Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

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Table of Contents

Part 4: Federal Environmental Laws

Part 5: Reference

Part 6: Community Workbook: Using Environmental Laws and Alternative Dispute Resolution Techniques to Address Environmental Justice

Preface

This toolkit, a companion volume to *A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice,* is a collection of fact sheets and other tools intended to help communities pursue environmental justice through methods of alternative dispute resolution (ADR). These materials were originally used in a series of workshops for community representatives that the Environmental Law Institute (ELI) conducted in partnership with the U.S. EPA Office of Environmental Justice. These workshops took place across the country from 2004 to 2009, as follows:

Albuquerque, NM (EPA Region 6)	September 2004
Newark, NJ (EPA Region 2)	September 2005
Denver, CO (EPA Region 8)	March-April 2006
Chicago, IL (EPA Region 5)	September 2006
Philadelphia, PA (EPA Region 3)	March 2007
Boston, MA (EPA Region 1)	October 2007
San Juan, PR (EPA Region 2)	May 2008
Kansas City, MO (EPA Region 7)	October 2008
Seattle, WA (EPA Region 10)	April 2009

The workshops provided training in the use of environmental laws and alternative dispute resolution techniques as a way to "get a seat at the table" and address environmental problems. This handbook pulls together the information and materials presented to provide a practical blueprint for the workshop participants to follow in their future community activities and to disseminate the lessons learned from the workshops to a wider audience.

Part 1: Responding to Environmental Impacts on Communities

- Using Environmental Laws and ADR to Achieve Environmental Justice in Your Community
- Assessment of Risks
- Cumulative Risks and Impacts: From Challenge to Opportunity
- Community-Based Participatory Research: A Tool for Achieving Environmental Justice
- Alternative Dispute Resolution

USING ENVIRONMENTAL LAWS AND ADR TO ACHIEVE ENVIRONMENTAL JUSTICE IN YOUR COMMUNITY
EJ Hooks Fact Sheet

STEP ONE: Develop a summary of the environmental justice problem you want to address

- What people are affected (e.g. neighborhoods, workers)?
- What are the demographics (e.g. race, ethnicity, income status, age)?
- What environmental media are affected (e.g. land, water, air)?
- What is the route of exposure (e.g. drinking water, recreation)?
- How are people affected (e.g. illness, jobs)?

STEP TWO: Form a Community-Based Participatory Research and Action (CBPRA) Steering Committee

- **Task One:** Hold community focus groups or other similar activity on the problem
- **Task Two:** Identify potential representatives for the Steering Committee (note: at least 51% should be community representatives)
- **Task Three**: Identify and invite potential collaborative partners with demonstrated concern about your problem. Select as needed and as appropriate to your circumstances from the following:
    1. Multi-disciplinary academics
    2. Multi-agency/governmental/non-governmental (e.g. representatives of health departments and/or clinics, local government, state regulatory agency, U.S. EPA, multi-business)
- **Task Four**: Conduct CBPRA Training for Steering Committee
- **Task Five**: Develop principles for collaboration

STEP THREE: Building Your Case

- **Task One**: Conduct research on community knowledge (anecdotal data) including residents and workers.
- **Task Two:** Conduct research on existing regulatory and technical data and identify data gaps
    1. Pollution Permits, Emissions and Compliance (local, state and federal)
        - Air, water, and soil
    2. Environmental Pollution
        - TRI, EPCRA
    3. Chemical Accidents
        - EPCRA
    4. Worker Issues/Worker Information
        - Recorded injuries, lost-time accidents and other injury categories for permanent and temporary employees; OSHA safety compliance inspection records; regulatory citations, notices, penalties.
        - Worker interviews on facility practices for both current and former workers (confidentiality may be needed)
    5. Environmental Assessments and Investigations
        - State Regulatory Agency
        - EPA
        - Property or ownership transactions

- **Task Three:** Conduct dialogue session(s) with the Steering Committee and other community members
    1. List and discuss all problems
    2. Discuss feasibility of any proposed actions
- **Task Four:** Conduct research on health concerns
    1. Develop health fact sheets for each on-site chemical's potential adverse health impacts (e.g., low-level exposure, high-level exposure)
    2. Research available health data on impacted community (e.g. ADD/ADHD and special education data; respiratory health data; cancer data; other available health data; community perceptions about health)
    3. Identify data gaps
    4. Identify cumulative risk and impacts and community vulnerability: *health of impacted community; income; access to health care; marginalization; duration of exposure, considering all media and exposure routes; environmentally related diseases; reproductive and developmental concerns*
- **Task Five:** Perform data analysis
    1. Develop an analytical report of all data, e.g., environmental, health, socio-economic, cumulative risks assessment
    2. Show data on blown-up maps and on GIS
- **Task Six:** Hold full-day Steering Committee meeting to review data and decide next steps
    1. What are the biggest concerns?
    2. What remedies does the community want?
    3. What responses will be most effective?

STEP FOUR: Develop a plan of action

- Identify points of leverage (legal and political)
- Identify additional collaborative partners (traditional and untraditional)
- Identity all strategies that may be effective
- Rank effective strategies
- Determine course of action

STEP FIVE: Getting Community Buy-In

- Present all data collected to impacted community (maps will provide powerful visual)
- Present concerns by priority and proposed remedies
- Provide opportunity for community input and buy-in
- Conduct other activities to inform larger community

STEP SIX: Getting to the Table

- Present data to industry of concerns and propose remedies
- Point out potential for mutual gains
- Propose ADR
- Ensure that community has capacity to participate in ADR

Assessment of Risks

Introduction

People want to know about the health risks on contaminated land in their community. A tool that is used to make decisions about how to address contamination is "risk assessment." It is important for community residents to know about risk assessment because the more informed they are about the facts and process, the more they can help influence government to make the proper decisions about cleaning up contaminated land.

Using Laws to Promote Environmental Justice

Risks from exposure to contaminated land depend on the chemicals that are present at the site, the ways people are exposed to the chemicals, and who those people are. Risk assessment for human health is used to address four main questions:

- What contaminants exist at the site?
- How are people exposed to contaminants?
- How dangerous could contaminants be to human health?
- What contaminant concentrations are safe?
- Are children, elderly or other vulnerable populations exposed?

Risk assessment is not an exact science. It is a method that uses the best information available about the site and the manner in which people are exposed to the site—the better the information, the better the decision. Community residents are an important source of information that can be used to improve the risk assessment process.

Steps of Risk Assessment:

To protect everyone who could come in contact with pollutants from a contaminated site, government uses risk assessment to study the potential impacts of the site on human health and environment. Risk assessment involves a four-part process.

Please see the following page for summaries of these four steps in risk assessment.

Step 1: Data Collection and Evaluation

Samples of the soil, water, air, fish, garden vegetables, and other things are collected. From these samples, the type and amount of chemicals are determined. This process creates understanding of what has happened at and around the site and where chemicals may have been left.

Step 2: Exposure Assessment

Data collected in Step 1 are used to find out how much of each chemical people may be exposed to. The amount of exposure depends on many factors, including:

- How much of each chemical is on the site;
- How many people are exposed to or come in contact with it (exposure pathways);
- Which people are exposed to it; and
- How a contaminant acts on receptors (e.g., people).

Step 3: Toxicity Assessment

Toxicity assessment is a tool to learn the potential for a contaminant to cause harm and how much of it causes what kind of harm. It asks: "What does the chemical do to people? How much is harmful?" This step helps with understanding the impact of the contaminated site on humans.

Step 4: Risk Characterization

This step tells us which chemicals pose the risk and what the risks are. It addresses the level of confidence in the results and can provide safeguards to address unknown factors.

Community Residents and Risk Assessment

Community residents can play an important part in the assessment of risk from a contaminated site. Information from residents can help answer:

- Where are chemicals located on the site?
- How did the chemicals get there?
- What is the history of the site?
- What do people do on or near the site?
- Who is exposed to the site?
- How are people exposed to the site?
- Are vulnerable populations exposed to it?

Cumulative Risks and Impacts: From Challenge to Opportunity

Introduction

The real life context of communities confronting environmental justice issues: this must be the focus of policies and practices that are intended to respond to the needs of people who are overburdened with pollution and disease. An important step in assuring this focus is the concept of "cumulative risk assessment and impact." This fact sheet will explain this concept and how it relates to the achievement of environmental justice for all communities.

History

The concept of cumulative risk assessment and impact can be viewed as part of the evolutionary process of understanding and regulating exposure to environmental agents. In the 1970s, as the *modern* version of environmental laws were being adopted, such as the Clean Air Act, efforts to control pollution generally used technology-based regulations or an individual chemical-by-chemical approach. Decisions were made using *risk assessment* tools. Risk assessment is a process that characterizes the relationship between environmental exposures and effects observed in exposed individuals. It traditionally involves 4 steps:

1. Hazard identification
2. Dose-response assessment
3. Exposure assessment
4. Risk characterization

While improving many aspects of environmental and health degradation from pollution, gaps in this approach became known over time. Knowledge was expanded through the development of databases on releases of pollutants. Understanding of the mechanisms of interactions between pollution and disease was improved through toxicological and epidemiologic research. Recognition of the need to account for sensitive sub-populations was increased by health professionals. Thus, over time, the concept of cumulative risk assessment was developed. In 2003, EPA published its *Framework for Cumulative Risk Assessment*, as one of its first steps in developing guidelines for responding to the *real life context of communities confront-*

History, cont'd.

ing environmental justice issues. And in 2004, the National Environmental Justice Advisory Council to the US EPA prepared its report *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*. This report provided recommendations for implementing cumulative risk assessment in order to ensure environmental justice for all communities and tribes.

What is Cumulative Risk and Impact?

To understand the meaning of cumulative risk, it is useful to consider the conventional scientific definition and also to consider the concept from an environmental justice perspective.

The conventional definition of cumulative risk is:

> the risk of a common toxic effect associated with concurrent exposure by all relevant pathways and routes of exposure to a group of chemicals that share a common mechanism of toxicity

As background, "route of exposure" is the way a chemical enters an organism after contact. This can include ingestion (i.e. eating); inhalation (i.e. breathing), or dermal absorption (i.e. touching).

From an environmental justice perspective, cumulative risks and impacts describe the "complex web of combined exposures" that is experienced by disadvantaged, underserved, and environmentally overburdened communities. The concept recognizes the collection of individual stressors that occur simultaneously and multiply over time. These stressors include chemicals and environmental toxins, but also consider other biological, physical, social and cultural factors that affect human health. The concept takes into account the multiple and interconnected factors that influence both individual and community health. These factors include:

- demographics (racial/ethnic status)
- pollution sources (factories, pesticides)
- existing health problems and conditions (e.g., asthma, skin rashes, lack of access to health care)
- unique exposure pathways (e.g. private wells/untreated drinking water)
- social/cultural conditions (e.g., subsistence fishers, hunters)
- community capacity & infrastructure/social capital (e.g., improper drainage, wastewater treatment, education)

To ensure the goal of environmental justice for all communities, EPA's Cumulative Risk Assessment Framework includes the following features:

- Takes a broad view of risk
- Utilizes a population-based and place-based analysis
- Involves multiple stressors (chemical and non-chemical)
- Promotes a comprehensive and integrated assessment of risk
- Posits an expanded definition of vulnerability to include biological and social factors
- Places a premium on community involvement and partnerships
- Emphasizes the importance of planning, scoping, and problem-formulation
- Links risk assessment to risk management within the context of community health goals

Cumulative Risk and Impact, cont'd.

For the above reasons, the emerging field of cumulative risk and impact assessment is particularly suited to properly assessing and mitigating the environmental and public health issues of communities that are: (1) vulnerable, (2) exposed to multiple hazards, and (3) lacking the capacity to adequately participate in the decision-making process.

Ultimately, the concept provides the foundation for understanding the susceptibility of certain communities to environmental toxins because of greater exposure to pollution and a compromised ability to cope with or recover from such exposures.

Environmental Law Opportunities for Assessing Cumulative Risk

There are statutory authorities found in federal environmental laws administered by the US EPA that support use of cumulative risk assessment in government decision-making. Even though the environmental laws do not contain specific language requiring consideration of cumulative risk, they provide the Agency with considerable discretion to address this environmental justice concern. This capacity is based on EPA's general discretionary authority to interpret and implement the statutes that contain broad admonitions to "protect human health and the environment." EPA's authority to consider cumulative risk is described below by agency function.

Standard-Setting

Environmental laws give EPA broad rulemaking powers to make standards and regulations to implement those laws. There are four general types of standards that have varying capacity to address cumulative risks and impacts. These are: 1) technology-based standards; 2) design and practice standards; 3) harm-based standards; and 4) standards for regulating substances.

Technology-based standards and design and practice standards pose the greatest challenge in securing consideration of cumulative risk. These types of standards focus on control measures that are available or achievable to control pollution, or to a specific method of managing waste. The standards are premised on eliminating exposure to toxics to the extent feasible or practicable, considering costs and limits of technology. Yet opportunities do exist to emphasize cumulative risks and impacts. For example:

Clean Water Act: When listing pollutants and setting effluent guideline limitations, EPA has the authority to take cumulative and synergistic effects into consideration. Thus, cost considerations can be overridden to secure adequate health protection.

Clean Air Act: Under the act's toxics program, EPA can make discretionary judgments to incorporate cumulative risk and impact information. In the case of uniform design requirements, such as installation of a double liner, EPA can use its discretion in evaluating the totality of permitting conditions at an entire facility to increase protection when necessitated by cumulative risks and impacts.

Permitting

There are two general opportunities to use permitting to address environmental justice: 1) the siting of new facilities, where EPA's role is somewhat limited; 2) the placement of conditions on a permit for operating a facility.

Facility siting decisions are primarily local, land-use planning or zoning issues and EPA's role in permitting is limited. Yet, there are specific areas where EPA does have authority to address siting. For example, under Section 404 of the Clean Water Act, regarding wetlands and coastal zones, EPA has significant ability to consider and address disproportionate impacts and cumulative risks.

Operating permits provide much greater opportunity for EPA to address cumulative risks and impacts. EPA's grant of authority to operate a facility can include measures that are necessary or appropriate to protect human health and the environment. These provisions are found in RCRA, CAA (Title V operating permits) and the CWA (Section 402(a)(1)), among others.

Specific Strategies to Incorporate Cumulative Risk into Dialogues with both Government and the Private Sector

1) Determine the extent to which regulatory decisions do not consider cumulative risks, and leverage this gap to invoke additional action
2) Request action to clarify the nature of cumulative risk faced by a community. There are primary and special methods to clarify the nature of cumulative risk.

Primary methods:

- questionnaires, interviews and panels to gather information about cumulative effects analysis
- modeling to quantify the cause-effect relationships leading to cumulative risks
- trends analysis to assess the status of resources, ecosystems, and human communities over time and identify cumulative effects problems
- overlay mapping and GIS to incorporate locational analysis and help set boundaries of the analysis and identify areas where effects will be greatest
- matrices to determine the cumulative effects on resources, ecosystems, and human communities by combining individual effects from different actions

Special methods:

- carrying capacity analysis
- ecosystem analysis
- economic impact analysis
- social impact analysis

3) Request that a clear operational framework be established that can provide a sound baseline of information about multiple stressors in a community, and that responds to these stressors.
4) Request that EPA use its discretionary authority to produce tangible and sustainable benefits for communities and tribes suffering environmental injustices.

Enforcement

EPA has the obligation to assure compliance with environmental laws and regulations. It can use a variety of tools to achieve compliance, including: issuing an administrative order, seeking an administrative fine, revoking or withholding a permit, bringing a court action, or pursuing criminal charges. When selecting a particular tool, EPA has discretion to consider a variety of factors, including the impact on public health. This can include cumulative risks and impacts.

An important authority found in several environmental statutes (e.g. RCRA, CWA, CAA) is the "imminent and substantial endangerment" provision that authorizes prompt action to abate and prevent serious harm. Cumulative risks and impacts can help meet the burden of showing substantial endangerment. For example, under Section 504 of the CWA, EPA can consider combined effects.

EPA can also consider cumulative risk in its determination of penalties. Since many enforcement actions are resolved through settlement, there are opportunities for crafting creative remedies. Supplemental environmental projects are also a vehicle for addressing cumulative risks and impacts.

Other Functional Activities

There are a variety of additional opportunities to address cumulative risks and impacts through EPA's functional activities. EPA's authority to gather information can stimulate consideration of cumulative risks and impacts. This can be through research, monitoring and reporting activities. The award of financial assistance by EPA, in the form of grants, contracts and assistance agreements, provides another venue to promote consideration of cumulative risks and impacts. Finally, public participation opportunities authorized by federal environmental laws provide the venue to raise awareness of cumulative risks and impacts.

How Cumulative Risk/Impact Can Be Used to Achieve Environmental Justice

The concept of cumulative risk clarifies the core challenges faced by environmentally overburdened communities. It captures the real-life, real-time experiences of communities living with multiple exposures to environmental toxins. The conventional regulatory approach for siting and operating various types of facilities or activities is predicated primarily on a risk-based paradigm from a single source or a single pollutant. Zoning for mixed-use areas also contributes to multiple exposures. This approach results in the aggregation of sources (clusters) that are within the risk threshold for individual facilities, but cumulatively produce a higher exposure burden to people living in surrounding areas. Cumulative risk can respond to the assumption used in scientific and government decision-making that people are only exposed to one environmental toxin at a time. Cumulative risk can also serve as an important link to a collaborative problem-solving approach. EPA's Framework for Cumulative Risk Assessment expands the scope of risk assessment to include the factors that are key to understanding full community risk. This approach fosters a dialogue between community residents, government, and the private sector that can lead to action that responds to cumulative risks and impacts.

Using Cumulative Risk/Impact to Achieve Environmental Justice, cont'd.

Cumulative risk can serve as a useful tool to help environmentally overburdened and health-compromised communities achieve environmental justice. In order to be an effective tool, it must be applied in the context of a "bias for action," and not used to delay implementation of measures that provide relief to communities overburdened with pollution. The benefits can accrue to both the outcome and the process. Beneficial outcomes include mechanisms to address multiple stressors; increased attention to the vulnerabilities in communities; and significant reduction in overall risk from exposure to environmental toxins.

The process of achieving environmental justice is also improved when cumulative risks are recognized. It provides the context for using efficient screening, targeting, and prioritization methods and tools to better understand the human health impact of exposure to environmental toxins. It provides the venue for creating a transparent process that instills confidence, trust, and other features of social capital. It provides the opportunity for regulatory authorities to garner the attention of recalcitrant parties and commence a dialogue about measures to address impact.

Conclusion

Cumulative risks and impacts are challenges borne by people overburdened with pollution and disease. They extend to environmental, health, economic, social and cultural issues. Understanding and recognition of these cumulative risks and impacts can produce opportunities for community residents, government and the private sector to develop and implement measures that will ultimately lead to environmental justice for all communities.

Community-Based Participatory Research: A Tool for Achieving Environmental Justice

Introduction

Community-based participatory research (CBPR) is a collaborative process of research involving researchers and community representatives. At its core, CBPR is a systematic way of involving the community in finding answers to questions or solutions to problems. It is an important tool for achieving environmental justice because it:

- Engages community members.
- Employs local knowledge in the understanding of health problems and the design of interventions.
- Invests community members in the processes and products of research.
- Involves community members in the dissemination and use of research findings.

History of CBPR

Ultimately, CBPR enables community members to play a key role in reducing health disparities and achieving environmental justice.

Traditionally, community residents have been included in the research process only as subjects. The researcher uses the subject to investigate hypotheses or questions, and decides how that information is to be gathered. The researcher also determines the research priorities, methods, and utilization of the results. This conventional approach has a contentious history, and has led to a spectrum of problems. It has hindered the ability to acquire information necessary to answer questions about environmental exposures and disease disparities. And it offers limited opportunities to improve the health and well-being of communities that bear the dual burden of pollution and disease.

NIEHS CBPR Program

The National Institute of Environmental Health Sciences (NIEHS) seeks to reduce the burden of environmentally associated diseases and health conditions. It developed a CBPR program to implement culturally relevant prevention/intervention activities in economically disadvantaged and/or underserved populations adversely impacted by an environmental contaminant. NIEHS sought to improve scientifically valid intervention methods and strengthen participation of affected communities in this effort. The long-range goal is to improve the knowledge and behavior of disadvantaged or underserved community members regarding prevention, detection and treatment of environmentally related diseases and health conditions, and thereby reduce incidence and mortality rates of such diseases and conditions.

History of CBPR, cont'd.

To address the deficiencies in conventional research, and because of the escalating interest in research that aims to improve the health of disadvantaged (minority, low-income, rural, central city, and other) populations, CBPR was developed as an alternative approach to conventional research. With a long and successful history in the social sciences and international and rural development, CBPR is now being used in

How Does CBPR Work?

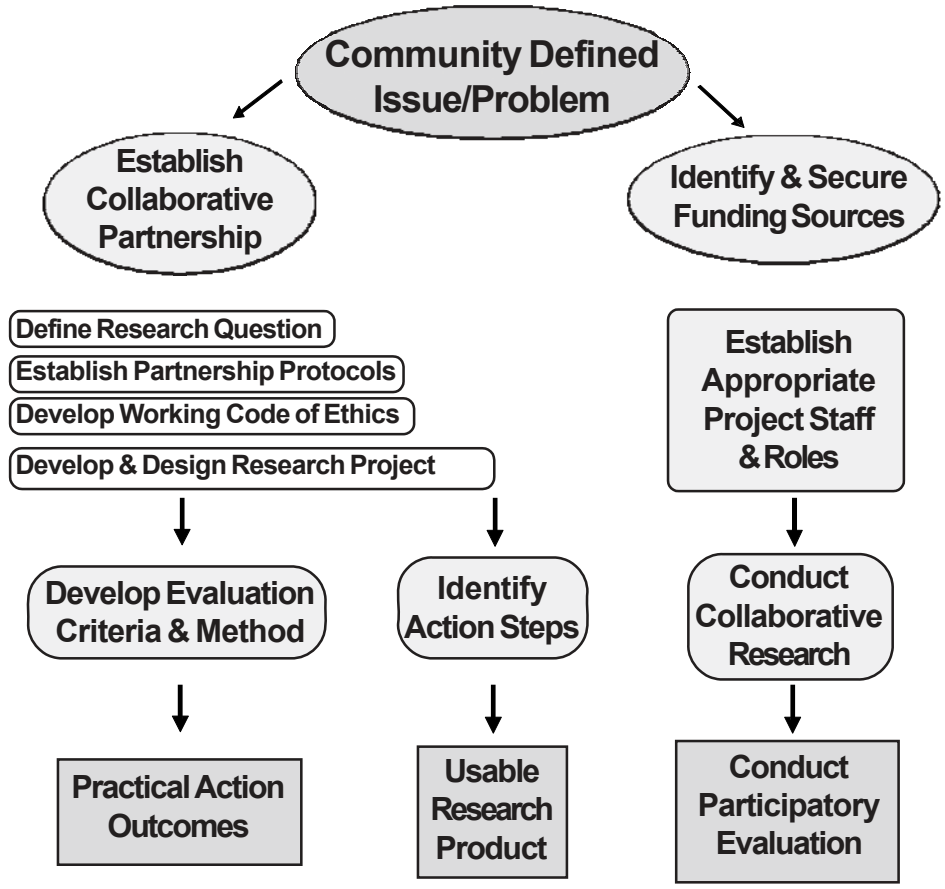
disadvantaged communities to address health and environmental concerns. There is a growing recognition of the importance and promise of this type of research within health services and public health institutions and funding organizations.

CBPR seeks to expand knowledge and understanding of the potential causes and remedies of environmentally related disorders. At the same time, it enhances the capacity of communities to participate in processes that shape research approaches and intervention strategies.

The process begins by identifying community concerns and ideas. This is most effectively done through community dialogue sessions. These sessions are used to provide basic training on CBPR methods. They also allow participants to identify community (and other) information and data; and begin initial identification and assessment of community expertise, resource needs, and initial identification of partners.

Research projects are conducted in a manner that reinforces collaboration between community members and research institutions. Relevant results are disseminated to the community in clear, useful terms. They are designed to be culturally appropriate – social, economic, and cultural conditions that influence health status are considered. Unique cultural factors are identified and incorporated into intervention strategies, which increases acceptability, use, and adherence by the intended beneficiaries of the research. Ultimately, CBPR seeks to maximize the potential for change in knowledge, attitudes, and behavior.

The strength of CBPR is that community members and groups work along with researchers, specialists and other stakeholders (e.g., government, business) to carry out projects in equitable partnerships. The following diagram (next page) was prepared by the Southeast Community Research Center to explain the CBPR process:



How Does CBPR Relate to Environmental Justice?

According to the Southeast Center for Community Research, CBPR is research that is conducted as an equal partnership between traditionally trained "experts" and community members that are unified by a particular concern. In CBPR projects, the community participates fully in all aspects of the research process. The views, concerns, and interests of all participants are given equal weight in determining the focus of the research question, the approach employed to attempt to identify answers and solutions, and the use and significance of the products of the research endeavor.

CBPR is important to community residents confronted with pollution and disease because it:

- provides a process to develop an action strategy that evolves from a strong community foundation to involve many parties and stakeholders,
- creates an avenue to ensure an understanding by all parties of community concerns, and
- ensures the involvement of impacted community groups in decision-making in an equitable, multi-disciplinary and collaborative framework.

CBPR creates partnerships that can:

- facilitate the definition of important environmental health issues and concerns,
- promote the development of measurement instruments that are culturally appropriate, and
- ensure the establishment of trust that will enrich the value of data collected.

Relating CBPR to Environmental Justice, cont'd.

The CBPR model can also be applied to other government activities addressing environmental justice challenges. First, it can be used for conducting risk assessments. The CBPR model can help ensure that risk assessments are informed by local knowledge and conditions. Second, it can help direct agency research and intervention strategies. The CBPR model promotes active community involvement so that agency research questions are guided by the environmental health issues and concerns most important to community members.

Examples of CBPR

PCBs and Health in the Mohawk Nation of Akwesasne: This CBPR project examined the extent to which exposure to polychlorinated biphenyls (PCBs) affected the physical and psychological functioning of individuals living in the Mohawk Nation of Akwesasne. The project was conducted in collaboration with university based scientists/researchers (from the school of public health at SUNY–Albany) and members of the Akwesasne community. **Reference:** "Building A Community-Based Research Partnership: Lessons from the Mohawk Nation of Akwesasne," *Journal of Community Psychology*, Vol. 26, No 2. (Written in collaboration between SUNY–Albany & ATFE).

Community-Level Exposure to Diesel Fumes in Harlem: This CBPR project was undertaken by West Harlem Environmental ACTion (WE ACT) in collaboration with the Columbia University-based Harlem Health Promotion Center. It involved a study of the effects of diesel fumes on adolescents in Harlem, NY. Harlem's borders are heavy traveled freeways, and it is home to 4,200 city buses and 650 Port Authority buses. The research findings showed measurements for small diesel particles to be 200 percent higher in Harlem than the EPA's standards. **Reference**: WE ACT produced a report on this study, which was published in the March 2000 issue of *Environmental Health Perspectives*.

Conclusion

The complexity and extent of environmental health challenges confronting communities burdened with pollution and disease demands constant improvement in government research and decision-making. CBPR is an essential new approach that is anchored by the people who are intended to benefit from government action.

Alternative Dispute Resolution

Community residents are often faced with complicated decisions about environmental matters. Controversies extend from the siting of new facilities to the cleanup of abandoned contaminated property. In most of these cases, communities have to confront difficult health, economic, environmental, and quality-of-life issues. The debates about these issues can become divisive and lead to conflict.

What is ADR?

The term alternative dispute resolution (ADR) is used to describe a range of techniques that can help people to address conflicts without having to resort to litigation, or to reach settlement more efficiently within existing litigation proceedings. ADR techniques involve a neutral third party who assists parties in designing and conducting a process for reaching agreement, if possible. This person has no stake in the substantive outcome of the effort. He/she helps orchestrate the process and ensures that it is implemented fairly and that everyone is heard and shares in the decision-making. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement, although federal courts have required the use of ADR in some cases.

What are the goals of ADR?

The goal of ADR is to have people work collaboratively together to develop and consider alternatives that can lead to mutually satisfying resolution of their issues. ADR is based on the theory that people who are involved in a controversy are the ones best able to develop a reasonable and enduring solution because they know their own needs and interests. Among ADR's objectives are:

- Faster resolution of issues;
- More creative, satisfying, and enduring solutions;
- Reduced transaction costs;
- Improved working relationships; and
- Increased stakeholder support for agency programs

Types of ADR

ADR techniques include:

Convening (or Conflict Assessment) involves the use of a neutral third party to help assess the causes of the conflict, to identify the persons or entities that would be affected by the outcome of the conflict, and to help these parties consider the best way (for example, mediation, consensus building, or a lawsuit) for them to deal with the conflict. The convener may also help get the parties ready for participation in a dispute resolution process, by providing education to the parties on what the selected process will be like.

Facilitation is a process used to help a group of people or parties have constructive discussions about complex or potentially controversial issues. The facilitator provides assistance by helping the parties set ground rules for these discussions, promoting effective communication, eliciting creative options, and keeping the group focused and on track. Facilitation can be used even where parties have not yet agreed to attempt to resolve a conflict.

Mediation is a process in which a neutral third party (the mediator) assists disputants in reaching a mutually satisfying settlement of their differences. Mediation is voluntary, informal, and confidential. The mediator helps the disputants to communicate clearly, to listen carefully, and to consider creative ways for reaching resolution. The mediator makes no judgments about the people or the conflict, and issues no decision. Any agreement that is reached must satisfy all the disputants.

Consensus Building is a process in which people agree to work together to resolve common problems in a relatively informal, yet cooperative, manner. It is a technique that can be used to bring together representatives from different stakeholder groups early in a decision-making process. A neutral party helps the people to design and implement their own strategy for developing group solutions to the problems.

An *Ombudsman* is an official who has the authority to receive complaints and help to resolve them. EPA has ombudsmen for several programs. They are high-level employees who have the ability to look independently into citizens' concerns and facilitate the communication and consideration that can lead to a solution.

Part 2: Legal Tools for Collecting Information

- Environmental Authorities to Produce Information that Addresses Environmental Justice
- The Emergency Planning and Community Right-to-Know Act
- How to Make a Freedom of Information Act Request

Environmental Authorities to Produce Information that Addresses Environmental Justice

Introduction

Reliable and accurate information about the impact of regulated activities on communities of color and low-income communities is critical for ensuring that EPA and state regulatory decisions will protect their health and environment. Various federal environmental statutes authorize the U.S. Environmental Protection Agency and/or state regulatory authority to undertake a wide array of actions to produce information relevant to government decisions that affect environmental justice communities. Three important tools in that process are research, monitoring, and reporting. It is important for community residents to know about these tools so they can use them in their efforts to address environmental justice concerns.

Research

EPA and Research

The need for research into health and environmental issues of concern to people of color and low-income communities has long been a focus of the national dialogue on environmental justice. A number of environmental statutes authorize EPA to conduct research into improving scientific knowledge and regulatory decision-making. These authorities can help community residents identify opportunities for raising issues of concern to people of color and low-income communities. To illustrate the types of authorities that are available, examples from the Clean Water Act and Clean Air Act are provided below.

Clean Water Act (CWA):

- Requires EPA to "conduct and promote the coordination and acceleration of research relating to the causes, effects, extent, prevention, reduction and elimination of water pollution" [33 U.S.C. §1254(a)(2)].
- Contains a number of provisions that authorize EPA to research health and environmental impacts on farm workers and agricultural communities, in particular the effects of pesticides and agricultural pollution [33 U.S.C. §1254(l) and (p)].

EPA and Research, continued

Clean Air Act (CAA):

- Authorizes EPA to research air pollution issues, such as risks from combinations of air pollutants [42 U.S.C. §7403(d)(2)] and urban air toxics [42 U.S.C. §7412(p)].
- Authorizes EPA to impose research requirements upon regulated entities. For example, Section 211(b)(2) authorizes EPA to require the manufacturer of any fuel or fuel additive to research the potential health effects of the substance [42 U.S.C. §7545(b)(2)].

Community Research

Federal environmental laws also support EPA efforts to establish community participation in agency research activities. A variety of provisions create mechanisms to facilitate this involvement. For example:

- Numerous statutes authorize EPA to provide funding to private organizations and individuals to support their participation in community-based research (e.g. collect information).
- A number of environmental laws establish formal advisory bodies to inform EPA's research activities, and these can include individuals with expertise in environmental justice issues.
- EPA can also promote environmental justice by providing communities with research results and information necessary to facilitate community involvement and participation. Certain statutes explicitly authorize the sharing of research results with the public. For example, CAA Section 103(b) authorizes the Administrator to collect and make available research results [42 U.S.C. §7403(b)], while CAA Section 112(l)(3) requires EPA to maintain a publicly-available air toxics clearinghouse containing research on preventing and controlling health risks [42 U.S.C. §7412(l)(3)].

Monitoring

Monitoring is a central component of EPA's information-gathering activities. Monitoring of facility emissions and discharges is an important tool for ensuring compliance with permits and other pollution control requirements. Monitoring of pollutant levels also provides data needed to guide the development of agency standards and programs. National discussions on environmental justice issues have emphasized the need for more extensive monitoring in communities of color and low-income communities, both to improve understanding of the environmental and health conditions in the communities and to increase agency and citizen capacity to identify facilities that are not in compliance with existing requirements. EPA has considerable statutory authority to tailor its monitoring activities to achieve these goals and to assist communities in conducting monitoring on their own.

By Regulated Entities

EPA has extensive statutory authority to require monitoring and record-keeping by regulated facilities. Certain statutes provide EPA with authority to require monitoring in specific circumstances, authority which EPA could use to address environmental justice concerns. For example:

- Under RCRA Section 3013(a), EPA may require the owner or operator of a facility to conduct further monitoring upon a finding by EPA that the presence or release of waste from the facility presents a substantial hazard [42 U.S.C. §6932].
- The CAA requires EPA to promulgate rules requiring monitoring and reporting by solid waste incineration units [42 U.S.C. §7429].

By EPA

EPA's authority to require monitoring and record-keeping by regulated entities is often coupled with EPA's authority to conduct its own monitoring and sampling as necessary. For example:

- The CWA grants EPA the right of entry to access records, sample effluents, and inspect monitoring equipment [33 U.S.C. §1318(a)].
- RCRA facilities must allow entry, inspection, and sampling by an agency representative [42 U.S.C. §6927(a)].

Community Involvement

Some environmental laws contain provisions that could be invoked to support EPA's authority to enhance the community's capacity to monitor the compliance of the facilities within the community. Because some communities of color and low-income communities frequently lack the resources to engage in effective oversight, EPA can build community monitoring and enforcement capacity by providing the public with as much of the monitoring data and records as possible. Certain statutes designate material as publicly available unless there is a legally recognized interest in not allowing disclosure of the information. For example, under the CAA, monitoring information must be publicly available, except where the material constitutes a trade secret [42 U.S.C. § 7414(c)].

Reporting

Federal environmental statutes typically require reporting of a wide array of information. Reporting is often connected to monitoring, with various environmental statutes requiring facilities to provide reports to EPA on the data monitored. EPA plays a significant role in developing the nature and scope of these reporting requirements, and can use this authority to expand their breadth and coverage to include information relevant to environmental justice. EPA can further environmental justice by making information from the reports widely available and easily understandable to the public. This information can be used by community groups to:

- Assess risks;
- Promote public participation in environmental decision-making; and
- Support enforcement actions where necessary.

Overall, community residents can work with government agencies to ensure that the information needed to make proper decisions is both available and considered.

United States Environmental Protection Agency | Office of Solid Waste and Emergency Response (5101) | EPA 550-F-00-004 March 2000

The Emergency Planning and Community Right-to-Know Act

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) establishes requirements for Federal, State and local governments, Indian Tribes, and industry regarding emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

FACTSHEET

What Does EPCRA Cover?

EPCRA has four major provisions:

- Emergency planning (Section 301-303),
- Emergency release notification (Section 304),
- Hazardous chemical storage reporting requirements (Sections 311-312), and
- Toxic chemical release inventory (Section 313).

Information gleaned from these four requirements will help States and communities develop a broad perspective of chemical hazards for the entire community as well as for individual facilities. Regulations implementing EPCRA are codified in Title 40 of the Code of Federal Regulations, parts 350 to 372. The chemicals covered by each of the sections are different, as are the quantities that trigger reporting. Table 1 on the next page summarizes the chemicals and thresholds.

What Are Emergency Response Plans (Sections 301-303)?

Emergency Response plans contain information that community officials can use at the time of a chemical accident. Community emergency response plans for chemical accidents were developed under section 303. The plans must:

- Identify facilities and transportation routes of extremely hazardous substances;
- Describe emergency response procedures, on and off site;
- Designate a community coordinator and facility coordinator(s) to implement the plan;
- Outline emergency notification procedures;
- Describe how to determine the probable affected area and population by releases;
- Describe local emergency equipment and facilities and the persons responsible for them;
- Outline evacuation plans;
- Provide a training program for emergency responders (including schedules); and,
- Provide methods and schedules for exercising emergency response plans.

Planning activities of LEPCs and facilities initially focused on, but were not limited to, the 356 extremely hazardous substances listed by EPA. The list includes the threshold planning quantities (minimum limits) for each substance. Any facility that has any of the listed chemicals at or above its threshold planning quantity must notify the SERC and LEPC within 60 days after they first receive a shipment or produce the substance on site.

What Are the Emergency Notification Requirements (Section 304)?

Facilities must immediately notify the LEPC and the SERC if there is a release into the environment of a hazardous substance that is equal to or exceeds the minimum reportable quantity set in the regulations. This requirement covers the 356 extremely hazardous substances as well as the more than 700 hazardous substances subject to the emergency notification requirements under CERCLA Section 103(a)(40 CFR 302.4). Some chemicals are common to both lists. Initial notification can be made by telephone, radio, or in person. Emergency notification requirements involving transportation incidents can be met by dialing 911, or in the absence of a 911 emergency number, calling the operator. This emergency notification needs to include:

- The chemical name;
- An indication of whether the substance is extremely hazardous;
- An estimate of the quantity released into the environment;
- The time and duration of the release;
- Whether the release occurred into air, water, and/or land;
- Any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, advice regarding medical attention for exposed individuals;
- Proper precautions, such as evacuation or sheltering in place; and,
- Name and telephone number of contact person.

A written follow-up notice must be submitted to the SERC and LEPC as soon as practicable after the release. The follow-up notice must update information included in the initial notice and provide information on actual response actions taken and advice regarding medical attention necessary for citizens exposed.

What Are SERCs and LEPCs?

The Governor of each state designated a State Emergency Response Commission (SERC). The SERCs, in turn, designated about 3,500 local emergency planning districts and appointed Local Emergency Planning Committees (LEPCs) for each district. The SERC supervises and coordinates the activities of the LEPC, establishes procedures for receiving and processing public requests for information collected under EPCRA, and reviews local emergency response plans.

The LEPC membership must include, at a minimum, local officials including police, fire, civil defense, public health, transportation, and environmental professionals, as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media. The LEPCs must develop an emergency response plan, review it at least annually, and provide information about chemicals in the community to citizens.

Table 1: EPCRA Chemicals and Reporting Thresholds

	Section 302	Section 304	Sections 311/312	Section 313
Chemicals Covered	356 extremely hazardous substances	>1,000 substances	500,000 products	650 toxic chemicals and categories
Thresholds	Threshold Planning Quantity 1-10,000 pounds on site at any one time	Reportable quantity, 1-5,000 pounds, released in a 24-hour period	TPQ or 500 pounds for Section 302 chemicals; 10,000 pounds on site at any one time for other chemicals	25,000 pounds per year manufactured or processed; 10,000 pounds a year used; certain persistent bioaccumulative toxics have lower thresholds

What Are the Community Right-to-know Requirements (Sections 311/312)?

Under Occupational Safety and Health Administration (OSHA) regulations, employers must maintain a material safety data sheet (MSDS) for any hazardous chemicals stored or used in the work place. Approximately 500,000 products have MSDSs.

Section 311 requires facilities that have MSDSs for chemicals held above certain quantities to submit either copies of their MSDSs or a list of MSDS chemicals to the SERC, LEPC, and local fire department. If the facility owner or operator chooses to submit a list of MSDS chemicals, the list must include the chemical or common name of each substance and must identify the applicable hazard categories. These hazard categories are:

- Immediate (acute) health hazard;
- Delayed (chronic) health hazard;
- Fire hazard;
- Sudden release of pressure hazard; and
- Reactive hazard.

If a list is submitted, the facility must submit a copy of the MSDSs for any chemical on the list upon the request of the LEPC or SERC.

Facilities that start using a chemical or increase the quantity to exceed the thresholds must submit MSDSs or a list of MSDSs chemicals within three months after they become covered. Facilities must provide a revised MSDS to update the original MSDS if significant new information is discovered about the hazardous chemical.

Facilities covered by section 311 must, under section 312, submit annually an emergency and hazardous chemical inventory form to the LEPC, the SERC, and the local fire department. Facilities provide either a Tier I or Tier II form. Tier I forms include the following aggregate information for each applicable hazard category:

- An estimate (in ranges) of the maximum amount of chemicals for each category present at the facility at any time during the preceding calendar year;
- An estimate (in ranges) of the average daily amount of chemicals in each category; and,
- The general location of hazardous chemicals in each category.

The Tier II report contains basically the same information as the Tier I, but it must name the specific chemicals. Many states require Tier II information under state law. Tier II forms provide the following information for each substance:

- The chemical name or the common name as indicated on the MSDS;
- An estimate (in ranges) of the maximum amount of the chemical present at any time during the preceding calendar year and the average daily amount;
- A brief description of the manner of storage of the chemical;
- The location of the chemical at the facility; and
- An indication of whether the owner elects to withhold location information from disclosure to the public.

Because many SERCs have added requirements or incorporated the Federal contents in their own forms, Tier I/II forms should be obtained from the SERC. Section 312 information must be submitted on or before March 1 each year. The information submitted under sections 311 and 312 is available to the public from LEPCs and SERCs.

In 1999, EPA excluded gasoline held at most retail gas stations from EPCRA 311/312 reporting. EPA estimates that about 550,000 facilities are now covered by EPCRA 311/312 requirements.

Reporting Schedules

Section	
302	One time notification to SERC
304	Each time a release above a reportable quantity occurs; to LEPC and SERC
311	One time submission; update only for new chemicals or information; to SERC, LEPC, fire department
312	Annually, by March 1 to SERC, LEPC, fire department
313	Annually, by July 1, to EPA and State

What is the Toxics Release Inventory (Section 313)?

EPCRA section 313 (commonly referred to as the Toxics Release Inventory or TRI) requires certain facilities (see box) to complete a Toxic Chemical Release Inventory Form annually for specified chemicals. The form must be submitted to EPA and the State on July 1 and cover releases and other waste management of toxic chemicals that occurred during the preceding calendar year. One purpose of this reporting requirement is to inform the public and government officials about releases and other waste management of toxic chemicals. The following information is required on the form:

- The name, location and type of business;
- Whether the chemical is manufactured (including importation), processed, or otherwise used and the general categories of use of the chemical;
- An estimate (in ranges) of the maximum amounts of the toxic chemical present at the facility at any time during the preceding year;
- Quantity of the chemical entering the air, land, and water annually;
- Off-site locations to which the facility transfers toxic chemicals in waste for recycling, energy recovery, treatment or disposal; and
- Waste treatment/disposal methods and efficiency of methods for each waste stream;

In addition, the Pollution Prevention Act of 1990 requires collection of information on source reduction, recycling, and treatment. EPA maintains a national TRI database, available on the Internet (see the Where Can I Find EPCRA Information? section for further details).

Who's Covered by TRI?

The TRI reporting requirement applies to facilities that have 10 or more full-time employees, that manufacture (including importing), process, or otherwise use a listed toxic chemical above threshold quantities, and that are in one of the following sectors:

- Manufacturing (Standard Industrial Classification (SIC) codes 20 through 39)
- Metal mining (SIC code 10, except for SIC codes 1011,1081, and 1094)
- Coal mining (SIC code 12, except for 1241 and extraction activities)
- Electrical utilities that combust coal and/or oil (SIC codes 4911, 4931, and 4939)
- Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste treatment and disposal facilities (SIC code 4953)
- Chemicals and allied products wholesale distributors (SIC code 5169)
- Petroleum bulk plants and terminals (SIC code 5171)
- Solvent recovery services (SIC code 7389)

What Else Does EPCRA Require?

Trade Secrets. EPCRA section 322 addresses trade secrets as they apply EPCRA sections 303, 311, 312, and 313 reporting; a facility cannot claim trade secrets under section 304 of the statute. Only chemical identity may be claimed as a trade secret, though a generic class for the chemical must be provided. The criteria a facility must meet to claim a chemical identity as a trade secret are in 40 CFR part 350. In practice, less than one percent of facilities have filed such claims.

Even if chemical identity information can be legally withheld from the public, EPCRA section 323 allows the information to be disclosed to health professionals who need the information for diagnostic and treatment purposes or local health officials who need the information for prevention and treatment activities. In non-emergency cases, the health professional must sign a confidentiality agreement with the facility and provide a written statement of need. In medical emergencies, the health professional, if requested by the facility, provides these documents as soon as circumstances permit.

Any person may challenge trade secret claims by petitioning EPA. The Agency must then review the claim and rule on its validity.

EPCRA Penalties. EPCRA Section 325 allows civil and administrative penalties ranging up to $10,000-$75,000 per violation or per day per violation when facilities fail to comply with the reporting requirements. Criminal penalties up to $50,000 or five years in prison apply to any person who knowingly and willfully fails to provide emergency release notification. Penalties of not more than $20,000 and/or up to one year in prison apply to any person who knowingly and willfully discloses any information entitled to protection as a trade secret.

Citizens Suits. EPCRA section 326 allows citizens to initiate civil actions against EPA, SERCs, and the owner or operator of a facility for failure to meet the EPCRA requirements. A SERC, LEPC, and State or local government may institute actions against facility owner/operators for failure to comply with EPCRA requirements. In addition, States may sue EPA for failure to provide trade secret information.

Where Can You Find EPCRA Information?

MSDSs, hazardous chemical inventory forms, follow-up emergency notices, and the emergency response plan are available from the SERC and LEPC.

MSDSs on hazardous chemicals are maintained by a number of universities and can be accessed through www.hazard.com.

EPA also provides fact sheets and other information on chemical properties through its website: www.epa.gov. EPA has compiled a list of all chemicals covered by name under these regulations into a single list and published them as The Title III List of Lists available at www.epa.gov/swercepp/ds-epds.htm#title3.

Profiles of extremely hazardous substances are available at www.epa.gov/ceppo/ep_chda.htm#ehs

Each year, EPA publishes a report summarizing the TRI information that was submitted to EPA and States during the previous year. In addition, TRI data are available through EPA's Envirofacts database at www.epa.gov/enviro. TRI data are also available at www.epa.gov/tri, www.rtk.net, and www.scorecard.org.

All of these sites can be searched by facility, city, county, and state and provide access to basic TRI emissions data. The RTK-Net site, maintained by the public advocacy group OMB Watch, provides copies of the full TRI form for each facility. The Scorecard site, maintained by the Environmental Defense public advocacy group, ranks facilities, States, and counties on a number of parameters (e.g., total quantities of carcinogens released) as well as maps that show the locations of facilities in a county or city.

Initial emergency release notifications made to the National Response Center or EPA are available on line at www.epa.gov/ernsacct/pdf/index.html.

A list of LEPCs and SERCs is available at http://www.RTK.NET:80/lepc/.

Many of these sites can also be accessed through www.epa.gov/ceppo/.

Are There Other Laws That Provide Similar Information?

The Oil Pollution Act (OPA) of 1990 includes national planning and preparedness provisions for oil spills that are similar to EPCRA provisions for extremely hazardous substances. Plans are developed at the local, State and Federal levels. The OPA plans offer an opportunity for LEPCs to coordinate their plans with area and facility oil spill plans covering the same geographical area.

The 1990 Clean Air Act Amendments require the EPA and OSHA to issue regulations for chemical accident prevention. Facilities that have certain chemical above specified threshold quantities are required to develop a risk management program to identify and evaluate hazards and manage those hazards safely. Facilities subject to EPA's risk management program rules must submit a risk management plan (RMP) summarizing its program. Most RMP information is available through RMP*Info, which can be accessed through www.epa.gov/enviro.

For More Information

Contact the EPCRA Hotline at:
(800) 424-9346 or (703) 412-9810
TDD (800) 553-7672
Monday -Friday, 9 AM to 6 PM, EST

Visit the CEPPO Home Page at:
WWW.EPA.GOV/CEPPO/

For EPA EPCRA contacts, check the CEPPO home page. For TRI program officials and EPA TRI regional contacts, check www.epa.gov/tri/statecon.htm.

How to Make a Freedom of Information Act Request

United States Environmental Protection Agency
Based on EPA/100-F-97-002 October 1997.
Content Updated March 2003

The Freedom of Information Act (FOIA) allows you to obtain information from various agencies of the federal government, including the Environmental Protection Agency (EPA). The purpose of this brochure is to provide you with a brief description of your rights and the manner in which the EPA will respond to your requests under the FOIA.

The information contained in this brochure is not exhaustive or definitive. Specific requests will be governed by the provisions of the FOIA, set forth in 5 U.S.C. 552, and in the Agency's regulations implementing the Act, set forth in 40 CFR Part 2. Copies of these regulations are available at the Agency's Freedom of Information Office (Headquarters) in Washington, DC and at its regional offices.

Questions may be directed to the:
National Freedom of Information Operations Officer, 1200 Pennsylvania Avenue, N.W. (2822T, Washington, DC 20460; telephone (202) 566-1667. Also, questions may be directed to the regional office within your geographical jurisdiction (addresses listed under REGIONAL OFFICES).

INFORMATION YOU CAN OBTAIN

In general, you can inspect or obtain copies of publicly available material maintained by the EPA through public reading facilities in the Agency's headquarters and regional offices. Also, you may electronically access information by means of the Internet via the Agency's Web site at: ***http://www.epa.gov***. All agency records must be made available to the public under the FOIA, except for records which are:

1. Properly classified as secret in the interest of national defense or foreign policy;
2. Related solely to internal personnel rules and practices;
3. Specifically made confidential by other statutes;
4. Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential;
5. Inter-agency or intra-agency memoranda or letters, except under certain circumstances;
6. Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

7. Records or information compiled for law enforcement purposes, the release of which (a) could reasonably be expected to interfere with enforcement proceedings, (b) would deprive a person of a right to a fair trail or impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, (e) would disclose investigative techniques, and/or (f) could reasonably be expected to endanger the life or physical safety of any individual;

8. Information contained in or related to certain examination, operating, or condition reports concerning financial institutions;

9. Certain information concerning gas or oil wells.

In addition, if the foregoing types of information may be reasonably segregated and deleted from any records, the EPA will make the remainder of that record available to you for inspection or copying, if it is not otherwise available.

SUBMITTING YOUR REQUEST

Before making a request under the FOIA, make sure the information you seek is not already available to the public in reading rooms or the Agency's Web site on the Internet. Copies of this public material can also be requested by writing to the Agency's headquarters office or to the appropriate Agency's regional office.

If the information you seek is not already available to the public, **submit a written request to the National FOIA Operations Officer in Washington, DC or the Regional FOIA Officer in the appropriate regional office (addresses listed below)**. To assist the EPA in the processing of your request, include: (A) readable information such as your name, address, and phone number; (B) try to be as specific as possible in identifying the records sought in a way that will permit their identification and location; (C) whether payment of fees are guaranteed; and (D) if fees are incurred, you will be required to provide a Taxpayer Identification Number (TIN), if requesting information on behalf of a company/organization or Social Security Number (SSN), if requesting information as a private citizen which is required under the Debt Collection Improvement Act of 1996.

Generally, you have a right to a decision with regard to the release of the requested records within 20 working days of receipt of your inquiry and the EPA makes every effort to meet this time frame. However, due to the complexity of certain requests, the agency may take a substantially longer time to fully respond to a request.

If your request is initially denied in whole or in part, in accordance with exemptions provided by the FOIA, you will be advised of your right to appeal. Generally, you will have a right to a decision on the appeal within 20 working days of receipt.

All requests made under the FOIA are a matter of public record and may be placed in the Agency's public files.

INSPECTION OF RECORDS

Records requested (in writing) under the FOIA can be made available for inspection at the Agency's headquarters office in Washington, DC or at the Agency's regional offices.

Actual production and/or copying of records should be arranged with the staff after it is determined that records are in fact accessible.

SEARCH, REVIEW AND COPY CHARGES

With certain specific exceptions authorized by the FOIA Reform Act of 1986, a fee will generally be charged when more than one-half staff hour of work is devoted to locating, reviewing and making available for inspection or copying records requested pursuant to the FOIA. These fees will recoup the full allowable direct costs incurred. In accordance with the EPA's revised FOIA regulations (40 CFR 2.100, et. seq.), effective November 5, 2002, the Agency's fees for processing requests have changed. The new fee schedule is as follows:

- Clerical staff time billed at $4.00 per 15 minutes of search and/or review;
- Professional staff time billed at $7.00 per 15 minutes of search and/or review;
- Managers' time billed at $10.25 per 15 minutes of search and/or review;
- Duplication charges at $.15 per page;
- No fee will be charged for services at or below $14.00;
- Assurance of payment of fees above $25.00 will be obtained from the requester before commencing any work;
- Advance payment of fees above $250 may be required by the Agency before commencing any work; and
- Any other services not listed above, such as certification of documents or priority mail, will be charged the direct costs.

The EPA may determine to waive or reduce fees in cases where furnishing the information primarily benefits the general public by significantly assisting citizens in understanding how their government works. Requests for waiver or reduction of fees should be submitted with the requests for records under the FOIA. Please include in any waiver request relevant facts or arguments, which might support the request.

URL: http://www.epa.gov/foia/broc.htm

Part 3: Environmental Law: General Principles

- Environmental Justice through Pollution Prevention
- Environmental Laws Can Help You Achieve Environmental Justice in Your Community
- Standard-Setting: EJ Hook Fact Sheet
- Environmental Permitting Process
- Permitting: EJ Hook Fact Sheet
- Permitting and Environmental Justice
- Siting of New Facilities
- Supplemental Environmental Projects
- Delegation: EJ Hook Fact Sheet
- Delegation of Environmental Programs to States and Tribes

Environmental Justice through Pollution Prevention

Introduction

Reducing pollution at its source is one of the best ways to improve environmental and health protection. The generation of waste and by-products can be avoided. Harmful emissions can be eliminated. Accidental releases or spills can be reduced. The regulatory system can become more efficient by reducing the need for end-of-pipe environmental control. To be effective, measures used to prevent pollution should be developed in cooperation with facilities seeking to prevent pollution, regulatory agencies, and the community where the facility is located. Ultimately, pollution prevention offers the opportunity to provide a variety of benefits to people overburdened with pollution.

What is Pollution Prevention?

Pollution prevention can be defined both as a technical approach and as a participatory process. As a technical approach, pollution prevention is defined as "source reduction" and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation. It involves the reduction or elimination of wastes and pollutants at the source, and includes a wide array of activities, such as:

- More efficient use of materials, water, energy and other resources
- Substituting less harmful substances for hazardous ones
- Eliminating toxic substances from the production process
- Developing new uses for existing chemicals and processes
- Recycling of materials
- Reusing materials
- Conserving natural resources

As a participatory process, pollution prevention can be defined as "activities that include community participation and involvement in decision-making to reduce, minimize and eliminate pollution through sustainable practices that demonstrate sustainable development and activities."

Pollution Prevention and the Law

When federal environmental laws were first adopted in the 70's, the approach to protection of the environment and human health was to control pollution after its creation "at the end of the pipe." The focus was on limiting how much pollution was discharged into the environment. It was not on controlling the amount of pollution that was created in the first place. Over time, the need to expand this approach became obvious. Regulatory control activities were modified to include innovative activities that address pollution before its release into the environment.

Thus, in 1990, Congress passed the Pollution Prevention Act. This law seeks to prevent pollution from being generated in the first place. To do this, the law directed EPA to

- Develop and implement a strategy to promote source reduction
- Establish a database that contains information on source reduction
- Provide grants to the States to promote source reduction by businesses

The law also required owners and operators of businesses that are required to file a toxic chemical release form to include a toxics reduction and recycling report.

It is important to note that other federal environmental laws now include pollution prevention as a means of protecting human health and the environment. These include:

Clean Air Act (e.g., EPA must establish a national research and development program for prevention and air pollution control)

Resource Conservation and Recovery Act (e.g., owners and operators of facilities that produce hazardous waste must certify that they have a plan to reduce waste)

Clean Water Act (e.g., EPA must, in cooperation with federal, state and local agencies and industries, develop programs for preventing, reducing or eliminating pollution of the navigable waters and ground waters)

Pollution Prevention and Environmental Justice

The Principles of Environmental Justice, prepared in 1991 at the First National People of Color Environmental Leadership Summit, recognize the concept of pollution prevention as an element of environmental justice. For example, Principle 4 emphasizes a right to "ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet." Principle 6 demands the "cessation of the production of all toxins, hazardous wastes, and radioactive materials." Several important principles can guide the implementation of pollution prevention in a manner that achieves environmental justice. These include:

1) Protection of human health and the environment can be achieved through pollution prevention. The health and quality-of-life concerns of the impacted communities must be closely tied to pollution prevention activities.

Pollution Prevention and Environmental Justice, con't.

2) The importance and value of community knowledge and experience must be recognized, and full participation of the impacted community must be incorporated into pollution prevention projects. Collaboration between all stakeholder groups should be included, and capacity for participation ensured.
3) Pollution prevention activities can be achieved without sacrificing jobs, economic stability, or environmental quality.
4) Enforcement of environmental laws remains an important tool that is not replaced by pollution prevention.
5) Pollution prevention is essential for sustainable community development. It should be proactive, positive, solution-oriented, and holistic in approach (i.e. multi-media).
6) Pollution prevention must address the needs of special populations, such as children, the elderly, individuals with compromised immune systems and other susceptible populations. It must also address cumulative risks and impacts.

Conclusion

Pollution prevention, when properly implemented, can lead to reduced pollution exposures, holistic community development, and economic sustainability for communities overburdened with pollution. Ultimately, it is a tool that can be used by community residents to achieve environmental justice.

Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

Environmental Laws Can Help You Achieve Environmental Justice IN *YOUR* COMMUNITY

Introduction

Environmental laws can be used to address community health concerns and exposure to environmental harms and risks. They give community residents the:

- Opportunity to evaluate proposed projects; and
- Tools to ensure that decisions affecting the community are made properly.

Even though environmental problems may be very complex, knowing the basic opportunities for relief and using the tools provided in environmental laws can help community residents make sure that government decisions consider environmental justice issues. This understanding allows community residents to increase public participation, and work more effectively with others (from government to the private sector) to address environmental justice problems.

Using Laws to Promote Environmental Justice

Environmental laws address a wide variety of environmental issues that may be faced by a community. However, there is no single law that addresses all environmental problems. Rather, there are many different laws that address different types of issues. Also, there is not one law that expressly addresses "environmental justice" issues. The statutory authority to address environmental justice concerns is based on general environmental laws that are intended to protect all people regardless of race, ethnicity or income status. The laws address environmental pollution and cover contamination of air, water, soil, or food supplies by toxic and other pollutants. These laws are mainly administered by the U.S. Environmental Protection Agency (EPA) and delegated state or tribal governments. Please see the sidebar for examples of these laws.

Examples of Environmental Laws Used to Promote Environmental Justice:

- Clean Air Act (CAA), which addresses the quality of the air you breathe, including specific pollutants;
- Clean Water Act (CWA), which addresses pollution of our rivers, lakes, streams and estuaries;
- Safe Drinking Water Act (SDWA), which addresses the safety of our drinking water and groundwater contamination; and
- Resource Conservation and Recovery Act (RCRA), which addresses hazardous and solid waste disposal.

Environmental Justice in Your Community, continued

There are other environmental laws that address protection of natural systems. These laws are administered by other federal agencies. For example:

- The U.S. Department of Interior's Fish and Wildlife Service implements the Endangered Species Act (ESA), which addresses the protection of flora and fauna in relationship to man's activities.
- The U.S. Department of Agriculture's National Forest Service implements the National Forest Management Act (NFMA), which addresses protection of forests in relationship to man's use.

It should be noted that other laws, at both the state and federal level, can be used to address environmental justice issues.

Role of the Community

By understanding and using the many diverse tools provided by environmental laws, community members can promote environmental justice. For example, environmental laws can help community members:

- Identify fully the impacts of agency actions and decisions on environmentally burdened communities;
- Advocate for agency decisions that are aimed at remedying and preventing disproportionate impacts; and
- Ensure that communities have meaningful input in identifying impacts, making decisions, and implementing environmental programs that affect them.

Community residents are ideally placed to:

- Identify their environmental justice concerns to the government;
- Provide facts that can support government action to address those concerns; and
- Monitor follow-up actions to make sure those concerns are resolved.

With an understanding of environmental laws—their purpose, obligations imposed on the government and the regulated community, and the tools they provide to community residents—community residents can make a lasting impact on the health and well-being of their community.

STANDARD-SETTING: EJ Hook Fact Sheet

Summary of the Law

While Congress has enacted laws to protect human health and the environment, it also gave the U.S. Environmental Protection Agency (EPA) authority to set standards and adopt rules. These "regulations" add important detail to the broad statutory mandates of Congress. For example, they can address facility design by establishing day-to-day operating procedures; pollutant controls by determining what pollutants can enter the environment in what manner and at what levels; and natural resource protection by determining the use and quality of the resource.

There are four broad categories of standards: technology-based; design and practice; harm-based; and substance regulation. The process for setting standards includes important roles for community participation, including providing written and verbal testimony at government hearings or initiating rule-making proceedings.

Environmental Justice Hooks

Community residents can use the standard-setting process to focus attention on environmental justice challenges. They can provide written information and testimony that relate to actual circumstances of human exposure (e.g. cumulative risks and impacts) and environmental conditions (e.g. surface water flows).

Illustrations of legal provisions and examples of where community residents can use the standard-setting process to address environmental justice include the following:

1) Clean Water Act: States issue water quality standards for rivers, lakes, and other surface waters. These standards identify the designated uses for which these waters will be protected, and the levels of water quality for various pollutants and other water conditions necessary to protect those uses. Community residents can provide information on the actual uses of water bodies in their communities (e.g. fishing, swimming, raw water consumption). This information can result in more protective standards.

2) Clean Air Act: EPA establishes "national ambient air quality standards" for important air pollutants that occur almost everywhere in the country. These standards define how much pollution can be in the air from all sources combined. These standards must address the ways in which different pollutants combine and interact, provide an "adequate margin of safety," and address health risks to "sensitive populations." Community residents can bring information on special impacts to sensitive populations, such as the elderly and children, during public hearings held on proposed standards.

3) Clean Water Act: States or tribal governments set criteria to protect "fishable uses." They can set fish consumption values based on a national default value. Or they can use site-specific information, including fish consumption by subsistence fishers. Community residents can provide this information to the government regulatory agency.

Environmental Permitting Process

Introduction

The U.S. Environmental Protection Agency (EPA) uses a system of permits and permitting procedures to govern and regulate activities that affect the environment and human health. Permits and permitting procedures are at the core of EPA's authority under most major pollution control statutes. The permit application and review processes offer a very important opportunity for community residents to participate in decisions that affect their health and environment.

Types of Permits

There are several types of permits that a facility can receive. The type of permit can be related to the type of activity being proposed. One type of permit helps determine where industrial and waste disposal facilities may be located, and under what circumstances. Another type, generally known as an "operating permit," translates general environmental standards into specific discharge and emission limitations, incorporates monitoring, reporting, and other related requirements, and provides a basis for subsequent enforcement actions. A third type, "registrations" or "listings" of chemical substances, regulates whether, how, and in what quantities those substances may be manufactured, distributed, and used.

Procedures in Permitting

Due to the importance of the permit, community residents should become familiar with the procedures involved in government's issuance of the permit. The steps involved in the permitting process are summarized below:

1. Any person who requires a permit under the Resource Conservation and Recovery Act (RCRA), the Safe Water Drinking Act's (SDWA) Underground Injection Control (UIC) program, the Clean Water Act's (CWA) National Pollution Discharge Elimination System (NPDES), or the Clean Air Act's (CAA) Prevention of Significant Deterioration program MUST submit an application for each permit required.

2. Once an application is complete, the Director of the permitting agency shall tentatively decide whether to prepare a draft permit or to deny the application.

Procedures, continued

a. If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit, which follows the same procedures as any draft permit.

b. If the Director tentatively decides to issue a permit, he or she shall prepare a draft permit that contains information regarding conditions, schedules, and monitoring reports.

3. EPA shall prepare a statement of basis for every draft permit. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

4. A fact sheet shall be prepared for certain types of draft permits. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

5. The Director shall give public notice for any decision made on an application for permits. Public notice involves both:

a. Mailing a copy of the notice to the applicant, affected local, state, and federal agencies, and persons on a developed mailing list. Any person may request (in writing) to be placed on the mailing list.

b. Publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity. This requirement is only for major permits (e.g. facilities of a certain size), NPDES, and CWA Section 404 general permits.

6. Public notice shall allow at least 30 days for public comment (45 days for RCRA permits). During the public comment period provided, any interested person may submit written comments on the draft permit or the permit application and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All relevant comments shall be considered in making the final decision and shall be answered.

7. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit. Public notice for the hearing will be given.

8. After the close of the public comment period on a draft permit, the Regional Administrator shall issue a final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit.

9. Within 30 days of the final permit decision, any person who filed comments on that draft permit or participated in the public hearing may appeal the permit decision to the Environmental Appeals Board.

Permit Requirements

A permit translates general requirements of environmental laws into specific provisions tailored to the operations of each person discharging pollutants. A permit is supposed to generally specify an acceptable level of a pollutant or pollutant parameter in a discharge or release into the environment. A permit will contain both general and specific conditions that are used to govern the activity of the facility receiving the permit. General conditions address reporting and recordkeeping, for example. Specific conditions address discharge limits and monitoring parameters, for example.

Public Participation

Community participation is very important in the permitting process. This is because agency staff may not be as familiar with community-specific issues and facts as community residents when they must decide whether or not to issue a permit, or the conditions for the permit.

Timing of community participation is very important. It is not limited to input on permits during the public notice-and-comment period offered by the agency. Generally, it is best to begin to participate long before the permit hearing, because this public comment comes in late in the decision-making process. By the time of the hearing, a draft permit has already been written. Community residents should provide information to the agency soon after a permit application has been submitted, so that the draft permit can be written with all the relevant facts in mind. This information can be provided through meetings and conversations. Yet it is also important that information be submitted in writing.

Examples of Permitting

Permits and permitting procedures are at the core of EPA's authority under the CWA, CAA, and RCRA.

Clean Air Act (CAA): Under Title V of the CAA, permits are required from states or EPA for new or modified sources of air pollution. A source can be a power plant, factory, or anything that releases pollutants into the air. Cars, trucks, and other motor vehicles are sources, and consumer products and machines used in industry can be sources too. Sources that stay in one place are called stationary sources. Sources that move around, like cars or planes, are called mobile sources.

Air pollution is managed by a national permit system. Information included in a permit addresses:

- Which pollutants are being released;
- How much may be released;
- What kinds of steps the source's owner and operator is taking to reduce pollution; and
- Plans to monitor (measure) the pollution.

Permits must require the facility to use pollution prevention or treatment methods. They also require it to reduce pollution to levels that ensure that air quality standards are met.

- New air pollution sources may request a waiver from new source performance standards for innovative technology or continuous emissions reduction systems.
- Risk management plans are required for owners or operators of stationary air pollution sources to minimize accidental releases and provide prompt emergency response.
- Permits are required for new sources or modification of existing sources of air pollution in attainment areas to protect PSD (prevention of significant deterioration) areas.

Permit applications and permits are available for review by the public. The state or regional air pollution control agency or EPA can provide information on access to these documents.

Examples, continued

Clean Water Act (CWA): Permits are required for new or modified sources of water pollution. The CWA provides for different types of permits. These include National Pollutant Discharge Elimination System (NPDES) permits for discharges to surface waters from point sources. They also include dredge-and-fill permits and stormwater permits. As with air permits, CWA permits must require the facility to use pollution prevention or treatment methods, and to reduce pollution levels to ensure that water quality is met.

The NPDES program under the CWA requires a permit for all point source discharges to navigable waters. CWA prohibits anybody from discharging "pollutants" though a "point source" into a "water of the US" unless they have an NPDES permit. The permit will contain limits on what can bedischarged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health. NPDES permits will be denied for a new source or a new discharger if the permit application cannot demonstrate that water quality standards will/can be met. EPA has the authority to review and object to state-issued NPDES permits, and to modify existing NPDES permit based on new information.

Dredge-and-fill activity permits are administered by the Army Corps of Engineers. However, EPA retains veto power over dredge-and-fill activity permits, and has the authority to review state-issued dredge-and-fill activity permits.

Stormwater permits are also authorized under the CWA. Stormwater is rainwater that runs across land or through a storm sewer that is discharged into surface waters. It contains biological, chemical and physical pollutants. It can pose a threat to public health, fish, wildlife, and aquatic habitats. Stormwater is addressed under a two-phased national program that relies on an NPDES permit, and involves municipal separate storm sewer systems.

There is a national system that provides certain permitting information, called the Permits Compliance System (PCS). You can also find out more about your local watershed through EPA's "Surf Your Watershed" site at www.epa.gov/surf. Additional information on these programs can be obtained from EPA's website, at www.epa.gov.

Resource Conservation and Recovery Act (RCRA): Permits are required for all new facilities that treat, store, or dispose of hazardous wastes. RCRA sets up a system that seeks to track hazardous waste from "cradle-to-grave." Permits are also required to address solid waste disposal. EPA has broad authority to impose requirements "necessary to protect human health and the environment." EPA interprets this language as allowing it to consider environmental justice concerns. These include aggregate and cumulative health risks, and effects on sensitive populations. In addition to hazardous waste permits, RCRA also requires land disposal permits, and permits for non-hazardous waste management facilities that receive household and small quantity generator hazardous waste.

Enforcement of Permits

Since the permit can serve as a method for evaluating the facility's performance, the need for community involvement continues after a permit is issued. If the conditions of a permit are violated, action can be taken. Federal environmental laws provide EPA and the authorized state regulatory agencies with various methods of taking enforcement actions against violators of permit requirements. The methods include:

- Administrative orders that require facilities to correct violations and that assess monetary penalties; and
- Civil and criminal actions that may include mandatory injunctions or penalties, as well as jail sentences for persons who are found willfully violating requirements and endangering the health and welfare of the public or environment.

PERMITTING: EJ Hook Fact Sheet

Summary of the Law

Permits and permitting procedures govern activities that affect the environment and human health. These can include discharges to the water, releases to the air, and disposal on the land. Permits can address both the construction and operation of a facility.

Community residents should become familiar with the procedures involved in permitting. The first step is the filing of a permit application by a regulated facility. The second step is the issuance of a draft permit or permit denial by the regulatory agency. The agency must also prepare a "Statement of Basis" explaining its decision. The third step is most important: public participation, including notice, commenting, and a hearing. The fourth step is the final permit decision by the regulatory agency. The fifth step is an appeal by either the facility applying for the permit or a person who filed comments or participated in the hearing on the draft permit.

The permit serves as the means for evaluating the facility's performance. If the conditions of a permit are violated, action can be taken. Methods of enforcement include administrative orders, civil actions (injunctions and/or penalties), and criminal actions.

Environmental Justice Hooks

Environmental justice issues most often arise during the permitting or re-permitting process. The review of site-specific operations can include consideration of cumulative impacts, sensitive populations, and unique exposure pathways, among other factors. Several outcomes are possible, ranging from denials of permits to bans on particular substances to improved information disclosure:

1) Assessments: Section 404 permits under the Clean Water Act for dredge and fill require consideration of important factors, including whether the project would contribute unacceptably to cumulative impacts on the surrounding area (40 C.F.R. 230.10, 230.11).
2) Information Requirements: Applications for RCRA land disposal permits must include detailed information about potential releases and exposure pathways at the proposed site– information EPA can use to require a comprehensive health assessment (42 U.S.C. §6939a).
3) Ambient Pollution: Under the Clean Air Act (CAA), national ambient air quality standards are met through state or federal implementation plans that allocate total pollutant loadings among permitted sources. EPA has authority to examine these allocations for their environmental justice implications for federally administered programs, and has limited ability to do so for state programs. (42 U.S.C. §7410(a)(2)(E)).
4) Siting: The general rule is that location of a facility is not usually considered under federal law because land-use decisions are made by state and local government. However, specific provisions in federal environmental laws allow consideration of siting as part of the permitting process. For example, under the CAA, new source permits may be issued in areas where air quality standards are already violated, only after the regulatory agency considers special factors relating to alternative sites, production methods and pollution-control techniques.

Permitting and Environmental Justice

Introduction

The decision whether to grant a permit (or a variance or exemption from permitting requirements) for a facility is the one government decision where environmental justice issues most often have arisen. It is during review of site-specific operations that these issues are most likely considered and dealt with in the agency's decision-making process.

There are a variety of environmental justice issues that may be involved in the permitting process, including:

- Disproportionate impacts;
- Cumulative exposure (exposure to multiple sources of contamination or health risks);
- Chronic exposure (exposure, usually at lower doses, over a long period of time);
- Synergistic impacts (when the effect of exposure to two or more contaminants is greater than the combined effect of each contaminant);
- Effects on sensitive populations (for example, increased risk of asthma);
- Unique exposure pathways; and
- Cultural and socio-economic factors relevant to sensitive and vulnerable populations.

Focus of Debate

Permitting has long been a focus of the environmental justice debate. Activists, regulators, and industry agree that "EPA needs to address the issue of incorporating environmental justice considerations in permitting because communities increasingly are insisting upon a broader view of permitting and because neither companies nor permit writers know what is expected of them" [*National Environmental Justice Advisory Council (NEJAC), Environmental Justice In the Permitting Process, Appendix A, "Pre-Meeting Report," page A-3 (U.S. EPA, EPA300-R-00-004, July 2000)*] [the "NEJAC Permitting Report"].

Key issues that are being discussed are whether EPA or a state agency can take specific action on a permit (i.e. deny a permit, or place conditions on a permit) based on the impact the activity would have on low-income communities and people of color.

Authority to Address Environmental Justice

The permitting provisions of specific environmental laws or regulations rarely specifically address issues that relate only to low-income communities or people of color. Rather, the authority to consider environmental justice generally is based on a broader statutory authority to "protect human health and the environment," or to take "appropriate" or "necessary" action to carry out a statute's purposes and goals.

As part of its authority to consider factors (from environmental conditions to construction design to operation) during the permitting process, EPA or the state regulatory agency has great latitude to take a broad range of actions, provided: (1) the agency's action is not contrary to Congress's clear intent, as expressed in the authorizing statute; and (2) the agency's interpretation of the statute to consider environmental justice issues is "reasonable." As long as EPA or the state regulatory agency complies with these requirements, several types of action are possible. These include:

- Denial of permits;
- Bans on particular substances or practices;
- Site-specific mitigation measures;
- Heightened monitoring requirements;
- Advanced pollution-prevention practices;
- Best management practices;
- Specialized control technology;
- Enhanced public participation procedures;
- Improved information disclosure; and
- Community inspections.

Environmental Justice and Siting

Siting of industrial facilities and other potentially polluting activities raises important environmental justice questions. To the extent that claims of disproportionate impact rest upon the concentration of sources within a geographic area or their proximity to sensitive populations, decisions about where to site a facility become crucial to ensuring that no single community bears more than its fair share of impacts. Because most land-use and zoning decisions are made at the state and local levels, EPA has comparatively little opportunity to be involved in siting issues directly.

However, EPA has considerable authority over a number of important issues carved out by the federal environmental statutes that can indirectly affect siting. Specifically, the Agency has authority to address siting decisions that involve: (1) geographic areas where the federal government has specialized jurisdiction, such as wetlands and coastal zones; (2) concentrations of pollutants, such as non-attainment areas (areas where air pollution standards are not met) under the Clean Air Act; (3) heavily regulated facilities, such as waste disposal sites and incinerators; and (4) the federal government's own activities that impact the environment. Within these realms, EPA has broad discretion and numerous opportunities to consider and address environmental justice issues in siting decisions. Its authority to do so often is based on language that requires either an "assessment" of the health or environmental impacts – which may include cumulative impacts – of siting an activity or facility, or an analysis of alternatives to a proposed project, which may include alternative sites or forgoing the project entirely. (See the fact sheet, "Siting of New Facilities," for more information about this topic.)

Environmental Justice and Permits

EPA or the state agency exercises substantial discretion when administering the permit programs that are at the heart of most major pollution control statutes. EPA's grant of authority often takes the form of general or "omnibus" provisions that give the agency discretion to decide what measures are "necessary" or "appropriate" to protect human health and the environment or to advance the purposes of a particular statute. In addition, EPA's "media-specific" (i.e., air, water, waste, etc.) statutes have provisions that supply EPA with general authority to consider environmental justice issues when deciding whether to deny or to place conditions on operating permits. A number of specific statutory sections and regulations also spell out in more detail the precise types of conditions that EPA may wish to place on permits, many of which are amenable to environmental justice goals.

Environmental Justice and Pesticide Registration

Another type of permit controls the use of potentially polluting *substances*, rather than pollution sources or releases into the air, water, or soil, that also can have significant effects on environmental justice. These substances, which may have both beneficial as well as harmful effects, include "registrations" of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), "tolerances" for pesticide residue under the Federal Food, Drug, and Cosmetic Act (FFDCA), and approvals of new manufactured chemical substances under the Toxic Substances Control Act (TSCA). These laws govern manufacture, processing, distribution, use, and disposal of chemicals within their purview. It should be noted that the procedures provided in the law largely presume that use of a substance will be approved unless EPA makes an affirmative finding that its use will adversely affect health or the environment. Nevertheless, EPA's mandate under these statutes to collect comprehensive data to assess a substance's health and environmental effects from a variety of possible uses, and its ability to prohibit or to condition certain uses, provide a preventative approach that the agency can use to address environmental justice concerns.

Permitting Process for CAA, CWA, RCRA

The major pollution control statutes – the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA) – provide EPA with authority to address permitting and permit processing issues in heavily impacted areas. As mentioned earlier, EPA's grant of authority often takes the form of general or "omnibus" provisions that require the agency to complete an "assessment" to decide what measures are "necessary" or "appropriate" to protect human health and the environment. The types of control that may be exercised to achieve environmental justice include assessments, information requirements, and ambient pollutant standards.

Assessments

Environmental justice can be addressed through proper assessments of the potential impact of an activity on the environment and human health. The following examples illustrate the authority provided by key environmental laws:

- Although the U.S. Army Corps of Engineers has primary responsibility for administering the Section 404 wetland permitting program under the CWA, it must do so within environmental guidelines produced by EPA, and EPA retains veto authority over individual permits. Through a detailed public notice-and-comment procedure, the Corps and EPA must consider several factors: whether a project is in the public interest; has "practicable alternatives" that would have less adverse ecological impact; whether it would threaten water quality or endangered species, or cause "significant degradation" to drinking water supplies and fish and wildlife habitat; whether the organization proposing the project has taken all "appropriate and practical steps" to minimize and mitigate impacts at the proposed site; and whether the project would contribute unacceptably to cumulative impacts in the surrounding area [40 C.F.R. §§230.10, 230.11].

Assessments, continued

- New source review (NSR) permits under Section 173(a)(5) of the Clean Air Act may only be issued if an "analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed sources demonstrates that the source's benefits significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification" [42 U.S.C. §7503(a)(5)]. The analysis of "social costs" could include a wide variety of impacts on affected communities, and lead to a determination that alternative sites would be preferable from an environmental justice perspective [*Memorandum from Gary S. Guzy, U.S. EPA Office of General Counsel, EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting (Dec. 1, 2000)*].
- Prevention of significant deterioration (PSD) permits, under Section 165(a)(2) of the Clean Air Act, requires analysis of "the air quality impact of the source, alternatives thereto, control technology requirements, and other appropriate considerations" [*42 U.S.C. §7475(a)(2)*]. Given the broad wording of these provisions, EPA can exercise its discretion to consider environmental justice concerns, including the possibility of alternative sites, in instances where it is administering the NSR or PSD program [*e.g., In re AES Puerto Rico,* 8 E.A.D. _____, 1999 WL 345288 (May 27, 1999)].

Information Requirements in Permit Applications

Another useful method to address environmental justice is to ensure that information requirements in permit applications are complete. The following examples illustrate opportunities to address information requirements:

- Applications for RCRA land disposal permits must include detailed information about potential releases and exposure pathways at the proposed site – information that EPA can use to require a comprehensive health assessment if the agency determines that the proposed facility "poses a substantial risk to human health" at the proposed site [42 U.S.C. § 6939a]. RCRA land disposal permits must also include information that is useful for emergency planning and response [42 U.S.C. § 6939a].
- Section 504(c) of the Clean Air Act requires permits to include inspection, entry, monitoring, compliance, certification, and reporting requirements [42 U.S.C. § 7661c].
- Section 402(a)(2) of the Clean Water Act authorizes the Administrator to prescribe conditions to assure compliance with discharge permits, "including conditions on data and information collection, reporting, and such other requirements as he deems appropriate" [33 U.S.C. § 1342(a)(2)].

Ambient Pollution Standards

Another important method is ambient pollution standards, which address levels of contamination from pollutants that are in a surrounding area. The following examples illustrate the types of ambient pollution standards available through environmental laws:

- Water quality standards established under Section 303 of the Clean Water Act may require a "total maximum daily load" (TMDL) to be set for specific pollutants within an impaired water body [33 U.S.C. §1313]. Environmental justice concerns may arise because allocating a TMDL for a body of water has distributional consequences.
- Under the Clean Air Act, national ambient air quality standards are met through state implementation plans (SIP) and federal implementation plans (FIP) that allocate total pollutant loadings among permitted sources [42 U.S.C. §7410]. In areas where EPA administers the Act through a FIP, the agency has authority to examine these allocations for their environmental justice implications, and it may also have some ability to review or influence state allocations under a SIP [42 U.S.C. §7410(a)(2)(E)].

Conclusion

Taken together, the permitting processes established through federal environmental laws provide an opportunity to address environmental justice concerns and allow community residents to protect their health and environment.

Siting of New Facilities

Introduction

Siting of new facilities that may affect the environment and human health is an important environmental justice matter. To the extent that claims of disproportionate impact rest upon the concentration of sources within a geographic area or their proximity to sensitive populations, siting decisions become crucial to ensuring that no single community bears more than its fair share of the impacts.

Authorities of Government

It is very important to determine the roles of various levels of government in the siting process. Generally, the location of a facility does not always have to be considered in decisions made under environmental laws. Federal environmental laws will consider environmental and health effects on the surrounding population and environment, but generally will not be involved in reviewing the alternatives. Siting usually is the responsibility of local zoning authorities. Since most land-use and zoning decisions are made at the state and local levels, in most cases the U.S. Environmental Protection Agency has comparatively little opportunity to weigh in on siting issues. Yet, in certain circumstances, federal environmental laws do allow for consideration of siting issues in key decisions.

Federal environmental statutes address many important decisions that can involve:

- Geographic areas where the federal government has specialized jurisdiction, such as wetlands and coastal zones;
- Concentrations of pollutants, which can result in designation of non-attainment areas under the Clean Air Act;
- Heavily regulated facilities, such as waste disposal sites and incinerators; and
- The federal government's own activities that impact the environment.

Within these areas, EPA or the state regulatory agency has broad discretion and numerous opportunities to consider and address environmental justice issues in siting decisions. Its authority to take action is often based on language within specific laws that requires an "assessment" or consideration of the health or environmental impacts – which may include cumulative impacts – associated with siting an activity or facility, or that requires an analysis of "alternatives" to a proposed project, which may include the identification of alternative sites or forgoing the project entirely.

Examples of Siting Provisions

There are provisions in federal environmental laws administered by the U.S. EPA or the delegated state programs that do address matters associated with the siting of new facilities. The following examples illustrate some of those opportunities where community residents can pursue environmental justice.

Water and Wetlands

Under the Clean Water Act, permits may not be issued for discharges of dredged or fill material into surface waters, including wetlands, if there is a "practicable alternative" with less impact on the aquatic environment. Specific environmental justice impacts that may be considered include:

- Wetlands and other waters may support fish and wildlife populations used by communities for subsistence fishing or hunting purposes;
- Wetlands may filter pollution to keep other waters clean for drinking water and other domestic uses; and
- Wetlands may prevent flooding in communities located near adjacent water bodies.

Community residents can use this authority during the permitting process involving wetlands. For example, discharges and the deposition of fill materials into important water bodies can be prevented if the permitting agency (in this case, the Army Corp of Engineers or a state agency) is provided information about viable alternatives, such as conducting the activity in another location, possibly where fill is not needed. The Clean Water Act also requires the Army Corps of Engineers to conduct a "public interest review" when it considers a permit application for the discharge of dredged or fill material into the navigable waters at specified disposal sites. This public interest review is based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. A long list of factors may be considered, such as conservation, economics, historic properties, fish and wildlife values, and the needs and welfare of the people. Several of these factors touch on environmental justice concerns. For example, the definition of "historic properties" expressly includes "Indian religious or cultural sites."

Air

Under the Clean Air Act, special procedures are required before a major new source of air pollution is allowed. In areas in which air quality standards are already violated, new source permits may be issued only after the regulatory agency:

- Evaluates alternative sites for the facility;
- Considers production methods and pollution control techniques; and
- Is provided a showing that the benefits from the proposed new source will be greater than the environmental and social costs.

Hazardous Wastes

Under the Resource Conservation and Recovery Act (RCRA), the U.S. EPA has developed location standards that may limit the siting of hazardous waste treatment, storage, and disposal facilities. Community residents can provide helpful information about pre-existing levels and areas of pollution, and common uses of the property where a new or expanded facility may be built. This can help the state or EPA decide whether the proposed site for a hazardous waste activity will beappropriate.

Other Opportunities to Address Issues Associated with Siting

In addition to the opportunities for action outlined above, community residents can use authorities provided in environmental laws to address the siting of new facilities in their community.

First, community residents can use the same information that they would use to address the siting of a facility to request more protective permit conditions. For example, in a community in which multiple factories already discharge into the surface water, a new proposed facility may further increase the pollutant load on the river. The Clean Water Act requires the permitting agency to deny a water discharge permit where necessary to enforce water-quality standards in impaired waters. Therefore, the permitting agency should consider the information about existing pollutant loads to the river and community uses of the river in deciding whether to issue the permit, or in setting the level of pollutants the new factory will be allowed to discharge. This information could also change the cost-benefit analysis for the new factory (increase the costs, decrease the benefits) and cause the company to rethink whether the best location for the new facility has been identified.

Second, community residents can play a key role in documenting the environmental and social costs of a major new source of pollution. This is especially true for human health, and for costs imposed on communities that already face high levels of environmental or other human health threats. Information about environmental exposures in the community can help the agency write a permit that is more protective of the community's health. Community residents can play an important role in gathering this information and giving it to government agencies. This will ultimately increase protection of the community's health and environment and help it achieve environmental justice.

Supplemental Environmental Projects

What is a Supplemental Environmental Project (SEP)?

A supplemental environmental project (SEP) is an environmentally beneficial project that a violator voluntarily agrees to perform as part of a settlement of an enforcement action. In return, EPA agrees to reduce the monetary penalty that would otherwise apply as a result of the violation(s). Since SEPs are part of a settlement, they must meet the following legal requirements:

- SEPs must improve, protect, or reduce risks to public health or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits public health and/or the environment;
- A relationship between the SEP and the violation must exist. For example, a company that violates the Clean Water Act may propose a SEP that reduces the amount of pollutants it discharges into a river to an amount below what the law requires;
- SEPs must be voluntary. The project cannot be required by any federal, state, or local law or regulation. SEPs may include activities that the violator will become legally obligated to undertake two or more years in the future, as long as the regulation or statute does not benefit the violator for early compliance;
- SEPs cannot have been committed to or started before EPA identifies the violation (e.g., issued a notice of violation, administrative order or complaint). This is because the primary purpose of SEPs is to obtain environmental or public health benefits that may not have occurred "but for" the settlement;
- EPA plays no role in managing funds or controlling performance of a SEP. EPA may perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement, and have legal recourse if the SEP is not adequately performed;
- The type and scope of project must be determined in a signed agreement. In other words, one cannot just agree to pay a certain sum of money on project(s) to be defined later; and
- A SEP must not increase EPA's or any federal agency's resources to perform activities that the agency is legally required to perform itself. Similarly, a project cannot provide a federal grantee with additional funds to perform a specific task identified in an assistance agreement.

Categories of SEPs

SEP Projects **CAN** address:

- Public Health;
- Pollution Prevention;
- Pollution Reduction;
- Environmental Restoration and Protection;
- Assessments and Audits;
- Environmental Compliance Promotion; and
- Emergency Planning and Preparedness.

SEP Projects **CANNOT** address:

- General public educational or environmental awareness projects;
- Contributions to environmental research at a local university;
- Conducting a project that benefits the public, but does not enhance environmental protection;
- Studies or assessments undertaken without a requirement to address the problems identified in the study; or
- Projects that already receive financial support, through subsidies, grants, contracts, or other assistance, from the federal government.

Public Involvement

Enforcement settlement negotiations are confidential. This is to ensure that both parties involved in the lawsuit will be open and honest in communication without worrying about repercussions in the case. However, some violators who agree to perform an SEP will also want community input on issues surrounding the SEP. You can get involved in these ways:

- EPA will hold a public meeting to give the community information on the SEP. Attend this meeting and voice your opinions, concerns, and suggestions.
- In certain cases, EPA will publish the proposed settlement in the Federal Register before the settlement becomes legally effective. The proposed settlement will then have a period for comments from the public. EPA gives serious consideration to any comments on proposed settlements and SEPs.
- EPA keeps a list of ideas for SEPs in an "SEP library." Design your own SEP for your community and send it in as a suggestion for possible use in a future enforcement settlement.

Examples (from EPA's website)

Within Pennsylvania's Chester-Upland Public Schools, children with asthma are receiving treatment and education about this devastating disease. These students were being diagnosed with asthma at an alarming rate, almost twice the national average. When the Crozer Chester Medical Center entered into a SEP agreement with EPA and the Chester-Upland School District to resolve Clean Air Act violations, the medical center agreed to implement a comprehensive asthma detection and treatment program in the Chester-Upland public schools. The primary goal of this program was to reduce the long-term impact of asthmatic conditions in this student population. As a direct result of these initiatives, diagnosed students are linked to medical care programs designed to enhance their asthma management. The students and their families are educated to improve daily asthma management and to reduce exposure to environmental irritants. This SEP responds to a

Examples, continued

community-specific, environmentally related need in this affected area. In addition, it also meets the primary purpose of the SEP policy—encouraging and obtaining environmental and public health protection and improvements.

S.C. Johnson & Son resolved violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by paying a penalty and agreeing to assist the Asthma and Allergy Foundation of America (AAFA) with the purchase and staffing of a mobile asthma clinic (a Breathmobile®). Staffed by a physician, a nurse, and a respiratory therapist, the Breathmobile® will provide preventative health care as well as specialized asthma treatment to high-risk, inner-city children. The great advantage to this mobile asthma clinic is that it brings consistent state-of-the-art medical care to inner city, underprivileged children right at their elementary school. These children would otherwise not have routine access to effective asthma care. Studies suggest that children who remain in the program for three visits experience improvement in their asthma health. Therefore, the mobile asthma clinic will provide each child with at least three visits. This settlement resolves violations of FIFRA for allegedly selling and distributing an unregistered pesticide, which was marketed to allergy sufferers, and addresses both environmental justice and children's health concerns involving allergies. The settlement supports the mobile asthma clinic for a full year of diagnosis and treatment. After one year of treating children, the S.C. Johnson & Son settlement anticipates that the mobile asthma clinic will be continued through the University of Maryland.

ASARCO's lead refinery in Omaha, Nebraska, began operations during the end of the 19th century. Although this facility is now closed, over a century of operations resulted in contamination of the surrounding area by airborne lead particulates. As part of a settlement agreement for Clean Water Act violations, ASARCO agreed to implement SEPs to: (1) create, restore, or improve the ecosystem of the Missouri River into which the plant discharged; and (2) explore and mitigate potential public health problems related to its past operations. ASARCO's second SEP focused on assessing public health risks due to the long-term airborne lead contamination problem. The Omaha/Douglas County Health Department was selected to measure both current blood lead levels in children and evaluate possible health impacts. The blood level sampling was completed, and the results led to further sampling. The additional sampling included both blood levels in vulnerable children and measures of lead levels in soils, homes, and at daycare facilities. Superfund cleanup actions have been initiated to remove contaminated soils from the yards at some daycare facilities that were particularly impacted.

Penalty Mitigation

The amount of penalty mitigation is based on the cost of the SEP and whether or how effectively the SEP:

- Benefited the public or the environment;
- Was innovative;
- Considered input from the affected community;
- Factored in environmental justice issues;
- Reduced emissions to more than one medium (air, land, water); and
- Implemented pollution prevention techniques and practices.

The actual percentage of penalty mitigation given is within EPA's discretion. However, it cannot exceed 80% of the cost of the SEP unless the violator is a small business, a government entity or a nonprofit organization, or the SEP implements pollution prevention. Further, in all cases the final settlement penalty must equal or exceed: a) the economic benefit of noncompliance plus at least 10% of the gravity component; or b) 25% of the gravity component only, whichever is greater regardless of the cost or environmental value of the SEP.

DELEGATION: EJ Hook Fact Sheet

Summary of the Law

Most federal pollution control laws authorize the U.S. Environmental Protection Agency (EPA) to delegate its responsibility to state and tribal governments. This can include authority for permitting, monitoring, and enforcement. Programs that can be delegated include regulation of water and air pollution, hazardous and solid waste, and drinking water.

Delegation means that the authority to operate an environmental regulatory program has been shifted from EPA to a state agency or tribal government. Then the state agency or tribal government is responsible for carrying out the provisions of the law.

The process for delegation includes a formal application by a state or tribal government for federal authorization; determination by EPA of whether the state or tribal government is adequate; approval or disapproval by EPA of the program; and EPA oversight or withdrawal of delegated authority, as appropriate.

Environmental Justice Hooks

Community residents can use the delegation process to focus attention on environmental justice challenges. They can provide written information and testimony. Useful information relates to adequacy of personnel, funding, and authority of the state or tribal government to carry out the program.

Illustrations of provisions and examples of where community residents can use delegation to address environmental justice include the following measures:

1) **Clean Air Act**: EPA can impose sanctions against a state if it determines that they are necessary to ensure that the State Implementation Plan (SIP) meets the requirements of the Clean Air Act [42 U.S.C. §7410(m)]. One sanction, short of program withdrawal, that EPA can impose if a state's transit plan does not conform to its SIP is withholding federal highway funds for the state.

2) **Clean Water Act**: EPA can make grants to assist states in administering water programs. The Clean Water Act requires EPA to withhold grant monies from states that fail to conduct adequate water quality monitoring and reporting [33 U.S.C. §1256].

3) **Resource Conservation and Recovery Act**: EPA is entitled to participate in the public notice-and-comment period on state-issued permits. If the state has been delegated EPA's "omnibus authority" but fails to address factors identified by EPA, EPA can seek to have the state include additional permit condition.

4) **Permit Override:** Under certain programs, EPA can review state-issued permits (e.g. water discharge, dredge-and-fill) and object in writing to the issue of any permit as "being outside the guidelines and requirements" of the act. If the state fails to address EPA's objections following a public hearing, EPA may issue its own federal version of the permit.

Delegation of Environmental Programs to States and Tribes

Introduction

Most major pollution control laws authorize the U.S. Environmental Protection Agency (EPA) to *delegate* significant programmatic responsibility for permitting, monitoring, and enforcement activities to state and tribal governments. *Program delegation* means that the authority to operate a regulatory program has been shifted from EPA to a state environmental agency or tribal government. Consequently, the state agency or tribal government is responsible for carrying out the provisions of the laws.

Why "Delegate"?

Delegation places authority in the hands of state officials whose residents will experience the benefits and burdens of environmental decisions. One purpose behind the delegation of statutory programs from EPA is to address the balance of power between federal and state or tribal governments. The federal system of law uses modern pollution control statutes to establish *national* standards and to provide for *uniformity* in their implementation and enforcement At the same time, the federal system of laws gives a large role to state and tribal governments in the implementation and enforcement of these laws. There is also a general policy preference for "*states' rights*" and tribal sovereignty. Often states and tribes are more aware of, and better positioned to respond to, conditions in the field due to their first-hand account of local problems. The purpose of delegating EPA's authority is therefore:

- To achieve a balance between local control and nationally consistent environmental protection; and
- To ensure that federal and state expertise and resources are put to their most effective uses.

So long as a state implements a program that is comparable with the federal requirements, EPA plays only an oversight and compliance assurance function.

Process Used for Program Delegation

Programs that can be delegated include water and air pollution, hazardous and solid waste, and drinking water. With the exception of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which has no delegated programs, the delegation provisions of EPA's major statutes are substantially similar. The process for delegation includes:

- Formal application by the state or tribal government for federal authorization, which is reviewed by EPA through a public process;
- Determination by EPA of whether the state's or tribe's laws and proposed measures provide adequate personnel, funding, and authority to carry out the federal program; and
- Approval by EPA of the program, by which EPA gives to the state or tribal government the appropriate elements of its authority within that jurisdiction.

Community residents can participate in EPA's decisions regarding delegation of environmental regulatory programs by providing written information and testimony. Useful information relates to the adequacy of personnel, funding and authority of the state or tribal government to carry out the program.

EPA Oversight

Even after authority for a program has been delegated, EPA often retains oversight of various state actions and decisions. This oversight is important to ensure that the federal requirements are met. Examples of EPA's oversight include:

Clean Air Act (CAA): Under the CAA, EPA can impose sanctions against a state if the Agency makes a "finding, disapproval, or determination" that sanctions are necessary to ensure that any State Implementation Program (SIP) meets the requirements of the CAA [42 U.S.C. §7410(m)]. One drastic sanction EPA can impose, if a state's transit plan does not conform to its SIP, is withholding federal highway funds for the state. Citizens can also impact the process of developing a SIP. This can provide significant opportunities for addressing environmental justice concerns related to air pollution.

EPA Oversight, continued

Clean Water Act (CWA): The CWA authorizes EPA to make grants to assist states in administering programs, and requires EPA to withhold grant monies from states that fail to conduct adequate water quality monitoring and reporting [33 U.S.C. §1256]. However, the CWA lacks the financial leverage of withholding federal highway funding, as under the CAA. The CWA authorizes EPA to review state-issued discharge permits and dredge-and-fill permits, and to object in writing to the issuance of any permit "as being outside the guidelines and requirements" of the Act. If the state fails to address EPA's objections following a public hearing, EPA may issue its own federal version of the permit [33 U.S.C. §1342(d)(2)(B) and 33 U.S.C. §1344(j)]. Depending on circumstances, such ongoing review processes may provide an additional opportunity, and an additional forum, for incorporating environmental justice concerns into operating permits.

Resource Conservation and Recovery Act (RCRA): EPA is entitled to participate in the public notice-and-comment period on proposed state-issued permits [40 C.F.R. §271.19(a)]. If the state has been delegated EPA's "omnibus authority" to protect human health and the environment, but fails to address factors identified by EPA as necessary for doing so, EPA can seek to enforce its comments and have the state include appropriate permit conditions.

It is important to note that commenting by community residents and others is generally permitted when EPA exercises its oversight of state and tribal government programs.

Revoking Program Delegation

Most of the statutes that authorize delegation of EPA program authority to state environmental agencies and tribal governments also make some provision for its revocation and return to EPA if the authority is not being properly used.

The EPA's power to completely revoke delegated authority implies a variety of lesser-included powers and sanctions. These include the ability to review and object to state-issued permits and place conditions on federal funding; or other measures that fall short of total revocation of the delegated authority. Examples of these measures under the CAA, CWA, and RCRA are described below.

Revoking Program Delegation

Examples of measures that revoke delegated authority:

The CWA and CAA both provide that if EPA finds violations of state-issued permits that "are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively," it must give the state notice, and if the situation goes uncorrected, temporarily assume federal enforcement authority until the state provides assurances that it will enforce its program [33 U.S.C. §1319(a)(2) (CWA), 42 U.S.C. §7413(a)(2)(CAA)].

The CWA also authorizes total revocation on a number of grounds, including inadequate permitting, inadequate public participation, or inadequate enforcement [33 U.S.C. §1342(c)(3) and 40 C.F.R. §§123.63(a)(2) & (3)]. Similar revocation provisions and authorities are found in, or have been read into, other statutes and programs, including RCRA [42 U.S.C. §6926(e)].

Environmental Justice for Delegation

EPA has authority to consider environmental justice issues during the approval process for program delegation. For example, when EPA examines a state's or tribal government's capacity to actually carry out a program, that inquiry could include consideration of how the proposed allocation of budget, staff, and other resources may affect low-income and minority communities.

EPA has a broad mandate to protect low-income communities or communities of color in implementing its programs. States are not allowed to propose laws that are any *less* stringent than the federal requirements. But it is important to note that states may make laws that are more stringent than federal requirements. As a result, a broad interpretation of EPA's mandate could actually result in even stricter requirements by the states.

Ultimately, it is very important for community residents to understand the importance of the program delegation process and the authority provided by law to make sure that federal environmental laws are met by state and tribal governments.

Part 4: Federal Environmental Laws

- Federal Laws that Address Environmental Justice Concerns
- Clean Air Act (CAA): EJ Hook Fact Sheet
- Clean Air Act
- Resource Conservation and Recovery Act (RCRA): EJ Hook Fact Sheet
- Resource Conservation and Recovery Act
- Brownfields Redevelopment: EJ Hook Fact Sheet
- Clean Water Act (CWA): EJ Hook Fact Sheet
- Clean Water Act: Supplemental Authorities
- Federal Water Pollution Control Act: "Clean Water Act"
- Safe Drinking Water Act (SDWA): EJ Hooks Fact Sheet
- Safe Water Drinking Act
- Infrastructure for Safe Drinking Water and Wastewater Treatment & Disposal

Federal Laws that Address Environmental Justice Concerns

Introduction

The following is a brief summary of the federal environmental laws that are relevant to environmental justice matters. For a fuller discussion of these laws and the opportunities that they provide for addressing environmental justice concerns, please refer to the ELI publications *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice* and *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities*.

In addressing any environmental justice issue, one of your first tasks will be to determine which of these laws might apply.

National Environmental Policy Act (NEPA)

NEPA sets up a process by which the federal government must evaluate the environmental impacts of any major actions that it plans to take, and consider alternatives.

Relevance to environmental justice issues generally:
The national environmental policy articulated by NEPA, with its call for the government to fulfill the "social, economic, and other requirements" of present and future generations, speaks broadly to the goals of environmental justice. NEPA seeks to assure for "all Americans" a healthful environment, as well as aesthetically and culturally pleasing surroundings and a wide sharing of life's amenities. These goals mean that having certain communities suffer disproportionate adverse risks or impacts is contrary to the national policy. NEPA was enacted to help ensure that the federal government's use of the environment would be "without risk to health or safety, or other undesirable consequences." NEPA commands that the environment be maintained to support "diversity and a variety of individual choice." Residents of communities of color and low-income communities may use their environment in certain ways, such as for subsistence hunting and fishing, that may differ from the uses by other communities. NEPA seeks to protect and preserve these uses. It should be recognized that the courts have interpreted NEPA's provisions, and there is disagreement on the application of the policy language provided in the statute.

NEPA, continued

Relevance to action on environmental justice issues:
NEPA contains a number of notice-and-comment provisions, most noticeably for NEPA-related hearings, public meetings, and the availability of environmental documents; in deciding the appropriate scope of environmental impact statements (EISs); for draft EISs; and, in certain instances, on final EISs before agency decisions are made. Public hearings or meetings are required where there exists substantial environmental controversy concerning a proposed action, and for draft EISs. It should be noted that this controversy must pertains to disagreement on science, and not merely on degree of public sentiment. NEPA also obliges EPA to provide technical assistance to ensure thorough understanding by those who propose the project and the general public, among others, of a proposed federal action.

Ultimately, the importance of NEPA to environmental justice was highlighted in an agency-wide memorandum issued by EPA Administrator Christine Todd Whitman in 2001, which provided that "[I]n the National Environmental Policy Act of 1989 (NEPA), Congress could not have been any clearer when it stated that it shall be the continuing responsibility of the Federal government to assure for all Americans 'safe, healthful, productive and aesthetically and culturally pleasing surroundings.'"

Federal Water Pollution Control Act ("Clean Water Act" or CWA)

The CWA reflects Congress' intent first to control and then to eliminate all pollutant discharges into U.S. waters. The statute sets an aspirational "zero-discharge" goal for waters of the United States.

Relevance to environmental justice generally:
The CWA brings a number of environmental justice issues within its reach, from protecting drinking water supplies, to reducing toxic exposure, to protecting fisheries, wetlands, and wildlife habitat. Further, the Act's stated goal of eliminating all pollutant discharges, its well-established permitting programs, and its stringent enforcement provisions make it potentially a very effective tool that EPA and other regulatory authorities can apply to address environmental justice concerns.

Relevance to action on environmental justice issues:
The CWA offers the opportunity for notice and participation by providing for public review of and comment on the periodic revisions of guidelines for incorporating technology-based standards into facility-specific effluent limitations; for the triennial review of toxic pollutant effluent limitations; and for the issuing of dredge-and-fill activity permits. Public hearings and meetings are called for in the instances of the triennial review of a state's designation of in-stream uses to be protected via water-quality-based standards; before issuance of the National Pollutant Discharge Elimination System (NPDES) permits for discharge of pollutants to navigable waters; upon a state-initiated request for such when EPA proposes to veto issuance of a dredge-and-fill activity permit; and when a state requests delegation of authority to administer a program.

Clean Air Act (CAA)

The CAA is the federal law that regulates emissions into the air from stationary (not able to move) and mobile (able to move) sources in order to protect public health and decrease air pollution. Title V of the statute establishes a single comprehensive permit that includes all of a facility's applicable CAA requirements.

Relevance to environmental justice generally:
The health effects caused by air pollution and maintenance of air quality that does not endanger public health are important environmental justice issues. Disproportionate numbers of people in low-income communities and communities of color live in urban environments with high levels of air pollution. Exposure to air pollution may trigger or cause adverse health effects and may explain, in part, why illnesses such as asthma and bronchitis particularly affect low-income communities and communities of color.

Relevance to action on environmental justice issues:
The Clean Air Act provides ample opportunity for environmental justice activism by incorporating notice and participation provisions on draft Title V permits; on EPA proposals to approve state Title V permit programs; on pending EPA approval of a State Implementation Plan (SIP) or a SIP revision; on a pending action to re-designate a prevention of significant deterioration (PSD) permit; and on pending action by the federal government to enter into a consent order or settlement agreement under the CAA. The CAA also provides opportunities for public hearings on draft Title V permits; on draft PSD permits; on pending EPA approval of a SIP revision; and on a pending PSD area re-designation. In addition to including a public education provision and reporting requirements, the CAA calls for EPA to consult with advisory committees before issuing various air quality standards and regulations, and requires meaningful community participation in siting solid waste incineration units. The Act also describes the method for initiating citizen suits against anyone who violates the statutory requirements, against the EPA to enforce its non-discretionary duties, or against anyone constructing a new source without the necessary permit(s).

Resource Conservation and Recovery Act (RCRA)

RCRA is the primary federal law regulating management and disposal of solid and hazardous waste. Subtitle C of the statute creates a system designed to manage hazardous waste from its creation, through its transportation, to its ultimate disposal. Subtitle D of RCRA includes planning requirements and technical criteria for building municipal solid waste (garbage) facilities.

Relevance to environmental justice issues generally:
The siting of hazardous and solid waste facilities has long been an important environmental justice issue. RCRA directly addresses the health and environmental risks posed by waste disposal activities. Implementation of specific RCRA provisions to address environmental justice issues necessarily requires consideration of political, technical, legal, and other factors.

Relevance to action on environmental justice issues:
RCRA requires public hearings to be held if EPA receives written notice of opposition to the siting of hazardous and solid waste facilities. The statute also allows for informal public meetings between permit applicants and affected communities, provided that the meetings occur before permit applications are submitted. Reporting requirements are imposed on waste generators, transporters, and treatment, storage, and disposal facilities. They are also imposed on states, which must provide EPA with an inventory of all sites at which hazardous waste has been stored or disposed. Federal agencies also must provide EPA with an inventory of all federally owned or operated hazardous waste sites. RCRA addresses federal assistance in planning and implementing energy and materials conservation and recovery programs.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

CERCLA (also known as "Superfund") was enacted in 1980 to address the cleanup of sites where hazardous substances have been released into the environment and threaten imminent and substantial harm to human health or the environment or where such a threat is posed.

Relevance to environmental justice issues generally:
According to some estimates, as many as one in four people lives within a four-mile radius of a Superfund site. Many of these people live in low-income communities and communities of color. Effective, equitable and efficient cleanup of Superfund sites is essential to protecting the health and environment of communities of color and low-income communities.

Relevance to action on environmental justice issues:
CERCLA has notice-and-comment provisions, which allow for public participation in cleanup decisions; in decisions regarding the transfer or sale of federal facilities before cleanup is completed; in consent decrees; and in settlement with *de minimis* parties or cost recovery settlements. CERCLA also provides opportunities for public meetings to be held in affected areas regarding cleanup alternatives. The act also stipulates reporting and public education requirements. Moreover, CERCLA permits the filing of petitions for preliminary assessment of hazards to human health and environment. The statute also provides for the awarding of technical assistance grants, funding for natural resource damages and restoration (including on tribal land), and reimbursement to the local community for emergency cleanup expenses up to a maximum of $25,000.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Federal Food, Drug, and Cosmetic Act (FFDCA)

FIFRA and FFDCA together provide the framework for pesticide regulation in the U.S. Under FIFRA, EPA is responsible for regulating manufacture, labeling, sale, and use of pesticides. Under FFDCA, it determines allowable levels of pesticide residue in food.

Relevance to environmental justice issues generally:
Pesticide use is an important issue in environmental justice for a variety of reasons. First, farm worker communities, composed largely of people of color and low-income families, are usually subjected to more frequent pesticide exposures from more sources than other communities. Second, some low-income communities and communities of color may, as a result of inadequate nutrition or other medical factors, be more vulnerable to the harmful effects of pesticides. Third, many communities of color and low-income communities already bear a disproportionate share of environmental burdens flowing from other kinds of pollution, waste disposal, access to drinking water, and facility siting.

Relevance to action on environmental justice issues:
FIFRA and FFDCA both include provisions for notice and comment. These opportunities arise when EPA exercises its discretion to solicit the views of “qualified persons” when suspending or canceling pesticide registration; when reviewing registration applications; and when announcing an intent to cancel pesticide registrations or change pesticide classifications. Public hearings and/or meetings are to be held within 60 days after setting pesticide tolerances or exemptions; public evidentiary hearings are to be held if requested by an interested person. Public hearings are also required on pesticide registration cancellations or on changes in pesticide classifications if requested. The statutes also contain public education and reporting provisions.

Safe Drinking Water Act (SDWA)

The SDWA has two principal programs: regulating public water systems and the quality of water they provide for human consumption, and protecting underground sources of drinking water from contamination (the "underground injection control" or UIC program).

Relevance to environmental justice issues generally:
Environmental justice goals present an important challenge in implementing the public health provisions of the SDWA. Many people in the United States – including residents of *colonias* along the U.S.-Mexico border and farm worker communities – still live without access to safe drinking water. Contaminated drinking water supplies may present particularly high risks to children and other sensitive populations. In addition, public drinking water systems in low-income communities, if small, may have difficulty meeting stringent health-based standards for drinking water, nor can those local municipalities afford to fix problems with drinking water quality.

Relevance to action on environmental justice issues:
The notice-and-comment requirements of the SDWA call for public notice and comment before granting facility-specific variances to national primary drinking water standards; for EPA's three-year review of variances and exemptions granted to national primary drinking water standards; and on a state's plan of intended uses for the drinking water treatment revolving loan fund. Public hearings and meetings are to be held upon an EPA notice to revoke a variance from, or revise the compliance schedule for, attaining national primary drinking water standards; before an exemption is granted from the national primary drinking water standards due to compelling factors; and before EPA acts on a state's application to administer the underground injection control program. SDWA requires that the National Drinking Water Advisory Council include 5 of its 15 members from the general public and 5 from private organizations and groups. States must establish technical and citizens' advisory committees to encourage public participation in developing underground injection control programs. The Act contains public education and reporting requirements, and allows for the submission of petitions to have EPA object to and/or revoke state variances from attaining national primary drinking water standards.

The SDWA also provides grants to state authorities to provide additional subsidies for loans to disadvantaged communities. Further, 1.5% of the annual appropriation for the revolving loan fund capitalization is to be set aside for Indian tribes and Alaska Native villages. The Act provides for grants to Arizona, California, New Mexico, and Texas for assistance to the low-income communities known as *colonias* to facilitate compliance with national standards. Program funding is available to states and tribes to implement public water system supervision programs and underground water supply protection programs. Finally, the Maximum Contaminant Levels established under the SDWA must consider the impact on sub-populations.

Toxic Substances Control Act (TSCA)

TSCA provides a framework for addressing threats to health and the environment from chemical substances. Under TSCA, EPA has authority to screen new chemicals, test existing chemicals, and place restrictions on the use of chemical substances that pose "unreasonable" health or environmental threats.

Relevance to environmental justice issues generally:
Equitable distribution of environmental problems and benefits has become an increasingly important social and public health issue over the past several years. While TSCA establishes specific requirements for the various regulatory actions described in

TSCA, continued

the Act, the statute's broad goal can support efforts to ensure that health and environmental risks to communities of color and low-income communities are addressed in implementing it. TSCA Section 2(c) also states explicitly Congress' intent that EPA "shall consider the environmental, economic, and social impact of any action" taken to implement the Act. This provision provides general support for EPA to consider fully the impacts of TSCA decisions on communities of color and low-income communities.

Relevance to action on environmental justice issues:
The notice-and-comment provisions of TSCA apply before EPA regulates chemicals that pose unreasonable risk; before EPA issues testing rules for chemicals that may pose unreasonable risk; to consent agreement negotiations on testing requirements that are open to the public; and to all documents in EPA's public file. Public hearings are required upon the filing of a petition to issue, amend, or repeal a rule. The statute also contains public education and reporting requirements. Funding of public participation activities is available to compensate for the costs of participating in EPA's attempts to regulate chemicals that pose unreasonable risk (although it should be noted that due to court reversals, EPA is "deemphasizing" this regulatory authority). The U.S. Department of Health and Human Services is authorized by TSCA to make grants to non-profit organizations to develop inexpensive and efficient testing methods for addressing health and environmental impacts of chemical substances that can be used in developing test data. Program funding is made available to states for technical assistance to carry out radon-related activities and to implement radon programs.

Emergency Planning and Community Right-To-Know Act (EPCRA)

EPCRA addresses two important issues, community right-to-know and community preparedness. EPCRA establishes programs that impose reporting requirements on owners and operators of certain facilities that produce, store, or use toxic chemicals, or release them into the environment, and makes the reports available to the public.

Relevance to environmental justice issues generally:
EPCRA was enacted in response to the perceived need for improved emergency preparedness, including the need to provide information about chemical use and storage to communities and emergency personnel, prior to chemical release accidents. EPCRA requires state and local entities to take certain steps to prepare for chemical release emergencies, such as preparing local emergency response plans. EPCRA also seeks to increase the amount of information available to the public about chemicals in their communities by requiring certain businesses to report information about the use, storage, and release of specific chemicals. The EPCRA provisions aim to provide the public with a framework for considering the scientific, technological, political, and legal factors that may influence future EPA efforts to use other statutory authorities to promote environmental justice through more effective regulation of the release of contaminants.

Relevance to action on environmental justice issues:
EPCRA promotes public education and reporting by state emergency response commissions (SERCs), local emergency planning commissions (LEPCs), and facility owners/operators about certain kinds of information to health professionals. EPCRA provides for the filing of petitions to SERCs to modify membership of LEPCs; for petitions to add or delete a chemical from the list subject to toxic chemical release reporting requirements; and for petitions for disclosure of specific chemicals identified and claimed as trade secrets. EPCRA also addresses the manner in which the public may request material safety data sheets (MSDS) from LEPCs; Tier II information on hazardous chemical threshold quantities from a SERC or LEPC about a particular facility; and information about adverse health effects from a state governor or SERC about chemicals not revealed due to trade secret claims.

Freedom of Information Act (FOIA)

FOIA ensures that the public has access to information in the federal government's files. A member of the public can file a written request for information from the federal government. The government must respond within ten days, saying how and when it will provide access to the documents (or stating why it will not provide such access). Many states have similar public access statutes.

Relevance to environmental justice issues generally:
Information is key to addressing environmental justice concerns. While not an "environmental" statute, FOIA is an extremely valuable tool to get important documents and other information about environmental issues from federal agencies. It may not be necessary to use FOIA in your first attempt to gather information, and we recommend that you check to see whether relevant information is automatically available to the public under provisions of the various environmental statutes listed above. In other cases, you can get the information you need simply by calling or visiting the appropriate agency offices. If there is any reason to believe that all of the relevant information is not being made available, however, FOIA is a useful method to make sure or at least to identify documents that have been withheld.

Relevance to action on environmental justice issues:
FOIA promotes more effective citizen participation in government decision-making because it provides community residents with the ability to obtain information that is being considered in that process. It also provides the opportunity for community residents to better understand the nature of activities regulated by government.

CLEAN AIR ACT (CAA): EJ Hook Fact Sheet

Summary of Law

The CAA is intended to:

- Protect public health
- Decrease air pollution
- Regulate emissions into the air from stationary sources (for example power plants, factories) and mobile sources (for example cars)

EPA sets standards and rules to regulate air pollution, issues permits to emit certain levels of air pollution, and delegates regulatory authority to the states.

Environmental Justice "Hooks"

There are many provisions in the CAA you can use to achieve environmental justice goals:

1. **Air Quality Standards**: EPA can consider the impacts and health risks on sensitive populations when setting or revising the National Ambient Air Quality Standards, the New Source Performance Standards, and the National Emissions Standards for Hazardous Air Pollutants.

2. **Mobile Source Standards:** When designing emissions standards, EPA can consider the health impacts on communities of emissions from motor vehicles, toxic emissions from vehicles, emissions along bus routes, and emissions from fuels (Sections 202 and 211).

3. **Urban Area Source Program:** EPA is required to conduct a research monitoring program of urban area sources of air pollution, focusing on the public health risks posed by hazardous air pollution. After monitoring is complete, EPA must submit to Congress a strategy for controlling hazardous air pollutants in urban areas (Section 112(k)).

4. **Title V:**

   - If EPA fails to object to a permit, citizens can petition the agency to object within 60 days of the review period under section 505(b).
   - Section 504(a)-(c) may authorize EPA to impose permit conditions that help communities ensure that facilities comply with the law, such as requiring the facility to provide information about its emissions to the community.
   - Section 504(b)'s requirement that facilities that receive permits engage in monitoring, record-keeping, and reporting can provide affected communities access to information that could lead to enforcement action or citizen suits, where necessary.

5. **Enforcement:** Section 113 gives EPA broad discretion in choosing when and where to bring an enforcement action. It can consider environmental justice concerns when determining what penalties to impose for a violation. EPA can seek comments from affected communities on proposed settlements with polluters and take emergency action to stop emission of air pollutants in order to protect public health, welfare, or the environment (Section 303).

6. **Information Gathering:**

- CAA requires pollution sources to monitor their emissions and share this information with affected communities. Any information obtained by EPA is available to the public, except where it constitutes a trade secret (Section 114(c)).
- EPA may require that owners or operators of emissions sources: (1) establish and maintain records; (2) make reports; (3) install, use, and maintain monitoring equipment; (4) sample their emissions; (5) keep records on control equipment; (6) submit compliance certifications; and (7) provide other information as required by EPA (Section 114(a)).

7. **Research and Development:**

- EPA is authorized to research the health and welfare effects of air pollution on, and investigate problems of concern to, low-income communities and communities of color. EPA can work with communities to carry out research, and should ensure that its research results are shared with affected communities (Section 103).
- EPA is required to research the short and long-term effects of air pollutants, including wood smoke, on human health (Section 103(d)), and to establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to state and local agencies and others (Section 112(l)(3)).

8. **Financial Assurance:**

- Community groups and individuals can seek technical and financial aid from EPA for activities aimed at preventing and controlling air pollution, such as collecting information, clarifying test results, and/or purchasing monitoring equipment (Section 103(a)(2)).
- EPA could condition its grant assistance to state air pollution control agencies on the consideration of cumulative impacts in the process of establishing air quality standards, and on considering demographic factors in developing an alert system (Section 105).

9. **Public Participation**:

Community residents can provide public comments on Draft Title V Permits; EPA consideration of a state's Title V program; EPA approval of a State Implementation Plan (SIP), or the revision of a SIP; EPA's decision whether to redesignate an area as Prevention of Significant Deterioration (PSD); and EPA's proposed consent orders or settlement agreements with a polluter.

Community residents can participate in public hearings on Draft Title V permits; Draft Prevention of Significant Deterioration (PSD) permits; revisions of a State Implementation Plan (SIP); proposed redesignation of a PSD area.

For more details on how to use the CAA to achieve environmental justice, please see:

1. *Opportunities for the Advancement of Environmental Justice: An Analysis of EPA Statutory Authorities* (Environmental Law Institute, 2001).
2. *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice.* (Environmental Law Institute, 2002).

Clean Air Act

Introduction

The Clean Air Act (CAA) enables the federal government and the states to regulate air quality and to promote air quality standards.

Purpose

The purpose of the CAA is to regulate emissions into the air from stationary (not able to move) and mobile (able to move) sources to protect public health and decrease air pollution.

Types of Issues Addressed

The Clean Air Act authorizes the Environmental Protection Agency (EPA) to set national ambient air quality standards (NAAQS) for certain air pollutants. NAAQS are levels of pollution in the outside air that research indicates will not harm even individuals who are particularly sensitive to pollutants.

The EPA also sets national standards that must be met by all stationary facilities that have air emissions. These include standards for new stationary sources of pollution (known as new source performance standards or NSPS). EPA lists categories of sources of certain hazardous air pollutants (HAPs), and sets national emission standards for them (known as NESHAPs). EPA has a specific program (known as the Urban Air Toxics Program or Urban Air Strategy) to develop a strategy for reducing emissions of HAPs in urban areas.

These national standards are applied to an individual facility with a stationary source of air emissions through a permit. Although historically, a variety of permits were issued under the CAA, there has been a move toward consolidating all requirements into a single operating permit under Title V of the CAA. Facilities that do not yet have a Title V operating permit may be operating under a new source review (NSR) permit or a prevention of significant deterioration (PSD) permit (which is issued in “attainment” areas). States can apply to EPA for authority to administer the Title V permit program within their boundaries.

EPA also regulates mobile sources, which include automobiles, trucks, buses, aircraft, and non-road engines. It regulates motor vehicle and heavy-duty truck emissions, hazardous air pollutant emissions from motor vehicles and motor vehicle fuels and fuel additives, and sets urban bus standards.

Framework

The Clean Air Act addresses the following:

Public Notice and Participation

- Public notice and comment on draft Title V permits (40 C.F.R. §70.7(h)).
- Public notice and comment on EPA's proposal to approve state Title V permit program (40 C.F.R. §70.7(b)).
- Public notice and comment before EPA approval of SIP (§110(a), 42 U.S.C. §7410(a)).
- Public notice and comment before EPA approval of SIP revision (§110(l), 42 U.S.C. §7410(l)).
- Public notice and comment before a PSD area is redesignated (§164(b), 42 U.S.C. §7474(b)).
- Opportunity for public notice and comment before U.S. enters into a consent order or settlement agreement under the CAA (§113(g), 42 U.S.C. §7413(g))
- Opportunity for public hearing on draft Title V permit (40 C.F.R. §70.7(h)).
- Public hearing on draft PSD permit (§165(a)(2), 42 U.S.C. §7475(a)(2)).
- Public hearing before EPA approval of SIP revision (§110(l), 42 U.S.C. §7410(l)).
- Public hearing before any PSD area is redesignated (§164(b), 42 U.S.C. §7474(b)).
- EPA to consult with advisory committees before issuing various air quality standards and regulations (§117(a), (b), 42 U.S.C. §7417(a), (b)).
- Meaningful community participation in siting solid waste incineration units (§129(a)(3), 42 U.S.C. §7429(a)(3)).
- Any body that approves permits or enforcement orders to have a majority of members who represent the public interest (§128(a), 42 U.S.C. §7428(a)).

Available Information

- Databases of information on emission control technology (§108(h), 42 U.S.C. §7408(h)
  (a) Clean Air Technology Center (http://www.epa.gov/ttn/catc).
  (b) RACT/BACT/LAER Clearinghouse - information on air pollution emission standards (http://cfpub1.epa.gov/rblc) (RACT, BACT, and LAER are acronyms for different program requirements under the CAA. They stand for Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate.)
- Great Lakes atmospheric deposition monitoring network; monitoring stations for Chesapeake Bay and Lake Champlain; atmospheric deposition monitoring networks for coastal waters and watersheds (§112(m), 42 U.S.C. §7412(m)).
- Revised inventory of actual emissions for ozone non-attainment areas (every three years until attainment reached); ambient monitoring of various air pollutants (§182, 42 U.S.C. §7511a).
- EPA-sponsored air quality monitoring stations in major urban areas (§319, 42 U.S.C. §7619).
- Air toxics clearinghouse and center (technical information and assistance to states and local agencies; information to be available to the public) (http://www.epa.gov/ttn/atw) (§112(l)(3), 42 U.S.C. §7412(l)(3)).
- National Urban Air Toxics Research Center (http://es.epa.gov/ncerqa/nuartrc.html) (§112(p), 42 U.S.C. §7412(p)).

Public Education

- Education and outreach efforts to inform public about integrated urban (air toxics) strategy (§112(k), 42 U.S.C. §7412(k)).
- Annual notification of public by state of areas in which NAAQS are not attained (§127(a), 42 U.S.C. §7427(a)).

Standard-setting:
- Air quality criteria for specific air pollutants.
- Primary and secondary NAAQS (5-year review of NAAQS) (§109, 42 U.S.C. §7409).
- Performance standards for NSPS (§111(f), 42 U.S.C. §7411(f)).
- Performance standards for solid waste incineration units (§129, 42 U.S.C. §7429).
- NESHAPs (§112(c), (d), 42 U.S.C. §7412(c), (d)).
- Urban air toxics program/integrated urban strategy (§112(k), 42 U.S.C. §7412(k)).
- Standards for air pollutant emissions from new motor vehicles (§202(a)(1), 42 U.S.C. § 7521(a)(1)); and emissions from heavy duty engines (§ 202(a)(3)(B), 42 U.S.C. §7521(a)(3)(B)).
- Motor vehicle emission standards for urban buses (§219(a), 42 U.S.C. § 7554(a)).

Rulemaking:
- EPA to list categories of stationary sources that cause or contribute significantly to air pollution (§111(b), 42 U.S.C. §7411(b)).
- Periodic review of hazardous air pollutants list (§112(b)(2), 42 U.S.C. §7412(b)(2)).
- Requirements to control hazardous air pollutant emissions from motor vehicles and motor vehicle fuels (§202(l), 42 U.S.C. §7521(l)).
- Requirements for fuels, fuel additives, diesel fuel and reformulated gasoline (§211, 42 U.S.C. §7545).
- EPA to promulgate federal implementation plan when state does not meet minimum criteria or SIP or permit program is disapproved (§110(c)(1), 42 U.S.C. §7410(c)(1)).
- Requirements regarding accidental releases (prevention, detection, correction, monitoring, recordkeeping, reporting, training, equipment, etc.) (§112(r)(7), 42 U.S.C. §7412(r)(7)).

Permitting and other approvals:
- New air pollution source may request waiver from new source performance standard for use of innovative technology or continuous emission reduction system (§111(j), 42 U.S.C. §7411(j)).
- Risk management plans required for owner/operator of stationary air pollution source to minimize accidental releases and provide prompt emergency response (§112(r), 42 U.S.C. §7412(r)).
- Title V air pollution permit program (§504, 42 U.S.C. §7661c).
- Preconstruction review of new sources or modification of existing sources of air pollution (NSR permits required in non-attainment areas) (§173(a), 42 U.S.C. §7503(a)).
- Permits for new sources or modification of existing sources of air pollution in attainment areas to protect PSD (§160(1), 42 U.S.C. §7470(1)).
- Emissions trading authorized for sulfur dioxide and nitrogen oxides (§403(b), 42 U.S.C. §7651b(b)).

Siting:
- EPA to designate geographic areas as attainment or non-attainment for NAAQS; non-attainment areas further classified as marginal, moderate, serious, severe, or extreme (§181(a), 42 U.S.C. §7511(a)).
- EPA may require state to redesignate areas as non-attainment for NAAQS, or change significance classification within non-attainment area (§107(d)(3), 42 U.S.C. §7407(d)(3)).
- Siting requirements for solid waste incineration units (cumulative impacts) (regulations published at 40 C.F.R. § 60, subpart Cc) (§129(a)(3), 42 U.S.C. §7429(a)(3)).
- NSR permit decision to include siting considerations (§173(a)(5), 42 U.S.C. §7503(a)(5)).

Legal Rules, continued

Enforcement and compliance assurance:
- EPA to require use of low-polluting fuels if urban buses do not meet emission standards (§219(c)(2), 42 U.S.C. §7554(c)(2)).
- EPA may impose highway sanctions and offsets as consequence for state's inadequate administration of air program (§§502(i), 179, 42 U.S.C. §§7661a(i),7509).
- EPA civil action and civil penalty authority (§113(b), (e), 42 U.S.C. §7413(b), (e)).
- EPA may dictate required revisions of SIP (§110(k)(5), 42 U.S.C. § 7510(k)(5)).
- "Imminent and substantial endangerment" authority (§303, 42 U.S.C. §7603).

Using the Clean Air Act to Achieve Environmental Justice

The Clean Air Act provides many opportunities for community residents to become involved in government decisions on activities regulated by this law. These activities include opportunities to provide public comments, participate in public hearings, and other miscellaneous activities.

In addition to opportunities to participate in government decision-making, it is also important for community residents to understand where they can obtain information that will assist them achieve their goals.

Information sources include clearing houses and databases. One source is EPA's website:

"The Plain English Guide to the Clean Air Act," which includes a glossary of terms.

Please see www.epa.gov oar/oaqps

Community residents can provide public comments on the following:
- Draft Title V permits;
- EPA's proposal to approve state Title V permit program;
- EPA approval of a state implementation plan (SIP);
- EPA approval of a SIP revision;
- Before a PSD area is redesignated; and
- Before U.S. enters into a consent order or settlement agreement under the CAA.

Community residents can participate in public hearings on the following:
- Draft Title V permit;
- Draft PSD permit;
- Before EPA approval of a SIP revision; and
- Before any PSD area is redesignated.

Community residents can also participate in the following additional types of activities:
- Citizen advisory groups;
- EPA consultation with citizen committees before issuing various air quality standards and regulations;
- Meaningful community participation in siting solid waste incineration units; and
- Any board or body that approves permits or enforcement orders is to have at least a majority of members who represent the public interest.

Facility monitoring is another important activity for community residents. Community residents should obtain and review copies of documents that address the regulated facility, such as the following:
- Stationary air pollution source's risk management plan (risk management plans found at http://www.epa.gov/emergencies/content/rmp, and at facility) (§112(r)(7)(B)(ii), 42 U.S.C.§7412(r)(7)(B)(ii)).
- Title V permit recordkeeping requirements (§504(c), 42 U.S.C. §7661c(c)).
- Facility-specific recordkeeping and monitoring requirements (must be available to public) (§114(a), 42 U.S.C. §7414(a)).
- Ambient air quality monitoring required as part of PSD permit review (continuous air quality monitoring data; data to be made available at public hearing (§§165(e)(1), 165(a)(7), 42 U.S.C. §§ 7475(e)(1), 7475(a)(7)).
- Emissions monitoring by solid waste incineration units (copies to be available for inspection and copying during business hours) (§129(c), 42 U.S.C. §7429(c)).

Clean Air Act and Public Participation:

Community residents should keep in mind that public participation regulations require that all relevant comments offered by the public must be taken into consideration before final decisions are made.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA):

EJ Hook Fact Sheet

Summary of Law

- Cradle-to-grave system controls generation, transportation, treatment, storage and disposal of hazardous waste.
- States are responsible for management and disposal of solid wastes.
- Promotes pollution prevention to protect the environment and public health.
- No direct federal authority for siting of facilities.

Environmental Justice "Hooks"

RCRA provides authority to address environmental justice challenges caused by hazardous and solid waste. Types and examples of provisions that can be used by community residents include:

1. **Legislative Intent:** Section 1003(b) "declares it to be the national policy of the U.S. that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible." This provision provides the opportunity to focus on pollution prevention as a means of reducing risks in heavily impacted communities.

2. **Omnibus Authority**: Section 3005 (c)(3) states that "each permit issued under this section shall contain such terms and conditions as the Administrator (or State) determines necessary to protect human health and the environment." EPA has interpreted this provision to authorize denial of a permit to a facility if EPA determines that operation of the facility would pose an unacceptable risk to human health and the environment and that there are no additional permit terms or conditions that would address this risk. On a case-by-case basis, this omnibus authority may be applicable to address the following health concerns:

   - cumulative risks due to exposure from pollution sources in addition to the applicant facility;
   - unique exposure pathways and scenarios (e.g. subsistence fishers, farming communities);
   - sensitive populations (e.g. children with levels of lead in their blood, individuals with poor diets)

3. **Location Standards**: Section 3004(o)(7) states that EPA can issue location standards as are necessary to protect human health and the environment. For example, EPA could establish minimum buffer zones between hazardous waste management facilities and sensitive areas (e.g. schools, areas that already have several hazardous waste facilities, residential areas).

4. **Exposure Information and Health Assessments:** Section 3019 provides that EPA has the authority to increase requirements for applicants for land disposal permits to provide exposure information and to request that the Agency for Toxic Substances Disease Registry conduct health assessments at such land disposal facilities.

5. **Contingency Plans**: Section 3004(a) requires that permitted facilities must maintain "contingency plans for…effective action to minimize unanticipated damage from any

treatment, storage, or disposal of…hazardous waste." Thus, EPA could require facilities to prepare and/or modify their contingency plans to reflect the needs of communities that have limited resources to prepare and/or respond to emergency situations.

6. **Public Participation Opportunities:** Community residents have the opportunity to comment on government decision-making on permitting of hazardous and solid waste facilities. They can also participate in informal public meetings between permit applicants and affected communities (before submission of permit application).

7. **Case Authority:** *Chemical Waste Management, Inc.*, 6 E.A.D. 66, 1995 WL 395962 (1995). If the operation of a facility may have a disproportionate impact on a minority or low-income community, EPA can:

    - Assure early and ongoing public participation opportunities to comment on the permitting process.
    - Conduct a second review of its health and environmental impact assessment of the facility in order to determine if the impact on minority or low-income populations is disproportionately adverse.
    - Impose permit conditions or denials based on disproportionately high and adverse human or environmental health effects.

    Note: there is no legal basis for rejecting a permit application solely based on alleged social or economic impacts.

Environmental Justice Outcomes Under RCRA

Possible outcomes from RCRA that address environmental justice challenges and goals include:

1. Permit denials or conditions
2. Establishment of cleanup priorities
3. Research studies
4. Increased public participation opportunities
5. Buffer zones

For more details on how to use RCRA to achieve environmental justice, please see:

1. *Opportunities for the Advancement of Environmental Justice: An Analysis of EPA Statutory Authorities* (Environmental Law Institute, 2001).
2. *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice.* (Environmental Law Institute, 2002).

Resource Conservation and Recovery Act

Introduction

The Resource Conservation and Recovery Act (RCRA) is the primary federal law regulating the management and disposal of solid and hazardous waste.

Purpose

The purpose of the Resource Conservation and Recovery Act is to provide legal and regulatory tools for use by the federal government to govern the management and disposal of solid and hazardous waste. The goals of RCRA are to:

- Ensure that wastes are managed in a manner that protects human health and the environment;
- Reduce or eliminate as quickly as possible the amount of waste generated; and
- Conserve energy and natural resources through waste recycling and recovery.

Approach

RCRA is different than most pollution control laws that focus on addressing pollution as it "leaves the pipe." It is meant to be a pollution prevention statute. At the outset, RCRA:

- Established a protective "cradle-to-grave" approach to hazardous waste management;
- Implemented a permitting and tracking system for managing wastes;
- Developed design and performance standards for hazardous waste treatment, storage and disposal facilities; and
- Started a state authorization program for states to play a major role in addressing waste management.

In 1984, Congress expanded RCRA's authority and made the law even stronger. It passed the Hazardous and Solid Waste Amendments, which:

- Created a land disposal restriction program (which serves as an incentive for business to implement waste minimization plans);
- Established Corrective Action requirements (which address cleanup of contamination);
- Specified permitting deadlines for hazardous waste facilities;

Approach, continued

- Regulated businesses that generated small amounts of hazardous waste;
- Required a nationwide look at the conditions of solid waste landfills;
- Encouraged source reduction and recycling;
- Imposed strict conditions for landfill closure; and
- Specified design and operating practices that protect human health.

Issues Addressed

The Resource Conservation and Recovery Act authorizes the federal government to manage hazardous waste from its creation, through its transportation, to its ultimate disposal. The statute also has provisions dealing with non-hazardous solid waste, including municipal garbage, underground storage tanks, used oil, and medical waste. States also can obtain authorization to administer the RCRA hazardous waste program. Since many additional requirements were added in the 1984 amendments to RCRA, states have had to apply for supplemental authorization to administer these requirements. Thus, in many cases, the state will issue the basic RCRA permit, but EPA will still be the agency that determines what corrective action (if any) is required for past hazardous waste disposal at the permitted facility.

Framework

The Resource Conservation and Recovery Act addresses the following:

Public Notice and Participation

- Public hearing to be held if EPA receives written notice of opposition (§7004(b)(2), 42 U.S.C. §6974(b)(2)).
- Expanded Public Participation Rule - informal public meetings not applicable between permit applicants and affected communities (must occur *before* permit application submitted) (40 C.F.R. Part 270).

Available Information

EPA information requests to "handler" of hazardous waste (all info received open to public) (§3007(a), (b), 42 U.S.C. §6927(a), (b)).

Legal Rules and Opportunities

Rulemaking:

- General rulemaking authority (§2002(a)(1), 42 U.S.C. §6912(a)(1)).
- Hazardous waste listing and identification criteria (§3001, 42 U.S.C. §6921).
- Generator standards (§3002(a), 42 U.S.C. §6922(a)).
- Transporter standards (§3003(a), 42 U.S.C. §6923(a)).
- Transporter standards, in consultation with the Department of Transportation (§3003(b), 42 U.S.C. §6923(b)).
- Treatment, storage, disposal facility standards (§3004(a), 42 U.S.C. §6924(a)).
- Treatment, storage, disposal facility location standards (§3004(o)(7), 42 U.S.C. §6924(o)(7).
- Monitoring and controlling air emissions at treatment, storage, and disposal facilities (§3004(n), 42 U.S.C. §6924(n)).
- Non-hazardous wastes (§§4001-4010, 42 U.S.C. §§6941-6949a).
- Guidelines to assist in development and implementation of state solid waste management plans (§§4002(b), 4002(c)(9), 42 U.S.C. §§6942(b), 6942(c)(9)).
- Criteria for determining which facilities are "open dumps" or "sanitary landfills" (§4004(a), 42 U.S.C. §6944(a)).
- Underground storage tanks (§§9001-9010, 42 U.S.C. §§ 6991-6991i).

Legal Rules, continued

Permitting and other approvals:
- Hazardous waste permitting omnibus authority (§3005(c)(3), 42 U.S.C. § 6925(c)(3)).
- Land disposal permits (§3019, 42 U.S.C. §6939a).
- Non-hazardous waste management facilities that receive household and small quantity generator hazardous waste (§4005, 42 U.S.C. §6945)

Siting:
- Treatment, storage, disposal facility standards (§3004(a), 42 U.S.C. § 6924(a))
- Treatment, storage, disposal facility location §3004(o)(7), 42 U.S.C. §6924(o)(7)).

Cleanup decision:
- Corrective action for permitted facilities (§§3004(u),(v), 3008(h), 42 U.S.C. §§6924(u),(v), 6928(h)).
- "Imminent and substantial endangerment" court action (§7003, 42 U.S.C. §6973)

Enforcement and compliance assurance:
- EPA compliance orders, suspension/revocation of permits, administrative civil penalties (§3008, 42 U.S.C. §6928).

Using RCRA to Achieve Environmental Justice

The public plays an important role in the RCRA program. EPA requires waste management facilities to involve the public and the local community throughout the RCRA permitting process. At any time during the process, the public can submit comments and request public hearings to clarify information or voice concerns and objections.

Further, the public has a role in facility cleanup processes. Under corrective action, the local community can access a facility's inspection information, and participate in remedial decisions and processes. EPA also works with tribes to control open dumps on native lands.

RCRA provides many opportunities for community residents to become involved in government decisions on activities regulated by this law. Some examples of these opportunities include:
- Public hearings can be held if EPA receives written notice of opposition;
- Expanded Public Participation Rule: informal public meetings between permit applicants and affected communities can be held, but they must occur before a permit application is submitted;
- ATSDR health assessments man be prepared for land disposal facilities authorized: public may submit evidence of release or exposure (§3019, 42 U.S.C. §6939a); and
- EPA-ordered monitoring: EPA can do monitoring or authorize "any person" to do it at company expense (§§3013, 3008(d), 42 U.S.C. §§ 6934, 6928(d)).

In addition to opportunities to participate in government decision-making, it is also important for community residents to understand where they can obtain information that will assist them to achieve their goals. Information sources include clearinghouses and databases. One source is EPA's website, which has several fact sheets under "managing hazardous waste in your community." See www.epa.gov/epawaste. Facility monitoring is another important activity for community residents. Community residents should obtain and review copies of documents that address the regulated facility, such as the following:
- Generators' recordkeeping requirements (§3002(a), 42 U.S.C. §6922(a));
- Transporters' recordkeeping requirements (§3003(a), 42 U.S.C. §6923(a));
- Treatment, storage, disposal facility requirements (§3004(a), §6924(a));
- EPA information requests to "handler" of hazardous waste (all information received is open to public) (§3007(a), (b), 42 U.S.C. §6927(a), (b)); and
- EPA-ordered monitoring (§§3013,3008(d), 42 U.S.C. §§ 6934, 6928(d)).

RCRA and Public Participation:

Community residents should keep in mind that public participation regulations require all relevant comments offered by the public to be taken into consideration before final decisions are made.

BROWNFIELDS REDEVELOPMENT: EJ Hook Fact Sheet

Summary of the Law

Many communities have underused or abandoned land that may be contaminated. These properties can be vacant lots, under-utilized warehouses, gas stations, salvage yards, mine-scarred lands, sites with controlled substances (e.g. meth labs), factories, and other eyesores. Since the 1990s, many states adopted laws to address these properties through cleanup and reuse. In 2002, Congress passed the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Act) as an amendment to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). This law codified and expanded the US EPA's Brownfields Program by expanding the funding, types of grants, and sites eligible for assessment and cleanup of brownfields properties. It also exempted contiguous property owners and prospective purchasers from Superfund liability, and clarified the appropriate inquiry for innocent landowners. Finally, it authorized funding for state and tribal governments to establish and enhance response programs, and limited EPA's Superfund enforcement authority at sites cleaned up under a state response program.

A "brownfield site" is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfields are underused or abandoned land that may be contaminated.

Environmental Justice Hooks

Brownfields plague virtually every community in America, but are often concentrated in low-income communities and communities of color. They can cause blight to neighborhoods, threaten public health and the environment, inhibit economic development, and encourage urban sprawl. Further, brownfields can reduce community health by posing challenges to safety (e.g. abandoned buildings); environment (soil and water contamination); and social and economic prosperity (reduced governmental tax base).

The EPA, state and tribal Brownfields programs focus on providing grants to communities to assess and clean up property that may be contaminated and return it to productive use. The private sector is using this process very effectively, taking advantage of financial, technical and other government resources. Non-profit organizations are beginning to use the Brownfields Act to revitalize their communities. The following measures are opportunities for community-based organizations to address their concerns:

Competitive Grants Program:

EPA provides the following types of grants:

- Assessment funds of $200,000 for assessment, planning and community outreach.
- Clean-up funds of $200,000 for direct cleanup of contamination.
- Revolving Loan Fund, of up to $1,000,000 (per entity) to capitalize loans and subgrants for cleanups. Coalitions of entities may apply revolving loan funds seeking up to $1 million per entity.
- Job training of $200,000 for environmental training for residents.

Health Monitoring: Local governments can allocate up to 10% of their EPA brownfields grant to: 1) monitor the health of populations exposed to hazardous substances from a brownfields site; and 2) monitor and enforce institutional controls used to prevent human exposure to hazardous substances from a brownfield site. Examples of activities include: mapping site features, monitoring health through community-wide inventory, collecting baseline environmental and health data, examining site access patterns, and monitoring the air during cleanup activities.

Targeted Brownfields Assessment Assistance: EPA provides funding and/or technical assistance for environmental assessments at brownfields sites. This assistance is available directly from EPA through EPA Regional Brownfields offices and from state or tribal voluntary response program offices. This assistance can address site screening, full environmental assessment, and support cleanup planning, options and cost estimates based on future uses and redevelopment plans. The criteria for receiving the assessment include factors related to community environmental justice, such as preferences for: 1) property owned by a municipality or through a quasi-public entity such as a community development corporation; 2) property where there is a clear municipal/community vision and support for property revitalization; 3) property that will likely have low to moderate contamination levels, and where redevelopment will provide tangible benefits for the community; and 4) property where the project area has a clear need for revitalization evidenced by significant deterioration and/or significant environmental justice issues.

All Appropriate Inquiry Rule (AAI): AAI is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. EPA's AAI rule establishes specific regulatory requirements for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for certain landowner liability protections under CERCLA. Many of the inquiry's activities must be addressed by an environmental professional. Further, community residents may have essential information that must be addressed by the environmental professional. For example, the inquiry of the environmental professional must include: 1) interviews with past and present owners, operators and occupants; 2) reviews of historical sources of information; 3) visual inspections of the facility and adjoining properties; 4) commonly known or reasonably ascertainable information.

Environmental Justice Outcomes

Possible outcomes from the Brownfields Act that address environmental justice challenges and goals include:

1) assessment of contaminated sites in neighborhoods;
2) cleanup of contamination at sites in neighborhoods;
3) elimination of safety concerns (e.g. open pits, abandoned structures);
4) increase in green and open spaces (e.g. parks);
5) redevelopment of sites into land uses that promote community benefit, health and sustainability (e.g. community or art centers, health clinics, recreational centers);
6) increased tax base that can support community health and well-being (e.g. schools and school clinics, immunizations);
7) engagement of local government in community environmental justice concerns related to health, poverty, crime and environment;
8) full participation by community residents in government and business decisions that affect cleanup of contaminated sites and determination of land uses; and
9) job training and employment opportunities through new businesses.

CLEAN WATER ACT (CWA): EJ Hook Fact Sheet

Summary of Law

- Governs quality of surface water (rivers, streams, lakes, wetlands) in order to restore and maintain their chemical, physical, and biological integrity.
- Prohibits discharge from a point source of any pollutant into U.S. waters unless it complies with specific requirements.
- Establishes standards to improve and protect water quality based on technology, water quality standards, and control of toxic effluents and sewage.
- Creates two permitting systems:
    - EPA or states issue NPDES permits for point sources of pollution.
    - Army Corps of Engineers or states issue dredge-and-fill permits.

Environmental Justice "Hooks"

Community residents can use the CWA to protect drinking water supplies, reduce their exposure to toxins, and protect fisheries, wetlands, and wildlife habitat. They can call EPA or a state or tribal government's attention to specific pollutants in the water, specific facilities discharging pollutants, or the quality of their water resources. Types of provisions and examples of each that can be used to address environmental justice include the following measures:

1. **Legislative Intent:** Section 101(a)(3) prohibits discharges of toxic pollutants in toxic amounts. If there is uncertainty about the effect of a discharge on an overburdened community's health, encourage your state environmental agency to exercise its discretion to reduce or eliminate pollutant discharges.

2. **Antidegradation Provision**: This provision maintains and protects the existing levels of water quality. It is especially important for protection of high-quality waters. If a facility seeks a permit to discharge pollutants into high-quality surface waters that may cause significant degradation, it must demonstrate that reasonable alternatives do not exist, such as:

    - Pollution prevention measures (e.g., substitution of less toxic substances)
    - Reduction in the scale of the project
    - Recycling or re-use of water
    - Changes in the manufacturing process
    - Innovative water treatment technology
    - Advanced water treatment technology
    - Seasonal or controlled discharge options to avoid critical water-quality periods
    - Improved operation and maintenance of existing treatment systems
    - Alternative discharge location

The activity may be authorized if:

- Socio-economic importance is shown
- Existing uses are protected
- Controls on pollution sources are achieved

3. **Existing Uses Provision:** Water-quality standards must protect "existing uses," defined as uses actually attained in the water on or after November 28, 1975 (40 CFR 131.12 (a)(1)). If your community uses a water body for recreational or subsistence fishing, EPA can require consideration of elements of the use (such as actual fish consumption) and protection by state water-quality standards. NPDES permits for waters where fish consumption is an existing use should protect that use appropriately.

4. **Fish Consumption Provision:** States and tribes set criteria to protect "fishable uses." They can set fish consumption values based on:

   - a national default value
   - site-specific information, including fish consumption by subsistence fishers.

5. **Triennial Reviews:** EPA must review state water-quality standards every 3 years, and may disapprove a criterion that does not protect populations with high exposure to water pollution.

6. **Dredge-and-Fill and Section 404 Permits:** When the Corps issues a permit, it conducts a "public interest review" and evaluates the probable impacts on the public of the proposed activity. The Corps can consider aesthetics, general environmental concerns, safety, and the needs and welfare of the people (33 CFR 320(4)(a)). Community residents can present their environmental justice concerns to the Corps if they fit into one of these categories.

Environmental Justice Outcomes Under the CWA

Possible outcomes from the CWA that address environmental justice challenges and goals are:

- Permits
  - conditions to limit discharges
  - permit denial
- Surface water resource protection
  - designated use
- Standards
  - water-quality standards
  - effluent limitations
- Improved public participation
  - scheduling of hearings
  - community notice

For more details on how to use the CWA to achieve environmental justice, please see:

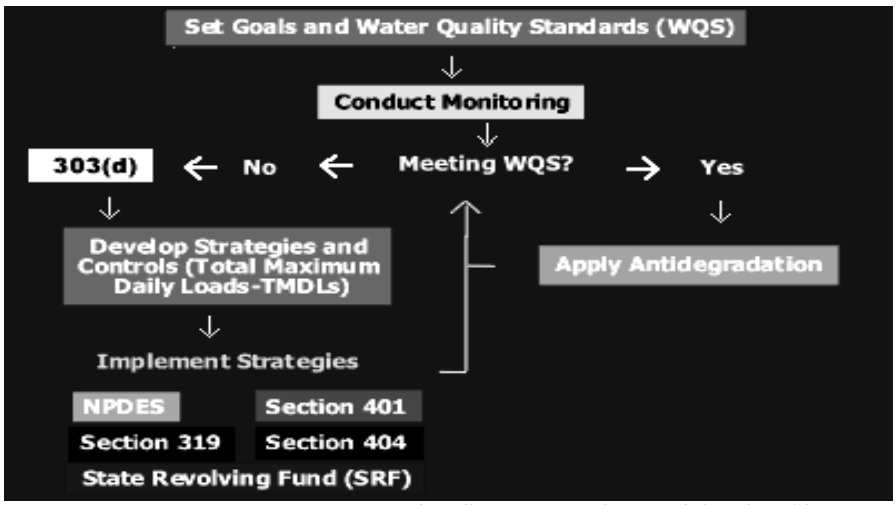
1. *Opportunities for the Advancement of Environmental Justice: An Analysis of EPA Statutory Authorities* (Environmental Law Institute, 2001).
2. *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice.* (Environmental Law Institute, 2002).

CLEAN WATER ACT: Supplemental Authorities

The Clean Water Act:

- Governs protection of surface waters, but does not address groundwater or water quantity
- Aims to restore and maintain the chemical, physical, and biological integrity of the Nation's waters so that they can support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."
- Uses a variety of regulatory and non-regulatory tools to reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff.
- Addresses point source discharges and non-point source run-off

Summary of CWA Approach



http://www.epa.gov/watertrain/cwa/cwa1.htm

Water quality standards (WQS) are the foundation for action. Surface waters are monitored to determine whether the WQS are met. If all WQS are met, antidegradation policies and programs are used to keep water quality at acceptable levels. Ambient monitoring is also used. If the surface water is not meeting the WQS, a strategy must be developed. The most common strategy is development of a Total Maximum Daily Load (TMDL). TMDLs are used to first determine what level of pollutants in the surface water would be consistent with meeting the WQS, and then to allocate acceptable pollutant loads among sources of the relevant pollutants. To reduce the levels of pollutants discharged, several measures authorized by the CWA can be used, including:

- **NPDES Permit Program**: Covers point sources of pollution.
- **Section 319**: Addresses non-point sources of pollution, largely through grants and plans.
- **Section 404**: Regulates the placement of dredged or fill materials into wetlands and other waters of the United States.
- **Section 401**: Requires federal agencies to obtain certification from states, territories, or Indian tribes before issuing permits that would result in increased pollutant loads to a surface water. The certification is issued only if such increased loads would not cause or contribute to violations of water quality standards.
- **State Revolving Funds**: Provide large amounts of money in the form of loans for municipal point sources, non-point sources, and other activities.

Environmental Justice "Hooks"

Non-Point Source (NPS) Pollution of Surface Waters: Non-point source pollution is caused by runoff of precipitation (rain and/or snow) over or through the ground. Sources include farming and forestry operations and atmospheric deposition (i.e. pollutants discharged into the air and returned directly or indirectly to surface waters in rainfall and snow). The CWA does not provide a detailed definition of non-point sources. Rather, they are defined by exclusion, and include anything not considered a "point source" under the CWA and EPA regulations. There are many types of runoff that are treated as point sources rather than non-point sources under the CWA (e.g. stormwater associated with industrial activity, construction-related runoff, and discharges from municipal separate storm sewer systems). Pollutants commonly associated with non-point source pollution include nutrients (phosphorus and nitrogen), pathogens, clean sediments, oil and grease, salt, and pesticides.

Section 319 of the CWA addresses non-point sources of water pollution. Unlike point source discharges, they are not addressed through a regulatory approach, but instead through a federal grant program that provides money to states, tribes, and territories to develop and implement NPS management. These funds can be used to:

- develop state NPS regulatory programs
- develop and implement statewide NPS program plans or holistic watershed plans
- develop and implement TMDLs in watersheds where non-point sources substantially contribute to pollution levels causing the impairment
- support Clean Lakes program activities
- support projects aimed at protecting groundwater

A state, tribe, or territory receiving Section 319 funds must complete and update an NPS management plan every five years. Elements of the plan include: waters that are impaired or threatened by non-point sources of pollution; short and long-term goals for cleaning them up; best management practices (BMP) that will be used; a monitoring and evaluation plan, which is usually tied into the state's Section 305(b) assessment and reporting program; and strategies for working with other agencies and private entities. See also: http://www.epa.gov/OWOW/NPS/facts

Watershed Protection: Watershed protection seeks to protect healthy waters and restore impaired ones. A watershed is an area of land that catches snow and rain, which then drains or seeps into a marsh, stream, river, lake, or groundwater. Watersheds come in all shapes and sizes: some are millions of square miles, and others are just a few acres. A *watershed plan* is a strategy for achieving water resource goals. It seeks to characterize existing conditions, prioritize causes and sources of problems, define water-quality goals and management objectives, and develop and implement protection or remediation actions to solve those problems. The plan must include these analyses, actions, and participants, as well as designate resources for development and implementation of the plan. A watershed planning approach may be used for a variety of reasons: (1) regulatory issues, which include CWA Section 303(d) requirements for the development of Total Maximum Daily Loads (TMDLs), requirements under CWA Section 319 for non-point source protection, and the National Pollutant Discharge Elimination System (NPDES) stormwater permit regulations; (2) federal, state, and local initiatives that target geographic areas (e.g. Chesapeake Bay); and (3) community-driven issues (e.g. increased development pressures). See also: http://www.epa.gov/owow/watershed

Federal Water Pollution Control Act: "Clean Water Act"

Introduction

The Federal Water Pollution Control Act, also popularly known as the Clean Water Act (CWA), provides legal and regulatory tools for use by the federal government, the states and tribes to act to minimize the amount of pollution in the waters of the United States.

Purpose

The purpose of the Clean Water Act (CWA) is to control and then eliminate all pollutant discharges into U.S. waters. The statute authorizes the U.S. Environmental Protection Agency (EPA) to set national standards to meet these goals. States and tribes are also involved in setting standards to help reach the goal of eliminating water pollution. States and tribes can be delegated the authority to administer the CWA program within their boundaries, and to issue discharge and dredge-and-fill permits.

Types of Issues Addressed

The Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which requires persons discharging pollutants from a specific location (point source) to receive a permit that limits the level of pollutants allowed in the discharge. In issuing the NPDES permit, the state, tribe, or EPA uses various methods to apply technology-based and water quality standards to the specific discharger applying for a permit.

The CWA also regulates activities in wetlands. No one can discharge “dredge or fill material” into a water body or a wetland without a permit issued by the U.S. Army Corps of Engineers.

Framework

The Clean Water Act addresses the following:

Public Notice and Participation

- Public review and comment for annual revisions of guidelines for incorporating technology-based standards into facility-specific effluent limitations (CWA §304(m), 33 U.S.C. §1314(m)).
- Public notice and comment for triennial review of toxic pollutant effluent limitations (CWA §307(a)(2), (a)(3), 33 U.S.C. §1317(a)(2),(a)(3).
- Public notice and comment before issuing dredge and fill activity permit (CWA §404, 33 U.S.C. §1344(a)).
- Public hearing for triennial review of state's designation of in-stream uses to be protected via water-quality-based standards (CWA §303(c)(1), 33 U.S.C. §1313(c)(1).
- Opportunity for public hearing before issuance of NPDES permit for discharge of pollutants into navigable waters (CWA §402(a)(1), 33 U.S.C. §1342(a)(1)).
- State may request a public hearing when EPA proposes to veto issuance of a dredge-and-fill activity permit (CWA §404(j), 33 U.S.C. §1344(j)).
- Opportunity for public hearing when a state requests delegation authority to administer a CWA-driven program (CWA §402(b), 33 U.S.C. §1342(b)).

Available Information

States are required to report to EPA every two years on water quality within the state and progress toward meeting water quality goals (CWA §305 (b), 33 U.S.C. §1315(b)).

Legal Rules and Operations

Standard-setting:

- Technology-based standards for point source discharges (CWA §301(b), 33 U.S.C.§1311(b)).
- Best available technology requirements for certain non-conventional pollutants may be modified if still protective of human health and the environment (CWA §301(g), 33 U.S.C. §1311(g)).
- Secondary treatment requirements for publicly owned treatment works that discharge into marine waters may be modified if still protective (CWA §301(h), 33 U.S.C. §1311(h) (CWA §301(h), 33 U.S.C. §1311(h)).
- Guidelines for incorporating technology-based standards into facility-specific effluent limitations (CWA §304(b), 33 U.S.C. §1314(b)).
- Water-quality-based standards for point source discharges to protect all uses of receiving water body (CWA §303(c), 33 U.S.C. §1313(c)).
- Standards governing disposal of sewage sludge resulting from municipal waste treatment (CWA §405, 33 U.S.C. §1345)

Rulemaking:

- Discharge of toxic pollutants to meet best available technology level of control (CWA §301, 33 U.S.C. §1317).
- Individual control strategies for toxic pollutant "hotspots" (CWA §304(l), 33 U.S.C. §1317(l)).
- Development of total maximum daily loads (TMDLs) to allocate pollutant loads to ensure water-quality standards are met (CWA §303(d), 33 U.S.C. §1313(d))

Permitting and other approvals :

- EPA discretion to set effluent limitations to meet water-quality standards (CWA §302(a), 33 U.S.C. §1312(a)).
- NPDES permits for point source discharges to navigable waters (CWA §402(a)(1), 33 U.S.C. §1342(a)(1)).
- EPA authority to review and object to state-issued NPDES permits (CWA §402(d), 33 U.S.C §1342(d)).
- NPDES permit to be denied for new source or new discharger if cannot demonstrate that water quality standards will be met (40 C.F.R. §122.4(*i*)).
- Authority to modify existing NPDES permit based on new information showing that water quality standards cannot be met (40 C.F.R. §122.62(a)(2)).
- Dredge-and-fill activity permit requirement (administered by the U.S. Army Corps of Engineers) (CWA §404(a),33 U.S.C. §1344(a)).
- EPA retains veto power over dredge-and-fill activity permits (CWA §404(c), 33 U.S.C. §1344(c)).
- EPA authority to review state-issued dredge-and-fill activity permits (CWA §404(j), 33 U.S.C §1344(j)).

Siting:

- Dredge-and-fill activity permits to consider siting issues (CWA §404(a), 33 U.S.C. §1344(a)).
- Dredge-and-fill activity permitting guidelines (CWA §404(b)(1), 33 U.S.C. §1344(b)(1)).

Enforcement and Compliance Assurance:

- EPA enforcement authorities for violations (CWA §309, 33 U.S.C. §1319).
- Army Corps of Engineers and EPA have enforcement authority for dredge-and-fill violations (CWA §§404(s), 404(n), 33 U.S.C. §§1344(s), 1344(n)).
- "Imminent and substantial endangerment" enforcement authority (CWA §504, 33 U.S.C. §1364).

Using the Clean Water Act to Achieve Environmental Justice

The Clean Water Act provides numerous opportunities for community residents to participate in decision-making about discharges to waters. These opportunities include public notice and comment for the following:

- Annual revisions of guidelines for incorporating technology-based standards into facility-specific effluent limitations;
- Triennial review of toxic pollutant effluent limitations; and
- Issuing dredge-and-fill activity permit.

The Clean Water Act also provides opportunities for public hearings for the following:

- Triennial review of state's designation of in-stream uses to be protected via water-quality-based standards.
- Issuance of NPDES permit for discharge of pollutants into navigable waters.
- When EPA proposes to veto issuance of a dredge-and-fill activity permit.
- When a state requests delegation authority to administer a CWA program.

Once community residents become aware of opportunities to participate in decisions affecting the discharge of pollutants into waters, they can then learn how to participate in the decision-making process. An important first step is to gather information. The Clean Water Act provides information through clearinghouses and databases. For example, EPA has a FAQ website regarding NPDES permit program at: www.epa.gov/npdes.

Clean Water Act and the Community:

It is important for community residents to know that public participation regulations require that all relevant comments offered by the public must be taken into consideration before final decisions are made.

SAFE DRINKING WATER ACT (SDWA): EJ Hooks Fact Sheet

Summary of Law

- regulates *public water systems* by treating for contaminants, monitoring to ensure that health-based standards are met, making sure water is treated by qualified operators, and maintaining the infrastructure, especially of distribution pipes that carry water from the treatment plant to customers
- assesses and protects drinking water sources
- protects wellhead and collection systems
- makes information available to the public on the quality of their drinking water

Environmental Justice "Hooks"

The Safe Drinking Water Act provides important opportunities to address the safety of public drinking water and to help prevent contamination of water sources. Categories and examples of SDWA provisions that can be used by community residents include:

Consumer Confidence Reports (CCR): These reports are required by the SDWA as a means to inform consumers about the water they receive from public water supply systems. A CCR summarizes information regarding sources used (i.e., rivers, lakes, reservoirs, or aquifers), any detected contaminants, compliance, and educational information. These reports are due to customers by July 1st of each year. See http://water.epa.gov/drink/local

Source Water Assessments: A *source water assessment* (i.e. study and report) seeks to protect drinking water at the source. Source water is untreated water that comes from streams, rivers, lakes or underground aquifers that is intended for human consumption. The SDWA requires that states develop EPA-approved programs to assess all source waters in the state for every public water system. This assessment provides information such as where drinking water comes from, potential sources of contamination, the land area providing water to each public water system, and how susceptible the public water supply is to potential contamination. These assessments are available to the public, and can be obtained from the state or public water system.

Wellhead Protection (WHP): A wellhead is the area surrounding a well from which the well's ground water is drawn. The SDWA requires states to prepare a WHP plan. Program activities to be included are delineation, contaminant source inventory, contingency planning, and source management. All states have EPA-approved state WHP Plans. Methods to implement the plan include: management plans, education, technical assistance, and mandatory requirements for wellhead protection at the local level.

Public Notification: This tool helps ensure that consumers know if there is a problem with their drinking water. Public water systems must notify their customers when they violate EPA or state drinking water standards or otherwise provide drinking water that may pose a risk to consumer health. Information includes a description of the violation, including the potential health effects, the population at risk, and, if alternate water supplies must be used, what the water system is doing to correct the problem as well as actions the consumer can take. The time a water supplier has to notify the public depends on the situation's severity, and ranges from one day to one year.

Safe Drinking Water Act

Introduction:
The Safe Drinking Water Act (SDWA) seeks to ensure safe public drinking water and protect underground sources of drinking water. This fact sheet provides background information on drinking water and groundwater pollution. It also explains how community residents can use this law to protect their health and this important natural resource.

Where does drinking water come from?
Drinking water comes from two natural sources. One source is surface water, such as rivers, lakes, and reservoirs. The other source is groundwater. Groundwater comes from rain and melting snow soaking into the ground. Water fills the spaces between rocks and soils, making a water-bearing underground layer, or aquifer.

People rely on these two sources for their drinking water. To get the water, some people use private wells, which consist of pipes drilled into the ground that deliver water to homes or businesses without a regulated system of controls. This source draws exclusively from ground water. Most people get their drinking water through a public water supply system, which is a network of pipes that can be below or above the ground, which deliver water to homes or businesses from systems that may or may not be regulated. Public water supplies are drawn from surface or ground water or both.

What pollutes drinking water?
Drinking water can be polluted by contaminants that are man-made or naturally occurring. Ground water can be polluted by human activities, including the following:

- improper use of fertilizers, animal manures, herbicides, insecticides, and pesticides;
- leaking or abandoned underground storage tanks and piping;

- improperly built or poorly located and/or maintained septic systems for household wastewater;

- improperly routed or managed stormwater systems that take in pollutants (e.g. chemicals, microbial contaminants) that are washed off of streets, parking lots, and other surfaces into the ground water;

- improper disposal or storage of hazardous, industrial, municipal and other wastes; and

- chemical spills at industrial sites.

Suburban growth and sprawl can also contribute to pollution of drinking water. This happens when businesses, industries, residential developments and other activities move into areas that were once rural. Contamination can occur when there are no adequate wastewater treatment facilities or storm-water management systems to address pollution from these new activities.

Also, in rural areas, people often use private wells for drinking water, which pose special challenges. Groundwater may also contain natural contaminants that can cause harm even without human activity. For example, it can contain dissolved elements such as arsenic, selenium or radon.

What law addresses drinking water protection?

The primary law governing drinking water is the Safe Drinking Water Act, which was passed by Congress in 1974 (and amended several times since its passage). This law seeks to protect drinking water by regulating the nation's public water supply and protecting sources of drinking water. It is administered by the US Environmental Protection Agency (EPA) and state environmental or health agencies.

When the law was originally passed and implemented, it focused on treatment as the means to provide safe drinking water at the consumer's point of use (i.e. "the tap"). The 1996 amendments strengthened the existing law by also recognizing original source water protection, training for public water supply system operators, funding for water system improvements, and public information and education as important components of maintaining safe drinking water. Another major provision in the SDWA is the underground injection control program, which regulates the discharge of fluids into, above or below underground sources of drinking water.

The SDWA uses what EPA calls a "multiple barrier" approach to drinking water protection. It is useful to understand these measures because they provide the framework for the SDWA. These measures include:

- determining the location, output and number of drinking water sources, and protecting those sources;
- regulating public water supply systems by:
  - treating water for contaminants;
  - monitoring water to ensure that health-based standards are met;

- making sure water is treated by qualified operators; and
- maintaining equipment and infrastructure, especially the distribution pipes that carry water from the treatment plant to customers.

· protecting wells and collection systems; and
· making information available to the public on the quality of their drinking water.

Who has control over drinking water protection?

While EPA and state governments set and enforce standards, local governments and private water suppliers shoulder the direct responsibility for the quality of water that people use for domestic purposes. Water systems test and treat their water, maintain the distribution systems that deliver water to consumers, and report on their water quality to the state. States and EPA provide technical assistance to water suppliers, and can take legal action against systems failing to provide water that meets state and EPA standards. Protecting drinking water sources usually requires the combined efforts of many partners, such as EPA, state agencies, tribes, communities, resource managers, drinking water utilities, communities, and the public at large.

Are private wells governed by the SDWA?

Some people get their water from private wells that are not subject to EPA standards. As mentioned above, EPA regulates public water systems but it does not have the authority to regulate private drinking water wells. However, some state and local governments set rules to protect the users of these wells. Unlike public drinking water systems, private wells do not have experts regularly checking the water's source and its quality before it is sent to the tap. These households must take special precautions to ensure the protection and maintenance of their drinking water supplies. Proper well construction and continued maintenance are keys to the safety of water supplies for private wells. Sources of information include your state water-well contractor licensing agency, local health department, or local water system professionals.

What is the SDWA framework to provide safe drinking water to consumers?

The SDWA's framework to provide safe drinking water to consumers includes two major programs, drinking water standards and public water supply systems. Both are discussed below.

<u>Drinking water standards</u>

The SDWA gives EPA responsibility for setting national drinking water standards to protect the health of people who get their water from public water systems. It protects against health risks while considering available technology and costs.

Drinking water standards apply to water systems differently based on the system's type and size. For example, states can grant variances from Maximum Contaminant Levels and treatment techniques to systems that serve fewer than 10,000 persons. The variance must still ensure "adequate protection of human health."

There are two categories of drinking water standards:

A **National Primary Drinking Water Regulation** (NPDWR or primary standard) is a legally enforceable standard that applies to public water systems. Primary standards protect drinking water quality by limiting levels of specific contaminants that can adversely affect public health and are known or anticipated to occur in water. They take the form of "maximum contaminant levels" for particular contaminants or required ways to treat water to remove contaminants.

A **National Secondary Drinking Water Regulation** (NSDWR or secondary standard) is a non-enforceable guideline regarding contaminants that may cause cosmetic effects (such as skin or tooth discoloration) or aesthetic effects (such as taste, odor, or color) in drinking water. EPA recommends secondary standards to water systems but does not require systems to comply. However, states may choose to adopt them as enforceable standards.

The standards address different types of contaminants, including *disinfectants*, *disinfection byproducts*, *inorganic chemicals*, *organic chemicals*, and *radionuclides*.

The process used by EPA to set drinking water standards was strengthened by the 1996 Amendments to the SDWA. This law requires EPA to go through several steps to determine whether setting a standard is appropriate for a particular contaminant, and if so, what the standard should be. The steps include: (1) identify drinking water problems; (2) establish priorities; and (3) propose and finalize a National Primary Drinking Water Regulation. EPA considers many factors, including occurrence in the environment; human exposure and risks of adverse health effects in the general population and sensitive subpopulations; analytical methods of detection; technical feasibility; and impacts of regulation on water systems, the economy and public health. EPA must also consider public input throughout the process.

Public Water Supply Systems

A public water system (PWS) is specifically defined in the SDWA as a system that serves at least fifteen service connections or regularly serves at least twenty-five individuals with public water for human consumption through pipes or other constructed conveyances. Human consumption includes drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene.

The SDWA does not regulate PWS through a permitting process; rather, it uses the national primary drinking water standards. In addition to the requirements above, each standard includes requirements that water systems be tested for contaminants to make sure standards are achieved. In addition to setting these standards, US EPA provides guidance, assistance, and public information about drinking water, collects drinking water quality data, and oversees state drinking water programs.

National drinking water standards are legally enforceable. Both EPA and states can take enforcement actions against water systems that are not meeting standards. They may issue administrative orders, take legal actions, or fine utility companies. And they may also work to increase a water system's administrative understanding of and compliance with standards.

Environmental Justice Hooks

Consumer Confidence Reports: The Consumer Confidence Rule requires public water suppliers that serve the same people year round (community water systems) to provide consumer confidence reports (CCR) to their customers. Community water systems are public water systems that have at least 15 service connections or regularly serve at least 25 year-round residents. The CCR summarizes information regarding sources used (i.e., rivers, lakes, reservoirs, or aquifers) any detected contaminants, compliance and educational information. The reports are due to customers by July 1st of each year. More specifically, the CCR must provide consumers with the following fundamental information about their drinking water:

- the lake, river, aquifer, or other source of the drinking water;
- a brief summary of the susceptibility to contamination of the local drinking water source, based on the source water assessments by states;
- how to get a copy of the water system's complete source water assessment;
- the level (or range of levels) of any contaminant found in local drinking water, as well as EPA's health-based standard (maximum contaminant level) for comparison;
- the likely source of that contaminant in the local drinking water supply;
- the potential health effects of any contaminant detected in violation of an EPA health standard, and an accounting of the system's actions to restore safe drinking water;
- the water system's compliance with other drinking water-related rules;
- an educational statement for vulnerable populations about avoiding *Cryptosporidium*; and
- educational information on nitrate, arsenic, or lead in areas where these contaminant may be a concern.

Additional sources of information include EPA's Safe Drinking Water Hotline (800-426-4791) and website: http://water.epa.gov/drink/local

Source Water Protection: Protecting water at the source is a vitally important step in drinking water protection. The 1996 amendments to the Safe Drinking Water Act address this need by requiring source water assessments. For purposes of this law*, source water* is defined as untreated water that comes from streams, rivers, lakes or underground aquifers that is used for drinking water. This water may be used to provide public drinking water through public water supply systems or to supply private wells used for human consumption.

The SDWA requires that the states develop EPA-approved programs to carry out assessments of all source waters in the state. The law requires that states ensure that a source water assessment is completed for every public water system. A *source water assessment* is a study and report that applies specifically to each water system. The assessment provides basic information about the water used as drinking water, such as:

- where drinking water comes from;
- potential sources of contamination that could pose a threat to drinking water quality;
- land area contributing water to each public water system; and
- how susceptible the public water supply is to potential contamination.

The assessments are available to the public, and can usually be obtained from the state or public water system administrator. This information gives water utilities, community members, and government the information they need to decide how to protect their drinking water sources and to take actions to reduce potential sources of contamination.

Wellhead Protection: The SDWA Amendments of 1996 established a new program to protect underground sources of drinking water through pollution prevention and management. This program is called the Wellhead Protection Program (WHPP). A wellhead is the area or part of an area surrounding a well, from which the well's ground water is drawn. The SDWA requires states to prepare a WHPP, which must be approved by EPA prior to implementation. Program activities to be included are delineation, contaminant source inventory, contingency planning and source management. All states have EPA-approved state WHPPs, but methods to implement the plan vary between states. Tools used include: management plans, education, technical assistance, and mandatory requirements for wellhead protection at the local level.

Public Notification: Another important tool to ensure the safety of drinking water recognized by the SDWA Amendments of 1996 is public notification. This requirement helps ensure that consumers will always know if there is a problem with their drinking water. Public water systems must notify their customers when they violate EPA or state drinking water standards (including monitoring requirements), or otherwise provide drinking water that may pose a risk to consumers' health. Information that must be included in a notice includes:

- a description of the violation that occurred, including the potential health effects;
- the population at risk. and whether alternate water supplies need to be used;
- what the water system is doing to correct the problem;
- actions consumers can take;
- when the violation occurred, and when the system expects it to be resolved;
- how to contact the water system for more information; and
- language encouraging broader distribution of the notice.

The length of time that a water supplier has to notify the public depends on the severity of the situation, and ranges from 24 hours to one year. EPA identifies three categories or tiers for this notice. These notices immediately alert consumers if there is a serious problem with their drinking water (e.g., a boil water emergency). For less serious problems (e.g., a missed water test), water suppliers must notify consumers in a "timely manner."

INFRASTRUCTURE FOR SAFE DRINKING WATER AND WASTEWATER TREATMENT & DISPOSAL: Fact Sheet

Summary

Clean, safe water is critical for human and ecosystem health. Our nation's livelihood depends, in large part, on the quality of our water – for drinking, swimming, recreation, economic uses, and other benefits of healthy ecosystems. One major effort to protect the quality of water and human health is through the construction and operation of an extensive network of facilities that provide for drinking water treatment and distribution and for wastewater treatment and disposal. Collectively, these are called *infrastructure*. This fact sheet addresses the nature of water and wastewater infrastructure, identifies challenges to the infrastructure, and provides opportunities for communities to address their concerns.

Environmental Justice Questions and "Hooks"

What is infrastructure? Infrastructure is a term used to describe large-scale public systems, services, and facilities that are necessary for economic activity, including power and water supplies, public transportation, telecommunications, roads, and schools. Infrastructure that addresses human use and disposal of water provides the public with access to drinking water and sanitation. It includes water treatment plants, sewer lines, distribution lines, and storage facilities.

What is the legal authority? Drinking water and waste water infrastructure are guided by the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA). These laws establish the requirements for water facilities and how they must operate in order to protect human health and the environment. For example, the SDWA provides regulations for public water supply systems, and the CWA provides regulations for wastewater facilities, including sewage treatment plants and underground injection wells.

What is the challenge? The nation's infrastructure, which provides drinking water and waste treatment, suffers from a number of challenges. First, the systems are aging. Many facilities were constructed in the period following World War II, and will be reaching the end of their useful life in the next 20-40 years. Second, because of population growth, many of the systems were not designed to serve the number of people currently being served. Third, some rural communities have never had access to public water supply systems or wastewater treatment facilities. Small communities often experience the greatest difficulty. These challenges result in enormous costs for construction, operation, and maintenance of these facilities. Utilities and their local communities must provide the primary sources of funding to meet those needs. Federal and state funding can help water utilities meet needs. At the same time, budgets at the local, state, and federal levels face increasing demands and fewer resources.

What needs to be done? Infrastructure needs can be met through several approaches that focus on sustainable development, defined as *development that meets the needs of the present generation without compromising the ability of future generations to meet their needs*. These approaches include practical improvements, funding for drinking water and wastewater facilities, and source protection. Further, many communities could avoid costly construction projects through improved management skills, adequate financing, appropriate technology, and better wastewater treatment system operation and maintenance. EPA has identified four such practices:

- Better Management of Water and Wastewater Utilities: Practices like asset management and environmental management systems should be used. Also, consolidation and public/private partnerships offer utilities significant savings.

- Full Cost Pricing: Rates should reflect the total cost of service. Rate restructuring can help utilities capture the actual costs of operating water systems, raise revenues, and help conserve water.
- Water Efficiency: Efficiency and conservation are critical, particularly in those parts of the country that are undergoing water shortages. Market incentives must be created to encourage more efficient use of water and to protect water sources.
- Watershed Approaches: Infrastructure should be addressed as part of water quality protection.

Funding to address concerns caused by the lack of public water supply systems and wastewater treatment plants or concerns caused by existing facilities is available through government programs, as follows:

- Drinking Water State Revolving Fund: Funds drinking water systems to finance infrastructure improvements. Emphasis is on small and disadvantaged communities and pollution prevention.
- Clean Water State Revolving Fund: Funds water-quality protection projects for wastewater treatment, nonpoint source pollution control, and watershed and estuary management. See http://www.epa.gov/OWM/cwfinance
- Environmental Finance Program: Assists communities with creative approaches to funding.
- Funding for Nonpoint Source Pollution: Funds different nonpoint source pollution and watershed protection projects. See http://www.epa.gov/owow/nps/funding.html
- Catalog of Federal Funding Sources for Watershed Protection: Searchable database of financial assistance sources (grants, loans, cost-sharing) available to fund a variety of watershed protection projects. See http://cfpub.epa.gov/fedfund
- EPA's Office of Wastewater Management Small Communities Team: provides water and wastewater services to tribal and community leaders, including technical assistance, financial assistance, and education & training.

Using these principles and approaches, a strategy for addressing infrastructure needs should include the following tasks:

Task One: Identify and document the problem. Questions include: Is the drinking water source unsafe? Has the quality of the water been threatened by the disposal of wastewater?

Task Two: Engage a broad group of interested people and organizations who can work to address the challenge. Questions include: Is there a local utility involved? Is there an association that may be helpful? What is the role of federal and state environmental agencies?

Task Three: Determine if an environmental law might apply or if alternative dispute resolution is appropriate. Questions include: Is there a violation of an environmental law, such as the CWA or the SDWA? Is there authority in the environmental laws for funding and technical assistance to address the problem?

Task Four: Determine the measures that can be taken to address the problem. Questions include: are there funding sources to pay for construction of a public water supply system or a wastewater treatment plant? If these facilities exist, is there funding to upgrade them? Are there pollution prevention measures that can be used, such as watershed protection, non-point source run-off management, and personal practices? How do we access the State Revolving Loan Fund? Do Rural Development Utility Programs' grant and loan programs apply? What other funds are available?

Part 5: Reference

- Glossary
- Acronyms

Glossary

Acute Exposure: A single exposure to a toxic substance which may result in severe biological harm or death. Acute exposures are usually characterized as lasting no longer than a day, as compared to longer, continuing exposure over a period of time.

Air Quality Standards: The level of air pollutants prescribed by regulations that are not be exceeded during a given time in a defined area.

Ambient Pollution Standards: Standards that address the levels of contamination from pollutants that are in a surrounding area. These include water quality and air quality standards.

Attainment Area: An area considered to have air quality as good as or better than the national ambient air quality standards as defined in the Clean Air Act. An area may be an attainment area for one pollutant and a non-attainment area for others.

Coastal Zone: Lands and waters adjacent to the coast that exert an influence on the uses of the sea and its ecology, or whose uses and ecology are affected by the sea.

Chronic Exposure: Exposure, usually at lower doses, over a long period of time.

Consent Order: A court decree that all parties agree to. Also termed **consent decree**.

Contaminants: Pollutants in air, water, soil, or food. A contaminant could be chemicals released by a facility, household products used incorrectly, car exhaust, stream discharges, or other materials that could cause harm to humans or the environment.

Cumulative Exposure: Exposure to multiple sources of contamination or health risks.

Glossary, continued

Cumulative Health Impacts: Combined effects of multiple pollutants on an individual or individuals. Some statutes require that the government consider cumulative health impacts before allowing additional sources of pollution. This is an important consideration in neighborhoods with multiple sources of potentially hazardous substances.

Delegation: The arrangement under which a state or tribal government assumes the lead role in running a federal program. To receive delegated authority, states or tribes must meet certain minimum requirements. For example, states typically must adopt adequate laws and regulations, and prove that they have the funding and other resources necessary to administer and enforce the laws properly.

De minimis: A fact or thing so insignificant that a court may overlook it in deciding an issue or a case.

Designated Uses: Those water uses identified in state water quality standards that must be achieved and maintained as required under the Clean Water Act. Uses can include freshwater fisheries, public water supply, and irrigation.

Discretionary: Optional or non-mandatory. Some things the government must do; these are mandatory, or non-discretionary, duties. Other things the government may choose to do; these are discretionary duties.

Effluent: Liquid waste that is discharged into a river, lake or other body of water.

Environmental Impact Statement (EIS): A document required of federal agencies by the National Environmental Policy Act for major projects or legislative proposals significantly affecting the environment. A tool for decision-making, it describes the positive and negative effects of the undertaking and cites alternative actions.

Environmental Justice: The fair treatment and involvement of all individuals and groups in environmental decision-making, regardless of race, ethnicity, or income. Environmental justice issues include ensuring that agency decisions (such as issuing permits and making cleanup decisions) consider fully the impacts on environmentally burdened communities, which often already are home to many polluting facilities and activities. Environmental justice issues include aggregate and cumulative health risks, and effects on sensitive populations. Siting of new facilities is one example of an action that might involve environmental justice concerns, such as clustering of polluting facilities and cumulative impacts.

Environmentally Burdened Community: A community that has a disproportionate, or unequal, exposure to pollutants or polluting facilities.

Exposure Pathway: The path from sources of pollutants via, soil, water, or food to humans and other species or settings.

Federal Agency: Any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation.

FOIA Request: A written request for information from the federal government, submitted in accordance with the Freedom of Information Act.

Glossary, continued

Finding of No Significant Impact (FONSI): A document prepared by a federal agency showing why a proposed action would not have a significant impact on the environment and thus would not require preparation of an Environmental Impact Statement. A FONSI is based on the results of an environmental assessment.

Hazardous Waste: A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. The Resource Conservation and Recovery Act (RCRA) sets out standards for handling, storage, transportation, treatment and disposal of hazardous wastes.

Hearing: A public meeting that comes in two general forms. One format is an informal hearing at which any member of the public may speak about a particular issue or decision currently before the agency. A more formal hearing may resemble a trial before judges, where witnesses are sworn in and evidence is considered using formal rules of evidence and procedure. Environmental laws often require or allow public testimony on important decisions to be taken at public meetings or public hearings.

Location Standards: Criteria established by EPA, as mandated by law, for the acceptable location of new and existing hazardous waste treatment, storage, and disposal facilities as necessary to protect human health and the environment.

Mitigation: Measures taken to reduce adverse impacts on the environment.

Mobile Source: Any non-stationary source of air pollution such as cars, trucks, motorcycles, buses, airplanes, and locomotives.

National Pollutant Discharge Elimination System (NPDES): A provision of the Clean Water Act that prohibits discharge of pollutants into waters of the United States unless a special permit is issued by EPA, a state, or, where delegated, a tribal government on an Indian reservation.

New Source Review (NSR): A Clean Air Act requirement that State Implementation Plans must include a permit review that applies to the construction and operation of new and modified stationary sources in non-attainment areas to ensure attainment of national ambient air quality standards.

Non-Attainment Areas: Areas where air pollution standards are not met.

Notice and Comment: Notice is the announcement to the public of a proposed agency action or plan. Notice may be provided through radio, newspaper, posters, the Federal Register, or other media. Public comment may be given in writing or as spoken testimony at a public meeting or hearing. The public also can comment through letters, reports by scientists, or other experts who may be willing to help.

Omnibus Authority: Section 3005(c)(3) of Resource Conservation and Recovery Act (RCRA) (codified at 40 CFR 270.32(b)(2)) requires that each hazardous waste facility permit contain the terms and conditions necessary to protect human health and the environment. This provision is commonly referred to as the "omnibus authority" or

Glossary, continued

"omnibus provision." It is the means by which additional site-specific permit conditions may be incorporated into RCRA permits should such conditions be necessary to protect human health and the environment. The RCRA regulations governing hazardous waste incinerators have not been upgraded in over 15 years, even though new pollution control technologies have been developed over that same period of time. To address this gap, EPA has been using RCRA omnibus authority as necessary in appropriate cases to ensure that incinerator permits contain conditions that are protective of human health and the environment. The RCRA omnibus authority allows permitting agencies to impose additional conditions in a permit as needed to ensure that the facility is operating in a manner that is sufficiently protective. Usually, these types of additional conditions are identified pursuant to a site-specific risk assessment.

Pathogens: Microorganisms (e.g., bacteria, viruses, or parasites) that can cause disease in humans, animals and plants.

Permit: A document that gives permission for an activity. In the case of environmental permits, a permit is a document that sets forth the allowable amount of pollution and the standards that a permittee (the person holding the permit) must meet in order to maintain the permit or permission for their activity. The standards or conditions written into permits may include the following, and more: a requirement to sample discharges or emissions; a requirement to maintain such monitoring data and report it regularly to the government; the authority for government staff to conduct site inspections; and public notice requirements.

Point Source: A stationary location or fixed facility from which pollutants are discharged; any single identifiable source of pollution, e.g., a pipe, ditch, ship, ore pit, factory smokestack.

Pollutant: A contaminant of air, water, soil, or food. A pollutant could be chemicals released by a facility, household products used incorrectly, car exhaust, or other materials that could cause harm to humans or the environment.

Pollution: The contamination of air, water, soil, or food supplies by toxic and other pollutants.

Prevention of Significant Deterioration (PSD): EPA program in which state and/or federal permits are required in order to restrict emissions from new or modified sources in places where air quality already meets or exceeds primary and secondary ambient air quality standards.

Risk Assessment: A study or evaluation that identifies, and in many cases quantifies, the potential harm posed to health and the environment by contamination. Risk assessments may make assumptions about the affected community that may not be accurate. For this reason, citizen comments are useful in the risk assessment process.

Sensitive Populations: Groups of people who are more at risk for illness or disease than the general population. This could be because they are already in poor health, or because they had more exposure to certain pollutants than other people in similar situations.

Glossary, continued

Solid Waste: Any garbage, refuse, sludge, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities. The term solid waste is commonly used to refer to solid waste that is not hazardous.

State Implementation Program (SIP): Plans developed by individual states to ensure that the national air quality standards are met, as required by the Clean Air Act.

States' Rights: All rights not delegated to the federal government by the Constitution nor denied by it to the states.

Stationary Source: A fixed-site producer of pollution, mainly power plants and other facilities using industrial combustion processes.

Synergistic Impacts: When the effect of exposure to two or more contaminants is greater than the combined effect of each contaminant.

Toxic Substance: A chemical or mixture that may present an unreasonable risk of injury to health or the environment.

Underground Injection Control (UIC): The program under the Safe Drinking Water Act that regulates the use of wells to pump fluids into the ground.

Variance: A procedure by which someone can ask the government for an exception from environmental requirements, due to unique circumstances. Generally, the variance process is similar to getting a permit. An application for a variance is filed, after which a proposed variance is drafted. There are often public notice and comment opportunities before the final variance is granted.

Water Quality Standards: State-adopted and EPA-approved ambient standards for water bodies. The standards prescribe the use of the water body and establish the water quality criteria that must be met to protect designated uses.

Wetlands: An area that is saturated by surface or ground water with vegetation adapted for life under those soil conditions, as swamps, bogs, fens, marshes, and estuaries.

Acronyms

ATSDR: Agency for Toxic Substances and Disease Registry

ARAR: applicable and relevant or appropriate requirement

BACT: Best Available Control Technology

CAA: Clean Air Act

CABs: community advisory boards

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act

CEQ: Council on Environmental Quality

CFR: Code of Federal Regulations

CWA: Federal Water Pollution Control Act, or Clean Water Act

DMRs: discharge monitoring reports

EA: environmental assessment

EIS: environmental impact statement

EJ: environmental justice

ELI Statutory Analysis: companion report to this handbook, entitled "Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities". Available electronically at no cost from the Environmental Law Institute web site www.eli.org. (Click on "Publications", then "Research Reports" to obtain a copy.)

EPA: Environmental Protection Agency

EPCRA: Emergency Planning and Community Right-to-Know Act

ESA: Endangered Species Act

Acronyms, continued

FFDCA: Federal Food, Drug, and Cosmetic Act

FIFRA: Federal Insecticide, Fungicide, and Rodenticide Act

FIP: federal implementation plan

FOIA: Freedom of Information Act

FONSI: finding of no significant impact

FWS: United States Fish and Wildlife Service

HAPs: hazardous air pollutants

HHS: Department of Health and Human Services

LAER: Lowest Achievable Emission Rate

LEPC: Local Emergency Planning Commission

MCL: maximum contaminant levels

MCLG: maximum contaminant level goals

MSDS: material safety data sheet

NAAQS: national ambient air quality standards

NEP: National Estuary Program

NEPA: National Environmental Policy Act

NESHAPs: national emission standards for hazardous air pollutants

NPDES: National Pollutant Discharge Elimination System

NPL: National Priorities List

NSPS: new source performance standards

NSR: new source review

O&M: operation and maintenance

PAIR: Preliminary Assessment Information Report

PA/SI: preliminary assessment and site investigation

PCBs: polychlorinated biphenyls

PMN: pre-manufacture notice

Acronyms, continued

PSD: prevention of significant deterioration

QNCRs: Quarterly Non-Compliance Reports

RACT: Reasonably Available Control Technology

RCRA: Resource Conservation and Recovery Act

RD/RA: remedial design and remedial action

RI/FS: remedial investigation and feasibility study

ROD: record of decision

SERC: State Emergency Response Commission

SDWA: Safe Drinking Water Act

SICs: Standard Industrial Codes

SIP: state implementation plan

SNUN: significant new use notice

TAGs: technical assistance grants

TMDL: total maximum daily load

TOSC: Technical Outreach for Communities

TRI: Toxics Release Inventory

TSCA: Toxic Substances Control Act

UIC: underground injection control

USC: United States Code

Part 6: Community Workbook: Using Environmental Laws and Alternative Dispute Resolution Techniques to Address Environmental Justice

USING ENVIRONMENTAL LAWS and ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES to ADDRESS ENVIRONMENTAL JUSTICE

Community Workbook

prepared by:

_____

for the:

_____

Name of Community Organization

_____

City and State

_____

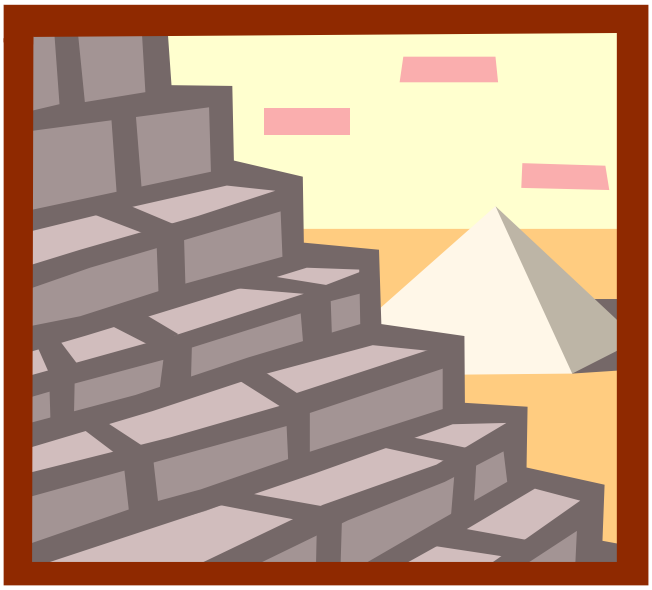
Date

Using Environmental Laws and Alternative Dispute Resolution to Address Environmental Justice

NEXT STEPS: Creating a Strategy to Get to, and Succeed at, the Table

To make the best use of information and knowledge you have gained, it is important to create a strategy or strengthen your current plan. This strategy will help you organize your efforts, determine goals and the milestones needed to achieve those goals, identify challenges and opportunities, evaluate the success of your approaches, and increase your capacity to address challenges, among other benefits. By completing this workbook, you can capture information that will continue to be useful in your efforts to pursue environmental justice.

There are four steps to creating a strategy:



STEP 1: Preparation

STEP 2: Collaborative Partnerships

STEP 3: Collaborative Research

STEP 4: Collaborative Action

This workbook will help you develop and strengthen your strategy.

STEP 1: PREPARATION

Summary of your problem:

In your summary, be sure to include:

WHO is affected? What people are affected or harmed (*for example, neighborhoods, workers, etc.*)?

How are people affected (*for example, illness, jobs, stress, quality of life, etc.*)? What are the demographics (*for example, race, ethnicity, income, age) of the affected people*?

How many sensitive populations are affected (*children, women of child-bearing age, elderly*)?

WHAT is affected? What environmental media are affected (*for example, soil, surface or ground water, air*)?

HOW are you exposed? What is the route of exposure (*for example, through the soil, drinking water, air*)? What are the pathways for exposure (*breathing [inhalation], touching [dermal], drinking or eating [ingestion], etc.*)?

WHEN did the problem first occur and how long has the community been affected?

What needs to be done to fix it:

What is the chronology of events (*date and time of significant occurrences*)?

Please list key events and dates: _____
_____
_____
_____
_____
_____

Do you have any videotapes, audiotapes, or photographs of unusual activities?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

STEP 2: COLLABORATIVE PARTNERSHIPS

Who are the people from your community/neighborhood who may share your concerns?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____

What are the key community and organizational members who would be willing to help?

- ☐ _____ _____
  Name Organization
- ☐ _____ _____
  Name Organization
- ☐ _____ _____
  Name Organization
- ☐ _____ _____
  Name Organization

Who are the people or organizations outside your community who can assist you (*for example, academics, local and state government agencies, non-profit organizations, faith-based organizations, health-care providers, etc.*)?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____

Who from among these people may agree to serve on a *Community-Based Participatory Research and Action Steering Committee?*

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____

Who can help you conduct training for the Steering Committee?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What are the principles that should guide this collaborative effort?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____

What measures/activities can be taken to gain an understanding of community concerns and get buy-in for a collaborative effort (*for example, focus groups, petitions, etc.*)?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____

STEP 3: COLLABORATIVE RESEARCH

Part A:

Community Environmental Status *(Anecdotal information from lay experts)*

Have you observed any impact on property in the neighborhood (*for example, soot on house/car windows, soiled laundry, discolored water, odor, etc.*)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

When do the problems appear worse (*for example, early morning, late at night, certain times of the month, etc.*)?
_____
_____
_____

Have you observed any impacts on your or your neighbors' health?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

Have you observed unusual activities at the facility that are related to the problem (*for example, frequent or unreported accidents, poorly maintained monitoring equipment, etc.*)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

Have you noticed impacts in the community (*for example, discolored surface water, fish kills, etc.*)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

Part B:

Health Research

Has a health survey or assessment been conducted?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe who did it and when: _____
_____

If no, should one be done and how? _____
_____

Do we understand how the pollutants can affect people?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

Are there existing fact sheets (*for example, health effects of pollutants*)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe what you know: _____
_____
_____

Who can help prepare additional fact sheets?

☐ _____.
☐ _____.
☐ _____.

Part C:

Environmental Laws

Which laws or regulations apply to your environmental justice problem?

- ☐ Clean Air Act (CAA)
- ☐ Clean Water Act (CWA): surface waters
- ☐ Safe Drinking Water Act (SDWA)
- ☐ Resource Conservation and Recovery Act (RCRA): hazardous and solid waste
- ☐ Emergency Planning and Community Right-to-Know (EPCRA)
- ☐ Brownfields Law
- ☐ Other: _____

Does the problem relate to:

- ☐ delegation
- ☐ permitting
- ☐ rulemaking
- ☐ enforcement
- ☐ site cleanup and reuse
- ☐ release of pollution
- ☐ chemical accidents
- ☐ other:_____

What is the facility's compliance history with local, state, and federal laws?

_____
_____
_____

Have there been property or ownership transactions?
☐ Yes ☐ No ☐ Need to find out

If yes, what happened? _____
_____
_____

Have there been worker issues (for *example, accidents, injuries, etc.*)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

Have any environmental laws or regulations been violated?
☐ Yes ☐ No ☐ Need to find out

If yes, what actions were taken by regulatory agencies and the facility? _____
_____
_____

What non-litigation provisions of environmental laws apply to our problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What government agencies have responsibility for oversight for the problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.

Are there government decisions pending about the problem?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe them: _____
_____
_____

STEP 4: COLLABORATIVE ACTION

Outlining Your Strategy

For the environmental law(s) at issue, which "EJ Hooks" should we use to address our problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What sources of information do we need to document how our environmental justice problem impacts us?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.

Have we obtained existing visuals of information (*for example, maps, GIS images, etc.*)?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What are the significant findings in our analytical report of data collected?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.

What strategy can we use to leverage our use of environmental laws and government decision-making?

_____
_____
_____
_____

Community Buy-In

Who else in our community, outside of our group, may be interested in our environmental justice problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.

What are their particular interests in the problem?

_____
_____
_____

What other activities can we undertake to inform people about our problems and opportunities to address these problems?

- ☐ _____.
- ☐ _____.
- ☐ _____.
- ☐ _____.

What are all the remedies needed to address our environmental justice problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.

IMPORTANT: Does everyone in our community agree with these remedies?
☐ Yes ☐ No ☐ Need to find out

If no, please describe who does not agree and which elements they disagree with _____
_____
_____

Understanding Business and Industry

Which business(es) or government agencies are involved with our environmental justice problem?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What issues are they concerned about?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What are the mutual gains that can be achieved between us and them?

- ☐ _____.
- ☐ _____.
- ☐ _____.

Using ADR

Has ADR been used in the past (e.g. facilitation, negotiation, mediation, arbitration)?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe the situation and result: _____
_____
_____

Did we have to negotiate or mediate with anyone?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe with whom: _____
_____
_____

Did we have to go to court, or threaten to go to court?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe what happened: _____
_____
_____

Did anyone help us with getting the challenge successfully resolved?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe who helped us: _____
_____
_____

Do we think the business or government would be interested in using ADR now?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe why we think this: _____
_____
_____

Does our community group have the capacity to participate in ADR?
☐ Yes ☐ No ☐ Need to find out

If yes, please describe why we think we are able: _____
_____
_____

Plan of Action

What are the leverage points (legal and political) to address our environmental justice problem?
_____
_____
_____

Who are potential additional collaborative partners?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What strategies can we use, and how should they be ranked?

- ☐ _____.
- ☐ _____.
- ☐ _____.

What are the steps needed for our plan of action?

- ☐ _____.
- ☐ _____.
- ☐ _____.

NOTES

Training Team Partners:

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