

Part 1

Introduction

The mission of the U.S. Environmental Protection Agency (EPA) is to protect human health and provide environmental protection. To accomplish this mission EPA officials have followed an orderly and prescriptive approach toward implementing federal environmental legislative requirements. While this approach has accomplished much, its future usefulness was being questioned in the early 1990s and the need for change was being studied by environmental advocates inside and outside the government. This portion of the dissertation outlines the challenges that EPA officials faced as change was being debated regarding how the next generation system of environmental protection should look, and what their role should be in this system. Although there was uncertainty about what types of change initiatives should be undertaken, EPA officials realized they needed to be in the forefront of change as well as lead the participating stakeholders.

Chapter 1: Overview

A. Prologue

Environmental protection is at a crossroads. Thirty years after its creation, the U.S. Environmental Protection Agency (EPA) has reached maturity. Much has been accomplished in the past several decades. Ambient air quality has dramatically improved—American industry is no longer characterized by belching smokestacks and sickening smells. More than sixty percent of the nation's rivers and lakes are suitable for fishing, swimming, and drinking. Toxic hazardous wastes have been identified and a Superfund program created to enforce property damage liabilities and clean up abandoned sites. Despite these accomplishments, however, there is widespread belief that the “command-and-control” approach (with EPA officials operating as positional leaders and umpires) that has served the agency so well, has reached the end of its useful life. The clearest example of the failure of current environmental protection practices is the contentious development of environmental regulations. Approximately eighty percent of EPA regulations developed through the traditional “notice-and-comment” procedures are challenged in court (Vig & Kraft, 1997).

This chapter presents an overview of the dissertation. The first section describes the promise of collaboration and the manner in which EPA created the Common Sense Initiative (CSI) as an opportunity to demonstrate its potential for environmental protection. The second section presents the research questions that guided this study and the two analytical frameworks that were used to compare and contrast EPA official activities in the CSI. The third section discusses the contributions to the literature and a gap that exists within this literature about facilitative leadership and the consensus-building process. The fourth section describes the overall organization of the dissertation.

B. Collaboration and Environmental Protection

Collaboration will be the hallmark of twenty-first century environmentalism. This new way of operating will require EPA to adopt a more facilitative approach toward environmental management. The Common Sense Initiative (CSI) was created as an opportunity for EPA officials to demonstrate their ability to operate in a collaborative, multistakeholder dialogue. CSI offers a chance for EPA personnel to work face-to-face with industry officials, environmentalists, state and local regulatory authorities, environmental justice representatives, and union officials. Twenty years ago, virtually the only time EPA officials talked to industry was through the *Federal Register* or in court, and the same held true for their relationship with many of the other CSI stakeholders. Historically, the environmental regulatory process has been characterized by a broad deference to EPA expertise and discretion, and EPA officials have been rewarded for their technical competence rather than their cooperative, team building skills. In the future, however, EPA officials will need to drive change, rather than be driven by it. They will need to lead change, as well as to lead people.

CSI was created as a fundamentally different approach to environmental protection. Its sector-based orientation ran counter to EPA's traditional single media (air, water, solid waste) or pollutant-specific approach. Its multistakeholder involvement was inclusive rather exclusive and its consensual procedures were the antithesis of adjudication. Much of the burden to attain CSI's challenging goals of achieving "cleaner, cheaper, and smarter" environmental protection fell on the shoulders of the front line EPA officials who had to deal directly with stakeholders and the interests and values they brought to the CSI process.

Groups that are formed to provide advice and recommendations to the federal government are subject to the procedural requirements of the Federal Advisory Committee Act (FACA), which requires that a Designated Federal Official (DFO) be appointed to act as the official liaison between the federal government and the non-federal parties involved in the advisory committee. This study focuses on the roles EPA DFOs played in the CSI process. Although, FACA defined the DFO's administrative duties, it did not address the more important aspects of the collaborative dialogue—group facilitation, mediation, and facilitative leadership.

This research suggests that EPA DFOs played four different roles in CSI—resource managers, facilitators, mediators, and facilitative leaders, each of which affected different aspects of the consensus-building process. Ideally, these roles should be complementary rather than mutually exclusive. Facilitative leadership should be viewed as the logical extension of these role orientations. However, the interactive nature of multistakeholder collaboration does not always follow theoretical forms. Some DFOs were able to achieve facilitative leadership status while others were not. This study explores how DFOs functioned in their various role orientations, and tracks the evolutionary development of these roles. The study concludes with a series of propositions for scholars and EPA officials to consider as they assess the usefulness of these role orientations in future collaboration and consensus-building efforts.

C. Research Questions

The environmental protection system as we have known it will be changing, and the public administrators working within this system will need to change accordingly. The next generation system will be built on collaboration and consensus-building principles. Government officials will need to know these principles and what new skills and tools will be needed to apply them. Three overarching questions guided this research effort:

1. *What is an appropriate role orientation for EPA officials in the next generation system of environmental protection?*
2. *How can EPA officials contribute to a consensus-building process?*
3. *What specific skill sets are needed by EPA officials in collaborative public decision-making?*

To address the first question, two analytic frameworks were used—a consensus-building model proposed by Susskind (1999) and a mediation competency model suggested by Honeyman (1988, 1990). DFO actions were compared and contrasted against these models. Susskind’s model helps address the second question regarding the consensus-building process. The Susskind model identifies five steps (convening, clarifying, deliberating, deciding, and implementing) that groups use to achieve consensus. This model builds on many aspects of group collaboration including mutual gains negotiations, getting to yes principles, and building social capital. The Susskind model provides a broad structure against which the EPA DFO actions could be reviewed across a range of consensus-building steps. The remaining question about the necessary skill sets required a finer level of analysis to decipher specific types of DFO behavior.

Mediation was a specific task that all EPA DFOs had to perform in the CSI process. Their resource manager responsibilities were defined by FACA procedures and neutral facilitators were employed by EPA to manage Sector Subcommittee meetings. Facilitative leadership, while a desirable role orientation, was the result of a developmental process and not achieved by all DFOs; therefore, mediation was used as the pivotal analytical lens for viewing DFO behaviors. Honeyman identifies five skill competencies (investigation, empathy, inventiveness, persuasion and presentation, and interactive management) that measure the effectiveness of mediators. Raising questions about these skill competencies with CSI stakeholders evoked reactions about DFO roles that went beyond mediation, and these reactions helped build the propositions about the other role orientations EPA officials experienced in the CSI process.

To address the three general questions that guided this research study, a series of ten open-ended secondary questions based on the Susskind and Honeyman models were used to interview fifty-two different participants in CSI. These participants (including CSI stakeholders, DFOs and other EPA officials, as well as the neutral facilitators) were drawn from three different CSI Sector Subcommittees—automobile manufacturing, computers and electronics, and metal finishing.

D. Contributions to the Literature

The promise of collaboration and the call for a new kind of environmental leadership form the basis for this research. There are two fields of scholarly literature to which this research will contribute. The first field deals with the process of collaboration (mutual gains negotiations, getting to yes principles, and the consensus-building process). This field profiles the structure in which collaboration occurs; it outlines the vision and goals for collaboration, and distinguishes it from conventional positional bargaining. The second field of literature deals with the roles and skills that consensus-building practitioners need in collaborative processes (facilitative leadership, group facilitation, and mediation). Understanding these roles and how they overlap is important to determine how they intersect with various stages of the consensus-building process.

Leadership plays a critical role in collaboration. Facilitative leadership is a structured form of leadership that relies on the group facilitation process. While the need for facilitation and mediation have been recognized in the consensus-building process, there remains a gap in the scholarly literature about the role of facilitative leadership in consensus-building, and although most scholars acknowledge the importance of facilitative leadership in collaborative dialogue, they fail to acknowledge its significance in the consensus-building process (Ray, 1999; Conley and Goldman, 1994; Schwarz, 1994; Svava, 1994; Rees, 1991). In addition, much of the scholarly literature about consensus-building, mutual gains negotiations, and “getting to yes” agreements has not recognized the dynamic and additive value of being a facilitative leader in the consensus process (Susskind and Field, 1996; Fisher, Ury, and Patton, 1991; Cormick, 1991; and Susskind and Cruikshank, 1987; and Raiffa, 1982). The empirical data drawn from this research suggests that scholars need to explore the nexus between these two fields of literature and determine how they might be better integrated in the future.

E. Organization of the Dissertation

This dissertation is divided into five parts. The purpose of the first part is to provide the history that led to the creation of the CSI experiment, as well as the limitations of the first generation system of environmental protection and some of the converging themes of a second generation system. This section also reviews the need for a new EPA institutional role and the context CSI provided for the creation of this evolving role.

The second part of this dissertation describes the CSI process in detail and how it fits into the spectrum of federal agency consultation and collaborative approaches. Accomplishments in the three CSI Sector Subcommittees also are included in this section, as well as analysis on the limitations of the CSI process.

The third section of this research study reviews the literature to which the study will contribute. Two relative fields of scholarly research are described. First, a deductive approach is used to describe the promise of collaboration and how mutual gains negotiations, “getting to yes” principles, and social capital-building can lead to producing consensus. Second, the role orientations needed for effective collaboration and consensus-building are reviewed. Skills for a new kind of collaborative leadership (facilitative leadership) are described. Group facilitation and mediation also are closely associated with the consensus-building process and a discussion of the distinctions between these roles is provided.

The fourth part of the dissertation is the case studies. It includes an analysis of three CSI Sector Subcommittees (automobile manufacturing, computers and electronics, and metal finishing) and the roles DFOs played in these Subcommittee activities.

The fifth part of this dissertation includes the findings and recommendations. These conclusions are directed primarily for EPA officials who will be faced with questions regarding their roles and responsibilities in the next generation system of environmental protection. Five

different role orientations are outlined and the implications for these roles based on the DFO experiences in CSI. This section of the dissertation ends with some perspectives on the need for collaboration in future governance.

The appendices include all support materials for this research effort. Appendix A contains a list of acronyms that may be helpful to the reader of this dissertation. Appendices B and C provide more detail on who was interviewed for this study, the design and methodology, and the interview protocols. Appendix D presents some propositions that may bridge the gap in the scholarly literature between facilitative leadership and consensus-building. Appendix E outlines some research needs that should be considered to more fully explore EPA role orientations relative to collaboration and the next generation system of environmental protection.

Chapter 2: Searching for the Next Generation System of Environmental Protection

A. Foreword

The 1990s was a decade of review and reflection for many environmental advocates. Few new pieces of federal environmental legislation were passed. Scholars and government policy analysts were busy assessing what had been accomplished during the previous two decades for the environment, and how policy-making could be shifted from a reactive to a proactive mode. Change was the watchword for the incoming Clinton Administration in 1993, and several Congressional and Presidential policy studies were commissioned to examine how environmental policy-making could be improved. In 1994, as senior EPA officials were investigating how change could be instituted within the Agency, some preliminary results from these studies were available to guide EPA deliberations. Several of the findings and recommendations from these studies helped shape the design and implementation of the Common Sense Initiative (CSI).

This chapter will review the limitations of the first-generation system of environmental protection and some of the challenges EPA officials faced in deciding how to pursue different policy options. It will summarize the seven different studies that offered recommendations for a second-generation approach to environmental protection, as well as outline the need for a new institutional role for EPA officials (contrasting traditional command-and-control centralized decision-making with more participative, consensual decision-making approaches).

Collaboration will be emphasized in twenty-first century environmentalism, requiring EPA officials to adopt a more facilitative approach toward environmental management. CSI was created as opportunity for EPA officials to test a collaborative rather than an authoritative approach to environmental management.

B. Limitations of the First Generation Regulatory System

In the late 1960s, the Cuyahoga River caught fire, California's beaches were blackened by oil tanker spills, and DDT was found in the plant and animal food chain. There was national outrage over the deteriorating state of our public health and natural environment and a call for government intervention. President Richard Nixon responded by creating the U.S. Environmental Protection Agency (EPA) through an Executive Reorganization Plan on December 3, 1970. EPA's mission is to protect human health and to safeguard the natural environment (air, water, and land) upon which life depends. EPA has been pursuing this mission through a command-and-control, deterrence-oriented approach that has remained largely unchanged throughout its history. With this approach, the institutional role for EPA officials has been authoritative and prescriptive. However, it would be sheer coincidence if the first-generation system of environmental protection created thirty years ago would fit the nation's economic and environmental needs at the start of the twenty-first century (Knopman and Fleschner, 1999).

Clearly, the current system of environmental protection has accomplished a great deal. EPA's clean goals and the rigid means used to achieve those goals has worked. Not only has ambient air quality in urban and industrial areas has dramatically improved, more than 60 percent of the nation's rivers and lakes are suitable for fishing, swimming, or drinking, and a "cradle to grave" manifest system has substantially reduced the generation of hazardous wastes. However, despite the advances made by this "one-size-fits-all," end-of-pipe approach, there is increasing concern that it has reached the limits of its capabilities.

The question of what is wrong with the existing regulatory regime for protecting the environment is complex and the answer involves a variety of issues ranging from the legislative history of environmental protection to the American political culture of adversarial legalism.

Legislative Fragmentation. The current environmental regulatory structure has developed in a piecemeal fashion over the past three decades—crisis by crisis, media by media, and pollutant by pollutant. The result is a highly fragmented regulatory system with sixteen different environmental laws (e.g., the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act) and thousands of specific regulations, overseen by thirteen different Congressional committees and thirty-one different subcommittees. "In 1993, EPA officials testified 131 times before 67 committees and subcommittees; the EPA Administrator alone testified 30 times" (NAPA, 1995, p. 126). Moreover, many of those laws were crafted on the basis of partial or even incorrect assumptions (Reilly, 1989). The consequence of this fragmentary approach to environmental protection is that the existing system is ill prepared to deal with the diverse, complex, and unprecedented nature of current environmental problems.

Setting the Wrong Priorities. Since its creation, EPA has been basically a reactive agency. As environmental issues were identified, Congress passed laws in an attempt to solve the problems within a specific time frame. EPA then implemented the laws with an administrative structure that mirrored the environmental legislation. Because of EPA's reactionary approach to addressing environmental problems, it has made little effort to analyze the relative seriousness of different problems (Landy, Roberts, and Thomas, 1994). Each environmental problem poses some possibility of harm to human health, the ecology, the economic system, or the quality of human life; that is, each problem poses some environmental risk. Even EPA has admitted that it has resorted too often to oversimplifications, forcing an environmental problem to fit in an organizational structure rather than employing a relative risk-ranking procedure; thus, high public health and environmental risk exposures do not correspond well with EPA's current program priorities (EPA, 1987).

Rising Costs of Environmental Regulations. Since 1970, the cost of environmental regulation has risen sharply. By 2000, the total annualized cost of pollution control will reach \$185 billion, about 2.8 percent of the Gross National Product (GNP)—this is up from \$30 billion and less than 1 percent of the GNP in 1972 (EPA, 1990). This rapid growth in pollution control costs is the result of the compounding effects of more prescriptive environmental regulations and expanding pollution control capital investments (EPA Science Advisory Board, 1990). If the

upward trend continues into the next century, this increased spending could affect U.S. competitiveness in world markets. Furthermore, EPA has found that the costs of pollution control are rising at a time when unmet environmental needs are still quite large.

New Environmental Challenges. There is growing concern among environmental policymakers that the urban sprawl engulfing much of the United States and the expanding number of chemicals (estimated to be more than eighty thousand) in domestic commerce are creating environmental problems beyond the scope of our current regulatory system. Manufacturing facilities increasingly are located in or near high population zones, and chemicals that are toxic to human health, persistent in the environment, and accumulate in food chains are becoming alarmingly prevalent in domestic commerce. Environmental problems no longer can be separated from worker health and safety problems. The need for “clean rooms” for manufacturing is synonymous with the need for a clean environment around a factory. Some persistent, bioaccumulative, and toxic chemicals also are suspected endocrine disruptors (chemicals that interfere with the normal functioning of the human and animal glands, such as the thyroid or adrenal), the secretions of which pass directly into the blood stream (EPA, PBT Strategy, 1998).

Changing Industrial Sources. The industrial base that EPA was created to regulate has changed dramatically over the past thirty years. While the economy has shifted from the traditional manufacturing sector (i.e., the automobile manufacturing industry) to a service sector (i.e., automobile service and repair businesses) [Guile and Cohon, 1997], the short (i.e., eighteen months) product life cycle of high technology products, such as semiconductors, has strained the flexibility of the environmental permitting systems to keep pace with the variable emissions from production process changes. In addition, small businesses, such as metal finishers and printers that have not been closely regulated in the past, have been found to contribute to persistent environmental problems such as urban smog and the creation of inner-city hazardous waste sites.

Adversarial Legalism. At any given time, EPA is party to more than six hundred lawsuits (Browner, 1994). This contentious environment is the result of a command-and-control regulatory system that encourages litigation and the building of polarized relationships among stakeholders (Elliott, 1997). Increasingly, prescriptive environmental statutes have encouraged confrontation. As a result of Congress passing overly prescriptive statutes that place unrealistic demands on the agency that it inevitably cannot meet, environmental advocates have filed citizen lawsuits to prod EPA into action or as a countermeasure to some perceived bias favoring industry through a proposed regulatory action. The result of this legislative quagmire is environmental gridlock (Kagan, 1988).

These limitations in the existing regulatory system have created a fundamental challenge for regulatory officials, clearly described in the report of the 1997 National Academy of Public Administration (NAPA), *Resolving the Paradox of Environmental Protection: An Agenda for Congress, EPA, and the States*. It concluded that:

EPA's paradox is that it must maintain national programs and seek national consistency while simultaneously attempting to make its programs and standards fit an incredibly diverse and dynamic Nation. Environmental conditions, problems, and trends vary from place to place and no "one-size-fits-all" approach to regulation can accommodate such variety. No laissez-faire approach will work, either...a combination of market forces and public actions can help the Nation achieve its environmental goals.

Thus, to resolve the paradox, Congress, EPA, state regulatory agencies, and the public as a whole needs to focus on environmental results — on environmental performance — and develop an array of policies, management approaches, and accountability (emphasis added) measures that ensure that...all (stakeholders) meet their mutual obligations.

The academy panel envisions just such a system emerging from the changes happening today at EPA, within state environmental agencies, and within firms (p. xii-xiii).

C. Next Generation Environmental Policy Initiatives

Top-down bureaucratic regulation will not solve the environmental problems of the twenty-first century. This theme resonated among several Presidential and Congressional commissions, expert policy panels, and academic scholars who conducted studies about problems with the current environmental system and methods to improve it (Aspen Institute, 1996; Chertow and Esty, 1997; E4E, 1997; NAPA, 1995 and 1997; NEPI, 1997; the Presidential/Congressional Commission on Risk, 1997; the President's Council on Sustainable Development, 1997). These studies determined a significant need for evolutionary change in the nation's environmental protection system. The studies argue that without such change, the United States will be unable to meet the environmental challenges of today as well as those looming in the next century (Hausker, 1999). Four common themes emerged from these policy studies that influenced the design and operation of CSI.

(1) Promote the use of performance-based approaches. The current highly prescriptive regulatory system encourages reactive, single media regulatory compliance and discourages any multimedia regulatory flexibility through uniform, one-size-fits all, national standards. In contrast, next generation studies argue that regulated entities should be allowed to set their own goals (matching or exceeding existing regulatory requirements), using the most flexible and efficient means to meet these goals while maintaining high standards of accountability (Hausker, 1999). Many policy studies found that "superior environmental performance" could be achieved by creating bold, new systems based on verifiable and enforceable performance standards that provide operational flexibility achieved through a collaborative process (E4E, 1997; NAPA, 1997; NEPI, 1997; PCSD, 1996). Similarly, it was found that the hallmark of performance-based management is a focus on measuring and

achieving specific environmental *outcomes* rather than agency activities or *inputs* (e.g., rulemakings, permitting) [NAPA, 1997].

(2) Expand stakeholder involvement and collaborative decision making. With EPA's fragmented legislative structure and the opportunity for citizen law suits in nearly all statutes, the importance of stakeholder participation in regulation and policy formulation has become increasingly important. The National Environmental Policy Institute (NEPI, 1997, p. 29) found that EPA's hierarchical ("commander-in-chief") view of itself resulted in the agency believing it was the primary "determiner" of what the relationships among and between stakeholders should be. These relationships were seen primarily as a means to accomplish EPA's command-and-control objectives. These relationships may have developed naturally as EPA's regulatory authority has grown, but they need to be revisited to match today's environment (NEPI, p. 29). Other next-generation studies also found that EPA needs to accept and promote an *inclusive rather than an exclusive* notion of stakeholder involvement (Risk Commission, 1997; E4E, 1997; and NAPA, 1995 and 1997). Engaging stakeholders has many benefits. It ensures that public values are considered; it can reduce the overall time and expense of environmental regulation; and it should generate better-accepted, more readily implemented risk-management decisions (Risk Commission, 1997).

(3) Encourage pollution prevention and beyond-compliance corporate behavior. Source reduction (e.g., pollution prevention) is preferable to source (e.g., pollution) control. The current rule-based regulatory system is one way that public policies have sought to alter the behavior of firms for nonmarket activities (e.g., environmental protection). However, pollution prevention does have market value. While technology-based standards have established minimally acceptable environmental behavior, they do not encourage or reward environmentally conscious industrial activities. As the environmental ethic has matured over the past several decades and firms have become more knowledgeable about pollution prevention, there is a growing awareness among some firms about the value of becoming stewards of the environment rather than environmental laggards. The Enterprise for the Environment Report (E4E, 1997) defined this new environmental ethic as a values-driven rather than a rules-driven approach to environmental protection. It argued that "broad social values about environmental protection can be internalized by a firm's management and fully reflected in their operations" (E4E, p. 58).

(4) Promote experimentalism. Traditional regulatory models generally discourage experimental learning because prescriptive standards are too rigid. The prevailing principle under the current regulatory system is simple—one size fits all. Second-generation reports envision a much more experimental and learning-oriented approach to environmental problem solving. The 1995 NAPA Report (p. 92) found, for example, that the Clean Air Act of 1977 established a technology-based standard for new coal-fired power plants that required them to be equipped with flue-gas scrubbers regardless of their location or local environmental conditions. This requirement effectively prevented plants from switching to cheaper, low-sulfur coals (and thus preserved jobs in high-sulfur coal states), making the plants less efficient and increasing their output of carbon dioxide—a cause of global climate change. The NAPA Report suggests

that a performance-based sulfur emission standard would allow individual facilities to choose the approach that best fits their needs. A coal-fired plant in West Virginia might choose to add a scrubber, while a similar plant in Wyoming would simply burn low-sulfur coal; still a third utility might limit the plant's output, while investing in conservation measures to reduce electricity demand. In other words, experimentation and learning would encourage facilities to find the cheapest way to meet their environmental obligations.

D. What is EPA's Future Role?

There is considerable debate about what the role orientation of EPA officials should be in the next generation system of environmental protection. Prevailing views of leadership in environmental protection suggest that EPA's role should not be to direct others but, rather, to create a culture in which decisions are made collaboratively. Focusing on inclusion of stakeholders in the regulatory process will require EPA to redefine its leadership role. This new role will require EPA to stress "facilitative" rather than directive leadership. Such facilitative leadership exercises power through others, rather than over them (Conley and Goldman, 1994).

The relationship between power and leadership needs to be understood. Facilitative power differs from top-down power (Dunlap and Goldman, 1991). Conley and Goldman, citing Leithwood's (1992) and Ouchi's (1981) work on organizations, suggest there needs to be a shift from Type A toward Type Z organizations. This shift will give rise to a clearer conceptualization of facilitative power and a greater appreciation of its potential value (Conley and Goldman, 1991, p. 5).

Type A organizations...centralize control and maintain differences between management and staff...they rely on top-down decision processes; such organizations are based on top down power. This is the power to control...one cannot do away with this form of power without losing one's share. It is a zero sum game.

In contrast, Type Z organizations emphasize participative decision-making as much as possible. They are based on a radically different form of power that is "consensual" and "facilitative" in nature—a form of power manifested through other people, not over other people (Leithwood, 1992, p. 9).

Leadership through others is not easy. Changing established roles and approaches takes time and patience. Shirley Hord (1992) notes that change is a process not an event. She points out that individuals must change before the institution can, and that they do so in different ways and at different rates. This reshaping of leadership and power has clear implications for EPA.

Historically, the environmental regulatory process has been characterized by a broad deference to EPA expertise and discretion; however, over the past thirty years this deference has changed. Regulated industries, environmental advocacy organizations, and the courts have interceded. Federal agency roles in regulatory development are dictated by the Administrative

Procedures Act of 1946 and traditionally, a “notice and comment” strategy is used to involve stakeholders in the regulatory development process. The regulatory agency’s role in such a strategy is that of a process manager and arbitrator or umpire among disputes. This strategy is generally initiated through a *Federal Register Notice* announcing a regulatory action. Next, regulated businesses and non-governmental organizations, such as environmentalists and public interest groups, are asked to review and comment on the regulatory action through a formal public comment process. Public hearings or meetings are permissible but not required in this process. Finally, the regulatory agency bases its actions on a consideration of the comments received, although in addressing ambiguities and uncertainties in the public record, agency officials routinely use their administrative discretion in making a final decision (Susskind and McMahon, 1985).

One frequently noted complaint about the notice and comment strategy is that it tends to undermine problem solving and reward adversarialism (Harter, 1982). Other criticisms include: the missed opportunities for parties to engage constructively on issues because of their posturing in anticipation of litigation (Freeman, 1997); the undermining of the implementation of rules and policies because of the lack of dialogue and deliberation among the parties most affected by them (Freeman, 1997; Landy et al, 1994); and the failure to make the best use of available data and information because of the early call for public comment (Kerwin, 1994).

CSI sought to respond to many of the criticisms leveled against the existing regulatory process by reorienting the decision-making around joint problem solving, multi-stakeholder involvement, and less controlling-agency discretion. Using this approach presented an opportunity for the agency to overcome the “ownership problem” that was the source of its influence in the past and an irritant for many stakeholders involved in the traditional regulatory process.