

# Use of Situation Assessment To Identify Best ADR or Collaborative Process



## The Case of the Safe Drinking Water Act Airline Drinking Water Rulemaking

EPA's Conflict Prevention and Resolution Center

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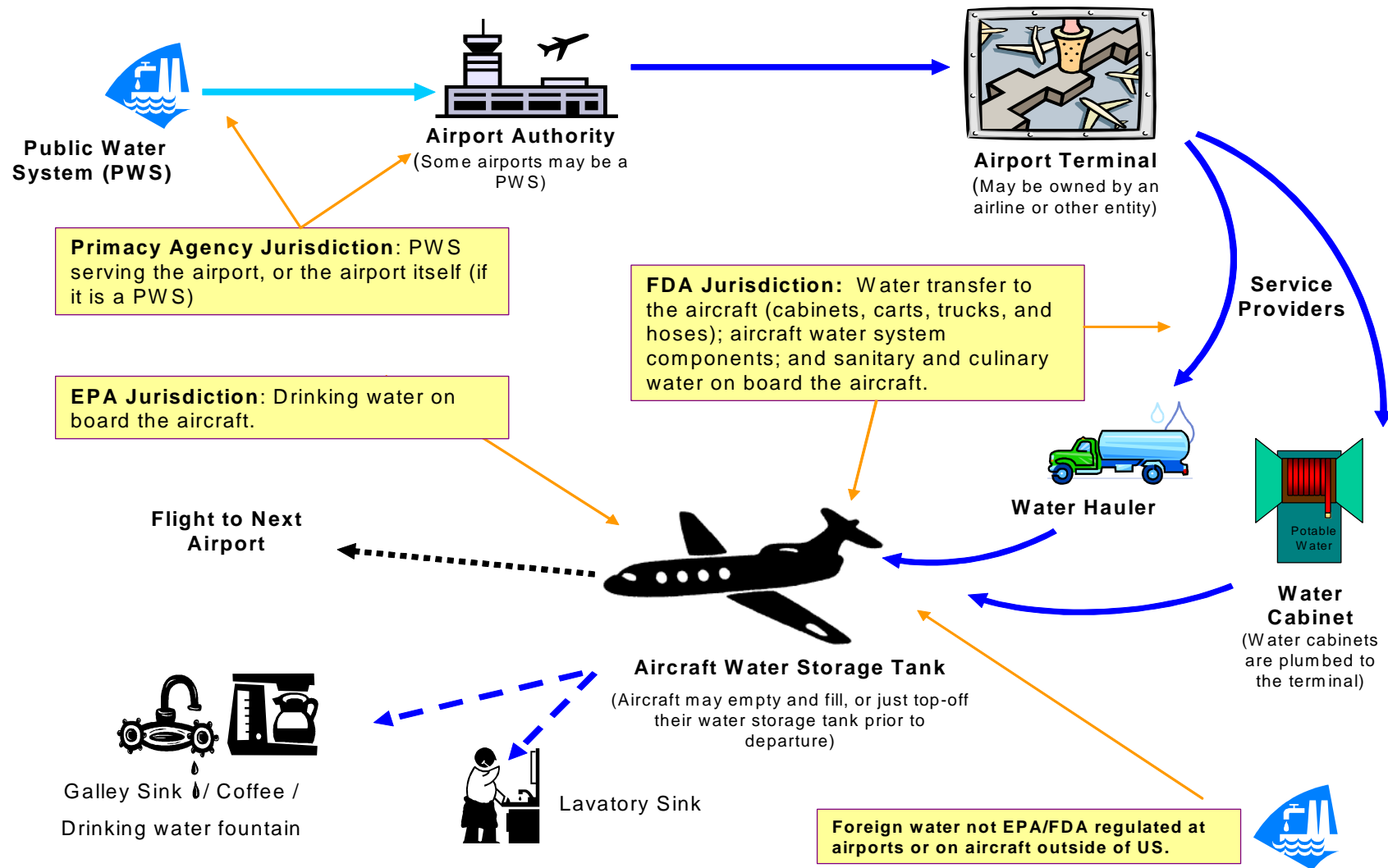




# Why New Regulations?

- Existing National Primary Drinking Water Regulations (NPDWRs) are designed for traditional, stationary Public Water Systems (PWSs) and don't consider unique airline characteristics:
  - Board water from many different sources including sources outside of EPA's jurisdiction
  - Maintain rigorous flight schedules and tight security
  - Board water via temporary connections (e.g., water carts, trucks and hoses) that provide frequent opportunities for cross contamination
- In 2004, EPA sampled 327 aircraft of which 15% tested positive for total coliform (2 were *E. coli* positive).
- Protect public health at the same time consider economic and operational feasibility and flexibility, and evolution of technology, coordinate multiple agency responsibilities and recognize agency response capabilities.

# Step 2. Describe Water System: Aircraft Potable Water Transfer and Supply Chain

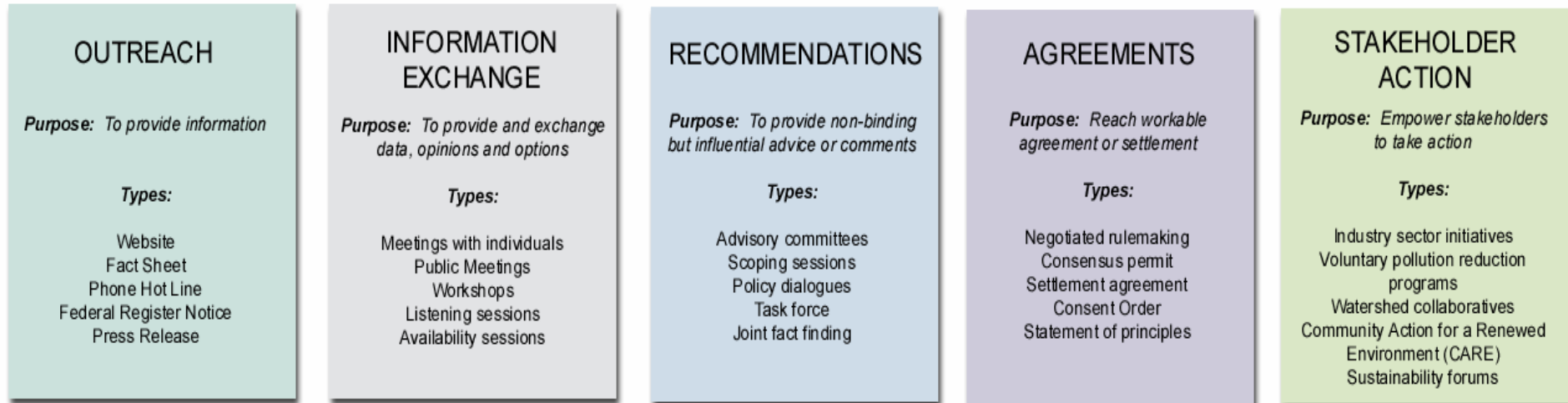




## Why do ADWR Situation Assessment ?

- EPA had not directly regulated airlines and wasn't intimately familiar with industry or technology.
- Co-incident enforcement Consent Orders negotiated with each airline separately highlighted complexity of regulatory compliance.
- Collaborative process intriguing because of complexities and time issues, but unfamiliarity with industry pointed to need for study.
- Formal "situation" assessment was conducted by Resolve to explore most appropriate process.

# EPA Consultative and Collaborative Processes



An EPA Situation Assessment needs to consider both Agreement Seeking and Non-Agreement seeking processes to offer the most tailored and relevant advice.

# Situation Assessment

A Tool to Design Successful  
Consultative and Collaborative  
Processes



# What Type of Process to Use?

Goal/End Results of an OUTREACH process:

- Share information broadly
- Build understanding about what actions you are taking and why
- This is a *one-way* transmission of information
- May be prelude or accompanying process for other processes

Some situational indicators:



- Additional information can avert misunderstandings
- Create a level playing field of information and knowledge
- No time to involve the stakeholders more fully
- Very limited resources (money, staff)
- Little management commitment to more involvement
- Face to face interactions are not possible or feasible
- Too many parties with too diverse interests, representation not feasible

# What Type of Process to Use?

Goal/End Results of an [INFORMATION EXCHANGE](#)

- Give and gain information from individuals
- Get reactions to proposals and learn about concerns
- Not a consensus or collective recommendation process



Some situational indicators:

- Additional data or info needs to be shared or developed
- Parties are unused to working in collaborative relationships
- Parties are unable to work together due to trust problems – agreement is unlikely
- Commitment to a negotiation process is uncertain or absent
- Previous collaborative processes went badly
- Time is a key factor
- There is no deadline or decision forcing factor
- Resources are not available for a more intense process
- Too many parties, too diverse interests or representatives not identifiable



# What Type of Process to Use?

Goal/End Results of a RECOMMENDATIONS process:

- Individual or collective set of advice or recommendations for agency or joint parties' decisions or actions
- May or may not be “agreement-seeking” - recommendations may be a package or pro/con choices
- Produce non-binding, but influential advice

 Some situational indicators:

- Parties need to more fully integrate their separate data, information, analyses
- Joint thinking and dialogue might solve persistent problems
- Relationships between parties are cordial enough for dialogue
- Some agreements or convergence seems possible
- Sufficient range of options and flexibility of positions

# What Type of Process to Use?

Goal/End Result of an AGREEMENT process:

- Bring closure to decisions on proposals or issues where buy-in is needed from other parties in controversial or complex situations
- Overcome stalemates by identifying a mutually acceptable approach with affected parties



Some situational indicators:

- A decision is unlikely to be durable without an agreement
- Implementation will need the active participation of multiple parties
- Parties interests and needs are congruent enough to allow for successful negotiations
- Parties together can develop a larger range of creative solutions
- Parties have a good relationships and positive histories with each other
- Coordination of multiple agencies/levels of government will improve implementation
- High levels of voluntary compliance are needed to achieve environmental goals

# What Type of Process to Use?

Goal/End Result of a STAKEHOLDER ACTION process:

- Enable outside stakeholders to make better decisions on issues where the Agency is not the mandated decision maker or the lead or sole implementer of the solution
- Share decision-making



Some situational indicators

- No one party has decision making authority or responsibility for the problem
- All parties can bring creative options, time and resources to the problem
- Voluntary action is one of the preferred alternatives
- Parties see each other as part of solution as well as the problem

# SITUATION ASSESSMENT - A Tool To Design Successful Collaborative Processes

## SITUATION / CASE STUDY

### AIRLINE DRINKING WATER CASE

#### Issue:

Under the Safe Drinking Water Act, all airplanes regularly serving drinking water are subject to the National Primary Drinking Water Regulations (NPDWRS). The current NPDWRS were designed to regulate water quality in stationary public water systems not mobile water systems that obtain their water from many different sources. EPA has decided to evaluate and update the National Primary Drinking Water Regulations (NPDWRS) for the airline industry.

#### Goal:

EPA's goal is to develop drinking water rules that are tailored to the unique characteristics of aircraft public water systems and ensure that airline water is as safe as any other public drinking water supply.

#### Deadlines:

EPA hopes to have a proposed rule published in 18-24 months.

## SITUATION ASSESSMENT

### EPA INTERNAL QUESTIONS

1. How flexible is management about looking at options?
2. Does management want to lead or follow?
3. What resources are available to support the entire collaboration process?

### EXTERNAL ASSESSMENT

#### What's Going On?

1. What are the issues and history?
2. What are the parties' interests and desired outcomes?
3. What information is available and how well informed are the parties?

#### Who's Affected?

1. Who are the recognized stakeholders/potential participants?
2. What are the relationships among potential participants?
3. Whose support is crucial to any process to resolve the issue?

#### What's Next?

1. What decision and process options exist?
2. What are realistic options for a resolution or decision process?
3. Is outside help needed for the process?

## FINDINGS

### SCENARIO 1

#### Internal Assessment

- EPA to develop a rule and needs help defining implementation but is uncertain about available data.
- EPA is looking for a range of alternatives rather than specific answers.

#### External Assessment

- Can't apply current regulations and lingering questions about health impacts and whether risk warrants rule.
- Airlines, aircraft manufacturers, the union, passengers, water supply representatives, water treatment equipment manufacturers
- Poor relationships among parties; constrained resources; airlines have not had good experiences with negotiated rulemakings

## CONSULTATIVE AND COLLABORATIVE PROCESSES USED BY EPA

### OUTREACH

- Purpose:** To provide information  
**Types:** Website  
 Fact Sheet  
 Phone Hot Line  
 Federal Register Notice  
 Press Release

### INFORMATION EXCHANGE

- Purpose:** Provide and exchange data, opinions and options  
**Types:** Meetings with individuals  
 Public Meetings  
 Workshops  
 Listening sessions  
 Availability sessions

### RECOMMENDATIONS

- Purpose:** Provide non-binding, but influential advice or comments  
**Types:** Advisory committees  
 Scoping sessions  
 Policy dialogues  
 Task force  
 Joint fact finding

### AGREEMENTS

- Purpose:** Reach workable agreement or settlement  
**Types:** Negotiated rulemaking  
 Consensus permit  
 Settlement agreement  
 Consent Order  
 Statement of principles

### STAKEHOLDER ACTION

- Purpose:** Empower stakeholders to take action  
**Types:** Industry sector initiatives  
 Voluntary pollution reduction programs  
 Watershed collaboratives  
 Community Action for a Renewed Environment (CARE)  
 Sustainability forums



A well researched design can help achieve a more productive outcome and better relationships among participants. Best practices suggest that a process is more likely to be successful if stakeholders are involved in its planning and design.

