Chapter 1

INVESTIGATION AND EVALUATION: KEYS TO SELECTING SAFE SITES FOR SCHOOL CONSTRUCTION*

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INTRODUCTION

"SPECIAL ATTENTION MUST BE GIVEN TO THE POTENTIAL ENVIRONMENTAL AND HEALTH HAZARDS OF A PROPOSED SCHOOL SITE."

As school districts across the country move to meet growing population demands by expanding or renovating old schools and building new ones, special attention must be given to the potential environmental and health hazards of a proposed school site. Current environmental laws governing contaminated property cast a wide net of procedural hoops and potential liability that may impede needed school site acquisitions and development. More importantly, a school district should proceed carefully in planning, structuring and managing the inspection and eventual purchase of a school site to ensure the safety of children, faculty and staff at new or renovated schools.

This chapter provides an overview of the main environmental considerations in evaluating a potential site for school construction and/or redevelopment. A school board or district should take several common-sense steps to identify potential health or construction risks before significant funds are committed to the purchase of property and/or a construction plan. As of

* The contents of this chapter and related appendices are designed to provide general summary information about the topics addressed. They are not intended to provide and should not be interpreted as providing legal advice. The authors wish to thank Thomas Butler and Alfred Fraijo, summer associates in the San Francisco office, for their significant contributions to this article.

SCHOOL SITES RAISE ENVIRONMENTAL CONCERNS

In recent years, several school projects that have encountered significant environmental issues during or after construction have focused attention on the subject of school siting and led to heightened scrutiny of school board decisions.

- In Los Angeles, the discovery of underground oil fields and explosive gases during the construction of a multi-million dollar school complex in the Belmont area halted construction after the project was more than halfway complete.

- In Elmira, New York, extensive soil and air testing was begun after parents raised concerns that the population at Southside High School, built in 1979 on the site of numerous former manufacturing operations, had suffered an unusually high number of cancer cases. Although no causal relationship has been established and the state departments of environmental conservation and health have determined that the site is safe, the school board and other officials must now decide for themselves whether the buildings and school grounds, including athletic fields, should continue to be used.

- The school board in Corry, Pennsylvania decided to consolidate four of the five small elementary schools into one large school with a capacity for more than 1,000 students. The site chosen for the new school is next to Foamex, a polyurethane foam manufacturing plant that ranks second in Pennsylvania for hazardous air emissions. Local parents have been working to convince the school board to select an alternate site.[1]

- The Miami-Dade School Board has found itself defending selection of a site for a new high school that sits on a portion of a federally designated flood-hazard area.[2] Additional dredging and site preparation could cost the board $5.6 million before construction can even begin. Questions were raised whether adequate pre-purchase inspections had been completed.

this writing, only California has a statute that compels school administrators to investigate potentially contaminated property.[3] But, school boards need not wait for state legislators to act before instituting procedures to ensure public safety and to make sound infrastructure investments.

The scope of this chapter and space limitations prevent a discussion of the steps a school board should take if, despite best efforts or investigation, a site is found to be contaminated. Environmental statutes and common law create a complex scheme of liability and regulations governing the cleanup of contaminated properties. It is also beyond the scope of this chapter to address such complicated questions as "what levels of contamination are

1. CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE, POISONED SCHOOLS: INVISIBLE THREATS, INVISIBLE ACTIONS 21 (March 2001).
2. *See Land Deal Flooded With Questions,* SCHOOL CONSTRUCTION NEWS, May/June 2001.
3. CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE, CREATING SAFE LEARNING ZONES 2 (2002).

acceptable?" or "what clean-up standards should be applied?" The answers will vary depending on the contaminant of concern and applicable state and federal standards. The standards for appropriate clean-up for possible school sites may also change over time. Needless to say, the best way to avoid having to address these issues is to avoid problems in the first place. Key to this "ounce of prevention" philosophy is careful site investigation and evaluation.

PRIOR TO PROPERTY PURCHASE AND/OR CONSTRUCTION

Children's health and safety plays a prominent role in the selection of a site for a new school. Yet there are no national health-based child-sensitive standards for safe or acceptable levels of contaminants in the air or soil that can serve as a guide for school districts in need of more schools.[4] As the examples highlighted on page 2 emphasize, the siting and construction of schools near contaminated properties can lead to legal and financial difficulties. A recent report titled *Creating Safe Learning Zones* by the Center for Health, Environment and Justice showed that in just five states (California, Massachusetts, Michigan, New Jersey and New York), there are over 1,100 schools located within a half-mile radius of federally- or state-identified contaminated sites.[5]

As a school district considers the information in this chapter, it may want to develop its own protocol for evaluating potential school sites. Such a protocol should focus on the issues of particular sensitivity to the local area. For example, some school districts may be located in a heavy industrial area, while other districts may be located in an area rich in archaeological resources.

SITING AND DUE DILIGENCE

Before the acquisition of a proposed school site, an accurate and comprehensive evaluation of the site's environmental condition, including the potential extent of contamination, must be conducted. Such a site assessment supports the decision making process from a variety of angles. First, it identifies problems and potential risks associated with the selected site. In addition, the assessment process itself will result in the development of a comprehensive record of the school board's decision and presumably help justify that decision. Finally, site assessment and evaluation may be vital in constructing certain legal defenses that can be raised should litigation eventually occur. For example, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),[6] a site owner's liability is strict, joint and several as well as retroactive.[7] Ascertaining the environmental condition of a property may allow buyers and lenders to raise an innocent purchaser or landowner defense,[8] where "appropriate inquiry" into the environmental condition of the property may exempt an owner from liability related to preexisting contamination.[9]

4. CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE, POISONED SCHOOLS: INVISIBLE THREATS, INVISIBLE ACTIONS 30 (March 2001).

5. The report is available at http://www.childproofing.org

6. 42 U.S.C. § 9601 *et seq*.

7 Under strict liability a school district may be held responsible for cleanup costs based solely on its ownership or operation of contaminated property, even if it played no role in causing the contamination. Joint and several liability means that the school district can be liable for 100% of the property cleanup costs, again, even if it played no role in causing it. Retroactive liability means that a party may be held liable for cleanup costs even if the acts causing the contamination were legal at the time they occurred.

8. 42 U.S.C. § 9607(b).

9. U.S. v. Serafini, 706 F. Supp. 346, 353-354 (M.D. Pa. 1988); In re Hemingway Transport, Inc., 993 F.2d 915 (1st Cir. 1993).

Environmental due diligence at the pre-purchase stage is a fundamental component that can help avoid future health concerns for any acquisition. From a risk management perspective, the proper conduct of due diligence also may affect the way liability is imposed on the parties to the transaction. In light of these considerations, some states have elected to regulate closely a school district's new school site acquisition and development. In California, the legislature has passed a measure that would require the Department of Toxic Substances Control to directly investigate a proposed school site before development and construction plans are finalized.[10] A school district's efforts to expand and develop new schools may thus be affected by changes to state environmental regulations.

Phase I and Phase II Environmental Site Assessments

Once a site is proposed, the school district should contract with an environmental consulting firm or assessor to conduct a two-phase environmental site assessment. (See Attachment A, *infra* at 12, for sample contract language.) The process for evaluating a proposed site should be conducted on a schedule consistent with the projected time schedule for developing the school site. Typically, the Phase I site assessment can be completed in 3 to 4 weeks, while a Phase II assessment, if found to be necessary, can require 8 to 16 weeks. However, every site poses unique considerations that affect the type of investigations performed and their respective duration.

- **Phase I**

A Phase I site assessment provides the potential user and developer with enough information to determine the amount of due diligence to be performed before the property can be used. It will guide a school district, as the prospective purchaser, on the type of further investigation and, if necessary, remediation if contamination is found. The American Society for Testing and Materials (ASTM) has created a practice guide establishing industry-wide standards for environmental site assessments. Phase II builds on the discoveries made during the initial phase. Indeed, the scope of Phase II analysis normally depends on the results of the Phase I study. While generally Phase I does not include physical testing or sampling, Phase II will incorporate Phase I recommendations for a more technical investigation where contamination is likely to be present.

The assessment process begins with the negotiation of access to the property, including the right to collect soil and groundwater samples as well as samples from existing structures conducted during a Phase II site assessment. Before allowing such access, the potential seller may require an indemnification agreement, whereby the seller expects to recover for any damage to the premises and interference with existing activity at the site.

The major inspection criteria in Phase I includes a thorough review of property records, interviews of the current owners and operators, a site surveillance or reconnaissance, and a final evaluation and a written report. Review of public and private records of current and past uses, including any environmental liens against the property provides critical information regarding the history of use for the site. Records inspection should include, but not be limited to, review of the property in any reasonably accessible databases of contaminated and potentially contaminated sites, federal and state agency registries, as well as historical aerial photographs. Review of archaeological databases also should not be overlooked. In Miami-Dade the school

10. CAL. EDUC. CODE § 17210 *et seq.*

board faced challenges over the purchase of a parcel that contains an ancient Native-American burial site.[11]

When inspecting the site, particular attention should be given to any physical evidence that explains prior and current use and suggests the likelihood of contamination. During the site visit, attention should also be given to surrounding properties for possible sources of contamination. Interviews with persons familiar with the site's history involves inquiry of any past clean-up efforts, changes to site use, and changes or developments of surrounding properties or facilities. The final report for Phase I should include all environmental conditions discovered, recommendations for future investigation and an initial assessment regarding a new owner's exposure to liability.

- **Phase II**

Phase II will focus on the analysis of soil and ground and surface water. Air will also be sampled if potential sources of air pollution have been identified. If applicable, Phase II will include testing of building materials, equipment and existing structures for lead or asbestos, among other contaminants. Where toxins or contaminants are found, a Phase II report will include grid samples that describe the nature and extent of the contamination to a reasonable degree. Additionally, specialized devices will be used to locate the areas where contaminants are concentrated and/or their potential sources. If buildings on a site must be demolished, sampling may need to be conducted under those structures following demolition to get a complete picture of potential problems. The final report for Phase II will involve a detailed summary of the samples taken and techniques used for their study, tables explaining laboratory results as well as the characteristics of any contaminants located at the site. Lastly, the report may include the consultant's recommendations describing any necessary additional work or information gaps affecting the report's findings.

History of the Property

Environmental due diligence also requires that special attention be given to prior uses of the site to better determine the potential contamination and health risks present. Before more resources are invested in a more in-depth site assessment, preliminary interviews with former and current owners and operators about the property's use may reveal that the property is not suitable for a school. Obtaining a title report will likely reveal important information about prior use and provide contact information regarding former owners and operators. Alternatively, an accurate evaluation of a property's history of use can provide a viable framework for determining the most effective method of quantifying risks during a Phase I and Phase II site assessment as well as any future remediation efforts.

Participation of surrounding communities may also be beneficial. A school district may elect to notify the surrounding community of the environmental evaluation performed at the proposed sight. Neighbors may have lived in a community for decades. Their involvement may lead to indispensable information regarding the history of the site as well as surrounding industrial uses that will aid in creating a more complete environmental assessment of the site. In many states, more formal involvement is required. (*See* environmental impact analysis discussion *infra*, at 7.) A school district may also consider accessing the U.S. Environmental Protection Agency's (EPA) database of hazardous substance release sites to determine whether the property itself or neighboring properties, have been the site of a chemical spill.[12]

11. *See Indian Grave on Debated School Parcel*, MIAMI HERALD, April 25, 2001.

12. EPA's database of Superfund sites can be accessed at http://www.epa.gov/superfund/sites/locate/index.htm

Nearby Industrial Uses

The type of land use activity found in surrounding properties directly impacts the suitability of a proposed site for school construction. Any factories, scrap yards, refineries, and chemical storage facilities, among other industrial use properties, surrounding the proposed sight represent potential risks and sources of contamination. Identification of property within a reasonable radius from the site is recommended to determine the potential for those surrounding land-use activity posing significant health hazards. The environmental sampling data also provide clues to the source of contamination that may be linked to industrial plants or facilities in the surrounding area. In addition, assessment of surrounding facilities will influence the type of clean up and mitigation measures that are necessary to prevent future contamination. Given these considerations, school districts should consult the EPA's Toxic Release Inventory (TRI) and their state department of environmental protection and health for current listings of sites that pose contamination concerns. (See Attachment C, *infra* at 26, for further information on TRI access.)

CONTRACTUAL PROTECTIONS

Discovering the presence of contamination at the property with a thorough environmental assessment is one mechanism for controlling future liability from existing environmental hazards at the site. However, once a school district proceeds with the acquisition of the site, an important step is to design and include special contractual provisions in the sale agreement that address environmental risks and liabilities. The timetable for entering negotiations for the purchase of the site will likely come after the Phase I environmental site assessment, assuming that report comes back clean or with minor problems that can be addressed. Once enough information concerning the environmental hazards found on the site is collected and a school board is convinced about the soundness of purchase and/or development plans, legal counsel for the district can begin to craft specific purchase agreement provisions that reflect the school district's best interests and protect it from liability.

"AN IMPORTANT STEP IS TO DESIGN AND INCLUDE SPECIAL CONTRACTUAL PROVISIONS IN THE SALE AGREEMENT THAT ADDRESS ENVIRONMENTAL RISKS AND LIABILITIES."

General Indemnity

In the environmental risks arena, general indemnity involves contractually allocating liability (shifting or transferring risks) between the current owner and purchaser from any claim or action arising out of the release of contamination that occurs prior (or subsequent) to the purchase of the property. Therefore, executing a general indemnity agreement or including general indemnification and release provisions in the final purchase agreement is a fundamental component to purchasing a targeted site. As a condition to purchasing the property, the school district may require the owner to indemnify the purchaser against any misrepresentations contained in the purchase agreement as well as any future claims arising out of preexisting contamination. Conversely, the owner will require to be indemnified from liabilities incurred as a result of the school district's development and operation at the site. A school district should expect to include notification and opportunity to defend provisions along with any indemnification agreement. Finally, while negotiating provisions in a purchase agreement that shift or transfer liability related to environmental risks found on the site, the school district, as purchaser, should note their limitations. For example, environmental indemnification serves to apportion liability among parties but it does not release a party's underlying liability

to the government under CERCLA or similar state Superfund statutes.[13]

Specific Environmental Provisions

To ensure that its interests are protected, a school district should consider including a range of environmental protections in the final acquisition agreement. The school district may elect to incorporate covenants that obligate the owner to comply with all environmental regulations in its own operations before the school district takes control of the property, thereby ensuring that no substantial changes to the environmental condition of the property occur prior to the date of possession. Similarly, provisions could be negotiated that compel the owner to pay for a cleanup before the district takes title and the standards that apply to the cleanup. Further, it may negotiate the duration of the owner's representations and warranties after a purchase agreement is finalized, since environmental liabilities usually surface some time after the initial purchase. Other important environmental provisions for the purchaser to consider include obtaining the owner's express acknowledgment regarding site conditions and any specific environmental hazards discovered during environmental site assessments. Lenders will likely require separate covenants that exempt lenders from liability arising out of the purchaser's operation and development of the site. Moreover, lenders will want to ensure that property is not seriously contaminated if it serves as collateral for a loan.

13. Kaufman & Broad-South Bay v. Unisys Corp., 822 F. Supp. 1468 (N.D. Cal. 1993); Chemical Waste Mgt. v. Armstrong World Indus. 669 F. Supp. 1285 (E.D. Pa. 1987).

Leasing

A school district may decide to enter into a lease agreement instead of purchasing the targeted parcel based purely on economic advantages. Leasing the property may also limit liability if unanticipated contamination is discovered at a site. For example, under CERCLA, the school district, as a lessee, may be exempt from liability related to contamination that existed before the lease was executed. However, it may be difficult for the school district to prove existing contamination is unrelated to its own operations at the site if similar materials that caused the contamination are being used by the lessee.[14] Pursuant to CERCLA, as under other federal or state environmental laws, a lessee may be treated the same as an owner for liability purposes.[15] As a safeguard, before the signing of a leasing agreement, the school district should perform similar environmental due diligence inquiries as those involved when purchasing the property, including a Phase I Site Assessment and on-site inspection, among other site-specific investigations that lead to a complete evaluation of the parcel.

A lease agreement for a school site should include particular protections relating to school operations, such as the increased sensitivity of children to potential contaminants, as well as the traditional contractual provisions that accompany a real estate purchase. Along with the types of indemnities discussed in this chapter, a school district should consider including specific covenants in a leasing agreement that anticipate environmental risks and possible remediation of

14. Some courts have found a lessee or tenant liable under CERCLA as an "owner" when the lessee or tenant was involved in the disposal of hazardous waste at the site. *See Clear Lake Properties v. Rockwell International,* 959 F. Supp. 763, 768 (S.D. Tex. 1997) (imposing strict liability on a tenant laboratory facility that had played no role in causing the relevant contamination); *U.S. v. National Bank of the Commonwealth*, 1990 WL 357792 (W.D. Pa. Apr. 23, 1990) (same).

15. U.S. v. Monsanto Co., 858 F.2d 160 (4th Cir. 1988); Burlington N.R.R. v. Woods Indus., 815 F. Supp. 1384 (E.D. Wash. 1993).

hazardous materials discovered or released on the property during the lease period. For example, the school district may choose to condition the lease on the accuracy of the representations made by the landlord. The landlord will likely require the lease to include that the tenant report to state and federal agencies any construction or development on the premises under applicable environmental regulations. The lease may also include a landlord's right of entry to inspect the premises and make any repairs. Finally, a school district should also be cautious of a landlord's attempts to negotiate "as is" clauses or provisions that disclaim all representations and warranties regarding the property. Although the courts are more willing to interpret "as is" clauses narrowly and may not exempt a landlord from CERCLA contributions claims,[16] it is in the school district's best interest to independently perform a thorough investigation of the premises. Finally, the school district may also choose to condition the lease on the accuracy of the representations made by the landlord.

ENVIRONMENTAL IMPACT ANALYSIS

State Statutory Programs (Mini-NEPAs)

A number of states have adopted statutes similar to the federal National Environmental Policy Act (NEPA).[17] (See Attachment B, *infra* at 17, for examples of state statutes.) NEPA requires federal agencies to consider the potential environmental effects of proposals for federal action, including issuance of permits for private projects, prior to taking final action. Similarly, the purpose of these analogous state programs is to assess the potential environmental impacts of a project as an integral part of the planning process. In some states, the siting of a school may trigger the requirements of those statutes, thereby placing the district in a process that openly considers possible environmental effects of the proposed action, with full public participation.

Many state programs, often referred to as mini-NEPAs, parallel NEPA's limitation covering only those projects that will result in "significant" effects on the environment, while others encompass a broader array of projects including any project that may result in environmental effects. Generally, the mini-NEPAs fall into two general categories—procedural and substantive. Those in the procedural category focus on the steps of identifying potential impacts and appropriate mitigation measures. Those in the substantive category go one step further. They require that the alternative that results in the least impact on the environment be selected.

States programs also differ with regard to the agencies covered. Some state programs apply only to state level agencies and will not cover local entities, while the majority of the states with mini-NEPA programs impose requirements on local agencies. Despite the differences in state programs, most share three basic requirements discussed below.

Identifying Potential Impacts

The first step in analyzing a proposed project is to identify and evaluate its potential impacts. General categories that must be examined include: air quality, aesthetic resources, land use, waste management, traffic, plants and wildlife, water quality, and historic resources. After identifying the resources that may potentially be impacted by a proposed project, the next step is to evaluate the severity or significance of the impacts. This analysis takes place through one of several types of documents. The most comprehensive analysis used in situations

16. International Clinical Lab., Inc. v. Stevens, 710 F. Supp. 466 (E.D.N.Y. 1989); Mardan Corp. v. C.G.C. Music, Ltd., 600 F. Supp. 1049, 1055 (D. Ariz. 1984), *aff'd*, 804 F.2d 1454 (9th Cir. 1986).

17. 42 U.S.C. § 4321 *et seq.*

ENVIRONMENTAL IMPACT ANALYSIS REQUIREMENTS

- ➢ Identify potential impacts—air quality, aesthetic resources, land use, waste management, traffic, plants and wildlife, water quality, historic resources.
- ➢ Identify project alternatives—alternate locations, no project.
- ➢ Identify mitigating measures with monitoring plan.
- ➢ Mitigate impacts and monitor success.
- ➢ Select alternative with least environmental impact.

where the impacts are potentially significant is usually referred to as an environmental impact statement (EIS) or environmental impact report (EIR). If project impact analysis results in the conclusion that no significant impacts will be caused, some less comprehensive analysis is published. Under the federal program and some state programs, this is referred to as a Finding of No Significant Impact (FONSI).[18]

Identifying Project Alternatives

A second key component of mini-NEPA analysis is the identification of project alternatives. This involves the analysis of potential impacts associated with viable project alternatives. These could include school siting alternative locations or a no project alternative. Although this analysis may be useful in identifying potential alternative school sites, it is often a perfunctory exercise reaching the predictable conclusion that the proposed project is the best alternative.

One beneficial approach for a school district may be to study more than one proposed site at a time. Concurrently studying several alternative sites ensures more viable options for a school district and may even accelerate the final selection process. If one site does not meet a school district's criteria, acquisition of remaining sites can be pursued more aggressively. Additionally, the investigation process for individual sites may be consolidated, thereby maximizing a district's resources. For example, title searches and access to a city's public records may be conducted at one time for multiple sites. If the alternative sites are neighboring parcels, investigations of surrounding properties may reveal potential hazardous conditions regarding several targeted sites. Considering several properties at a time may also provide useful comparisons between sites that may lead a school district to choose to develop a site that requires less or no remediation.

Mitigation Planning and Monitoring

The third major aspect of mini-NEPA programs is the identification of measures to minimize or avoid potential impacts associated with the school project. Each significant or potentially significant impact should have an associated mitigation measure. For example, if traffic congestion on city streets surrounding the proposed school location is identified as a potentially significant impact, a school board may propose adding a lane to a major artery or adding signals or turning lanes to relieve congestion. In addition, the mitigation measure might include incentives to facilitate alternative transportation as well as measures to integrate regular auto traffic with school bus pick-up and drop-off areas.

The mitigation plan must also include a monitoring aspect and all measures identified in the mitigation plan should be enforceable. This means that a school board may have to commit

18. Other state programs refer to it as a Negative Declaration.

to traffic counts or water management techniques and monitor the success of the proposed measures. If the board itself will be responsible for monitoring, it should take into account the added costs of measuring and mitigating potential impacts for the life of the school.

INSURANCE

In recent years, the redevelopment of contaminated or otherwise environmentally challenged properties has become more frequent. The properties, termed "brownfields," present unique risks with regard to continuing and potential future liability for the owner and developer. Not surprisingly, the insurance industry has responded to the marketplace demand for new insurance products specifically geared for remediation and reuse of these contaminated properties. The primary role of insurance is to eliminate or reduce the uncertainty that exists for all parties involved in brownfield property transactions. Municipal governments, property owners, developers, potential purchasers and financial institutions as well as school districts can benefit from these new insurance products by reducing their present and future environmental liability. Environmental insurance providers now offer flexible and responsive insurance products to assist parties in getting brownfield projects planned, cleaned, developed and completed. Insurance products applicable to brownfield projects include the following.

Remediation Stop Loss Coverage

One of the newest and perhaps most critical types of coverage offered by environmental insurers is remediation stop loss. This coverage allows the project owner to cap the remediation costs for a project. The discovery of higher-than-expected concentrations or wider spread contamination may result in additional incurred cleanup costs. In any development, a pro forma is prepared to arrange financing and determine the financial liability of a project. By being able to cap one of the most significant cost drivers in brownfield redevelopment, property owners and developers are better able to predict their break-even point for a profitable transaction. It also allows them to secure better credit terms since the project's viability is more certain.

Remediation Legal Liability

Remediation legal liability protects the insured against the cost of remediating any additional contamination that is discovered onsite. This coverage provides additional security to the insured for any pre-existing contamination that was unknown at the time the site was acquired.

Pollution Legal Liability Coverage

Pollution legal liability coverage protects the insured against suits brought for damages for bodily injury or property damages caused by the migration of contamination from the insured's site to neighboring property. Pollution legal liability coverage may also cover more indirect exposures such as suits for diminution in value of neighboring sites from contamination from an insured's activities.

Defense Coverage

In many actions brought under environmental liability coverage, the cost of defense will exceed the actual damages paid out. This coverage provides to the insured the cost of defense, as well as the cost of investigating the claim.

CONCLUSION

Just as with any real property acquisition and development, the siting of a new school raises potential environmental and health concerns. This chapter highlighted some of those concerns and outlined considerations for due diligence and environmental impact analysis. A school district undertaking a new school project faces a myriad of concerns, but careful study and planning from an environmental perspective can help avoid some major pitfalls down the road and can, in the long run, conserve valuable funds in addition to providing a safe and healthy environment for education.

ATTACHMENT A: SAMPLE CONSULTING SERVICES CONTRACT

CONSULTING SERVICES CONTRACT

This CONSULTING SERVICES CONTRACT is entered into effective _____ 20_, by and between _____ ("Counsel") as legal counsel for its client, _____ ("Client"), and _____ ("Consultant").

WHEREAS, Counsel requires the assistance of an expert consultant in connection with _____ ,as specified in the Scope of Work, attached hereto as Exhibit "A";

WHEREAS, Counsel has been authorized by Client to retain an expert to assist Counsel as specified in the Scope of Work;

WHEREAS, Consultant is in the business of providing professional consulting services in the fields of _____ ;

NOW, THEREFORE, upon the terms and conditions set forth herein, and for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged by both parties, it is agreed as follows:

1. Services. Consultant shall perform for Counsel and Client the consulting services (hereinafter the "Services") described in the Scope of Work, attached hereto as Exhibit "A" and incorporated by reference herein, and as may be amended from time to time.

2. Contract Term/Performance Schedule. The term of this Contract shall commence as of _____ and shall continue until satisfactory completion of the Services, in the reasonable business discretion of Counsel and Client, or upon termination in accordance

with the provisions set forth herein. Counsel may terminate all or part of this Contract at any time without cause, upon giving Consultant notice of termination. In such event, however, Counsel agrees to arrange for payment to Consultant (in accordance with the terms set forth in Paragraph 3) for all services properly performed up to the date of Consultant's termination.

3. Compensation. For satisfactory performance of the Services, Counsel shall arrange for payment to Consultant for the Services on the basis identified in Exhibit "B" attached hereto and incorporated by reference herein. Consultant shall provide to Counsel a monthly detailed statement of the Services provided and expenses incurred pursuant to the Scope of Work. Within a reasonable time after receipt of such detailed statement, Counsel will send an invoice to Client for payment that covers payment of Consultant's statement. Within ten (10) business days after receipt of payment from Client for the Services rendered by Consultant, Counsel will make payment to Consultant. Consultant specifically acknowledges and agrees that the Services are being performed for the benefit of Client, that Client has the sole responsibility for payment, and that Counsel has no responsibility for payment to Consultant unless and until Client makes payment to Counsel for the Services.

4. Representations and Warranties. Consultant represents and warrants that it shall perform the Services in accordance with all applicable legal requirements and professional standards, and with that standard of care, skill, and diligence normally provided by a professional person or firm in the performance of similar services. At its sole expense, Consultant shall promptly correct any portion of the Services which fails to meet the above requirements, provided Consultant is notified by Counsel in writing of such defective Services within thirty (30) days after completion of any such portion of Consultant's Services. Consultant is hereby given notice and acknowledges that Counsel will be relying on the accuracy, expertise, competence, and completeness of Services and upon Consultant's lawful performance hereunder.

5. Subcontracts. Consultant shall not subcontract for any part of the Services or obligations hereunder without the prior written consent of Counsel.

6. Reports to Counsel. Consultant shall report to and consult with Counsel with respect to all matters covered by this Contract, and Consultant shall make itself available at reasonable times and places to report to and consult with Counsel in connection with the Services. Reports, invoices, and correspondence shall be sent to Counsel at the following address: _____ , Attn: _____ .

7. Confidentiality. Consultant acknowledges that its retention by Counsel, [the proposed transaction under consideration by Client] and all data, samples, materials, drawings, photographs, recordings, documents, results, communications, and any other information acquired from Counsel or Client or developed by or on behalf of Consultant (the "Service Information") in the course of performing Services hereunder is information being provided or developed to enable Client to obtain legal advice from Counsel and is confidential and covered by the attorney-client privilege. Consultant shall treat Service Information as confidential and Consultant shall ensure that it and those performing on its behalf maintain strict security over all Service Information and shall not, without Counsel's or Client's prior written consent, divulge any Service Information, directly or indirectly, to any person, corporation, or other entity, including governmental agencies or representatives, other than to the authorized representatives of Counsel and Client. Consultant shall be responsible for any breach of this confi-

dentiality provision by its agents, representatives, employees, or subcontractors. In addition to and without limiting the foregoing, Consultant agrees that:

A. All documents, including letters and reports, generated by Consultant shall be prominently marked as "PRIVILEGED AND CONFIDENTIAL," and Consultant shall keep all writings and other materials received or generated under this Contract in separate files marked "PRIVILEGED AND CONFIDENTIAL."

B. All written reports shall be submitted to Counsel in draft form before submission in final form on instructions of Counsel. All draft reports shall, in addition to being marked as "PRIVILEGED AND CONFIDENTIAL," shall also be prominently marked as "DRAFT - FOR DISCUSSION PURPOSES ONLY."

C. Consultant agrees that it will not, during the term of this Agreement and for a period of ten (10) years subsequent to the expiration or termination hereof, disclose to any third party any information which Consultant acquired from or about Client (or any of its affiliates) or its plans and operations, as a result of the confidential relationship created herein.

Consultant's obligation of confidentiality shall not apply to Service Information which at the time of disclosure is in the public domain, or after disclosure becomes, through no act or fault of Consultant or its employees, part of the public domain; was developed by Consultant or was in Consultant's possession prior to the receipt of same from Client; or is furnished to Consultant by others as a matter of right without restriction on disclosure. Consultant's obligation also shall not apply to disclosures compelled by law, an order of a court of competent jurisdiction or a subpoena, provided, Consultant shall immediately notify Counsel of the circumstances under which such disclosure is sought, and refrain from such disclosure for the maximum period of time allowed by law so that Counsel may procure a protective order or take other actions to protect the confidentiality of the information. The obligations of confidentiality set forth in this Paragraph shall survive the expiration or termination of this Contract.

8. Counsel Property. All Service Information shall be and remain the confidential and proprietary property of Counsel and shall be delivered to Counsel upon request, and in any event, a copy of all Service Information shall be turned over to Counsel at the termination of this Contract. Upon request, Consultant shall execute or secure execution of any documents, including assignments, that may be requested by Counsel for the purpose of prosecuting, enforcing or affirming its ownership rights.

9. Insurance. During the term of this Contract, Consultant shall, at its own expense, maintain adequate insurance to cover liability for the acts of its employees and/or Company. A certificate of insurance will be provided by Consultant at Counsel's request.

10. Indemnity. Consultant shall be responsible for and shall defend, indemnify and save Counsel and Client harmless from and against any and all damages, losses, claims, judgments, penalties, demands, liabilities, causes, and causes of actions, including all reasonable expenses and attorneys' fees and costs, arising out of injuries to or the death of any person or persons, or arising out of loss of or damage to any property or interests of any person or entity, to the

extent caused by, resulting or arising from, directly or indirectly, Consultant's performance hereunder, the negligent, wilful or wrongful acts or omissions of the Consultant or any one performing on its behalf (including its contractors or subcontractors), or Consultant's breach of any term, representation or warranty of this Contract, except that Consultant assumes no liability to defend, indemnify, or hold harmless Counsel or Client for acts or omissions of Counsel or Client.

11. Independent Contractor. In performing the Services, Consultant shall operate as and have the status of an independent contractor and shall not act as or be deemed an agent, employee, partner, or joint venturer of Counsel or Client. Unless prior written authorization is provided to Consultant, Consultant shall have no power or authority to enter into any agreement or obligation on behalf of Counsel or Client, it being understood that Counsel's and Client's liability is only that expressed in this Contract. Where Consultant enters into contracts it shall do so as principal. As an independent contractor, Consultant will be solely responsible for determining the means, manner, and method for performing the Services, and all payroll taxes, unemployment taxes, income taxes, disability taxes, unemployment insurance, workers' compensation insurance, and the like, for Consultant, its employees, agents, independent contractors, and subcontractors, shall be the sole and exclusive responsibility of Consultant. Consultant is not entitled to workers' compensation or other benefits from Client or Counsel, and Consultant is obligated to pay federal and state income taxes on any monies earned pursuant to the contract relationship.

12. Conflicts of Interest. Consultant warrants that it is not a party to any other existing or previous agreement that would prevent Consultant from entering into this Contract or which would adversely affect Consultant's ability to perform the Services. During the term of this Contract Consultant will not, without the prior written consent of Counsel, perform services for any other person or entity if such services are reasonably likely to lead to a conflict of interest with respect to Consultant's obligations under this contract.

13. Assignment. Consultant's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned without the prior written consent of Counsel, and any attempted assignment in violation of this provision shall be void and of no effect. This Contract may be assigned by Counsel without the consent of Consultant, provided that notice of such assignment shall be given to Consultant. This Contract shall be binding upon and inure to the benefit of the parties, their successors and assigns.

14. Advertising and Publicity. Consultant shall not use the name of Counsel or Client or any related companies in any advertising or promotional releases, literature, or the like without the express written permission of the entity affected.

15. Waiver. No change in, addition to, or waiver of any of the provisions of this Contract shall be binding upon either party unless in writing signed by an authorized representative of each party. No waiver by either party of any breach by the other party of any of the provisions of this Contract shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Contract.

16. Severability. In the event that any of the provisions, or portions or applications thereof, of this Contract are held to be unenforceable or invalid by any court of competent

jurisdiction, Consultant and Counsel shall negotiate an equitable adjustment in the provisions of this Contract with a view toward effecting the purpose of this Contract and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

17. Injunctive Relief. Consultant acknowledges that the breach of its confidentiality obligations would cause Counsel to suffer irreparable harm, and agrees that legal damages would not be a sufficient remedy for any breach of the confidentiality obligations by Consultant, its agents, representatives or employees. Accordingly, Consultant consents to injunctive or other appropriate equitable relief, including specific performance, upon the institution of legal proceedings by Counsel.

18. Governing Law: This Contract shall be governed and construed in accordance with the internal laws of _____.

19. Termination: Notwithstanding any other provisions of this Agreement, Client and Consultant shall have the right, at their sole option, without cause, and without incurring liability for damages, to terminate this Agreement by giving each other fifteen (15) days advance written notice. In the event either party exercises said option, Consultant shall be paid the consulting fee earned and reimbursable expenses incurred as of the date of such termination of this Agreement.

20. Entire Agreement: This Agreement represents the entire agreement between the parties hereto and supersedes any oral or written understandings heretofore entered into by or on account of the parties.

IN WITNESS WHEREOF, the parties hereto have entered into the Contract effective as of the date first above written.

[NAME OF CONSULTANT]
By:
Name:
Title:

[COUNSEL FOR SCHOOL BOARD]
By:
Name:
Title:

Source: Fred R. Wagner, Beveridge & Diamond, P.C., Washington, D.C.

ATTACHMENT B: SELECTED ENVIRONMENTAL QUALITY STATUTES (NEW YORK AND WASHINGTON)

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW

Sec. 8-0101. Purpose.

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.

Sec. 8-0103. Legislative findings and declaration.

The legislature finds and declares that:

1. The maintenance of a quality environment for the people of this state that at all times is healthful and pleasing to the senses and intellect of man now and in the future is a matter of statewide concern.

2. Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

3. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

4. Enhancement of human and community resources depends on a quality physical environment.

5. The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.

6. It is the intent of the legislature that to the fullest extent possible the policies, statutes, regulations, and ordinances of the state and its political subdivisions should be interpreted and administered in accordance with the policies set forth in this article. However, the provisions of this article do not change the jurisdiction between or among state agencies and public corporations.

7. It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.

8. It is the intent of the legislature that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

9. It is the intent of the legislature that all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage.

Sec. 8-0105. Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "State agency" means any state department, agency, board, public benefit corporation, public authority or commission.

2. "Local agency" means any local agency, board, district, commission or governing body, including any city, county, and other political subdivision of the state.

3. "Agency" means any state or local agency.

4. "Actions" include:

(i) projects or activities directly undertaken by any agency; or projects or activities supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies;

(ii) policy, regulations, and procedure-making.

5. "Actions" do not include:

(i) enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(ii) official acts of a ministerial nature, involving no exercise of discretion;

(iii) maintenance or repair involving no substantial changes in existing structure or facility.

6. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

7. "Environmental impact statement" means a detailed statement setting forth the matters specified in section 8-0109 of this article. It includes any comments on a draft environmental statement which are received pursuant to section 8-0109 of this article, and the agency's response to such comments, to the extent that such comments raise issues not adequately resolved in the draft environmental statement.

8. "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 8-0109 of this article.

Sec. 8-0107. Agency implementation.

All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this article, and shall recommend or effect such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this article. They shall carry out its terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review.

Sec. 8-0109. Preparation of environmental impact statement.

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(a) a description of the proposed action and its environmental setting;
(b) the environmental impact of the proposed action including short-term and long-term effects;
(c) any adverse environmental effects which cannot be avoided should the proposal be implemented;
(d) alternatives to the proposed action;
(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
(f) mitigation measures proposed to minimize the environmental impact;

(g) the growth-inducing aspects of the proposed action, where applicable and significant;
(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan;
(i) effects of proposed action on solid waste management where applicable and significant;
(j) effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to article fifty-five of this chapter; and
(k) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

3. An agency may require an applicant to submit an environmental report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of an environmental impact statement.

4. As early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination whether an environmental impact statement need be prepared for the action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.

If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. The purpose of a draft environmental statement is to

relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

For any action for which the agency determines that such statement is not required and which would take place in a special groundwater protection area, as defined in section 55-0107 of this chapter, the agency shall show how such action would or would not be consistent with the comprehensive management plan of the special groundwater protection program, as implemented by the commissioner pursuant to article fifty-five of this chapter.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113.

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

Notwithstanding the specified time periods established by this article, an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of paragraph four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.

6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner and made available to the public prior to acting on the proposal which is the subject of the environmental impact statement.

7. a. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be

made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

b. Such rules and regulations shall require the applicant to reimburse the conservation fund, as established pursuant to subdivision (a) of section eighty-three of the state finance law, in order to recover all costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement by employees of the department, whose salary and expenses are paid, in whole or in part, from the conservation fund.

8. When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

9. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area, as defined in section 55-0107 of this chapter. Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.

WASHINGTON STATE ENVIRONMENTAL POLICY ACT (EXCERPTS)

RCW 43.21C.010 Purposes.

The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between man and his environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and stimulate the health and welfare of man; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.

[1971 ex.s. c 109 § 1.]

RCW 43.21C.020 Legislative recognitions -- Declaration -- Responsibility.

(1) The legislature, recognizing that man depends on his biological and physical surroundings for food, shelter, and other needs, and for cultural enrichment as well; and recognizing further the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Washington, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) foster and promote the general welfare; (b) to create and maintain conditions under which man and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

[1971 ex.s. c 109 § 2.]

RCW 43.21C.030 Guidelines for state agencies, local governments -- Statements -- Reports Advice -- Information.

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the world-wide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

[1971 ex.s. c 109 § 3.]

RCW 43.21C.031 Significant impacts.

(1) An environmental impact statement (the detailed statement required by RCW 43.21 C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.II0(l)(a) do not require environmental review or the preparation of an environmental impact statement under this chapter. In a county, city, or town planning under RCW 36.70A.040, a planned action, as provided for in subsection (2) of this section, does not require a threshold determination or the preparation of an enviromnental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

(2)(a) For purposes of this section, a planned action means one or more types of project action that:

(i) Are designated planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(ii) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (A) a comprehensive plan or sub-area plan adopted under chapter 36.70A RCW, or (B) a fully contained community, a master planned resort, a master planned development, or a phased project;

(iii) Are subsequent or implementing projects for the proposals listed in (a)(ii) of this subsection;

(iv) Are located within an urban growth area, as defined in RCW 36.70A.030;

(v) Are not essential public facilities, as defined in RCW 36.70A.200; and

(vi) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection.

[1995 c 347 § 203; 1983 c 117 § 1.]

RCW 43.21C.038 Application of RCW 43.21C.030(2)(c) to school closures.

Nothing in RCW 43.21C.030(2)(c) shall be construed to require the preparation of an environmental impact statement or the making of a threshold determination for any decision or any action commenced subsequent to September 1, 1982, pertaining to a plan, program, or decision for the closure of a school or schools or for the school closure portion of any broader policy, plan or program by a school district board of directors.

[1983 c 109 § 1.1.]

ATTACHMENT C: U.S. ENVIRONMENTAL PROTECTION AGENCY TOXICS RELEASE INVENTORY

PURPOSE

What is TRI?

The Toxics Release Inventory (TRI) is a publicly available EPA database that contains information on specific toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as federal facilities. This inventory was established under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), which requires facilities to use their best readily available data to calculate their releases and waste management estimates. If facilities do not have actual monitoring data, submitted values are derived from various estimation techniques.

Reporting Year (RY) 1999 is the most recent TRI data available. Facilities reporting to TRI were required to submit RY 1999 data to EPA by July 2000. *TRI Explorer* provides access to two sets of *frozen* data: the current data update (as of August 1, 2001); and public data release (PDR) data (as of December 28, 2000). The current data update includes revisions/withdrawals that have been submitted by facilities since the initial public data release (i.e., the annual release of the TRI data) until August 1, 2001. To view the most recent data that has been submitted after August 1, 2001, please access EPA Envirofacts. <http://www.epa.gov/enviro/html/ef_overview.html>

What is the TRI Explorer?

The TRI Explorer <http://www.epa.gov/triexplorer/reports.htm> provides access to the TRI data to help

<http://www.epa.gov/triexplorer/>

communities identify facilities and chemical release patterns that warrant further study and analysis. Combined with hazard and exposure information, the TRI Explorer can be a valuable tool for risk identification.

What are the limitations of TRI data?

TRI data do have certain limitations. TRI data reflect releases and other waste management of chemicals, and not exposures of the public to those chemicals. TRI data alone are not sufficient to determine exposure or to calculate potential adverse effects on human health and the environment. TRI data, in conjunction with other information, can be used as a starting point in evaluating exposures that may result from release and other waste management activities which involve toxic chemicals.

TRI ACCESS ON-LINE

How can I access TRI data on-line?

- **TRI Explorer** — EPA created the TRI Explorer <http://www.epa.gov/triexplorer/reports.htm> to provide access to TRI data that is both easy to understand and flexible to use. Currently, the TRI Explorer includes on- and off-site releases, transfers off-site, and other waste management data (i.e., recycling, energy recovery, treatment, and quantities released). The TRI Explorer will generate reports based on facilities, chemicals, geographic areas, or industry type (SIC code) at the county, state, and national level.
- **Envirofacts** — EPA created the Envirofacts <http://www.epa.gov/enviro/html/ef_overview.html> Warehouse to provide the public with direct access to the wealth of information contained in its databases (including TRI). The Envirofacts Warehouse provides environmental information from EPA databases on Air, Chemicals, Facility Information, Grants/Funding, Hazardous Waste, Risk Management Plans, Superfund, Toxic Releases, and other EPA databases. Envirofacts provides access to TRI data that is continually updated with the latest revisions.
- **The National Library of Medicine (NLM) TOXNET System** — NLM's TOXNET <http://toxnet.nlm.nih.gov/> System makes TRI data and health information accessible to concerned citizens and to businesses and organizations interested in environmental or public health issues. TOXNET offers state-of-the-art, user-friendly, on-line searching.

PUBLIC DATA RELEASE REPORTS

What is the TRI Public Data Release report?

The TRI Public Data Release report books are published each year and provide a general overview of that year's TRI data and information on trends. The State Fact Sheets are released with the Public Data Release report and provide a brief summary of the TRI data by State. These reports can be obtained electronically below or by calling EPA's National Service Center for Environmental Publications (NSCEP) at (800) 490-9198.

<http://www.epa.gov/triexplorer/>

- Public Data Release (PDR) Report <http://www.epa.gov/triinter/tridata/index.htm>
- TRI State Data Files <http://www.epa.gov/triinter/tridata/state_data_files.htm>

OTHER INFORMATION RESOURCES

What other information resources should I consider?

Release estimates alone are not sufficient to determine exposure or to calculate potential adverse risks to human health and the environment. TRI data, in conjunction with other information, such as the toxicity of the chemical, the release medium, and site-specific conditions, can be used as a starting point in evaluating exposures that may result from releases of toxic chemicals.

- **Hazard Information on Toxic Chemicals Added in 1995** <http://www.epa.gov/triinter/chemical/hazard_cx.htm> — EPA added 286 new chemicals and chemical categories to the EPCRA section 313 list. These chemicals were added to the list based on the statutory criteria in EPCRA section 313(d)(2): in short, acute human health risks, cancer or chronic (non-cancer) human health effects, and/or environmental effects.
- **Chemical Fact Sheets** <http://www.state.nj.us/health/eoh/rtkweb/rtkhsfs.htm> — EPA is continuing to develop Chemical Fact Sheets as part of its effort to provide the public with information on chemicals. The goal is to provide information summaries that supplement environmental release information for TRI chemicals. These summaries provide a chemical's identity and properties; how it is used; how exposure to it might occur; what happens to it in the environment; how it affects human health and the environment; and contact information for EPA offices and other groups.
- **Integrated Risk Information System (IRIS)** <http://www.epa.gov/iris/> — The Integrated Risk Information System (IRIS) contains summaries of hazard assessments and EPA regulatory information on over 500 specific chemicals. It is a key source for descriptive and quantitative hazard/risk information, such as oral reference dose and inhalation reference concentrations for chronic, non-carcinogenic health effects; oral slope factors and unit risk for chronic exposure to carcinogens; EPA drinking water health advisories; and summaries of EPA regulatory actions. The system is useful in the risk assessment process.
- **ATSDR ToxFAQsTM** <http://atsdr1.atsdr.cdc.gov/toxfaq.html> — The Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQsTM is a series of summaries about hazardous substances being developed by the ATSDR Division of Toxicology. Information for this series is excerpted from the ATSDR Toxicological Profiles and Public Health Statements. Each fact sheet serves as a quick and easy to understand guide. Answers are provided to the most frequently asked questions (FAQs) about exposure to hazardous substances found around hazardous waste sites and the effects of exposure on human health.
- **New Jersey Hazardous Substance Fact Sheets** <http://www.state.nj.us/health/eoh/rtkweb/> — Fact sheets for 1,234 individual hazardous chemicals that includes information relating to acute and chronic health hazards, identification, workplace exposure limits, medical tests, handling and storage, definitions, emergency response information for fires, spills and first aid, and other information.

<http://www.epa.gov/triexplorer/>

MORE INFORMATION

- **Contacts:** <http://www.epa.gov/tri/contacts.htm> Gives the names, addresses, and phone numbers of people in EPA and state environmental agencies to contact about TRI.
- **General Information:** <http://www.epa.gov/tri/whatis.htm> Explains more about the TRI Program and other resources available.
- **Regulations/Policy/Statute Page:** <http://www.epa.gov/triinter/lawsandregs/index.htm> Provides links to TRI regulations, recent chemical petition responses, EPCRA section 313, and the Pollution Prevention Act.
- **Metadata:** <http://www.epa.gov/triexplorer/metadata.pdf> Provides detailed metadata information for EPA's TRI Form R. (PDF Format, 26KB).