

# **SUCCESSFUL PROCESS PRINCIPLES TO REACHING CONSENSUS ON COMPLEX ENVIRONMENTAL ISSUES**

(A process description of the Chesapeake Bay Program's Nutrient Trading Negotiation Team  
development of Nutrient Trading Guidelines and Fundamental Principles)

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## **INTRODUCTION**

In March of 2001, the Chesapeake Bay Principles Staff Committee officially endorsed a recently completed document entitled "Chesapeake Bay Program Nutrient Trading Fundamental Principles and Guidelines". The nutrient trading fundamental principles and guidelines contained in this document were developed by the Nutrient Trading Negotiation Team (NT). This team was assimilated by the Chesapeake Bay Program for the purpose of exploring the very complex issue of nutrient trading, and if appropriate, to develop a set of guidelines to be used as a guide for those Bay jurisdictions that choose to establish nutrient trading programs.

The NT was convened in June 1999 and worked, using a facilitated negotiation process that was consensus based, over the next 18 months to develop these nutrient trading guidelines. The process was unique in that it involved a very complex issue that few of the NT members were experts on, and it involved a very large team of a wide variety of stakeholders (necessary to cover both the geographic scope of the Bay watershed and the many disciplines potentially affected by trading) typically considered too many for successful negotiations.

Due to a combination of many techniques, processes and innovative ideas used during the process, the negotiations were extremely successful and the end product was not only completed, but all the NT members requested that they collectively sign their names to the document as clear evidence of the consensus that was achieved. This paper documents the process that was used and describes such techniques and innovative ideas that were incorporated to make it particularly successful.

## **BASIC ELEMENTS OF THE PROCESS**

The outline below provides the skeleton of the techniques and processes that were used which are described in more detail in the pages that follow:

- I. Forming the Negotiation Team
  - A. Strategic Membership Selection
  - B. Team Commitment
  - C. Team Set-up
- II. The Negotiation Team's working relationship with the rest of the CBP
- III. Negotiation Principles
  - A. Facilitation
  - B. The Structured Problem Solving Process
  - C. Individual Participation and Buy In
  - D. The "Round Table" Concept
  - E. Strategic Seating Arrangements
  - F. Taking Risks
  - G. Bonding Time
  - H. Sign on the Dotted Line
- IV. Process Principles
  - A. Ground Rules
  - B. Well Defined Mission
  - C. Running Draft of the End Product
  - D. Meeting Length
  - E. Recording: Flipcharts and Notes
  - F. Facilitation
  - G. Meeting Planner
  - H. Public Transparency/Involvement
  - I. Secure Adequate Technical Support: Inside and Out
- V. Other Important Factors
  - A. Language Hierarchy
  - B. Newsletter

## **THE CORE OF THE NEGOTIATION PROCESS**

The core of the negotiation involved a structured problem solving process as described in the box below. This technique allowed ample time for the NT to become proficient in a topic, to be able to determine options, and to finally negotiate solutions. Key to the success of this effort was relying as much as possible on the actual team members to research, investigate, and explore issues themselves thus, enabling knowledgeable decision making and ownership and buy-in at the end of the process.

## THE PROBLEM SOLVING PROCESS

1. **Brainstorm together:** Conduct a plenary session to brainstorm/explore an issue in general and develop questions to investigate later
2. **Engage technical support :** outside the group if necessary, or from an individual group member to investigate the issue further and return for a report at the next meeting
3. **Present on the Issue:** After enough time has occurred to investigate an issue, usually at a subsequent meeting, provide background to the group, and a list of possible options if appropriate
4. **Conduct breakout sessions:** to discuss the issue at a more detailed level. Here breakout sessions can all be on the same issue, thus providing opportunity for each group to come up with its own solution and then be compared to the rest of the sessions, or divide the issue up into components for each breakout session to consider individually.
5. **Report Out to the group:** Have spokesmen from each breakout session report out on the results of their breakout sessions. It is very important here to limit the plenary discussion to questions of clarity only. Limit general or decision making discussions on the topic until later plenary or negotiation sessions.
6. **Conduct Plenary Discussion Session:** The entire Team, alternates and principal negotiators, discuss the issue in an open forum, considering options
7. **Conduct a Formal Negotiation:** Only principal negotiators may speak during the negotiations. Here the facilitator leads the group through consensus decision building on a topic. Careful recording as the conversation evolves is essential. During negotiations, alternates may confer privately only to their principles during the negotiation to provide opinions and comments.

## FORMING THE NEGOTIATION TEAM

### A. Strategic Membership Selection

Much time and effort was spent to form a team that had broad expertise, and broad representation of the stakeholders across the watershed that would have a vested interest in the concept of Nutrient Trading. A Nutrient Trading Organization Team (later formed into the Nutrient Subcommittee's Nutrient Trading and Offsets Workgroup) was formed to solicit nominations for NT membership, and then to make final selections based on these nominations. After the Organization Team determined the general stakeholder categories that should be represented on the Team, letters were sent out to heads of appropriate organizations soliciting nominations for NT membership. Once nominations were collected, the Organization Team selected from the pool of candidates a group that would balance federal, state, local governments, with private organizations, farmers, environmental groups, and that would also balance state representation. The following groups were represented:

US EPA - Chesapeake Bay Program

US EPA - Region III

District of Columbia

State of Maryland (MDE and Dept. of Ag)

State of Pennsylvania (PADEP and PA Dept. of Ag)

Commonwealth of Virginia (VADEQ and VA Dept. of Cons. and Rec.)

Environmental Interests

Regional Environmental Interests

Local Government Interests

Municipal Point Source Interest

Industrial Point Source Interest

Rural Non-point Source Interest (crop and animal ag)

Stormwater Interest

Chesapeake Bay Commission (for the first several meetings)

Public Interest

## B. Team Commitment

The membership solicitation also included a clear statement of the time commitment that would be required for the NT members. In this case, the member solicitation letters included a statement to the effect that approximately 10, 2-day meetings would be held over an 18 month time frame with additional analytical work required between meetings.

## C. Team Set-up

The NT consisted of 38 individuals: 16 primary negotiators, and 16 alternates. The principal members were the speaking members at the negotiation table. The alternate members were also an integral part of the process: Not only did the alternates serve as a speaking member in the absence of the principal member, but provided the principal with supporting opinions and a broader scope of perspectives than one member alone could contribute.

## **THE NEGOTIATION TEAM'S WORKING RELATIONSHIP WITH THE REST OF THE CBP**

From the beginning, it was established that the work of the NT was eventually to be reviewed and approved by the Chesapeake Bay Program's committee and subcommittee structure. The NT was to do all of the groundwork and policy decisions required to develop nutrient trading guidelines, but this work would be subject to review and comment first by the Nutrient Subcommittee's Trading and Offsets Workgroup, then the Nutrient Subcommittee, then the IC, and then the PSC. The NT hoped to have the document eventually endorsed by the PSC, which did occur in March, 2001. Thus, over the 18 months that the NT deliberated, regular briefings were provided to TOWG, NSC, IC and the PSC along the way such that the PSC was informed and ready to endorse the guidelines in March. The NT did however, feel empowered to make the important policy and technical decisions on their own as they became the principle experts in the Bay watershed on this topic. See Attachment 1.

It is important to note that the Nutrient Trading Fundamental Principles and Guidelines Document that was ultimately produced in March 2001 by the NT, is not regulatory or mandatory in any way. Rather, the NT made it clear, in the preamble to this document, that it is intended to be used on a voluntary basis as a guide for those Bay jurisdictions that choose to establish nutrient trading programs.

### **MORE ON NEGOTIATION PRINCIPLES**

A. A good facilitator with excellent leadership and negotiation skills is necessary, especially where a group of stakeholders with opposing viewpoints is concerned, and where complex topics are involved.

B. A Structured Problem Solving Process Must be Well Defined.

See the "Problem Solving Process" Box above.

C. Individual Participation is Key to Buy In

Encourage individual participation from all members: Have the work done by, and decisions made from, the group itself wherever possible. The two day meetings were structured in such a way as to allow the NT time to explore the issues during presentations and breakout sessions, make group decisions in the plenary sessions, and came to consensus in the negotiations. Where possible, ask the group members to research an area themselves, get all members at least one time in the process to own an issue and present the options and info on it to the group. Encourage the group members to do the work themselves instead of by staff. This ultimately promotes buy-in from the team at the end of the process.

D. The "Round Table" Concept

As with King Arthur and his knights of the round table, the NT did not have a committee chair. Rather, the leader of the group was the impartial facilitator which served the function of moving the group through the issues, and conducting the negotiations. All members of the group were considered equal.

#### E. Strategic Seating Arrangements

Prior to each meeting, NT name plates were placed at strategic locations around the negotiation table to promote productive lines of communication. All principle negotiators sat at the table. All alternates sat directly behind the alternates, not at the table, but close to the principle for convenient conference during the meetings, and during the negotiations. While the alternates were not allowed to speak during formal negotiations, they were invited and encouraged to confer with their principle during negotiations. Alternates could also participate freely outside of formal negotiations, such as during plenary and breakout sessions.

#### F. Take Risks, and Make Sacrifices for the Good of the Team

Make Consensus the goal: It was very clear from the beginning that the goal of these negotiations was to come to consensus wherever possible. The NT and the facilitator all felt strongly about this and were as a result, willing to make individual compromises for the good of the group.

#### G. Make Time for Bonding!!

Never underestimate the power of non-work bonding opportunities. The evening in the middle of the two day meetings was always reserved for a dinner and cocktail get together. Each time, something special and fun was arranged ahead of time. This proved invaluable as members developed relationships with stakeholders from opposite perspectives - thus opening the door to understanding and flexibility. By the end of this process, folks were saying that they were going to miss their new friends.

#### H. Sign on the Dotted Line

Because this was an effort that was created by the group, the NT believed it important for everyone to be willing to sign a document acknowledging that they all came to consensus on the issues that were presented in the guidelines document. All knew that they would eventually be signing this document and thus, the negotiations became particularly poignant. The signed document by the NT simply states: "The Principles and Guidelines Established in This Document are agreed to by consensus by the Chesapeake Bay Program Nutrient Trading Negotiation Team", and it was placed in the front of the guidelines document.

## **PROCESS PRINCIPLES FOR CONDUCTING EFFICIENT AND PRODUCTIVE MEETINGS AND FOR MOVING THROUGH THE ISSUES.**

### **A. Ground Rules**

One of the first tasks of the entire NT was to establish ground rules related to the responsibilities of the team, the importance of regular attendance, negotiation rules, consensus building, the role of the facilitator, and group communications. These ground rules were posted during all of the meetings.

### **B. Well Defined Mission**

Articulate a clear purpose or mission in the very beginning!! In the ground rules which the NT developed in their first meeting, the group's mission was clearly established. Make sure this mission is revisited regularly to keep the group's work on task.

### **C. Keep a Running Draft of the End Product**

Have a clear vision for the end product! The NT knew all along that their job was going to be development of a trading guidelines document. One of the best tools used by the NT to accomplish this was to compose a running draft of the guidelines document early on which captured all of the decisions and information provided to date. This draft was regularly reviewed by the NT before each meeting such that by the end of the 18 months, completing the draft was not an overwhelming task, and the NT felt comfortable with its accuracy.

### **D. Meeting Lengths**

It was decided that intensive 2-day meetings held every 4 - 6 weeks would be necessary to allow the time required to research, discuss, and then negotiate on issues.

### **E. Recording: On Flipcharts and in Notes**

Recorders were essential to capture the consensus points and the flow of the conversations during the meetings. One person was used just to take minutes during the meetings. Two recorders were often used to record decisions and ideas as they occurred on flip charts during the meetings, and during the breakout sessions. ALL consensus points were carefully recorded.

### **F. A Good Facilitator is Key!!**

The facilitator's job was to be responsible for rigorous enforcement of the ground rules, keeping discussions focused and on task, assisting in resolving any impasses that may arise and for being the determined force to problem solving and achieving consensus. The facilitator was an impartial

convener. The facilitator ensured that formal negotiations were carried out in an efficient, professional and productive manner, and that a consensus was obtained wherever possible.

#### G. Meeting Planner

Someone dedicated to arranging sites, composing agendas, arranging for meals, planning outside activities, etc. is essential.

#### H. Public Transparency/Involvement

All NT meetings were open to the public. While the public was free to attend, participation was limited during the meetings. Rather, there were one or two structured opportunities provided at each NT meeting, where the public was allowed to comment.

Additionally, keep the public informed of the status of the project and allow them the opportunity to comment on the final products before they are finalized. In a program like the Chesapeake Bay Program, public buy in is essential. All work performed by the Bay Program must be transparent to the public. The nutrient trading effort was initiated with a public workshop in December 1998 to gauge the public's interest in exploring trading. The conclusion during this workshop was to move forward. When the draft guidelines document was developed in the fall of 2000, it was distributed to the public for review, and was made available on the web. Sixteen public meetings were conducted in all Bay signatory jurisdictions in the fall of 2000. These public meetings were largely paid for and planned by the jurisdictions themselves - not the Bay Program Office. 118 public comments were submitted. Each of the jurisdictions were responsible for collecting and summarizing their own state comments. The CBPO collected all of the summarized comments and combined them into a comments summary document. An entire 2 day NT meeting was dedicated to responding to these comments and agreeing to revisions. The revisions made by the NT were also documented and combined with the comments and published as a separate document. Yet another document was published which summarized the times, attendees, and major discussions at the 16 public meetings. These documents are all on the web.

#### I. Secure Adequate Technical Support - Inside and Out

While the NT was asked to take responsibility for becoming proficient on the topic of trading such that decisions could be knowledgeable made within the NT, there were times when advice or information was sought from outside experts. These experts were often invited to present at the NT meetings. Additional Bay Program support on researching issues was obtained, as well as outside consulting support where necessary.

However, wherever possible, each individual NT member was also asked to champion an issue, research details, develop options and report back to the group. This not only encouraged group



ownership and interest, but promoted expertise within the NT itself.

## **OTHER IMPORTANT FACTORS IN THIS PROCESS:**

### **A. Language Hierarchy**

Another tool that helped achieve consensus during the negotiation was the use of a Hierarchy of Language to reflect the varying levels of importance on certain guidelines. In the guidelines document the NT's careful and deliberate use of the words "must" and "will" reflect essential elements of a successful and defensible nutrient trading program, the word "should" reflects the Negotiation Team's strong recommendation for inclusion of such elements in a trading program, and the use of the word "may" reflects optional elements that are worthy of consideration. An explanation of these terms is also placed up front in the guidelines document.

### **B. Newsletter**

Regular updates in the form of a simple newsletter can be an effective communication tool to keep all regularly informed on the progress of this effort. The NT utilized this tool, kept it to two pages, updated it about every 3 months, made it available on the web and distributed it at meetings where appropriate. It made an excellent log of the process at the end!

## Attachment 1

# Nutrient Trading in the Chesapeake Bay- *the process*

