

**Facilitated Rule-Making Case Study**  
**Ohio Department of Agriculture**  
**Livestock Environmental Permitting Program**  
**Spring 2002**  
by  
Maggie Lewis  
Ohio Commission  
on Dispute Resolution

In early 2001, the Ohio Department of Agriculture contacted the Ohio Commission on Dispute Resolution to facilitate the development of administrative rules mandated by Senate Bill 141 enacted the previous year. This controversial legislation mandated the transfer of regulatory authority from the Ohio Environmental Protection Agency to the Ohio Department of Agriculture (O.D.A) for construction and operation of manure storage and treatment facilities and manure utilization at large livestock operations, a growing industry across many parts of Ohio. Authority for rule development was vested in the twenty-one member Concentrated Animal Feeding Facility (CAFF) Advisory Committee, representative of livestock production, environmental, citizen and governmental interests. Recommendations drafted by this committee were to be forwarded to the O.D.A. Director for final review and then to the state's administrative review agency, J.C.A.R.R. (Joint Committee on Agency Rule Review) for final regulatory approval necessary for program implementation.

The working group held sixteen full-day meetings in Columbus from June-December, 2001 resulting in the issuance of draft recommendations comprised of fifty-six new regulations in six chapters of administrative procedure with the force of law. During the following six months (January-June 2002) an exhaustive legal review, a mandatory public hearing and a series of public information sessions were also completed by the Department. The new rules received final review and approval by the Rule Review Agency in June 2002 and thus paved the way for the implementation of the new regulatory program.

“This was the first time ODA rules have been drafted using a facilitated rule-making process,” said Ohio Agriculture Director Fred L. Dailey. “The process was successful, because it brought parties from all sides of the issue together at one table to draft one set of recommendations. And in developing recommendations, they were asked to build consensus whenever possible – no easy task, but they were successful.”

Several factors contributed to the Departments' successful first effort with the facilitated rule making process and included:

**Inclusion of all Affected Parties**

As process sponsor, the O.D.A. sought to draft recommendations that complied with statutory requirements and were reflective of the needs of the regulatory, livestock production and environmental communities. Whereas the CAFF Advisory Committee was initially comprised of twenty-one members, representatives from three additional interest groups were added to gain wider input into the rule-making process.

“When I started with ODA and the Livestock Environmental Permitting Program I knew that the rulemaking process was going to be very contentious and critical to the success of our efforts,” said Kevin Elder, executive director of the new program. “We needed to have ‘buy in’ from everyone who had initially battled on both sides of this issue.” Another hurdle Elder felt the program faced was educating not only the public, but also the advisory group members about the statute and the work of writing extensive administrative rules. “I had been through a facilitated process in the past, and it had worked well – although that situation did not have near the potential areas of conflict of this program.” Now that the process has worked well at ODA, Elder hopes other groups use it. He believes while it is time consuming at the beginning, the early work helped shorten the later hurdles of education, adoption and implementation of the rules.

### **Using Consensus in Decision Making**

The group used a decision-making framework whereby participants were encouraged to seek agreement through consensus, rather than by voting. Participants could choose to “live with” and therefore not block a consensus by the group as well as to “agree to disagree” in the event that they could not fully endorse the decision of the group. Parties with “agree to disagree” positions were encouraged to summarize those positions for distribution to other group members, and for inclusion in the committee’s final report.

### **Striving for Broad Public Participation**

The rulemaking process also employed a number of innovative techniques designed to capture greater public participation into the committee’s draft report. In contrast, for example, to the traditional role of public members solely as observers, members of the public were recognized by facilitators and actively contributed with an array of timely questions and comments. These questions and comments were routinely addressed by participants and were also recorded in the meeting minutes. This “on the spot” commentary provided valuable input into the committee’s recommendations and resulted in an atmosphere of openness at each meeting. The Department further attempted to elicit public comment to the draft rules by posting each completed (draft) rule on the Agency’s web site for public review and comment. In this way, persons who could not attend meetings could also provide timely input on the committee’s work.

Evaluations completed by 21 of the 24 group participants indicated “strong satisfaction” with the process. All participants agreed that “all parties with an interest in the issue had an opportunity to participate” and rated the process as “effective” or “very effective” in improving communications, defining issues and concerns and reaching general understandings and agreements.

Project facilitation services were provided by Maggie Lewis, staff at the Ohio Commission on Dispute Resolution and Conflict Management and public policy facilitator Fred Bartenstein. The staff of the Ohio Department of Agriculture provided administrative and logistical support for the process. Funding for the process was provided by the Ohio Commission on Dispute Resolution and the Ohio Department of Agriculture. For more information about the rule making process, please contact Kevin Elder, Executive Director, Livestock Environmental Permitting Program, Ohio Department of Agriculture or Maggie Lewis, Associate Director, Ohio Commission on Dispute Resolution 614/752-9598.