

STAGE 2: SITUATION ASSESSMENT—EXTERNAL

A. What is an External Situation Assessment?

To maximize the potential of stakeholder involvement, it is important to consult with possible participants about the issues and the nature of the proposed process. EPA's Public Involvement Policy recommends that "when possible, consult or involve the affected public to ensure that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs." This step is known as an external situation assessment.

Conducting external assessments for information exchanges, recommendations, agreements, and stakeholder action processes involves many of the same tasks. This task is often performed by a "convener," a neutral third party who gathers information to test the feasibility of a particular stakeholder involvement process or outcome. A convener's duties generally include the following tasks:

- Identifying potential interest groups and participants
- Informing potential participants about EPA's interest in a stakeholder involvement process
- Interviewing interested parties to determine their concerns and interest in working with EPA
- Identifying which issues the parties believe should be explored in the stakeholder involvement process
- Assessing resource and time requirements for both EPA and the stakeholders
- Recommending what process to use, what issues to address, whom to invite, and what schedule to follow, based on the input received and the stated goals of EPA staff and management
- Assessing the likelihood of ultimate success for processes seeking recommendations or agreements

The scope and intensity of external assessment efforts should grow as you move from information ex-

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Definition of Convener:

The term "convener" refers to a neutral third party (i.e., facilitator or mediator) who gathers information to test the feasibility of a particular stakeholder involvement process or outcome. The convener typically identifies and interviews potential participants to identify issues for discussion and make a recommendation about an appropriate process and schedule. The convener documents results of the external assessment in an assessment report, often referred to as "the convener's report."

changes to agreement processes. Participants can be assembled through open meetings of any interested persons, by nominations received following public notice, or through direct contacts with people you have worked with in the past. Outreach efforts can identify new individuals who should participate either because they will be affected or they have special insight or expertise into the issue.

If you are contemplating a recommendations process, an external assessment is very important because it will help identify the full diversity of views on an issue and gauge the time commitment parties would need to make in order to participate. The convener's predictions regarding the fruitfulness of an advisory process can help you decide whether it is worth the time and resources.

If an agreement is anticipated, the parties assembled at the table will be working with you to reach a meaningful decision. Therefore, an even more thorough external assessment is needed to ensure that appropriate issues are identified, crucial points of view effectively represented, and consensus is at least possible, if not likely.

If you are considering a stakeholder action process, the convener should assess the stakeholders' incentives to engage with one another in a collaborative process and perform an active role in implementing the results of the process. Further, the convener can assess and make suggestions regarding what EPA can do as a catalyst to inspire or reward voluntary actions.

Managing Details Takes Time

- You should give stakeholders at least one month's notice of any significant meeting
- Some parties may need even more time to gather resources, and you may need to contribute resources to improve their ability to participate
- The chartering process for FACA may take two to four months, including the time to identify members and draft a charter
- The GSA regulations require FACA committee meetings to be announced in the Federal Register 15 days in advance (41 C.F.R. 102-3.150(a)). Allow another five days for processing time
- Processing most contract actions (small purchases or task orders) can take three to six weeks

B. When to Start—Four General Tips

Tip #1: The more resource-intensive your stakeholder involvement process, the earlier you should communicate your intentions to outside stakeholders. All organizations have budget processes and each party to a stakeholder involvement process needs adequate resources to participate and time to marshal resources.

Tip #2: The more directed your process is towards recommendations, agreements, or stakeholder actions, the earlier you should start because:

- It takes significant time to identify and sort through possible interest groups and appropriate representatives of these groups;
- Representatives need time to gather information, needs, and opinions from their constituencies; and

- You may need significant time to obtain contract support for facilitation, logistics, or scientific/technical support.

Tip #3: Logistical coordination is time-consuming. Potential participants and facilitators aren't sitting around waiting for you to call them. Phone tag can delay identification of appropriate participants. Coordinating convenient meeting dates can be difficult with a large group, especially when people represent their constituencies in many different forums.

Tip #4: It always takes longer than you think! How early is early? Ideally you should begin talking with stakeholders when you start gathering technical data or request funding for your project. This may be six to 18 months before you are actually ready to commence a stakeholder involvement process.

C. When to Use a Neutral Convener

In consultative procedures such as information exchanges, in which there may be no need to limit the numbers of participants or balance the group's membership, you may be able to identify the proper parties and bring them into the process without the assistance of an outside convener. But in recommendations, agreement, and stakeholder action processes, an external assessment can be difficult and time consuming yet critical to laying a foundation for success. Although you may be familiar with many of the interested parties, other interests may be difficult to identify or you may not anticipate a reaction from them. An outside convener brings neutrality to the task; this allows private parties the opportunity to provide more candid assessments than they would provide directly to EPA staff.

When is a neutral convener most important?

- For an information exchange, it is less important, but potentially useful, to employ a neutral convener
- Using a neutral convener in recommendations, agreement, and stakeholder action processes can help identify issues and stakeholders of which you may be unaware

Pros and Cons of Agency as Convener

Pro:

- Knowledge about issues and options
- Familiar with parties
- Authority to invite parties
- No cash cost
- No delays for contracting

Con:

- May know too much
- May be biased
- May not be considered neutral
- May not have enough time
- May not have skills
- Limited in ability to make independent recommendations
- May not be trusted with confidential information

“While we came to the table as representatives of specific organizations, businesses, and regulatory agencies, we all came to see how communities are the ultimate stakeholders.”

— Robin Morris Collin and Robert Collin
University of Oregon

“The table must be balanced in terms of power or the effort will not head in the right direction. People who have little money but a lot of direct understanding and intelligence need to be at the table, and need to be compensated for their time and effort. Often you will see people at the table who have excellent full-time jobs—and being there is one of their jobs. This automatically sets up an inequality.”

—Paula Fitzgerald Yoon
On-line Dialogue on Public
Involvement in EPA Decisions

In these situations, the convener’s goal is to understand the situation from the perspective of those s/he is interviewing. That can only be achieved if the convener promises those interviewed that their discussions will be confidential.

D. Suggestions for Finding Stakeholders

Going beyond your personal phonebook is important if you truly wish to hear all sides of an issue. Here are 16 resources that can help identify stakeholders:

1. Check **the docket** for previous versions of your rule or action or for closely related rules or policies. The docket index will list all who commented on the Agency’s action. You may use this as a reference to get a feel for potentially interested organizations.
2. Contact your **Assistant Administrator’s communications staff** regarding the individuals or organizations interested in actions from your office.
3. If your action or policy involves a particular chemical, the workgroup chair, team leader, communications staff, or docket manager may be able to help.
4. Contact the **EPA Office of Public Affairs** or its regional equivalent to obtain the lists of its contacts in certain subject areas.
5. Contact **EPA Regional Offices** with respect to identifying potential stakeholders, especially when seeking a diversity of perspectives within a particular constituency (e.g., a small chemical plant).
6. Contact **state coordinators or community relations coordinators** when dealing with localized issues.
7. Contact the **Small Business Ombudsman** for assistance with small business identification.
8. Contact the **EPA Office of Cooperative Environmental Management (OCEM)** for information on the scope of existing FACA committees and their memberships.
9. Contact the **EPA Office of Congressional and Intergovernmental Relations** for information on state and local government contacts.
10. Contact the **EPA Office of Environmental Justice** for assistance in identifying whether there are environmental justice issues at play and who might be involved.

11. Contact the **EPA American Indian Environmental Office** for assistance in identifying whether there might be tribal issues and who might be involved.
12. Consult **directories of environmental groups and trade associations**. These may be available in the library or your AA or RA’s communications office (e.g., the National Wildlife Federation’s Conservation Directory, association directories, corporate yellowbooks, etc.).
13. Search **the Internet**.
14. Post a notice on **your office’s web site**.
15. Publish a **Federal Register notice** asking interested parties to identify themselves.
16. Contact **trade journals** with a press release or, for local facilities, determine the most widely read publications and place an article or ad in them.
17. Ask **key stakeholders** for additional contacts. Generally stakeholders know who else is involved in the issue. Facility representatives can identify local officials and citizens. Trade groups can identify member companies or organizations.

When do you stop searching for stakeholders?

When you are confident that you have discovered all the sides of the issue and all the major players. You don’t have to find everyone, just representatives of the different points of view. At some point in your search you will be given fewer and fewer new names. This is a good indicator that you can move on, as long as you have been searching broadly and you remain open to new parties approaching you later in the process.

Once you have identified the universe of potential parties, you can start paring it down to those who are most affected, interested, and likely to contribute views. Start the external assessment process by contacting these parties first.

E. Conducting the External Assessment Process

In investigating and designing a stakeholder involvement process, you or the convener typically asks interviewees the following questions:

- What issues do you think should be addressed? Which are **priority issues**? How well defined are the issues? What issues should not be discussed?

**Case Example
Beyond the
Usual Parties**

When conducting an external assessment regarding a proposed negotiated rulemaking for the revision of the Clean Air Act rule on fugitive emissions, the convener obtained a list of stakeholders from EPA staff. After contacting all of the “usual” parties (environmental groups, chemical manufacturers, petroleum refiners, state governments), the Agency published a “Notice of Intent to Negotiate a Rule” in the Federal Register as a matter of form.

The notice described the issues and the potential participants in the negotiation and asked for comment. In response to the notice, the City of Louisville, Kentucky, proposed adding one of its local air pollution management staff to the committee as a representative of local government interests. The Agency concurred with the suggestion and added the representative to the committee.

During the negotiations, this stakeholder was one of the most helpful negotiators on the team, contributing actively to the final agreement of the committee.

Conducting the External Assessment Process

The International Association for Public Participation uses a five-step process for conducting public participation. The first step is to identify the stakeholders and define the issues for public participation. This step includes the following activities:

- Identify key stakeholders and stakeholder groups
- Identify potential impacts of the decision and potential levels of controversy
- Identify the issues and interests of stakeholders and levels of concern
- Define the problem in such a way that it includes the perspectives of all participants.

Initially, "... (the Common Sense Initiative program) tended to have undefined goals and objectives, too many sector groups, and far too many projects within some of the sectors. In future efforts, we will look for a narrower and more clearly defined mission, a pared-down, focused effort."

— John Adams
Natural Resources Defense Council

- **Who else cares** about this situation? What are each party's basic interests? Are they mutually exclusive? What is the history of relationships on these or similar issues?
- How **well educated** are you and the parties on the likely issues?
- How **well organized** are you and other parties to participate effectively?
- How much **time and resources** are you and other parties willing to devote to the process? Do you have access to adequate resources?
- What is a **realistic outcome** of this stakeholder involvement process? Is "closure" desirable, necessary, and/or possible?
- What do you think will happen if some sort of collaborative process is **not** used?
- In your view, **what could be gained** by exchanging information, soliciting joint recommendations, negotiating agreement, or engaging in stakeholder action on these issues? What do you fear you could lose?
- What **kinds of data** will be important for addressing the issues? Do you think these data exist? Who has them? Are more needed? Who should participate in deciding what data are gathered or used? What data/information/expertise can you bring?
- What is the most credible, efficient, and comfortable way for you to receive notices and information?
- What **legal, resource, or other barriers** to a successful stakeholder involvement process do you see for yourself and others?
- If the group were trying to reach agreement but couldn't, **what would you do?** What do you think others would do?
- What **concerns** do you have about the particular involvement process? Do you need additional information about these processes?
- What **ground rules** or procedures do you believe should be followed to ensure the process is fair and effective?
- What meeting, note-taking or recording techniques are you comfortable with?

- If a process seeking recommendations, agreement, or stakeholder action were undertaken, **would you participate**? Who else would need to be there for the process to be credible and durable?
- What qualifications should a neutral third party have in order to facilitate this process?

In addition to these standard questions, special attention should be paid to the following issues in the external assessment process:

Issue Identification and Development. As you move along the continuum from outreach to agreements, there is a greater need to identify in advance what issues will be on the table. If the issues are not developed beforehand, some parties may be reluctant to participate for fear that they would be forced into discussing issues they would prefer to avoid. Also, having the stakeholders identify or decide in advance on a package of issues can be extremely valuable in accomplishing the goals of the process, reaching consensus, or crafting optimal solutions. For recommendations and agreement processes, it is helpful for a convener to identify in advance related issues and the range of parties' views. Conducting a thorough external assessment can significantly expedite the work of the negotiating group by framing the issues in a way the group can comfortably address them.

Balancing Interests. The more explicit the recommendations, agreement, or stakeholder action, the greater the importance of careful analysis regarding who must be included in the process. The method of decision-making—vote or consensus (see Stage 3)—may affect how members are balanced. It is desirable—and may be required if you are in a FACA process—to have a balance of participants. In a process that may be governed by majority vote, you will probably want some numerical balance among interests, so no one interest group can dominate the discussions or intimidate others. In consensus processes, somewhat paradoxically, numerical balance is less crucial since each party is empowered to block consensus, so it is difficult for a minority to be numerically outvoted.

EPA staff can make a preliminary determination about participants, then use the external assessment process to adjust the list. For both recommendation and agreement groups, the number of direct participants should be limited to 25 or fewer if feasible. Larger groups can become logistically unwieldy and may bog down in meetings unless you break the group into smaller workgroups that will address specific issues to be con-

“Looking back (at the stakeholder involvement process), I think there may have been some imbalance among the interest groups represented. There was a tendency for some groups’ members to stick together as a kind of united front, making it harder to reach a compromise. In order for diverse forums to work, balanced stakeholder representation is critical.”

— Frank Grimes,
United Steel Workers of America

sidered by the larger committee. If you would like to include more people indirectly, additional individuals or representatives of groups can form caucuses and they can designate one or more people to represent them formally in the process.

Individual Versus Representative Capacity of Participants. Different situations call for a variety of representative capacities. Conducting an external assessment can help decide whether participants represent themselves as individuals or as representatives of an entity, organization, interest group, or of a general point of view (e.g., small businesses). Representational responsibility can be linked to the level of support expected for the outcome: if an organization is expected to promise not to object to certain negotiated outcomes or to implement them, then organizational representatives are needed. On the other hand, participating in an individual capacity is far easier because the decisions do not carry the responsibility of speaking on behalf of a broader group. Individual participants feel far less duty to “call home” to check before agreeing to something. A representational capacity, on the other hand, may require extensive deliberations in caucuses, back at their offices or with their constituencies, before positions can be taken. The primary benefit of representative capacity is that members may have buy-in from a larger group or a collection of groups.

How does the general public participate?

- During information exchanges, the general public is usually invited and encouraged to speak to the group
- During recommendations processes, the agenda usually includes a specific time for public comments and provide for submission of written comments
- The general public may be allowed to participate in an agreement process with the unanimous consent of the committee
- Public participation in stakeholder action processes varies widely depending on the nature of the project

Nature of Participation by the General Public.

During the external assessment process, you should explore the role of the general public in the process. While many consultative processes are open to the public, the nature of general public participation varies. Unless the purpose of the process is to receive broad public input, it is helpful to designate at least the core participants in advance. This is especially true if more than one meeting is contemplated because continuity of participation will help move discussions forward.

For information exchanges and recommendations, anyone who attends will usually have at least some opportunity to offer public comment. Make it clear when designing the process whether people who were not explicitly invited but who attend the meeting will be able to participate fully or whether they will be limited to submitting questions or comments. (If you are involved in a FACA process, only the members of the committee may participate fully in the committee’s discussion and deliberations; others may observe and provide oral and written comment.) Sometimes segments of an agenda may be set aside for members of the general public to offer views on a topic.

During agreement processes, unless the decision would resolve pending litigation or administrative actions, meetings of a government organized committee are generally open to the public, and those who attend are usually permitted to submit statements or offer comments at designated points. But the process belongs to the committee members, and the participation by the public should not eclipse that fact.

Public participation in stakeholder action processes varies considerably depending on the nature of the project. Some projects offer little or no opportunities for public participation because the process involves only those parties willing to engage in voluntary action on non-regulatory matters. Other projects, especially those on the community level, provide for ongoing and elaborate public participation as different parties cycle in and out of the stakeholder action process based on the specific issue and action under consideration.

F. The Convener's Report

After completing the interviews and analyzing the information collected during the external assessment process, the convener will typically provide a written and/or oral report that:

- Discusses the issues and perspectives of those interviewed, but without attribution;
- Assesses the feasibility of the process;
- Recommends a design for the process;
- Defines the elements of a successful process;
- Recommends who should be contacted to participate in what role;
- Recommends what issues should be considered;
- Lays out a schedule of events;
- Discusses resource needs; and
- Identifies the desired qualifications for a neutral for the process.

The convener's report for an information exchange may be relatively short (one to two pages). When the issues are complex and controversial and agreement is the goal, the convener's report should be more complete and formal. Maintaining confidentiality is important in

After Receiving a Convener's Report:

1. Have internal stakeholders review the draft report
2. Receive an oral debriefing on the written report with key management from relevant EPA offices
3. Suggest only factual changes to the report
4. Request additional research, analysis, or options if major questions are raised
5. Accept a final report from the convener
6. Provide the final report to the parties interviewed by the convener
7. Make a decision on the appropriate stakeholder involvement process using report recommendations
8. Use the report to support FACA charter (if necessary)
9. Use the report information for notices

Dangers of Proceeding without an Assessment

- A process might proceed even though some parties are not motivated to see it through in good faith
- The issues may be framed in ways that prevent or discourage stakeholders from coming to the table
- Key participants may be left out
- A process might start without sufficient resources needed to complete it

Case Example

The Value of Assessment

In one situation assessment for a negotiated rulemaking, EPA strongly desired an agreement process, but the primary industry group preferred to seek legislative relief. If a consensus process had gone forward, that industry group would not have been fully committed to a negotiated process while it was seeking relief in another forum.

the external assessment process for agreement groups, so it is not appropriate for EPA staff to ask the convener to identify individuals who took a particular position or to inquire about the views of a particular party.

G. The Results of the External Assessment Process

Once you've received the convener's report (or recorded your own observations if you conducted the analysis yourself), you or internal stakeholders will typically have an opportunity to offer comments. EPA should refrain, however, from seeking to rewrite the report, since it should reflect the convener's data gathering, independent recommendations, and the interviewees' perspectives. In recommendations and agreement processes, you should seriously consider sharing the convener's report with non-Agency parties who were interviewed as well. In fact, the Regulatory Negotiation Act provides that the convener's report is a public document. It is essential to share the convener's report for stakeholder action processes given that the stakeholders will need to assess the commitment level of other parties before engaging in a collaborative process geared toward voluntary action. In all cases, sharing the document adds legitimacy and integrity to the process and helps establish a transparent and positive atmosphere. The information gathered in the external assessment process can be used to ratify, refine, or revise your initial decision made in the preliminary planning stage. Also, you should use the information in the convener's report as well as your desired stakeholder involvement goals to define the elements of a successful stakeholder involvement process. You may later use these as the criteria for evaluating the success of your process.

If you decide to move ahead with a stakeholder involvement process, you and/or the convener should contact potential parties to verify their interest in participating in the suggested process and take additional steps to ensure that all affected interests have an opportunity to participate. You may issue a public notice, such as a Federal Register notice or press release, of your intent to move forward with a stakeholder involvement process, to make sure all relevant entities are aware of the proceeding.

For Negotiated Rulemaking Committees, EPA is legally required to publish a notice in the Federal Register and elsewhere announcing its intent to form the committee, request comments, and obtain a charter under the Federal Advisory Committee Act for the negotiating

group. This process permits persons who believe their interests will not be adequately represented to apply to participate or to nominate others.

Based on your internal assessment, you made an initial decision about the ideal stakeholder involvement outcome for your situation. Your next step is to conduct, or have a neutral convener conduct, an external assessment to confirm your preliminary decision or to modify your desired stakeholder involvement outcome. You should use the questions on the following pages, as well as the contents of this chapter, to guide you as you plan for and conduct the external assessment process. ■

Questions to Answer in the External Situation Assessment Stage

1. Based on your preliminary assessment, what stakeholder involvement process seems most appropriate (information exchange, recommendations, agreement, or stakeholder action process)?

2. Based on the desired stakeholder involvement process and time frame for the decision, how much time is needed to conduct the convening and implement the stakeholder involvement process?

3. Is a neutral convener needed for the external assessment process? What factors argue for or against the use of a neutral convener?

4. What resources are needed and available to conduct the external assessment process (money, staff, technical contractors, etc.)?

5. For your issue, what resources should you and the convener consult to identify the stakeholders?

6. What questions should you or the convener ask interviewees as part of the external assessment process?

7. If you're considering a recommendations, agreement, or stakeholder action process, what factors should you consider to determine the composition of the stakeholder group?

- **What decision-making method will be used—voting or consensus?**
- **Is it necessary or desirable to seek a balance of interests among the participants?**
- **Should participants represent themselves as individuals or as representatives of a specific group or interest?**
- **What should the size of the group be – how many direct participants should be included?**
- **What should the role of the general public be in this process?**

8. What information should be included in the convener's report?

9. How will you use the convener’s report to advance the stakeholder process design? Make a list of the internal and external parties that need to read and discuss the report and what steps are needed to finalize the process design?
