

Attorneys and Public Involvement: A Powerful Combination for Resolving Environmental Conflicts and Concerns

An environmental lawyer's ability to safeguard a client's sensitive information is one of his or her most valuable services. Documents that attorneys create or commission from consultants on their clients' behalf are, in most cases, protected from public disclosure as "attorney work product" (privileged work product developed in anticipation of litigation).

But keeping information confidential does not always serve the client's best interests. For example, what happens when neighbors or other stakeholders raise questions regarding a proposed new facility, emissions from an existing facility, or conditions at a contaminated site associated with the client? In such cases, environmental attorneys may find that the client can benefit from making information available to the public and soliciting stakeholders' questions and input.

Understanding the benefits of stakeholder dialogue

About This Article

Environmental attorneys may be familiar with the terms "public involvement," "public participation," and "community relations." How-

ever, many of them haven't ventured beyond fulfilling the most basic requirements (e.g., placing public notices in newspapers).

For this article, I sought out attorneys who self-identified as having swum—or at least waded—in the far choppy and less-well-charted seas of voluntary, proactive public dialogues. I sought to explore their experiences in this often-complex discipline.

This article begins with some background on public involvement/community relations. It then goes on to discuss a number of key topics, including:

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- the types of cases that can benefit from dialogues with the public,
- why working with the public is important,
- how attorneys have worked with their clients on such cases, and
- considerations for working with public involvement/community relations specialists or other communication professionals when outside assistance is desired.

What Is Public Involvement (or Public Participation, or Community Relations)?

The terms “public involvement,” “public participation,” and “community relations” are often used interchangeably in environmental statutes, regulations, and other government-generated materials (see sidebar entitled “Terminology”). All the terms refer to the process of providing information

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to the public and soliciting stakeholder input and suggestions regarding issues such as permitting actions or the investigation and cleanup of contaminated sites. The goal is to allow public participation in the decision-making processes of government agencies, such as the United States Environmental Protection Agency (US EPA) and the state environmental protection agencies.

In this article, I use the term *public involvement/community relations* (PI/CR) to designate activities that include both providing information to the public *and* soliciting stakeholder input. Readers should note that in cases of moderate or low interest or concern, PI/CR activities often appear to emphasize the provision of information *to* the public over the solicitation of feedback or input *from* the public. However, as long as those who are communicating with the public are open

to hearing from stakeholders and are willing to consider their comments and suggestions, then the effort can rightfully be considered PI/CR—even if the agency, business, or other entity is unable to act (or act immediately) on stakeholders’ suggestions.

Responsibility for PI/CR Activities

Under the environmental statutes, fulfilling PI/CR requirements is generally the responsibility of regulatory agencies. In some cases, such as the Resource Conservation and Recovery Act expanded public participation rule (which applies to hazardous waste treatment, storage, and disposal facilities¹), private businesses and other government entities are also required to perform certain PI/CR activities themselves.

Private-sector businesses and nonregulatory government entities (such as municipalities) may also choose to engage in voluntary PI/CR activities to ensure that the public understands and supports their actions. Indeed, US EPA and state regulatory agencies typically encourage businesses to engage their neighbors in dialogues—particularly if the issues in question are contentious—in hopes of resolving points of concern. In addition, in some cases of significant public concern, regulatory agencies may order businesses or other entities that haven’t been particularly forthcoming with their neighbors to hold public meetings.

Finally, some high-profile businesses that have, or are viewed as having, significant impact on the environment or on public space (e.g., utilities that operate power lines) have adopted policies of conducting proactive PI/CR or outreach activities on a regular basis to keep the lines of communication with the public open.

Local Focus of PI/CR

PI/CR activities are almost always focused on local issues and local audiences (e.g., within a

neighborhood, a community, a county, or, more rarely, a well-defined portion of a state), although nonlocal stakeholders, such as representatives of national environmental advocacy groups, sometimes weigh in as well. Attorneys and clients facing issues of multistate or national scope may use some PI/CR techniques, such as holding public meetings or distributing fact sheets, but such cases also invariably require substantial media coordination and the ability to answer questions remotely from diverse and geographically far-flung parties whose specific concerns or agendas may be largely unknown. Such cases are outside the scope of this article.

Subtle Differences Between PI/CR and Public Relations

Many attorneys and businesses use the catch-all term “public relations” (PR) for all communication with the public. In fact, PI/CR differs from mainstream PR in a subtle, yet important way. While ethical PR practitioners neither mislead the public nor knowingly provide false information, they tend to be almost entirely client-focused and generally advocate vigorously for their clients to the exclusion of other parties.

PI/CR professionals also work vigorously for their clients, but they do so in large part by advocating for stakeholders to their clients—both to promote frank and productive dialogues and to help their clients understand stakeholders’ questions or concerns and what they want or need. These dialogues can facilitate decisions that may not please all parties but that *do* aim to mitigate adverse effects and disproportionate environmental burdens.

Also, despite efforts to explore options for lessening adverse effects (or perceived adverse effects) on communities and the environment, PI/CR professionals must manage stakeholders’ expectations. Facility owners may only be able to do so much to mitigate the effects of their

operations; entities responsible for remediating contaminated sites may have to engage in some activities that are viewed as disruptive in order to perform cleanups. As they facilitate stakeholder-client dialogues, good PI/CR specialists are up front with community residents about what can, and cannot, be done.

To be sure, there are PR professionals who perform first-rate PI/CR work and, when doing so, take on the stakeholder advocacy role to help guide their clients. However, most PR practitioners aren’t trained to adopt the stakeholder advocacy viewpoint assumed by PI/CR specialists. Readers should keep this subtle, yet important difference in mind if they are considering engaging the assistance of a communication professional to help them understand and address stakeholder complaints, questions, or concerns.

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When Might PI/CR Efforts Be Needed?

Not all of the cases that environmental attorneys handle require or would benefit from a dialogue with the public. Says Bryan Keyt, a partner with the law firm Bryan Cave LLP, “You have to have a matter that involves the community. Much of what environmental attorneys do doesn’t directly involve community issues. But when it’s appropriate, working with the community can be faster and more cost-effective for the client than attempting to resolve an issue through litigation.”

Based on the attorney interviews that were conducted for this article, the need for PI/CR most often arises in conjunction with:

- submittal of permit applications, renewals, or revisions for waste management facilities, in-

- industrial or agricultural operations, or natural resource extraction, harvesting, or use;
- siting activities involving waste management facilities, industrial or agricultural operations, new developments, or the redevelopment of property;
- cases involving historical contamination that may affect (or is perceived to potentially affect) nearby residents, businesses, property, or natural resources;
- accidental chemical releases that may affect (or are perceived to potentially affect) nearby residents, businesses, property, or natural resources;
- odors, noise, traffic, and other local “nuisance” issues;
- cases involving impending enforcement actions, especially if those actions are prompted by public complaints;

- cases in which litigation on behalf of community residents is likely; and
- other high-profile activities that are likely to attract (or have already attracted) the public’s attention.

Several persons interviewed for this article added that existing poor relations between facilities or developments and their communities can exacerbate otherwise routine activities, such as permit renewals, and lead to community concerns or opposition.

No Single Template for PI/CR

Approximately half the attorneys interviewed for this article initially gained their experience working with the public while they were employed by environmental or other governmental agencies—experiences that provided

Terminology

The term “**public participation**” is often used to refer to activities conducted under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act. The term “**community relations**” is most often used to refer to public involvement activities conducted in regard to contaminated sites under the Comprehensive Environmental Response, Compensation, and Liability Act. Guidance documents for regulations under these statutes also use the term “**public involvement**.”

“**Community outreach**” is another common term used by many businesses, nonprofit organizations, and local government entities for voluntary communication activities. Voluntary outreach activities, which do not have the weight of legal requirements behind them, typically emphasize the dissemination of information more than the active solicitation of feedback or suggestions.

What Is “the Public?”

US EPA uses the term “**the public**” in the broadest sense, meaning the entire population of the United States down to the level of private individuals, and including segments that may have a particular interest in or may be affected by Agency programs and decisions.

The definition in the preceding paragraph was paraphrased from “Definitions of the Most Commonly Used Public Stakeholder Involvement Terms,” which can be found online at <http://www.epa.gov/publicinvolvement/definit.htm>. This document goes on to list examples of stakeholders included in the definition of “the public,” noting that the term includes (among others):

- representatives of consumer, environmental, and other advocacy groups;
- environmental justice groups;
- indigenous peoples;
- minority and ethnic groups;
- business and industrial interests, including small businesses;
- elected and appointed public officials;
- news media;
- trade, industrial, agricultural, and labor organizations;
- public health, scientific, and professional representatives and societies;
- civic and community associations;
- faith-based organizations; and
- research, university, education, and governmental organizations and associations.

them with insights into how agencies view public complaints. The others either worked for law firms where PI/CR activities were standard tools that they used to serve their clients or else they bravely took the PI/CR plunge alone to ward off enforcement actions or litigation against their clients.

Regardless of how the attorneys cut their teeth on PI/CR, all of them agree that there is no single template for effective PI/CR work. “Adequate development and delivery of the right message is key, but how [a communication effort] is handled depends on the client and its capabilities and possible in-house protocols,” explains Harvey Sheldon, a partner with Hinshaw Culbertson LLP. Earlier in his career, Sheldon held various government positions, including chief of the Illinois Attorney General’s Environmental Enforcement Division, regional counsel of US EPA’s Region V office in Chicago, and special counsel to the Illinois Department of Mines & Minerals.

Sheldon, who has spearheaded both PI/CR efforts and crisis communication for numerous clients, continues:

A small company may be overwhelmed by bringing in a bunch of communication consultants and would rather have the attorney counsel them on what to say to the neighbors and the media. In other cases, it makes sense to bring in consultants who specialize in environmental and risk communication and public involvement. But then, big companies may have protocols in which they bring in their corporate public relations staff, and their own people write press releases and coach facility staff or others who will act as spokespersons. Every case has to be handled as the specific situation dictates.

The Complexity of PI/CR

Moreover, since individual attorneys (and individual clients) possess differing thresholds of comfort when it comes to working with stakeholders, significant tensions can arise when deciding which information to release and how input and suggestions should be handled. Adding even more complexity to the mix, some stakeholders are more demanding than others regarding the amount of information and the degree of involvement they want to have in decision making.

The messiness and uncertainty of PI/CR can be intimidating to clients and to attorneys who have little practical experience with it. This is especially true when stakeholders are bellicose or confrontational—even if such bluster is merely a style of communication that doesn’t match their actual feelings.

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Why Engage With the Public?

Regardless of the complexity, a good PI/CR program can be vital to solving problems that might otherwise have deleterious effects on a business or other entity. The following sections cover the primary reasons why engaging in proactive PI/CR is not only important in some cases, but can stave off considerable problems down the road.

Information Is Already Available to the Public (and Rumors Are, Too)

Linda Bochert, a partner in Michael Best & Friedrich LLP’s Land and Resources Practice Group in Madison, Wisconsin, began her legal career working for the Wisconsin Department of Natural Resources (DNR), where she held several

positions, including staff attorney and assistant to the administrator, Division of Enforcement. She also worked with the Wisconsin Department of Justice as unit head of the Environmental Protection Unit before entering private practice in 1991.

Her work with the DNR gave her insights into what type of information is available to the public—insights she conveys to her clients. Bochert says:

Generally, I explain to them that getting a regulatory permit or approval is a public process, and that much of the information they submit will be available [to the

public]. As such, I encourage them to consider presentation, accuracy, and completeness in all of the information they submit. When companies interact with the agencies, almost all of that

information is available to the public.

Other attorneys add that the ready availability of information on the Internet (some of which may be false and misleading or simply open to misinterpretation by frightened laypersons) has strengthened the need to provide accurate, project- or facility-specific information.

Comments Yvonne Hennessey, an attorney with The West Firm PLLC in New York, “You go to a public meeting and someone holds up something they’ve printed out from the Internet about how natural gas drilling caused groundwater contamination, and even if it’s a factual situation that is very different from your client’s situation, it’s still there, and you have to address it.”

Yet another reason for proactive disclosure of good information is to dispel rumors. Nature ab-

hors a vacuum, and where accurate information isn’t available, rumors will inhabit the void. As Harvey Sheldon observes, “These are usually horrific scenarios forming in the public mind that are far worse than the actual situation.”

Taking the Pressure Off Regulators

Former regulator Linda Bochert comments on another point she makes to her clients in favor of proactive public involvement/community relations. She notes that working with the public can take some of the pressure off regulators that could otherwise result in enforcement actions:

“For a minute,” I say, “Let’s look at it from [Wisconsin] DNR’s point of view. What can we do to make their jobs easier?” I encourage clients to think beyond whether someone is for us or against us. From the regulatory point of view, the agency has to deal with all comers—and that includes self-described “interested parties.”

Bochert goes on to note:

Companies often aren’t thinking about the fact that DNR has to serve and listen to everyone. They wonder, “why can’t they see that thus-and-such neighbor is unreasonable?” I try to help them recognize that when these neighbors complain to DNR, DNR will feel obligated to do something. So what can we do to take DNR out of the mix?

She counsels her clients to talk with and be accessible to the neighbors and to try to resolve minor complaints informally:

In some cases, it can be as simple as making contact with the neighbors and letting them know who they can call if they have

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questions or complaints. This allows DNR to step back and say, “this situation is being addressed,” so DNR doesn’t have to play a more active role or take immediate action against the company.

Working With Regulators

Jennifer T. Nijman, a partner with the law firm of Nijman Franzetti LLP in Chicago, has counseled several clients who own properties that are subject to the community relations requirements contained in Illinois’s Right-to-Know Act,² advising them on how to communicate with the public. The Right-to-Know statute, which went into effect in 2006, requires the Illinois Environmental Protection Agency (Illinois EPA) to notify nearby property owners and renters when their properties may be affected by the migration of groundwater or soil contamination from a contaminated site.

While Illinois EPA is responsible under the statute for the community relations work (which also includes creating and distributing fact sheets), parties that are responsible for the contaminated sites may, if they desire, be delegated the authority to do this work under agency oversight.

“There has been a mixed reaction to the Right-to-Know law,” says Nijman of her work with affected clients. “Some [clients] are willing to hold meetings to help nearby residents understand the situation. In other cases, clients have simply hoped any concerns will blow over.”

While Nijman believes that public involvement, including public meetings, can be useful for minimizing the likelihood of toxic torts in Right-to-Know and other cases, she prefers to have agency personnel available at her clients’ public meetings—or even running the meetings themselves—so that they can handle some of the questions that arise. “People raise all sorts of issues in public meetings, and a lot of it isn’t even relevant to the purpose of the meeting.

Crowds can become very hostile if they don’t get answers,” she says.

Nijman raises a legitimate point: Including regulatory personnel in a meeting that a business or local government entity is holding can lend legitimacy to the information that is presented. In addition, regulatory personnel can provide some insight into the agency’s thoughts on the issue, along with discussion of the actions it might take if a problem were to persist. Likewise, when business managers make themselves available to the public, they provide an all-important personal presence and can hear for themselves the concerns that local stakeholders are raising.

Avoiding Enforcement Actions

Bryan Keyt has used PI/CR efforts to help his clients avoid or resolve impending enforcement actions over matters such as nuisance odors. “We have worked with PI/CR specialists in an effort to receive information from the community and respond to their concerns as well as those voiced by regulators, who were receiving complaints from the neighborhood,” he explains.

In one of Keyt’s matters, the PI/CR specialist’s preliminary interviews with the neighbors suggested that there were multiple odor sources in the area, and that many of the odors being blamed on the client’s facility were actually coming from these other sources.

The PI/CR specialist also identified appropriate venues in the neighborhood for the client to perform outreach and, in consultation with Keyt, arranged meetings between the facility’s managers and the neighbors. In addition, Keyt and the PI/CR specialist worked with the client to set up a “neighborhood hotline” that neighbors could

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call when they smelled odors so that facility personnel could determine where the odors might be coming from.

Keyt adds that, to improve communications with regulators, logs of the calls received on the hotline were voluntarily sent to the regulatory agencies and to a local elected official to keep them apprised of odors that the neighbors were reporting and to educate the regulators about the various odor sources associated with the complaints.

Investigations into the odors reported to the hotline helped the neighbors and regulators understand which odors were—and weren't—com-

ing from the facility. This information also helped the client identify the source of its own odors. In this instance, the client was able to target specific emission points. The client subsequently installed odor-abate-

ment equipment that eliminated the majority of odors from the facility.

Even though the effort to abate the odors took several years, Keyt says that the client's work with the community—and its technical work to reduce the odors—helped to address the regulators' concerns and facilitated resolution of enforcement actions. He adds that the initial neighborhood interviews performed by the PI/CR specialist gave both him and the client a thorough understanding of the neighborhood, its residents, and their preferences, attitudes, and concerns.

"We were able to communicate with the right people and we found the right venue to foster communication and open dialogue. In doing so, the client was able to receive input from the community, address their concerns, and resolve disputes with stakeholders," Keyt explains. He continues:

The community relations process allowed us to narrow down the concerns by answering questions such as: How real are the community's concerns? How pervasive are they? Do many people in the community share them, or just a few people? Identifying stakeholders is a major issue. After you do this, a client will hopefully be able to find the most cost-effective way to address stakeholders' concerns. Sometimes this may require implementing changes to facility operations, such as installing odor-abatement equipment or implementing administrative controls. But sometimes issues can be resolved more simply by creating the opportunity for dialogue, sharing information, and making sure that people know who they can call.

Responding to Community Concerns Following a Crisis

Several of the attorneys interviewed for this article have counseled clients on how they should respond to crises such as accidental chemical releases or cases involving product contamination and recalls. Crisis situations typically require communicating with the media in real time, as well as communicating with other stakeholders, including residential and business neighbors and local officials.

Both the public and the media often judge an organization as much by how it responds to a crisis as by the crisis itself. In addition, the concerns of local officials and neighbors often find their way into media coverage about the crisis (or lead to litigation later). So providing relevant information and assistance to neighbors is extremely important.

"In one case involving a chemical release, along with helping our client work with the media, we enlisted the assistance of a local doctor who the client made available to answer people's

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questions or to set up examinations if they thought they'd been exposed," explains Jennifer Nijman. This effort, she says, was appreciated by the community.

"A few people requested exams with the doctor hired by the client, and others requested exams by their own doctors that were paid for by the client. The client offered either option. The exams revealed no exposures, and the public was generally pleased with the client's response," she says, adding, "I do think it's important to offer to pay for a person's own doctor to perform an examination as well as offering the services of a doctor who has been engaged by the client."

Other attorneys also reported setting up dedicated phone lines that community members could call to inquire about an incident. Nijman suggests that, from her experience, unless the person answering the phone is very well trained and can answer questions with authoritative information, clients might be better served by having calls routed to voicemail with directions to leave a message. Client personnel can then return the calls and provide the proper information.

Heading Off Future Complaints

Agricultural and environmental attorney Christian Sande, of Christian Sande LLC, practices primarily in Minnesota. He describes working with a client that owned a hog farm, taking a proactive approach in an effort to avoid future conflicts. The owners of the hog farm were already engaged in an ongoing community relations program with a nearby city. But when they learned that a real estate developer had plans to build a 200-home subdivision not far from their farm, they took additional steps, with Sande's help.

"We appeared at the city council meeting about the subdivision, not to oppose the project, but with suggestions," Sande explains. He continues:

The developer wasn't pleased and objected, but the city council ended up prevailing upon them to include wind shields and berms to mitigate odors and required them to include a brochure with each of the packages that they would give to prospective buyers on what to expect when they moved into an agricultural area, such as farmers harvesting crops into the night. It also included "scratch-and-sniff" patches of what hog manure and other agricultural by-products smell like.

Sande states that these concessions were hammered out in a series of meetings with the city council, many of which lasted into the night. The city wanted to avoid problems with the housing development's future residents. They also wanted to preserve the agricultural nature of the area, which included keeping Sande's client, the hog farm, in operation.

"The developer wasn't pleased, and they objected, but they had to go along if they wanted to move ahead with the development," Sande says. "If the city council had been in the pocket of the developer, we couldn't have done what we did," he adds.

Allowing Public Input Early in the Process

Yvonne Hennessey stresses the importance of getting public input early in the process—a practice that experienced PI/CR specialists recommend and that many of the regulations regarding public involvement/public participation/community relations attempt to promote. "When you start off early in the planning process, you can

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make accommodations. There are certain things you can fix if you catch them early.”

Hennessey gained her experience on the job, working on large-scale projects that tended to require both public involvement and (under New York law) significant research into potential impacts on “community character.” She describes a case she worked on involving the building of a minor league baseball stadium.

While the planning process was still under way, Hennessey and others involved in the project met with the stadium’s neighbors to solicit their views regarding the lighting and sound systems proposed for the stadium, as well as how

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the additional traffic should be addressed. Since this consultation took place early in the process, they were able to make changes, particularly in the proposed lighting setup, which made the project a much better fit for the neighborhood.

Reluctant Clients

Despite the benefits that a dialogue with neighbors can provide, attorneys report that it is not always easy to get clients on board, especially early in the process when such work can often do the most good. “It’s always a battle with clients because they don’t think they have to get out in front,” observes Hennessey.

Clients who hesitate to engage in PI/CR activities early on may find themselves playing “catch up” later—often after incurring expenditures of time and money that could have been avoided with more proactive outreach. Eric Boyd, a partner in the Chicago office of Seyfarth Shaw LLP, recounts a case he worked on for a client whose operation generated a large amount of dust. He explains:

They would receive dust tickets from the municipality, and there were several hearings about the dust issue. The client asked us to vigorously defend its position at each hearing. Some of the complaints were unreasonable. For example, one of the neighbors who complained drove his car onto the facility’s property, and that’s how it got dusty. The dust on another neighbor’s car was a different color than the dust the facility generated.

Boyd adds, “But the operation was unquestionably generating dust, and the client had to deal with that. Eventually, the client addressed the dust issue, but not before it had alienated the neighbors and spent a lot of money.”

Understanding When Proactive Communication May Be Needed: An Example From the Natural Gas Drilling Industry

Yvonne Hennessey describes a case where industry clients did not initially believe that proactive communication would be necessary—but later changed their minds. The situation involved natural gas drilling in the Marcellus shale of southern New York. She explains:

Oil and natural gas drilling has been going on in New York for 150 years, and no one paid much attention to it. But that all changed with efforts to develop this new formation [the Marcellus shale]. In the summer of 2008, it [developing the formation] became highly publicized, with the Sierra Club and the Natural Resources Defense Council and other groups weighing in.

According to Hennessey, there were two reasons why the issue became such a hot topic. “First, the amounts of money that the explora-

tion companies were willing to pay to landowners for the mineral rights skyrocketed," she says. In addition to significant per acre "signing bonuses," landowners would also be getting royalties on natural gas pumped from beneath their land.

"This caused hard feelings among other land owners, who had signed agreements for much lower amounts of money years earlier. It was a competitive issue, and it pitted neighbor against neighbor," Hennessey explains.

At the same time, she adds, the state law governing natural gas drilling activities was being amended in Albany to allow for Marcellus shale drilling, creating a second point of public interest. She notes:

The environmental groups jumped on it. Then the issue burst upon the scene. It shocked the industry. It caught the drilling companies that wanted to do the drilling by surprise. They got behind, and we have had to backtrack and put out information explaining what we are really trying to do.

Not All Kisses and Hugs

PI/CR is not a panacea. It cannot, for example, overcome ongoing poor environmental performance or serious environmental effects. In addition, the process may not make all parties happy, despite any compromises that managers of a facility or project might make. Entrenched community opposition, often based on longstanding conflict, may not be resolvable through the exchange of information or even accommodations on the part of a facility.

Odors are one example of an ongoing problem that can wear on communities. In the case of agricultural facilities in particular, the problem may not be amenable to significant abatement short of shutting down the operation.

Adding to the difficulty of addressing odor issues is their subjective nature. How people experience odors can vary widely, ranging from some who say they don't smell anything or don't mind what they smell to others in whom an odor can cause severe headaches and nausea.

Agriculture and environmental attorney Christian Sande, whose practice includes large farms (some of which can produce substantial odors), has significant experience dealing with the subjectiveness of odors. "People smell with their eyes—that's a saying you hear out here. If people see a farm that looks messy, they are more likely to perceive that it is odorous," he says. He adds that when people don't like a farm, or if a farm wants to expand, people are more likely to voice their displeasure over odors.

Sande further describes the intractable nature of some farming odors by explaining, "In some areas where there are a number of farms in one place, all you can do to provide mitigation is to keep the facilities from expanding and put restrictions on any additional permits."

Sande adds, "You need to understand the level of people's objections. If they are reasonable, you can deal with it. Otherwise, you get people who just want to shut farms down."

Who Should Handle PI/CR Work?

Some attorneys are able to guide their clients through the PI/CR process without enlisting the support of outside professionals. There are cases, however, in which the assistance of PI/CR specialists or other communication professionals can be vital to the success of the effort.

In many situations, attorneys who understand PI/CR and techniques such as risk commu-

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nication can walk their clients through communicating with the public without assistance from outside communication professionals.

In addition, companies that are routinely in the public eye regarding the environmental performance of their facilities (such as public utilities and large manufacturers) often have ongoing PI/CR programs with professional, in-house communication staff. If local issues arise, the in-house staff can often work with local attorneys to design a PI/CR program for a specific community.

Attorneys in Charge: Handling PI/CR Without Outside Help

The sections that follow profile two attorneys who ably engage in PI/CR work on their own.

A Minnesota Farming Background

Christian Sande doesn't believe that engaging a PI/CR specialist would be worthwhile for the farm issues he handles. "Reporters would rather talk to attorneys or owners or experts—not communication people," he explains.

Sande has found that, with his own family background in agriculture, he can handle much of the communication on his own. "In Minnesota, most people are only a couple of generations away from farming, so they are more understanding of agriculture. I can stand in front of an audience and say that I'm from a Minnesota farming family; people here understand that."

Sande understands the importance of gathering information on potential opposition to projects. In the cases he has encountered, he has either been able to do this himself or his clients have performed this function. "I think it's worth gauging what pull the opposition has with decision mak-

ers. If they are well funded and well connected, it may not be worth it to take them on," he says.

Sande also indicates that he prefers to work in communities whose issues and behaviors he understands. From years of experience, he has a good idea of areas of the state where residents and officials are amenable to certain farming practices and specific agricultural interests. "There are some counties where you have people in charge who aren't going to listen to outsiders, and it's a waste of time to try," he explains.

Overall, Sande prefers to concentrate his practice in geographical areas where common experience and culture provide a basis for understanding. He says, "I could see working in western Wisconsin, because I understand their issues. I don't know that the approach I use would translate well into a community in Illinois, though."

Childhood Experience Translates Into an Affinity for PI/CR

Eric Boyd has worked on a number of cases in which he has managed to steer his clients successfully through the public meeting and hearing process without outside assistance. (He has also been involved on two occasions with projects in which public relations practitioners were already engaged by his clients.)

Boyd, who has spent his career in private practice, traces his awareness of the power of corporate openness to his childhood in Cincinnati. Both of his parents worked for a large manufacturer that held tours for the public.

"You had an idea of what they were doing," Boyd says. "There might be some issues, such as protecting trade secrets, that could preclude allowing the public inside parts of a facility, but allowing tours, when possible, or organizing community advisory panels, makes people a lot more comfortable with a company."

Such ongoing activities can pay dividends when interest in a facility is piqued by, for ex-

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ample, permitting activities. “When a public meeting or hearing is being held, it’s nice when there is someone in the audience who can say, ‘I’ve been inside the plant and I know the plant manager, and everything he’s saying is true,’” Boyd notes. He adds, “Managers of facilities that have serious community issues would do well not to stick their heads in the sand.”

Incorporating PI/CR Specialists Into the Team

Other attorneys take a different view of working with outside PI/CR assistance. Says Linda Bochert, “Lawyers can do a lot of things, but it isn’t always cost-effective to have them doing work that could be done by a PR firm.” She adds that the public relations firms that her firm works with possess specific expertise in environmental PI/CR that many general practice PR firms don’t have.

Keeping the Message Consistent

Bochert, along with other attorneys interviewed, stresses the importance of consistency in messaging. She says:

The key, in my view, is to have a working relationship in which the client, the lawyers, and the PR firm check their facts and make sure they are on the same page. This is a matter of good project management. Good communications firms are aware of the importance of correct and consistent terminology. Vocabulary matters a lot in this business.

Finding the Right PI/CR Company

Attorney Yvonne Hennessey has also used outside communications firms to assist with PI/CR work. In an upstate New York case involving efforts to site a cement plant, the firm she worked for at the time engaged a communications company that specialized in siting issues in that part of the state.

In the natural gas drilling case that Hennessey is working on now in the southern tier of New York state, the choice was made to use a New York PR firm that didn’t have a background or track record in the technical or regulatory aspects of drilling issues. There was a good reason for this choice, however.

Hennessey explains that when the drilling became a contentious issue in the summer of 2008, one of the bones of contention had to do with out-of-state energy firms benefiting from the exploitation of natural gas in New York. She says:

Industry could have gone with a firm from Texas or Oklahoma—with people who already knew about natural gas extraction and environmental issues—but there were already sensitivities about money going out of state. You have to understand New York. It’s easier to teach PR people who already know about working with people in New York about technical issues and the oil and gas industry than it is to take people from other parts of the country and teach them about how things work in New York.

Unlike attorneys representing their own clients, PI/CR specialists have the advantage of being seen as neutral third parties—or at least as relatively impartial players whose goal is to facilitate the communication process.

PI/CR Specialists as Neutral Third Parties

Unlike attorneys representing their own clients, PI/CR specialists have the advantage of being seen as neutral third parties—or at least as relatively impartial players whose goal is to facilitate the communication process.

“I don’t think an attorney can be viewed by the community as a neutral party when they are being paid by a company. If an attorney isn’t

working for the neighborhood, [he or she] will not be as forthcoming with information,” says Bryan Keyt, echoing a view that several other attorneys also voiced.

Harvey Sheldon agrees, saying that in some cases, it is important to bring in a third party who can deliver a measure of impartiality. “Sometimes stakeholders may be leery of outside consultants—they view them as ‘hired guns.’ But outsiders can also be useful if they don’t appear to be in the pocket of the client,” he says.

Michele Straube, a mediator/facilitator with CommUnity Resolution, Inc., in Salt Lake City, began her career as an attorney. She now restricts

her practice to mediation and collaborative problem solving. Straube states, “The strength of having a third party is their impartiality. They are there to make sure that all of the voices are heard. That is how you

build trust—by listening to all parties and making sure they’re heard. A lawyer representing a party can’t do that.”

Maintaining Trust

Trust is a fragile thing, however. Tracy Craig, principal with Craig Communications, of Pinole, California, performs PI/CR work and facilitation on environmental, infrastructure, and other community issues. She emphasizes, “If you show up, talk to people, do what you say you can do, and explain what you can’t, you can build credibility. But if you don’t return their calls or answer their questions honestly, they will never trust you.” Like several of the attorneys interviewed for this article, Craig has also worked for a regulatory agency. She was a public participation specialist for the California

Department of Toxic Substances Control before establishing her own firm.

Craig’s success in gaining and keeping the trust of the persons with whom she works—and her reputation for forthright impartiality—is demonstrated by some of the people she uses as references for her work. “There are several people who live in public housing projects that I refer prospective clients to,” she says. “Although they may not always be pleased with the outcomes of the projects we’ve worked on, they always say that I’m honest and do what I say I’m going to do.”

Allowing PI/CR Specialists to Gather Information From Stakeholders (So Lawyers Don’t Have to Do It)

Allowing PI/CR specialists (or other skilled communications professionals) to handle information-gathering activities—such as interviewing neighbors or meeting with small groups—allows attorneys to maintain some distance from stakeholders in the event of litigation.

“Lawyers can be handicapped by doing that kind of work. If there is going to be litigation, and you have been out talking to people in the community, that can create problems,” explains Harvey Sheldon. “If an attorney talks to people, it can turn into a ‘he said/she said’ situation in court. You’ve conceivably turned yourself into a witness and created a conflict in your capacity to continue full representation of your client.”

Bryan Keyt notes:

If you need to get information from the community, *someone* has to communicate with them. A community relations specialist is often a good choice for this role. For this person to be effective, you need to have a community relations person you can trust to talk about scientific issues in common parlance so that community members can discuss their concerns. This

will help the attorney and the client to understand what the concerns really are.

Keyt goes on to explain that, since community outreach efforts are often undertaken to stave off litigation or enforcement actions, the PI/CR specialist's role as a gatherer of information is especially important. "You have legal mechanisms that you can use to get information if you are involved in litigation. But if you are in a pre-litigation or pre-enforcement action phase, those same mechanisms are not available to use to gather information."

He adds, "If you are going to try to resolve issues without litigation or enforcement actions, one way to do this is to find someone who can talk to people in the community and gather information. Then the attorney can look at this information and identify the client's available strategic options."

Helping Clients Understand Stakeholder Concerns

Tracy Craig enlarges upon Keyt's points, emphasizing the importance of helping clients gain insight into stakeholder issues. "Even in 2010, most company people do not want to go out and talk to people in the community. I don't know why. I guess they're afraid they'll be yelled at, or of how people might respond," she says.

Craig often coaches facility personnel on how to talk to neighbors and others in a community. "Once they'd done it a few times, and found that they *can* talk to people, they're converts," she adds.

Craig recounts a story that provides insights into the role that community interviews can play—and underscores what a revelation it can be when corporate clients hear information from community residents. Craig says she once took a public relations manager from a corporate headquarters along with her on meetings she

held with people in a neighborhood that was experiencing a groundwater contamination issue. She says:

He was very corporate, very smooth, very well dressed. Initially, he wasn't interested in talking to the neighbors. He asked, "do we *really* have to go out to meet with people?" But he came along with me to meet with the people in their homes. We visited 25 to 35 homes. Sat in clean living rooms and messy ones, and talked and listened—mostly listened. He was there for every one. At the end of it, he said, "I have never done anything like that."

He was genuinely moved, and he saw how powerful and humbling it was to sit down and talk to people.

Those attorneys who engaged PI/CR specialists reported positive experiences in working with them.

In fact, this experience made such an impact on the PR manager that the company included a section about these neighborhood visits in its next annual report.

Potential Pitfalls of Using an Outside PI/CR Specialist

Those attorneys who engaged PI/CR specialists reported positive experiences in working with them. The few concerns that they expressed were mostly hypothetical in nature but are worth noting. Harvey Sheldon comments:

As an attorney, you have to be careful to keep them [PI/CR specialists] from making promises that can't be kept or giving out information that could be misused, misunderstood, or that turns out to be false. You can also have a problem if communications people think they are doing

the client a favor by unreasonably soft-pedaling the issue or puffing up their client's virtues. If they do that, they can do more damage than good to the credibility of the communication effort.

Sheldon also lists "legalese and highly technical wording" as problems that can plague communication efforts. (For more on this topic, see the sidebar entitled "Avoiding Legalese.")

Linda Bochert states that she hasn't personally encountered any cases where a communication consultant has caused a problem in terms of ethics, such as misrepresenting a client or misleading the public. However, she notes that the public relations companies her law firm works with are very experienced and understand how to work with the public on environmental issues. She reiterates that attention to wording and terminology is important, and that communication consultants need to understand terms and use them consistently.

Yvonne Hennessey also reports no problems using communications specialists. As noted earlier, for the natural gas drilling project on which she is currently working, her firm engaged a

New York public relations company with limited knowledge of extractive industries and environmental issues since using local people who understood the attitudes and behaviors of New Yorkers was considered more important than technical knowledge in this particular case. "That means we spend a lot of time prepping the PR people on technical issues before we let them talk to people in the community," she says.

Bryan Keyt has had good experiences using a PI/CR specialist to work with stakeholders in order to avoid enforcement actions or litigation but says he could see possible pitfalls. "If you are involved in litigation and have a community relations person out in the community, there's the danger that they could share information that they shouldn't share, or send a message that is later misinterpreted by regulators or the community," he says.

Choosing a PI/CR Specialist or Other Communications Professional

Unsurprisingly, the attorneys interviewed for this article indicated that knowledge of the technical and regulatory aspects of environmental issues was desirable—although in Yvonne Hen-

Avoiding Legalese

While the attorneys interviewed for this article are savvy when it comes to working with the public, some attorneys can be decidedly tone-deaf in their communications with facility neighbors.

Tracy Craig, principal of Craig Communications, recounts a situation where sap from a tree on a facility's property fell onto a next-door neighbor's car. The neighbor was very upset and tried to find someone connected to the facility with whom she could lodge a complaint. "But it was a closed facility," Craig explains. "And she couldn't find a phone number answered by a person that she could talk to. So she asked an on-site security guard."

Since Craig had done some outreach work related to environmental conditions and cleanup at the facility, the guard gave the neighbor her number. Craig got a call from the neighbor, calmed her down, and promised the woman that she would alert the company to the problem.

The company decided to make good on Craig's promise by sending the neighbor a check for \$1,500. However, the letter that the company attorney drafted to accompany the check was filled with legalistic wording that tended to undercut the effect of the outreach efforts. Fortunately, the company sent Craig a copy of the proposed letter before sending it to the neighbor.

"The initial letter said, 'Here is a \$1,500 check to have your car cleaned.' But then it went on to say 'we admit no fault or responsibility' and other such language and asked the neighbor to sign something saying that she wouldn't sue them," Craig says.

After Craig pointed out the problems with the lawyer's language, the company quickly rewrote the letter. This time, the company acknowledged the damage to the car—and apologized for it.

Craig stresses that she works with many attorneys who are very sensitive to how statements can sound to laypersons. But she adds that others don't appear to realize how disconcerting "legalese" can be to a facility's neighbor. "They don't think through how people will receive a message like this," she says.

nessey's natural gas drilling case, the industry made a conscious decision to forego specific technical expertise in favor of local knowledge and experience, a factor vital to working successfully in the southern tier of New York.

Most of the attorneys did not differentiate between public relations practitioners and PI/CR specialists. However, their comments indicated that they appreciate the importance of finding professionals who understand community-level dynamics and who can function with sufficient objectivity and impartiality to gain stakeholders' trust.

Harvey Sheldon, a veteran of many public meetings, took the idea of "neighborhood" focus a step further, commenting on how PI/CR people should present themselves in order to be effective. "Slick doesn't do it. People's lives are hectic as it is. The affected people are ordinarily helping Johnny with the homework, trying to make dinner, and now *this problem* comes along?" he says, referring to the types of environmental issues that often form the subject of public meetings. He continues:

But they're concerned enough to attend a meeting, despite everything else going on in their lives, and if they show up, and you've got communications people dressed like Meryl Streep in *The Devil Wears Prada*, they think, "What is this? Madison Avenue? We just want honest information." They probably haven't had a chance to change their clothes, and they don't want to listen to someone who looks like they stepped out of *Vogue*. They want to talk to someone who looks like them, who they perceive as interested in them. Someone who can credibly relate to them.

Learning How to Use PI/CR Effectively

Most law schools do not offer classes on PI/CR techniques or working with the public, so

attorneys often have to learn on the job. This is unfortunate, especially for lawyers who go straight into private practice from law school rather than working at a government agency. Without such experience, they may not recognize situations in which strategically performed PI/CR could head off potential problems and make their clients' lives (and their clients' neighbors' lives) a lot easier.

Michele Straube teaches a course on collaborative problem solving at the University of Utah's S. J. Quinney School of Law. (She also teaches a course on negotiation, mediation, and conflict resolution in the Master's of Public Administration program at the university.) "I proselytize to baby lawyers, teach them that there are many ways to get to a solution that don't involve litigation," she says.

Straube adds that, although many law schools offer courses in Alternative Dispute Resolution, they typically do not cover the collaborative problem-solving and conflict-prevention processes that she practices. In her class, she covers ADR and mediation, but she also incorporates conflict management strategies such as partnering, corporate ombuds programs, and citizen advisory committees.

"I want my students to know that these types of alternatives are out there," Straube says. "I teach them that they have to identify all of the different stakeholders, identify where you would be getting push back. I teach students to have open minds going into a situation and to look for different solutions." She adds, "I'm not teaching them to be mediators—or how to do public involvement themselves—but I want them to know what mediators do and what public involvement can do so they can make recommendations to their clients."

Most law schools do not offer classes on PI/CR techniques or working with the public, so attorneys often have to learn on the job.

Straube says that much of what she teaches is counterintuitive to law students. “An example is the principles of risk communication. Teaching them to communicate proactively early on—that’s not something that attorneys would necessarily think to do,” she says. Another technique she teaches (which is the public involvement practitioner’s stock in trade but can be counterintuitive to lawyers) is “to identify those who have the power to block what you want to do, and engage them in a dialogue.”

Those who aren’t fortunate enough to take Straube’s course can read widely on the topic, and will hopefully run across other attorneys who have experience helping their clients implement PI/CR efforts. But even with training, it can take effort to fine-tune one’s skills in communicating complex technical or risk information.

Experience is the best teacher when learning to look for the subtle (or sometimes not so subtle) signs that can indicate whether a PI/CR or crisis communication effort is on track or is about to jump the rails. Harvey Sheldon observes:

There’s no substitute for experience. You have to see crises come and go. You do your best, and you see mistakes, and then the next time, you do better. You learn how to cut through all of the noise and know what you need to do to communicate promptly and effectively. It takes practice and experience to build a comfort level in working with the public.

Conclusion

Ultimately, attorneys will tend to use those techniques with which they are most comfortable. Clients also possess their own comfort levels with, and preferences for, certain methods of resolving disputes or addressing neighbors’ concerns. The goal of this article was to explore the insights and experiences of attorneys who have successfully used PI/CR to resolve, or at least mitigate, problems their clients might be having with local stakeholders.

As the examples indicate, well-executed PI/CR programs can be effective tools for attorneys to offer their clients. PI/CR can often save money that might otherwise have to be spent pursuing legal action, while also helping clients gain an understanding of and appreciation for the needs, wants, and concerns of their surrounding communities.

PI/CR specialists are fond of saying that “people don’t sue facilities that they have a positive relationship with.” This saying doesn’t always hold true, of course. But it suggests the important role that public involvement and community relations can play in addressing stakeholder concerns and resolving disputes before they turn into costly legal battles. Attorneys who learn how and when to use PI/CR techniques can add a powerful arrow to their quiver of problem-solving tools.

Notes

1. See the RCRA Expanded Public Participation Rule website, <http://www.epa.gov/wastes/hazard/tsd/permit/pubpart.htm>.
2. For additional information on this law, see Forrest, C. J. (2009, Summer). Illinois’s right-to-know law: Notifying residents of off-site contamination. *Environmental Quality Management*, 18(4), 9–27.

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