

2. *Infants and children.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. Because silane, dichloromethyl-, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

### 3. Cabot Corporation

9E6019

EPA has received an amendment to a pesticide petition (9E6019) from Cabot Corporation proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to amend an exemption from the requirement of a tolerance for hexamethyldisilazane, reaction product with silica (TS-530) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. The initial notice of filing was published in the **Federal Register** of August 25, 1999 (64 FR 46378) (FRL-6096-1). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

An exemption from the requirement of a tolerance under 40 CFR 180.1001(c) and (e) was established for hexamethyldisilazane, reaction product with silica in the **Federal Register** of March 1, 2000 (65 FR 10946) (FRL-6490-9), with the following uses: "moisture barrier, anti-caking agent, anti-settling agent." This petition amendment requests that the use "thickening agent" be added so that the uses for TS-530 under 40 CFR 180.1001(c) and (e) will read as follows: "moisture barrier, anti-caking agent, anti-settling agent, thickening agent."

#### A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

#### B. Toxicological Profile

As discussed in the March 1, 2000 **Federal Register**, hexamethyldisilazane, reaction product with silica meets all the criteria for a low risk polymer, as specified in 40 CFR 723.250.

#### C. Aggregate Exposure

##### 1. Dietary exposure.

Hexamethyldisilazane, reaction product with silica is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

##### 2. Drinking water.

Hexamethyldisilazane, reaction product with silica is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure.* For most uses of hexamethyldisilazane, reaction product with silica the primary route of exposure is dermal.

Hexamethyldisilazane, reaction product with silica with a molecular weight significantly greater than 400 is not absorbed through the intact skin.

#### D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilazane, reaction product with silica. Because hexamethyldisilazane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

#### E. Safety Determination

1. *U.S. population.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilazane, reaction product with silica. Because hexamethyldisilazane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children.* Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilazane, reaction product with silica. Because hexamethyldisilazane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

[FR Doc. 00-16633 Filed 6-29-00; 8:45 am]

BILLING CODE 6560-50-F

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6727-4]

### Draft EPA Guidance for Community Involvement in Supplemental Environmental Projects

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Office of Enforcement and Compliance Assurance (EPA) is noticing a draft document, "Guidance for Community Involvement in Supplemental Environmental Projects," for comment. This document is intended to provide guidance to EPA personnel on how to achieve the community involvement objectives of the 1998 Supplemental Environmental Projects Policy (SEP Policy). EPA is soliciting public comments on this guidance to assist it in addressing issues such as identifying communities affected by enforcement actions, facilitating the outreach process, encouraging realistic community expectations, and using liaisons to facilitate communication.

**DATES:** Comments are due on or before August 29, 2000.

**ADDRESSES:** Mail written comments to the Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC-G-2000-055, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Room 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to [doCKET.oeca@epa.gov](mailto:doCKET.oeca@epa.gov). Electronic comments may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** Melissa Raack, 202-564-7039, Office of Regulatory Enforcement, Mail Code 2248-A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: [raack.melissa@epa.gov](mailto:raack.melissa@epa.gov).

**SUPPLEMENTARY INFORMATION:** In its Supplemental Environmental Projects Policy of May 1, 1998, EPA affirmed its commitment to involve communities in the consideration of SEPs in appropriate enforcement cases. Although there is no formula for effective community

involvement, this guidance is intended to identify issues and suggest resources that may be utilized to achieve such involvement. Community involvement is an important goal that should be considered along with other enforcement goals, such as quick response to environmental threats, timely resolution of enforcement actions, and using limited resources effectively to achieve the maximum benefit for human health and the environment. Building trust between EPA and communities is the foundation of effective community involvement. EPA is soliciting comments on how this document can provide the best guidance to its personnel to ensure that trust is established and maintained in the SEP consideration process.

**Sylvia K. Lowrance,**

*Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.*

### Introduction

In its Supplemental Environmental Projects Policy (SEP Policy) of May 1, 1998, EPA affirmed its commitment to involve communities in the consideration of SEPs in appropriate enforcement cases.<sup>1</sup> Seeking community involvement can have a number of advantages. It can result in SEPs that meet a need of the community in which the violation of an environmental law occurred. It can also promote environmental justice, enhance community awareness of EPA's enforcement activities, and improve relations between the community and the violating facility.

This document provides guidance to EPA on achieving the community involvement objectives of the SEP Policy. It is premised on EPA's belief that effective SEPs respond to the environmental needs of the affected community. While direct community involvement may not be possible or appropriate in all cases involving SEPs, in many cases community involvement can be a valuable part of SEP

consideration without adversely affecting the enforcement action.

Although there is no formula for effective community involvement, this guidance identifies issues and suggests resources that may be utilized to achieve such involvement. The guidance suggests when it may be appropriate to include the community in SEP consideration. It also provides direction for identifying communities potentially affected by the violations, facilitating the process, encouraging realistic community expectations, and using liaisons to facilitate communication.

This guidance recognizes that not every settlement can include a SEP proposed or favored by community members. SEPs are projects undertaken voluntarily by defendants, and not all defendants are interested in performing SEPs. Defendants may not be willing to solicit input from the community, or may not be receptive to community input. Further, final approval of all SEPs rests with EPA,<sup>2</sup> which must review project proposals to ensure consistency with the SEP Policy. Not all proposed projects will meet the criteria of the SEP Policy. Also, if different community groups support different SEP projects, some part of the community is likely to be disappointed no matter what the outcome of the SEP consideration process might be.

Nevertheless, community involvement is an important goal that should be considered along with other enforcement goals, such as quick response to environmental threats, timely resolution of enforcement actions, and using limited resources effectively to achieve the maximum benefit for human health and the environment. This guidance encourages Regions to think creatively about how to engage communities, even though direct community participation will not be possible in every case that includes a SEP. For example, Regions can consider setting up a SEP Bank to solicit community project ideas outside of the context of a particular enforcement action so that community project ideas are available to draw from in appropriate cases. Also, settlements can be structured to provide for community input on implementation of the SEP, even if participation in SEP consideration itself is not feasible.

Building trust between EPA and communities is the foundation of effective community involvement in the SEP consideration process. Even where

community outreach does not result in a community-supported or proposed SEP being included in a settlement, effective community outreach can help increase the community's confidence in the process and may encourage the community to work with EPA in the future.

### I. Reasons To Include Communities in the Consideration of SEPs

Including communities in the consideration of SEPs may benefit the defendant,<sup>3</sup> the community, the environment, and EPA. First, because SEPs help to protect the environment and public health, and can redress environmental harm, involving communities in SEP consideration enables EPA and the defendant to focus on the particular environmental priorities and concerns of a community, which is especially important if several different SEPs are being considered. The community can also be a valuable source of SEP ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.

Second, active community involvement can strengthen trust and cooperation between EPA and a community, and help EPA respond to communities' environmental protection priorities. Even when a SEP cannot fully respond to local priorities, community involvement may provide ideas for projects for future environmental protection efforts outside the context of the enforcement action (See discussion of SEP Banks).

Third, pursuant to the SEP Policy, a defendant's active participation and inclusion of public input into a SEP is one of the factors EPA uses to determine the penalty mitigation for a SEP. (SEP Policy, p. 16). Defendants may also benefit from community involvement because it can result in better relationships with the community.

Finally, the public has the opportunity to comment on the terms of proposed judicial and some administrative Consent Decrees, and early community involvement may avoid adverse comments on the terms of a settlement or a SEP during the public comment period. Community involvement also helps the public understand the process of judicial or administrative enforcement actions.

<sup>1</sup> The SEP Policy allows EPA to consider a defendant or respondent's willingness to perform an environmentally beneficial project when setting an appropriate penalty to settle an enforcement action. The purpose of a SEP is to secure significant environmental or public health protection improvements beyond those achieved by bringing the defendant into compliance. The SEP must be a new project, where EPA has the opportunity to shape the scope of the project before it is implemented, and the defendant must not be otherwise legally required to do the work. Community participation in SEP consideration is one of the factors considered in valuing a SEP. This summary of the SEP Policy should not be considered a full summary of the SEP requirements and persons interested in such requirements should consult EPA's Final SEP Policy at 63 FR 24796 (May 5, 1998).

<sup>2</sup> Throughout this guidance, the term "EPA," when used in the context of a judicial enforcement action, also includes the Department of Justice.

<sup>3</sup> "Defendant," when used herein, includes defendants in civil judicial actions and respondents in EPA administrative actions.

## II. Determining When Community Involvement Is Appropriate

### A. Community Participation In SEP Consideration In Individual Cases

Given the wide range of violations and communities, there is no formula to determine when community involvement in the consideration of a SEP is appropriate. There are a number of factors, however, to consider when determining whether community involvement is appropriate in any particular case.

One obvious factor to consider is the defendant's willingness to perform a SEP and to involve the community in considering possible SEP projects. Even if a defendant does not wish to participate actively in outreach to the community on SEP proposals, its willingness to consider projects generated by community sources is essential to the process. As noted above, there are many incentives for defendants to engage communities in SEP consideration. However, EPA cannot coerce a defendant to do a project or to accept projects proposed by the community.

Resources are another concern when evaluating whether and how to involve communities in SEP consideration. Direct community involvement in SEP consideration has obvious impacts on the time, money and effort that will be required to bring the action to conclusion. While the additional resource demands are not in themselves reasons not to include communities in SEP consideration, these impacts should be evaluated against the size and complexity of the enforcement action and how community involvement in SEP consideration may affect the Agency's ability to resolve enforcement actions within a reasonable time frame. Balancing enforcement impacts with the desire for community input may require creative approaches. In some cases it may be desirable to delay the community involvement until after the consent decree has been entered. For example, if the government and defendant agree on a particular project that satisfies the terms of the SEP Policy (e.g., a greenway project in a particular area for a specified amount of acreage), they may agree to provide for community involvement in the SEP during the implementation of the consent decree (e.g., in determining exactly which parcels of land to purchase for the greenway).

In general, those cases which have a large penalty at stake, where the violations have had a direct impact on the community and where community interest in the enforcement action is

high may be appropriate for a broad and inclusive outreach effort. As the SEP Policy points out, community involvement may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated. (SEP Policy, p. 19).

At the other end of the spectrum, routine cases which have relatively little potential for significant penalties, direct environmental impact on the community, or community interest may not be good candidates for a broad outreach effort. Between these two extremes, however, lie opportunities to tailor community involvement efforts to meet the needs and limitations of a particular enforcement action.

Generally, the important factors to be considered in determining whether and to what extent to involve communities once the defendant has indicated a desire to perform a SEP are:

1. The amount of the proposed penalty and the settlement amount which is likely to be mitigated by the SEP;
2. The impact of the violations on the community;
3. The level of interest of the community in the facility and the potential SEP; and
4. The willingness of the defendant to solicit and respond in a meaningful way to community input.

### B. SEP Banks

"SEP Banks" or "SEP Libraries" are Regional inventories of potential SEPs that can be consulted in individual cases where the defendant requests assistance in identifying appropriate SEPs. SEP Banks can provide an important avenue for community input on SEPs, that can be used when the size of the case or the timing of the enforcement process does not allow for direct community participation. SEP Banks generally are more acceptable to defendants than broad outreach efforts and can help to avoid raising unrealistic community expectations about the likelihood of a particular project being performed by a particular party.

The SEP Bank inventory can include specific projects identified as priorities by EPA, communities, or non-governmental organizations. EPA can solicit ideas for the SEP Bank through town meetings, public hearings, or meetings with appropriate EPA staff. At the time ideas are collected for the SEP Bank, the enforcement action in which the SEP may ultimately be selected will be unknown. Therefore, it is important for communities to understand that inclusion of a SEP in the SEP Bank does not ensure that the project will be implemented. All SEP Policy

requirements should be applied in the context of the enforcement action to determine whether the proposed SEP meets the requirements of the Policy. Before EPA considers a SEP Bank proposal in the context of an enforcement action, EPA should contact community leaders to try to determine whether the project is still a priority for the community.

## III. Roles of Participants In SEP Consideration

Each participant's role in the process of SEP consideration will depend primarily on the circumstances of the case, including the defendant's willingness to solicit and include community input in the development of a SEP. However, there are several principles to keep in mind to ensure that each participant understands its responsibilities and obligations.

### A. EPA

EPA should provide communities with information about SEP possibilities as early as possible in the settlement process, consistent with the requirements of the case and in accordance with confidentiality constraints. When providing information early in the process, EPA should avoid raising community expectations beyond realistic levels. When a defendant expresses interest in performing a SEP, EPA may play the primary role in facilitating community involvement. EPA should also establish milestones and objectives for community involvement, consistent with the litigation deadlines, to ensure that community involvement does not create any potential impediment to the progress of the litigation or to meeting court-imposed deadlines. EPA should make clear to the community that EPA remains the final decision-maker on all matters affecting the content and the process of community involvement, and that any SEP selected must meet the requirements of the SEP Policy.

### B. The Defendant

The defendant has a responsibility to learn about the SEP Policy and to explain why any SEP it proposes conforms to the requirements of the Policy. The defendant should also explain why it favors any particular SEP proposal over another proposal. As noted above, in order to qualify for additional mitigation of civil penalties for community involvement, a defendant must "actively" participate by soliciting and incorporating public input. The defendant's knowledge of the community, the defendant's resources, and the defendant's cooperation can

help ensure the success of community participation. The following are just some of the many activities that a defendant may do when seeking to actively participate:

1. Identify communities and community representatives;
2. Provide facilities and resources for public outreach;
3. Participate actively in EPA's outreach efforts;
4. Analyze and evaluate SEP ideas proposed by the community;
5. Engage in discussion of SEP ideas with community representatives;
6. Add to or build upon SEP ideas proposed by the community;
7. Revise SEP proposals in response to community comments (whether presented directly by the community or through EPA)

Even if the defendant is actively soliciting and incorporating public input, EPA remains in control of community involvement and the final decision on SEPs.

#### C. Communities

Communities can participate most effectively when they are aware of the requirements of the SEP Policy, the general nature of the enforcement action, and are willing to work within EPA and court-imposed deadlines. Communities need to understand that not all community problems can be solved through SEPs and that federal law and the SEP Policy imposes a number of constraints on the types of activities that qualify as SEPs. Communities may benefit by trying to resolve any differences amongst themselves so that they may present clear and consistent proposals and recommendations.

#### IV. Timing for Community Outreach

EPA should establish deadlines and inform the community of those deadlines to maintain compliance with court-imposed deadlines and to help keep the enforcement case on track. In most cases, EPA will seek community input after the defendant shows an interest in performing a SEP and EPA knows the approximate amount of money available for a SEP. In some cases, when the defendant is particularly interested in settlement, this may occur shortly before or after the filing of the complaint. For example, it may occur during pre-filing negotiations. However, in many cases, the potential for settlement, the potential for the settlement to include a SEP, and the amount of money available for a SEP, will not be known until weeks, months, or years of litigation. Nonetheless, as discussed below, there

are steps EPA can take even before the defendant shows interest in performing a SEP.

#### A. General Outreach

In some cases, EPA may begin community outreach very early in the enforcement process. For example, EPA may develop a communication strategy when developing the enforcement case. Several EPA offices may participate in the development of a communications strategy, including the Environmental Justice Regional Team, the geographical initiative teams, community outreach personnel, and other regional and headquarters offices, as resources permit. A communications strategy should include ways in which the community can be prepared to participate in SEP consideration, should that possibility arise. For example, EPA may mail non-case-specific information on enforcement and SEPs to community leaders to help them and their communities better understand SEP Policy requirements and be better prepared to participate in SEP consideration. In any event, EPA should track community interest and communicate significant developments to the community to help them participate effectively in SEP consideration.

#### B. Steps To Ensure a Smooth Process of Community Involvement

Once EPA determines that a SEP with community involvement is feasible, there are several steps that may smooth the way for such involvement.<sup>4</sup> First, if extensive community involvement is expected, the Regional Office may make an EPA regional employee with outreach experience available for consultation. Second, EPA should provide an outline of the SEP consideration process to community leaders, highlighting important matters, including the deadlines for decisions, and details for community involvement, *e.g.*, information about anticipated community meetings. EPA and the defendant should select the best approach to engage the community and to identify the priorities of the community or communities. EPA should advise the community of significant decisions about consideration of SEPs in a timely manner, including the initial decision to include the community in the development of a SEP. Finally, EPA should advise community members how they can obtain information about the

status of the SEP consideration process. EPA should also make clear that EPA and the Department of Justice are the final decision-makers in selecting SEPs and determining appropriate penalties.

#### C. Making the Final Decision on a SEP

After EPA has gathered sufficient information from the community (or communities) and is close to making a decision on a SEP or SEPs, EPA may want to offer a limited opportunity for any final community input (within a clear and probably rather short deadline). If a number of SEPs are under consideration, EPA may want to ask the community to rank the proposed SEPs in order of priority to the community. Once a SEP is selected, EPA should explain why.

#### V. Tools and Techniques To Involve Communities in SEP Consideration

##### A. Identifying Communities

EPA should begin by deciding where to look for communities potentially affected by the violations. Where to look will generally depend on the nature of the enforcement action. For example, in an air toxics case, it may be appropriate to look at all communities within a certain radius of the defendant's facility. In a water quality case, the focus may be on communities downstream of the defendant's facility. Where a case involves right-to-know violations, the appropriate area may be based on a local emergency planning committee's jurisdiction.

After deciding where to look, EPA and/or the defendant should identify community members who may want to be involved in SEP consideration. EPA may rely on various internal and external resources, some of which are identified in Appendix A. A community may have diverse interests. By contacting a range of sources, EPA and/or the defendant may ensure that interested community members are not excluded. To be as inclusive as possible, EPA and/or the defendant may have to make a special effort to reach out to community members who face specific barriers to involvement, for example, language barriers or other socioeconomic barriers.

##### B. Conducting Outreach

Once the affected community or communities have been identified and the other circumstances described above have been met (*i.e.*, defendant is willing to do a SEP and the approximate amount of money for a SEP is known) EPA and/or the defendant can notify the community about the violation, possible SEPs, and the opportunity for

<sup>4</sup> Many of the steps taken for community outreach may be undertaken by the defendant, in consultation and coordination with EPA.

community involvement. As noted above, during negotiations with the defendant concerning SEPs, EPA must establish procedures, milestones, and deadlines for community involvement. EPA and/or the defendant should also maintain communications with representatives of the community. The list of outreach approaches included in Appendix B to this guidance may provide ideas for involving the community in SEP consideration.

### *C. Fostering a Good Relationship With the Community*

EPA can take a number of relatively simple steps to foster a good relationship with the community and build and maintain trust among all parties. Communication of information to the community is one important aspect of fostering a good relationship. EPA should:

1. Ensure the community understands that the defendant must agree to do a SEP and that EPA cannot unilaterally impose SEPs;
2. Explain to the community its role in the SEP process while making clear that EPA and DOJ remain solely responsible for final SEP consideration;
3. Explain that a SEP is only one part of the overall settlement, which will generally also include penalty assessment and injunctive relief;
4. Advise the community that a SEP is an environmental project, which requires nexus between the SEP and the violation, and cannot be a direct payment of money to the community, and explain other limitations of federal law and the SEP Policy;
5. Advise the community of the milestones and deadlines in the enforcement action and ensure that the community understands the need to meet deadlines, as well as the time negotiations may take and the government's process for approval of settlements and SEPs;
6. Advise the community as milestones in the negotiation and the development of a SEP are reached.

There are a number of approaches EPA can use to effectively involve communities in SEP consideration, including:

1. Inform communities about Agency databases, such as ERNS, IDEA, the SEP Database, and Internet sources;<sup>5</sup>
2. Using local libraries as information repositories;

<sup>5</sup> ERNS stands for Emergency Response Notification System. IDEA stands for Integrated Database for Enforcement Analysis. The SEP Database contains descriptions of SEP projects included in the settlement of Agency enforcement actions. These databases can be accessed through EPA's website at [www.epa.gov](http://www.epa.gov).

3. Employing creative approaches to educating communities;

4. Providing information in plain language and translating into languages other than English if resources allow.

EPA's credibility is another important factor in fostering a good relationship. The EPA case team may want to enlist help from other EPA employees familiar with the community or a community member to clearly present information to the community. Enlisting this additional help may be limited by available resources and expertise.

In some circumstances, EPA may want to use an independent third-party liaison to communicate with the community. Use of such liaisons will not be advisable for every SEP, but could be especially helpful in complex cases. Before entering into any contract to use a third-party liaison, certain questions should be resolved, such as: Who pays for the liaison? How will the process be managed to avoid delay and miscommunication? How will EPA resolve any community dissatisfaction with the liaison?

There are also a number of factors EPA should consider before electing to use a liaison:

1. The constituency of the community. For example, large communities or communities with many factions may be better served by an independent third-party liaison that possesses the expertise to manage the myriad concerns such communities may have.
2. The complexity of the case. In a complex case, third-party liaisons may alleviate resource burdens and expedite the consideration process.
3. The liaison's credibility with EPA, the defendant, and with the community, and any additional costs associated with using a liaison.

In determining which liaison to use, EPA should consider the following issues:

1. The variety of individuals or groups who are useful for identifying affected communities. Many of these people can function as liaisons;
2. The amount and quality of experience a liaison has conducting outreach;
3. Recommendations or suggestions from the affected community or the defendant.

If Alternative Dispute Resolution ("ADR") is used to assist in settling the case, a third-party neutral may already be available to contact the community for input on SEPs. Even where ADR is not used, EPA's lists of third-party neutrals and ADR procedures for their hiring may be useful.

## **VI. Managing Confidentiality Concerns**

SEPs usually will be developed in the context of settlement negotiations. Confidentiality between the government and the defendant is essential to the exchange of ideas and exploration of settlement options. Because of this, EPA must consider how to provide information to the public to facilitate their involvement in SEP consideration and development without undermining the confidentiality of settlement negotiations. Much of the information developed by the government may be privileged and therefore not appropriate for release to the public. In addition, a defendant may provide information to the government that must be kept confidential. For example, a defendant may provide confidential business information ("CBI") to EPA. CBI, by law, cannot be provided to the public.<sup>6</sup> Thus, each case will have limits on what EPA may make available to the public.<sup>7</sup> Because of the voluminous documentation in many enforcement cases it may not always be practicable for EPA to undertake the privilege and confidentiality reviews necessary to make information available, but where it is able EPA should do so. In judicial cases, the Department of Justice will also retain authority to determine what information can be released to the community.

The provision of information to the community should enhance the community's ability to provide meaningful input and to develop realistic expectations about what SEPs are possible. Thus, when practicable, EPA should make relevant, non-privileged and non-confidential information available to the public. The types of information that may be provided to the community, where practicable, are notices of violation, complaints, and other documents filed with a Regional Hearing Clerk,

<sup>6</sup> See 40 CFR part 2, subpart B.

<sup>7</sup> Regardless of the case at issue, several categories of documents and information must be kept confidential. These include: (1) the parties' settlement offers; (2) EPA's penalty positions, disclosure of which could compromise the government's case if settlement fails; (3) information claimed as CBI pursuant to 40 CFR part 2, subpart B; (4) privileged documents (e.g., attorney work-product, attorney-client communications, etc.); (5) National Security Information; and (6) information subject to the privacy requirements of FOIA or other statutes. EPA's policy on withholding enforcement sensitive information that may be considered exempt from the Freedom of Information Act ("FOIA") conforms with FOIA's "presumption of disclosure." However, if such documents would interfere with enforcement proceedings, EPA may choose to withhold such information. See Memorandum of Steven A. Herman, dated August 15, 1996, entitled "Public Release of EPA Enforcement Information."

Administrative Law Judge, or court, the facility's monitoring reports, and EPA, state, or local inspection reports. EPA should encourage the defendant to agree to share information with the community, within parameters discussed above. This should help EPA and the defendant establish a positive relationship with the community and enable the community to participate in the SEP process more effectively.

## VII. Conclusion

EPA is committed to involving communities in the consideration of SEPs in appropriate cases. This guidance is intended to facilitate community involvement in SEP consideration and helps effectuate the best possible SEPs in settlement of enforcement cases in a manner that promotes mutual trust and confidence, and builds positive relationships between the community and the Agency.

This document is guidance intended for the use of EPA personnel and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. This guidance is not intended to supercede any statutory or regulatory requirements, or EPA policy. Any inconsistencies between this guidance and any statute, regulation, or policy should be resolved in favor of the statutory or regulatory requirement, or policy document, at issue.

## Appendix A—Resources for Identifying Communities

Below are some suggested resources within and outside of EPA that may be useful in targeting community outreach efforts.

### Suggested Internal Sources

1. Community involvement coordinators at OERR's Community Involvement and Outreach Center;
2. Headquarters offices, including: Office of Environmental Justice, American Indian Environmental Office, Federal Facilities Enforcement Office;
3. Colleagues in other media programs or regions;
4. Regional offices or coordinators who handle community involvement, environmental justice, tribal issues, or Community-Based Environmental Protection (CBEP);
5. "Model Plan for Public Participation" (November, 1996), developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (available at NEJAC website: [www.epa.gov/oeca/oej/nejac](http://www.epa.gov/oeca/oej/nejac)).

### Suggested External Sources

1. State, local, or tribal governments;
2. Educational or spiritual organizations;
3. Other federal agencies;

4. Neighborhood organizations or groups, and individuals in neighborhoods closest to the defendant's facility;
5. Community activists;
6. Environmental and environmental justice organizations and groups;
7. Local unions, business groups, and civic groups;
8. The defendant or other members of the regulated community (*i.e.*, trade associations);
9. Local newspapers, radio, television, local Internet sites.

## Appendix B—Community Outreach Techniques

\*This list is intended to provide a library of options available for use in conducting community outreach, and is not intended to suggest that all of these techniques be used in any given case.

1. Interview: Face-to-face or telephone discussions with community members provide information about local concerns and issues. A significant time commitment may be required to gather feedback representative of the community.
2. Small Group Meeting: Convening community members in a local meeting place stimulates dialogue, generates information, and may build rapport among participants.
3. Focus Group Meeting: Focus group participants are convened by a trained facilitator to provide answers to specific questions. This direct approach is an efficient information-gathering tool if participants represent a cross-section of the community.
4. Public Meeting: Public meetings are useful for hearing what people have to say about current issues and engaging community members in the process. At public meetings, EPA should focus on active listening and learning from the public.
5. Public Availability Session/Open House: A public availability session is a less structured alternative to a public meeting that provides everyone an opportunity to ask questions, express concerns, react to what is being proposed, and make suggestions. Typically, a public official announces she or he will be available at a convenient time and place where community members can talk informally.
6. Public Notice: Public notices in the print media or on radio and television are a relatively inexpensive way to publicize community participation opportunities. In addition to the mainstream media, minority publications, church bulletins and other such vehicles offered by local organizations can reach a more diverse audience.
7. Workshop: Workshops are participatory seminars to educate small groups of citizens on particular site issues. Workshops involve and empower participants; but they, too, can be time-intensive.
8. Site Tour: Site tours can familiarize citizens, the media and local officials with the nature of environmental concerns affecting a community near a specific site. Tours may result in better communication among the community, facility, and Agency, however, they are frequently resource-intensive to arrange and conduct.
9. Information Repository: An information repository is a project file containing timely

information on site-specific activities and accurate detailed and current data about a site or enforcement action. Project files are typically kept at convenient public locations, *e.g.*, libraries, and publicized through various media.

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00658; FRL-6556-4]

### Pesticides; Policy Issues Related to the Food Quality Protection Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on the pesticide draft science policy paper entitled "Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity." This document is the eighteenth in a series concerning science policy papers related to the Food Quality Protection Act and the Tolerance Reassessment Advisory Committee.

**DATES:** Comments for the draft science policy paper, identified by docket control number OPP-00658, must be received on or before August 28, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00658 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Martin, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308-2857; fax: (703) 305-5147; e-mail: [martin.kathleen@epa.gov](mailto:martin.kathleen@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to: