



**Welcome to the CLU-IN Internet
Seminar**

Negotiations Training for OSCs (Module 4)

Sponsored by: EPA Office of Superfund Remediation and Technology Innovation

Delivered:

October 8, 2010, 1:00 PM - 3:00 PM, EDT (17:00-19:00 GMT)

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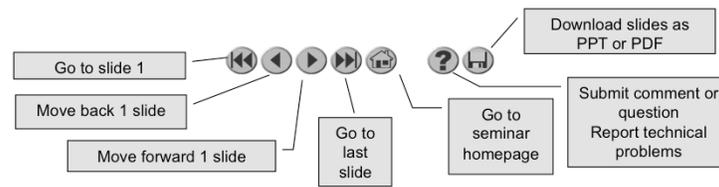
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Visit the Clean Up Information Network online at www.cluin.org

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Housekeeping

- Please mute your phone lines, Do NOT put this call on hold
 - press *6 to mute #6 to unmute your lines at anytime
- Q&A
- Turn off any pop-up blockers
- Move through slides using # links on left or buttons



- This event is being recorded
- Archives accessed for free <http://clu.in.org/live/archive/>

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Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

Please mute your phone lines during the seminar to minimize disruption and background noise. If you do not have a mute button, press *6 to mute #6 to unmute your lines at anytime. Also, please do NOT put this call on hold as this may bring delightful, but unwanted background music over the lines and interrupt the seminar.

You should note that throughout the seminar, we will ask for your feedback. You do not need to wait for Q&A breaks to ask questions or provide comments. To submit comments/questions and report technical problems, please use the ? Icon at the top of your screen. You can move forward/backward in the slides by using the single arrow buttons (left moves back 1 slide, right moves advances 1 slide). The double arrowed buttons will take you to 1st and last slides respectively. You may also advance to any slide using the numbered links that appear on the left side of your screen. The button with a house icon will take you back to main seminar page which displays our agenda, speaker information, links to the slides and additional resources. Lastly, the button with a computer disc can be used to download and save today's presentation materials.

With that, please move to slide 3.

OSC Negotiations Course

Module 4: More Skills & Ask an Expert

Delivered By:
Margaret Ross, EPA CPRC
Deborah Dalton, EPA CPRC
Dan Dozier, Consultant
Terry Brubaker, Consultant

Course Credit and Course Evaluation

- Please sign in
- Your certificate is predicated on attending deliveries of all 4 modules of the course (total of 8 hours).
- After each module, please complete the Clu-In feedback form.
- Attendance for this module will be validated through a roll call, and completion of the feedback form.
- We really value and use these evaluations. We want to provide the best, most relevant trainings, and your feedback is key.

Negotiations Course Learning Objectives

- **At the end of this four module course, you will be able to:**
 - Recognize opportunities to apply interest-based negotiation skills to everyday interactions and relationships.
 - Explain 3 basic components of interest-based negotiation and describe how to apply each concept during the course of a negotiation.
 - Identify 3 basic communication skills that can help in any negotiation and apply each in common negotiation scenarios.
 - Explain 4 types of “people” problems, and match each with appropriate strategies to overcome those problems in a negotiation.
 - Identify when it’s appropriate to involve a facilitator or mediator.

Negotiations Course Outline

- **Module 1:** Introduction to Interest-Based Negotiation
- **Module 2:** Communication Skills for Negotiation
- **Module 3:** Skills for Overcoming Obstacles
- **Module 4:** More Skills + “Ask an Expert”

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Module 4: Skills for Overcoming Obstacles (Cont.) & “Stump the Chump”

4.1 Obstacle #5: Their Power

- How can their power impact a negotiation?
- How do I overcome power plays in negotiation?

4.2 “Stump the Chump” with Dan Dozier

- Discussion of OSC submitted cases

4.3 Third Party Neutrals: Mediators and Facilitators

- When should I get a facilitator or mediator?
- How do I bring in a third party neutral?

4.4 Key Takaways

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Obstacle #5: Their Power

“Use power to bring them to their senses, not to their knees.”
-William Ury, *Getting Past No*

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How can power negatively impact negotiations?

- **Power to Disagree:** In interest-based negotiation, any party has the power to withhold agreement.
- **Power of Politics:** When parties use outside authorities or hierarchies to undermine negotiations.
- **Power to Corner:** When power is used to limit the options of others until they must agree to a particular position.



How do I overcome negative uses of power?

Use your own power.

1. Power to Educate
2. Power of Reality
3. Power of Plan B
4. Power of Choice



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How do I overcome negative uses of power?

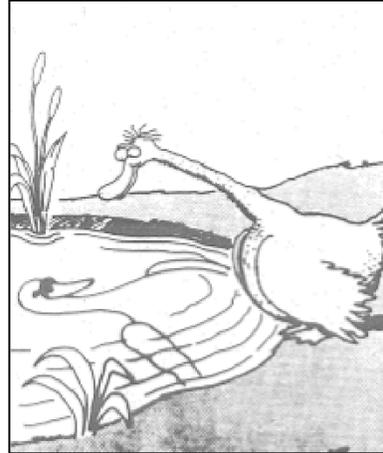
1. Power to Educate

- Remind them that your goal is to meet all interests
- Bring the discussion back to interests; yours and theirs.
- Remind them about progress you've made, and where you've been able to agree.
- Remind them about the consequences of no agreement.

How do I overcome negative uses of power?

2. Power of Reality

- Ask reality testing questions
 - What do you think will happen if we don't come to agreement?
 - What do you think I will do?
 - What will you do?
 - How do you see this working...?



How do I overcome negative uses of power?

3. Power of Plan B

Flashback to Module 1:

- When preparing for a negotiation, consider your alternative strategies.
- Your best alternative to a negotiated agreement is called your BATNA ... your Plan B.
- When you've tried everything else, it's time consider the power of your BATNA.

The slide is titled "Phase 1: Preparations (cont.)" and is part of a presentation. At the top, there are navigation arrows labeled 1.1 Selection, 1.2 Process, 1.3 Tools, and 1.4 Compromise. A small box in the top right corner says "agreement made easier". The main text asks "How do I know whether negotiation is my best strategy?" and includes a quote: "You've gotta know when to hold 'em, know when to fold 'em, know when to walk away, and know when to run." with a small graphic of a hand holding cards. Below this, it says "Ask yourself:" followed by four bullet points: "What can I do to achieve my goals on my own, without them?", "What can I do to them, to pressure them to meet my goals?", "How could a third party help further my interests?", "What are the pros and cons of using an alternative strategy?", and "How would the other side answer these questions?". At the bottom, it states "Negotiation may not always be the right strategy, but consider your alternatives carefully." The footer includes the CPRC logo (Certified Preparation and Resolution Center) and a progress bar with "Preparation", "Negotiation", and "Implementation" stages, with "Negotiation" being the current stage. The slide number "12" is in the bottom right corner.

How do I overcome negative uses of power?

3. Power of Plan B (cont.)

Your BATNA endows you with a few powers:

- The power to warn.
 - A warning is a statement about what will happen, not about what you will do, if negotiations fail.
 - A threat is confrontational, a warning is an objective reminder.
 - "If we don't reach agreement, a warrant will allow me to access your property"

- The power to demonstrate your Plan B.
 - Get the warrant, then ask them to come back to the table.
 - "I have the warrant, but I'd really prefer to see if we can reach an agreement based on interests."

- The power to leave negotiations and use your BATNA.
 - Use the minimum amount of power necessary. Do not seek revenge.
 - Always use legitimate means.

How do I overcome negative uses of power?

3. Power of Plan B (cont.)

- What are some examples of less provocative BATNAs?
 - Use of third parties to stop attacks
 - Building a coalition of allies to support your message
 - Use of third parties to promote/facilitate negotiation

“If one person tells you that you have a tail, you laugh. If three people tell you that you have a tail, you turn around and look.”

How do I overcome negative uses of power?

4. Power of Choice

- If you are in danger of “cornering” others – step back.
 - Help them see that there is still something to be gained by negotiating. Sun Tzu’s “Golden Bridge.”
- Negotiate even when you can win.
 - Demonstrate your willingness to use interest-based negotiation.
 - Allow negotiation on details
 - Ensures cooperation when the other party feels like some part of the solution is theirs

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“Stump the Chump”

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Introduction: Dan Dozier



Dan is an internationally-recognized pioneer in conflict management and collaborative decision-making, nearly 35 years of experience as an attorney, negotiator, and mediator, including 25 years as a mediator and facilitator of complex multi-party environmental and public policy, employment, contract and commercial disputes.

Case 1: Recalcitrant RP won't clean up

1. Who was involved?

- OSC,
- EPA management,
- RP - very manipulative and controlling

2. What was the situation?

- Clean up of a partially demolished lumber drying kiln with commingled asbestos debris.
- Low income houses with children 50' away with limited site control.
- Time Critical Removal action, at the "we should have had this cleaned up three months ago" stage.

3. What was the problem?

- RP would commit to do the clean up and then fail to meet any deadlines, then recommit and fail again.
- Management kept giving him extra chances
- RP apparently unconcerned with risks or exposure to neighbors.

Case 1 (cont.)



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Case 1 (cont.)

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Case 2: State PM dissatisfied with removal action

1. Who was involved? OSC, State PM

2. What was the situation?

- Removal Action at a Superfund site, State wanted to do additional work beyond the scope of EPA.
- Removal action contract was written by the OSC and signed by all parties prior to Action.
- The Action included EPA portion of work, the State would begin their portion (including costs) afterwards, because of their delay in signing the Contract.



3. What was the problem?

- The State PM did not agree with the cost or the strategy, even though the Action had already been initiated, the Contract signed.
- State PM was upset that he couldn't be left alone at the site without an OSC present, and because he could not direct the operation.
- PM lost it with OSC one day stating, "This process isn't going to work. It's bogus. The operation is a sham. The contractor is terrible and will never do work for this state directly. This action is costing way too much and no one in the state understands why it costs so much for disposal of hazardous waste."

Case 3: “How can we help?” Confusion with USCG

1. Who was involved?

- EPA, County, State, Coast Guard

2. What was the situation?

- Oily release from a broken pipe onto a beach.
- EPA asked by the county and state to help.
- Called the Coast Guard to determine if they thought it was their jurisdiction/ response.



3. What was the problem?

- USCG accepted jurisdiction.
- OSC asked what assistance they wanted from EPA (already in the middle of placing booms and needed to know whether to continue or stop or do something different).
- Petty Officer kept repeating what USCG planned to do (contact the RP and direct them to clean it up)
- OSC asked what they wanted EPA to do about the work already started.
- He kept saying they couldn't order EPA to do anything, OSC kept trying to reiterate the offer of assistance if they wanted it.

Case 4: Brownfield work railroaded by the railroad

1. Who was involved?

- OSC (Liaison between Removal and Brownfields Programs)
- Brownfields Applicant
- Railroad

2. What was the situation?

- Brownfields applicant wants to purchase inactive railroad line and convert to "rails-to-trails" bike trail.
- EPA and its contractor would perform a Phase II environmental assessment along the railroad line prior to purchase
 - to assist applicant with due diligence requirements
 - to know environmental liabilities involved
- EPA and its contractor require access agreement from the railroad to perform Phase II sampling.



3. What was the problem?

- The RR provided access agreement that contravenes EPA policies and laws, and places liability for "releases" of hazardous substances on the recipient of the access agreement.
- Railroads have little incentive to cooperate because it doesn't benefit them if the Phase II identifies new contamination
- Brownfields is a cooperative program. It is totally at the Railroad's discretion whether they want to cooperate or not. Use of Superfund access authorities (threatening to perform PA/SI assessments) could poison the waters for future projects.

Case 5: Stalemate with Tribe on acceptable remedies

1. Who was involved?

- EPA OSC,
- Shoshone-Bannock Tribes and
- FMC Corp. (RP)

2. What was the situation?

- Elemental phosphorus waste in RCRA-closed impoundments managed by RP generating phosphine gas.
- Site is on Tribal reservation fee land.
- Tribes insist on waste removal as only acceptable remedy.
- FMC says waste removal could cost \$1 billion, and could not be done safely anyway.



3. What was the problem?

- Tribes don't trust FMC.
- FMC downplays risk and is not very forthcoming with information.
- From the Tribes' perspective, any remedy that is not removal of the waste (such as gas extraction and treatment) is a band-aid that only prolongs decision on what really needs to be done, and they don't support it.

Case 6: Community insists on local jobs with contractors

1. Who was involved?

- EPA, the city, out-of-town contractors, local activist, and local residents.

2. What was the situation?

- EPA continuously received complaints about large amounts of government dollars being spent on projects in a certain community.
- Community has a very low employment rate.
- Many individuals in the community are trained in the work being done.

3. What was the problem?

- Activists want to know why EPA isn't requiring the contractors to hire locally.
- EPA's position: We recommend/persuade local hiring, but cannot control contractor hiring processes.
- Large amounts of funds are expended and work is done in an EJ community, while trained, local, unemployed residents are not able to capitalize on the benefits.



Case 7: One person is taking all my time!

1. Who was involved?

- EPA
- ERRS Contractor
- Home Owner

2. What was the situation?

- Removal Action - Residential Clean Up of 50+ homes in an EJ community
- Contaminants of concern were lead and PCB's
- All conflicts evolved in the restoration phase.



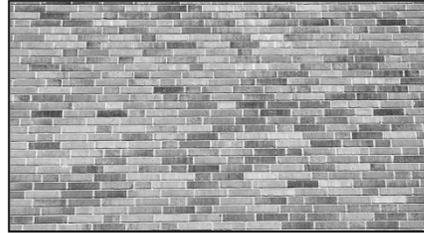
3. What was the problem?

- One resident insisted that he receive a new shed when there was no clean up action level basis for him to receive a new shed.
- He constantly pestered workers with phone calls and came onsite, called.
- Even tried to knock the shed down himself and blame it on EPA.
- It got to the point where the OSC could not get attend to other site duties completed.

Case 8: A low ball stonewall

1. Who was involved?

- PRPs (who are themselves attorneys)
- PRP's consultants
- ERRD Branch Chief
- ERRD Section Chief
- ORC Branch Chief
- ORC Section Chief
- Site Attorney
- DOJ Section Chief



2. What was the situation?

- Initial meeting to negotiate a settlement for penalties and past costs (oversight costs) regarding a PRP cleanup of a Superfund Site.

3. What was the problem?

- Many senior managers without enough preparation to establish a cohesive strategy.
- The DOJ attorney (Section Chief) was introduced late in the process without familiarity with facts.
- PRPs came in with a low ball offer and were prepared to walk away without a settlement with no concern about going to court. Threatened to keep issues tied up in courts.
- Would not raise their offer a dollar. Negotiation ended without resolution.

Case 9: PRPs play politics

1. Who was involved?

- The Mayor (City is PRP)
- The Property owner (PRP and friend of the Mayor)
- The Senators and Congresswoman
- The case team (case attorney, Enforcement coordinator, OSC, section chief, congressional liaison)
- DEP, DPH

2. What was the situation?

- Property owner wants to continue to allow tenants to use contaminated storage yard
- Property owner accused EPA of forcing businesses to close and causing unemployment
- Mayor supports the property owner

3. What was the problem?

- Despite the contamination and the warnings from EPA and DEP, the property owner continued to allow usage of the contaminated areas by tenants
- When EPA tried to enforce, the property owner went to Mayor who in turn went to Senators & Congresswoman to complain
- Property owner fabricated allegations and made personal attacks against the OSC

Case 10: The Chicken Lady (Part A)

1. Who was involved?

- OSC
- Branch Chief
- Division Director
- Property Owner



2. What was the situation?

- Removal Action – the same back yards of a number of homes in Los Angeles located in close proximity to the Montrose Chemical Corporation - the largest producer of DDT in the world.
- EPA and START were hand augering in the backyards of homes.

3. What was the problem?

- One skeptical resident, (AKA the chicken lady), video taped everything the team did.
- Hand auger was pulled out of the ground clearly showing large white chunks of something. The chicken lady screamed DDT!
- OSC patiently explained that there could not possibly be softball to bowling ball sized chunks of pure DDT in her backyard
- Analytical results of course confirmed that she had large chunks of pure DDT present in her backyard.

Case 10: The Chicken Lady (Part B)

1. Who was involved?

- OSC
- Branch Chief
- Division Director
- Property Owner
- Press

2. What was the situation?

- Removal assessment demonstrated that when the neighborhood was built, contaminated land fill from Montrose was used.
- First day of removal action...



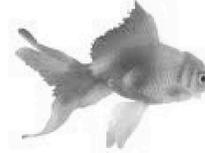
3. What was the problem?

- The chicken lady showed up at OSC trailer with a large hefty bag filled with dead chickens and informed me that she would like to have EPA autopsy the chickens.
- OSC explained that EPA would do no such thing, and gave her a long list of reasons why it was not appropriate to do so.
- She left and fifteen minutes later OSC got a phone call from his Division Director telling him to have the chickens autopsied.

Case 10: The Chicken Lady (Part C)

1. Who was involved?

- OSC
- Branch Chief
- Division Director
- Property Owner
- Press



2. What was the situation?

- Removal assessment demonstrated that when the neighborhood was built, contaminated land fill from Montrose was used.
- Ensuing weeks of removal action...

3. What was the problem?

- The chicken lady returned with another hefty bag (this time the OSC had the START contractors look inside the bag) – containing a dead cat and informed me she would like to have EPA autopsy the cat.
- OSC explained that EPA would do no such thing, and gave her a long list of reasons why it was not appropriate to do so.
- She left and fifteen minutes later OSC got a phone call from his Division Director telling him to have the chickens autopsied.
- The chicken lady returns again. This time she wanted me to autopsy her goldfish. This time the Division Director backed the OSC.

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Third Party Neutrals: Mediation and Facilitation

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Don't wait ...

til it's too late...

to mediate!



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When do I bring in a third party neutral?

When to consider a mediator:

- You have too many roles in the situation
- Parties are unlikely to be candid with you
- Difficult people/adversarial relationships
- You don't have enough time to manage all the pieces
- You don't have all the skills necessary
- It's just not your "thing"
- Low trust situations



When do I bring in a third party neutral?

A mediator can help you:

- Figure out what isn't working or why
- Take care of procedural matters so you can focus on substantive issues
- Overcome impasse
- Address and improve low trust situations
- Help people work together efficiently, effectively and cooperatively

How do I bring in a third party neutral?



Specialists with ADR & collaboration experience and training in HQ and every EPA Regional Office can help you:

- Assess your needs
- Design your collaborative project
- Find a facilitator/mediator
- Help with contract access
- Provide training
- Help find funding for neutrals

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INSTRUCTOR INFORMATION

Lesson: Interest Based Negotiation

Topic: Help is Available

Method: Lecture

DELIVERY

In addition to CPRC in DC, EPA has a network of ADR Specialists who have experience and training in dispute resolution and negotiations who are located in your regional offices and who can help you out.

The names and contact information for these regional ADR specialists are listed on the back of the handout entitled Help Managing People Problems (instructor hold that handout up)

How to I bring in a third party neutral?

The Conflict Prevention and Resolution Center (CPRC) can:

- Quickly find and retain **facilitators and mediators**
- Help you **engage stakeholders or the public** productively
- **Assess obstacles to agreement** and design a process to cement lasting decisions
- Provide **training and coaching** in facilitation, mediation, managing public involvement, and conflict prevention
- Help **find the funds** to retain expert facilitators and mediators

Contact us at:
202-564-2922 • adr@epa.gov • www.epa.gov/adr

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Wrap Up

Key Takeaways

- Negotiation is a process for working things out and keeping things moving along at your sites
- Understanding interests – your own and those of your stakeholders – will make negotiation more successful and less painful
- Listening and questioning are skills to help you uncover interests and focus negotiation for success
- Consider using a neutral facilitator



Useful References

- Getting to Yes. 1991, Fisher, Ury & Patton, Penguin.
- Getting Past No. 1993, Ury, Bantam.
- Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement Seeking Processes. 2007, ACR (www.acrnet.org)
- “Building Trust – 20 Things you can do...” Adler & Birkhoff, www.policyconsensus.org/publications
- “Managing Scientific & Technical Information in Environmental Cases” Adler et al. www.policyconsensus.org/publications



Resources & Feedback

- To view a complete list of resources for this seminar, please visit the **Additional Resources**
- Please complete the **Feedback Form** to help ensure events like this are offered in the future

U.S. EPA Technical Support Project Engineering Forum
Green Remediation: Opening the Door to Field Use Session C (Green Remediation Tools and Examples)
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