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## INTERGOVERNMENTAL CONSULTATION AND COORDINATION: CONTINUED PROTECTION OF PUBLIC HEALTH AND SAFETY THROUGH PUBLIC ACCOUNTABILITY

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**Abstract.** Intergovernmental consultation and coordination are means of incorporating the concerns of state and local governments, tribal nations, and the general public in the implementation of programs characterized by real or perceived high risk and public opposition. Incorporation of public concerns is required by law and regulation prior to commencement of programs generating significant environmental impact; yet agencies are given few guidelines as to how such public concerns may be encompassed, particularly during program implementation. The theory and practice of intergovernmental consultation and coordination in the Chemical Stockpile Disposal Program is examined in terms of four goals: (1) conformance to federal law; (2) obtaining and maintaining citizen concurrence and gaining public support; (3) increasing program legitimacy; and (4) promoting democratic values of public trust. The potential for success of a proposed Intergovernmental Consultation and Coordination Board and its possible overlap with public participation components of SARA Title III are assessed in light of these goals. Single agency management, early public involvement, and means for small-group advising and sharing of information, as well as consideration of issues through mediation and negotiation, are likely to optimize incorporation of public concerns and acceptance of the CSDP.

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## INTRODUCTION

The potential environmental impacts associated with the Chemical Stockpile Disposal Program (CSDP) fall into two areas: (1) those associated with construction, operation, and decommissioning of disposal facilities and (2) those which would be associated with accidental, off-site releases. None of the former activities should result in unmitigable or significant impacts to health or the environment.

The potential for impacts from an accidental release, given the relative or perceived novelty of the disposal technology and its perceived complexity, has heightened public concern for assurances that program safety and security will not be compromised. At some of the CSDP sites (e.g., Lexington-Blue Grass Army Depot, or LBAD, and Aberdeen Proving Ground, or APG), prior incidents involving hazardous substances have raised concern and undermined public confidence in the Army. Moreover, at all eight sites, some members of the public have expressed a desire for information about program operations in order to ensure that potential risks are minimized and that effective emergency preparedness measures will be in place. The Final Programmatic Environmental Impact Statement (FPEIS), as well as the Record of Decision (ROD), commits the Army to the creation of an intergovernmental consultation and coordination board to provide public information, communication between the Army and state and federal agencies, and assurance of safe operation.

This article is a discussion of the intergovernmental consultation and coordination concept as originally envisioned in the FPEIS and programmatic ROD for the CSDP. Since the inception of this concept, numerous issues that could not be adequately resolved during the programmatic NEPA process have been raised. As shall be noted in the conclusion of this article, these issues have compelled certain changes in the implementation of the consultation and coordination process. Moreover, continued changes are anticipated as this process evolves.

## OVERVIEW OF INTERGOVERNMENTAL CONSULTATION

Intergovernmental consultation and coordination are means of incorporating the concerns of state and local governments, tribal nations, and other concerned members of the public in the implementation of government programs that encompass potential risk and are likely to generate public opposition. Consultation and coordination are necessary when public trust in the competence or integrity of decisionmakers vested with control over potentially hazardous programs is at stake. In advanced industrial societies, politically controversial decisions that are perceived by the public to be risky, and which are formulated by select groups of experts, may lead to aliena-

tion by increasing the political distance between citizens and government. Under such conditions, citizens may believe that their ability to oversee decisions and hold decisionmakers accountable is very limited.

State and federal authorities have increasingly come to rely upon consultation and coordination as a procedural arrangement to build public support and resolve potential conflicts by:

- (1) institutional planning for emergency response,
- (2) upgrading community infrastructure affected by facility siting, and
- (3) developing tools for enhancing public acceptance through programmatic oversight.

An example of the **first** use, relevant to the CSDP, is U.S. Department of Energy (DOE) technical assistance to states and communities for mitigating impacts associated with the federal low-level nuclear waste disposal program (Kerr, 1982). An example of the **second** is afforded by U.S. Department of Transportation (DOT) and Federal Emergency Management Agency (FEMA) training of state and local inspectors charged with regulating transported hazardous materials through the former's State Hazardous Materials Enforcement Development Program and the latter's Federal Radiological Preparedness Coordinating Committee (OTA, 1985, p.186; Smith, 1982, p.15). The **third** case is exemplified by the incorporation of formal conflict resolution mechanisms in waste repository siting requirements prescribed by the Nuclear Waste Policy Act (NWPA) of 1982 (U.S. DOE, 1986, p. 58). These mechanisms are designed to alleviate objections raised by affected states and Indian nations. All three cases exemplify an important characteristic of the management of hazardous technologies in a federal system: the need for state-federal cooperation. The mechanisms established for these programs have attempted, with some success, to address these problems.

In the United States, implementation of policies potentially affecting public health and safety — environmental protection, emergency planning, and the disposal of toxic or hazardous waste (areas of special concern in the CSDP) — has always been shared simultaneously among several layers of government. This sharing among governments is sometimes characterized as a "marble cake" arrangement (Grodzins, 1983), a phrase that underscores shared responsibility and the apparent lack of absolute hierarchy among governmental layers. Law, precedent, tradition, necessity, and vastly greater resources place the national government in a position of advantage in terms of authority. This has, on occasion, given rise to considerable mistrust.

The extraordinary complexity of the CSDP, it is argued by some state and local officials and members of the general

public, means that each layer of government has a special competence to oversee its associated impacts. This is problematic because in hazardous waste management programs, state and local governments cannot exercise pre-emptive vetoes (Rosenbaum, 1984, p.183).

Exceptions to this non-allowance of vetoes are worthy of note because they are both rare and exemplify the complexities of decisionmaking in risk-laden programs within a federal system. Under provisions of the NWPA, an affected state or tribal nation may lodge a formal objection with Congress over a DOE site-selection decision. That objection becomes effective unless overturned by passage of a joint resolution of both houses of Congress. These unprecedented rights of limited veto were incorporated into the NWPA to build public support for a high-level waste repository and to eliminate acceptance of a patently unsafe siting proposal from U.S. DOE (OTA, 1985, pp.180-183). The highly controversial nature of this program has necessitated unusual steps to incorporate the concerns of states, communities, and tribal nations.

For the CSDP, however, a more middle-range, practical option was recommended in the FPEIS. Originally, this option would have allowed local oversight of the program, but would have reposed authority for its management in the Program Executive Office-Program Manager for Chemical Demilitarization (PEO-PMCD). Later, when put into practice, the Intergovernmental Consultation and Coordination Board's (ICCB) responsibility was redefined as "advisory"—a role consistent with intergovernmental bodies in other similar programs such as nuclear waste management. The difficulty in implementing such a middle-range alternative was in assuring a sufficiently significant role for the public to ensure public safety, provide usable information about the program, and alleviate distrust.

This required reliance upon some precedents able to meet congressional and administrative agency expectations as partly elucidated, for example, in P.L. 92-463, the Federal Advisory Committee Act (FACA), which precludes any "board, commission, or council" designed to advise officers of federal agencies from decisionmaking. FACA applies to most executive departments. If an agency advisory board is explicitly established by Congress, it may be exempt from this act (P.L. 92-463, Sec. 4). Although advisory boards cannot make decisions under FACA, the agencies that create them are required to provide adequate resources to ensure that their "advice and counsel" is heeded.

Intergovernmental review boards such as ICCBs must be provided with staff, travel support, and clerical assistance to ensure that reports and recommendations are recorded and that members are able to fully participate in proceedings. In addition, each board must follow explicit operating

criteria to ensure full expression of diverse opinions and adequate consideration of issues.

It is the responsibility of the forming agency to assure that these criteria are satisfied through providing:

- (1) a charter stating the board's objectives,
- (2) an estimate of the board's duration,
- (3) balanced membership representing diverse viewpoints,
- (4) periodic reports to Congress on the board's accomplishments, and
- (5) detailed minutes of proceedings.

In addition, interested persons must be given the opportunity to testify subject to agency discretion, and the agency is strictly prohibited from influencing or censuring the board's recommendations (P.L. 92-463, Secs. 5, 8-9).

## EVOLUTION, STRUCTURE, AND FUNCTION OF ICCB

### How ICCB Came About: Public Trust at CSDP Sites

A serious problem that confronted the Army, regardless of the disposal alternative considered, was its ability to manage the CSDP competently. Several issues were raised at public hearings pertaining to Army sensitivity to public concerns—the impacts of past Army activities at one or more of the eight continental U.S. sites (CONUS), and possible lack of Army recognition of the political, social, and cultural complexities underlying public perceptions of the program and its associated risk.

Some measure of these problems is exemplified by statements from public hearings at the eight CONUS sites. These statements ranged broadly over issues such as program complexity, different public conceptions of population density from those of the Army, public distrust due to prior non-stockpile incidents at one or more sites, the need for independent review of the program's implementation, how sabotage would be avoided, how public safety would be ensured, and consideration of emergency response problems encompassed by each disposal alternative.

When combined with public questions raised at these same hearings, comments and questions submitted in writing to the Army, and editorial sentiment expressed in local media, it appears obvious that any alternative the Army could have selected for destruction of the nation's chemical stockpile would be fraught with some controversy. For example, additional study of each of the eight sites, a process taking place at present, may uncover information that would

warrant the reconsideration of the programmatic alternative. This could, in turn, affect the public's perception of Army competence to manage the CSDP and ensure effective implementation of mitigation measures proposed in the FPEIS, over and above those expressed before the program got under way. Moreover, the risks from accidental events are never entirely absent for the installation population and the surrounding communities (Ambrose, 1988, pp. 3-4). One reason for the decision to develop a two-tier ICCB was the anticipation of the number and diversity of public and agency concerns with the CSDP. These concerns, and the ICCB's role in dealing with them, are discussed below.

### **The Purposes of Intergovernmental Consultation and Coordination in the CSDP**

The ICCB concept developed by Oak Ridge National Laboratory will provide both a mechanism for consultation with the interested public and coordination of disposal operations with affected states, communities, and Indian nations. Originally, it was to address public concerns regarding:

- Provision of financial and technical assistance to states, communities, and native Americans for upgrading community health facilities, public safety, and emergency response capabilities consistent with the Emergency Response Concept Plan (ERCP) (U.S. AED, 1987) and other related infrastructure.
- Direct notification of all aspects of the disposal program, including any required but unanticipated program changes affecting communities, states, or Indian nations.
- Coordination of disposal activities with federal, state, local, and tribal authorities responsible for enforcing environmental laws.
- Provision of accurate and timely information concerning the nature, amount, and dispersion of hazardous substances resulting from the disposal process, whether through accidental release or normal operations.

A programmatic ICCB, linked to local ICCBs through a liaison officer for each site, will probably be comprised of a multi-member board chaired by the PMCD, with representatives from the Department of the Army, Department of Health and Human Services, FEMA, Environmental Protection Agency, and affected states.

Local ICCBs also will likely consist of multi-member boards with representation from state and local governments, some federal agency regional officials and, in the case of UMDA and TEAD especially, affected Indian nations. In addition, a dedicated emergency planner from the Local Emergency Response Committee (see Sec. 2.C),

post commander, and operations manager will be included. State and local government representatives will be appointed by state governors. Local boards will be chaired by the installation commander or PMCD representative to assure consistency among the eight local boards.

The programmatic ICCB will be involved in all aspects of CSDP implementation, providing a conduit for information; promoting an exchange of ideas; ensuring the protection of public welfare while resolving conflicts elevated from local ICCBs; and addressing human health and environmental issues throughout construction, operations, and closure of CSDP facilities. Local ICCBs will offer an integrated forum among all relevant agencies involved in the CSDP, provide a means for resolving any conflicts between facilities and communities, serve as a conduit for public information and communication regarding all aspects of the program, and identify issues requiring guidance or resolution by the Army. The local chairperson will work with members of the ICCB and the potentially affected communities in achieving these ends.

Liaison officers should represent local interests. This role will be performed by state representatives to the local ICCB, who will also represent their states on the programmatic board. By serving as the primary communication link with the programmatic ICCB, for instance, issues not resolved by the local ICCB may be presented by the liaison officer to the programmatic ICCB for resolution. Upon rendering a resolution of local issues, the programmatic ICCB should inform all local ICCBs and other interested parties of resulting policies, decisions, and changes in program guidance. The evolving charter of this relationship will also be affected by another policy development, SARA Title III.

### **Representation and Affiliation: Problems of Decisionmaking Relative to Title III of SARA**

As work on the FPEIS proceeded, Congress passed Public Law 99-499, The Superfund Amendments and Reauthorization Act of 1986. The purposes of Title III of SARA, also known as the Emergency Planning and Community Right-to-Know Act of 1986 are to:

- (1) significantly decentralize the dissemination of emergency planning information, including the development of chemical emergency warning systems (U.S. EPA, 1988a);
- (2) obtain pro-active state and local participation in the development of emergency response plans for toxic and chemical hazards; and
- (3) encourage federal, state, and local cooperation in the design, development, and implementation of

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databases for monitoring and oversight of these potential hazards.

Many of the requirements of SARA Title III have a direct impact upon the CSDP inasmuch as:

- (1) EPA, FEMA, and the Army have identified important chemical agent storage safety issues, regardless of disposal encompassed by this Act, and
- (2) the ICCB concept shares important characteristics with SARA Title III:

(a) Under Title III, states were required to establish State Emergency Response Commissions (SERCs) by April 17, 1987, and Local Emergency Planning Committees (LEPCs) by August 17, 1987. The purposes of both are to oversee development of emergency plans, handle information requests from the public, and evaluate available resources for responding to potential chemical emergencies (P.L. 99-499, SARA Title III, Sec. 301-303).

The emergency planning structures encompassed by both bodies, but especially by LEPCs, are comparable to the review and assessment purposes of local ICCBs described in the CSDP-FPEIS (U.S. DA, 1988, Vol. I, pp. 4-168) and discussed in Sec. 2.B (see also, Ambrose, 1988, p.7). Of particular note are those purposes of the ICCB that include coordination of disposal activities with these same bodies. These functions are generally performed by LEPCs working with privately owned and operated chemical facilities within emergency planning districts. LEPCs are beginning to serve as effective ICCB surrogates for managing these tasks at all eight sites. In time, they may serve as auxiliary structures for intergovernmental consultation and coordination in conjunction with the local ICCBs; the latter would handle non-emergency planning concerns such as public information, review, and assessment of the program, and policy coordination with states and communities. This is especially likely given the fact that some ICCBs (e.g., NAAP, APG) have no emergency planning personnel on the board membership.

(b) A principal purpose of the community right-to-know provisions of SARA Title III is to increase public knowledge of and access to information about the presence of hazardous chemicals in their communities as well as releases of these chemicals into the environment (U.S. EPA, 1988b).

Local ICCBs have as their purpose the provision of accurate and timely information concerning the chemical stockpile disposal process, whether through normal operation or accidental release (U.S. DA, 1988, Vol. I, pp. 4-168). It is

possible that LEPCs, which perform similar purposes for other chemical hazards, could function partly as information dissemination instruments for these aspects of the CSDP. Certain members of LEPCs are also members of ICCBs at some sites.

Reporting and notification structures established for other chemical facility hazards may be utilized for disseminating unclassified information concerning the CSDP. Reporting requirements for SARA that apply to privately owned and operated chemical facilities are flexible enough to provide useful information for local emergency planning without compromising the CSDPs exemption from full reporting requirements (P.L. 99-499, SARA Title III, Sec. 311-312).

(c) Finally, an element of particular complexity for at least one of the CSDP sites (Umatilla Depot Activity, or UMDA) is the manner in which tribal nations should be represented in the process of review and assessment. The ICCB is charged explicitly with coordinating disposal activities with Indian nations responsible for enforcing environmental laws on tribal lands (U.S. DA, 1988, Vol. I, pp. 4-168).

Under Title III, the role of Indian nations in emergency planning for chemical hazards is clarified in ways germane to all federal agencies. Under this act, "state" includes "Indian tribe," and "governor" (the person charged with appointing members to SERCs and LEPCs) includes "tribal chairman" (U.S. EPA, 1988c). Thus, Indian nations are required to have emergency planning committees for monitoring chemical hazards or to contract with states and communities toward fulfillment of this goal. Tribal nations can be incorporated into the ICCB system formally through this emergency planning committee structure. For example at UMDA, relations between Oregon's Title III structure and the Umatilla Indian Reservation are well established (Kirchner, 1988).

All rights given by Title III to states and communities regarding consultation about chemical hazards, provision of information, and most importantly, federal technical and training assistance for hazards mitigation, apply with equal vigor to Indian nations (U.S. EPA, 1988c). Close consultation and coordination with Indian nations is essential for the CSDP's ICCB as a matter of law as well as of practical politics.

Although SARA legally does not oblige the Army in the same manner it would affect a privately owned and operated chemical facility (Bishop, 1988), the Department of Defense has agreed to comply with those sections of SARA that are designed to protect the public in the event of a release of toxic materials from a defense installation

(Schafer, 1987). These sections of SARA include Title III, 301(c), 303(d) and 304 and encompass notification of chemical incidents, participation in local emergency planning and facility participation in the activities of LEPCs. The interface between Title III and the ICCB is likely to create a more formal, regulated pattern of intergovernmental consultation and coordination than was originally envisioned in the FPEIS.<sup>1</sup>

## THE GOALS OF THE ICCB

### Maintaining Citizen Concurrence and Gaining Public Support Through Intergovernmental Consultation

The ICCB is intended to reduce public opposition to the CSDP by providing institutional arrangements to mitigate a wide range of impacts arising as implementation proceeds. A number of related strategies have emerged, including tax-equivalent payments in lieu of revenue losses incurred in upgrading community infrastructure, anticipatory compensation payments before an action commences, upgrading emergency response capabilities, mitigating health and safety concerns, and providing technical assurances of quality control in program management (Carnes et al., 1982; OTA, 1985, pp. 107-108). These particular associated strategies have not been incorporated into ICCBs.

For the CSDP, successful implementation of these types of measures hinge upon a number of prerequisites. First, the Army, like other agencies in charge of programs perceived as hazardous and risk-laden, sometimes operates under an ethos of secrecy, a closed process of deliberation, and hierarchical command (Kraft et al., 1987; Nelkin, 1981; Freudenburg and Baxter, 1985). Consequently, personnel charged with implementing intergovernmental consultation and coordination programs may lack the experience, training, and inclination necessary to accommodate concerns for broad-based public participation. Moreover, most agencies with similar missions historically have been resistant to opening their decisionmaking processes to public scrutiny (Kraft et al., 1987; Feldman, 1986; Nelkin and Pollak, 1982). To overcome this obstacle, the PMCD should undertake a concerted effort to foster an alternative ethos. It should be noted that in the CSDP the approach taken by the PMCD has already made considerable inroads in establishing credibility separate from the Army, even at sites such as LBAD where the Program has been contentious. Local ICCBs are designed to confront these problems by establishing a visible, accessible agency presence in CSDP communities to inform local residents of programmatic activities and changes.

Similarly, were compensation efforts to be utilized in such a program (they are not), they must be directed explicitly at the mitigation of anticipated impacts. There must be frank discussion over what is being compensated — and

why. Without links between programmatic objectives and monetary exchange, charges of "bribery" or "buying consent" are likely to arise (Carnes et al., 1982). More problematically, the scope of a compensation framework should be conceived carefully. If citizens do not believe a program is necessary, it is unlikely that offers of compensation for its impacts will be acceptable. For example, public opposition to the Monitored Retrievable Storage (MRS) proposal by the Department of Energy for storage of high-level nuclear waste (planned to be located in Roane County and the City of Oak Ridge, Tennessee) stemmed from vigorous objection to the presumed need for a temporary nuclear waste storage facility. Some critics charged that proponents failed to elucidate the purpose of a temporary facility given the goals of a national program to establish a permanent high-level waste repository (Snyder-McCabe and Fitzgerald, 1987; Taylor, 1986). As a consequence, when a broad compensation program, including local oversight, was offered, it failed to mitigate criticism that the environmental impacts of the program would extend to the entire eastern Tennessee region and not just to the local area. Furthermore, the goals of the program remained unclear (Snyder-McCabe and Fitzgerald, 1987; Taylor, 1986). A basic difference in the CSDP, of course, is that the chemicals are currently stored at these sites and thus pose a threat regardless of whether they are disposed of or not. For the CSDP, the Army already has taken great pains to address this potential problem. Through participation in LEPCs, specific discussions on payments to upgrade emergency response training programs and equipment, improve communication and warning systems, and develop coordinated exercises have begun (Olson, 1988; Browne, 1988; Salado, 1988). Moreover, it is not the need for disposal that remains an issue, but rather where to dispose of the stockpile.

### Intergovernmental Consultation and Policy Effectiveness

A secondary purpose of intergovernmental consultation and coordination in the CSDP is to make policy decisions feasible, efficient, equitable, and cognizant of non-economic values. This is achieved by minimizing delays in implementation, making better decisions, and protecting the environment and human health. As a result of public scrutiny, the quality of many controversial siting decisions has been improved markedly through the solicitation of broad public input and review. The Trans-Alaska oil pipeline is an example (OTA, 1985, pp.190-191).

Once the CSDP commences operation, intergovernmental consultation and coordination can be employed to enhance its legitimacy and build public support. If many local residents together believe that their concerns and recommendations are being ignored, they can direct their resources toward stopping the project through interest group mobilization and litigation strategies (OTA, 1985, p.191;

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Schoenbaum, 1979). One way the ICCB is trying to build public support is by sponsoring tours of CSDP facilities for local officials. Also, the ICCB is offering host communities the opportunity to independently evaluate technical issues related to the preferred alternative for destruction of the chemical stockpile (*Federal Register* 52; Salado, 1988). In this way, an outlet for public concerns is provided, and local resources and energies are directed toward improving cooperation and understanding (see also Hindman, this issue).

### Intergovernmental Consultation, Citizen Participation and Democratic Values

The CSDP exemplifies the democratic dilemma of decisionmaking by select groups of experts not directly accountable to the general public. These groups are responsible for making complex and important political decisions. Further, the secluded work of these specialists who implement potentially hazardous programs reduces opportunities of the citizens to influence the outcome of decisions critical to their health, welfare, and quality of life (Barber, 1984; Mansbridge, 1983). This lack of accountability and the subsequent political alienation that may result from it pose a significant challenge to democratic theory (Kraft et al., 1987, p. 54).

Citizen participation in implementing the CSDP is a mechanism for channeling democratic impulses in a manner likely to enhance public trust in the program. To do so successfully, however, three goals must be accomplished. First, the range of alternatives considered must be shown to be unbiased (Anderson, 1979; Dror, 1968; Kalleberg and Preston, 1975). In the CSDP, this parameter is exemplified by the Army's consideration of various options for the destruction of the stockpile; however, some members of the public believe that decisions were preformed or made prior to consultation—a criticism similar to one that has arisen in nuclear waste-siting controversies (Peelle, 1987).

There is an obvious dilemma in convincing the public that the selection of the environmentally preferred alternative and subsequent ROD were not pre-formed (see also Carnes, "NEPA Compliance for the CSDP," this issue). Council on Environmental Quality (CEQ) regulations require identification of a preferred alternative for destruction of the chemical munitions stockpile by the Army. This was necessary in both the draft and final versions of the environmental impact statement to

present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice (40 *CFR*, Sec. 1502.14).

CEQ regulations go on to suggest that the environmentally preferred alternative and an agency's preferred alternative

could differ (e.g., if non-environmental factors weighed heavily against the environmentally preferred alternative). One task facing ICCB will be explaining to the public that the criteria for deriving the environmentally preferred alternative were selected on the basis of concerns deemed important at public hearings (U.S. DA, 1988; Vol. 3, M-3-16). There is an emerging consensus among local emergency planners and CSDP installation representatives that small group decisionmaking and face-to-face discussion through ICCB emergency planning activities may alleviate some concerns over pre-formation of decisions (Salado, 1988; Slone, 1988).

In line with the second goal for using citizen participation to enhance public trust, citizens must be given sufficient information to express thoughtful preferences about each of these alternatives. Policy objectives must be transparent and scrutable so that public consent to all aspects of the program taken together is based on a full appraisal of its impacts (Rawls, 1971). Public hearings on both the DPEIS and the FPEIS revealed considerable public concern over the meaning, interpretation, and application of risk assessments incorporated in the selection of the environmentally preferred alternative. This is likely to be an ongoing issue in the ICCB.

Third, mechanisms to hold policymakers accountable must be provided by the policymaker. One reason the Army supports the formation of an ICCB is the hope that such a consultative mechanism can enhance the public's understanding and acceptance of the program. ICCB input provides a means of ascertaining concerns not provided by conventional agency monitoring.

### INTERGOVERNMENTAL CONSULTATION AND COORDINATION AND THE STATUTORY REQUIREMENTS OF PUBLIC PARTICIPATION

Under Public Law 94-580 (Resource Conservation and Recovery Act of 1976, or RCRA), hazardous waste management facilities such as chemical munitions disposal plants must have plans for closure that protect human health and the environment. Public Law 99-145, the Defense Authorization Act of 1986, also mandates removal of the facilities at the end of stockpile disposal operations. Establishing technical standards for these plans has strengthened the role of states in RCRA implementation. Many states have chosen to involve the public in these plans through distribution of newsletters, local hearings, and independent site monitoring with the assistance of local officials (Skinner, 1982; U.S. GAO, 1983). Such activities are consistent with ICCB's role.

Public Law 94-469, the Toxic Substances Control Act (TSCA), also encourages citizen input. The Army is required to obtain research and development permits for polychlorinated biphenyls (PCB) disposal at those instal-

lations where M55 rockets are to be incinerated. It is also required to exchange data on toxic substances with state and local authorities to facilitate standardization of analysis and testing procedures. In this instance, because some M55 firing tubes are contaminated with PCBs, approval will be required at any facility scheduled to incinerate these items. Local ICCBs can serve as clearinghouses to oversee this activity, especially if local emergency managers in charge of SARA Title III chemical hazards information are members of ICCB.

In addition, requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and SARA incorporate contractors and other private entities in emergency response planning activities. Representatives from local emergency response organizations will serve on local ICCBs to facilitate rapid exchange of information and to identify specific needs for financial and technical assistance. The success of coordinated emergency response drills, mandated by SARA, can also be enhanced by plans developed with the assistance of LEPCs, as appended to county emergency plans.

As shown in Table 1, significant consultation and coordination mechanisms also are mandated under the Clean Air Act of 1977, which strengthened state authority to establish air quality standards over federally operated facilities and extended compliance obligations to "non-governmental entities" (contractors). Citizen suits may be enjoined in cases of failure to obtain proper permitting or instances of alleged permit violation.

Finally, although consultation with state governors is mandated by the Armed Forces acts cited in Table 1, the Defense Authorization Act of 1986 prescribes conformance with all relevant state and local laws. Local ICCBs, by providing ongoing exchanges of information through face-to-face discussion, can facilitate an atmosphere conducive to satisfying the requirements of these acts.

### ICCB ACCOUNTABILITY TO THE PUBLIC

A growing body of literature concerning alternatives to citizen participation in technological decisionmaking suggests several keys to maximizing effective public involvement, its acceptance of controversial programs, and the accountability of government agencies to the public. As synthesized by Kraft et al. (1987) and Solomon and Cameron (1985), these factors include

- (1) placing a credible, competent agency in charge of decisionmaking;
- (2) involving citizens in the process of decisionmaking as early as possible;

- (3) providing adequate financial support to ensure full and representative public participation;
- (4) providing forums for interaction between the public and decisionmakers to encourage problem solving rather than posturing; and
- (5) providing an ongoing public information program.

Credibility and competence are maximized by placing authority for operation of a program generating risk and uncertainty in a single agency. Army investment of the CSDP in a PEO-PMCD was designed to invest a single responsible agency with program management and inter-governmental consultation. Because the PEO-PMCD will chair the programmatic ICCB and periodic reports will be issued to host communities on the CSDP, this perception of single agency accountability should be strengthened. Early citizen involvement turned out to be the result of a public hearing request, in Kentucky, for some kind of independent evaluation of the CSDP. Under Secretary of the Army Ambrose authorized the expenditure of funds for community groups to perform independent evaluation of the DPEIS for the CSDP, to review and comment on additional studies addressing specific areas of concern, and to perform independent studies of a variety of technical issues (*Federal Register* 52). These groups provided an important instrument for gathering information on a number of concerns expressed by community residents (see also Carnes, "NEPA Compliance for the CSDP," this issue.)

The Army has acknowledged the importance of these community groups in addressing needs for continuing dialogue, lucid presentation of risk data, and mitigation of possible risks and health effects resulting from the program. This is exemplified by the absence of any attempt to sway the citizens' groups as to the content or tone of their findings (U.S. DA, 1988, Vol. 3, R-3). Many of the emergency preparedness concerns being addressed by local SARA Title III bodies, especially at LBAD, were first considered by these study groups (Colyer, 1988).

Encouragement of problem solving rather than political posturing has been one of the toughest challenges for ICCBs. The public hearings held in conjunction with the NEPA process only encouraged one-way communication, from the citizen to the government or vice versa. Those who attended these hearings, a select group of citizens, made their statements and went home. Decisionmakers who hold these meetings brief the public and leave behind a sometimes perplexed audience. There was also little opportunity for an extended exchange of information between decisionmakers and citizens. Such meetings may be confrontational and often lead to a polarization of views (Kasperson, 1986, p. 280; Kraft et al., 1987). In addition, the presence of the news media, whose interests are often

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**Table 1. Intergovernmental Consultation and Coordination Requirements and Guidelines  
Associated with the Chemical Stockpile Disposal Program**  
Consultation Required<sup>b</sup>

Statute	Form of Assistance Prescribed <sup>a</sup>	Consultation Required <sup>b</sup>		Coordination Procedure Required/Recommended <sup>c</sup>
		State	Local	
<b>General Environmental Laws and Regulations</b>				
National Environmental Policy Act (P.L. 91-190) or NEPA. Also 40 CFR Sec. 1500.1, 1502.14, and 1502.16	Technical assistance for impact mitigation; incorporation of diverse values and public concerns (Sec. 101-102 and 40 CFR Sec. 1500.1).	X	X	Scoping meetings, public hearings, policy distribution of environmental impact statements to public prior to decision on proposed action.
Resource Conservation and Recovery Act (P.L. 94-580) or RCRA	Grants to states for monitoring hazardous wastes (Sec. 3007-3012).	X	-	None required, recommend independent state monitoring.
	Conformance with state permitting requirements (Sec. 3006).	X	-	None required; however, C and C with state EPA's is recommended.
	State consultation with local communities for waste management, special assistance for rural communities in planning (Sec. 4006, 4009).	-	X	C and C with state governors, designated state officials and planning and local elected officials.
Toxic Substances Control Act (P.L. 94-469) or TSCA	Exchange of R and D data on toxic substances (Sec. 10).	X	X	Consult with elected state and local officials, designated state officials.
	Response to citizen petitions to modify/repeal rules (Sec. 20-21).	-	-	No explicit requirement, recommend integration of citizen input.
	Grants to states to mitigate "unreasonable risks to health or environment" (Sec. 28).	X	-	No explicit requirement, recommend integration of citizen input.
Comprehensive Environmental Response, Compensation, and Liability Act (P.L. 96-510) or CERCLA	Furnish information to all affected governments on accidents/incidents; participate in cost-sharing activities associated with monitoring of hazards; provide assistance for emergency response. This act forms the basis for SARA.	X	X	C and C with state/local elected officials; incorporate "private entities" involved in disposal.
Superfund Amendments Reauthorization Act (P.L. 99-499) or SARA	Technical assistance for upgrading emergency response infrastructure (Title III).	X	X	C and C with state/local emergency and response coordinators and commissions.
	Notification of states/communities in event of accidents/incidents (Sec. 302-304).	X	X	Same as above. Assist communities in emergency planning ( <i>Federal Register</i> 52:13379-96, April 22, 1987)
	Establishment of uniform inventory format for identification of chemical hazards for use by state/local authorities (Sec. 311-312).	X	X	Same as above. Reporting provisions provide public access to information ( <i>Federal Register</i> 52:2836, January 27, 1987).
Endangered Species Act (P.L. 93-205)	Cooperate with states prior to acquisition of land/water rights for chemical disposal program (Sec. 6).	X	-	None prescribed; cooperation with appropriate state agencies recommended.
Hazardous Materials Transportation Act <sup>d</sup> (P.L. 93-633)	Conformance with state/local laws affording equal or greater protection to public during transit of chemical munitions (Sec. 112).	X	X	None prescribed. DOT shall determine effectiveness/appropriateness of state and local HMTA ordinances; thus C and C with DOT and DHHS review committee for program oversight recommended.
Clean Air Act of 1970 (P.L. 91-604)	Conformance with "State Implementation Plans" (SIPs) for air quality (Sec. 106, 107, 110).	X	-	Cooperate with state air pollution control agencies, interstate APCs, and regional intrastate APCs.
Clean Air Act of 1977 (P.L. 95-95)	Conformance by federal agencies and contractors with SIP air quality requirements and local air pollution ordinances (Sec. 116).	X	X	Same as above.
<b>Armed Forces Laws</b>				
Armed Forces Appropriation Act of 1970 (P.L. 91-121)	Conformance with DHHS regulations regarding overall public health and safety in transportation and testing and prior notification of states in transport (Sec. 409).	X	-	Consultation with state governors. DHHS is charged with mitigation of state/local health/safety concerns; thus consultation with DHHS recommended.
Armed Forces Appropriation Act of 1971 (P.L. 91-441)	Prior notification of testing or disposal of chemical munitions.	X	-	Consultation with state governors.
Defense Authorization Act of 1986 (P.L. 99-145)	Conformance with all applicable laws providing "maximum protection for the environment and public" (Sec. 1412).	X	X	None prescribed with states; recommend integration of public input. C and C with EPA and DHHS required.
National Defense Authorization Act of 1987 (P.L. 99-661)	Optimize public safety and cost-effectiveness of chemical munitions disposal program (Sec. 154).	X	X	None; but community oversight groups consistent with these goals ( <i>Federal Register</i> 52: 4646, February 13, 1987).

<sup>a</sup> Prescribed means explicit in noted sections of laws, or in the law itself.

<sup>b</sup> Required consultation also is explicit in these laws.

<sup>c</sup> If procedure is required, it is so stated in the law; if recommended, recommendation is author's in text.

<sup>d</sup> If an off-site transportation alternative had been selected.

focused around the existence of controversy rather than the components of a dispute, may not be conducive to free and open dialogue.

Conflicts between the Army and citizens, as well as between the Army and other federal agencies, are most likely to be resolved effectively through mediation and negotiation. Small-group discussion, consistency of ICCB membership, the opportunity for face-to-face communication, and—in the case of the local ICCB—participation by trusted members of state and local governments, may increase the opportunities for successful negotiation. The establishment of a well-conceived deliberative procedure for consultation and coordination that represents the community and that is linked to higher decisionmaking channels through an appeals system should be able to resolve many issues. Already, local officials in the vicinity of LBAD have initiated direct contact with the Army through two novel techniques: an early invitation to the facility to appoint a representative to serve on the LEPC and holding a series of small group meetings among the Army, local emergency managers, and local and state agency officials (Colyer, 1988; Johnson, 1988). This is consistent with studies of consultation and coordination measures in other, comparable programs where informal face-to-face discussions have led to constructive negotiation and a constant exchange of information (Lang, 1987; Bidwell et al., 1987).

By contrast, DOE experience with the attempt at siting a high-level nuclear waste repository is instructive. The State of Washington and various tribal nations recently have complained of DOE's failure to keep them adequately informed about program activities at the proposed Hanford high-level waste site (U.S. GAO, 1987, p. 35). Ironically, DOE maintained that because little site-characterization activity was taking place at Hanford, informing these institutions of the activity was not imperative (U.S. GAO, 1987, p. 35). To the public, states, communities, and tribal nations, even the absence of activity may constitute a noteworthy issue. Experience with the CSDP has shown that it is prudent to develop a continuous information flow via the ICCB before disposal operations commence, while they are occurring, and during closure of the facilities. This is likely to ensure public cooperation.

#### EMERGENCY PLANNING ISSUES, PUBLIC INVOLVEMENT, AND THE FUTURE OF ICCB

The need to upgrade emergency preparedness capabilities at the eight CONUS sites has been discussed thoroughly in public hearings. SARA Title III guidelines discussed here earlier already are proving to be important determinants of the pattern of intergovernmental consultation and coordination at each of these sites.

All eight CSDP states have in place SERCs that have been entrusted with the oversight of LEPCs, which are required by SARA. In Maryland and Oregon, SERCs are derivative from pre-SARA emergency planning councils. In the states with CSDP sites, SERCs were created after passage of SARA. The structure, membership, and array of concerns displayed by these SERCs and LEPCs vary considerably from state to state (Feldman, 1988b).

This variation means that no single pattern of consultation and coordination is appropriate for all sites. It also suggests that the level of pro-active public participation in emergency planning in each state may be neither evenly developed nor present identical problems. Some states, such as Maryland and Oregon, have made great strides in fostering pro-active local and state involvement in chemical emergency planning through active consultation with communities, computerized chemical hazards data bases, and high political visibility provided to SERCs and LEPCs (Phillips, 1988; Sutherland, 1988).

In each of the CSDP states, SERCs are entrusted with responsibility for:

- (1) approval of emergency response plans developed by LEPCs,
- (2) establishment of procedures for handling information requests from the public and the chemical industry about hazards and measures to avert them, and
- (3) prescribing formats for chemical facility inventory information.

Although these responsibilities are the same in all states, state-level resources provided for these functions vary considerably. Generally, representatives from state agencies who serve as either chairs or co-chairs of SERCs also provide staff support. There may be no more than two or three assistants who work with chairs on Title III planning. This will place considerable strain upon the time available for serving on ICCBs.

Moreover, while SERCs are entrusted with principal authority for statewide planning, LEPCs are given primary responsibility for the development of emergency response plans due to be submitted by October 17, 1988 (U.S. EPA, 1988b). SARA grants considerable discretion to state and local governments in developing these plans.

One option for local ICCBs is to append CSDP emergency plans to general county chemical facility emergency plans. This would make review of the CSDP by LEPCs manageable while serving to coordinate disposal activities with state and local governments and also is consistent with the goals articulated by the CSDP-FPEIS (U.S. DA, 1988, Vol. I, pp. 4-165). This option has been under active considera-

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LEPCs are invested with emergency planning responsibilities over jurisdictions termed "emergency planning districts" (EPDs). While the types of personnel mandated to serve on LEPCs are prescribed by law, the boundaries of EPDs are determined by states [Title III, Sec. 301 (b)]. The SARA-mandated deadline for establishment of EPDs was July 17, 1987. While LEPC size is determined by states, representation is explicitly prescribed by law. In some CSDP emergency planning districts, it has been difficult to recruit LEPC members who represent all of the functions required by Title III of SARA.

Title III requires that LEPCs be comprised of relevant state and local officials: police, fire, civil defense, public health, environmental affairs, transportation personnel, and members of the mass media, and designated "community groups." Local officials report that public interest in serving on LEPCs varies by public awareness of hazardous material issues in a given county. Interest, in turn, is affected by the amount of industry in a particular county as well as population density and prior chemical incidents. Three factors—size, representation, and public awareness—will all have a bearing upon pro-active participation for emergency planning and will shape the appropriateness of expectations about participation by the public itself.

In linking pro-active participation in emergency planning with consultation and coordination, it must be recognized that ICCBs and the emergency planning instruments of SARA Title III are separate and distinct entities. The detailed structure, functions, and responsibilities of both instruments constitute "an evolving charter not yet firmly established" (Feldman, 1988b). For example, the operation of the ICCB will not be the same across all sites. Nevertheless, enhanced capabilities for coordination at the programmatic level still ensure that local ICCBs conform to their basic mission. This mission includes emergency planning, notification of operations, coordination of disposal activities with states and communities, and provision of timely information.

Early ICCB developments prompt a number of programmatic-level questions. First, who should serve as installation representatives on local ICCBs? If LEPCs perform the ICCB role, should a chemical surety officer be assigned as liaison, or should the liaison officer be the post commander or designated alternate? The issue here is not mere consistency across sites. The central concern is that the Army be able to make binding, legitimate decisions regarding emergency planning and be able to credibly respond to other public concerns.

Second, some LEPCs—such as those in Alabama, Arkansas, Colorado, Kentucky, and Utah—already have estab-

lished subcommittees for managing unique aspects of chemical emergency planning in their respective planning districts. Establishing such subcommittees would allow greater interaction between members of the community most knowledgeable about and interested in CSDP emergency planning. This might also free other LEPC resources and allow members to concentrate on the multitude of other local chemical emergency concerns that need to be addressed.

Finally, LEPCs cannot handle all aspects of inter-governmental consultation and coordination nor was it ever intended that they do so. Non-emergency planning problems and issues will need to be managed by the ICCBs. In other instances, perhaps public concerns over financial and technical assistance, notification of programmatic operations, coordination of disposal activities, and provision of accurate and timely information may revolve largely around emergency planning concerns. If so, it is possible that LEPCs can manage some issues originally intended to be relinquished to formal, separately appointed ICCBs.

#### CONCLUSIONS: THE FUTURE OF ICCB IN THE CSDP

As was noted in the introduction of the article, many issues now incorporated into ICCBs could not be resolved during the programmatic NEPA process. In an attempt to update the postprogrammatic ROD status of ICCB, the following refinements resulting from the Army's need to define relationships between itself and other federal agencies and from local and state desires to establish harmonious relationships likely to bring about meaningful dialogue are noted. Major changes include redefining the purpose of ICCB as "incorporating the concerns of state and local communities, tribal nations, and the general public in CSDP operation" (rather than providing independent oversight and guidance), and having the state representative to the local ICCB serve as the liaison to the national ICCB. In addition, one issue under consideration is providing a means of informal contact among local ICCBs to share information beneficial for the mitigation of impacts, perhaps through some kind of newsletter.

Finally, by local initiative, members of ICCBs have opted to develop means to allow alternates to represent them in their absence, to recommend additional appointments of emergency planning representatives to local boards by governors, and to conduct business meetings closed from public or media scrutiny. This lattermost recommendation may prove to be the most problematic. On the one hand, while it may assure that ICCB meetings are conducted in a non-polarized atmosphere, it may also exacerbate public suspicion of the CSDP—which is one of the very reasons why ICCBs were formed.

## FOOTNOTE

1 Despite the fact that the ICCB and the requirements of SARA Title III share numerous parallels (begging the question of "Why an ICCB if Congress intended to deal with local emergency planning through LEPCs?"), ICCBs were intended to address a broad range of concerns — not just emergency planning. In addition, unlike Title III organizations such as LEPCs, ICCBs do not make decisions. At the time PEO-PMCD and ORNL were preparing the Draft Programmatic EIS (DPEIS), it was decided to include intergovernmental consultation and coordination and enhanced emergency planning and preparedness as mitigative measures in the DPEIS. After SARA Title III's enactment, it was unclear how the legislation would apply to federal facilities. Consequently, it was decided to recommend a commitment to such concepts to the Army, recognizing that subsequent Title III implementation may have to be coordinated with the ICCB and emergency planning mitigation (Feldman, 1988a).

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