

Legal framework for Accountability

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Legal Framework for Accountability

- Legal Framework for Accountability involves
 - public involvement and
 - ensuring consequences for local jurisdictions that fail to implement

PUBLIC INVOLVEMENT

- The Clean Air Act provides opportunities for public participation in development of federal controls and plans as well as State Implementation Plans (SIPs) and Permits decisions

Public Involvement Policy (contd)

- EPA public involvement policy explains how EPA implements transparency requirements in US Laws
 - Information is provided at places easily accessible to interested and affected persons and Organizations

Public Involvement Policy (contd)

- EPA provides public with integrated, on-line, user-friendly access to health and environmental data and information
- Communities, including minority, low-income and underserved populations, have access to relevant data and information

Public Involvement Policy (contd)

- Policy includes EPA developing information and educational programs so all levels of government and public have opportunity to become familiar with the issues, technical data and relevant science behind the issues
 - Documents such as information and outreach documents and engineering and technical documents are written in plain language the public can easily understand

Public Involvement Policy (contd)

- Policy includes EPA providing documents in languages in addition to English for affected public or interested parties

Public Involvement Policy (contd)

- Policy includes EPA maintaining ongoing communication and outreach with interested and involved public on particular EPA activities through periodic newsletters, list serves or any other means

Public Involvement in Rulemakings on Federal Controls and Plans

- EPA regulations generally are promulgated through rulemaking process
 - In general, most rule makings provide at least a 30-day period for public comment

Public Involvement in Rule makings on Federal Controls and Plans (contd)

- EPA creates docket for most rulemaking
 - Docket contains documents referred to in the Federal Register document
 - Any public comments received
 - Technical support documents

Public Involvement in Rule Makings on Federal Controls and Plans (contd)

- Public must have access to the docket and the documents in the docket
 - Public can also access the docket in-person at the EPA Docket Center

Public Involvement in Rule Makings on Federal Controls and Plans (contd)

- Public can also request a public hearing and EPA must hold a public hearing if requested
- At public hearing, public present oral comments on the proposed rule

Public Involvement in State Implementation Plans (SIPs) Rule Makings

- Public involvement for EPA review and approval SIPs through rule making is required under the Administrative Procedure Act (APA) not under the Clean Air Act
- Public are provided with opportunity to comment

Public Involvement in SIPs Rule Making (contd)

- EPA uses dockets for SIP rule makings
 - Dockets are created and maintained by the EPA regions for SIP rule makings
 - Public can access docket either on-line or in-person at Region conducting the rule making
 - Docket contains documents referred to in the Federal Register document, public comments received and technical support documents

Public Involvement in SIPs Rule Makings (contd)

- Public cannot request public hearing for SIP rule makings
 - There are no provisions for hearings for SIP rule makings under the basic APA requirements

Public Involvement in Permitting

- The national, state, and local agencies provide notice and opportunities for the public to provide written comments during development of the permits
- The permitting agencies provide for public notice and opportunity for public hearings on draft permits
 - supporting documentation and emission monitoring information released by industrial sources are available to the public
- Permitting agencies also involve the public in
 - Public meetings
 - Workshops
 - Citizen advisory committees
 - Public education campaigns

Public Involvement in Permitting (contd)

- Public can comment on draft permits
- Public can request public hearing
- Public can challenge final permits in EPA's Environmental Administrative Appeals Board
 - If public challenge prevails the permit is sent back to the permitting agency for the agency to correct

Public Involvement in Rulemakings on Federal Controls, Plans and SIPs

- Public can ask Agency to reconsider rule or SIP approval
 - If EPA decides to reconsider, rulemaking would be conducted
 - Public involvement process is same as in rulemakings on SIPs
- Public can challenge Federal rulemaking and SIP approval or disapproval in Court
 - Public can challenge federal rules, SIPs approval or disapproval as not complying with the Act
 - Public can ask court to order EPA to take action on federal rules and SIPs approval or disapproval if EPA action is not completed by deadline

FAILURE TO IMPLEMENT

Public Suits

- Public can sue facilities and states for failure to comply with SIPs
- Public can sue facilities that operate either without permit or in violation of permit
- Public can ask court to order EPA to take action on SIP approval or disapproval if EPA action is not complete by required deadline

Failure to Implement (contd)

EPA Actions

- EPA can sue facilities directly for failure to comply with provisions of an approved SIP
 - US EPA's Enforcement Program brings enforcement actions against individual sources (civil administrative actions, civil judicial actions, and criminal action)
- EPA can sue states for failure to implement state provisions or commitments in SIPs
- EPA can take over implementation of SIPs where a state does not enforce SIP

Failure to Implement (contd)

EPA Actions (Permits)

- EPA reviews key draft permits
 - EPA is more likely to review a permit for a new facility with large air emissions
 - standard for EPA permit review is whether permit complies with the State regulations, State plan, and Clean Air Act
- EPA can object to permit
 - EPA is likely to object to permit if the permit fails to provide adequate emission monitoring and reporting
 - State is given a chance to correct the issue(s), and if not, EPA issues permit instead of the State

Failure to Implement (contd)

Sanctions

- Sanctions apply for planning and implementation failures
 - If EPA finds that States have not timely submitted plans or implemented plans, or if EPA disapproves plans, two potential sanctions apply if state does not correct problem within 18 months:
 - The requirements for new source permits to offset new source emissions become more stringent
 - Federal funding of major highway construction is terminated if implementation failure is not corrected after an additional 6 months

Thank You

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