

# A Citizen's Platform For Our Environmental Right-To-Know



March 2001

An Agenda for Access Report

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## Forward and Acknowledgements

This report is the result of the thinking of many individuals who, over the years, have devoted significant time and energy to defending and strengthening the public's right to know. Many organizations recognize the power that information brings. Interviews we conducted with over 100 policy makers, shapers and implementers working both inside government and outside government revealed a startling paradox: while the public's right to know and the policies and practices that derive from it are recognized and used as a strategic tool by some, many who benefit directly in their work from proactive right-to-know policies and practices are unaware of these benefits and do not devote time, attention or much consideration to their ability (or the ability of the public *writ large*) to access, understand and use public information – especially information collected and held by government.

This report represents an effort to reach those who benefit from and rely upon the right to know but who may not have thought about the right to know, information policy and public access to information as questions of policy. It is also an effort to inform policymakers about key right-to-know issues in a specific issue, the environment. Through the lens of environmental protection, this report begins by elucidating several key principles underlying the right of the public in a free society to access information in order to inform decisions. It then outlines key issues in right-to-know and information policy, such as the limits of national security and confidential business claims to withhold access. The report concludes with recommendations to advance the right to know and provides a timeline for action in 2001 for one agency, the Environmental Protection Agency.

We would like to thank the many experts in environmental policy, health issues, information policy and technology who contributed nuance and character to the report's discussion, language and recommendations. Affiliations are indicated for identification purposes only and do not necessarily indicate endorsement of the contents of this document:

Carol Andress, Environmental Defense; Mary Alice Baish, American Association of Law Libraries; Patricia Bauman, The Bauman Foundation; Jeremiah Baumann, U.S. Public Research Interest Group; Lynn Bradley, American Library Association; John Chelen, The Unison Institute; Steve Cochran, Environmental Defense; Nevin Cohen; Ken Cook, Environmental Working Group; Susan Doran, Knowledge Management Consulting; John Echeverria, Environmental Policy Project, Georgetown University Law Center; Lois Epstein, Environmental Defense; Karen Florini, Environmental Defense; Gail Harmon, Harmon and Curran; Blair Horner; Gene Karpinski, U.S. Public Interest Research Group; Pat Kenworthy, National Environmental Trust; Tara Magner, The Bauman Foundation; Patrice McDermott, OMB Watch; Thomas Natan, National Environmental Trust; Mike Newman, Sierra Club; Miriam Nisbet, American Library Association; Erik Olson, Natural Resources Defense Council; Paul Orum, Working Group on Community Right To Know; Charlie Osolin, Context Communications; Bill Roberts, Beldon Fund; Donald Ross, Rockefeller Family Fund; Barbara Sattler, University of Maryland; Bob Shavelson, Cook Inlet (Alaska) Keeper; Felice Stadler, Clean Air Network; Michael Stanley-Jones, Silicon Valley Toxics Coalition; Lynn Thorp, Clean Water Network; Lee Wasserman, Rockefeller Family Fund; Greg Wetstone, Natural Resources Defense Council.

We are also particularly grateful to several individuals whose time, intellectual energy and patience shaped and significantly improved the document that follows: Mary Alice Baish, Patricia Bauman, Jeremiah Baumann, Tara Magner, Paul Orum, Barbara Sattler and Charlie Osolin. At the U.S. Public Interest Research Group, Grant Cope and Carolyn Hartmann were responsible for developing "A Guide to Environmental Statutes and Regulations That Promote Public Access Activities," attached here as Appendix C.

While this report benefits from the feedback, insights and contributions of many individuals and organizations, the authors themselves reserve responsibility for the content. At OMB Watch, Rick Blum was principle author.

Gary Bass and Patrice McDermott substantially set the direction of the report. Barbara Western, Reece Rushing, Cate Paskoff and Nick Bartoli contributed in innumerable ways to its production.

The report is part of the Agenda for Access project, a two-year project to identify obstacles to and opportunities for public access to government information, strengthen constituent interest and involvement in public access issues, and advocate for changes to improve public access to government information. Previous Agenda for Access reports include “A Presumption of Disclosure: Lessons from the John F. Kennedy Assassinations Records Review Board” and “Federal Government Information & Information Technology Policy.”

This report was made possible in part through the generous support from the Bauman Foundation, Beldon Fund, Rockefeller Family Fund, and the Surdna Foundation.

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## Summary of Recommendations

### I. PRESCRIBING PRINCIPLES IN AN INFORMATION POLICY FRAMEWORK

1. EPA should articulate core principles that establish a clear commitment to right-to-know.
2. EPA should define what providing public access involves.
3. EPA should define what it means by “information.”
4. EPA must spell out the role of citizens in developing EPA information policies & practices.
5. EPA must create an information management backbone.

### II. ISLANDS OF KNOWLEDGE, SEAS OF IGNORANCE: COLLECTING INFORMATION TO FILL DATA GAPS

1. EPA should fill gaps in our knowledge.
2. EPA should limit confidential business information claims.
3. EPA should make an electronic list/index of information holdings.
4. EPA should identify and advocate for statutory changes or congressional appropriations that may be necessary to respond to certain information needs.

### III. DATA QUALITY AND CONTENT

1. EPA should step up efforts to achieve data comparability and integration across EPA, state, and local information holdings.
2. EPA should audit the quality of the data it receives from external sources.
3. EPA needs to release environmental information to the public in a timely manner.

### IV. CITIZEN PARTICIPATION

1. EPA should establish a Public Access Advisory Council.
2. EPA should develop a Public Access Burden Reduction Program for the public.

### V. NEW WAYS OF OPERATING

1. EPA should require, not simply allow, industry to submit information to EPA in electronic formats.
2. EPA should experiment with public access to databases that do not reside in one location.
3. EPA needs to improve linkages with other government departments and agencies.
4. EPA should strengthen its accountability to the public for achieving these action steps.
5. EPA should recognize in its actions that public access is no substitute for regulation.



## Executive Summary

Unfortunately our country has never developed a coordinated information policy framework to address public access concerns. Although we live in an electronic information age, our policies are written for a less advanced time. The problem is not failing to anticipate the future; rather it is failing to keep pace with the present. The growth of the Internet and of personal computers have increased our opportunities for using information, but have also made the lack of a coordinated information policy framework more apparent. By the same token, these changes also present an opportunity to begin developing such a framework to meet our Information Age.

For a number of reasons, such as the lack of a government-wide information leadership structure, we decided not to engage in a government-wide policy framework. Instead, we felt by working with a single agency, such as EPA, we could learn many lessons, which, in turn, could be shared with other agencies.

This Platform proposes harnessing public information to enhance the public good. Many of the ideas presented in this Platform have already been presented to EPA, but not in this consolidated form. By consolidating the action steps, we hope to encourage action that will result in meaningful public access, participation, and protection of public health and the environment.

### I. Prescribing First Principles in an Information Policy Framework

As one of its first priorities, EPA must develop a roadmap that describes its vision for right-to-know and how the agency plans to achieve that vision. This roadmap, or “Information Access Plan,” should be grounded in key principles and incorporate several essential elements:

1. **EPA should articulate core principles that establish a clear commitment to right-to-know, such as:**
  - ✓ In our democracy, all members of the public have an enforceable right to anonymous, timely, and unfiltered access to government information at low or no cost.
  - ✓ Government has a duty to identify and collect data and information to protect and benefit the public, spur efficiency, ensure accountability, and strengthen democratic processes.
  - ✓ Government has an affirmative responsibility to make information broadly available to the public in an equal and equitable manner and in formats that are timely, easily located, understandable, and useful. Those who seek to withhold information carry the burden of proof to justify their position.
  - ✓ Government should strive to ensure that the information it releases is complete and accurate; however, questions about completeness or accuracy should not be permitted to restrict the free flow of information.
  - ✓ Citizens have a right to participate in government decision making about public information access policies and strategies.
  - ✓ Citizens have a right to hold the government accountable for enforcing policies requiring public dissemination of information.
  - ✓ Government should embrace electronic media without disadvantaging those without access.

- ✓ Government efforts to provide equal and equitable access to government information are not competitive with the private sector.
  - ✓ Government has a responsibility to manage, over its entire life-cycle, the information it creates or collects, including documents, records, electronic files, and databases.
  - ✓ Government has an obligation to ensure the public can determine national trends and indicators to benefit the public interest.
2. EPA should define what providing public access involves.
  3. EPA should define what it means by “information.”
  4. EPA must spell out the role of citizens in the development of EPA information policies and practices.
  5. EPA must create an information management backbone.
  6. EPA must clarify state and local government responsibilities for information collection, transfer, and access.

## II. Filling Data Gaps: Islands of Knowledge, Seas of Ignorance

Substantial information and data gaps seriously hamper EPA’s – and the public’s – ability to use environmental information to help achieve measurable environmental results. EPA and individual states are required by such laws as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act to collect statistical and monitoring data on environmental conditions. Even so, critical environmental information – such as the health and ecological effects of many chemical pollutants – is not often available to the agency or to citizens.

EPA lacks useful information on many critical health and environmental factors. To address these data gaps:

1. EPA should fill gaps in the public’s knowledge.
2. EPA should require up-front substantiation of all CBI claims and establish expirations on confidential business information shields.
3. EPA should create and maintain an electronic index of information holdings.
4. EPA should identify and advocate statutory changes or congressional appropriations that may be necessary to respond to certain information needs.

## III. Improving Data Quality and Content

Environmental data are collected under a wide variety of laws and regulations, each with unique requirements. Generally, even where large amounts of environmental data do exist, they do not adhere to common definitions or formats. The resulting cacophony of incompatible data frustrates efforts by parents, neighbors, community groups, and researchers to integrate EPA’s databases.

EPA needs to address these problems forcefully. It should adopt the following action steps.

1. **Step up efforts to achieve data comparability and integration across EPA, state and local information holdings.**
2. **Develop procedures to audit and improve the quality of the data EPA receives from external sources.**
3. **EPA needs to release environmental information to the public in a timely manner.**
4. **EPA should improve data quality by providing public access and other efforts.**

#### **IV. Assuring Citizen Participation**

The term “public” has many different meanings. The public includes: the regulated industry; state and local governments; school boards and planning commissions; community, social justice, and environmental groups; emergency responders (such as police and firefighters); news reporters; investors; and many other interested parties.

The public may have the right-to-know in theory, but people also need well-organized communities, reliable information, technical assistance, appropriate opportunities to intervene, solid information, and support from a well-organized regulatory system.

1. **Involve the public in strengthening government accountability and the public’s right-to-know.** EPA should take the lead within the Administration in pursuing executive action and legislative changes that would improve both public access to existing information and the collection of additional, badly needed environmental data. Some possibilities include:
  - A. **Establish a Public Access Advisory Council.**
  - B. **Support citizen enforcement.**
  - C. **Fund citizens as monitors.**
2. **Develop a Public Access Burden Reduction Program for the Public.** EPA has narrowly defined “burden reduction” to mean reducing the reporting burden on industry and the states in complying with federal laws and regulations. But “burden reduction” also means reducing the burden on the public in obtaining, understanding, and using information held by the agency. At a minimum this program should include:
  - A. **Training and assistance grants**
  - B. **Training and assistance hotlines.**
  - C. **Coordinated programs with libraries and others.**
  - D. **Web sites that are more user friendly.**

#### **V. Developing New Ways of Operating**

As new technologies and ideas develop, EPA must be flexible enough to incorporate fresh approaches to strengthening the public's right-to-know. EPA must have an ongoing program of experimentation with innovative efforts.

The following action steps suggest new ways of operating.

1. **Require, not simply allow, industry to submit information to EPA in electronic formats.** Electronic submissions will reduce burden on industry, improve data quality, and speed up public access to the information.
2. **EPA should experiment with integrated public access to databases that do not reside in one location.** With the development of new software and technology, it is possible for the public to gain access to multiple databases in multiple locations -- without even knowing it.
3. **EPA needs to improve linkages with other government departments and agencies.** EPA should link to and ensure compatibility of EPA data with other federal agencies and organizations, such as the Occupational Safety and Health Administration and the Securities and Exchange Commission.
4. **Strengthen EPA accountability for achieving these action steps.** Citizens have a right to hold the government accountable for enforcing policies requiring public dissemination of information; government employees who disclose violations of those policies are entitled to the same "whistleblower" protections as those who disclose government waste, fraud and abuse.
5. **Public access is no substitute for regulation.** Right-to-know programs should supplement, not supplant, regulation; these programs should provide the information needed by regulators, legislators, and citizens alike to tell if our environmental laws are working.

## Conclusion

Not all the action steps in the Platform can be embraced immediately. That is why we conclude this Platform with a beginning agenda for 2001. We are committed to working with EPA to carry out this constructive agenda. If EPA believes these deadlines cannot be met, we would like to understand why and, if appropriate, refine the deadlines.

**By March 30, 2001,** EPA should hold its annual release of Toxics Release Inventory data (covering toxic chemical releases during 1999).

**By May 30, 2001,** EPA should establish a Public Access Advisory Council.

**By July 1, 2001,** EPA should:

- Develop and make available through the Internet a list of the agency's information holdings, including those not now available to the public and the reasons for withholding the information;
- Construct an Information Access Plan for public comment. This Plan should be finalized by the end of 2001;
- Have a detailed work plan for implementing a "key identifiers" architecture that incorporates a facility identifier and ownership (corporate) identifier; and
- Begin a process for identifying and filling existing data gaps. This should be coordinated with the Public Access Advisory Council.

By September 1, 2001, EPA should prescribe a plan for setting time limits on the withholding of CBI-categorized information and a process for requiring up-front substantiation of future CBI claims.

By December 15, 2001, EPA should:

- Have a budget request for grant support to nonprofits and for citizen monitors;
- Require electronic submissions from all regulated entities (with limited exceptions); and
- Establish procedures for auditing the quality of the information the agency collects and establish penalties for errors in submissions.

This timeline represents what we believe to be a reasonable timeline for EPA to take important steps that will substantially improve public information through right-to-know.



## Introduction: Why the Environmental Protection Agency?

A healthy democracy demands that citizens and communities have unfettered access to public information held by our government. Assaults on the right-to-know prevent our citizens from standing on a level playing field to work with government and industry to protect human health and the environment. These assaults mean that people cannot readily identify company owners of polluting facilities or say with certainty whether our drinking water is safe, our lakes are swimmable, or our air is safe to breathe. These assaults include orchestrated public relations attacks, lawsuits, and sneak “riders” added to legislation. They include restrictions on government dissemination of chemical safety information on the Internet, efforts to establish an “industry veto” over new EPA information products, and limitations sought by states on EPA’s ability to use information and inform the public. Thus, as the nation stands poised to reap the environmental health benefits of the emerging Information Age, our citizens and communities face continuing barriers to full and effective participation in the democratic process. This report both calls attention to these barriers and suggests policies and procedures -- both general and specific -- that can help strengthen our nation’s historical commitment to an informed democracy.

We focus this report examining right-to-know policies and practices on the Environmental Protection Agency (EPA) because the agency has considerable experience with right-to-know initiatives. In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA), which created the Toxics Release Inventory (TRI). (See Appendix A for more information on the TRI program.) Under TRI, chemical-using industries report to EPA their toxic emissions to the air, water, and land. The EPA makes the data available through computer telecommunications and other means to any person on a cost reimbursable basis. Numerous reports cite the TRI program as a model for providing environmental information to the public.<sup>1</sup> The success of the TRI program is partly due to farsighted legislation. It is also due to pressure from public-interest groups, the news media, and individual citizens to ensure that EPCRA’s public-access provisions were implemented. More than a decade of the public’s right to know about toxic chemicals on the TRI list has resulted in a 45 percent decline in the release as waste of those chemicals.<sup>2</sup> In fact, the TRI program has been such a successful, if limited, program that EPA Administrator Carol Browner created a new Office of Environmental Information “as a center of excellence that advocates the use and management of information as a strategic resource to enhance public health and environmental protection.”<sup>3</sup> (See Appendix B for more information on EPA’s Office of Environmental Information.)

Just as the TRI program represented a novel, innovative effort in its early years, the new Office holds similar prospects. And just as the TRI faced enormous hurdles in its early years, so too does the new Office. Decisions made now about the new Office of Environmental Information will help it develop a successful track record akin to the TRI program or vitiate its long-term prospects. That is one reason this Citizen’s Platform develops important action steps at this time.

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<sup>1</sup> See, for example, John D. Howay, Warren R. Muir & Barbara F. Bass, *Existing Reporting vs. Needs for Public Environmental Performance Data about Toxic Chemicals at Industrial Facilities*, Alexandria, VA: The Hampshire Research Institute (September 1997), p. 1; Margaret M. Jobe, “The Power of Information: The Example of the U.S. Toxics Release Inventory,” *Journal of Government Information* 26:3 (1999), 287-295; “Survey of Data Information Use and Need by Public Interest Advocacy Organizations in Massachusetts,” Boston: JSI Center for Environmental Health Studies (November 1998), p. 3.

<sup>2</sup>United States Environmental Protection Agency, “1998 Toxics Release Inventory (TRI) Data Summary,” EPA-745-S-00-001, May 2000, p. 4. This figure reflects only on- and off-site releases as waste of chemicals for which industry disclosed releases under the Toxic Release Inventory program. The figure does not include transfers to processing and handling facilities for incineration or other disposal. Nor does it include chemicals in products (as opposed to wastes). The TRI program originally covered some 300 chemicals released from manufacturing industries; the EPA has broadened the program to now cover over 600 chemicals and seven additional non-manufacturing industries.

<sup>3</sup> Letter from Carol Browner to EPA Employees, December 9, 1998, as published in *Inside EPA*, December 11, 1998, p. 14-15.

Another reason is that actions taken by Congress and the Clinton Administration, coupled with the growing ubiquity of the Internet, have created a critical environment for articulating a vision for meaningful public access. Although laws governing the right-to-know are still fragmented and do not provide adequate direction for the public to get accurate, timely information in understandable and usable forms, over the past five years, changes in federal laws have nudged the legal framework in the right direction.<sup>4</sup> Further, political leaders are voicing concern over the division of our society into those who do have access to a computer and the Internet and those who do not. (Even in the discussion of this “digital divide,” however, missing is discussion of the information content that these new technologies bring into the homes of millions of Americans.) In addition, on December 17, 1999, President Clinton issued two memoranda to the heads of executive branch agencies directing them to improve government’s use of technology to deliver government services and to support civil society.<sup>5</sup> And on June 24, 2000, the President announced that within 90 days the federal government would launch “FirstGov.gov,” the federal government’s one-stop portal to federal government information.

Yet despite these high-level directives, and despite the demonstrated ability of right-to-know to help protect the environment and improve public health and safety, most government agencies have yet to establish effective programs to enhance public access to government information.<sup>6</sup>

And those agency right-to-know activities that do exist have been hit-and-miss. Some agencies do only the minimum; some do not even achieve the minimum. A few agencies, on the other hand, are striving to meet the spirit of the panoply of public access laws. These agencies have at least one high-level leader who understands the importance of getting information to the public and devotes resources to the task. EPA is such an agency.<sup>7</sup>

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<sup>4</sup> In 1995, for example, Congress passed the Paperwork Reduction Act (PRA) which instructed agencies to “ensure that the public has timely and equitable access to the agency’s public information” (44 USC 3506(d)) and provided for development of a Government Information Locator Service. (44 USC 3511) A year later, Congress modified the Freedom of Information Act to require agencies to make “records” that have been released under FOIA available *without* a request if the agency determines that the records “have become or are likely to become the subject of subsequent requests for substantially the same records.” (5 USC 552(a)(2)(D)) These records, along with an index of all agency records, were to be made available through the Internet by the end of 1999. Also in 1996, Congress passed the Information Technology Management Reform Act (called the Clinger-Cohen Act after the sponsors), which instructed agencies not only to ensure timely and equitable public access to public information, but also to solicit and consider public participation in their information dissemination activities.

<sup>5</sup> “Memorandum for the Heads of Executive Departments and Agencies,” December 17, 1999, [http://ombwatch.org/info/info\\_society-presmemo.html](http://ombwatch.org/info/info_society-presmemo.html).

<sup>6</sup> Various studies have shown that EFOIA is being poorly administered by the federal agencies and that the Government Information Locator Service has not lived up to its legislative promise. Even after years of deliberation, OMB has not been able to issue web guidelines to agencies that included basic advice such as the necessity to follow various laws, such as the Privacy Act, that were originally written for the paper world.

<sup>7</sup> Across the government, policies on information access remain hit-and-miss. One problem has been the weak government-wide leadership on information issues. Part of that problem stems from the management structure of the federal government. There is no central authority to focus attention and wrestle with these thorny issues. Some have proposed changes to focus attention on information issues. For example, on July 27, 2000, Representative Tom Davis (R-VA) introduced The Federal Information Policy Act of 2000, which would create a new Chief Information Officer for the United States and concentrate information management functions in one office. Putting management issues aside, the federal government needs a plan, firmly grounded in the right-to-know, to guide policy and practices around information access and the public’s right-to-know. While this paper focuses on one agency, we hope this document will help contribute to the development of an information policy plan and right-to-know culture across the federal government.

**The starting point must be an agency-wide plan for public access that begins with key principles outlining the public's fundamental right-to-know...**

While EPA has taken significant steps in strengthening the public's right-to-know, particularly through the TRI program, the agency still has work remaining to provide full and meaningful public access to environmental information. The starting point must be an agency-wide plan for public access that begins with key principles outlining the public's fundamental right-to-know and commits the agency

to gathering the information necessary to identify, understand and address threats to human health and the environment. Up to now, the agency has only begun to address this worthy and ambitious goal. EPA must also solve its chronic data collection, standardization and quality control problems. In a September 1999 report to Congress on EPA's information management programs, the U.S. General Accounting Office (GAO) found that

... EPA has not yet identified or evaluated options for filling the agency's data gaps, has not yet developed a plan detailing how it will standardize the data in many of the agency's key databases, and has not yet identified the specific actions that the agency and its state partners need to take to ensure the accuracy of environmental data.<sup>8</sup>

EPA has experienced other shortcomings in pressing right-to-know policies as well. On February 16, 2000, EPA had to shut down its web site and cut off Internet and email access for agency employees after an anti-environmental Congressman, Thomas Bliley, raised concerns that the agency's information systems were not adequately protected from hackers. EPA has slowly restored most Internet services, although several months later powerful file transfer protocol (FTP) transactions, widely used to transfer large amounts of data between computers, are still not fully functional.

And despite a lengthy EPA analysis of what some have termed the "right-to-know effect" – or the tendency for public oversight to spur action for safety – the agency worked closely with the Justice Department to severely restrict public access to chemical companies' worst-case accident scenarios – without taking *any* meaningful action to reduce these hazards. The rule is designed to make it extremely difficult for anyone to post the information on the Internet and even bars government officials from providing the information to the public unless companies themselves have released their worst-case scenario.

Finally, industry is increasingly mounting efforts that undermine the public's right-to-know. More aware that the success of right-to-know makes it harder to oppose publicly, industry supports right-to-know rhetorically but behind the scenes works to slow the process of developing and implementing strong right-to-know policies. In addition, Congress attacks EPA right-to-know efforts through the appropriations process. In a bid to keep more information secret through greatly expanded (and unwarranted) trade secrecy claims, for example, report language accompanying the Fiscal Year 2000 appropriations bill for EPA unnecessarily forced the agency to examine whether its policies on confidential business information make it more difficult to protect confidential business information. (EPA's initial conclusion is that they do not.)<sup>9</sup>

Even the President recognized the opportunity that EPA embodies and, conversely, the need for improving EPA's right-to-know efforts. Among the sixteen directions to agencies in the December 17, 1999 memorandum on e-society, President Clinton directed EPA to "develop a national strategy for promoting

<sup>8</sup> General Accounting Office, "Environmental Information: EPA is Taking Steps to Improve Information Management, But Challenges Remain," RCED-99-261 (September 1999), p. 2.

<sup>9</sup> "Initial Review of Statutes, Regulations, and Policies Concerning Confidential Business Information," unpublished Environmental Protection Agency report to Congress (August 2000), p. 4.

environmental applications of information technology (such as disseminating information about manufacturing techniques that reduce pollution, and increasing the timeliness of environmental information).”<sup>10</sup>

So EPA is committed to right-to-know initiatives, but has many problems to solve. It operates in response or crisis mode. This is not the right framework to develop and expand right-to-know. The agency needs a long-term vision for empowering the public with information to help protect communities and the natural environment. This vision should be embodied in a long-range plan. This document suggests the principles, goals and steps necessary to honor the public’s right-to-know.

While we focus this right-to-know agenda on a single federal agency, we suspect that the problems identified are common to most, if not all, federal agencies. Therefore, by directing public interest attention to EPA, we hope to establish standards and practices that will serve as models for other agencies.

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<sup>10</sup> “Presidential memorandum for the heads of executive departments and agencies,” December 17, 1999, [http://ombwatch.org/info/info\\_society-presmemo.html](http://ombwatch.org/info/info_society-presmemo.html).

# Implementing Right-To-Know Principles at the Environmental Protection Agency

How EPA implements our right-to-know laws has a profound effect on the public's ability to access information. Our action steps for EPA fall into five categories:

1. Prescribing First Principles in an Information Policy Framework
2. Filling Data Gaps: Islands of Knowledge, Seas of Ignorance
3. Improving Public Access: Data Quality and Content
4. Assuring Public Participation
5. Developing New Ways of Operating

## I. Prescribing First Principles in an Information Policy Framework

There are many threats to the public's right-to-know. In providing public access, EPA should ensure public information remains public. When government functions are out-sourced to third-party entities, as is occurring on a more frequent basis, EPA should ensure that information held by government contractors is also publicly accessible. The federal government should not privatize services or refrain from activities – such as free tools for accessing and analyzing information -- out of fear of being accused of competing with the private sector. Further, government information tools should rely to the greatest extent possible on open source software. Software is considered “open source” if its underlying programming code is available for others to view and examine. The programming code in commercial software is considered a trade secret and is not generally viewable. When the public accesses information held by government, the public should not be required to own, license or access proprietary systems in order to obtain the public information.<sup>1</sup>

And since the U.S. has gone further in many respects than any other country in addressing the public's right-to-know, the movement to “harmonize” national policies around the globe also threatens our democratic guarantees of openness and transparency.

As one of its first priorities, EPA must develop a roadmap that describes its vision for right-to-know and how the agency plans to achieve that vision. This roadmap, or “Information Access Plan,” should be grounded in key principles and incorporate several essential elements: (1) the vision for right-to-know; (2) a definition of public access; (3) a definition of “information;”<sup>2</sup> (4) the role of the public; (5) a description of the information management backbone (often referred to as an “information architecture”<sup>3</sup>); and (6) clarification on state and local responsibilities for information access.

1. **EPA should articulate core principles that establish a clear commitment to right-to-know.** Too often agency policies inhibit public access unnecessarily due to a lack of clear guidelines, leadership, and standards around public right-to-know policies and practices. EPA operational policy must make it clear that information is to be made publicly accessible except when a compelling argument is made to

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<sup>1</sup> While we recognize that government information systems often depend on commercially available, off-the-shelf systems, when government itself develops or contracts for an information system, the system should be open source.

<sup>2</sup>Information can roughly be separated into two types: information located within databases and text-based documents. While some policy issues, such as permanent public access (archiving), are relevant to both types of information, issues exist that affect or relate to one type of information more than the other. Unless otherwise noted, our intent is that “information” refers to both data and text-based documents.

<sup>3</sup> At various points in this document we use the terms “public access plan,” “information policy plan” or “information policy framework.” We use these terms interchangeably.

withhold it. Right-to-know principles will strengthen the resolve of agency management and staff who support right-to-know. Agency endorsement of right-to-know principles will help get the attention of those unfamiliar with “the power which knowledge gives.”

Under this “first principle,” the Freedom of Information Act (FOIA) should be the vehicle of last resort for public access to government information. FOIA is an essential tool in citizens’ arsenal to open the doors of government, but it is a blunt instrument. Citizens who use FOIA to access information face the heavy burdens of identifying specific pieces of information and following through with agencies to obtain them. This process is often lengthy, cumbersome, and needlessly expensive for all involved. Instead, EPA should make every effort to provide meaningful public access “up front” through well-organized databases and catalogues, as defined below. To the extent health data is involved, personal privacy should be protected under the provisions of the Privacy Act. The protections afforded by the Privacy Act, however, do not and should not extend to facilities, corporations, or governmental units.

2. **EPA should define what providing public access involves.** Does the information exist? If so, is it available to the public? Is it accessible? (Can the public find the information?) How can the public access it? Once accessed, is the information understandable? Is it in a form that is usable and useful? Is the information sufficient to assess environmental conditions where people work, live, or play? Is it integrated with other relevant data (such as by location, topic, facility, company, and industry)? Public access is more than simply putting information on the Internet.
3. **EPA should define what it means by “information.”** Much of the discussion about public access within EPA is targeted to databases even though its information holdings are much broader. The definition of information must also include records, publications, documents, notices, regulations, guidance, materials posted on EPA’s Web site, maps, graphic files, and all information collected by EPA. Categories of information that should be publicly accessible include: (1) information collected by EPA as authorized under the Paperwork Reduction Act and environmental statutes; (2) information not now currently collected or compiled at EPA headquarters, but reported to local, state, or federal government or other governmental units under federal laws; (3) analyses and reports developed by EPA; (4) regulatory notices, guidance and other supplementary materials; (5) information commonly sought through Freedom of Information requests that have been made publicly available; and (6) a comprehensive and regularly updated electronic directory of EPA information resources. In defining information, EPA must clearly state which of these holdings will be archived for permanent public access.
4. **EPA must spell out the role of citizens in the development of EPA information policies and practices.** As described below (see Citizen Participation), EPA must explore new ways of involving the public that give full meaning to the intent of the Paperwork Reduction Act’s requirements to “regularly solicit and consider public input on the agency’s information dissemination activities.” 44 USC 3506(d)(2) While the Paperwork Reduction Act also requires EPA to “provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products,” this does not necessitate notice and comment procedures on individual dissemination products. Nor does this require EPA to seek public involvement in the day-to-day decisions about the dissemination of individual information holdings.
5. **EPA must create an information management backbone.** This is essential for future management of information—and for access to it. At a minimum, this backbone must provide common standards across all environmental databases for: (a) facility identification; (b) corporate identification that tracks ownership to the ultimate parent company; (c) industrial identification; (d) chemical identification; (e) geospatial identifiers; (f) environmental and regulatory status, (g) units of measure, and (h) biological taxonomy. The management backbone must also describe data collection methods and an open procedure for error correction.

6. **EPA must clarify state and local government responsibilities for information collection, transfer, and access.** States have a dual relationship with EPA. States not only carry out state laws, but also administer federal laws that require information collection and transfer to the federal EPA. Thus, they are both the providers of information to the Agency and in essence are a part of the regulated community. As states are ready to point out, a substantial amount of information in major EPA databases is collected through the states. A serious problem arises when states fail to submit required data to EPA. For example, audits indicate that roughly 88 percent of drinking water quality violations never get reported into EPA's drinking water database.<sup>4</sup> EPA must take decisive action to ensure states are meeting their reporting obligations.

To ensure data quality and public access, EPA should establish and enforce common performance standards for state information collection activities under federal laws. For information collected under federal statutes, state copyright privileges, controls on re-use, and charging of fees should be prohibited. When state and federal information is co-mingled, the federal statute that prohibits copyright and copyright-like restrictions on access should prevail. To reduce reporting burdens and improve timeliness, EPA should work with the states to develop an infrastructure for collecting, managing, and disseminating as much information as possible in electronic form.

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<sup>4</sup> "Data Flawed on Drinking Water Quality," *USA Today*, September 2, 1999, p. A-1.

## Principles Guiding Public Right-To-Know Across Government and at the Environmental Protection Agency

*We affirm that, in order to fulfill government's democratic obligation to honor the public's right to know, Congress, the federal Executive Branch, the Courts, the States and Tribes, and local governments must be guided in their actions and decisions by core principles. These core principles derive from at least four fundamental assumptions about a democratic government's responsibility to the public:*

- *An informed public citizenry is critical to the effective functioning of a democracy;*
- *The public's ability to participate in an informed democracy, as well as the Constitutional freedoms of speech, assembly, and petition, and the functioning of a free press, all depend upon broad access to all relevant information;*
- *The free flow of information is the lifeblood of our democracy and is a public resource, not a commodity to be taxed or sold; and*
- *Information is an essential public policy tool, supplementing but not supplanting government's regulatory authority in carrying out its responsibilities to the citizens.*

*Given these elements fundamental assumptions, the health of our American democracy demands government and society conduct the affairs of governance consistent with several key principles:*

- **In our democracy, all members of the public have an enforceable right to anonymous, timely, and unfiltered access to government information at low or no cost.**

*Democracy means that citizens and communities can freely access information – especially including information held by government – to make decisions affecting our lives, families, communities, and nation.*

- **Government has a duty to identify and collect data and information to protect and benefit the public, spur efficiency, ensure accountability, and strengthen democratic processes.**

*Like fire protection, collecting and providing environmental information is a core function of government. Government, industry, and the general public must all have adequate information to inform decision-making, ensure accountability, and document results of environmental decisions. The public must be able to hold governments and private entities accountable for the decisions they make.*

- **Government has an affirmative responsibility to make information broadly available to the public in an equal and equitable manner and in formats that are timely, easily located, understandable, and useful.**

*Strategies for information access must ensure equity among groups with differing levels of capability to acquire and process the information. Moreover, government must provide a means for locating and directly accessing information and protecting the personal privacy of individuals about whom the government holds information.*

- **Those who seek to withhold information carry the burden of proof to justify their position.**

*Only the narrowest of exceptions should be allowed to the general principle of broad public access to government information, such as for the protection of national security, public safety, or personal privacy. Those asserting trade secret or confidential business information claims carry the burden of substantiating those claims.*

(Continued ...)

## Principles Guiding Public Right-To-Know (Cont.)

- **Government should strive to ensure that the information it releases is complete and accurate; however, questions about completeness or accuracy should not be permitted to restrict the free flow of information.**

*The best solution to inaccurate or incomplete information is to release all information in hand for robust debate and public airing of the issues, rather than keeping it secret. Government then has an obligation promptly to correct inaccurate information in an open process.*

- **Citizens have a right to participate in government decision making about public information access policies and strategies.**

*This principle should not be construed as limiting the free flow of individual information products from government to the public.*

- **Citizens have a right to hold the government accountable for enforcing policies requiring public dissemination of information.**

*Government employees who disclose violations of those policies are entitled to the same “whistleblower” protections as those who disclose government waste, fraud and abuse.*

- **Government should embrace electronic media without disadvantaging those without access.**

*Government should embrace and facilitate the use of electronic media to accept, organize, and disseminate information in a manner that does not disadvantage those without access to electronic communication tools.*

- **Government efforts to provide equal and equitable access to government information are not competitive with the private sector.**

*Government should employ open source systems to fulfill the public’s right to know. To access information in the public domain the public should not have to purchase proprietary software, hardware or other products and services. Such activities cited as “competitive” but which we deem essential government services include government web sites that provide free public tools for accessing and analyzing information.*

- **Government has a responsibility to manage, over its entire life-cycle, the information it creates or collects, including documents, records, electronic files, and databases.**

*A clear memory of our history informs who we are, our problems and our strengths, enabling us to make better decisions and avoid past mistakes. This responsibility extends to the electronic world and, left untended, will extend the twenty-year gap historians cite as resulting from government’s failure to archive properly the electronic information it collects. This responsibility also extends beyond maintaining an archive of information to ensuring we have permanent public access to the documents, records, electronic files and databases that shape our collective history. Government’s responsibility extends to those entities who collect, manage or disseminate information on the government’s behalf.*

- **Government has an obligation to ensure the public can determine national trends and indicators to benefit the public interest.**

*To ensure that information collected can be compared, integrated and synthesized, government has an obligation to ensure common standards across governments (local, state, and federal) and compatible collection mechanisms.*



## II. Filling Data Gaps: Islands of Knowledge, Seas of Ignorance

Substantial information and data gaps seriously hamper EPA's – and the public's – ability to use environmental information to help achieve measurable environmental results. EPA and individual states are required by such laws as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act to collect statistical and monitoring data on environmental conditions. Even so, critical environmental information – such as the health and ecological effects of many chemical pollutants – is not often available to the agency or to citizens. EPA's internal reviews found that basic toxicity data does not exist for more than one-third of the chemicals produced in large volumes as well as for about two-thirds of the known hazardous air pollutants. Further, 93% of the industrial chemicals (i.e., those other than food additives, drugs, or pesticides) lack at least some of basic screening data, as defined by international agreement. Highly touted efforts to gather basic scientific data will only capture a small portion of the chemicals in U.S. markets. According to the General Accounting Office, the EPA's Integrated Risk Information System (IRIS), a database available on the Internet that characterizes the health effects from exposure to more than 500 common chemicals, “has toxicological data on only one-third of the known hazardous air pollutants.”<sup>1</sup>

Beyond the serious shortage of health effects information, EPA lacks useful information on many other critical health and environmental factors (see box). To address these data gaps:

1. **EPA should fill gaps in the public's knowledge.** EPA should identify and respond to information needs, prioritizing filling the gaps that most

### ***Seas of Ignorance:***

#### ***Examples of Information Critical to Assessing Human Health and Environmental Conditions But Not Collected by the Federal Government***

Following is a partial list of “data gaps.” This list will, of course, change over time, depending on circumstances and changes in statutory mandates.

No easy way currently exists for the public to identify:

- ***Untested ingredients*** in specific pesticides and other products (labeling), and the flow of chemicals into the environment through product streams from industrial facilities (chemical use data, also known as “materials accounting”);
- ***Compliance records*** of producers and emitters of pollution; also, information on enforcement actions against violators, and the filing and status of citizen suits;
- ***Facility ownership***, such as the identity of parent companies;
- ***Geographic and climatic information*** related to pollution outfalls and point sources (e.g., the height of smokestacks, the direction of prevailing winds, groundwater plume modeling);
- ***Total volume flows, release durations, and the size of peak releases*** of toxic emissions; and the total environmental loading of pollutants within geographic areas;
- ***Health of ecosystems***;
- ***Workplace illness and injury records***; and
- ***National environmental trends***, such as land-use trends, drinking water safety, and human health indicators (e.g., asthma, birth defects and chronic diseases).

These are examples of critical information that neither the government nor the public can easily find. For each of these examples, public access to this information would further our understanding of the environment and help us protect human health.

<sup>1</sup> GAO, September 1999, p. 5. EPA has begun a collaborative initiative with Environmental Defense (formerly Environmental Defense Fund) and the American Chemistry Council (formerly Chemical Manufacturers Association) to collect basic toxicity data on a voluntary basis on high-production volume chemicals. High production volume chemicals are defined as those chemicals produced in quantities of one million pounds each year.

hinder EPA's ability to carry out its mission and acquiring new information or creating new information products that, in addition to regulation, could spur environmental and public health improvements.

Further, EPA should not allow paperwork burden reduction to interfere with its responsibility to expand the collection and dissemination of meaningful and useful environmental data. At the same time, a systematic, periodic review of data gaps should allow EPA to coordinate data collection efforts to reduce redundancy and duplication. Coupled with other action steps in this Platform, such as electronic submission of information and a coordinated collection system, burden imposed on industry could actually be reduced while simultaneously addressing data gaps.

To connect the islands of knowledge in our seas of ignorance, EPA could develop an exposure-based system that would allow the public to identify chemicals to which individuals -- based on lifestyle, eating and behavioral patterns -- are exposed in daily life. EPA could ask each EPA program office to identify information not available today that would be crucial for the agency to carry out its mission and inform the public of identified and potential human health threats. Each office would develop a schedule for filling those gaps and include budget cost estimates. Such planning should be tied directly to the performance planning process under the Government Performance and Results Act.

EPA must develop an ongoing mechanism for seeking public input on "data gaps" *and establish a process for collecting and making publicly accessible the missing information.*

2. **EPA should limit confidential business information claims.** Protecting confidential business information is important but not difficult under environmental laws. Simple, common sense restrictions on confidentiality have successfully limited secrecy claims to less than 2 percent of reports under certain major right-to-know laws.<sup>2</sup> The challenge, then, is to ensure that the public can access the fullest possible range of information while respecting submitters' need to keep certain information confidential. EPA could do two things to strengthen the right-to-know and limit confidentiality claims:
  - a. **First, EPA should limit the time period during which information is kept secret through confidential business information claims.** Confidentiality claims should be subject to clear, stringent time limits. EPA could institute procedures for reviewing and approving *substantiated* requests to extend the confidentiality waiver. The number of extensions should be limited as well such that all information is eventually released to the public.
  - b. **Second, EPA should require up-front substantiation of all CBI claims.** Confidentiality of information allows businesses to protect research programs, marketing plans, product formulas, manufacturing details, and the economics of their operations. Disclosure of trade secrets could hurt specific companies and American competitiveness. While the importance of CBI is recognized, it should not be a loophole to undermine meaningful public access. (See detailed discussion below.) Trade secrecy claims have been limited while maintaining legitimate trade secrecy claims. For example, under TRI, a company cannot claim trade secrecy if: 1) it has already disclosed the information (other than in limited circumstances) or failed to take reasonable precautions to protect it; 2) another law already requires the company to disclose the information; 3) the information is already easy to find out using reverse engineering; or 4) disclosure is not likely to harm the firm's competitive position. (EPCRA 322(b))
3. **EPA should create and maintain an electronic index of information holdings.** This would require EPA to redevelop and expand the Information Resources Directory and make it available in a searchable

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<sup>2</sup> "Trade Secret Claims Under Right-to-Know Laws," *Working Group on Community Right To Know Working Notes*, January-February 1997, p. 2. See also New Jersey's Worker and community Right-to-Know Act of 1983 and Massachusetts' Toxics User Reduction Act of 1989.

format on the EPA Web site. EPA should individually list each information holding (databases, publications, etc.), along with (a) a brief description of the holding, (b) a Government Information Locator Service (GILS) identifier, (c) a link that provides direct access to the item or a description of how to obtain it, and (d) a listing of other information holdings related to the item being described. This list would help EPA comply with the Electronic Freedom of Information Act and at a minimum should include:

- a. **Information currently available to the public.** This index should provide a comprehensive listing of information products available to the public and, in an electronic version, provide links to the product as possible, provide instructions on how to access the information product or provide a name, phone number and email address of the person who can provide the information.
  - b. **Information that is collected by EPA but not now available to the public.** This would include information that is excluded because of national security concerns, qualification as confidential business information, or other statutory reasons. The list should include an EPA contact name, email address and phone number for each information holding that is not disclosed.
4. **EPA should identify and advocate statutory changes or congressional appropriations that may be necessary to respond to certain information needs.** While one current law pushes federal agencies, including EPA, to reduce the overall burden each agency imposes on the public for reporting information to the federal government, other laws may need to be written to allow agencies to collect the right information and make it available to the public.
- a. **EPA should support efforts to improve the Paperwork Reduction Act (PRA) to allow EPA to meet other statutory obligations to collect information.** The PRA pressures agencies to reduce the government-reporting and record-keeping burden on the regulated community. The result is a bottleneck in EPA's efforts to fill data gaps, assess environmental conditions and trends, and develop appropriate performance measures to meet the requirements of the Government Performance and Results Act. EPA's need to increase its data collection in order to meet its obligations under other laws has made it impossible for the agency to satisfy the Act's requirement of a five percent government-wide annual reduction in paperwork burden. Congress should remedy this statutory conflict by eliminating the five percent requirement when it interferes with the collection of needed environmental data. EPA should be advocating this statutory change.
  - b. **EPA should defend its right-to-know programs from congressional attack "riders" on EPA's annual appropriations.** Opponents have in the past used the congressional appropriations process to undermine the public's right-to-know either by attempting to slash budgets or attach riders that would allow industry to veto EPA analyses and reports before the public ever saw them.

## **Upfront Substantiation Reduces Secrecy Claims: A Primer in Confidential Business Information**

Confidentiality of information allows businesses to protect their research programs and marketing plans, the specific formulation of their products, the details of their manufacturing process, and the economics of their operations. Disclosure of trade secrets could hurt specific companies and American competitiveness. However, while important, protecting trade secrets is not difficult under environmental laws.

While protecting confidential business information (CBI) is important, it should not be a loophole to undermine meaningful public access. A 1992 study by Hampshire Research Associates found that under the Toxics Substance Control Act (TSCA) many things were being classified CBI, including: 90% of all premanufacture notices for new chemicals; 95% of all polymer exemption submissions; 25% of all substantial risk notifications; and 20% of all reported health and safety studies. Hampshire goes on to note great unevenness in CBI claims when comparing similar chemicals under TSCA and Toxics Release Inventory (TRI) programs. Depending on the assumptions used, TSCA claims were between 10 times and 1,500 times the rate of trade secrets claimed under TRI. Both TSCA and TRI are EPA programs – but TRI has simpler and more effective up-front standards for protecting trade secrets.

Under TSCA, claiming CBI is a simple procedure, although EPA has taken steps designed to insure that only that information which is actually CBI is claimed as confidential. For most TSCA requirements, however, the applicant merely needs to label the information as “confidential,” “proprietary,” or “trade secret,” with no up-front substantiation. In some cases, the applicant need only check off a box on a form. The burden is on EPA to challenge these requests.

Under the TRI program, in contrast, the burden is placed on the applicant to justify its request for CBI. This up-front substantiation, along with simple, common-sense restrictions on trade secrecy, has resulted in only 13 trade secret claims out of more than 73,311 TRI forms submitted in 1995. Clearly, the TRI test has not been onerous, harmful, or unfair to corporations, even though many companies are subject to both statutes. Accordingly, EPA should begin a process for applying the TRI procedures for CBI across the agency in order to promote greater public understanding of environmental and health risks. EPA should: (a) identify all statutory and regulatory policies affecting trade secrets; (b) develop a list of all CBI and trade secrets; (c) develop a procedure for conducting a re-review of all existing trade secrets/CBI claims; and (d) advocate statutory changes, if and where necessary, to conform CBI policies to TRI procedures. To the extent permitted by law, EPA should employ the CBI principles enumerated above.

Where statute prohibits adopting this approach to CBI claims, EPA should recommend changes in those laws in order to be consistent with TRI principles and TRI confidential business information practices.

## **Recommendations for Handling Claims of Confidential Business Information**

The recommendations for handling confidential business information that appear on this page have been adapted from the methods for handling such claims under the Toxics Release Inventory program.

1. Submitters must substantiate CBI claims at the time of filing (“up-front” substantiation). No information could be claimed as a trade secret or CBI unless the submitter was able to show that:
  - The identity of the item, such as the name of a chemical, is not readily discoverable through reverse engineering;
  - Disclosure of the information is likely to cause substantial harm to the competitive position of the submitter;
  - The information is not required to be disclosed to the public under any other Federal, state, or local statute; and
  - The information has not been disclosed to any other person, except the government and those bound by confidentiality agreements, and the submitter has taken reasonable measures to insure the confidentiality of the information.
2. A high-level corporate official must sign the substantiation.
3. Submitters making false CBI claims should be subject to significant penalties; these penalties should be enforced.
4. EPA holds as confidential only the specific identity of the chemical substance (but not its chemical class) and releases information that is not secret, such as submitter information.
5. Finally, EPA should impose a narrow definition of allowable claims, along with “class determination” of data types that never may be classified as CBI. This might include:
  - Company name, contact information (mailing address, phone number), and locational information (street address, latitude and longitude coordinates);
  - The chemical name and Chemical Abstract Service (CAS) number of any chemical that is the subject of a health and safety study or report (under TSCA);
  - Any information that can be obtained from a public or government source (newspaper articles, public corporate reports, satellite imagery etc.); and
  - Any other information that interferes with the agency’s ability to carry out its mission or statutory intent.

### III. Improving Data Quality and Content

Environmental data are collected under a wide variety of laws and regulations, each with unique requirements. Generally, even where large amounts of environmental data do exist, they do not adhere to common definitions or formats. The resulting cacophony of incompatible data frustrates efforts by parents, neighbors, community groups, and researchers to integrate EPA's databases.

**PUBLIC ACCESS  
LEADS TO  
IMPROVED  
DATA QUALITY**

The impact is felt in any number of ways. For instance, it becomes very difficult to perform cross-media (e.g., air, land, water) and time-period comparisons; to determine environmental conditions within ecosystems, in specific geographic areas, or in the nation as a whole; to examine facilities and industrial sectors from a multi-media perspective; and to share data with states and citizen organizations. Because of data incompatibilities, a task force of the National Advisory Council for Environmental Policy and Technology (NACEPT) warned in an August 1994 report to EPA that "agency and state efforts in ecosystem protection, multi-media targeted enforcement, and pollution prevention are severely hampered."<sup>3</sup>

Even though a root cause of data incompatibility remains the single media statutes (e.g., Clean Water Act, Clean Air Act, Solid Waste Disposal Act) passed by Congress, EPA can do a number of things to remedy the problem -- and has taken some preliminary steps. The agency's current standardization efforts focus on developing six basic standards: date, facility identification, industrial classification, latitude and longitude coordinates, biological taxonomy (classifications of plants and animals), and chemical identification. The standards will initially apply only to thirteen national databases, and only to new data as they are entered into those databases. EPA's deadline for implementing the new standards is the middle of fiscal year 2003.<sup>4</sup>

Along with making the data more useful, standardization can relieve some state pressure on the EPA for burden reduction. According to a report by the Environmental Council of the States (ECOS), the variety of standards among separate media databases causes at least part of the data management burden on the states. Thus better coordination of databases could reduce "the duplication of data holdings and data entry for information such as location data and business-type data."<sup>5</sup>

In addition, data standardization could help improve EPA's ability to make environmental information available to the public in a timelier manner. By using common data standards, the agency should be able to shorten the time it takes to collect data and make them available; update current data more frequently; and correct inaccurate or incomplete data more quickly.

Just as data compatibility issues cause problems, so does poor quality control of the data collected by and submitted to EPA. Poor data quality interferes with the agency's efforts to achieve environmental results by:

- Creating additional burdens for industry and the states;

<sup>3</sup> Environmental Information and Assessment Committee, National Advisory Council for Environmental Policy and Technology, "Using Information Strategically to Protect Human Health and the Environment: Recommendations for Comprehensive Information Resources Management." EPA 270-K-94-002, August 1994, 5.

<sup>4</sup> Presentation by Mr. Joe Retzer, EPA Office of Environmental Information at public meeting on Electronic Submission of Environmental Reports, Washington, DC, July 11, 2000.

<sup>5</sup> Environmental Council of the States, "Burden Reduction and State Environmental Agencies," 1999, <http://www.sso.org/ecos/publications/burden%20reduction.htm>

- Delaying public access to important information as facilities seek additional time to “clean up” their reports;
- Hampering comparisons among facilities and states and across databases; and
- Causing tension between the states, industry, the public, and EPA.

A number of internal and external reviews of EPA’s data revealed, in the words of the General Accounting Office,

... persistent concerns about the accuracy of data in many of EPA’s information systems. EPA does not yet have a common understanding of what data quality means and how the agency and state partners can most effectively ensure that the data used for decision-making or disseminated to the public are of high quality.<sup>6</sup>

EPA needs to address these problems forcefully. It should adopt the following action steps.

1. **Step up efforts to achieve data comparability and integration across EPA, state and local information holdings.** EPA’s current standards and integration initiatives should be rapidly expanded to include additional “key identifiers” and databases. The Agency’s Facility Registry System described in EPA’s Year 2000 Action Plan for the Office of Environmental Information is a good first step.<sup>7</sup> But the public needs a broader, integrated registry. EPA should help build it. (It should be described in the Information Policy Plan mentioned above.) In addition to unique facility identification, the registry should include unique facility ownership identification (including corporate identity), chemical identification, and source identification (e.g., water sources), as well as geospatial identifiers and biological taxonomies.

Further, the Agency should support congressional efforts to provide a legislative mandate to establish data standards including key identifiers that cut across the program-specific statutory mandates for information collection. While EPA could go through each of its media-specific program areas and establish these data standards itself, Congress could provide a statutory mandate for such standards to ease the burden on the Agency. This mandate could then be a model of data standards for other federal agencies and governments around the world.

**INFORMATION HAS THE GREATEST IMPACT WHEN IT IS TIMELY**

A user should be able to identify a facility by an identification number, so that if the facility moves or expands it will have a common identifier. Similarly, there should be a separate unique identifier for corporate ownership. Finally, a system should link the corporate and facility identifiers and allow for easy, timely updates as necessary to follow mergers, acquisitions, cooperative agreements, and other changes in the relationships between company and facility entities. If, for example, a facility changed hands, the facility identification code would remain the same but the ownership identification code would change while the system would “remember” that the facility used to be owned by the previous owner. In addition:

<sup>6</sup> General Accounting Office, September 1999, p. 10-13.

<sup>7</sup> “Office of Environmental Information Year 2000 Action Plan,” April 2000, U.S. EPA Office of Environmental Information, pp. 10-11.

- A. All EPA program staff should adhere to identical data standards in all program-specific databases;
- B. To improve the management of data between the local, state, and Federal governments, EPA should develop common metrics with which to measure environmental protections; and
- C. Finally, EPA must resist efforts to create fragmented, devolved and localized information systems, which would move the agency in precisely the wrong direction with respect to data comparability and its ability to achieve integrated information management systems. The “key identifiers” must be lead by EPA and link in an efficient manner with state data collection systems.

2. **Develop procedures to audit and improve the quality of the data EPA receives from external sources.**

Deadlines should be set for correcting inaccurate data submissions, along with penalties for missing the deadlines. EPA should also augment its education and compliance assistance by initiating enforcement actions against facilities and companies that chronically file inaccurate or incomplete data. A lack of resources for monitoring data submissions itself is no excuse; based on authority under specific statutes, EPA should require independent third-party verification (paid for by industry) using standard auditing procedures. In addition, EPA should increase the use of electronic reporting and provide interactive computer tools to foster compliance with reporting obligations.

3. **EPA needs to release environmental information to the public in a timely manner.**

Information has the greatest impact when it is timely. While public access to historical information is essential for tracking environmental and safety track records, information on permit violations is more useful if available the day or week after the violations occur rather than a year or two years after those violations occur. The public needs timely access to comprehensive national databases in order to participate in making their communities safer and protecting our immediate and long-term health in the face of acute and long-term threats to the human health and the environment.

Even within current operating procedures, EPA should be able make the TRI data available online by January, a full six months after submission by industry, and a full year after the toxic chemical emissions actually occur. As these action steps are incorporated into EPA’s work, the agency will be able to improve data quality and get the data to the public in a shorter amount of time.

### **EPA Must Release Toxics Release Inventory Data More Rapidly**

There is usually an 18-month time lag between facilities’ release of toxic chemicals and public access to the numbers that describe the extent of those releases. TRI data from reporting years 1996 and 1997 were ready for release within fourteen months. Yet EPA did not release the data to the public for several additional months. For reporting year 1998, EPA delayed release of the data until May 2000 in order to literally call hundreds and hundreds of first-time filers to correct problems with their filings.

Part of EPA’s data quality checks for TRI data is to provide industry with second and even third chances to make changes to their filings. This should not be necessary.

Clearly, any complex information system must incorporate error correction mechanisms to ensure the information contained in it is of the highest quality.

However, the Agency is increasingly taking responsibility for the accuracy of information reported by industry when, in fact, only industry, after receiving adequate guidance in filling out the necessary forms, should be responsible for the accuracy of the information it submits to the Agency.

4. **EPA should improve data quality by providing public access and other efforts.** While EPA clearly needs to establish an infrastructure and procedures for the timely correction of data errors, questions about data quality should not be allowed to interfere with public access to environmental information. The TRI program experience shows that public access leads to improved data quality. Releasing data as soon as practicable would stimulate debate and allow errors to be corrected in the public forum. As errors are corrected, EPA should keep a log of the changes and the reason for the change. This error correction log should be publicly available.

## IV. Assuring Citizen Participation

The term “public” has many different meanings. The public includes: the regulated industry; state and local governments; school boards and planning commissions; community, social justice, and environmental groups; emergency responders (such as police and firefighters); news reporters; investors; and many other interested parties. The general public includes those who actively use information from the government (e.g., preparing a report), and those who only passively use such information (e.g., watching the news). Within each of these categories, there are those who could make better use of government information to further their life goals and participate in civic life.

The public can also be divided along competency with using government information. Information “sophisticates,” who include but are not limited to researchers, academics, and advocates, know where information they need is located and how to find new information. They often have personal relationships with people in agencies who can direct them to sets of information, provide access to hard-to-find documents, and provide advice and guidance on overcoming hurdles in the way of open public access. Others, mostly the “John Q. Publics,” do not have special relationships with individuals in agencies or do not realize that individuals in agencies can be helpful in finding timely, relevant information. They may scan web sites from link to link, often feeling as though they are discovering useful information on an ad hoc, “hit or miss” basis and as though they might be missing crucial information.

The public can also be understood in other terms that affect citizens’ ability to access timely, relevant information, including: competency with technology; language and literacy level; formal education and familiarity with technical terms; and access to physical resources and social networks. A major barrier to access is the lack of both physical and social resources. The public may have the right-to-know in theory, but people also need well-organized communities, reliable information, technical assistance, appropriate opportunities to intervene, solid information, and support from a well-organized regulatory system.

3. **Involve the public in strengthening government accountability and the public’s right-to-know.** EPA should take the lead within the Administration in pursuing executive action and legislative changes that would improve both public access to existing information and the collection of additional, badly needed environmental data. Some possibilities include:
  - A. **Establish a Public Access Advisory Council.** EPA should establish a high-level council that reports to the Administrator to advise and recommend agency actions to improve the agency’s information policies in ways that meet citizens’ right-to-know. The council should address: (a) priorities, based on agency resources, for making agency information publicly accessible; (b) the gaps existing in agency information collections; (c) changes needed to minimize trade secrecy and confidential business information; (d) approaches for making information available through the Internet and other means, including system design, user interface, and public outreach and training; (e) a method for monitoring the progress of integrating and making information publicly accessible; and (f) policies and approaches for integrating currently fragmented state and federal data systems.

- This council should have the resources to convene hearings around the country and should have regular meetings with the Administrator. Membership should have equal representation from each of the following categories: the national environmental justice community, national environmental groups; state and local environmental groups; industry; information policy experts; labor health and safety representatives; technology experts; librarians; academia and research institutions; public health experts; news media; EPA program offices; and state, local and tribal governments.
- B. **Support citizen enforcement.** The legal standing of citizens to sue industry is unclear. Recent court rulings sent mixed messages on standing when the regulated community failed to report or reported inaccurate information. Legislation could clarify the issue by granting clear legal standing to sue for anyone within a geographic boundary that is affected by right-to-know violations. The public should also be able to sue government agencies for failing to release information or for not making it available in useful formats.
  - C. **Fund citizens as monitors.** EPA could fund citizens as monitors to verify the accuracy of data that is reported to EPA. To reduce costs, the agency could contract with volunteer organizations or with colleges and universities. In this model, EPA would provide technical training and financial support. Existing partnerships, such as the EPA-Charles River Watershed Association partnership to assess and inform the public of water quality problems in Boston's Charles River, could be expanded upon and strengthened. EPA could draw from the many community groups that are monitoring water quality according to EPA guidelines from Louisiana to Alaska. Under this model, strengthened citizen monitors would have authority to recommend that EPA levy fines for significant errors. As noted above, EPA could also require submitters to pay for independent audits of their data submissions in order to ensure accuracy and completeness.
4. **Develop a Public Access Burden Reduction Program for the Public.** EPA has narrowly defined "burden reduction" to mean reducing the reporting burden on industry and the states in complying with federal laws and regulations. But "burden reduction" also means reducing the burden on the public in obtaining, understanding, and using information held by the agency. At a minimum this program should include:
    - A. **Training and assistance grants.** EPA should provide support grants to environmental organizations, libraries, nonprofit technology assistance centers, and other entities, to strengthen their ability to access and use environmental information and to teach the public how to access and use it.
    - B. **Training and technical assistance hot lines.** EPA should maintain telephone hot lines to assist the public in finding, obtaining, and using EPA information holdings. Hot lines should also provide advice to the regulated community on compliance with federal regulations and required information submissions.
    - C. **Coordinated programs with libraries and others.** EPA should establish an ongoing program with public libraries, depository libraries, and community technology centers to provide access to EPA information, coupled with efforts to educate the public about use of the data.
    - D. **Web sites that are more user friendly.** EPA must take steps to improve its Web site and do a better job of linking resources with regional web sites. More effort should be devoted to software tools that help the public find the information on the EPA site, aggregate and disaggregate information, download data, and receive information from EPA about information updates via e-mail. The development of "finder" tools is very important and must go beyond the existing search engine that is currently provided. For example, it is important that a search engine provide links to documents and databases. However, search engines rely in one form or another on indices of information

holdings. This underlying index should be publicly available. EPA's website should enable users to give feedback to the agency on the content and format of the site.

## V. Developing New Ways of Operating

As new technologies and ideas develop, EPA must be flexible enough to incorporate fresh approaches to strengthening the public's right-to-know. EPA must have an ongoing program of experimentation with innovative efforts. For example, EPA, foundations, and nonprofits collaborated in the development of RTK NET, which piloted methods of providing database access to community groups. The lessons from RTK NET have led to initiatives such as Envirofacts and EPA's new tool to access Toxics Release Inventory data, TRI Explorer, and have provided case examples for better understanding how the public uses EPA databases.

The following action steps suggest new ways of operating.

1. **Require, not simply allow, industry to submit information to EPA in electronic formats.** Electronic submissions will reduce burden on industry, improve data quality, and speed up public access to the information. EPA has experimented with electronic submissions. For example, roughly 97 percent of risk management plans, as required by the Clean Air Act, were submitted this year in electronic form. This experience alone reinforces the notion that it is time to require electronic submissions across all program areas operated by EPA. Any facility, company, or other entity that cannot comply can seek a special waiver to continue submitting the information in paper form.
2. **EPA should experiment with integrated public access to databases that do not reside in one location.** EPA's Envirofacts system, which integrates data from several major EPA databases at a single point of access, is a powerful public access tool. The Envirofacts model, however, represents a centralized data-warehousing approach to databases that may not be necessary in the future. With the development of new software and technology, it is possible for the public to gain access to multiple databases in multiple locations -- without even knowing it. The advantage of this distributed model is that the public can get access to information that may be at EPA, at another federal agency, or at the state level in a seamless, transparent, single search. EPA should begin experimenting with different ways of providing public access through the distributed model. It should build a pilot collaboration with foundation and nonprofits to begin this experimentation, much as was done with RTK NET and the Toxics Release Inventory. (This approach, however, must not allow information to remain at facilities in such a way that it undermines actual reporting requirements.)
3. **EPA needs to improve linkages with other government departments and agencies.** EPA should link to and ensure compatibility of EPA data with other federal agencies and organizations, such as the Occupational Safety and Health Administration and the Securities and Exchange Commission. As the agency's Science Advisory Board recommended, this effort should focus in particular on linking environmental data with occupational safety and health, census, cancer and birth registry data and other systems, such as water distribution maps, in order to determine the relationship between human health and environmental problems. The experimentation with distributed databases should help EPA in its efforts to improve linkages with other federal databases.
4. **Strengthen EPA accountability for achieving these action steps.** Citizens have a right to hold the government accountable for enforcing policies requiring public dissemination of information; government employees who disclose violations of those policies are entitled to the same "whistleblower" protections as those who disclose government waste, fraud and abuse.

5. **Public access is no substitute for regulation.** Right-to-know programs should supplement, not supplant, regulation; these programs should provide the information needed by regulators, legislators, and citizens alike to tell if our environmental laws are working. It has been noted that mandatory right-to-know reporting shames polluters into cleaning up. To some this view justifies dismantling existing environmental and public health safeguards. But right-to-know laws are catalysts; they help government work in a democratic society. Public disclosure works best when government enforces our laws and environmental protections, and when reporting systems draw from common information needed at every level – from plant manager to regulator to public citizen.

In order to fulfill its mission “to protect human health and to safeguard the natural environment – air, water, and land – upon which life depends,” EPA should continue working diligently to put more information in the hands of the public in ways people can understand and use. Currently, debates about known and potential environmental and human health threats often occur without adequate information.

This report begins to develop comprehensive policies to institutionalize and expand the public’s right-to-know in one federal agency, across the federal government and throughout government. While the tools and technology are advancing rapidly and opportunities expand to strengthen citizen interaction between government and the public, the question remains whether government will take the steps necessary to realize the possibilities.

## Conclusion

Unfortunately our country has never developed a coordinated information policy framework to address public access concerns. Although we live in an electronic information age, our policies are written for a less advanced time. The problem is not failing to anticipate the future; rather it is failing to keep pace with the present. The growth of the Internet and of personal computers have increased our opportunities for using information, but have also made the lack of a coordinated information policy framework more apparent. By the same token, these changes also present an opportunity to begin developing such a framework to meet our Information Age.

For a number of reasons, such as the lack of a government-wide information leadership structure, we decided not to engage in a government-wide policy framework. Instead, we felt by working with a single agency, such as EPA, we could learn many lessons, which, in turn, could be shared with other agencies.

This Platform proposes harnessing public information to enhance the public good. Many of the ideas presented in this Platform have already been presented to EPA, but not in this consolidated form. By consolidating the action steps, we hope to encourage action that will result in meaningful public access, participation, and protection of public health and the environment.

Not all the action steps in the Platform can be embraced immediately. That is why we conclude this Platform with a beginning agenda for 2001. We are committed to working with EPA to carry out this constructive agenda. If EPA believes these deadlines cannot be met, we would like to understand why and, if appropriate, refine the deadlines.

**By March 30, 2001**, EPA should hold its annual release of Toxics Release Inventory data (covering toxic chemical releases during 1999).

**By May 30, 2001**, EPA should establish a Public Access Advisory Council.

**By July 1, 2001**, EPA should:

- Develop and make available through the Internet a list of the agency's information holdings, including those not now available to the public and the reasons for withholding the information;
- Construct an Information Access Plan for public comment. This Plan should be finalized by the end of 2001;
- Have a detailed work plan for implementing a "key identifiers" architecture that incorporates a facility identifier and ownership (corporate) identifier.
- Begin a process for identifying and filling existing data gaps. This should be coordinated with the Public Access Advisory Council.

**By September 1, 2001**, EPA should prescribe a plan for setting time limits on the withholding of CBI-categorized information and a process for requiring up-front substantiation of future CBI claims.

**By December 15, 2001**, EPA should:

- Have a budget request for grant support to nonprofits and for citizen monitors;
- Require electronic submissions from all regulated entities (with limited exceptions);

- Establish procedures for auditing the quality of the information the agency collects and establish penalties for errors in submissions.

This timeline represents what we believe to be a reasonable timeline for EPA to take important steps that will substantially improve public information through right-to-know.

Democracy lets the public help shape the decisions affecting each and every member of society. But democracy is only a framework, a promise to be fulfilled. Communities most directly affected have a right to identify, analyze and act on threats to human health and the environment. The public has a right to safeguard their communities from such threats. The debate, discussion and disagreement so imbedded in the American process of democracy depend heavily on the public's ability to access timely, high quality information in order to make enlightened decisions on a level playing field with all participants in democracy's grand discussion. The public, in short, has a right to know.

## Appendix A: The Toxics Release Inventory Program & The Emergence of Community Right-to-Know

Congressional passage of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA, also known as SARA Title III) (*Pub. L. 99-499, Oct. 17, 1986; codified at 42 U.S.C. 11001-50 (1994)*) was one of the most significant milestones in U.S. history in terms of providing public access to information of importance to citizens and their communities. The law was revolutionary – a conceptual breakthrough that helped speed our transition to the Information Age. Besides requiring businesses to disclose the quantities and types of toxic chemicals they use, store and release into the environment, Congress for the first time ordered that much of the information be made available directly to the American people “by computer telecommunications and other means.” (*42 U.S.C. 11023(j)*)

What began as an organized-labor and grassroots movement at the state and local level in the 1970s became national law in the wake of the tragic December 1984 chemical accident in Bhopal, India. In what is generally regarded as the world’s worst industrial accident, thousands of people died, and many more were injured, when from a Union Carbide manufacturing plant escaped a deadly cloud of methyl isocyanate gas. Less than a year later, another release of toxic gas from a chemical plant in West Virginia brought the issue of hazardous and toxic chemicals close to home and spurred Congress into action.

EPCRA’s basic premise was that in order to protect the public health and safety, local officials, emergency responders, plant workers, and individual citizens need detailed information about the kinds, amounts, and effects of hazardous and toxic chemicals that are being used, stored and released into the environment in their communities. The law encourages and supports emergency planning for responding to chemical accidents, and it provides local governments and the public with timely and comprehensive information about possible chemical hazards in their communities.

**“The (EPA) Administrator shall establish and maintain in a computer data base a national toxic chemical inventory...The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.” (Emphasis added)**

--42 U.S.C. 11023(j)

Under EPCRA, businesses and industrial facilities must report to state and local authorities on, among other things, the types and quantities of toxic chemicals they release annually into the land, air and water. That information is then entered into the Toxics Release Inventory (TRI), a national, publicly accessible electronic data bank. Another part of the law requires emergency planning to protect the public in the event of an accidental release of especially dangerous chemicals.

The right-to-know provisions of EPCRA broke new ground in enhancing public access to important information about the presence and use of hazardous and toxic chemicals in the nation’s communities. It was the most revolutionary part of the law, however – Section 313, providing for the creation of the Toxics Release Inventory – which has produced the most visible and exciting results in terms of environmental protection.

EPA itself has been equally enthusiastic about TRI and right-to-know, noting it “dramatically changed the last decade of environmental policies. TRI has enabled the public to participate on an equal footing in environmental debates. It has allowed the public to question the decisions of lawmakers and industry alike. It has alerted U.S. industry to the impact they have on their local environments and has pointed out the significant

losses of raw material encountered each year as a result of releases and transfers.”<sup>1</sup> In a 1996 *Federal Register* notice proposing an expansion of the TRI program, the Agency said:

Facilities currently covered by the TRI have reduced their reported releases of toxic chemicals by 44 percent, or 1.6 billion pounds, since 1988. These reductions have been attributed to voluntary industry action motivated by a number of factors including: (1) the availability of TRI data for release and transfers of covered chemicals; (2) public involvement in facility and community planning; (3) flexibility in choosing reduction methods; and (4) transparency of facility performance.... The Agency’s commitment to expanding the TRI and the Right-to-Know Program is premised on its effectiveness as a tool to encourage pollution prevention, improve environmental quality, inform public involvement and (raise) public awareness of toxic chemicals that move to and through their communities.” (40 CFR Part 372, Sept. 25, 1996)

## Using the Toxics Release Inventory

Besides helping prompt dramatic reductions in the use and release of toxic chemicals, the TRI has become of the nation’s most widely used tools for environmental protection. In creating the TRI, Congress directed that its data be used not only as a source of information for citizens about the release of toxic chemicals into the environment, but also “to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines and standards; and for other similar purposes.” (42 U.S.C. 11023(h)).

*“[EPA’s] commitment to expanding the TRI and the Right-to-Know Program is premised on its effectiveness as a tool to encourage pollution prevention, improve environmental quality, inform public involvement and (raise) public awareness of toxic chemicals that move to and through their communities.”*

-- U.S. Environmental  
Protection Agency

In keeping with the law’s intent, the TRI is used for a wide variety of purposes by Federal, state, and local governments, business and industry, consultants and trade associations, labor unions, health professionals, public-interest organizations, and individual citizens.<sup>2</sup> Here are some of the more prominent uses of TRI data cited by EPA:

- ❖ **Congress** has relied on TRI in developing environmental legislation, such as the Clean Air Act Amendments of 1990 (early TRI data revealed that only two of the top 25 TRI-covered chemicals released to the air were regulated by the original Clean Air Act).
- ❖ **The Environmental Protection Agency** uses TRI data to monitor company compliance with a variety of environmental requirements, such as the emissions reductions called for under the 1990 Clean Air Act Amendments. The data also help the Agency target its enforcement efforts, determine if new regulations are needed to deal with water, air, and solid waste problems, and assess the success of pollution prevention programs.
- ❖ **Other Federal agencies**, such as the Agency for Toxic Substances and Disease Registry and the Internal Revenue Service, use TRI data for such diverse purposes as setting goals for improving the nation’s health and measuring compliance with tax laws pertaining to the use of toxic substances.

<sup>1</sup> Susan Hazen, “The History of TRI,” *Chemicals in the Environment: Public Access Information*. EPA 749-R-96-001b (Fall 1997), <http://www.epa.gov/opptintr/cie/issue06j.htm>

<sup>2</sup> For a brief overview of uses of TRI data over the last decade, See Appendix C of U.S. EPA, Chemical Emergency Preparedness and Prevention Office, “Assessment of the Incentives Created by Public Disclosure of Off-Site Consequence Analysis Information for Reduction in the Risk of Accidental Releases” (April 18, 2000), <http://www.epa.gov/ceppo/pubs/incenAss.pdf>

- ❖ **Businesses** use TRI data to help manage and reduce their use and release of toxic chemicals, cut costs, and improve the efficiency of their operations. The data also help spur the development and marketing of cleaner, safer, or more cost-effective chemicals and processes.
- ❖ **Educators and researchers** use TRI reports to study chemical use and to develop technologies that can help prevent toxic releases.
- ❖ **Labor unions**, which have been calling for more information about chemical hazards in the workplace since the early 1970s, use TRI data to press for safer working conditions. In 1990, for example, the TRI revealed that Sheldahl, Inc., of Northfield, Minnesota, was the 45th largest emitter of airborne carcinogens in the nation. This led the Amalgamated Clothing and Textile Workers Union to join forces with Northfield community activists in successfully negotiating with Sheldahl to reduce and ultimately eliminate emissions of methylene chloride, a probable carcinogen and a known health hazard to the workers.
- ❖ **State and local agencies**, along with fire departments, ambulance services, hospitals and schools, use the TRI for emergency planning and response. The data are also used in the development of state and local legislation; in 1989, for example, TRI data were instrumental in the passage of a new air toxics law in Louisiana requiring a 50 percent reduction of emissions by 1994.
- ❖ **Health officials** can use TRI data to build an information base about the use, manufacture, or transportation of hazardous chemicals in their state or community. Along with helping prepare for emergencies, the information can help diagnose, treat, or study the health effects of chemical exposures.
- ❖ **The News Media** have found in the TRI a treasure trove of information about environmental conditions and potential hazards in the communities they serve. National and local newspapers, trade and labor union publications, and periodicals regularly run articles based on TRI data and other right-to-know disclosures.
- ❖ **International organizations** and individual nations use TRI data to help monitor the earth's environment. Environment Canada uses the TRI to determine which industries and chemicals need greater regulation and is preparing a National Pollutant Inventory modeled on TRI. Other international users of TRI include Russia, Great Britain, continental Europe, India, and Japan. According to EPA, this is one of the fastest growing segments of the TRI user community.
- ❖ **Public-interest organizations** have been making effective use of TRI data in pressuring facilities to change their practices, helping educate citizens, preparing company and community environmental profiles, and pressing for government action to control pollution. TRI is especially valuable for these purposes because of its cross-media nature (facilities must report releases into the air, land, water, and waste streams) and because TRI reports are chemical and facility specific, allowing for meaningful comparisons among individual facilities, within industrial sectors, and across chemical types. The Silicon Valley Toxics Coalition, for example, used TRI to identify companies in its area that were emitting potentially harmful chemicals and to press for emissions reductions. National public-interest groups frequently publish reports based on the TRI data. On the Internet, the Right-to-Know Network ([www.rtknet.org](http://www.rtknet.org)), a joint project of OMB Watch and

the Unison Institute, and the Environmental Defense Fund ([www.scorecard.org](http://www.scorecard.org)) provide free public access to the TRI and other databases that enable citizens to assess environmental conditions in their neighborhoods.

- ❖ **Citizens** are, of course, the primary audience for the TRI; Congress intended the right-to-know provisions of EPCRA to empower members of the public to play a key role in improving health and safety by reducing chemical hazards in their communities. Citizens have used TRI data to negotiate with companies to change their practices, to compel their compliance with environmental laws, and to advocate local pollution prevention measures. Here are some examples of successful citizen action using TRI data, as reported by the National Environmental Trust:
  - In 1990, after 12 years of unanswered complaints from residents of a Brooklyn community about noxious fumes emanating from a graphic arts supply facility, the TRI revealed that the facility's owner, the Ulano Corporation, was the top toxic air polluter in New York. The public outcry surrounding this disclosure finally forced the state to require Ulano to reduce its emissions.
  - In San Jose, California, TRI information enabled Citizens for a Better Environment, a local environmental watchdog group, to identify a Silicon Valley IBM plant as the state's largest emitter of ozone-destroying chemicals. A "public accountability" campaign encouraged IBM to replace the chemicals with safer substitutes.
  - Citizens in Asheville, North Carolina, voted to reject funding for a \$40 million drinking water treatment plant because TRI data revealed that the treated water would still contain highly toxic contaminants released from local Dupont and General Electric facilities. The referendum pointed out to local citizens how toxic pollution can limit economic development.
  - Community organizations in San Diego, California, used TRI information to push for local land-use planning ordinances that would create toxic-free zones protecting a low-income/minority community already plagued with high levels of toxic air emissions.
  - For years, Lima, Ohio, experienced odors coming from a BP Chemicals of America facility. In 1988, the TRI identified BP as the largest toxic air polluter in the state. (BP had released 2 million pounds of probable carcinogens in 1987). A local environmental group, Allen County Citizens for a Clean Environment, used the information to secure state funding for monitoring BP's toxics emissions.
  - With information from the TRI, the Akron, Ohio, Citizen Action group published a report in 1989 identifying BF Goodrich as the number one emitter of toxic chemical pollution in the county. Goodrich subsequently invited city councilmen, reporters, fire department officials, and community activists on a tour of its plant and announced a plan to reduce toxic emissions by 70 percent over three years.

## Appendix B: EPA's Office of Environmental Information

*"The right-to-know is now a fundamental cornerstone of our work at EPA, and we have all worked hard to put information into the hands of the American people in the belief that this is one of the best ways to protect public health and the environment."*

--EPA's Then-Administrator  
Carol M. Browner, 2000

On October 14, 1998, Environmental Protection Agency (EPA) Administrator Carol Browner announced that the agency would create a new central office responsible for agency-wide information management, information policy, and technology stewardship. Among its duties would be to develop and implement goals, standards and accountability systems to manage and improve the quality of data and other information used both within the agency and by the public.

One of the goals for the new Office of Environmental Information (OEI) is to "expand (the public's) right to know about the environment." The Office is charged with enabling

"easy access to a wealth of information about the state of their local environment to expand citizen understanding and involvement and give people tools to protect their families and their communities as they see fit."

EPA stands at a critical crossroads with respect to the public's right to know. Creation of the Office of Environmental Information, officially launched in October 1999, should be an important step toward improving the public's access to high-quality, relevant environmental information. The creation of OEI allows the agency to focus attention on efforts to revise policies affecting public access to government information in ways that EPA could not have done otherwise. For example, the agency can prioritize what new information to collect in order to strengthen public access to additional information about the environment. The agency can develop standards for the collection of federal information by the states (in many cases, states accept authority for collecting information for EPA).

The Office is also responsible for taking the EPA lead on a number of key information management issues, such as improving data quality, achieving burden reduction, filling data gaps, integrating information, and implementing the Information Technology Management Reform Act (ITMRA, or "Clinger-Cohen") and Paperwork Reduction Act functions. In addition, the Office is supposed to coordinate management of EPA's information technology.

To carry out its goals, EPA is reaching out to the states to forge a more collaborative relationship than has existed in the past. In some areas, EPA will need cooperation and agreement from states to achieve advancements. For example, the states do collect a great deal of information and pass it along to EPA, so federal and state environmental authorities need to find agreement to standardize terminology. There are no definitions common across the states and federal government for knowing when an industrial site is "significantly out of compliance" with state or federal laws. Common standards for specific terminology along with data standards (e.g., for locational information, chemical names and identifiers, facility names, and ownership identifiers) will enable the public to integrate data from various reporting systems.

Some states, however, may have an incentive to delay or avoid setting standards as a way of derailing analyses that may show certain states in a poor light. For example, if there were common standards for facility identification, corporate identification and agreed-upon definitions for tracking enforcement by states, the public could compare states' enforcement records and determine which states are doing better or worse than others. To the extent that states are given a platform for advancing their positions above and beyond the

opportunity provided to other stakeholders, such as those individuals and organizations that actually use the data to develop reports, analyze trends, and identify needed improvements, EPA's special relationship with states in some cases may do more to hinder than help public access.

In another illustration of the special relationship EPA is forging with the states, the Office of Environmental Information and the Environmental Council of the States (ECOS) convened a variety of parties interested in right-to-know issues at a two-day forum in Chicago to gather input on ways to strengthen policies. The meeting covered five overarching themes: providing opportunities for stakeholder involvement, disseminating environmental information, data accuracy, balancing public interests, and enhancing public understanding of environmental information. Not included in the agenda was discussion on filling basic and pervasive gaps in the information collected to assess environmental and human health risks. A 47-page joint EPA/ECOS report summarizes the issues, discussions and EPA's preliminary actions that emerged from the conference.<sup>3</sup>

The ECOS-EPA relationship had an impact on the Chicago Forum and on OEI activities for the year 2000. OEI is pursuing the idea of developing an information products bulletin that would announce upcoming new information products that are under development at EPA. Industry has long argued that industry should be notified of new products that use data that industry provides to EPA. Industry representatives further argue that industry should be able to participate in the development of these products or help limit their scope or dissemination. Environmental and public interest groups argue that such a bulletin would be useful only to those with the resources to monitor such a bulletin and then take action.

For their foresight in creating a new office devoted to issues around access to information, EPA should be credited. Individual federal government agencies share with the federal government broadly speaking an organizational structure that does not lend itself well to dealing with information policy. Across the federal government, no one entity has bureaucratic capacity or resources to focus attention on these issues. The Office of Management and Budget (OMB) has an Office of Information and Regulatory Affairs (OIRA) that has historically paid little attention to information issues. Within the halls of Congress some are more aware of this problem and the pressing need to resolve it. For example, legislation has been introduced that would separate the information and regulatory functions that historically have been housed within OIRA. Others have

### **EPA's Organizational Goals for the Office of Environmental Information**

The EPA Office of Environmental Information has established several major goals for its work:

- **Integrate the information** the agency collects, manages and disseminates to the public to ease public understanding of environmental problems and risks;
- **Enhance the quality** of environmental information;
- **Foster and promote better information based decision-making**, by promoting new and innovative uses of information and technologies as part of environmental policy- and decision-making;
- **Reduce the burden associated with collecting and using information**;
- **Strengthen EPA's information infrastructure**, which translates into investments in technology, increasing computer security and improving the reliability of its technological investments; and
- **Expanding the public's right to know** about their environment.

EPA's complete list of goals for the Office can be read online at [www.epa.gov/oei](http://www.epa.gov/oei).

<sup>3</sup> The EPA-Environmental Council of the States joint report, entitled "The EPA/State Stakeholder Forum on Public Information Policies: Summary and Preliminary Action Plan" is available at <http://www.sso.org/ecos/publications.htm>.

suggested that a Chief Information Officer be created for the entire federal government. (Each agency has a CIO, and EPA's frustration with the limitations of the CIO structure led at least in part to the creation of the Office of Environmental Information.



# Appendix C: A Guide to Environmental Statutes & Regulations That Promote Public Access Activities (Prepared by U.S. Public Interest Research Group)

## Introduction

This guide analyzes the public access to information provisions of environmental statutes within the context goals and requirements of these statutes. It also highlights statutory provisions that require agencies to include the public in agency decision-making processes. It then canvasses the sources of information provided to the public by federal environmental agencies, as required by their statutory mandates.

The substantive requirements of the environmental statutes discussed in this guide supply the reader with baseline information that is relevant for two reasons. First, the substantive provisions describe the major programs that protect environmental quality. Agencies generate large amounts of information that is used to implement these statutes. Knowing the substantive rules enables the reader to judge whether agencies are complying with any statutory requirements in both the quality and quantity of information supplied by the agencies. Second, the descriptions of substantive requirements provide the reader with a synthesis of disparate, yet interconnecting and mutually supportive environmental safeguards. By showing these connections, the report supplies the reader with an overview of the most relevant issues and sources of information for understanding how multiple environmental statutes protect the same aspect of environmental quality and promote public participation in agency decision-making.

This guide discusses three types of statutes: 1) resource protective; 2) command and control; and 3) procedural and informational. Command and control statutes seek to protect environmental quality through regulating the amount of pollution that humans place into the environment. The Clean Water and Clean Air Acts, which require individuals to get state or federal permits prior to placing pollution in the water or air, are examples of this type of statute. Resource protective statutes safeguard public resources by proscribing management systems for federal land and by prohibiting individuals from harming certain public resources, such as endangered species. The National Forest Management Act is an example of this type of statute.

Procedural and informational statutes require federal agencies to either follow certain procedures, including public participation requirements, when making decisions or to supply the public with certain information. The National Environmental Policy Act (NEPA) and the Freedom of Information Act (FOIA) are examples of these types of statutes. NEPA mandates that federal agencies describe the environmental impacts of federal actions and involve the public when agencies are deciding whether to undertake an action that may impact environmental quality. FOIA provides citizens with the right to demand a wide range of information on government actions. Taken together, the procedural and information related statutes provide the public with the right to participate, in an informed fashion, in agency decision-making processes under the resource protective and command and control statutes.

### Model Websites

This guide discusses many government websites that contain information relevant to federal environmental statutes. Not all of these websites provide the same ease of use, quality and quantity of information, or tools to inform the public about everyday environmental concerns. However, some sites can serve as models for manipulating raw data or information into a form that is readily useable by the public. The EPA's "Index of

Watershed Indicators,” which is located at <http://www.epa.gov/surf/iwi>, combines many of these traits. This site integrates vast amounts of information on water quality, combines maps of the United States and an indexing systems that makes finding information on specific geographic areas easy. It also provides contacts to local, state, and federal actors active in water quality issues. This site’s ease of use and integration of information makes it a model for other federal agency websites.

Another excellent site is the EPA Environmental Quality web site, located at <http://www.epa.gov/ceis>. The site integrates all of EPA’s program data into one search engine, which enables users to assess a geographic region’s overall environmental quality using EPA data. While this site does not directly give the user access to local groups interested in environmental issues, it does an excellent job of integrating and supplying relevant information.

Another site that does an admirable job of integrating data is the National Environmental Data Index (NEDI) website, which is located at <http://www.nedi.gov>. NEDI provides users with direct access to environmental data collected by federal, state, and international agencies. Users may request three types of data, including texts and publications, regulations and legislation, and metadata (which are links to Internet sites that hold information pertinent to the user’s query). The melding of data, laws, and Internet sites as an answer to a request is an excellent presentation of the informational resources available on an issue.

Another model website is Envirofacts, located at [http://www.epa.gov/enviro/index\\_java.html](http://www.epa.gov/enviro/index_java.html), and in particular the Enviomapper function, located at [http://www.epa.gov/enviro/index\\_java.html](http://www.epa.gov/enviro/index_java.html). Envirofacts is a search engine that allows users to construct reports or maps on the environmental quality of an area, using information contained in numerous EPA databases. The site combines the major sources of Internet information pertaining to environmental quality. Enviomapper is a model for giving the public tools to manipulate environmental information. It allows users to construct maps of areas in the United States using various criteria, such as public lands and watersheds. If integrated with more information, such as water quality limited streams and air quality, it could provide a comprehensive graphic overview of an area’s environmental quality.

There are also sites that contain comprehensive lists of Internet addresses and phone numbers that the public can use to get information on federal environmental programs. One such website is called the “Index Clearinghouses and Hotlines,” which is located at <http://www.epa.gov/epahome/hotline.htm>. Another website, called the “RCRA, Superfund & EPCRA Hotline’s Guide to EPA’s Electronic Resources,” is located at <http://www.epa.gov/epaoswer/hotline/netguide.htm#rtk>. Each federal agency webpage should have this type of link because it provides citizens with ready access to information on an agency’s response to various types of pollution. For example, an individual who is interested in a Department of Transportation program to spray pesticides on the sides of roads would benefit from having direct Internet connections to various EPA offices that regulate pesticides and study their health effects.

Finally, many EPA documents are available, at a cost, through the National Technical Information Service. (NTIS) Individuals can contact NTIS at:

National Technical Information Service (NTIS)  
US Department of Commerce  
5285 Port Royal Rd.  
Springfield, VA 22161

Phone: (800) 553-6847

### **Limits of the Report**

As with any survey, thoroughness is a factor of time. This survey is not a comprehensive assessment of the

information provided on all government webpages. For example, each of the ten EPA regions contains detailed information that the agency has collected as required by numerous environmental statutes. However, due to time, this guide does not assess these sites. In addition, agencies are continually updating these websites. Therefore, the descriptions for some of these sites may not be applicable one month, day, or minute after this guide is produced.

## Statutes and Internet Resources

### NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

#### Summary of the law

Congress passed the National Environmental Policy Act (NEPA) to increase harmony between man and the environment, prevent or eliminate environmental damage, stimulate the health and welfare of humans, and enrich human understanding of the environment.<sup>1</sup> Congress created the Council on Environmental Quality (CEQ) to oversee implementation of the statute.<sup>2</sup> NEPA requires that all “federal actions”,<sup>3</sup> or private actions with a threshold amount of federal involvement,<sup>4</sup> comply with NEPA’s procedural requirements.<sup>5</sup> These requirements direct agencies to draft documents that describe the environmental impact of such actions. NEPA demands that agencies involve the public throughout an agency’s compliance with the act.<sup>6</sup>

Prior to producing any NEPA document, an agency must conduct a process called “scoping.”<sup>7</sup> “Scoping” consists of soliciting input from the public and other agencies on the needs and concerns of a proposed project.<sup>8</sup> Agencies must allow these documents to be critiqued by other agencies with expertise in issues relevant to the proposed action and by the general public.<sup>9</sup> Agencies may use this information to define the purpose, need, and scope of a proposed project.<sup>10</sup> When an agency prepares a NEPA document, they must utilize a “systematic interdisciplinary approach” to insure the “integrated use of the natural and social sciences.”<sup>11</sup> Agencies must also establish procedures to insure environmental values are given equal consideration in decision-making along with economic and technical considerations.<sup>12</sup>

In addition, public opinion, expert input, and information on environmental impacts must also inform agency decision-making.<sup>13</sup> Therefore, whenever a federal action may adversely affect environmental quality, the agency

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<sup>1</sup> 42 U.S.C. § 4321.

<sup>2</sup> 42 U.S.C. §§ 4342 and 4343.

<sup>3</sup> 42 U.S.C. § 4332 (2) (requiring completion of an Environmental Impact Statement (EIS) for “major federal actions significantly affecting the quality of the human environment”) and 40 C.F.R. 1508.9 (stating that an Environmental Assessment (EA) is a “concise public document... [that] briefly provide(s) sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact” (FONSI)).

<sup>4</sup> 40 C.F.R. § 1508.18 and RESTORE: The North Woods v. U.S. Dept. of Agric., 968 F.Supp. 168, 171-172, 174-175 (D. Vt. 1997) (stating “that where there is minimal federal involvement, where the federal agency has no power to affect the proposed action, or where there is no action to be taken, NEPA does not apply”).

<sup>5</sup> 42 U.S.C. § 4332 (C).

<sup>6</sup> 40 C.F.R. § 1506.6.

<sup>7</sup> 40 C.F.R. § 1508.25.

<sup>8</sup> 40 C.F.R. § 1501.7.

<sup>9</sup> 42 U.S.C. § 4332 (C) and 40 C.F.R. § 1501.6.

<sup>10</sup> 40 C.F.R. § 1501.7 (2), (3), and 1505.1 (discussing other purposes to an agency complying with NEPA’s procedures).

<sup>11</sup> 42 U.S.C. 4332 (A).

<sup>12</sup> 42 U.S.C. 4332 (B).

<sup>13</sup> 40 C.F.R. 1501.2.

undertaking the action must describe any foreseeable environmental impacts.<sup>14</sup> Since not every action affects environmental quality, agencies have published a number of routine acts that are categorically exempt from NEPA.<sup>15</sup>

However, if the action is not categorically exempt, then each agency begins the NEPA process by asking whether their proposed action will adversely affect the environment? If the answer is yes, then the agency must draft a document called an “Environmental Assessment.”<sup>16</sup> (EA) The purpose of the EA is twofold. First, the EA should describe the expected impacts of the action, the need for the proposal, and alternatives to the actions.<sup>17</sup> Second, the EA must analyze whether the proposed action amounts to a “major federal action” that will “significantly affect the quality of the human environment.”<sup>18</sup>

If the agency determines that the federal action is not “major” or its effects are not “significant,” then the agency publishes a “Finding of No Significant Impact,”<sup>19</sup> (FONSI) and proceeds to undertake the action. However, if the federal action is “major,” its impacts are “significant,” and the agency still wants to undertake the action, then the agency must prepare a much more detailed document called an “Environmental Impact Statement.”<sup>20</sup> (EIS)

As stated above, an agency must do an EIS for any “major federal action” that may “significantly impact” the quality of the human environment. Under CEQ regulations, “major federal actions” include the adoption or approval of official policy, formal plans, programs, and specific projects.<sup>21</sup> “Actions” include undertakings with effects that may be major and which are potentially subject to Federal control and responsibility.<sup>22</sup> Agencies must assess connected actions,<sup>23</sup> cumulative actions,<sup>24</sup> and similar actions.<sup>25</sup>

Agencies determine whether impacts are “significant” by considering the “context” and “intensity” of the action.<sup>26</sup> The “context” of an action can include several different factors, such as a societal (which can include a human, local, or national focus), regional, or an interest based context.<sup>27</sup> For example, agencies would judge the context of building a bridge over a small stream to be completely different than the context of constructing a major highway across numerous states. The “intensity” of an action is determined by the severity of its impacts.<sup>28</sup> In determining whether an action is severe, agencies must consider a variety of factors including whether the action affects public health or safety,

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<sup>14</sup> 42 U.S.C. § 4332 (C), 40 C.F.R. §§ 1501.4 (discussing when to prepare an EIS), 1501.3 (discussing when to prepare an EA) (allowing each agency to determine by regulation when an EA should be prepared, so long as the regulations are consistent with the definition of an EA contained in CEQ regulations), and 15078.3 (requiring each federal agency to promulgate regulations implementing NEPA).

<sup>15</sup> 40 C.F.R. §§ 1507.3 (b)(2)(i) and (ii), 1508.4 (defining categorical exclusion).

<sup>16</sup> 40 C.F.R. §§ 1501.2-3 and 1508.9.

<sup>17</sup> 40 C.F.R. § 1508.9 (b)

<sup>18</sup> 40 C.F.R. § 1508.9(a)(1).

<sup>19</sup> 40 C.F.R. §§ 1508.9 and 1508.13.

<sup>20</sup> 42 U.S.C. § 4332 (C) and 40 C.F.R. part 1502.

<sup>21</sup> 40 C.F.R. § 1502.4 and 1508.18.

<sup>22</sup> 40 C.F.R. § 1508.18 (a) (This includes projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. It also includes new or revised rules, regulations, plans, policies, or procedures.)

<sup>23</sup> 40 C.F.R. § 1508.25 (a)(1) (“connected actions” mean that “they are closely related and therefore should be discussed in the same” EIS. Actions are connected if the automatically trigger other actions that require an EIS, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification.)

<sup>24</sup> 40 C.F.R. § 1508.25 (cumulative actions, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed the same impact).

<sup>25</sup> 40 C.F.R. § 1508.25 (similar actions when “viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together)

<sup>26</sup> 40 C.F.R. § 1508.27.

<sup>27</sup> 40 C.F.R. § 1508.27 (a).

<sup>28</sup> 40 C.F.R. § 1508.27 (b).

ecologically critical areas, the environment, and the degree to which the effects are highly controversial, uncertain, unique, or involve unknown risks.<sup>29</sup>

If the agency concludes they are proposing a major federal action that will significantly impact the environment, then they must prepare an EIS prior to initiating the action. An EIS extensively discusses the impacts that may result from a major federal action.<sup>30</sup> The purpose of an EIS is primarily an “action-forcing device to insure that the policies and goals defined in (NEPA) are infused into” agency programs and actions.<sup>31</sup> Every EIS must include an explanation of the purpose of, and need for, the proposed action and a description of the affected environment.<sup>32</sup> The EIS must also address any relationship between local, short-term uses of the environment and the maintenance and enhancement of its long-term productivity, as well as any irreversible and irretrievable commitment of resources.<sup>33</sup> In addition, it must discuss any incomplete or unavailable information pertinent to any “reasonably foreseeable significant adverse effects” of the action.<sup>34</sup> Finally, agencies are required to consider reasonable alternatives to the proposed action that will mitigate its adverse effects.<sup>35</sup> Under certain instances, agencies also have a duty to supplement an EIS.<sup>36</sup>

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<sup>29</sup> 40 C.F.R. § 1508.28 (b)(1)-(9).

<sup>30</sup> 42 U.S.C. § 4332 (A) and (C) and 40 C.F.R. part 1502.

<sup>31</sup> 40 C.F.R. § 1502.1.

<sup>32</sup> 40 C.F.R. §§ 1502.13, 1502.15.

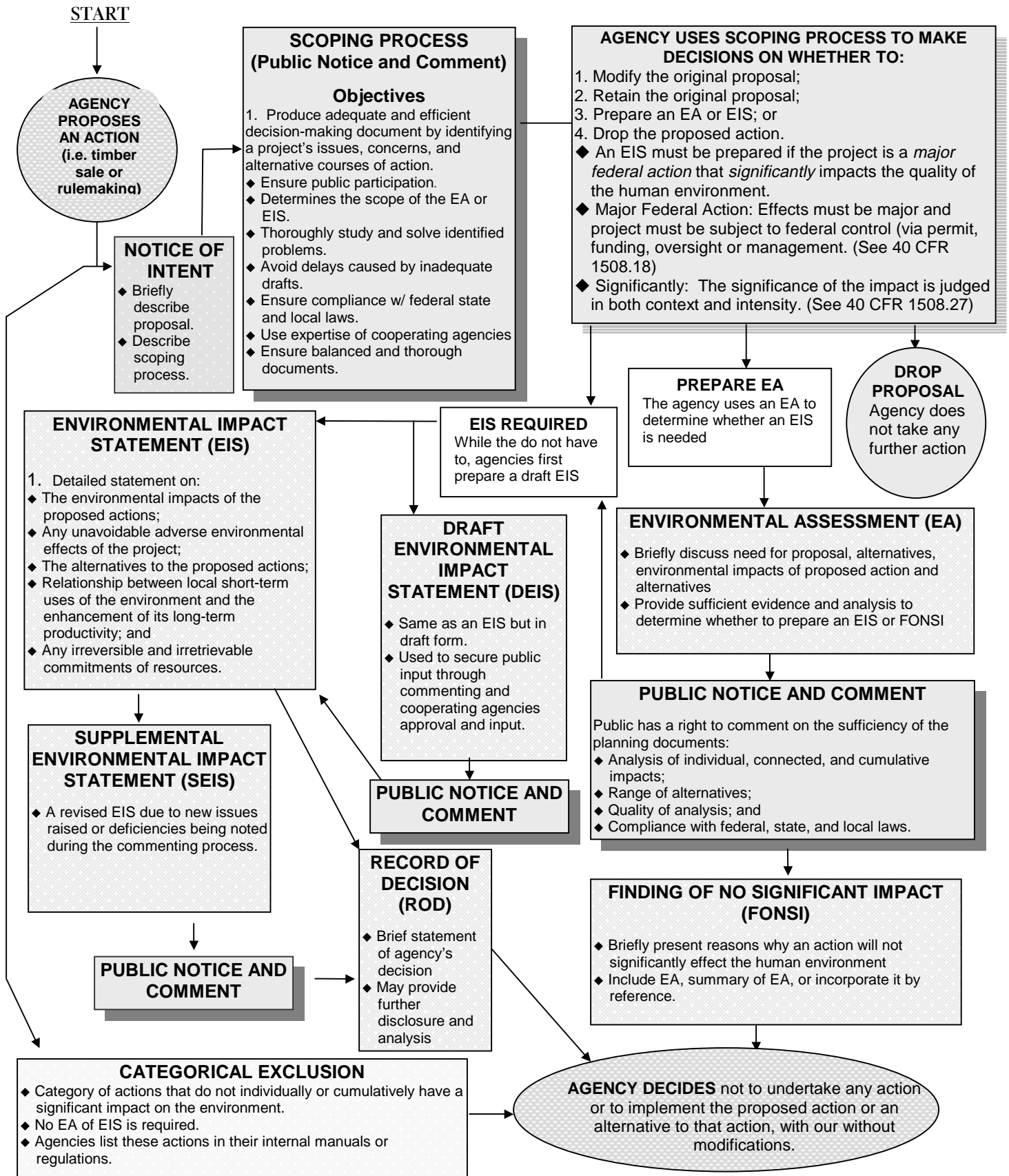
<sup>33</sup> 40 C.F.R. § 1502.16.

<sup>34</sup> 40 C.F.R. § 1502.22.

<sup>35</sup> 40 C.F.R. § 1502.14.

<sup>36</sup> 40 C.F.R. § 1502.9 (Agencies must supplement an EIS when the agency “makes substantial changes in the proposed action that are relevant to environmental concerns” or “there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts”)

# FLOW CHART OF THE NEPA PROCESS



## Internet Resources for NEPA

- 1) There are numerous government agency webpages that contain information pertinent to NEPA. CEQ's webpage is located at <http://www.whitehouse.gov/CEQ>. This page contains links to information on recent environmental initiatives undertaken by the executive; an executive task force devoted to technology exchange with industry, the White House's webpage, and to NEPANet.

◆ **NEPANet** is located at <http://ceq.eh.doe.gov/nepa/nepanet.htm>. This webpage has the full text of NEPA, relevant regulations and guidance on implementing the statute, links to other federal agency webpages that discuss their implementation of NEPA, links to webpages that address NEPA's impacts on pollution prevention, and environmental justice concerns. In addition, the webpage allows users to download reports on that discuss various aspects of NEPA.

The CEQ has published guidance on agency use and implementation of NEPA. This guidance is relevant to the public because it explains key aspects of the NEPA process, thereby ensuring that individuals can effectively oversee agency compliance with NEPA. There are five guidance documents on NEPANet that are relevant to understanding NEPA. First, NEPANet contains a guidance document on "Scoping," which explains how agencies should solicit information from the public throughout the NEPA process. Second, it has the document titled the "40 Most Frequently Asked Questions," which outlines various aspects of the NEPA process including the scope of its application, the adequacy of agency alternatives, and the need for mitigation of environmental impacts. Third, the site has the "Guidance Regarding the NEPA Regulations," which describe what agencies must do when promulgating their NEPA regulations. Fourth, the site also contains guidance on "Pollution Prevention," which highlights the need and process for agencies to include pollution prevention actions in their NEPA documentation. Fifth, the webpage has guidance promulgated by CEQ that addresses the interchange between NEPA and Environmental Justice.

The page also contains other documents that provide real life examples of how NEPA is used by agencies and enforced by the courts. There are example EAs and EISs and a link to review of NEPA case law. Unfortunately, the information only includes cases published in 1994. The webpage also provides access to a bibliography that lists material pertinent to the NEPA process. This material is particularly useful to people that are judging the adequacy of agency NEPA compliance.

- 2) **Office of Federal Activities**, located at <http://es.epa.gov/oeca/ofa/index.html>. This website has a list of federal agency webpages that concern agency compliance with NEPA. The list includes the Federal Highway Administration Office of Environment and Planning, Bureau of Land Management - Colorado State Office, General Services Administration's NEPA Call-In Site, Department of Energy NEPAWeb, Air Force Center for Environmental Excellence, USDA Natural Resources Conservation Service, US Forest Service, Federal Highway Administration - Eastern Resource Center Environmental Guidebook, and US Geological Service Environmental Affairs Program.
- 3) **General Services Administration's NEPA Call-In Site**, located at <http://www.gsa.gov/pbs/pt/call-in/erlsub3.htm>. This site has a particularly good compendium of laws and guidance documents relevant to NEPA.
- 4) **U.S. Geological Survey**, located at [http://water.usgs.gov/public/eap/env\\_guide/misc.html](http://water.usgs.gov/public/eap/env_guide/misc.html). This site has a concise summary of NEPA and links to NEPA related information. Unfortunately, this sites are geared towards informing agency personnel about NEPA, rather than the public.

## Summary of the law

The Freedom of Information Act<sup>37</sup> (FOIA) provides citizens with a powerful tool for accessing many types of government information. Pursuant to FOIA, federal agencies have an affirmative duty to inform the public about certain information and a duty to provide access to information when the public requests such access. When used in conjunction with the decision-making process proscribed by the NEPA,<sup>38</sup> FOIA provides all citizens with the tools to become involved in a wide variety of agency decision-making processes under environmental statutes.

The basis of FOIA is that the public has a right to view information that is relevant to the organization and decision-making processes of their government. To implement this mandate, each federal agency must publish regulations that explain how citizens can acquire such information.<sup>39</sup>

FOIA mandates that federal agencies provide the public access to certain information through the federal register.<sup>40</sup> Agencies must also provide the public with access to certain agency manuals, staff instructions, and final opinions from administrative law decisions, statements of policy, and the agency's unofficial interpretations of laws.<sup>41</sup> Agencies can charge for reproducing records if individuals request the agency produce copies of records.<sup>42</sup> However, if the information is in the public interest, the agency must supply the copies at no cost.<sup>43</sup> Importantly, while agencies can charge individuals for copies of agency records, access to such documents is free.

Under FOIA, when an individual requests an agency record, the agency must respond to the request within 20 days after their receipt of the request.<sup>44</sup> The requests must reasonably describe the record and be made in accordance with the agency's published rules that state the time, place, fees (if any), and procedures to be followed when making such requests.<sup>45</sup> The agency must provide the information in the form requested by the person if the record is readily reproducible in that form.<sup>46</sup> In addition, agencies must make reasonable efforts to search for the records in electronic format, unless such a search would significantly interfere with the operation of the agency's automated information system.<sup>47</sup>

Within this 20 day period, the agency must deny, comply, or extend the time period of the request. If the agency denies the request, the denial must explain the reasons for the denial and inform the person of their right to an appeal.<sup>48</sup> The individual can appeal the denial to an officer within the agency.<sup>49</sup> The agency can extend the time period, after contacting the individual, if the agency determines that it can not fulfill the request within 20 days and the individual does not want to shorten the request.<sup>50</sup> Additionally, an agency can extend this time limit by 10 days if it explains the reasons for the extension to the individual making the request.<sup>51</sup> An agency can also extend the time period by showing that there are exceptional circumstances in fulfilling the request.<sup>52</sup>

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<sup>37</sup> 5 U.S.C. § 552 et. seq.

<sup>38</sup> 42 U.S.C. § 4321 et. seq.

<sup>39</sup> 5 U.S.C. § 552 (a)(2)-(4), (6).

<sup>40</sup> 5 U.S.C. § 552 (a)(1).

<sup>41</sup> 5 U.S.C. § 552 (a)(2)(A)-(C).

<sup>42</sup> 5 U.S.C. § 552 (a)(4)(A)(ii).

<sup>43</sup> 5 U.S.C. § 552 (a)(4)(A)(iii).

<sup>44</sup> 5 U.S.C. § 552 (a)(6)(A)(i).

<sup>45</sup> 5 U.S.C. § 552 (a)(3)(A).

<sup>46</sup> 5 U.S.C. § 552 (a)(3)(B).

<sup>47</sup> 5 U.S.C. § 552 (a)(3)(C).

<sup>48</sup> 5 U.S.C. § 552 (a)(6)(A)(i).

<sup>49</sup> 5 U.S.C. § 552 (a)(6)(A)(ii) (the agency must make a determination on the appeal within 20 days).

<sup>50</sup> 5 U.S.C. § 552 (a)(6)(B)(i)-(ii).

<sup>51</sup> 5 U.S.C. § 552 (a)(6)(B)(i).

<sup>52</sup> 5 U.S.C. § 552 (a)(6)(C).

## Internet Resources for FOIA

Since each agency is responsible for implementing FOIA, there is no one central site to using or understanding FOIA. However, the webpages of many federal agencies describe the process for submitting a written FOIA request to the agency or allow individuals to send requests over the Internet.

## COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

### Summary of the law

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act<sup>53</sup> (CERCLA) to clean up the nation's worst hazardous waste sites and to deter people from creating new sites. To accomplish this goal, CERCLA gives EPA broad powers when responding to a release or a "substantial threat of [] a release" of a hazardous substance into the environment.<sup>54</sup> Congress also gave CERCLA a very expansive liability scheme that generally makes owner or operator of a contaminated sites, or anyone connected with the transportation or disposal of the hazardous waste, collectively and individually liable for the costs of cleaning up the contamination.<sup>55</sup>

Under CERCLA, the EPA can clean up contaminated sites through removal actions or remedial actions. If a release poses an immediate threat to the environment or human health, the EPA can undertake a short-term "removal" action.<sup>56</sup> Removal actions could include such things as removing rusting barrels that contain toxic substances or removing extremely contaminated soil from a hazardous waste site.<sup>57</sup> If the site poses a serious long-term threat to human health, the EPA also has the authority to conduct a remedial action.<sup>58</sup> Remedial actions may include permanently cleaning up hazardous substances or containing the substances to ensure they do not spread to any surrounding soil, air, or water.<sup>59</sup>

Alternatively, parties who are potentially responsible for the release or threatened release of a hazardous substance (hereinafter PRPs, for Potential Responsible Parties) can voluntarily cleanup the contamination at a site, with EPA oversight.<sup>60</sup> However, if there are multiple PRPs who can not agree on how to proceed, then the EPA can cleanup the site. If the EPA conducts a cleanup, the agency covers the costs of the cleanup with money

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<sup>53</sup> 42 U.S.C. § 9601 et seq.

<sup>54</sup> 42 U.S.C § 9604 (a)(1).

<sup>55</sup> 42 U.S.C. § 9607 (a) (1)-(3) (This liability is called "joint and several" liability. Under this system of liability, if ten people contributed to the contamination, each person individually and all of the people as a group are liable for the entire cost of cleaning up the contamination.).

<sup>56</sup> Id. CERCLA broadly defines the term "removal" to mean, "the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of a threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of moved material, or the taking of such other actions as many be necessary to prevent minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.

<sup>57</sup> CERCLA broadly defines the term "removal" to mean, "the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of a threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of moved material, or the taking of such other actions as many be necessary to prevent minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release."

<sup>58</sup> 42 U.S.C. 9604 (a)(1)

<sup>59</sup> CERLA's broad definition of the term "remedial" means, "those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment."

<sup>60</sup> 42 U.S.C. § 9604 (a)(1).

from a trust fund established by CERCLA.<sup>61</sup> Thereafter, the agency can seek compensation for the cost of cleaning up the site from the PRPs.<sup>62</sup> The trust fund is funded from a variety of sources, including a tax on the oil industry, money the EPA recovers from PRPs in actions brought under CERCLA, and from other sources.<sup>63</sup>

If the EPA undertakes a remedial action at a site, the agency must first list the site on the National Priorities List.<sup>64</sup> (NPL) To list a site on the NPL, the EPA must first conduct an investigation to determine the extent of contamination.<sup>65</sup> The EPA uses this information to rank the human health hazards posed by a site. This system is called the Hazard Ranking System.<sup>66</sup> (HRS) The HRS assigns a numerical value that represents the amount of risk to human health and the environment posed by a site. A high score on the HRS qualifies the site for the NPL. Any clean up of a site on the NPL must be consistent with the standards and guidelines contained in the National Contingency Plan.<sup>67</sup> (NCP) Actions taken by the EPA or the PRPs to cleanup a site must also be described in a Record of Decision.<sup>68</sup> (ROD) This ROD must be circulated for public comment prior to initiation of any activities.<sup>69</sup>

The EPA prepares a Community Relations Plan to keep local citizens informed about the clean up.<sup>70</sup> The agency also gives local communities Technical Assistant Grants (TAGs) to hire experts who will explain the clean up process to the community.<sup>71</sup> Finally, local citizens can establish Community Advisory Groups, to collectively describe their concerns and needs as they relate to a clean up. Finally, the agency has Community Involvement Offices in each region that assist local groups who wish to be involved in the clean up process.

### Internet Resources for CERCLA

The EPA's website has a number of databases devoted to the Superfund program. For questions related to Superfund, individuals can call the Superfund Automated Phone System, at 1-800-775-5037 or (202) 260-8321. The address for their main webpage concerning CERCLA is <http://www.epa.gov/superfund>. The webpage also lists a number of resources that can be used by the public to get information about the Superfund program.

- 1) **Superfund Community Tools**, located at <http://www.epa.gov/superfund/tools/index.htm>. This site contains numerous fact sheets about the community involvement process and descriptions of common issues that arise at Superfund sites, such as the chemicals found at Superfund sites, groundwater clean up issues, starting a Community Advisory Group, the Technical Assistance Grant Program, general technical information for clean up issues, and links to other Internet resources.
- 2) **Site Information**, located at <http://www.epa.gov/superfund/sites/index.htm>. This page is broken down

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<sup>61</sup> 42 U.S.C. § 9611 (a)(1).

<sup>62</sup> 42 U.S.C. § 9607 (a)(4).

<sup>63</sup> 26 U.S.C. § 9507 (a)-(b).

<sup>64</sup> 42 U.S.C. § 9605 (a)(1)-(8)(B). Subsection 8 (B) of section 9606 mandates the creation of a list that prioritizes the sites to be cleaned up by the EPA. Section 960 mandates, among other things, that the EPA create the "National Contingency Plan." (NCP) The NCP is a blueprint for cleaning up hazardous waste sites and reducing the likelihood that people will create such sites in the future.

<sup>65</sup> 42 U.S.C. § 9605 (a)(8)(B) (This process is called an RI/FS, which stands for Remedial Investigation and Feasibility Study.) and 40 C.F.R. § 300.430 contains the exact description of the RIFS.

<sup>66</sup> 42 U.S.C. § 9605 (c). 40 C.F.R. §§ 300.5, 300.425, and 300.App. A.

<sup>67</sup> 42 U.S.C. § 9605 The NCP is a blueprint for cleaning up hazardous waste sites and reducing the likelihood that people will create such sites in the future. *See generally* 40 C.F.R. part 300. These regulations pertain to the national contingency plan, which describes how hazardous waste sites should be cleaned up.

<sup>68</sup> 40 C.F.R. §§ 300.815 and 820.

<sup>69</sup> 40 C.F.R. §§ 300.815 (a)-(c), 300.435 (c) (describing procedures for public notice and comment on the proposed remedial action), 300.820 (a) (1)-(3) and 300.415 (n)(2)(ii) (describing the procedures for public notice and comment on the proposed removal action).

<sup>70</sup> 40 C.F.R. § 300.430 (c)(2)(ii).

<sup>71</sup> 40 C.F.R. §§ 35.4000-4130.

into three categories of information that include search engines for: 1) Sites on the NPL; 2) Information on hazardous waste site characteristics; and 3) Access to lists and reports on the Superfund program.

- ◆ **Sites on the NPL:** This page provides an easy way to search for sites that are either on the NPL, proposed sites, constructions complete sites, and sites that have been deleted from the NPL. The webpage contains a map of the nation and its territories. A person can access information on any of the above listed sites by simply clicking on the relevant jurisdiction and then on a icon that represents the desired site. The page provides a brief explanation of the site's history and a link to the Federal Register Notice for the ROD.
  - ◆ **Site Information Query:** This section provides an alternative way to access information on sites by the user entering in the necessary criteria, such as site name, address, EPA Identification Number, contaminated media, and the type of contamination. Accessing the site provides the same synopsis of information as with the prior search engine. In addition, the page also supplies a narrative on a site's characteristics for listing, a fact sheet on the site, and a link to the ROD.
  - ◆ **Access to Standard Lists and Reports:** This section provides access to the list of proposed, deleted, added, and constructions complete sites. Individuals can easily search this site by clicking on the name of the state and then the county in which the relevant site is contained. The information provided is extremely technical. However, this page provides a number for the Superfund Automated Phone System (1-800-775-5037 or (202) 260-8321) that a person can call with questions concerning any Superfund site.
- 3) **Comprehensive Environmental Response, Compensation, and Liability Information System, (CERCLIS)** located at <http://www.epa.gov/superfund/sites/cursites/toc/index.htm>. CERCLIS holds information on hazardous waste sites, site inspections, preliminary assessments, and remediation of hazardous waste sites. This webpage also contains links to Records of Decisions for sites proposed for listing under Superfund and archived records of sites that were not added to the NPL. These records are invaluable for understanding how a site will be cleaned up or why a site was not added to the NPL list.
  - 4) **Technical Documents**, located at <http://www.epa.gov/superfund/resources/index.htm>. This site contains a variety of information including an index of material on clean up standards, remediation technologies and reporting requirements, remedy selection guidance, information on risk assessment, software for making site assessments, training material on the use of HRS, and other general information on Superfund.
  - 5) **Initiatives and Programs**, located at <http://www.epa.gov/superfund/programs/index.htm>. This webpage contains information on administrative reforms, desired legislative reforms, Congressional testimony, working groups concerned with lead, soil screening levels, and links to the Brownfields and Environmental Justice homepages. It also has information on relocating people due to contamination found at Superfund sites.
  - 6) **Superfund Regional Programs**, located at <http://www.epa.gov/superfund/regions/index.htm>. This page provides access to information from the ten EPA regions across the nation. The various regional webpages provide a wealth of information, from phone numbers for agency contact personnel to substantive information on the Superfund program.
  - 7) **Superfund Partnerships**, located at <http://www.epa.gov/superfund/partners/index.htm>. This page provides information on EPA's other offices, other federal agencies, and international organizations.
  - 8) **Superfund Accomplishments**, located at <http://www.epa.gov/superfund/accomp/index.htm>. This

provides information to the status of sites, environmental indicators on a national or state level, and the EPA's progress in cleaning up Superfund sites.

- 9) **Search Superfund**, located at <http://www.epa.gov/superfund/search/index.htm>. This search engine should supply information relevant to any Superfund site. However, it responds to simple search terms by either giving no information or too much information. Consequently, using this system to access information on sites is very cumbersome.
- 10) **Environmental Justice (EJ)**, located at <http://www.epa.gov/swerosps/ej>. The EPA's Office of Solid Waste and Emergency Response This site contains a description of the EJ program, agency contacts, initiatives within the EJ program, the laws underlying the program, and agency publications. The page has a link to an innovative mapping program called Landview III. (Accessible at <http://www.epa.gov/swerosps/bf/lvinfo.htm>) Communities can use this program to get statistics and graphic representations of an area's environmental, geographic, and demographic composition.
- 11) **Brownfields**, located at <http://www.epa.gov/swerosps/bf/index.html#info>. The main web site contains indexed information on Brownfield issues. The information provided includes guidance on getting a Brownfield program started, projects and initiatives for the Brownfield program, and EPA contact personnel. This page also has a link to the Landview III mapping program.

The EPA's main webpage devoted to Superfund also contains the following sites.

- 12) **Office of CERCLA and RCRA Enforcement: Liability, Negotiations, and Settlement**, located at <http://es.epa.gov/oeca/osre.html>. The Office of Site Remediation Enforcement (OSRE) is a suboffice of EPA's Office of Enforcement and Compliance Assurance (OECA). OSRE provides direction, evaluation, oversight and assistance for remediation enforcement at non-federally owned CERCLA, RCRA, Oil Pollution Act (OPA), and the Underground Storage Tank (UST) sites. This page provides links to other government agency webpages related to CERCLA. It also has guidance documents on Orphan shares, settlement, and other aspects of enforcement.
- 13) **Chemical Emergency Preparedness and Prevention Office**, located at <http://www.epa.gov/swercepp>. This office encourages state and local authorities to identify local hazards and to plan for potential chemical emergencies. EPA created this office in response to the Emergency Planning and Community Right-to-Know Act of 1986. (EPCRA) EPCRA requires states to establish State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees to develop emergency response plans for each community. It also requires facilities to give the public information about certain hazardous chemicals stored or released at the facility. This page contains links to relevant laws, publications (such as Accident Prevention and Risk Management Plans), and a database listing instances in which hazardous substances were released.
- 14) **EPA Environmental Quality (formerly known as the Center for Environmental Information and Statistics)**, located at <http://www.epa.gov/ceis>. This EPA page provides information on the environmental quality, status, and trends of various pollutants. The page allows the user to compile an Environmental Profile for a county's air, drinking water, surface water, hazardous wastes, and toxic releases.
- 15) **Agency For Toxic Substances and Disease Registry, (ATSDR)** located at <http://atsdr1.atsdr.cdc.gov:8080/atsdrhome.html>. ATSDR, an agency of the U.S. Department of Health and Human Services, is concerned with preventing exposure and adverse health effects associated with hazardous substances from waste sites, unplanned releases, and other sources of pollution. ATSDR performs public health assessments of waste sites, health consultations concerning hazardous substances, health surveillance, response actions to emergency releases of hazardous substances, applied

research in support of public health assessments, information development and dissemination activities, and education and training concerning hazardous substances. ATSDR's web page contains a variety of excellent search engines and information, including:

- ◆ **Hazdat** (<http://atsdr1.atsdr.cdc.gov:8080/hazdat.html>): The Hazdat database supplies scientific and administrative information on releases of hazardous substances from Superfund sites or emergency events and on the health effects of hazardous substances. It also contains information as site characteristics, exposure levels and pathways, and populations that are especially sensitive to the adverse health effects from hazardous chemicals. Hazdat contains links to databases such as ToxFAQs, to access this information.
- ◆ **ToxFAQs** (<http://atsdr1.atsdr.cdc.gov:8080/toxfaq.html>): The ToxFAQs database contains summaries of hazardous substances that are taken from the ATSDR Toxicological Profiles and Public Health Statements. These summaries give succinct explanations of the health effects for chemicals that are commonly found at Superfund sites.

The EPA also maintains regional and national ombudsmen to answer questions that the public may have about Superfund. The national ombudsmen can be contacted at:

Hazardous Waste Ombudsman Bob Martin 800-262-7937  
Superfund Information Hotline 800-424-9346

## RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

### Summary of the law

Congress enacted the Resource Conservation and Recovery Act,<sup>72</sup> (RCRA) to regulate hazardous and solid wastes throughout their entire life cycle, from generation, to transport, disposal, reduction and recycling. RCRA also authorizes suits by either EPA or private citizens to restrain anyone who has contributed to the handling of a solid or hazardous waste that may present “an imminent and substantial endangerment to human health or the environment.”

Under RCRA's hazardous waste program, EPA is directed to assemble a list of hazardous waste, establish standards for handling and tacking such waste, and require facilities that treat, store or dispose (TSDs) of hazardous waste to obtain a permit for such actions. For solid waste, RCRA authorizes the EPA to set guidelines for state solid waste management plans, including a prohibition on dumping solid waste in any location except sanitary landfills. Finally, RCRA contains broad schemes for managing solid and hazardous waste and for regulating underground storage tanks and medical waste.

RCRA's information sharing requirements are numerous and diverse. Information pertaining to the location and the wastes at TSDs must be made publicly available by EPA and any State to which EPA delegates its authority under RCRA. Records, reports, and information obtained during a RCRA-authorized inspection of a TSD, medical wastes facility, or a property with underground storage tanks, is presumed to be public information absent a sufficient showing of confidentiality by the regulated party. RCRA additionally mandates that EPA disseminate information on the market potential of materials recycled from solid wastes and on the savings potential of conserving resources that contribute to the waste stream.

The EPA must also create a central reference library containing information on waste management activities, including economic, medical and technological studies, experiments, and research. The public's access to the

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<sup>72</sup> 42 U.S.C. sections 6901 – 6992.

library is “subject to such reasonable charges as may be necessary to defray expenses of making such information available.” The statute stresses implementing a program for the “rapid dissemination of information,” and emphasizes the need for citizen understanding of environmentally sound solid waste management practices.”

When passing RCRA, Congress was concerned for the health of workers who handle hazardous wastes. Therefore, RCRA mandates that the EPA tell the Department of Labor and Institute for Occupational Safety and Health about the location of cleanups, the dangers to which employees of TSDs are exposed, worker injury at TSDs, and any releases that present and imminent hazard. To impel disclosure of workplace hazards, RCRA includes an employee protection provision that prohibits employers from discriminating against a worker who participates in any proceeding under RCRA.

RCRA calls for public participation on the regulatory scheme by encouraging citizens to submit evidence of exposure to hazardous constituents from a TSD to the Agency for Toxic Substances and Disease Registry (ATSDR). In response, ATSDR will conduct health assessments of the facility to evaluate risks to the potentially affected populations. Should a facility pose an imminent and substantial endangerment of health or the environment, the EPA must afford the public an opportunity to comment upon any settlement that arises out of such a determination. Public involvement, however, is limited by a clause stating that the Administrator’s decision to enter into a settlement shall not constitute final agency action. The implication, then, is that such action would not be subject to judicial review at the behest of a private citizen.

As is typical of most environmental statutes, RCRA does allow any person to petition EPA for the promulgation, amendment or repeal of any regulation. Before permitting a TSD, the EPA must provide public notice, and if opposition surfaces, a public hearing. Lastly, RCRA provides for citizen suits, and for judicial review of final regulations, petitions and permits.

### Internet Resources for RCRA

- 1) **RCRA Hotline**, located at <http://www.epa.gov/epaoswer/hotline/index.htm>. This hotline provides referrals for documents related to these programs and also covers programs authorized by CERCLA and EPCRA.
- 2) **Office of Solid Waste and Emergency Response**, located at <http://www.epa.gov/swerrims>. This site provides information on various RCRA programs and regulations, including federal procurement of products that contain recycled material, hazardous waste generators and transporters, land disposal restrictions, solid and hazardous waste recycling, and TSD facilities.
- 3) **Federal Agency Hazardous Waste Compliance Docket**, located at <http://es.epa.gov/oeca/fedfac/oversight/oversight.html>. This site provides the public with a list of all federal facilities that engage in hazardous waste activities and the reporting information from such facilities, as required under RCRA. While a FOIA request is necessary to procure some documents, most of the data collected in the docket may be viewed at the site.
- 4) **Biennial Reporting System**, (BRS) located at [http://www.rtk.net/www/data/brs\\_gen.html](http://www.rtk.net/www/data/brs_gen.html). BRS tracks the generation, shipment, and receipt of hazardous waste. Not all hazardous waste is reported within BRS and some waste treatment facilities, particular wastewater treatment units, are not regulated under RCRA. Therefore, this is not a comprehensive database regarding such hazardous wastes.
- 5) **Resource Conservation and Recovery Information System**, (RCRIS) located at <http://www.epa.gov/epahome/dmedia.htm#toxic>. This site contains hazardous waste data reported by the regulated community and validated by States and EPA. RCRIS information is organized into four subject areas: 1) TSDs; 2) Large Quantity Generators; 3) Small Quantity Generators; and 4) Transporters.

6) **Other contacts for RCRA information**, including a hotline, research inquiry services, and modeling programs, are located at the following sources:

- ◆ **Hazardous Waste Ombudsman Program.** This is managed by EPA's Office of Solid Waste and Emergency Response. (OSWER) It assists the public in resolving problems with the hazardous waste program. The ombudsman handles complaints from citizens and the regulated community; obtains facts and other pertinent information; engages in dispute resolution, diplomacy and formal investigations. Individuals may contact the Office of the Ombudsman by phone, fax or mail:

Office of Ombudsman  
401 M Street, SW  
Mail Code: 5101  
Washington DC, 20460

Telephone: 202-260-9361  
800-262-7937  
Fax: 202-260-8929  
Hours of Service: 8:00 a.m. - 5:30 p.m. (EST) M - F

- ◆ **The RCRA Information Center (RIC)** indexes all materials supporting EPA's rulemaking actions under RCRA. RIC also disseminates all technical and non-technical Office of Solid Waste Publications. Access to RIC is unrestricted; information may be solicited by phone, fax or email at:

National Service Center  
for Environmental Publications  
P.O. Box 42419  
Cincinnati, OH 45242-2419

Phone Number: 800/490-9198  
Fax Number: 513/489/8695.

- ◆ **Underground Storage Tank Docket, (USTD)** located at <http://www.epa.gov/swrust1/resource/docket.htm>. USTD provides the public with information supporting EPA's regulatory actions on USTs. Seven separate dockets are available: 1) UST Notification; 2) Technical standards for USTs; 3) Financial responsibility for USTs containing petroleum products; 4) State program approval; 5) Report to Congress on exempt tanks; 6) Administrative assessment of civil penalties and revocation and suspension of permits; and 7) Financial responsibility for USTs Containing hazardous materials. Access to the UST Docket may be obtained by at the EPA, by phone, Internet, or email at:

For printed copies of documents, or for answers to questions concerning USTs, interested parties should contact the RCRA, Superfund, LUST, & EPCRA Hotline at (800) 424-9346, or at <http://www.epa.gov/epaoswer/hotline>.

UST Docket Mailing Address:  
U.S. Environmental Protection Agency  
Office of Underground Storage Tank Docket, 5305W  
401 M Street, SW  
Washington, DC 20460

UST Docket Actual Location:

U.S. Environmental Protection Agency  
Office of Underground Storage Tanks Docket  
1235 Jefferson Davis Highway, 1st Floor  
Arlington, VA 22202

UST Docket Telephone:  
(703) 603-9230  
(703) 603-9234 (Fax)

Freedom of Information Act (FOIA) Requests: FOIA requests should be sent to the EPA Freedom of Information Office for processing. Requests must be made in writing and can be sent either via U.S. Mail (401 M. Street, SW, MC: 1105, Washington, DC 20460), via Facsimile (202-260-4499) or via E-mail to the FOIA officer. For more information about FOIA requests, call the FOIA office at 202-260-4048, or visit the FOIA Web Site at <http://www.epa.gov/earth100/records/a00258.html>.

- ◆ The **Methods Information Communication and Exchange Service** provides information for those seeking answers to technical questions regarding the testing, monitoring and analysis of solid waste. The service employs a staff of chemists and sampling specialists to research inquiries. MICE was created to increase public involvement in the waste evaluation process. MICE may be reached at any time by phone at 703-821-4690.
- ◆ The **Hydrological Evaluation of Landfill Performance Model** aids landfill designers and evaluators in estimating the amount of moisture percolation through different types of landfill liners. HELP is available upon the request from the National Technical Information Service (NTIS) at (800) 553-6847.

## CLEAN WATER ACT (CWA)

### Summary of the law

The Clean Water Act<sup>73</sup> (CWA) is the principal federal law for controlling water pollution. Under the CWA, Congress declared the goal of eliminating the discharge of all pollutants into the waters of the United States.<sup>74</sup> The regulation of water pollution under the CWA is based on the maintenance of water quality standards.<sup>75</sup> Water quality standards are maintained through controls on point<sup>76</sup> and nonpoint<sup>77</sup> sources of water pollution.

Congress recognized the importance of public participation in the CWA by requiring public participation “in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established” by the EPA or the States.<sup>78</sup> The EPA has promulgated regulations that specify the minimum level of public participation required under the CWA in EPA actions.<sup>79</sup> These regulations require the EPA to

<sup>73</sup> 33 U.S.C. § 1251 et seq.

<sup>74</sup> 33 U.S.C. § 1251 (a)(1).

<sup>75</sup> 33 U.S.C. § 1313.

<sup>76</sup> 33 U.S.C. § 1362 (14) (defines a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.) 33 U.S.C. § 1342 contains the provisions applicable to regulating point sources.

<sup>77</sup> 33 U.S.C. § 1329 contains the most of the provision applicable to regulating non-point sources of pollution.

<sup>78</sup> 33 U.S.C. § 1251.

<sup>79</sup> 40 C.F.R. § 25.1-25.14.

“encourage, and assist the participation of the public.”<sup>80</sup> The term, ‘the public’ means “the people as a whole, the general populace,” although the regulations recognize that there are identifiable segments of the public.<sup>81</sup>

Water quality standards are the basis for regulation under the CWA. These standards establish either numeric criteria<sup>82</sup> (such as 100 parts per million of a pollutant in the water) or narrative criteria<sup>83</sup> (such as ensuring that water is fishable, swimmable, and drinkable), which protects the designated uses of a waterbody. Designated uses proscribe the types of activities that a waterbody must be able to support, which means the water can not be so polluted that it can not support that activity.<sup>84</sup> States establish water quality standards, taking into consideration the waterbody’s “use and value for public water supplies, propagation of fish and wildlife, recreation purpose, and agricultural, industrial, and other purposes.”<sup>85</sup> Once a state has established a water quality standard, the State can not allow the standards to be violated, meaning it must maintain and protect the quality of its waters from degradation by pollution.<sup>86</sup>

Under the CWA, the control of point sources of pollution is accomplished through a permitting system called the “National Pollution Discharge Elimination System.”<sup>87</sup> (NPDES) NPDES permits establish effluent limitations,<sup>88</sup> which are limitation on the amount of pollution that point sources can discharge into a waterbody. Effluent limitations are established for categories of industries, and require point sources to use the “Best Available Control Technology” (BACT) for reducing and eventually eliminating the discharge of pollutants.<sup>89</sup> Under the CWA, effluent limitations for toxic pollutants<sup>90</sup> require point sources to use the “best available technology [that is] economically achievable.”<sup>91</sup> States administer the NPDES program, under authority delegated to them from the EPA.<sup>92</sup> Once a state incorporates an effluent limitation into a permit, the State may not issue any future permit that is less stringent than the limitations in the first permit.<sup>93</sup>

The CWA contemplates the control of nonpoint source pollution (NPSP) through the use of “Best Management Practices.”<sup>94</sup> (BMPs) States must include the public when creating these BMPs.<sup>95</sup> The state must demonstrate that BMPs will reduce the main sources of nonpoint source pollution to the “maximum extent practicable.”<sup>96</sup> While the CWA contemplates BMPs as the practical tools to be used for decreasing nonpoint source pollution, BMPs are actually only part of a NPSP control management plan that States must develop and then submit to the EPA for approval.<sup>97</sup> These plans must contain “annual milestones” for the utilization of regulatory and non-regulatory enforcement programs and other actions that facilitate the implementation of BMPs.<sup>98</sup> Additionally, these plans must contain milestones for the actual implementation of BMPs.<sup>99</sup> Finally, the state must, to the

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<sup>80</sup> 40 C.F.R. § 25.3 (a).

<sup>81</sup> 40 C.F.R. § 25.3 (b). 40 C.F.R. § 123.25 contains the requirements for State authorized NPDES programs.

<sup>82</sup> 33 U.S.C. § 1313 (c)(2)(B).

<sup>83</sup> 33 U.S.C. § 1313 (c)(2)(B).

<sup>84</sup> 40 C.F.R. § 131.10.

<sup>85</sup> 33 U.S.C. § 1313 (c)(2)(A).

<sup>86</sup> 40 C.F.R. § 131.12.

<sup>87</sup> 33 U.S.C. § 1342.

<sup>88</sup> 33 U.S.C. § 1311.

<sup>89</sup> 33 U.S.C. §§ 1311 (b)(1)(A), 1314 (b).

<sup>90</sup> 40 C.F.R. § 129.4.

<sup>91</sup> 33 U.S.C. § 1317 (a)(2).

<sup>92</sup> 33 U.S.C. § 1342 (b). 40 C.F.R. 123 Subpart A-C and § 123.61 describe the requirements for State assumption of the CWA.

<sup>93</sup> 33 U.S.C. § 1342(o).

<sup>94</sup> 33 U.S.C. § 1329 (a)(1)(C), (b)(2).

<sup>95</sup> 33 U.S.C. § 1329 (a)(1)(C), (b)(1).

<sup>96</sup> 33 U.S.C. § 1329 (a)(1)(C).

<sup>97</sup> 33 U.S.C. § 1329 (b)(2).

<sup>98</sup> 33 U.S.C. § 1329 (b)(2)(B).

<sup>99</sup> 33 U.S.C. § 1329 (b)(2)(B).

“maximum extent practicable,” develop such BMPs on a watershed basis.<sup>100</sup>

As discussed above, effluent limitations are based on water quality standards. At least once every three years States must review their state water quality standards.<sup>101</sup> This review process must include public participation.<sup>102</sup> Where appropriate, the adoption and revision of such standards must also include public participation.<sup>103</sup> During each review, the State must list waters that are not meeting applicable water quality standards.<sup>104</sup> For waterbodies on this list, the State must establish a “total maximum daily load” (TMDL) for those waters, based on a priority ranking.<sup>105</sup> In making a TMDL, a state determines the total amount of a pollutant, from point, nonpoint, and naturally occurring sources, which can enter a waterbody without causing a violation of any water quality standard.<sup>106</sup> The state must set that amount with an “adequate margin of safety” to account for any “lack of knowledge concerning the relationship between effluent limitation and water quality.”<sup>107</sup>

The CWA also requires a permit for dredge and fill operations in the waters, including wetlands, of the United States.<sup>108</sup> The Army Corps of Engineers (Corps) is primarily responsible for administering the program, which mainly includes issuing permits after public notice and comment.<sup>109</sup> The EPA reviews the adequacy of the permits, and can deny their issuance, after public notice and comment, if the permitted activities will not have any “unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, [] wildlife, or recreational areas.”<sup>110</sup> States can also review permits to ensure they do not cause or contribute to any violation of state water quality standards and that the permit is consistent with the State Coastal Zone Management Act.<sup>111</sup>

Under the CWA, the Corps can issue two types of permits. First, the Corps can issue individual permits for the discharge of dredged and fill material in the waters of the United States.<sup>112</sup> The Corps can also issue “general permits,” on a state, regional, or nationwide basis, for a “category” of dredging or filling activities that “are similar in nature, will cause only minimal cumulative adverse effects when performed separately, and will have only minimal cumulative adverse effect on the environment.”<sup>113</sup> States can also assume the authority to implement these two permitting programs.<sup>114</sup>

Any permit issued by the Corps and approved by the EPA must conform to the requirements of the “404 (b)(1) Guidelines.”<sup>115</sup> The basis of the guidelines is that dredging or filling “material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or cumulatively.”<sup>116</sup> Under the guidelines, the Corps must evaluate the potential physical impacts of dredging and filling activities on the physical and chemical characteristics of the aquatic

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<sup>100</sup> 33 U.S.C. § 1329 (b)(4).

<sup>101</sup> 33 U.S.C. § 1313 (c).

<sup>102</sup> 33 U.S.C. § 1313 (c).

<sup>103</sup> 33 U.S.C. § 1313 (c).

<sup>104</sup> 33 U.S.C. § 1313 (d)(1)(A). This list of waterbodies is referred to as the “303 (d) list,” because this requirement stems from section 303 (d) of the CWA.

<sup>105</sup> 33 U.S.C. § 1313 (d)(1)(C).

<sup>106</sup> 33 U.S.C. § 1313 (d)(1)(C), 40 C.F.R. §§ 130.7. 33 U.S.C. § 1313 (d)(1)(B) concerns setting TMDLs for thermal pollution.

<sup>107</sup> 33 U.S.C. § 1313 (d)(1)(C), 40 C.F.R. §§ 130.7, 130 (i).

<sup>108</sup> 33 U.S.C. § 1344.

<sup>109</sup> 33 U.S.C. § 1344 (a), (d).

<sup>110</sup> 33 U.S.C. §§ 1344 (c), 1251 (d).

<sup>111</sup> 33 U.S.C. § 1370, 40 C.F.R. § 230.10 (b)(1), (a)(5).

<sup>112</sup> 33 U.S.C. 1344 (a).

<sup>113</sup> 33 U.S.C. § 1344 (e). The Corps regulations for general permits are located at 33 C.F.R. § 330. Corps NEPA regulations that are applicable to the permitting process are contained at 33 C.F.R. § 230.

<sup>114</sup> 33 U.S.C. § 1344 (g).

<sup>115</sup> 40 C.F.R. §§ 230.2 (discuss the applicability of the guidelines for individual and general permits) and 230.10 (describe the alternatives analysis and impact determinations), 230.7 (contain requirements for general permits).

<sup>116</sup> 40 C.F.R. § 230.1 (c).

ecosystem,<sup>117</sup> the biological characteristics of the aquatic ecosystem,<sup>118</sup> any special aquatic sites,<sup>119</sup> and any human use characteristics of the ecosystem.<sup>120</sup> The guidelines preclude development within the waters of the United States if there is a “practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.”<sup>121</sup> If there is no practicable alternative site for the activity and the activity will adversely impact environmental quality, the Corps must require the permit applicant to minimize those impacts.<sup>122</sup>

## Internet Resources for the CWA

- 1) The EPA’s Office of Water is located at <http://www.epa.gov/OW>. This page has a link to a site that contains a variety of databases, which are described below.
  - ◆ **Storage and Retrieval System for Water and Biological Monitoring Data.** (STORET) STORET is a database of chemical, physical, and biological data pertaining to ground and surface water quality. STORET data may be obtained by FOIA request or through the EPA mainframe, which requires a user ID and a fee. Users may get a free consultation on constructing requests by calling 800-424-9067. Additionally, the EPA’s website, located at <http://www.epa.gov/OWOW/STORET/legacy/retrieve/retrieval.html>, describes how to construct a request.

Users can access the EPA Mainframe computer system at [epaibm.rtpnc.epa.gov](http://epaibm.rtpnc.epa.gov). Users with mainframe accounts can use "Telnet" or "TN3270" to sign on TSO and use STORET directly. Internet users can also find limited information concerning STORET and other EPA systems through "FTP" at [epaibm.rtpnc.epa.gov](http://epaibm.rtpnc.epa.gov) address. The EPA also operates an email service with a STORET mailbox, at [STORET@epamail.epa.gov](mailto:STORET@epamail.epa.gov). There is also a listserve, located at [listserv@unixmail.rtpnc.epa.gov](mailto:listserv@unixmail.rtpnc.epa.gov), devoted to questions about STORET.

The system can produce listings, maps, graphs, statistics and criteria reports. Users can request different types of reports, including INVENT (which includes a summary of existing data), INDEX (which includes site descriptions), RET (which includes requested data in columns by parameter requested and rows by sampling event date), and MSP Reports (which includes graphics plus text).
  - ◆ **Reach Files**, located at <http://www.epa.gov/OWOW/NPS/rf/rfindex.html>. Reach files are comprised of national hydrologic databases that identify and interconnect the stream segments of surface water drainage system throughout the county. Users may get data, documentation, and technical support from the STORET User Assistance Group, by calling 800-424-9067.
  - ◆ **Spatial Data Management**, (GIS). This webpage, located at <http://www.epa.gov/ngispr>, provides users with access to geographic information systems (GIS) that attempt to ascertain the spatial inter-relationships of natural resources and potential or known sources of pollution. The public can contact the EPA if they wish to use the numerous GIS systems available through this program at:

USEPA National GIS Program  
Office of Information Resources Management  
401 M Street, SW. (3408)

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<sup>117</sup> 40 C.F.R. § 230 subpart C.

<sup>118</sup> 40 C.F.R. § 230 subpart D.

<sup>119</sup> 40 C.F.R. § 230 subpart E.

<sup>120</sup> 40 C.F.R. § 230 subpart F.

<sup>121</sup> 40 C.F.R. § 230.10 (a).

<sup>122</sup> 40 C.F.R. § 230.

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- ◆ **Better Assessment Science Integrating Point and Nonpoint Sources**, (BASINS) located at <http://www.epa.gov/OST/BASINS>. BASINS is a tool to help identify waterbodies that may not be meeting water quality standards. By employing BASINS, the user may combine point and nonpoint source loadings to estimate pollutant concentrations in a receiving waterbody and to evaluate potential control strategies. BASINS is available to the public and may be ordered from the National Center for Environmental Publications and Information, which has an Internet ordering site that is located at <http://www.epa.gov/ncepihom/orderpub.html>. To get a manual on using this database, users must request the publication number and title: EPA-823-B-98-006 BASINS Version 2.0 User's Manual. Alternatively, users may call the EPA, at 1-800-490-9198, and order a copy.
  - ◆ **Beach Watch**, located at <http://www.epa.gov/OST/beaches/local>. Beach Watch is a database of beach closing throughout the United States. Users can access the database by locating states on a map of the United States. However, not all states have contributed information.
  - ◆ **Clean Water Needs Survey**, located at <http://www.epa.gov/own/uc.htm>. This database contains the results of surveys for the needs of wastewater facilities. Users can access information on wastewater facilities, such as the names and locations of facilities, the populations they serve, and types of treatments undertaken at the facilities.
  - ◆ **1997 National Listing of Fish Consumption Advisories**, located at <http://www.epa.gov/OST/fishadvice>. This database contains all reported fish consumption advisories issued by States, Tribes, and the 12 Canadian provinces.
- 2) The main webpage also maintains a site that lists hotline and listserves, which is located at <http://www.epa.gov/OW/info.html>.
- ◆ **The Wetlands Protection Hotline**, located at <http://www.epa.gov/OWOW/wetlands/wetline.html>. This hotline responds to inquires concerning the values and functions of wetlands and options for their protection. The Hotline accepts requests for wetland publications and provides information on the availability of other wetland documents.
- The hotline is available (M-F, excluding Federal Holidays, 9 to 5:30, EST) by calling 1-800-832-7828. Users can also fax document requests at (703) 703-1308. Alternatively, they can make requests via email at [wetlands-hotline@epamail.epa.gov](mailto:wetlands-hotline@epamail.epa.gov).
- 3) There is a listing of **watershed related databases**, located at <http://www.epa.gov/owowwtr1/watershed/database.htm>.
- ◆ **The Watershed Information Resource System**, (WIRS) located at <http://www.terrene.org/wirsdata.htm>. WIRS is a bibliographic database that includes Clean Lakes Program Reports, technical data, government documents, journal articles and books on watershed management. Users can access information by waterbody name, state, EPA region, and by topic, keyword, author or date. WIRS is available through E2B2, an environmental online service. More

information about the service may be obtained by email from the Terrence Institute at [judy.taggart@e2b2.com](mailto:judy.taggart@e2b2.com).

- ◆ **Surf Your Watershed:** Located at <http://www.epa.gov/surf2/>. With this website, the public can access information on watersheds throughout the nation. This website provides information on efforts to protect watersheds, volunteer opportunities, drinking water, land use, population, Superfund sites, environmental quality, and effluent discharges. The text search engine employed is rather cumbersome. When using very simple words, such as locations of watersheds, it either gives you too many hits or none at all. Much of the information provided is based on volunteer groups that work to protect local watersheds.
  
  - ◆ **Index of Watershed Indicators** located at <http://www.epa.gov/surf/iwi>. This is the companion database to the “Surf Your Watershed.” The graphic program option of this website (<http://www.epa.gov/surf2/locate/map2.html>) provides easy links to substantive data. There are information gaps on the various criteria used to assess the overall health of a watershed. However, this program provides a breadth of substantive information from governmental and non-governmental websites. This is by far the best source of information on watershed health. However, this site does not contain information describing the health effects of chemicals found in the watershed.
- 4) The **National Small Flows Clearinghouse**, (NSFC) which has an EPA webpage located at <http://www.epa.gov/owmitnet/nsfc.htm> and a main webpage located at [http://www.estd.wvu.edu/nsfc/nsfc\\_homepage.html](http://www.estd.wvu.edu/nsfc/nsfc_homepage.html). NSFC provides small commentates and homeowners with advice on developing affordable solutions to wastewater treatment problems. NSFC public offerings include a toll-free hotline staffed by engineers, free newsletters, and 300 low cost information products and outreach services. Five NSFC databases allow users to search bibliographies and to locate information on manufacturers, consultants, innovative facilities, state and local regulations, and local health departments’ onsite programs. NSFC may be reached at 1-800-624-8301. Users can call (800) 624-8301 or (304) 293-4191, and have EPA representative answer questions concerns wastewater related issues.
  
  - 5) The **Water Docket** contains hard copies of materials relied upon by EPA in all rulemaking activities under the CWA, including Federal Register Notices, public comments, health criteria, analytical methods, economic analyses, treatment technologies, and records supporting effluent limitations for industry categories. All CBI information has been redacted from the Docket, although its absence is noted in the indices to the Federal Register notices. Otherwise, public access is unrestricted, though a cost for copying may be charged. For more information about the Docket, contact:

Colleen Campbell  
Water Docket staffed by ADS (Armstrong Data Services)  
401 M Street, SW  
Washington, DC 20460

Email: [OW-Docket@epamail.epa.gov](mailto:OW-Docket@epamail.epa.gov)

202-260-3027

Hours of Service: 9:00 a.m. - 4:00 p.m. (EST) M - F

- 6) The **Permit Compliance System** (PCS) located at [http://www.rtk.net/www/data/pcs\\_gen.html](http://www.rtk.net/www/data/pcs_gen.html). PCS stores data pertaining to 64,000 facilities regulated under NPDES. PCS information included every phase of NPDES compliance, including permit issuances, permit limits, monitoring data, and the status

of enforcement actions. PCS data is loaded into the system by individual states and EPA regions. Because of this, the data is of uneven quality, particularly since many states have different requirements for what must be kept track of in their water permits. The PCS database is only partially available to the public; unrestricted extracts are available on diskettes from the National Technical Information Service (NTIS) or from EPA regional offices.

- 7) The **Ocean Data Evaluation System (ODES)** contains marine and freshwater monitoring data. Its purpose is to ensure that sewage discharge requirements, applicable to POTWs, are being met. ODES data is available through the EPA mainframe, which requires a user ID and a fee. Further inquiries may be directed to

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Phone: 800-424-9067 or Fax 202-260-1977

- 8) The **National Sewage Sludge Survey**, a one-time 1988 survey concerning sewage sludge disposal practices at POTWs, may be obtained from NTIS.
- 9) **National Wetland Inventory**, located at <http://www.nwi.fws.gov>. The Fish and Wildlife Service runs this webpage because they are the federal agency with expertise in preserving land based wildlife habitat. The Inventory contains information on the characteristics, extent, and health of the nation's wetlands. Users can download data over the Internet. For any question related to accessing this information, users can download a file that explains how to use the system and send questions via email to [op@nwi.fws.gov](mailto:op@nwi.fws.gov).

## CLEAN AIR ACT (CAA)

### Summary of the law

Congress passed the Clean Air Act,<sup>123</sup> (CAA) “to protect and enhance the quality of the nation’s air resources so as to promote public health and welfare and the productive capacity of its population.”<sup>124</sup> To realize this goal, the CAA regulates sources of air pollution.<sup>125</sup> This regulation consists of setting air quality standards, using modeling techniques and source monitoring technologies to determine whether sources of pollution are violating these standards. The CAA also mandates that sources use technological controls to reduce their emissions.

The CAA establishes emission standards that limit the pollution emitted by stationary and mobile sources of pollution.<sup>126</sup> In general, the stringency of the limitation will vary depending on whether the source is geographically located in an area of a state that has clean or polluted air.<sup>127</sup> To distinguish between areas of the

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<sup>123</sup> 42 U.S.C. § 7401 et seq.

<sup>124</sup> 42 U.S.C. § 7401 (b).

<sup>125</sup> 42 U.S.C. § 7408 and 40 C.F.R. §§ 60-61 (discussing emissions standards for new stationary sources of pollutants and for sources that emit hazardous air pollutants).

<sup>126</sup> 42 U.S.C. §§ 7411 (Standards of performance for new stationary sources); 7412 (Standards of performance for sources that emit hazardous air pollutants); 7521 (Standards of performance for mobile sources such as cars);

<sup>127</sup> 42 U.S.C. § 7407. The states or the EPA can designate areas within states as being in “attainment” or “nonattainment” with the NAAQS. The EPA can designate such areas if the state fails to do so by a proscribed time.

country that have clean or polluted air, the CAA authorizes the Environmental Protection Agency (EPA) to set primary and secondary National Ambient Air Quality Standards.<sup>128</sup> (NAAQS) NAAQS represent the maximum legal level of pollution allowed within the air of a specific region.<sup>129</sup>

The EPA sets primary NAAQS at levels that, with an adequate margin of safety, protect public health and the environment.<sup>130</sup> The pollutants regulated under the primary NAAQS are called “criteria pollutants.” The six criteria pollutants are sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone, and lead. The EPA sets secondary NAAQS at a level that will “protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant.”<sup>131</sup>

The CAA regulates sources of emissions within geographic areas called “air quality control regions.”<sup>132</sup> These regions are either in “attainment”<sup>133</sup> or “nonattainment”<sup>134</sup> with the NAAQS. When a region meets the NAAQS for any pollutant, the region is considered to be in “attainment” with the NAAQS for that pollutant. If a region fails to meet the NAAQS for a pollutant, or contributes to another region’s failure to meet the NAAQS for a pollutant, then the state must designate that region as being in “nonattainment” status for that pollutant. The CAA regulates sources in nonattainment areas more stringently than sources in attainment areas. It also varies the stringency of controls based on whether the source is defined as a “major” source.<sup>135</sup>

Whenever an entity proposes to build a new<sup>136</sup> source, or to modify<sup>137</sup> to an existing source, the source is subject to the CAA’s provisions concerning the “prevention of significant deterioration.”<sup>138</sup> (PSD) Under PSD, the Secretary can permit the construction of such a source only if the source does not increase levels of pollutants beyond a threshold amount, called an “increment.”<sup>139</sup> The baseline of the threshold is established when the area is designated.<sup>140</sup> Compliance with the PDS is determined by modeling, conducted by the entity or the State, that demonstrates whether the source will “cause or contribute” to a violation of any air quality standard or exceed the increment allowed by statute.<sup>141</sup> Additionally, such entities must also undergo “new source review.”<sup>142</sup> (NSR) NSR involves the state or EPA setting a level of emissions (called a “standard of performance”<sup>143</sup> or “new source

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<sup>128</sup> 42 U.S.C. § 7409 and 40 C.F.R. part 50 (discussing the establishment of such standards).

<sup>129</sup> 42 U.S.C. § 7410 (a)(1) (these regions are called “air quality control” regions).

<sup>130</sup> 42 U.S.C. § 7409 (b)(1).

<sup>131</sup> 42 U.S.C. § 7409 (b)(2).

<sup>132</sup> 42 U.S.C. 7407.

<sup>133</sup> 42 U.S.C. § 7407 (d)(1)(A)(ii).

<sup>134</sup> 42 U.S.C. § 7407 (d)(1)(A)(i).

<sup>135</sup> The CAA varies the definition of “major” based upon the type of pollutant emitted by the source. For example, 42 U.S.C. §§ 7602 (j) defines a “major” to mean any stationary facility or source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any air pollutant other than a HAP. However, 42 U.S.C. § 7412 (a)(1) defines a “major” source of HAPs to mean “any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the “potential to emit” 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” (40 C.F.R. § 70.2 defines “potential to emit” which means the maximum amount of air pollutant that a source can emit under its physical and operational design. “Any physical or operational limitation on the capacity of a source to emit an air pollutant... shall be treated as part of its design if the limitation is enforceable by the” State or EPA.)

<sup>136</sup> 42 U.S.C. § 7411 (a)(2) (The term “new source” means any stationary source constructed or modified after the state or EPA has promulgated regulations that prescribe a standard of performance which applicable to the source.)

<sup>137</sup> 42 U.S.C. § 7411 (a)(4) (The term “modify” means “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”)

<sup>138</sup> 42 U.S.C. §§ 7471-7478.

<sup>139</sup> 42 U.S.C. § 7473.

<sup>140</sup> 42 U.S.C. § 7473.

<sup>141</sup> 42 U.S.C. § 7475.

<sup>142</sup> 42 U.S.C. § 7411 and 40 C.F.R. § 60.

<sup>143</sup> 42 U.S.C. § 7411 (a)(1) (These standards are applicable to sources regulated upon passage of the CAA).

performance standards”<sup>144</sup>) that new or modified source must meet through technology based controls, the use of low polluting fuels, or operational controls that limit the source’s emissions.<sup>145</sup>

When a company proposes to modify or construct a major stationary source of a pollutant in an area that is in nonattainment for that pollutant, prior to the modification or construction, the company must decrease the level of that pollutant in the air of the nonattainment area.<sup>146</sup> Companies accomplish this in two ways. First, they must meet stringent permitting requirements that control future emissions of that pollutant<sup>147</sup> through use of the technology standard called the “lowest achievable emission rate.”<sup>148</sup> (LEAR) Second, the state may require that the source help other sources to decrease their emissions.<sup>149</sup> This process is called “offsetting.”<sup>150</sup> Different technological standards are applicable to other pollutants. In non-attainment areas, new or existing source of volatile organic compounds and/or nitrogen oxide must meet a standard called the “reasonably available control technology.”<sup>151</sup> (RACT) In attainment areas, any new source or a modification to an existing source must use the “best available control technology” (BACT) to limit their emissions.<sup>152</sup> In addition, these sources must meet all new source performance standards and comply with all requirements under the NESHAP program.<sup>153</sup>

For nonattainment areas, states must demonstrate that the area is making “reasonable further progress” towards attainment with the NAAQS.<sup>154</sup> Depending on the level of pollution in a nonattainment area, states have a limited number of years to bring the area into attainment with the NAAQS.<sup>155</sup> If the state fails to meet a deadline, the EPA can increase the required offsets, withhold federal highway funds, or take over enforcement of the CAA within the state.<sup>156</sup>

Under the CAA, states can assume control over implementing the program by developing a “state implementation plan.”<sup>157</sup> (SIP) A SIP is comprised of state regulations that implement the federal requirements codified under the CAA.<sup>158</sup> If a state fails to promulgate such a plan, or a plan fails to provide a level of protection comparable to federal law, the EPA can establish a “Federal Implementation Plan” (FIP) to regulate sources of air pollution in the state.<sup>159</sup>

The CAA regulates numerous other types of pollution. For example, it contains “national emission standards for hazardous air pollutants.”<sup>160</sup> (NESHAP) Congress codified a list of hazardous air pollutants (HAPs) in the CAA.<sup>161</sup> Under the NESHAP program, sources that emit HAPs meet the “Maximum Achievable Control

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<sup>144</sup> 42 U.S.C. § 7411 (f) (These standards are applicable to sources that the EPA choose to regulate after the CAA was passed.)

<sup>145</sup> 42 U.S.C. § 7408 (b)(1).

<sup>146</sup> 42 U.S.C. § 7503 (a)(1)(A).

<sup>147</sup> 42 U.S.C. § 7503 (a).

<sup>148</sup> 42 U.S.C. § 7501 (3).

<sup>149</sup> 42 U.S.C. § 7503 (c).

<sup>150</sup> 42 U.S.C. § 7503 (c).

<sup>151</sup> 42 U.S.C. § 7502 (c)(1).

<sup>152</sup> 42 U.S.C. § 7475 (a)(4).

<sup>153</sup> 42 U.S.C. § 7475 (a)(3).

<sup>154</sup> 42 U.S.C. §§ 7501(1), 7502 (b)(2)

<sup>155</sup> 42 U.S.C. § 7502 (a)(2). The dates for meeting these standards are contained in the CAA at 42 U.S.C. §§ 7512, 7512a, and 7513-7513b.

<sup>156</sup> 42 U.S.C. § 7509 (b)

<sup>157</sup> 42 U.S.C. § 7410 (a).

<sup>158</sup> 42 U.S.C. § 7410 (a).

<sup>159</sup> 42 U.S.C. § 7509.

<sup>160</sup> 42 U.S.C. § 7412 (d)(1)-(2).

<sup>161</sup> 42 U.S.C. § 7412 (b). 40 C.F.R. § 63.1-63.81 contains the EPA’s regulations regarding HAPs. 40 C.F.R. § 63.60 contains the list promulgated by the EPA.

Technology”<sup>162</sup> (MACT) standard when limiting their emissions. Sources can delay employing the MACT standard if they voluntarily reduce their emissions by 90% or 95%, depending on the type of HAP they emit.<sup>163</sup>

The CAA also regulates other sources of air pollution. For example, the CAA regulates mobile sources of pollution by setting acceptable levels of emissions and by encouraging the production and use of “clean fuels” that produce less pollution when burned.<sup>164</sup> The CAA requires the states to develop transportation plans that reduce pollution from vehicles. The states must provide extensive public involvement when developing these plans.<sup>165</sup>

The CAA also mandates the reduction of sulfur dioxide (SO<sub>2</sub>) emissions (from power plants) by ten million tons per year.<sup>166</sup> To achieve this reduction, the CAA uses a market-based approach in which companies are first issued, and then subsequently they are allowed to trade, “allowances” of SO<sub>2</sub>.<sup>167</sup> Companies holding allowances may legally emit SO<sub>2</sub>.<sup>168</sup> The CAA also limits the amount of haze within certain areas, such as national parks and wilderness areas.<sup>169</sup> In addition, the CAA regulates the production and use of ozone,<sup>170</sup> particulate matter,<sup>171</sup> and chemicals that destroy the world’s stratospheric ozone layer.<sup>172</sup>

The process of permitting facilities under the CAA is a major avenue for public involvement in the program. Under the 1990 amendments to the CAA, Congress codified the “Title V” permit program.<sup>173</sup> Under this program, major sources can incorporate all of their requirements into one comprehensive permit.<sup>174</sup> Prior to approving such a permit, the regulating agency must provide an opportunity for public notice and comment on such permits.<sup>175</sup> This requirement gives the public an opportunity to play a major role in controlling pollution sources in their area. By commenting on the adequacy of such permits, citizens can point out mistakes that may have otherwise gone unnoticed by the permitting agency or the source requesting the permit.

#### Internet Resources for the CAA

- 1) **AIRSDData**, accessible through either <http://www.epa.gov/airsdata> OR <http://www.epa.gov/airs>. AIRSDData is a database that gives individuals access to air pollution data from sources located throughout the United States. Using AIRSDData, individuals can use a variety of criteria to create reports on sources of emissions throughout the nation. In addition, users can access maps that display the top sources of air pollution in the country. The same webpage also provides the names of people to contact if a user has questions concerning use of the systems. The EPA updates data on the AIRSDData on a monthly basis.

The database provides the user with the capability to generate six different types of Source Reports on “major” sources of air pollution. Users can generate reports that rank sources based on the size of their emissions and compliance history. In addition, users can generate reports that discuss baseline information (such as location), the size and type of the sources (using the standard industrial

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<sup>162</sup> 42 U.S.C. § 7412 (d)(2).

<sup>163</sup> 42 U.S.C. § 7412 (i)(5).

<sup>164</sup> 42 U.S.C. §§ 7521 and part C.

<sup>165</sup> 42 U.S.C. § 7408 (f).

<sup>166</sup> 42 U.S.C. § 7651b (a)(1).

<sup>167</sup> 42 U.S.C. § 7651b (a)-(b).

<sup>168</sup> 42 U.S.C. § 7651b (a)(1).

<sup>169</sup> 42 U.S.C. §§ 7491-7492.

<sup>170</sup> 42 U.S.C. §§ 7509a, 7511-7511e.

<sup>171</sup> 42 U.S.C. §§ 7513, 7513a.

<sup>172</sup> 42 U.S.C. §§ 7671-7671q.

<sup>173</sup> 42 U.S.C. §§ 7661, 7661a (a)-(d).

<sup>174</sup> 42 U.S.C. § 7661a (c).

<sup>175</sup> 42 U.S.C. § 7661a (a)(6).

classification systems under the Small Business Administration's regulations), and the number of sources that submitted emissions estimates for a calendar year.

- ◆ **Source Reports:** The "Source Ranking Reports" displays estimated annual pollutant emissions from a single source. It also contains a "Total" line at the bottom of each report page which shows the total pollutant emissions of all sources reported on that page. However, the system does not include certain types of air pollutants (HAPs), Sources are required to provide pollutant emission estimates to EPA every year.
  - ◆ **Monitor Reports:** The EPA also maintains the "Monitor" database, located at <http://www.epa.gov/airsdata/monitors.htm>. This database described pollution levels for the ambient air based on annual summaries of air pollution. "Maps" show the locations of major air pollution sources, monitoring sites, and areas of the country where air pollution levels exceed health-based EPA standards. The maps show information about a single pollutant at the national scale for the six criteria pollutants. Users may view maps of "nonattainment" areas, the location of air quality monitoring stations, the location of "major" stationary sources of air pollution, and the top 25 sources of pollution in the United States for each criteria pollutant. Unfortunately, users can not create new maps or create one map using parameters from two or more criteria. The system only includes data on "major" sources of air pollution, but does not include data on "area sources" of HAPs or smaller sources of the criteria pollutants.
- 2) **Technical Transfer Network**, (TTN) located at <http://www.epa.gov/ttn>. The Technical Transfer Network (TTN) is a listing of websites that have information pertaining to air pollution science, technology, regulation, measurement, and prevention. Users may access it from EPA's Office of Air and Radiation's main webpage, or by going to <http://www.epa.gov/ttn>. The purpose of TTN is to serve as a public forum for the exchange of technical information and ideas among participants and EPA staff. The information contained on TTN is very technical. Consequently, TTN is geared much more to agency personnel and private sector businesses than to the general public.
  - 7) **Technical Documents**, located at <http://www.epa.gov/ttn/direct.html>, there is a webpage that contains policy and guidance documents for the Office of Air and Radiation.
  - 8) **Unified Air Toxic Website**, located at <http://www.epa.gov/ttn/uatw/otherepa.html>. This site contains a listing of EPA webpages that deal with a wide variety of issues concerning toxic air pollution. However, most of the sites supply very technical information. It also contains information on the basics of the NESHAP program, rules applicable to the sources of HAPs, a listing of the HAPs, and contact information on agency personnel who implement the CAA.
- ◆ **Applicability Determination Index**, (COMPLI) is located at <http://ttnwww.rtpnc.epa.gov/cfdocs/adiwww/adiwww.html-ssi>. COMPLI a database that contains EPA memoranda on whether and how sources of emissions must comply with different provisions of the CAA.
  - ◆ **Support Center for Regulatory Air Models**, (SCRAM), located at <http://www.epa.gov/ttn/scram>. This website contains information on atmospheric dispersion models used by regulatory agencies to gauge air quality within air quality control regions.
  - ◆ **Ambient Monitoring Technology Information Center**, (AMTIC), located at <http://www.epa.gov/ttn/amtic>, contains information on monitoring programs, methods, regulations, as well as trends in air quality for different parts of the country.

- ◆ **Title V Permits**, located at <http://www.epa.gov/oar/oaqps/permits>. This site contains a variety of information that is invaluable for anyone who wants to become involved in permitting decisions under the CAA. It lists relevant regulations, guidance documents, state programs, and gives the status of state Title V permitting programs.

## FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA)

### Summary of the law

The Federal Insecticide, Fungicide, and Rodenticide Act,<sup>176</sup> (FIFRA) requires EPA registration for all pesticides sold in the U.S. Each registration applicant must demonstrate that the pesticide will “perform its intended function without unreasonable adverse effects on the environment.” FIFRA provides EPA with the authority to establish data requirements for registration and to solicit additional information post-registration, if necessary to ensure the pesticide is not likely to cause adverse environmental impacts. Thirty days after pesticide approval, EPA must make the data provided in the registration statement publicly available.

Access to this data is limited by FIFRA’s confidentiality provision. Under FIFRA, the applicant is given the option to mark any portions of the application which, in the applicant’s opinion are trade secrets or commercial or financial information. Likewise, the owner of an establishment that produces pesticides, for which a separate registration is required, is granted the presumption that any registration information submitted to EPA, other than the name and active ingredients of the pesticides produced, shall be considered confidential.

These provisions unfairly hamper public access by granting the pesticide producer or distributor the license to redact information from the public record at will. While the realities of a competitive market demand that certain records remain confidential, this classification should be used sparingly and its parameters should be well defined by the reviewing agency, rather than the regulated party.

### Internet Resources for FIFRA

- 1) **Office of Pollution Prevention**, located at <http://www.epa.gov/opptintr>. A number of electronic databases, overseen by EPA’s Office of Prevention, Pesticides, and Toxic Substances (OPPTS), provide a wealth of useful information, including:
- 2) The **Pesticide Information Network** (PIN) contains current and historic pesticide data organized in 5 subsets: Biological Pesticides (BPD); Ecological Incident Information System (EIS); Pesticide Applicator Training (PAT); Pesticide Monitoring Inventory (PMI) and Regulatory Information. Use of this database is unrestricted, and it may be accessed via a modem line at 703-305-5919.
- 3) The **National Pesticide Information** Retrieval System (NPIRS) is a collection of six subscription online databases. Through NPRIS, users may obtain pesticide product label information; pesticide studies submitted to EPA in support of registration; a residue tolerance index; EPA facts sheets covering over 200 pesticide chemicals; and material safety data sheets published by manufacturers of agricultural, turf and ornamentals use products. Access to these databases is intended to satisfy the Freedom of Information Act (FOIA) requirement that pesticide product registration data is made available to the public. Yet to obtain product specimen labels and a full text of registration support documents a separate, a specified FOIA request must be submitted to EPA. The final caveat is that NPRIS access requires the payment of a costly user fee or the purchase of an annual subscription membership to the proprietary gateway controlled by the Center for Environmental

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<sup>176</sup> 7 U.S.C. section 136. For regulations implementing FIFRA, see 40 C.F.R. parts 150-189.

and Regulatory Information Systems (CERIS-Net). Interested persons may link up to NPRIS at <telnet://ceris.purdue.edu> or <ftp://ceris.purdue.edu>.

- 4) The **National Pesticide Telecommunications Network (NPTN)**, located at <http://ace.ace.orst.edu/info/nptn>. NPTN is a cooperative effort between EPA and Oregon State University. It provides chemical, health and environmental information on 600 active ingredients incorporated into 50,000 products. This national service offers referrals for testing, investigation, disposal and safety procedures. NPTN also serves as a forum for the public to voice concerns on pesticide issues. Users may also access NPTN by calling 1-800-858-7378.
- 5) **Pesticide Product Information System (PPIS)**, <http://www.epa.gov/oppmsd1/PPISdata>. PPIS is administered by EPA's Office of Pesticide Programs. (OPP) PPIS contains basic ingredient and use information for all pesticide products registered in the U.S.
- 6) **Test Guidelines**, located at <http://www.epa.gov/docs/OPPTS>. The public draft and final versions of EPA OPPTS Test Guidelines, which are used as test protocols in support of pesticide product registration, are located on this website.

In addition to data available on electronic databases, other selected FIFRA information may be obtained in writing:

- ◆ The **Dietary Risk Evaluation System (DRES)** estimates risks to human health posed by pesticides in the diet by combining information on food consumption and crop residue. While residue data is not yet available to the public, chronic or cancer risk data and acute consumption data are available by written request.
  - ◆ The guide for "**How to Obtain Information from the Office of Pesticide Programs**" summarizes the types of records available and how they may be obtained through the Public Docket, FOIA requests and other sources. This publication may be ordered from OPP free of charge.
- 7) The **FIFRA Docket** provides public access to pesticide rulemaking information, including Federal Register Notices, background documents, public comments, science chapters and letters received by OPP. Requests for access to confidential business information are treated as formal inquiries under FOIA and in accordance with FIFRA's confidentiality provision. Records are available for inspection and copying or may be obtained by written request to:

Office of Pesticide Programs  
MC: 7502C  
Crystal Mall #2, Room 119, 1921 Jefferson Davis Highway  
Arlington, VA 22202  
Phone: 703-305-5805 or fax 703-305-4646  
Hours of Service: 8:30 a.m. - 4:00 p.m. (EST) M - F, except legal holidays.

Email: [p-docket@epa.gov](mailto:p-docket@epa.gov)

## Summary of the law

The Toxic Substances Control Act,<sup>177</sup> (TSCA) grants EPA broad authority to regulate the manufacture, distribution, use and disposal of any chemical upon finding that it “presents or will present an unreasonable risk of injury to health or the environment.” TSCA prohibits the manufacture of a new chemical substance or a significant new use of a known substance absent 90-day notice to EPA, the submission of data and the procurement of agency approval. In addition, TSCA has been amended to provide specific directives with regard to the regulation of asbestos, radon and lead.

TSCA requires all manufacturers of chemical substances to submit known health and safety studies and to maintain records of significant adverse health or environmental reactions, including consumer allegations of personal injury, reports of occupational disease or complaints of injury to the environment. Absent a determination of an unreasonable risk of injury, the disclosure of this data is limited to health and safety studies. The regulated party also has the option to designate information as confidential and thus unavailable to the public. If a complaint reaches the stage of a citizen’ civil action or petition, or an administrative action, TSCA encourages the disclosure of information by extending employment protection to workers who participate in such a proceeding.

TSCA provisions on indoor radon abatement and lead exposure specifically call for the public dissemination of information about potential hazards. The statute requires that the EPA publish “A Citizen’s Guide to Radon,” which catalogues the health risks associated with radon exposure and the costs of reducing radon concentrations. Additionally, EPA is directed to assist the States in designing radon information programs and to provide radon mitigation instruction to professional organizations representing building design, engineering and construction firms. As part of its state assistance mission, TSCA authorizes EPA to award grants, upon the application of a Governor of a State, for radon assessment purposes. Any State receiving funds under this program is required to compile a list of firms that receive a passing rating under the EPA proficiency-rating program for professionals offering radon-related services.

The statutory emphasis on promoting public awareness of the dangers of lead exposure follows a similar trajectory as that set forth in the radon provisions. For instance, EPA is ordered to disseminate guidelines for reducing the risk of exposure resulting from renovation activities to hardware and paint stores, trade groups, employee organizations, and state and local agencies. EPA is required to publish a lead hazard information pamphlet and to undertake a massive public education effort in conjunction with the Secretaries of Housing and Urban Development (HUD) and Health and Human Services (HHS). TSCA specifically divides the labor involved, by ordering HUD and the CDC to establish a National Clearinghouse on Childhood Lead Poisoning, while directing states agencies to create a lead-based paint hazard hotline.

## Internet Resources For TSCA

For all of the attention to public education campaigns manifest in TSCA provisions, very little of the requisite information is currently available online.

- 1) **Toxic Substances Control Act Test Submissions** (TSCATS) database is an index to non-confidential, unpublished studies submitted by regulated industries on chemical testing and adverse environmental and health impacts. Full text documents are on microfiche and may be ordered from the National Technical Information Service at 1-800-553-NTIS. Access to abridged online files is available through RTK NET at <http://www.rtknet.org>. These files can also be obtained from the National Library of Medicine or Chemical Information Systems, Inc.
- 2) **Test Guidelines**, located at <http://www.epa.gov/docs/OPPTS>. The public draft and final versions of EPA

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<sup>177</sup> 15 U.S.C. sections 2601- 2692; 40 CFR Parts 700-709.

OPPTS Test Guidelines are used as test protocols in support of toxic substance product regulation under TSCA. This database also houses test guidelines called for under FIFRA.

- 3) The **OPPT Nonconfidential Information Center** houses the public docket for TSCA rulemaking actions, the administrative record for TSCA and non-confidential case files for documents submitted under TSCA. Document requests must be submitted in writing fax, phone or email.

OPPT Nonconfidential Information Center  
401 M Street, SW, Room B-607 Northeast Mall  
MC 7407  
Washington, DC 20460

P: (202) 260-7099  
F: (202) 260-5069  
Hours of Service: 12:00 - 4 PM EST, M - F, except federal holidays

Email: [oppt-ncic@epamail.epa.gov](mailto:oppt-ncic@epamail.epa.gov)

- 4) **TSCA Assistance Information Service (TAIS)** provides technical assistance, Federal Register notices, support documents, and information about asbestos and lead reduction programs. TAIS provides advice about TSCA regulations to industry, labor associations, government agencies and private citizens. Information requests may be submitted by phone, fax, or in writing.

## SAFE DRINKING WATER ACT (SDWA)

### Summary of the law

The Safe Drinking Water Act (SDWA) is the primary Federal law that protects drinking water.<sup>178</sup> SDWA's regulations apply to public water systems that deliver drinking water to more than 25 people.<sup>179</sup> The EPA is the federal implementing agency for SDWA.<sup>180</sup> The EPA must establish standards for drinking water quality and ensure that the states are enforcing these standards.<sup>181</sup> To accomplish the first task, the EPA sets national standards for the levels of contaminants that are allowed in drinking water.<sup>182</sup> Under SDWA, the EPA sets primary water quality standards for the protection of the public health<sup>183</sup> and secondary regulations for the taste, odor, and appearance of drinking water.<sup>184</sup>

Primary drinking water regulations includes a maximum contaminant level.<sup>185</sup> (MCL) An MCL is the permissible level of a contaminant in water that is delivered to any user of a public water system. When the EPA determines that an MCL is not economically or technologically feasible, the agency may prescribe a treatment technique which would prevent adverse health effects to humans instead of the MCL.<sup>186</sup> The EPA has set MCLs for a range of inorganic and organic chemicals, turbidity, radioactive constituents, and microbiological

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<sup>178</sup> 42 U.S.C. § 300f et. seq

<sup>179</sup> 42 U.S.C. § 300f (4).

<sup>180</sup> 42 U.S.C. § 300f (7).

<sup>181</sup> 42 U.S.C. § 300g-1 (b), 300g-2 (b). While the EPA has the power to enforce the act, the states are the primary enforcement authority. 42 U.S.C. § 300g-2 (a).

<sup>182</sup> 42 U.S.C. § 300g-1 (b).

<sup>183</sup> 42 U.S.C. § 300b-1 (a), (b)(1)(A) and (C) and 40 C.F.R. §§ 141.11-16 and 141.61-63.

<sup>184</sup> 42 U.S.C. § 300g-1(c) and 40 C.F.R. part 143.

<sup>185</sup> 42 U.S.C. §§ 300g-1 (a) and 300f (3).

<sup>186</sup> 42 U.S.C. § 300g-1 (b)(3)(C) and (7)(A).

contaminants.<sup>187</sup> In addition to these provisions, SDWA included separate provisions for disinfection and disinfection byproducts,<sup>188</sup> arsenic,<sup>189</sup> sulfate,<sup>190</sup> and radon.<sup>191</sup>

SDWA has strong public participation provisions. For example, it mandates that owners or operators of public water systems produce and distribute Consumer Confidence Reports.<sup>192</sup> These reports must contain information on the levels of contaminants in the drinking water, any variances or exemptions to established MCLs, the source of the drinking water, a discussion of the health effects of any contaminants in the water, and any monitored violations of drinking water standards.<sup>193</sup>

The contents of these reports must be based upon source water assessments.<sup>194</sup> These assessments must delineate the geographic boundaries of areas that supply drinking water, identify any contaminants in the water, and, to the extent practical, the source of any contaminants and the water system's susceptibility to those contaminants.<sup>195</sup> SDWA also mandates that states make these assessments available to the public.<sup>196</sup>

### Internet Resources for the SDWA

- 1) **Office of Ground Water and Drinking Water**, (OGWDW) is located at <http://www.epa.gov/OGWDW>. The main webpage of the OGWDW has links to a variety of information sources, including a description of the applicable laws and regulations, various agency programs, and health related information. For example, there is a link to EPA guidance on conducting Source Water Assessments, descriptions of state and federal efforts at protecting sources of drinking water, and access to groups involved in protecting sources of drinking water.
- 2) **Locating Drinking Water Information**, available at <http://www.epa.gov/OGWDW/dwinfo.htm>, is a website that provides information on federal and state enforcement actions and the compliance history of water providers. While the site is easy to use, it suffers from a lack of reporting and incomplete data. Additionally, the site does not define all of the abbreviations used to describe the information.
- 3) **DATABASES**: One can access numerous databases on this webpage. The index of databases is located at <http://www.epa.gov/OGWDW/datab/database.html>.
  - ◆ **Safe Drinking Water Information System (SDWIS/FED)**  
<http://www.epa.gov/OGWDW/sdwisfed/sdwis.htm>. SDWIS/FED is a compendium of state drinking water monitoring results that the EPA has places into a database. This database contains information on approximately 175,000 public water systems. The database details each water systems name, ID number, number of people served, type of system (year-round or seasonal), and source of water (ground water or surface water). The states also report whether each water system has violated SDWA, complied with mandated treatment techniques, and their system of monitoring. As noted by the EPA, not all of the information contained in this database is accurate.

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<sup>187</sup> 40 C.F.R. §§ 141.11-16 and 141.61-63. Whenever the EPA establishes an MCL, they must also promulgate and maximum contaminant level goal (MCLG). 42 U.S.C. § 300g-1 (a)(3). The EPA need not set MCLGs are the “maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety (MCLGs) are nonenforceable health goals.” 40 C.F.R. §141.2.

<sup>188</sup> 42 U.S.C. § 300g-1 (b)(2)(C).

<sup>189</sup> 42 U.S.C. § 300g-1 (b)(12) (A).

<sup>190</sup> 42 U.S.C. § 300g-1 (b)(12) (B).

<sup>191</sup> 42 U.S.C. § 300g-1 (b)(13).

<sup>192</sup> 42 U.S.C. § 300g-3 (c)(4).

<sup>193</sup> 42 U.S.C. § 300g-3 (4)(A)-(B) and 40 C.F.R. § XXX.

<sup>194</sup> 42 U.S.C. § 300j-13.

<sup>195</sup> 42 U.S.C. § 300j-13 (a)(2).

<sup>196</sup> 42 U.S.C. § 300j-13 (a)(7).

- ◆ **Safe Drinking Water Information System / State Version (SDWIS/STATE):** The EPA is developing the SDWIS/STATE to provide a single data system for each state's drinking water program. SDWIS/STATE will hold inventory, sampling, and monitoring data. People interested in getting more information on this system should contact their state water quality agency.
  - ◆ **National Occurrence Database, (NCOD),** located at <http://www.epa.gov/OGWDW/standard/pp/ncodpp.html>. NCOD holds information on drinking water contaminants that the EPA uses to regulate drinking water. The information of occurrences of contamination in drinking water is used to construct a "Drinking Water Contaminant Candidate List" (CCL). The CCL is used to set priorities for research, further monitoring, or regulation. The site contains a schedule of public meetings that the EPA is holding to solicit public input.
- 4) **Envirofacts** at [http://www.epa.gov/enviro/index\\_java.html](http://www.epa.gov/enviro/index_java.html). This Envirofacts search engine allows users to construct reports or maps on the environmental quality of an area, using information contained in various EPA databases. The search engine is very easy to use. However, the information contained in the report could be better integrated with other systems to provide explanations for the health effects of contaminants and types of violations reported. However the **Enviromapper** function, located at [http://www.epa.gov/enviro/index\\_java.html](http://www.epa.gov/enviro/index_java.html) is a model for giving the public tools to manipulate environmental information. It allows users to construct maps of areas in the United States using various criteria, such as public lands and watersheds. If integrated with more information, such as water quality limited streams and air quality, it could provide a comprehensive graphic overview of an area's environmental quality.
  - 5) **National Drinking Water Contaminant Occurrence Database (NCOD):** The NCOD is provides access to data on the occurrence of contaminants in drinking water. The agency will use it to support decision making for future drinking water contaminant regulations. For information on this system, member of the public can call the EPA's Safe Drinking Water Act Hotline at 1 (800) 426-4791.
  - 6) **Information Collection Rule Database (IRC):** The EPA will use this database to support future regulation of microbial contaminants, disinfectants and disinfection byproducts. This database will have information on chemical byproducts that form when disinfectants used for microbial control react with chemicals already present in source water (Disinfection byproducts (DBPs)), disease-causing microorganisms (pathogens), including Cryptosporidium, and engineering data to control these contaminants. After eight months of data are entered into the system, the EPA will use the data to decide whether the current regulation for microbial contamination needs to be modified and, if so, how. For more information, members of the public can contact the Safe Drinking Water Hotline at 1-800-426-4791
  - 7) **Freedom of Information Act Request** for OGWDW is located at <http://www.epa.gov/OGWDW/foia.html>. The public can access any information on SDWIS/FED by submitting a Freedom of Information Act Request. Alternatively, the public can access a narrower range of SDWIS/FED information through the EPA's Envirofacts database, which is located at [http://www.epa.gov/enviro/html/sdwis/sdwis\\_ov.html](http://www.epa.gov/enviro/html/sdwis/sdwis_ov.html). As noted by the EPA, not all of the information contained on this system is accurate
  - 8) **Surf Your Watershed:** Located at <http://www.epa.gov/surf2/>. With this website, users can locate watersheds across the nation and get information on their overall environmental health. This website provides information on efforts to protect watersheds, volunteer opportunities, drinking water, land use, population, Superfund sites, environmental quality, and effluent discharges. The text search engine employed is rather cumbersome. When using very simple words, such as locations of watersheds, it

either gives you too many hits or none at all. Much of the information provided is based volunteer groups that work to protect local watersheds.

- 9) **Index of Watershed Indicators** located at <http://www.epa.gov/surf/iwi>. This is the companion database to the “Surf Your Watershed.” The graphic program option of this website (located at <http://www.epa.gov/surf2/locate/map2.html>) provides easy links to substantive data. There are information gaps on the various criteria used to assess the overall health of a watershed. This program provides a breadth of substantive information from governmental and non-governmental websites and is by far the best source of information on overall water quality. However, this site still does not contain any link addressing connections between chemicals and the health effects of those chemicals.
- 10) The EPA also maintains a hotline to answer questions concerning SDWA issues at 1-800-426-479. Users may also submit requests over the Internet via email at <http://www.epa.gov/OWOW/wetlands/wetline.html>.

## EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

### Summary of the law

Congress enacted the Emergency Planning and Community Right-to-Know Act,<sup>197</sup> (EPCRA) as the leading piece of national legislation on community safety, emergency notification, and the right to know about toxic chemicals. EPCRA has two basic goals. The first goal is to facilitate and promote planning for chemical emergencies at the state and local levels.<sup>198</sup> The second goal is to provide information to the public about the chemicals used, stored, and released in their communities.<sup>199</sup>

Under EPCRA, every state must appoint a State Emergency Response Commission (SERC).<sup>200</sup> A SERC divides their state into Emergency Planning Districts,<sup>201</sup> and then appoints Local Emergency Planning Committees (LEPC) for each district.<sup>202</sup> LEPCs process public requests information and encourage prevention and preparedness in response to chemical emergencies.<sup>203</sup> Under EPCRA, facilities must report on their inventoried chemical stocks when those stocks are above a threshold amount.<sup>204</sup> EPCRA also requires that covered facilities to submit information to State and local authorities for facility emergency planning and response purposes.<sup>205</sup>

In addition, EPCRA requires facilities to report releases of a chemical from a facility when the release is above a threshold amount.<sup>206</sup> The EPA compiles these reports into a database, called the Toxic Release Inventory.<sup>207</sup> (TRI) The EPA has established TRI User Support (TRI-US), which offers assistance to individuals seeking TRI

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<sup>197</sup> 42 U.S.C. § 110001 et seq.

<sup>198</sup> 42 U.S.C. § 11003.

<sup>199</sup> 42 U.S.C. §§ 11021-23 (requiring that facilities report the types and amounts of hazardous and toxic chemicals maintained at, or released from a facility); 11004 (requiring that facilities provide a notification for specific releases of hazardous or toxic chemicals from a facility); and 11044 (requiring that the public be given access to all plans, data sheets, forms, and notices that are not protected as trade secrets).

<sup>200</sup> 42 U.S.C. § 11001 (a).

<sup>201</sup> 42 U.S.C. § 11001 (b).

<sup>202</sup> 42 U.S.C. § 11001 (c).

<sup>203</sup> 42 U.S.C. § 11001 (a)-(c).

<sup>204</sup> 42 U.S.C. §§ 11002 11004 and 40 C.F.R. part 355 (discussing reporting and notification requirements pertinent to extremely hazardous substances) and part 370 (discussing reporting and notification requirements pertinent to hazardous chemicals).

<sup>205</sup> 42 U.S.C. §§ 11002 11004 and 40 C.F.R. part 355 (discussing reporting and notification requirements pertinent to extremely hazardous substances) and part 370 (discussing reporting and notification requirements pertinent to hazardous chemicals).

<sup>206</sup> 42 U.S.C. § 11023 and 40 C.F.R. part 372.

<sup>207</sup> 42 U.S.C. § 11023 (j).

data. TRI-US provides services to citizens; environmental and public interest groups; libraries; industry; the international community; media; academia; and federal, state and local agencies.

### Internet Resources for EPCRA

- 1) **The Right-to-Know Network, (RTK NET)** located at <http://www.rtk.net>. The RTK NET contains a number of databases that provide information on the amounts, types, sources, and health impacts of chemicals that are released into the environment. In addition to databases, the RTK NET allows users to access government documents and conferences that pertain to environmental protection.<sup>208</sup>

- ◆ **Accidental Release Information Program, (ARIP)** located at [http://www.rtk.net/www/data/arip\\_gen.html](http://www.rtk.net/www/data/arip_gen.html). ARIP contains information on accidental releases of chemicals. The database allows searching by geographic region, facility, and chemical. The system supplies users with information including facility contact personnel, type of chemical released, and number or injuries at facilities.
- ◆ **Emergency Response Notification System, (ERNS)** located at [http://www.rtk.net/www/data/arip\\_gen.html](http://www.rtk.net/www/data/arip_gen.html). The ERNS database stores information on notifications of oil discharges and hazardous substances releases made to a variety of government agencies. The webpage warns that the phone calls have not been checked for accuracy and may represent incorrect information given during an event. There may also be multiple phone calls referring to the same event. When requesting a search of ERNS, you should include several pieces of information to expedite the search process and to ensure an exhaustive search of the database. The request should include the discharger organization, if available, and the street address of the site, including the county.

**Standard Reports:** These reports include the following information: the date of the release and the notification, report number, discharger organization and address, material and quantity released, the location of the release, and the cause and source of the release. Some of the fields may be left blank when information is unknown at the time of the notification or when the caller's information is protected by the Privacy Act of 1974. Users will get a report approximately two weeks after making a request.

Access to ERNS is also discussed under number five of this section.

- ◆ **RCRA Biennial Reporting System for Hazardous Waste (BRS)**, located at [http://www.rtk.net/www/data/brs\\_gen.html](http://www.rtk.net/www/data/brs_gen.html). BRS tracks the generation, shipment, and receipt of hazardous waste. Not all hazardous waste is reported in BRS, in particular wastewater treatment units. Therefore, this is not a comprehensive database regarding such hazardous wastes.

Additionally, BRS information may not be readily compatible with other sources of information on government web pages. For example, RCRA hazardous waste quantities are traditionally reported in tons (2000 pounds). Therefore, direct comparison of BRS and TRI waste quantities is difficult since TRI reports on quantities of chemical components while BRS reports on quantities of wastes (which may contain many different hazardous and non-hazardous components).

- ◆ **CERCLIS** (See section on Superfund for full description and complete listing of databases).

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<sup>208</sup> Much of the information on RTK Net is taken from the description of the programs on their webpage.

- ◆ **EPA's Civil Docket Database, (DOCKET)** located at [http://www.rtk.net/www/data/doc\\_gen.html](http://www.rtk.net/www/data/doc_gen.html). DOCKET contains records on all civil cases filed by the Department of Justice for the EPA and a partial listing of the EPA's administrative cases. It does not contain criminal cases. There are four different ways to search for information on DOCKET, which include searching by facility, area, the defendant's name, or by the name of the case filed against the defendant.
  - ◆ **Permit Compliance System (PCS)**, located at [http://www.rtk.net/www/data/pcs\\_gen.html](http://www.rtk.net/www/data/pcs_gen.html). PCS is EPA's Water Permit Compliance System database, which EPA uses to keep track of NPDES surface water permits issued under the Clean Water Act. PCS data is loaded into the system by individual states and EPA regions. Because of this, the data is of uneven quality, particularly since many states have different requirements for what must be kept track of in their water permits.
  - ◆ **Resource Conservation and Recovery Act Information System, (RCRIS)** located at [http://www.rtk.net/www/data/rcr\\_gen.html](http://www.rtk.net/www/data/rcr_gen.html). EPA uses RCRIS track transporters, the status of disposal facilities, compliance with Federal and State regulations, and cleanup activities. EPA also uses of the data for program management, regulation development, waste handler inventorying, tracking corrective actions, regulation enforcement, facility management planning, and environmental program progress assessment.
- 2) **Toxic Release Inventory (TRI)** (please see the Pollution Prevent Act.), located at <http://www.epa.gov/opptintr/tri/index.html> or <http://www.epa.gov/opptintr/tri>. TRI is a searchable database that contains information on the release of specific chemicals above a threshold amount from certain facilities. The EPA publishes a "TRI Information" kit (document control number 749-K-98-001) that is available at:

U.S. EPA National Center for Environmental Publications and Information  
P.O. Box 42419  
P: (800) 490-9189  
F: (513) 489-8695 or (513) 489-8692

Users can also order EPA information on TRI from the TRI Hotline (1-800-535-0202).

On Line order: <http://www.epa.gov/ncepihom>.

Users may search the TRI database by generating an area, facility, industry, parent, or offsite transfer report. The area report gives TRI data for specific areas. The user can generate area reports by entering in the zip code, city, county, state, year, and level of detail (summary, low, medium, or high). Users can also specify particular types of chemicals. In addition, users may request the database sort the results by facility, release, release and transfer, total facility production related waste, or by state and then facility.

Users have the same options with the facility reports, although they can also specify a TRI facility ID number. To generate a facility report, the user must request information on specific types of industries. To generate Parent Reports, users must enter in either the parent company's name or a 9-digit Dun & Bradstreet number that uniquely identifies all companies. The offsite report is more complicated. In addition to the usual information, users must enter the offsite facility's name, type of transfer, and the specific type of treatment that the waste underwent.

In addition to generating reports, users may also access agency guidance documents on TRI, a listing of chemicals regulated by TRI, state and international TRI programs, and other information pertinent to TRI.

- 3) The EPA maintains **TRI-US**, which provides search assistance for the TRI, training, and demonstrations for both the TRI CD-ROM and the National Library of Medicine/TOXNET databases. Individuals can contact the TRI-US by telephone, fax, mail, or electronic mail as described below:

U.S. Environmental Protection Agency  
TRI User Support (TRI-US)  
Office of Pollution Prevention & Toxics (Mail Code: 7407)  
401 M Street, SW  
Washington, D.C. 20460

Telephone: 202-260-1531  
Fax: 202-401-2347  
E-mail: [tri.us@epamail.epa.gov](mailto:tri.us@epamail.epa.gov)

Service is available 8:00 am - 4:30 p.m., EST, Mon. – Fri. (except federal holidays).

- 4) **Toxic Substances Control Act Test Submissions (TSCATS)**, located on RTKNET at [http://www.rtk.net/www/data/tsc\\_all.html](http://www.rtk.net/www/data/tsc_all.html), or individuals can order documents from the National Technical Information Service at 1-800-553-NTIS. (Please see the section on the Toxic Substances Control Act for further information.)
- 5) **Emergency Response and Notification System**, located at <http://www.epa.gov/ERNS>. There are many ways for a user to search the ERNS system. Individuals can submit general information requests via email located on the page or to:

ERNS Manager  
U.S. EPA  
MC5203G  
401 M Street, SW  
Washington, DC 20460

However, depending on the status of the requester (commercial, nonprofit, school, etc.) the EPA may charge a fee for any information sent over a certain number of pages. Alternatively, a person can download the ERNS for free. The database information is also available on magnetic data tapes from the National Technical Information Service (NTIS) at (800) 553-6847.

- 6) **Book on EPCRA**. The EPA has also published a book that informs the public about EPCRA, titled, “Chemicals in Your Community, A Guide to the Emergency Planning and Community Right-to-Know Act.” A person can either download the document or get the address to order a copy of it from the EPA at the following Internet address <http://www.epa.gov/swerrims/outreach.htm>.
- 7) **Integrated Risk Information System (IRIS)**, located at <http://www.epa.gov/docs/ngispgm3/iris/index.html>. IRIS is a database of human health effects that may result from exposure to chemicals. IRIS’s webpage contains a “Glossary of Risk Assessment-Related Terms” and the list of “Acronyms and Abbreviations” for more information explaining terms used in the IRIS reports. IRIS reports contain descriptive and quantitative information on a variety of chemicals. The information contained in the reports includes oral reference doses and inhalation reference concentrations (RfDs and RfCs) for chronic non-carcinogenic health effects and hazard identification and measures of risk for carcinogenic effects. Unfortunately, much of this information is extremely technical and not readily understandable by nonscientists.
- 8) Users can search for an IRIS report by locating the chemical’s name on an index page. While much of

the information is very technical, people can easily get help on understanding the information through contacting the EPA at the numbers and address listed below. The information contained on IRIS is limited by IRIS's purpose, which is to provide hazard identification and dose-response assessment information on chemicals, but not assessments on the danger posed by individual instances of exposure for humans.

The EPA maintains phone and fax lines to answer questions that people may have about IRIS. EPA's Risk Information Hotline at

P: 513-569-7254

F: 513-569-7159

Email at [RIH.IRIS@epamail.epa.gov](mailto:RIH.IRIS@epamail.epa.gov).

- 9) **Toxicological Review**, located at <http://www.epa.gov/docs/ngispgm3/iris/toxreviews/index.html>. The webpage also has a list of Toxicological Review support documents and links to other webpages that contain information on other environmental health related issues.

## POLLUTION PREVENTION ACT OF 1990

### Summary of the law

In passing the Pollution Prevention Act of 1990, (PPA) Congress declared that it is a national policy to reduce pollution whenever feasible.<sup>209</sup> To accomplish this goal, the PPA is based on four basic principles. First, as stated above, businesses should prevent or reduce pollution whenever feasible.<sup>210</sup> Second, when businesses cannot prevent pollution, they should recycle it in an environmentally safe manner whenever feasible.<sup>211</sup> Third, pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible.<sup>212</sup> Fourth, the disposal or release of pollution into the environment should be used only as a last resort and should be conducted in an environmentally safe manner.<sup>213</sup>

The PPA defines "pollution prevention" to mean "source reduction," which includes practices that reduce or eliminate pollutants by increasing efficiency or protecting natural resources.<sup>214</sup> The PPA defines "source reduction" as a reduction in the amount of wastes produced or "otherwise released into the environment" and a reduction in the hazard to public health and the environment posed by releases of wastes into the environment.<sup>215</sup> The PPA mandates that the EPA establish standards for pollution prevention, coordinate prevention activities, review the agency's rules to ensure they support prevention goals, and assist industry in developing the means to meet the goals of the act.<sup>216</sup>

### Internet Resources for PPA

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<sup>209</sup> 42 U.S.C. § 13101 (b).

<sup>210</sup> 42 U.S.C. § 13101 (b).

<sup>211</sup> 42 U.S.C. § 13101 (b).

<sup>212</sup> 42 U.S.C. § 13101 (b).

<sup>213</sup> 42 U.S.C. § 13101 (b).

<sup>214</sup> US EPA, F. Henry Habicht II, Deputy Administrator, Memorandum on EPA's Definition of "Pollution Prevention," May 28, 1992.

<sup>215</sup> 42 U.S.C. § 13102 (5)(A).

<sup>216</sup> 42 U.S.C. § 13103 (b).

- 1) **Main Website:** The EPA's main webpage devoted to pollution prevention is located at <http://www.epa.gov/p2>. The link to "Projects and Programs," takes the user to a listing of sites on EPA pollution prevention programs.
- 2) **Office of Pollution Prevention's Toxic Release Inventory, (TRI),** located at <http://www.epa.gov/opptintr/tri>. This website has links to numerous other sites devoted to pollution prevention information and rulemakings.
- 3) **Pollution Prevention Information Clearinghouse (PPIC):** located at <http://www.epa.gov/opptintr/library/libppic.htm>. PPIC gives the user access to pollution prevention training materials, conference proceedings, periodicals, and federal and state government publications. People can access the PPIC online through the Online Library System (OLS) or at the Office of Pollution Prevention Technology (OPPT) Chemical Library. OLS is accessible via telenet at [epaibm.rtpnc.epa.gov](http://epaibm.rtpnc.epa.gov). If the user encounters any difficulties, they can call the EPA's National Computer Center for technical system assistance at 1-800-334-2405 or (919) 541-7862 (outside the U.S.).

This webpage contains links to three other databases:

- ◆ **Pollution Prevention Publications:** located at <http://www.epa.gov/opptintr/library/ppicdist.htm>. This webpage contains reports and fact sheets, case studies, and other information on the issue of source reduction and pollution prevention that are otherwise available from the Clearinghouse. Users can download some documents or users can order up to 10 paper copies of the documents listed on the page at:

U.S. Environmental Protection Agency  
Pollution Prevention Information Clearinghouse (PPIC)  
MC 7407  
401 M Street, SW  
Washington, DC 20460

P: 202-260-1023,  
F: 202-260-4659

Email: [ppic@epa.gov](mailto:ppic@epa.gov)

- ◆ **New Documents From PPIC,** located at <http://www.epa.gov/opptintr/library/ppicnew.htm>. This page supplies users with information on new documents published by PPIC. Users can order up to 10 of the documents listed on the page by submitting their request directly to the EPA using the webpage's ordering system.
- ◆ **Conference List,** located at <http://www.epa.gov/opptintr/library/ppicconf.htm>. The Conference List webpage provides contact people, with names and email address, and a calendar of pollution prevention conferences, workshops, and training seminars.
- ◆ **Common Sense Initiative, (CSI)** located at <http://www.epa.gov/commonsense/CSIApproach.html>. As part of its pollution prevention initiative, the EPA has started the CSI, which seeks to address environmental management concerns by industrial sectors rather than by environmental medium. The six pilot industries include automobile, manufacturing, computer and electronics, iron and steel: metal finishing, petroleum refining, and printing. There are also six sector subcommittees with representatives from industry, environmental justice organizations, labor organizations,

environmental organization, and federal, state, and local governments.

People who are interested in receiving information on the CSI can email a request for the information on the webpage. Alternatively, a party can send or fax in a request for information to the address or fax number below.

U.S. Environmental Protection Agency  
Common Sense Initiative Program Staff  
MC 1802  
401 M St., SW  
Washington, DC 20460  
FAX (202) 401-2474

- 4) **Projects and Programs for the Office of Pollution Prevention**, located at <http://www.epa.gov/opptintr>. This EPA site takes the user to an extensive listing of EPA efforts at increasing the amount of information and understanding of chemicals. This page provides links to programs and information on asbestos, Chemical Right-to-Know (ChemRTK), Chemical Testing and Information Gathering, Community-Based Environmental Programs, Consumer Labeling Initiative (CLI), Design for the Environment (DfE), Endocrine Disruptors, Environmental Accounting Program, Existing Chemicals, International Activities, Lead Programs, Persistent Bioaccumulative Toxic Pollutants (PBT's), TRI and other pages.

- ◆ **Community-Based Environmental Programs**, located at <http://www.epa.gov/opptintr/cbep> The Office of Pollution Prevention and Toxics (OPPT) brings together government, citizens and other stakeholders together to address concerns around environmental problems.

**Reference Material:** The page contains two documents that are meant to facilitate community groups that organize to solve environmental problems. The First document is “Act Locally! A Catalog of Activities and Products Supported by EPA's Office of Prevention, Pesticides, and Toxic Substances.” This document discusses OPPTS’s community based environmental protection activities. The second publication is titled, “An Internet Guide to Promote Concern for the Environment and to Generate Support for Community-Based Involvement.” This document contains a list of Internet sites that discuss strategies for local increasing awareness of environment problems and generating local support for environmental activities. The guide is a tool to help groups use Internet resources and ideas in addressing environmental problems.

- ◆ **Concerned Citizens**, located at <http://www.epa.gov/opptintr/opptcon.htm>. This site contains information on toxic dangers in the home, such as lead, a description of an EPA initiative designed to ensure manufacturers consistently label consumer goods that contain toxic constituents, and information on workplace exposures to toxic substances.
- ◆ **Databases and Software**, located at <http://www.epa.gov/opptintr/opptdb.htm>. This webpage contains six different databases on chemicals, chemical releases, environmental accounting, high volume production chemicals, pollution prevention, and regulatory information. The first databases is the 8(e) Triage Chemical Studies Database, which has scientific studies on the health and environmental effects of toxic chemicals. The second database is titled the “Screening Information System/LAN.” (SIS/L) SIS/L allows users to search for information on chemicals in a variety of databases, information systems, and document collections that are maintained by federal agencies. Users may access information on a chemical’s production and use; release, exposure, and monitoring results; toxicity and hazard; and risk. This database is not directly accessible, although the “Link to More Information” provides directions on accessing the database.

The databases on chemical releases describes the international equivalent of the TRI, a future database on the release and transfer of pollutants in all of North America, and a database that will estimate surface water concentrations of pollutants within the habitat of endangered species, and to TRI. The database on environmental accounting describes successful examples of environmental accounting projects and a link to a discussion group on such projects.

There is also a link to a webpage concerned with high volume production chemicals (chemicals manufactured or imported into the United States in amounts equal to or greater than one million pounds per year). The database contains baseline toxicity information for these chemicals that will enable the EPA to make informed judgements on risks posed by the use of high volume production chemicals. Additionally, users may access pollution prevention databases that discuss successful efforts at preventing pollution while reducing costs and articles that discuss methods of pollution prevention. There are also links to a variety of databases that facilitate industry's compliance with environmental regulations.

- 5) **Publications**, located at <http://www.epa.gov/opptintr/opptpub.htm>. This site contains information on federal notices of agency actions, annual agency reports, fact sheets on chemicals and EPA programs, and other information. The page also allows users to search for information by type of chemical or area of interest, such as citizen, regulated community, or environmental professional.
- 6) **Other Information Resources**, located at <http://www.epa.gov/opptintr/opptloc.htm>. This site allows the users to access on-line libraries and information clearinghouses.
- 7) **Index Clearinghouses and Hotlines**, located at <http://www.epa.gov/epahome/hotline.htm>. This link provides users with a complete listing of EPA clearinghouses of information and hotlines that give information on EPA programs.

## NATIONAL FOREST MANAGEMENT ACT (NFMA)

### Summary of the law

With passage of the National Forest Management Act,<sup>217</sup> (NFMA) Congress based America's use of national forest resources on an intensive land use planning process.<sup>218</sup> Under this process the United States Forest Service (USFS) must inventory resources on federal lands and assess the current and potential demand and uses of such resources.<sup>219</sup> This inventory must be kept current to reflect new and emerging resource uses and values.<sup>220</sup> NFMA also requires that agencies manage federal lands consistent with multiple use and sustained yield principles, as enunciated in the Multiple-Use Sustained-Yield Act of 1960.<sup>221</sup> (MUSYA)

Under MUSYA,<sup>222</sup> Congress declared that the national forests are established and administered for "outdoor recreation, range, timber, watershed, and wildlife and fish purposes."<sup>223</sup> MUSYA's provisions are supplemental to the purposes for which Congress established individual national forest.<sup>224</sup> Congress declared that these forests

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<sup>217</sup> 16 U.S.C. § 1600 et. seq

<sup>218</sup> 16 U.S.C. §§ 1601, and 1603-04.

<sup>219</sup> 16 U.S.C. § 1601 (a) and (c).

<sup>220</sup> 16 U.S.C. § 1603.

<sup>221</sup> 16 U.S.C. § 1604 (g).

<sup>222</sup> 16 U.S.C. §§ 528-531

<sup>223</sup> 16 U.S.C. § 528.

<sup>224</sup> 16 U.S.C. § 528

were established to “improve and protect the forest within (their) boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.”<sup>225</sup> Taken together, these standards demonstrate that the USFS must give ecological considerations great weight when inventorying resources and preparing NFMA plans.

Under NFMA, the USFS must prepare national forest management plans based on a comprehensive inventory of forest resources.<sup>226</sup> The USFS must give the public an opportunity to comment on these plans prior to their implementation.<sup>227</sup> These plans must be amended at least every fifteen years or when there is a significant change in circumstances within the national forest.<sup>228</sup>

NFMA must describe how the agency will manage national forests resources, consistent with multiple use and sustained yield principles.<sup>229</sup> These plans must be periodically updated to ensure they adequately reflect the resources contained on the federal lands and to modify management actions consistent with NFMA’s goals.<sup>230</sup> Importantly, the USFS must consider the environmental impacts of planned timber harvest operations within these plans.<sup>231</sup>

When developing and maintaining a NFMA plan, the USFS must use a “systematic interdisciplinary approach” to achieve an “integrated consideration” of the physical, biological, economic, other sciences.<sup>232</sup> The USFS must also coordinate various uses of the national forests, such as development, timber harvesting, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness values.<sup>233</sup> The USFS must weigh the value of these uses against the appropriate levels of resource protection. The USFS should achieve this balance in their site-specific actions (such as timber harvesting, road building, and wildlife protection) through the use of “standards and guidelines.”<sup>234</sup>

These standards and guidelines proscribe how and where activities can be carried out within a national forest.<sup>235</sup> They must be an integration of economic and environmental considerations, including the systems of silviculture that it will use and the level of protection given to forest resources such as range, timber, watershed, wildlife, and fish values.<sup>236</sup> The standards and guidelines must describe the suitability of lands for a given action, such as timber harvesting.<sup>237</sup> They must also provide for a diversity of plant and animal communities by considering the suitability and capability of national forest lands to meet multiple-use objectives.<sup>238</sup> In addition, the USFS must evaluate diversity, “in terms of its prior and present condition,” with “quantitative data.”<sup>239</sup>

The standards and guidelines must limit timber harvest to areas of land where soil, slope, or other watershed conditions will not be irreversibly damaged, trees will be adequately restocked within five years after harvest, and water bodies, wildlife, and fish habitat will be protected.<sup>240</sup> The USFS can not select any harvesting methods

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<sup>225</sup> 16 U.S.C. § 475.

<sup>226</sup> 16 U.S.C. § 1604 (a).

<sup>227</sup> 16 U.S.C. § 1604 (d).

<sup>228</sup> 16 U.S.C. § 1604 (f)(5).

<sup>229</sup> 16 U.S.C. §§ 1604 (e), (f), and 1607.

<sup>230</sup> 16 U.S.C. § 1604 (f)(5).

<sup>231</sup> 16 U.S.C. § 1611.

<sup>232</sup> 16 U.S.C. § 1604 (b).

<sup>233</sup> 16 U.S.C. § 1604 (e).

<sup>234</sup> 16 U.S.C. § 1604 (g).

<sup>235</sup> 16 U.S.C. § 1604 (g).

<sup>236</sup> 16 U.S.C. § 1604 (3)(A).

<sup>237</sup> 16 U.S.C. § 1604 (g)(2). The suitability of land for a particular purpose must be based upon an inventory of the land that was conducted using an interdisciplinary team of experts. 16 U.S.C. § 1604 (f)(3).

<sup>238</sup> 16 U.S.C. § 1604 (3)(B).

<sup>239</sup> 36 U.S.C. § 219.26.

<sup>240</sup> 16 U.S.C. § 1604 (3)(E)(i)-(iii), 36 C.F.R. § 219.27 (a)(1)-(8), (b)(2), (3), (5), (6).

because it will give the greatest dollar return or the greatest unit output.<sup>241</sup> Rather, the agency's harvesting method must be based upon a weighing of different values and considerations as described above. The USFS may use clear cut harvesting, and similar harvesting techniques, where it meets the objectives of the land use plan and where the harvesting is protective of "soil, watershed, fish, wildlife, recreation, and esthetic resources and the regeneration of timber resources."<sup>242</sup> The USFS has also established limitations on the size of patches that timber harvest operations can create when using methods such as clear-cutting.<sup>243</sup>

NFMA also requires that federal agencies establish "allowable sale" quantities of timber, which are yearly targets for that amount of timber to be harvested.<sup>244</sup> The allowable sale quantity for each national forest must be equal to or less than the quantity of timber that can be removed from the national forest annually in perpetuity on a sustained-yield basis.<sup>245</sup> While the USFS can depart from this target, it must do so consistent within multiple-use sustained management objectives of the national forest management plans and after allowing the public to comment on the deviation.<sup>246</sup> NFMA gives the USFS wide latitude in conducting salvage timber harvest (the removal of trees that are dead, dying, or damaged) operations.<sup>247</sup>

The USFS assess the health and distribution of animal species to determine whether the USFS is striking the correct balance between the use and protection of forest resources. Under NFMA, the USFS must manage fish and wildlife habitat to "maintain viable populations of existing native and desired non-native vertebrate species."<sup>248</sup> A "viable population" is defined as a population of animals that have "the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed throughout" a national forest.<sup>249</sup> To insure that viable populations are maintained, habitat for the population "must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others" in the national forest.<sup>250</sup> Additionally, to gauge the impacts that management activities have on forest values such as wildlife and fish, the USFS monitors the health and distribution of certain species, called "indicator species."<sup>251</sup>

### Internet Resources for NFMA

The USFS has two webpages. Their new webpage is located at [www.fs.fed.us](http://www.fs.fed.us). Their old webpage, which still contains a substantial amount of information, is located at [www.fs.fed.us/oldpage.html](http://www.fs.fed.us/oldpage.html). This site contains an easy to use index that provides access to a variety of information. Likewise, on the new webpage, there is an easy to use site index for locating information contained on USFS webpages. Both indexes contain links to information on NEPA, recreation, the impacts of fire, timber harvesting, forest health, research, publications, and much more.

Both indexes also have a link to USFS databases. Some of these databases are discussed below.

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<sup>241</sup> 16 U.S.C. § 1604 (3)(iv), 36 C.F.R. § 219.27 (b)(3).

<sup>242</sup> 16 U.S.C. § 1604 (3)(F). (The same provision states that this type of harvesting must be the optimum method of harvesting to meet the objectives of the forest plan, reviewed by an interdisciplinary team for environmental, esthetic, and economic impacts, consistency with multiple use principles, and subject to certain acreage limitation.), 36 C.F.R. § 219.14 (c).

<sup>243</sup> 36 C.F.R. § 219.27 (d).

<sup>244</sup> 16 U.S.C. § 1611 (a).

<sup>245</sup> 16 U.S.C. § 1611 (a).

<sup>246</sup> 16 U.S.C. § 1611 (a).

<sup>247</sup> 16 U.S.C. § 1611 (b).

<sup>248</sup> 36 C.F.R. § 219.19.

<sup>249</sup> 36 C.F.R. § 219.19.

<sup>250</sup> 36 C.F.R. § 219.19.

<sup>251</sup> 36 C.F.R. § 219.19 (a)(1).

- 1) **Databases**, located at <http://www.fs.fed.us/database>. The following is a discussion on some of the databases that users may access on this website. This webpage contains a variety of other databases that provide information relevant to the land use planning process. Most of it is highly technical and, consequently, most readily used by agency personnel or scientists.
  - ◆ **Fire Effects Information System**, (FEIS) located at [www.fs.fed.us/database/feis/plants/forb/antmic/value\\_and\\_use.html](http://www.fs.fed.us/database/feis/plants/forb/antmic/value_and_use.html). This FEIS database provides information regarding fire's effect on plants, animals, and their habitats. FEIS also contains general descriptions of a species' distribution, habitat requirements, occurrence, and use. This page provides a good source of information on a number of species. However, some of the databases have only a limited number of species or a limited amount of information on the species.
  - ◆ **Wildland Fire Assessment System**, located at [www.fs.fed.us/land/wfas](http://www.fs.fed.us/land/wfas). This site contains maps of selected fire weather and fire danger components throughout the United States. This database contains a large number of maps that graphically demonstrate an area's susceptibility to fire. It also has highly technical information on numerous aspects of the fire regime for the United States. This site is most helpful to agency personnel who must assess an area's propensity for catching fire or who need to understand specialized aspects of fire and its effects on the environment.
  - ◆ **Fire Management Tools**, located at <http://www.fire.org/perl/tools.cgi>. This database provides agency personnel with access to various computer systems that are used in fighting forest fires. This database has modeling software that can ascertain how a specific fire may react under certain environmental factors, such as fuels, topography, and whether. There are also databases used to produce fire fighting information, curriculum on understanding fire regimes, and other tools to facilitate agency efforts at fire suppression.
  - ◆ **Forest Inventory and Analysis National Database Retrieval System**, located at [www.srsfia.usfs.msstate.edu/scripts/ew.htm](http://www.srsfia.usfs.msstate.edu/scripts/ew.htm). This database provides information on the extent, condition, and volume of timber, growth, and depletions of the Nation's forestland. This database is useful for USFS personnel who plan timber-harvesting activities.
  - ◆ **Dendrome Forest Tree Genome Database**, located at <http://dendrome.ucdavis.edu>. It is a resource for the study of tree genomes. Dendrome is a collection of forest tree genome databases and other forest genetic information resources for forest geneticists. It is part of a larger collaborative effort to construct genome databases for major crop and forest species. The primary genome database of Dendrome is called TreeGenes. It includes genetic maps, DNA sequencing, germplasm, and other related information on species of trees. This webpage contains highly technical information that is most relevant to scientists.
- 2) **Software Library**: The USFS has a library of software available on line at <http://www.fs.fed.us/links/software.shtml>. The software is useful for the land use planning process. Most of this information is very technical and not readily useable by the public.
- 3) **National Forest links**, located at <http://www.fs.fed.us/links/forests.shtml>. Users can go directly to national forest websites by using the USFS's map based indexing system.
- 4) **NEPA, NFMA, NFMA Information**, located at <http://www.fs.fed.us/forum/nepa>. The USFS has a site devoted to the above mentioned statutes. The site contains a brief description of how these three statutes apply to USFS management actions, and how citizens can appeal USFS land management decisions.

## FEDERAL LAND POLICY MANAGEMENT ACT (FLPMA)

### Summary of the law

When Congress passed the Federal Land Policy Management Act,<sup>252</sup> (FLPMA) the legislature established a new multi-faceted national policy for the management of all federal lands.<sup>253</sup> This new policy is based on federal agencies using an intensive land use planning process to determine how federal lands could best be managed for the benefit the entire nation. Under FLPMA, federal land management agencies accomplish this goal by balancing a variety of factors when deciding how to best protect, preserve, or utilize public lands.<sup>254</sup> Many provisions of FLMPA apply to the USFS management of public lands. However, for the purposes of this guide, the Bureau of Land Management (BLM) is considered the implementing agency.

Prior to drafting a land use plan, and on a continuing basis thereafter, all federal land management agencies “must inventory all public lands and their resource and other values [], giving priority to areas of critical environmental concern.”<sup>255</sup> Federal land management agencies must develop land use plan for specified areas of federal land.<sup>256</sup> These plans must be prepared and revised with extensive public involvement.<sup>257</sup>

When developing and revising these plans, the federal agency must use multiple use<sup>258</sup> and sustained yield principles.<sup>259</sup> In addition, they must use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences and provide for compliance with applicable pollution control laws, among other factors.<sup>260</sup> FLPMA also mandates that federal land managers review all prior land classifications during this planning process, and it allows them to modify or terminate such classifications consistent with the land use plans.<sup>261</sup> The Bureau of Land Management has detailed regulations that implement this land use planning process.<sup>262</sup>

FLMPA demands extensive public participation throughout the land use planning process.<sup>263</sup> For example, FLMPA requires the BLM to “establish comprehensive rules and regulations (for managing public lands) after considering the views of the general public.”<sup>264</sup> The BLM must also provide for public involvement when developing, revising, or maintaining land use plans or programs.<sup>265</sup> As discussed in the BML’s regulations

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<sup>252</sup> 43 U.S.C. § 1701 et seq.

<sup>253</sup> 43 U.S.C. § 1701 (a)(1)-(13).

<sup>254</sup> 43 U.S.C. §§ 1701 (8) (The factors include protecting the land’s “quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; [] where appropriate, (preserving and protecting) certain public lands in their natural condition; [] (providing) food and habitat for fish and wildlife and domestic animals; and [] (providing) for outdoor recreation and human occupancy and use.”); 43 U.S.C. § 1732 (a) (requiring the Secretary to “manage the public lands under the principles of multiple use and sustained yield” as defined by section 1712); 1712 (refers to “principles of multiple use and sustained yield” as defined by FLPMA and “other applicable law”)

<sup>255</sup> 43 U.S.C. § 1711.

<sup>256</sup> 43 U.S.C. § 1712.

<sup>257</sup> 43 U.S.C. § 1712 (a), (f), and 43 C.F.R. § 1610.2 (“the public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments, and related guidance.”) In addition, the preparation of land management plans under FLMPA requires the drafting of an environmental impact statement under the National Environmental Policy Act. 43 C.F.R. § 1600.0-6.

<sup>258</sup> 43 U.S.C. § 1702 (c) (defines “multiple use”).

<sup>259</sup> 43 U.S.C. § 1701 (h) (defines “sustain yeild”).

<sup>260</sup> 43 U.S.C. § 1702 (c).

<sup>261</sup> 43 U.S.C. § 1712 (d).

<sup>262</sup> 43 C.F.R. part 1610.

<sup>263</sup> 43 U.S.C. § 1712 (a).

<sup>264</sup> 43 U.S.C. § 1701 (a).

<sup>265</sup> 43 U.S.C. § 1712 (a), (f).

governing the public involvement in the land use planning process, the NEPA process supplies the main avenue for public involvement in this process.<sup>266</sup>

FLMPA has a variety of other provisions. For example, it governs the withdrawal<sup>267</sup> of public lands<sup>268</sup> by federal agencies. FLMPA also requires that federal land management agencies review all prior land withdrawals to determine if the withdrawal's original purpose is still relevant, and therefore merits an extension.<sup>269</sup> In addition, federal agencies must hold public hearing whenever they make a new withdrawal.<sup>270</sup>

FLPMA established procedures for the Secretary to follow when exchanging public lands or interests in public lands.<sup>271</sup> These provisions allow the Secretary to make such exchanges only when the Secretary determines they are in the "public interest."<sup>272</sup> FLPMA contains a range of factors that the Secretary must consider when making this determination.<sup>273</sup> FLPMA also requires that the land received by the government have equal value to the public land for which it was exchanged.<sup>274</sup> If the land received by the government is of less value than the exchanged public land, then the values must be equalized through the payment of money, up to 25% of the value of exchanged public land.<sup>275</sup>

FLPMA also contains provisions that favor the retention of federal lands, rather than their sale.<sup>276</sup> There are three instances in which the Secretary can sell public lands. First, the Secretary can sell such land if he determines that the land is "difficult and uneconomic to manage as" public land and "not suitable for management by another Federal department or agency."<sup>277</sup> The Secretary can sell such land if the land was "acquired for a specific purpose and (it) is not longer required for that or any other Federal purpose."<sup>278</sup> Alternatively, the Secretary can sell a parcel of public land if that action is in the "public interests."<sup>279</sup>

FLPMA also revised the administration of grazing on federal lands.<sup>280</sup> Grazing regulation under FLPMA consist of the Secretary issuing grazing leases and permits to ranchers.<sup>281</sup> Permits and leases should be issued for periods of ten years, unless the Secretary determines that a shorter period of time is necessary or the terms and conditions of the permit or lease allow for its modification, suspension, or termination.<sup>282</sup>

The Secretary may issue grazing permits or leases pursuant to allotment management plans.<sup>283</sup> These plans must be specific to the range conditions of the area to which the plan applies.<sup>284</sup> These plans must be periodically

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<sup>266</sup> 43 C.F.R. § 1600.2.

<sup>267</sup> 43 U.S.C. § 1702 (j) (Defines "withdrawal" to mean "withholding an area of Federal land from settlement, sale, location, or entry, under some of all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.")

<sup>268</sup> 43 U.S.C. § 1714.

<sup>269</sup> 43 U.S.C. § 1714 (f).

<sup>270</sup> 43 U.S.C. § 1714 (h).

<sup>271</sup> 43 U.S.C. § 1716 and 43 C.F.R. §§ 2200 (General provisions governing exchanges); 2210 (provisions governing state exchanges); 2240 (provisions governing national park system exchanges); 2250 (provisions governing wildlife refuge exchanges); 2270 (provisions governing miscellaneous exchanges).

<sup>272</sup> 43 U.S.C. § 1716 (a).

<sup>273</sup> 43 U.S.C. § 1716 (a).

<sup>274</sup> 43 U.S.C. § 1716 (b).

<sup>275</sup> 43 U.S.C. § 1716 (b). These requirements may only be waived in a limited number of circumstances. 43 U.S.C. § 1716 (b).

<sup>276</sup> 43 U.S.C. § 1713 and 43 C.F.R. §§ 2520-2780 (containing provisions for the disposition of various types of land).

<sup>277</sup> 43 U.S.C. § 1713 (a)(1).

<sup>278</sup> 43 U.S.C. § 1713 (a)(2).

<sup>279</sup> 43 U.S.C. § 1713 (a)(3).

<sup>280</sup> 43 U.S.C. §§ 1751-1753 and 43 C.F.R. §§ 4100-4180.

<sup>281</sup> 43 U.S.C. § 1752 (a).

<sup>282</sup> 43 U.S.C. § 1752 (a)-(b).

<sup>283</sup> 43 U.S.C. § 1752 (d).

<sup>284</sup> 43 U.S.C. § 1752 (d).

reviewed to determine whether the range conditions are improving or whether the Secretary could better manage the range without such a plan.<sup>285</sup> Allotment management plans, which can include private lands, must be prepared with public involvement.<sup>286</sup>

When the Secretary allows grazing on public lands under an allotment management plan, the plan must include terms and conditions that assure rangeland ecosystems can properly function with grazing.<sup>287</sup> To gauge grazing's compatibility with rangeland ecosystems, FLPMA requires grazing to occur only where state water quality standards are being achieved or making significant progress towards achievement and healthy watershed values, ecological processes, and habitats are being achieved or making significant progress toward achievement.<sup>288</sup> Based upon listed ecological criteria, the BLM must establish standards and guidelines that are meant to ensure grazing is compatible with the above requirements.<sup>289</sup> The BLM must involve the public in promulgating and revising these standards and guidelines.<sup>290</sup>

### Internet Resources for FLPMA

- 1) **BLM Webpage**, located at [www.blm.gov](http://www.blm.gov). The BLM's webpage contains a limited amount of information on the agency's program, particularly given its rather expansive mandate.
  - ◆ **Statistics**, located at <http://www.blm.gov/natacq/pls97>. The BLM maintains a site that contains statistics relevant to public lands. The statistics include general information on the resources, health, commercial uses, recreational use, preservation, and public health and safety investments made by the BLM on public lands.
  - ◆ **Points of Interest**, located at <http://www.blm.gov/nhp/map/natmap.html>. Users can get information BLM actions within particular states by accessing the agency's "National Map of BLM Points of Interest."
  - ◆ **Directory**, located at <http://www.blm.gov/nhp/directory.html>. This webpage links users to BLM Offices and personnel.
  - ◆ **Other Offices**, located at <http://www.blm.gov/nhp/OtherOffices.html>. Users can access information on specific BLM program offices through this webpage. One such webpage, located at <http://www.blm.gov/nhp/BLMinfo/ReadingRoom/InfoAccessCtr.html>, lists the locations, telephone numbers, and contact personnel for BLM reading rooms. These reading rooms contain information on BLM's public land management decisions and programs.
  - ◆ **State Offices**, located at <http://www.blm.gov/nhp/StateOffices.html>. This webpage lists State BLM offices. These offices also contain information on local BLM land use decisions and programs.
- 2) **General Land Office**, located at <http://www.gloreords.blm.gov>. The BLM's main webpage has a link to the

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<sup>285</sup> 43 U.S.C. § 1752 (d).

<sup>286</sup> 43 C.F.R. § 4120.2 (b)-(c).

<sup>287</sup> 43 C.F.R. § 4120.2(a)(1) (referencing subpart 4180), 4180 (subpart titled "Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration).

<sup>288</sup> 43 C.F.R. § 4180.1 (a)-(d).

<sup>289</sup> 43 C.F.R. § 4180.2 (a)-(b) (Standards include such factors as watershed function, nutrient cycling, water quality, habitat for species protected under the ESA, and habitat quality for native plants and animals. Guidelines include maintaining, restoring, or achieving healthy riparian ecosystems, sound soil structure, adequate habitat for species protected by the ESA, and water quality standards.)

<sup>290</sup> 43 C.F.R. § 4180.2 (b).

General Land Office’s searchable database on federal land grants. Users can search for patents by entering in the zip code of the patented land. Currently, the database only contains patents issued in the eastern United States, between 1820 and 1908. However, this is limited to a select number of eastern states and only certain types of patents.

## ENDANGERED SPECIES ACT (ESA)

### Summary of the law

The Endangered Species Act<sup>291</sup> (ESA) is the nation’s premier law for the protection of biological diversity. Congress passed the ESA to conserve ecosystems that endangered and threatened species depend on for their survival, to provide a program for the conservation of such species, and to achieve the purpose of international wildlife treaties.<sup>292</sup> To attain these goals, the ESA regulates federal, state, and private entities when their actions may impact species that are protected by the ESA.<sup>293</sup>

The ESA has five major provisions that attempt to achieve the above goals. First, it establishes a process of listing species that are endangered,<sup>294</sup> threatened,<sup>295</sup> or that look like an endangered or threatened species.<sup>296</sup> This listing process is the initial step that provides an animal with federally provided protections. This listing process is subject to public notice and comment procedures.<sup>297</sup>

Second, the act prohibits any “person”<sup>298</sup> from taking, importing, exporting, possessing, selling, delivering, or transporting any individual of a species that is listed under the ESA.<sup>299</sup> The ESA broadly defines “take” to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any prohibited activity.”<sup>300</sup> These two provisions provide all listed species with broad protection from any type of action that could harm either individual members of a listed species or the entire species.

The third major provision of the ESA requires that federal agencies enter into a consultation process whenever they undertake any action that may impact a listed species.<sup>301</sup> If a federal agency has reason to believe that a protected species may be present in an area that will be impacted by the agency’s actions, the agency must prepare a “Biological Assessment” (BA).<sup>302</sup> This BA is the beginning of a longer consultation process.<sup>303</sup> During this process, the federal agency must consult with other federal agencies that have expertise in protecting listed

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<sup>291</sup> 16 U.S.C. § 1531 et. seq.

<sup>292</sup> 16 U.S.C. § 1531 (b).

<sup>293</sup> 16 U.S.C. §§ 1538 (a) (prohibits any person from “taking” a species protected by the ESA) and 1536 (this section institutes an intricate system of consultation between agencies undertaking actions that may impact species protected by the ESA and other agencies who suggest or require alternative actions to mitigate any adverse impacts on such species).

<sup>294</sup> 16 U.S.C. § 1532 (6) (The ESA defines “endangered species” to mean “any species which is in danger of extinction throughout all or a significant portion of its range.”).

<sup>295</sup> 16 U.S.C. § 1532 (20) (The ESA defines “threatened species” to mean “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”).

<sup>296</sup> 16 U.S.C. § 1533 (e).

<sup>297</sup> 16 U.S.C. § 1533 (b)(4).

<sup>298</sup> 16 U.S.C. § 1532 (13). The ESA broadly defines “person” to include private individuals, corporations, and federal, and state governments.

<sup>299</sup> 16 U.S.C. § 1538 (a)(1)(A)-(F).

<sup>300</sup> 16 U.S.C. § 1532 (19). The ESA provides less protection to listed plants. 16 U.S.C. § 1538 (a)(2).

<sup>301</sup> 16 U.S.C. § 1536 (a)(2).

<sup>302</sup> 16 U.S.C. § 1536 (c)(1), 50 C.F.R. §§ 402.2 (The BA must describe why the agency has reason to believe a listed species may be present in the affected area and an evaluation of the action’s potential effects on the species.) and 402.12.

<sup>303</sup> 16 U.S.C. § 1536 (a)(3).

species.<sup>304</sup> All federal agencies participating in this consultation process must insure that the federal action “is not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of [critical] habitat for that species.”<sup>305</sup> “Critical habitat” is an area of land that the Secretary of the Interior has determined to be essential for the survival of the species.<sup>306</sup>

During the consultation process, the expert agency will produce a “Biological Opinion” (BiOp) to assess the impacts of the action on the protected species.<sup>307</sup> If the expert agency determines that the federal action will jeopardize or adversely modify critical habitat, then the agency must suggest “reasonable and prudent alternatives” that it believes will negate the federal action’s adverse effects.<sup>308</sup> This BiOp must summarize the basis for the document, discuss the effects of the action on the protected species, and list any reasonable and prudent alternatives.<sup>309</sup> Within the BiOp, the expert agency can issue an “incidental take statement” to the federal agency undertaking the action.<sup>310</sup> This permit allows the agency to “take” a protected species, so long as the taking does not jeopardize the species or adversely modify its critical habitat.

The ESA does not mandate public involvement during the consultation process. Therefore, both BAs and BiOps are created without public notice and comment. However, NEPA affords the public an opportunity to assess the adequacy of these documents.<sup>311</sup>

Fourth, during the consultation process, federal agencies must use the “best scientific and commercially available data.”<sup>312</sup> Fifth, federal agencies have an independent duty to ensure their actions promote the recovery of listed species.<sup>313</sup> This is distinct from the agency’s duty not to jeopardize or adversely modify critical habitat of a listed species.<sup>314</sup> Taken together, these five provisions require agencies to use their best efforts at altering or mitigating the impacts of an action that would otherwise threaten a species with extinction.

When a species is listed pursuant to the ESA, the expert agency must develop a “recovery plan” for the species.<sup>315</sup> The expert agency’s creation or revision of such a plan is subject to public notice and comment procedures.<sup>316</sup> A recovery plan describes the steps necessary to promote the conservation and recovery of the listed species. The ESA defines “conservation” to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measure provided (in the ESA) are no longer necessary.”<sup>317</sup> Therefore, a recovery plan is a blueprint that describes the steps necessary for the eventually delisting of a listed species.

Congress incorporated provisions within the ESA that provided individuals with the means to develop their private land without jeopardizing the existence of listed species. One such provision authorizes the Secretary’s issuance of “incidental take permits,” which allow private citizens to develop their land when it contains listed species.<sup>318</sup> The Secretary may issue such a permit if the individual’s action will “take” a species, but the taking is

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<sup>304</sup> The Fish and Wildlife Service protects land animals and aquatic species that do not migrate to the oceans. The National Marine Fisheries Service protects animals that live in the sea or anadromous species of fish.

<sup>305</sup> 16 U.S.C. § 1536 (a)(2).

<sup>306</sup> 16 U.S.C. § 1532 (5)(A).

<sup>307</sup> 16 U.S.C. § 1536 (b) and 50 C.F.R. § 402.14.

<sup>308</sup> 16 U.S.C. § 1536 (b)(3)(A).

<sup>309</sup> 50 C.F.R. § 402.14 (h)(1)-(3).

<sup>310</sup> 50 C.F.R. § 402.14 (i).

<sup>311</sup> 40 C.F.R. § 1508.27 (b)(9).

<sup>312</sup> 16 U.S.C. § 1536 (a)(2) and 50 C.F.R. § 402.14 (d).

<sup>313</sup> 16 U.S.C. § 1536 (a)(1).

<sup>314</sup> 16 U.S.C. § 1536 (a)(2).

<sup>315</sup> 16 U.S.C. § 1533 (f).

<sup>316</sup> 16 U.S.C. § 1533 (f)(4).

<sup>317</sup> 16 U.S.C. § 1532 (3).

<sup>318</sup> 16 U.S.C. § 1539 (a).

incidental to the action.<sup>319</sup> In order to receive this permit, the individual must prepare and implement a “habitat conservation plan.”<sup>320</sup> (HCP) The Secretary can issue the permit only if the HCP complies with numerous statutory requirements meant to prevent the species from going extinct.<sup>321</sup> These HCPs must undergo public review.

### Internet Resources for the ESA

- 1) **FWS’s webpage**, located at <http://www.fws.gov>. There are a number of links to sites on this main webpage. The main page concerned with endangered species is located at <http://www.fws.gov/r9endspp/endspp.html>. This site contains access to past issues of the “Endangered Species Bulletin.” This publication discusses developments in the endangered species program, such as rulemakings (listings, reclassifications, and delistings), recovery plans and activities, regulatory changes, interagency consultations, changes in species’ status, research developments, new ecological threats, and other issues. In addition, the page has links to the following sites:
  - ◆ **Species Search**, located at <http://refuges.fws.gov/Tango/queryfiles/HubFile.qry?function=form>. This site allows users search for information on listed species using an animal’s common or scientific name. This search engine contains links to state or regional FWS databases that describe a listed species’ status, habitat requirements, range, and other pertinent characteristics.
  - ◆ **Policies**, located at <http://www.fws.gov/r9endspp/poldocs.html>. This site contains a listing of proposed guidance documents that describe how the agency plans to implement applicable statutory provisions or develop agency programs.
  - ◆ **Listing Decisions**, located at <http://www.fws.gov/r9endspp/frcites9.html#BOTTOM>. This site has an index of the FWS’s listing decisions published in the federal register.
  - ◆ **Habitat Conservation Plans**, located at <http://www.fws.gov/r9endspp/hcp/hcp.html>. This site has information on how to establish an HCP, as well as policies and programs that are applicable to HCPs.
  - ◆ **Section 7 Consultation**, located at <http://www.fws.gov/r9endspp/section7/section7.htm>. At this site, users can download the FWS’s handbook that describes the consultation process in detail.
  - ◆ **Database of Listed Species**, located at <http://www.fws.gov/r9endspp/listdata.html>. Users may download a list of all species that are currently protected by the ESA.
  - ◆ **Contact Information**, located at <http://www.fws.gov/r9endspp/contacts.html#CONTACTS>. The FWS also supplies the names, addresses, phone numbers, and email addresses of FWS personnel in each FWS region.
- 2) **NMFS webpage**, located at <http://www.nmfs.gov>, contains a limited amount of information on the agency’s implementation of the ESA.

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<sup>319</sup> 16 U.S.C. § 1539 (a)(1)(B).

<sup>320</sup> 16 U.S.C. § (a)(2)(A).

<sup>321</sup> 16 U.S.C. § 1539 (a)(2)(A)(i)-(iv) (These requirements include specifying the impacts of the taking, the step taken by the individual to minimize and mitigate the impacts, any source of necessary funding, alternatives to the taking and the reasons for their rejection, and such other measures as the Secretary deems “necessary and appropriate for the purposes” of the HCP.).

- ◆ **Office of Protected Resources**, located at <http://www.nmfs.gov>. This office oversees NMFS's implementation of the ESA. This webpage contains general information regarding incidental take permits, recovery programs, and listed species.
- ◆ **Regional Contacts**. NMFS's main webpage contains an index of links to regional NMFS offices. These regional office webpages contain detailed information on local initiatives that NMFS has undertaken pursuant to the ESA.

## COASTAL ZONE MANAGEMENT ACT (CZMA)

### Summary of the law

When Congress passed the Coastal Zone Management Act (CZMA), Congress declared that there is a “national interest in the effective management, beneficial use, protection, and development of the coastal zone.”<sup>322</sup> In passing the CZMA, Congress declared that it was our nation’s policy to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation’s coastal zone for this and succeeding generations.”<sup>323</sup> In seeking to balance the competing pressure between use and protection of coastal waters, Congress crafted the CZMA to rely on state led programs that are supported by federal dollars and expertise.<sup>324</sup> Implementation of this balance is achieved by states effectively exercising their “responsibilities in the coastal zone through the development and implementation of management programs (plans) to achieve wise use of the land and water resources in the coastal zone.”<sup>325</sup>

The CZMA encourages states to preserve, protect, develop, and, where possible, restore or enhance natural coastal resources.<sup>326</sup> State participation in the program is voluntary.<sup>327</sup> However, to promote state involvement, the CZMA gives federal financial assistance to any coastal state or territory that is willing to develop and implement a comprehensive coastal management program.<sup>328</sup>

The National Oceanic and Atmospheric Administration (NOAA) is the statute’s implementing agency.<sup>329</sup> The “Office of Ocean and Coastal Resource Management” (OCRM) administers individual state programs. A state with an OCRM-approved program can deny or restrict any development that is inconsistent with its coastal zone management program.<sup>330</sup> Currently, OCRM oversees programs in all coastal states except Georgia, Illinois,

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<sup>322</sup> 16 U.S.C. § 1451 (a). The CZMA defines “coastal zone” to mean “the coastal waters (including lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. 16 U.S.C. § 1453 (1).

<sup>323</sup> 16 U.S.C. § 1452 (1).

<sup>324</sup> 16 U.S.C. §§ 1455b (a)(1) (requiring federal agencies to develop, in conjunction with state and local authorities, controls for nonpoint source pollution); 1456b (g) (requiring federal agencies to develop guidance on controlling nonpoint source pollution); 1454 (authorizing federal management program development grants for state programs); and 1456b (authorizing federal coastal zone enhancement grants for state programs).

<sup>325</sup> 16 U.S.C. § 1452 (2).

<sup>326</sup> 16 U.S.C. § 1453 (2)-(3) (“Resources” include such things as such as beaches, reefs, and dunes, and the fish and wildlife using those habitats.)

<sup>327</sup> 16 U.S.C. § 1452 (2).

<sup>328</sup> 16 U.S.C. §§ 1454, 1455b, 1456.

<sup>329</sup> 16 U.S.C. § 1453 (16) (The CZMA defines the “Secretary” as the Secretary of Commerce. However, the Secretary of Commerce delegated this duty to the National Oceanic and Atmospheric Association.)

<sup>330</sup> 16 U.S.C. § 1455 (b)(10)-(11); 15 C.F.R. § 923.42.

Indiana, Minnesota, Texas, and Ohio.<sup>331</sup>

In order to receive federal grants, state must allow full participation by the public and relevant federal agencies in the development of management plans.<sup>332</sup> The public involvement provisions of the CZMA require that interests groups and the general public be included in designing state CZMA plans.<sup>333</sup> While federal lands are exempted from application of the CZMA,<sup>334</sup> federal agency actions must comply with such plans to the “maximum extent practicable.”<sup>335</sup> In addition to federal agencies, when a state management program anticipates impacts from energy facilities, the state plan must consider the impacts from these facilities.<sup>336</sup> The CZMA broadly defines “energy facilities” to include electric generating plants; petroleum refineries and associated facilities; gasification plants; facilities used for the transport, conversion, treatment, transfer, or storage of liquefied natural gas; and a variety of other equipment or facilities.<sup>337</sup>

In 1990, the CZMA was amended to broaden protections for coastal waters. The amendments require states to develop controls on nonpoint source pollution.<sup>338</sup> Specifically, states must issue management measures<sup>339</sup> for certain categories of runoff and erosion.<sup>340</sup> They must also evaluate nonpoint sources and identify land uses that, individually or cumulatively, may cause or contribute significantly to the degradation of coastal areas.<sup>341</sup> To aid state compliance with these requirements, the CZMA directs the EPA to develop guidance for state implementation of measures to reduce nonpoint source pollution.<sup>342</sup>

### Internet Resources for the CZMA

Because states implement the CZMA, individuals who are interested in discovering how states are implementing the statute must contact the relevant state agency. However, there are a few national and international websites that address topics related to CZMA issues.

- 1) **NOAA’s main website**, located at [www.noaa.gov](http://www.noaa.gov). This page has links to a variety of searchable databases and sites that provide the public with environmental information.
  - ◆ **Environmental Data**, located at <http://www.esdim.noaa.gov/NOAAserver>. This search engine allows users to search NOAA computers for environmental information relevant to different geographic regions throughout the world. Users can access the system through locating the relevant region on a map, identifying the desired libraries, and then entering in search terms. The results could provide users with an abstract that describes the findings of the search, a link to download

<sup>331</sup> [http://tis-nt.eh.doe.gov/oepa/law\\_sum/CZMA.HTM](http://tis-nt.eh.doe.gov/oepa/law_sum/CZMA.HTM).

<sup>332</sup> 16 U.S.C. § 1455 (3)-(4); 15 C.F.R. § 923.51.

<sup>333</sup> 15 C.F.R. § 923.50. 15 C.F.R. § 923.55 also discuss the requirements for public participation in implementing and managing development through a state CZMA plan.

<sup>334</sup> 16 U.S.C. § 1453 (1) (These plans must balance a variety of interests including the national interests discussed above, and “the management of coastal development to improve, safeguard, and restore coastal water quality; and [] the study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.”).

<sup>335</sup> 16 U.S.C. § 1456 (a) and (c)(1)(A).

<sup>336</sup> 16 U.S.C. § 145 (d)(8).

<sup>337</sup> 16 U.S.C. § 1453 (6).

<sup>338</sup> 16 U.S.C. § 1455b.

<sup>339</sup> 16 U.S.C. § 1455b (g)(5) (the term “management measures” means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.”)

<sup>340</sup> 16 U.S.C. § 1455b (a)(1), (b).

<sup>341</sup> 16 U.S.C. § 1456b (b)(1)(A)-(B) and (b)(2).

<sup>342</sup> 16 U.S.C. § 1455b (g).

the result, and contact information for requesting a copy of the result from the relevant agency. The system is geared towards scientists, and consequently, may be difficult for nonscientists to use.

- ◆ **Environmental Information**, located at [http://www.noaa.gov/env\\_info.htm](http://www.noaa.gov/env_info.htm). This site provides users access to the three divisions of NOAA's National Data Center. The three divisions include the National Climate, Oceanographic, and Geophysical Data Centers. Users can access data through the webpages of these data centers. In addition, there are links to the database referred to directly above and to the National Environmental Data Index.
- 2) **National Environmental Data Index**, (NEDI) located at <http://www.nedi.gov>. NEDI provides users with direct access to environmental data collected by federal, state, and international agencies. Users may request three types of data, including texts and publications, regulations and legislation, and metadata, which are links to Internet sites that hold information pertinent to the user's query. However, users may specifically tailor their requests for information, or else they get vast quantities of information on topics that are only tangentially related to their request.
- 3) **Office of Oceanic and Atmospheric Research**, (OAR) located at <http://www.oar.noaa.gov>. This site provides users with information the impacts that human activities have on the world's oceans and atmosphere. OAR's webpage has a link to their "Programs and Outreach" site. This site provides a environmental information on the oceans and atmosphere that is focused on school age children. There is also a link to the "National Acid Precipitation Assessment." (NAPA) NAPAP is an interagency scientific research, monitoring and assessment program on the effects of sulfur and nitrogen oxides on the environment and human health. Federal and State governments, universities, and private institutions all collaborate on NAPA. Users may access reports put out by NAPA, or contact NAPA directly at:

National Acid Precipitation Assessment Program  
NOAA, MC R/E  
1315 East-West Highway  
Silver Spring, MD 20910

Telephone: (301) 713-0197 x205  
Fax: (301) 713-1459

E-mail: [napap@noaa.gov](mailto:napap@noaa.gov)

- 4) **Environmental Research Laboratories**, located at <http://www.oar.noaa.gov/erl>. Environmental Research Laboratories conducts research, technology development, and services to improve understanding of the Earth and its water, atmospheric, and space environment. Users may access publications from these libraries by linking to individual laboratories or affiliated governmental and non-governmental organizations. Many of the publications are very technical and concern arcane scientific topics.
- 5) **Fisheries**, located at <http://www.noaa.gov/nmfs>. (NMFS) At this website, users can access information on NOAA's efforts to protect fisheries. The sites provides an overview of the laws that require NOAA to protect ocean resources and links to the websites of regional offices that have extensive information about local agency actions and programs.
- 6) **State of the Coast**, located at <http://state-of-coast.noaa.gov>. This website contains information about the environmental quality of America's coastline. Users can access data on the coastal populations of humans and marine species, ecological status of coastal species and habitats, and local, state, and national efforts to protect coastal resources.
- 7) **Coastal America**, located at [www.coastalamerica.gov](http://www.coastalamerica.gov). "Coastal America" is a quasi-federal organization that

addresses coastal issues pertinent to the CZMA. This organization is a collection of Federal, State, and local agencies, as well as private organizations that work to solve coastal environmental problems. The group was created from a 1992 Executive Order that called for the integration of Federal, state, local, and private efforts to protect, preserve, and restore the Nation's coastal ecosystems. This group focuses expertise and resources on decreasing sources of coastal pollution.

Their website contains information on agencies, demonstration projects, and reports that describe the state of America's living coastal resources. In addition, there are links to the webpages of other organizations that address issues related to the CZMA. There is also a useful index of non-federal partners that lists local and state organizations that work with Coastal America.

- 8) **United Nation's Conference on Environment and Development Coastal Website**, located at <http://www.minvenw.nl/projects/netcoast/message/message.htm#lendhand>. This site is devoted to increasing communication between institutions (ministries, coastal authorities, governmental and non-governmental organizations, funding agencies) and individuals (policy-makers, managers, scientists and engineers) involved in coastal zone issues. Users of this site may ask questions over an email list supported by this webpage. While the site deals with international coastal issues, it contains a wealth of information that is useful to anyone interested in coastal zone environmental issues.