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Environmental Protection Agency

2004

Negotiated Rulemaking Committee on All
Appropriate Inquiry

Committee No.

16567

No

04/28/2003 04/28/2005

04/28/2005

Yes

Agency Authority

04/15/2004

Terminate

No

12. Specific Establishment Authority

13.	14.
Effective	Committee
Date	Type

14c.
Presidential?

Agency Decision	02/19/2003	Continuing	No
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15. Description of Committee Regulatory Negotiations Committee

16a. Total Number of Reports	No Reports for this Fiscal Year
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17a.	17b. Closed	17c. Partially Closed	Other Activities	17d. Total
Open	2	0	0	2

Purpose

Start

End

Continued Negotiations on All Appropriate
Inquiry proposed rule.

10/14/2003 - 10/16/2003

Continue negotiations on proposed rule for all appropriate inquiry.

11/12/2003 - 11/13/2003

Number of Committee Meetings Listed: 2

	Current FY	Next FY
18a(1). Personnel Pmts to Non-Federal Members	\$0.00	\$0.00
18a(2). Personnel Pmts to Federal Members	\$1,602.00	\$0.00
18a(3). Personnel Pmts to Federal Staff	\$12,998.00	\$0.00
18a(4). Personnel Pmts to Non-Member Consultants	\$0.00	\$0.00
18b(1). Travel and Per Diem to Non-Federal Members	\$3,005.00	\$0.00
18b(2). Travel and Per Diem to Federal Members	\$0.00	\$0.00
18b(3). Travel and Per Diem to Federal Staff	\$0.00	\$0.00
18b(4). Travel and Per Diem to Non-member Consultants	\$0.00	\$0.00
18c. Other(rents,user charges, graphics, printing, mail, etc.)	\$19,995.00	\$0.00
18d. Total	\$37,600.00	\$0.00
19. Federal Staff Support Years (FTE)	0.10	0.00

20a. How does the Committee accomplish its purpose?

FY 2004 Accomplishments: The Committee reached consensus on recommended regulatory language on during it's November 12-13,2003 meeting. EPA published in the Federal Register the recommended regulatory language as part of a proposed rule, on August 26, 2004.PAST HISTORY:The Negotiated Rulemaking Committee on All Appropriate Inquiry provided a public negotiation forum for a balanced group of stakeholders representing a broad array of interests and backgrounds to negotiate and if

possible, reach consensus on recommendations for a proposed rule. The major issues that the Committee discussed and negotiated included:

- a. Clear definition and description of criteria identified in Brownfields Law:

 1. The results of an inquiry by an environmental professional
 2. Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility
 3. Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed
 4. Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law
 5. Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility
 6. Visual inspections of the facility and of adjoining properties
 7. Specialized knowledge or experience on the part of the defendant
 8. The relationship of the purchase price to the value of the property, if the property was not contaminated
 9. Commonly known or reasonably ascertainable information about the property
 10. The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation

- a. Definition of A reasonable time within which all appropriate inquiry must be conducted
- b. Relationship of federal standard to state program requirements
- c. Extent to which federal standard requires documentation or evidence of potential contamination (e.g., sampling and analysis)
- e.

Inclusion (or exclusion) of non-CERCLA contaminants (e.g., petroleum) f. Shelf life of an assessment

The duties of the Negotiated Rulemaking Committee on All Appropriate Inquiry are solely advisory in nature. The Committee negotiates the merits and context of the issues listed above as well as the content of the regulatory language for the proposed rulemaking. After each meeting the text of the Committee's working document (the draft proposed regulatory language) is revised to reflect the Committee's negotiations and serves as a starting point for the next meeting's negotiations. The Committee reached consensus on recommended regulatory language on November 14, 2003. EPA published in the Federal Register the recommended regulatory language as part of a proposed rule, on August 26, 2004.

20b. How does the Committee balance its membership?

Membership in the Negotiated Rulemaking Committee for All Appropriate Inquiry was developed in several ways. We first identified parties who have been involved with us in the analysis and refinement of the liability and all appropriate inquiry issues addressed in the Brownfields Law; second, we retained an expert facilitator to undertake a convening process to identify interested and affected stakeholders. The facilitator interviewed many of the stakeholders that we initially identified, as well as additional stakeholders identified by the initial interviewees, to determine the potentially affected parties, ascertain which parties are interested in participating in a regulatory negotiation, and identify what issues need to be negotiated. In addition, we will publish a Notice of Intent to Negotiate in the Federal Register, as required by

the Negotiated Rulemaking Act, to determine if other parties not previously identified or contacted will be affected by the rule and identify additional parties interested in participating in the work of the Committee. Special attention was placed on ensuring a balanced membership for the negotiating committee. We initially identified categories of stakeholders potentially affected by the regulation, keeping in mind that the regulatory standards will affect a diverse group of public and private sector entities. Our initial list of affected stakeholders included state and local governments, private real estate interests, public interest groups representing environmental and public health interests, the environmental justice community, Tribal governments, commercial lenders, environmental professionals, and real estate developers. We then identified trade associations and interest groups representing each of these categories of stakeholders and solicited their assistance in identifying other stakeholder interests that should be included in the negotiation. After interviewing over 50 different representatives, we determined that the following categories of interested stakeholders should be included in the negotiations: EPA, other federal government agencies, state environmental agencies, local government, tribal governments, real estate developers, bankers and lenders, environmental interest groups, the environmental justice community, and environmental professionals. We believe that representation from these categories of stakeholders will ensure a balance of governmental interests, as well as a balance between private and public sector interests, a balance of community and commercial interests and a balance amongst the types of private sector interests affected. In addition, as we solicit participation from individual interest groups

and trade associations we will attempt to balance the committee across geographical regions and socio-economic groups.

20c. How frequent and relevant are the Committee Meetings?

The Committee met twice during FY 2004 to complete its work. The final meeting of the committee was very relevant given that at the final meeting the Committee reached consensus on recommended regulatory language.

20d. Why can't the advice or information this committee provides be obtained elsewhere?

The Committee was necessary (completed its work in FY 2004) because of the many complex requirements and time-critical deadlines emanating from the Brownfields Law, a number of policy and regulatory processes within the Office of Solid Waste and Emergency Response are undergoing change. Some of these changes require rulemaking, the development of new policies, extensive review and revamping of existing policies, and/or extensive process improvements. A key requirement of the Brownfields Law is the congressionally-mandated schedule for EPA to complete the rulemaking on all appropriate inquiry by January, 2004. This rule will have a profound impact on the commercial real estate industry, including property owners, redevelopers, and commercial lenders as well as state and local governments, development and housing authorities, recreational authorities, environmental consultants, commercial and private users of developed properties, and the general public. It is essential for EPA to have an effective and timely mechanism for the public to engage in meaningful dialogue and for the Agency to have access to the experience, advice and

recommendations of knowledgeable and affected parties regarding the standards and requirements to be set forth in a proposed rule setting standards for all appropriate inquiry. The Negotiated Rulemaking Committee for All Appropriate Inquiry also will provide an important mechanism to foster communication and a clearer understanding of the liability limitations provided under the Brownfields law and affiliated implementation issues among our many stakeholders. There are no other Agency committees in existence which include the broad spectrum of stakeholders who are vitally interested in and affected by the development of a federal standard for conduction of all appropriate inquiry as required under the Brownfields Law. Without the Committee, the Agency would need to seek separate feedback from a significant number of constituencies, e.g., real estate developers, commercial lenders, environmental professionals, environmental/public interest groups, environmental justice interest groups, state and local governments, other federal agencies, Tribal governments; public health organizations, and the general public. This would be time-consuming, impractical, more costly, and would not engender the healthy dialogue among and between these various groups that is fostered within the negotiated rulemaking process. The Negotiated Rulemaking process as described in the Negotiated Rulemaking Act provides for parties who typically have opposing viewpoints to come together in open, transparent sessions to develop, after careful analysis and discussions, consensus recommendations on a proposed rulemaking for EPA to consider.

20e. Why is it necessary to close and/or partially closed committee meetings?

No meetings were closed or partially closed in FY

2004.

21. Remarks

The Committee held its last meeting on November 12-13, 2003. At that last meeting, the Committee reached consensus on recommended regulatory language for the proposed rule on all appropriate inquiries.

Designated Federal Officer

Patricia J. Overmeyer Designated Federal Officer

Committee Members	Start	End	Occupation	Member Designation
Blaha, Kathy	04/01/2003	04/30/2005	Trust for Public Land	Special Government Employee (SGE) Member
Block, Eric	04/01/2003	04/30/2005	National Groundwater Association	Special Government Employee (SGE) Member
Bowers, Carol	04/01/2003	04/30/2005	American Society of Civil Engineers	Special Government Employee (SGE) Member
Brownf, Alton	04/01/2003	04/30/2005	International Association of Shopping Centers	Special Government Employee (SGE) Member
Case, Clifford	04/01/2003	04/30/2005	International Municipal Lawyers Association	Special Government Employee (SGE) Member
Cohen, Abbi	04/01/2003	04/30/2005	Mortgage Bankers of America	Special Government Employee (SGE) Member
Colangelo, Robert	04/01/2003	04/30/2005	National Brownfields Association	Special Government Employee (SGE) Member

Crause, Tom	04/01/2003	04/30/2005	ASTSWMO	Special Government Employee (SGE) Member
Darrell, Andy	04/01/2003	04/30/2005	Environmental Defense	Special Government Employee (SGE) Member
Ferris, Deeohn	04/01/2003	04/30/2005	Partnership for Sustainable Brownfields Redevelopment	Special Government Employee (SGE) Member
Kalbacher, Karl	04/01/2003	04/30/2005	ASTSWMO	Special Government Employee (SGE) Member
Kilgore, Julie	04/01/2003	04/30/2005	Wasatch Environmental, Inc.	Special Government Employee (SGE) Member
Lourie, David	04/01/2003	04/30/2005	ASFE	Special Government Employee (SGE) Member
Luftig, Stephen	04/01/2003	04/30/2005	U.S. Environmental Protection Agency	Special Government Employee (SGE) Member
Miller-Travis, Vernice	04/01/2003	04/30/2005	West Harlem Environmental Action	Special Government Employee (SGE) Member
Mitchell, Martin	04/01/2003	04/30/2005	National Association of Homebuilders	Special Government Employee (SGE) Member
Novak, Kelly	04/01/2003	04/30/2005	National Association of Development Organizations	Special Government Employee (SGE) Member
Platt, Roger	04/01/2003	04/30/2005	The Real Estate Roundtable	Special Government Employee (SGE) Member

Sheahan, Judy	04/01/2003	04/30/2005	U.S. Conference of Mayors	Special Government Employee (SGE) Member
Siegel, Lenny	04/01/2003	04/30/2005	Center for Public Environmental Oversight	Special Government Employee (SGE) Member
Telego, Dean	04/01/2003	04/30/2005	Environmental Bankers Association	Special Government Employee (SGE) Member
Trilling, Barry	04/01/2003	04/30/2005	National Association of Industrial and Office Properties	Special Government Employee (SGE) Member
Ward, Matthew	04/01/2003	04/30/2005	National Association of Local Government Environmental Professionals	Special Government Employee (SGE) Member
Wolk, Julie	04/01/2003	04/30/2005	U.S. Public Interest Research Group	Special Government Employee (SGE) Member

Number of Committee Members Listed: 24

Narrative Description

The negotiated rulemaking committee supported the Agency's efforts to complete its Congressional mandate in the Small Business Liability Relief and Brownfields Revitalization Act to promulgate federal standards and practices for the conduct of all appropriate inquiries.

What are the most significant program outcomes associated with this committee?

Checked if
Applies

Improvements to health or safety

☐

Trust in government

☐

Major policy changes

☐

Advance in scientific research

☐

- | | |
|---|-------------------------------------|
| Effective grant making | <input type="checkbox"/> |
| Improved service delivery | <input type="checkbox"/> |
| Increased customer satisfaction | <input type="checkbox"/> |
| Implementation of laws or regulatory requirements | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> |

Outcome Comments

NA

What are the cost savings associated with this committee?

Checked if Applies

- | | |
|----------------------------|-------------------------------------|
| None | <input checked="" type="checkbox"/> |
| Unable to Determine | <input type="checkbox"/> |
| Under \$100,000 | <input type="checkbox"/> |
| \$100,000 - \$500,000 | <input type="checkbox"/> |
| \$500,001 - \$1,000,000 | <input type="checkbox"/> |
| \$1,000,001 - \$5,000,000 | <input type="checkbox"/> |
| \$5,000,001 - \$10,000,000 | <input type="checkbox"/> |
| Over \$10,000,000 | <input type="checkbox"/> |
| Cost Savings Other | <input type="checkbox"/> |

Cost Savings Comments

NA

What is the approximate Number of recommendations produced by this committee for the life of the committee?

1

Number of Recommendations Comments

The committee reached consensus on recommended regulatory language for the proposed rule that would set federal standards for all appropriate inquiries.

What is the approximate Percentage of these recommendations that have been or will be Fully implemented by the agency?

100%

% of Recommendations Fully Implemented Comments

The Agency published the Committee's recommended regulatory language as the proposed rule on all appropriate inquiries.

What is the approximate Percentage of these recommendations that have been or will be Partially implemented by the agency?

0%

% of Recommendations Partially Implemented Comments

NA

Does the agency provide the committee with feedback regarding actions taken to implement recommendations or advice offered?

Yes ☒ No ☐ Not Applicable ☐

Agency Feedback Comments

We notified the committee members that we published the rule in the Federal Register.

What other actions has the agency taken as a result of the committee's advice or recommendation?

Checked if Applies

Reorganized Priorities	<input type="checkbox"/>
Reallocated resources	<input type="checkbox"/>
Issued new regulation	<input type="checkbox"/>
Proposed legislation	<input type="checkbox"/>
Approved grants or other payments	<input type="checkbox"/>
Other	<input type="checkbox"/>

Action Comments

NA

Is the Committee engaged in the review of applications for grants?

No

Grant Review Comments

NA

How is access provided to the information for the Committee's documentation?

Checked if Applies

Contact DFO ☒

Online Agency Web Site
Online Committee Web Site
Online GSA FACA Web Site
Publications
Other

☒
☐
☐
☐
☐

Access Comments

NA