that this, as supplemented and amended by the SWWG Report to ANZECC – Version B [see footnote 3], constitutes the endorsed *National Strategy for the Management of Scheduled Waste*.)

It encompassed three main forms; PCBs (polychlorinated biphenyls) from the electricity industry, unwanted organochlorine pesticides such as DDT and Dieldrin, and hexachlorobenzene (HCB), a byproduct of the production of carbon tetrachloride by Orica (formerly ICI) at their Botany facility in NSW.

In 1994, the ministerial forum of the Australian New Zealand Environment and Conservation Council (ANZECC) adopted the National Strategy for the Management of Scheduled Waste. The key aspects of the strategy were :

- identification of separate waste streams facilitating distinct and diverse management and disposal options,
- nationally agreed and consistent principles and practice
- regulatory support through legislation and regulations
- commercially viable management disposal/destruction strategies for wasteholders
- based on a consultative and open process.

The national approach was supported by two bodies:

- The National Advisory Body (NAB) drawn from industry, environmental and local government interests,
- The Scheduled Waste Management Group composed of senior executives of Commonwealth and State / Territory environmental agencies.

The National Advisory Body on Scheduled Wastes

The National Advisory Body (NAB) was formed in 1994 from key industry /community /environmental stakeholders and was given the task of consulting on and negotiating acceptable solutions in the form of national management plans for each type of waste. The management plans were to be adopted by State regulations. The following characteristics of management plan development seen to be essential:

- openness and transparency, with appropriate opportunities for public input and comment at all key stages;
- using the best information available at the time or which could be generated within a reasonable period; and
- being based upon technically-sound, independently-verified assessments of the potential environmental, economic and social implications of all key elements of any proposed management regime.

The HCB management plan was the second of the plans to be developed and was accepted by ANZECC in 1996.

Stakeholder Participation

Unlike former approaches to the issue of hazardous waste, a process of regulatory negotiations or 'reg-neg' [3] was adopted for the NAB. The regulators participate in consensus based negotiations with affected stakeholders. This approach to environmental policy was first introduced in 1976 by the U.S. National Coal Policy Project. Its success in that program led to its use in the U.S. Toxic Substances Control Acts of 1977. Participants set the ground rules and control the negotiated process. In the scheduled waste process, the regulators formed the Scheduled Waste Management Group and meet with the NAB. Similar to the US experience, the negotiation process is viable up to the point where the agency incorporates the consensus decision into legislation. The scheduled waste process included the establishment of panels to both develop the management plans and facilitate the extensive community consultation and input.

A protocol (See Appendix 1) for conducting community consultations had been developed by NAB stakeholders as part of the Scheduled Waste program, and became the benchmark for all consultations. The National Protocol for Community Consultation spelt out the aims of the consultation process and the principles through which it would be conducted. Participants could

[3] Ortolano, L., "Environmental Regulation And Impact Assessment", John Wiley and Sons, Inc. 1997 at 416

access a clear description of the consultative process and had a set of commitments against which the NAB could be measured.

Community Consultation in the Development of the HCB Management Plan

The 8500 tones of HCB waste that was subject to the HCB Waste Management Plan was stored at the Orica (then ICI Australia) Botany facility in suburban Sydney. Although there was a general public interest in the destruction of this waste, the primary interest was from the Botany and surrounding communities. This influenced the form of the HCB public involvement program.

The first phase began in August 1994 with a call for public submissions through national newspapers. The HCB Background and Issues Paper[4] was then released in July 1995. Preliminary meetings were held with key stakeholders (Botany Council, ICI and community organisations) to seek their advice on venues, advertising and conducting of the public meetings, as well as information to identify other interested parties.

In November 1995, a draft management plan[5] was released and public forums in Botany were advertised through direct mail, including the distribution of 4,600 multilingual[6] leaflets through letterboxing and community centres. The HCB Panel consisted of the Independent Chair of NAB and the NAB representatives from the Nature Conservation Council of NSW and the Plastics and Chemicals Industries Association. Input from the forums[7], and the written submissions received during this phase as well as comments from the SWMG and NAB were used to revise the draft management plan. A Draft Final Management Plan[8] was then released for consultation in Phase 3.

In May 1996, the final phase of the public involvement program consisted of afternoon and evening forums held at Botany Town Hall. Written submissions were also received and these plus the feedback from the forums were considered in producing the Proposed HCB Waste Management Plan, which was endorsed by ANZECC in November 1996[9].

In the light of feedback, there were two major additions to the plan. These were the establishment of a local Community Participation and Review Committee to provide ongoing community input into implementation of the plan and the introduction of a process for addressing the HCB waste encapsulated under the Orica car park was included.

A key feature of the three-stage consultation process was the documentation of each stage of the process. All issues raised at public meetings were recorded and formerly responded to as part of a consultation document.[10] This enabled participants to see how their concerns were taken into account in the development of the plans.

The Community Participation and Review Committee (CPRC)

The role of the Community Participation and Review Committee set up under the HCB Management Plan was to facilitate ongoing contact between the waste holder, Orica, the NSW EPA and the local community. It would provide an opportunity to discuss and consider issues such as whether the waste would be destroyed on site or transported elsewhere and to review the proposed destruction technologies.

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[4] Anutech Pty Ltd (1995a), *HCB Waste Background and Issues Paper*, July.
[5] Anutech Pty Ltd (1995b), *Draft HCB Waste Management Plan and Supporting Document*, November.
[6] The primary text was in English but included information in Arabic, Italian, Spanish, Greek, Croatian and Mandarin which referred people to a freecall telephone interpreting service.
[7] Rae, I; Grinter, M; Maier, V; Bainton, P and Hoar, P (1996), *Summary Report of the HCB Consultation Panel on Major Outcomes from HCB Public Consultations, 5 December 1995*, April.
[8] Scheduled Wastes Management (1996), *Hexachlorobenzene (HCB) Waste Management Plan - Draft Final*, April.
[9] Australian and New Zealand Environment and Conservation Council (1996), *Hexachlorobenzene Waste Management Plan*, November.
[10] "Rae, I; Grinter, M; Maier, V; Bainton, P and Chalklen, A (1996), *Summary Report of the HCB Consultation Panel on Major Outcomes from HCB Public Consultations, 16 May 1996*, December.

Despite a lack of funding and community concerns that the committee is regarded as having a "low status",[11] overall the community members supported the forum and encouraged new members. The Committee has an important role in overseeing the implementation of the HCB plan, as well as communicating pertinent issues to the local residents. After continual concerns were expressed by the community members regarding independent technical information, an academic was seconded to the committee to provide independent advice. However, the fact that while the CPRC approved the payment of the technical expert, Orica, the waste holder actually paid the costs was an ongoing issue. It remained unresolved until the waste holder announced that it would be inappropriate for them to continue paying for advice that may be adverse to their case as presented in their Environmental Impact Statement. As such the independent technical adviser provided no further advice. The CPRC have approached State and Federal government departments, as well as Ministers to obtain resources to allow them to continue in the process with equity. All requests have been refused.

Some members of the NAB maintain an ongoing relationship with the committee, attend CPRC meetings and are assisting in the provision of technical information through fact sheets, technical advice as well as the development of information systems.

Independent Evaluation of the Public Involvement Programs

The 1998 independent evaluation of the scheduled waste program stated that most stakeholders saw the process as both inclusive and thorough, and an appropriate mechanism for gaining consensus and public trust in a previously hostile arena. The direct and active involvement of all NAB members was seen as providing open communication channels and was also supported because of the level and diversity of expertise they were able to bring to public meetings. Their presence gave credibility to the consultations, and hence to the management plans.[12]

The sequencing of the waste plans had allowed initial lessons to be applied to subsequent plans and thereby providing more effective utilisation of resources. It was estimated that development of each management plan would take about 15 months. Despite occasional difficulties it proved possible to maintain this timeframe and three management plans were forwarded to ANZECC in about three and a half years.

The fact that both PCB and HCB management plans were endorsed by ANZECC without dissent, also supported the view that the process was effective, in that Commonwealth, State and Territory ministers could trust that their endorsements would be widely supported. [13]

ARTD considered "the public consultation process to be a model for dealing with difficult public issues, where the solutions are more social and political, rather than technical and scientific" and commented that "No significant stakeholders were excluded from the process or felt their views had not been considered. The community consultation model made a contribution to changing the public response to scheduled wastes from one of high debate and little action to the opposite... The public, chiefly through community and environmental groups, has been invited into the scheduled wastes process... This has provided a level of credibility which has enhanced the approach...."

The evaluation also noted that the knowledge and awareness of interested groups and individuals was enhanced through their participation in the scheduled waste process.
By the end of 1997, the direct cost of all public involvement program for the three management plans was approximately $320,000, well within budget. This provided 61 half day forums and 10

[11] ibid
[12] David Morrisey , Michael Brookes & Chris Milne. "Evaluation of the Scheduled Waste Programme, Final Report." ARTD Management and Research Consultants, April 1998 Prepared for Chemicals and the Environment branch , Environment Australia at 24
[13] id., at 25

one-day workshops in 38 locations around Australia, from Kununurra to Hobart and Cairns to Bunbury.

ARTD summarised stakeholder views of the scheduled wastes problem with the following quotes; "consultation an outstanding success"; "best instance of such a process"; "more such public involvement needs to happen".

Recommendations for effective community involvement

1. Develop community consultation protocol
A Protocol for Community Consultation is essential and should explain the aims of the process and outline the principles on which it will be based. It provides a public accessible document that can be used as a "yardstick" by which to measure of the process. In preparing the protocol it is essential that it is clear what in the proponent wants to achieve through consultation. Most importantly, clearly define what share in the decision making the process offering. If the consultation is to inform the community of a decision that is already made, that must be stated. If feedback from the community is desired then it is essential to clarify how that information will be incorporated in the final decision.

2. Seek early advice from stakeholders in the design of your process
It is important to seek early advice from stakeholders on the importance of the issue, the types of processes that will best suit that community, appropriate advertising, venues and dates and any special needs of community members.
A public involvement program requires good planning and should includes the following steps:

- define the scope of the problem being addressed
- review (with an open mind) past examples and experiences in community involvement.
- describe the geographical area
- define your budgetary limitations
- break the process down into achievable and defined units
- develop realistic timeliness
- described information requirements and delivery formats
- develop a review, monitoring and feedback process.

3. Build A Contacts Data Base
Effective consultation requires a comprehensive up to date database of stakeholders. If a key person is omitted from the process, even for a short time, this can seriously affect the credibility of the process. Be as inclusive as possible and provide opportunities for all interested parties to be involved. When contacting networks and organisations, be sure to build in sufficient time to allow information to 'filter' down to regional and local representatives.

4. Communicate about the Consultative Process
The choice of how, and with whom the process is advertised is a crucial decision. The NAB experience suggests that the most cost-effective approach involves stories and interviews in local newspapers, radio interviews, local TV news spots and direct networking with groups. Advertising in major newspapers, however expensive, is not community consultation or public involvement.

5. Negotiate the Rules of the Game Early in the Process
It is important to negotiate an understanding between all the participants in the process. This involves early shared decision-making on issues such as meeting procedures, community resourcing and press releases. Again, be clear about the level to which participants can influence outcomes as "effective public involvement needs to be a structured process, where the agreed rules of engagement are clearly articulated and acceptable to key stakeholders.."[14] Many consultation processes fail because they are started long after the real decisions have been made. An independent chair or facilitator is always recommended but unless the inequity of power among participants is addressed and their 'luggage' acknowledged, the perception of their independence will be marred.

[14] Brotherton, P., "On Schedule, Eventually, The Story of Gaining Broad Consensus on One of Australia's Most Intractable Issues", Environment Australia 2000

7. Learn from mistakes
When mistakes or omissions occur, admit the error, ensure a process to resolve it and move on.

8. Appropriate resourcing
Too often, interested parties may be precluded from participating because of logistical or financial limitations or even lack of information. In most contentious issues, participants' 'resource' and 'informational' power may vary considerable. If stakeholders are expected to commit large amounts of time to a consultative process, it is unreasonable to expect them to do so if they suffer significant financial loss as a consequence of their involvement. While often the provision of childcare or travel assistance can address some of these inequities, there are situations where a sitting fee is essential. In disputes over technical issues, an even more proactive and capacity building approach is required.

9. Ensure Equal Access to Data
" To remain democratic, a society must find ways to put specialised knowledge into the service of public choice and keep it from becoming the basis of power for an elite." US National Research Council 1989.

It is vital for participants involved in a consultation process to participate on a 'level playing field'. This requires equal access to information, a thorny issue when matters such as commercial-in-confidence are involved. The NAB process accepted that people had a need and a right to relevant information, in a suitable language and format, yet the CRPC is now being confronted with confidentiality issues regarding the destruction technologies suitable for a the HCB waste.

One model of information provision are information repositories which are a regulatory requirement for the US EPA Superfund program for hazardous waste cleanup. The information repositories are housed in the local library or council building and are required to include the following documents:

- factsheets on the Superfund program,
- copies of all relevant Acts & Statutes,
- Pollution Contingency Plan
- Hazard Ranking System & methodology,
- information on Technical Assistance Grants for communities,
- administrative records & documents,
- community relations plan identifying community concerns,
- engineering evaluation & cost analysis,
- Remedial Investigation Feasibility Study Work Plan,
- Health Risk Assessment for the site,
- Site Sampling Data & Results,
- Remedial Investigation Report providing information on monitoring studies, nature & extent of the contamination, a baseline assessment ,
- Feasibility Studies Report,
- Remedial Action Plan,
- Remedial Design, describing all clean-up technologies,
- public meetings transcripts,
- press releases,
- Responsiveness summaries of public comments,
- Record of Decisions (ROD).

It is also important to recognise that the consultation/participation process should involve a two-way flow of information and that often community participants have valuable local knowledge to offer.

10. Capacity Building

Unless the community also has *"the capacity to receive the information, to interpret it, and to incorporate it into the decision making process, the amount and quality of information provided is irrelevant."* UN Earthwatch 1998 [15]

Many environmental conflicts have their basis in disputes over interpretation of scientific or technical data and the differing assessment of the risks involved. Much of the information that needs to be considered is technical by nature, complex and often difficult for the lay community to effectively utilise. Community stakeholders are often accused of being emotional and unable to deal with complex technical issues, yet, despite their limitations are unwilling to accept the word of government or industry on face value. If in a consultation process, you want an informed debate on the impacts, risks and benefits of particular policy or environmental decision, then there is a need to put resources into 'capacity building' and information delivery to the community. There are a range of capacity building and technology transfer models.

The US State of Massachusetts Toxic Use Reduction programs16 provide support and technical expertise in computer generated pollution data to assist community non-government organisations (NGOs) in their toxic campaigns. With the US EPA funded the independent development of "risk assistance" software released in 1995. This provided the community with the tools to assess and review government and industry based risk assessment.

A research project to develop an HCB community information system is currently underway. It is envisaged that that the system will provide the community participants on the Botany Community Participation and Review Committee with an information access and management tool, assistance with technical data and access to geographic information systems (GIS) technology.

11. Compile a Clear Record of Decisions and Actions

To achieve the desired level of public confidence in the consultative process, a record of the steps taken and outcomes achieved is essential. NAB prepared a Consultation Document which listed the questions and comments from each workshop and the submissions. These were then matched with the responses, allowing people to track the answer to the issue they raised. At the end of the process, NAB compiled a list of unresolved issues for future consideration and action and all documentation was publicly released as a record of the process and decision audit.

12. Monitoring, Feedback and Review

All participation processes need follow up and feedback. Notification of the outcomes of the public involvement program is a common courtesy. An evaluation of the process will assist in the design of future programs and will provide valuable knowledge. A process to review the outcomes from the process and provide feedback about their implementation is both desirable and can enhance public trust in future processes. This final feedback loop should be defined early in the process to help ensure that participants maintain their faith and trust in process organisers.

No Trust, No Process

The role of trust and good faith is critical to the participation or consultation process. Many people now openly distrust government and industry and reject the view of science as rational, value-free, objective and socially neutral. Organisers and facilitators of community involvement programs need to come to a better understanding of these issues:

- the concept of an 'expert' often inspires hostility and mistrust
- that some people have power, others do not
- some people have access to information while others do not
- some take the risk while others gain the obvious benefits
- and no amount of public relations will convince the community of a "new broom" approach unless it can be clearly demonstrated that this is the case.

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[15] UN System-Wide Earthwatch Website "Earth watch and Agenda 21, Information for Decision-Making" UN system-wide Earthwatch Coordination, UNEP, Updated 12 February 1998 at 8

[16] Panos, W., "Massachusetts Department of Environmental Protection Toxics Use Reduction (TUR) Program, Overview." OECD International Conference on Pollution Release & Transfer Registers, PRTRs : National and Global Responsibility, Sept.1998 Tokyo, UNEP Chemicals and UNITAR

A consultation protocol provides the commitments against which the process is judged by participants. Once a protocol is set, it is essential that commitment is shown to implementing it in full. While mistakes may be forgiven it is usually on of the proviso that the issue is addressed and that organisers learn from their mistakes. That said, "it should be recognised that duplicity, denial or defensiveness are precursors to failure in consultative processes".[17]

For more detailed information about the negotiation and consultative processes of the National Advisory Body for Scheduled Waste.

See: the library for an electronic copy of "On Schedule, Eventually, The Story of Gaining Broad Consensus on One of Australia's Most Intractable Issues".

Use the tab at the top right of this section of the HCB Community Information System.

[17] ibid

Appendix A

National Protocol for Community Consultation on Scheduled Wastes

Aims

The following consultation *and participation* aims have been agreed by the NAB and the SWMG and will be adopted in the development of management plans:

1. To enhance the development, adoption and implementation of effective management plans for scheduled wastes;
2. To maximise understanding of and involvement in the debate relating to the management of scheduled wastes;
3. To place scheduled waste management issues clearly within the context of broader waste management issues, *including those which may arise throughout the process of development and implementation of management plans*;
4. To achieve the most socially acceptable outcome possible in the development and finalisation of management plans, taking account of environmental, economic and social factors.

Principles

The NAB and SWMG, in facilitating the consultation *and participation* process, will seek to achieve clarity of roles and responsibilities, timeliness of decision making and information delivery, access to information and personnel, easily comprehensible information and processes, continuity, feedback mechanisms, openness, fairness and equity.

We will:

1. communicate in a clear and timely manner accommodating comments on the scope, aims and expected outcomes for each stage of discussion and submissions;
2. provide comprehensive and timely information to the community to encourage fair and informed discussion of issues;
3. support, to the maximum extent possible, the consultative process by providing information requested by those seeking to provide input;
4. establish clear and realistic timelines for all forms of input which reflect, as much as is possible, a sensitivity to the resources available to individuals and groups concerned;
5. translate key information into plain language for wider community consideration, especially when dealing with technical issues;
6. assist individuals and groups in a variety of practical ways to engage in the consultative process, within the limitations of the scheduled wastes budget, paying particular attention to equal opportunity principles;
7. pay specific attention to the inclusion of people from non-English speaking backgrounds in the consultation process, within the limitations of the scheduled wastes budget;
8. provide frequent feedback, including information relating to: emerging technologies, key outcomes from NAB and SWMG meetings and consultations, the nature of interested people's contributions, and final key recommendations;
9. ensure that people who enter consultative processes at different stages will, as much as possible, be able to influence the direction of the management plan development
10. stimulate conciliatory and constructive exchange of views and genuinely attempt to address, without prejudice, the major issues involved in the management plans;
11. frequently monitor and evaluate the effectiveness of the consultation program during and at the end of each stage of the management plan process;
12. *regularly review, update and activate contact lists of individuals and organisations with an interest, or a potential interest, in the management of scheduled wastes*; and
13. share the responsibilities for effective consultation with those who enter into the consultative process

While the protocol will apply to all of the management plans, each plan will require a specific implementation strategy for consultation. These strategies will include, among other things:

- consideration of target groups (for example, consultation on hexachlorobenzene is likely to be more localised than that for the other management plans;
- mechanisms for effective consultation (for example, the approach used in consultation with the rural sector for OCPs is likely to be very different from that used in Botany for hexachlorobenzene);
- clear timelines; and
- resourcing (levels and types of assistance will vary).

Sharing Responsibilities

The role of the NAB and SWMG are identified at Appendices B and C of the Report of the SWWG to ANZECC (May 1993). Appendix B states that the role of the SWMG is "... to implement, review and advise [ANZECC] on the National Strategy for the Management of Scheduled Waste. In particular, in consultation with the NAB, the SWMG is to:

- ensure that the community is adequately consulted through the NAB and through other means, such as Public Hearings and targeted consultation, education and information programs."

Appendix C states that the role of the NAB is to advise ANZECC on:

- community consultation/education and information programs; and
- any other relevant issue on which ANZECC or the SWMG seeks advice.

This makes it clear that while the SWMG is ultimately responsible for making sure the public is adequately consulted, the NAB has the responsibility of providing advice on consultation programs.

The NAB has considered the approach to be adopted for major public events in the consultation process. These events, including hearings and workshops, will be led by a balanced subgroup of the NAB, including the Chair. The SWMG will provide technical support on these occasions.

Revised August 1996,
National Advisory Body and
Scheduled Wastes Management Group