



How To **Win** at **Public Hearings**



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Center for Health, Environment & Justice

Updated May 2003



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Mentoring a Movement

Empowering People

Preventing Harm

About the Center for Health, Environment & Justice

CHEJ mentors the movement to build healthier communities by empowering people to prevent the harm caused by chemical and toxic threats. We accomplish our work by connecting local community groups to national initiatives and corporate campaigns. CHEJ works with communities to empower groups by providing the tools, strategic vision, and encouragement they need to advocate for human health and the prevention of harm.

Following her successful effort to prevent further harm for families living in contaminated Love Canal, Lois Gibbs founded CHEJ in 1981 to continue the journey. To date, CHEJ has assisted over 10,000 groups nationwide. Details on CHEJ's efforts to help families and communities prevent harm can be found on www.chej.org.

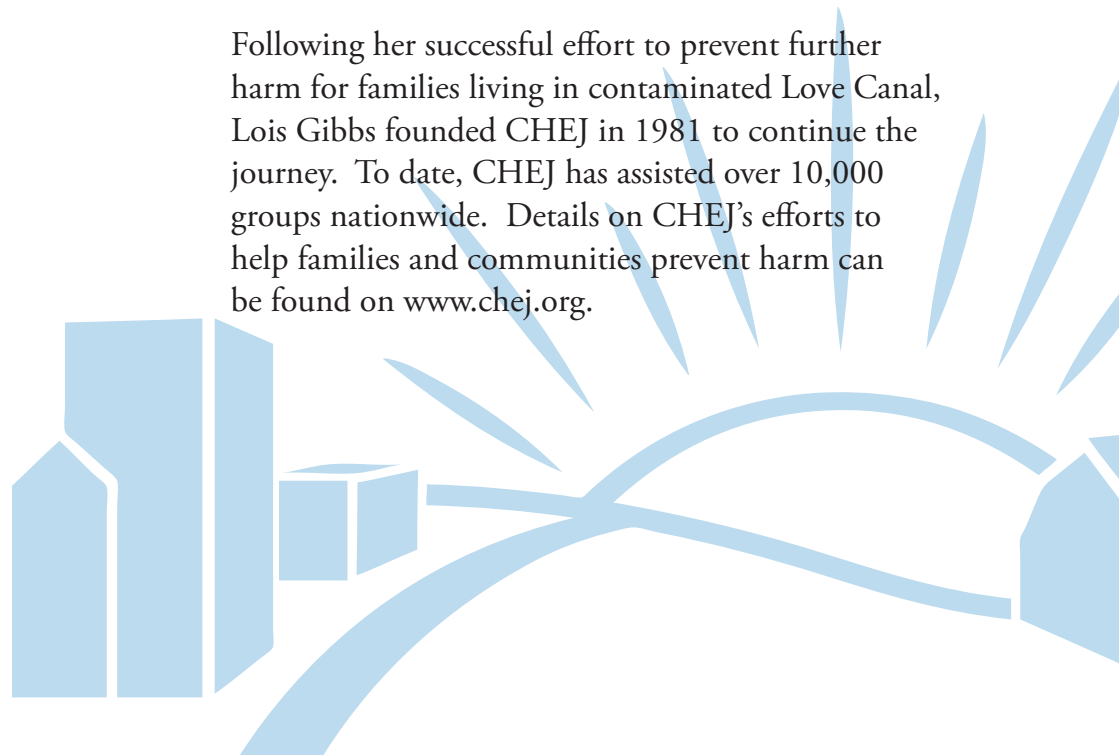


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Chapter 1

Introduction

The public hearing is a nearly universal process that people in the grassroots environmental movement experience. Whether your community group is fighting to stop, control or clean up after a polluter, you're probably going to take part in at least one public hearing. The purpose of this publication is to help you make public hearings work for you instead of against you, and to help you use public hearings as part of a winning grassroots organizing strategy.

If you are going to effectively protect your community and your family's health, it is important that you understand the following key points about public hearings.

- **Public hearings should be democracy in action but their purpose has become distorted.**

In the early 20th century, the establishment of public hearings was a victory for democracy and the power of the people. Before that, government officials and their allies had been free to make their decisions in secret, with no accountability to the average citizen. Now, big business and special interests have found ways to mangle public hearings so that they control the agenda while they meet their legal requirements.

- **Most public hearings are designed to appease the public, not to have a real debate leading to a decision.** More often than not, those in power already know what their decision is before the public hearing, and have set up the process so that the officially allowed public input will mean little. This means that if you accept the rules they choose, you will have no impact on the decision. However, there are many ways that your community can have an impact on decisions affecting your community, before, during and after the hearing.

- **Public hearings are primarily advertised as being the one and only opportunity for you, the private citizen, to influence decision-making.**

This is almost never true. You and your community have many options for changing bad decisions, if you choose to use them. Don't let the polluters or the government choose your strategy for you. Many times at CHEJ, we get calls from community people who are desperate and anxious, because a public hearing is coming up in just a few days, they just found out about it, and they are being told they will have no other

opportunity to have input. We advise them to do the best they can at the public hearing, but then we help them see the many other opportunities they have to change the minds of their decision-makers.

- **Public hearings usually focus on what the laws and regulations allow. That's not the only issue.** It's not even the main issue. Just because the regulations allow something doesn't mean it has to happen, or should happen. As CHEJ Executive Director Lois Gibbs often says, "It's not against the law to pollute." Polluter lobbyists help to shape many of our environmental laws and regulations, after all. No matter what the regulations allow, if a project is unsafe or immoral by the standards of your community, you have a right to let your public officials know that, and you have a right to organize to stop it.
- **The "hard science" facts emphasized at public hearings are not the only — or even most important - basis for decisions.** Since most of us do not understand complex scientific issues, and often can be intimidated by experts, public hearings frequently focus on the scientific aspects of a decision. Community people are told that anything but an objective scientific presentation is emotional or inappropriate. But in reality, decision-makers, who are usually not scientists themselves, don't base their decisions on science, but on their understanding of economic and political benefits.
- **It is very unlikely that any single fact or insight that you raise at a public hearing will change the mind of the decision-makers — but they are not your only audience.** Decision-makers usually know about most, if not all, of the problems and concerns you are going to raise. They have usually decided to ignore or minimize the problems that concern you, because they are more interested in financial or other concerns. They will be more influenced by how many people show up, and by how strong and well-organized your community group is, than by the facts you

bring up. However, if the media and your neighbors are listening, a public hearing may be a good time to bring up a few especially convincing facts.

- **Public hearings can be a trap for communities.** Activists put in many hours of their group's energy and time in preparation, only to find they are not listened to, or that the decisions that are made in the end do not reflect what happened at the public hearing. The community people who came out to the hearing, sometimes dozens or even hundreds of people, feel that nothing was accomplished, that the deck is stacked against them, and that they might as well stay home in the future. The community becomes discouraged, and gets weaker, instead of stronger, because it believes it has given its best shot and gotten nothing in return.

This guidebook is divided into two parts and gives you CHEJ's best advice on how to handle public hearings, regardless of how your group chooses to respond to the public hearing process.

Part 1 takes a serious look at what you must do if you are to "win" a public hearing through the use of the formal rules of proceedings. It gives you practical advice on organizing approaches you can take along side of the formal process to enhance your chances of winning.

This first part was written by two "experts" in the grassroots environmental movement. One author is Yitzchak E. Kornfield, an attorney who served on the staff of the Tulane University Environmental Law Clinic. There, he helped many citizens groups prepare to wage effective battle in the hearing process. The second author is Wilma Subra, who is one of the most valued and trusted technical experts used by the grassroots environmental leaders. She too has had exhaustive experience in fighting to win in the public hearing process.

The authors were aided by distinctly unique and special person, Willie Fontenot, who has worked for over two decades in the Louisiana Attorney

General's Office as a real public servant, dedicated to helping people get their fair share of justice out of the law.

Though the legal framework and examples used in the first section are Louisiana-based, the public hearing process is so similar everywhere that these examples should be useful.

Part 2 takes a different approach toward public hearings. If you reach the point where your group is frustrated by the public hearing process, this section describes organizing strategies and lively examples from a variety of grass roots communities that show how you can change the rules, play “hard-ball” and change the minds of the decision-makers.

Within most groups, there are on-going, potentially troublesome debates about how to respond to public hearings. Some members cling to a faith in the fairness of the process and want to participate. Other members, while cynical about their chances of getting a fair break, figure the group should participate in the hearing because, in their view, it's the only game in

town. And yet other members feel the public hearing is a farce and want to either ignore it or disrupt it.


No matter how you feel, it's hard to ignore the public hearing process. The key is to find that right balance between participation and ignoring it altogether. Ideally, you want to use the process to advance your group's goals and objectives without spending a great deal of time and diverting your group's energy and activities.

You will probably need to use both sections of this guidebook. In the early stages of your fight, your group will probably decide to play by the rules. To do otherwise puts you at risk of losing large blocks of members who think you're being “too radical” or who think you're “jumping the gun” by skipping the “Nice Guy” stage and launching directly into the more political tactics in Part 2.

Through your group's democratic process, you'll make these decisions. Regardless of what that decision will be, there ought to be useful tools you can use in this guidebook.



“We’ve just finished reviewing the Environmental Audit and it looks great! We have only one suggestion: On Recommendation No. 4, rather than “should investigate further,” we want to say, “should NOT investigate further.” Can you live with that?”



Chapter 2

Public Hearings the Formal Process

PUBLIC HEARINGS: A PRIMER,

by Itzhak E. Kornfeld, J.D. and Wilma Subra, M.S.

Citizen testimony in public hearings is the key to educating your community, elected officials and the agency or department you are trying to convince. We review below the elements of public hearings, which we and many friends and colleagues have gained through numerous state and federal public hearings, and by submission of written comments regarding a wide-range of environment issues. Although some believe other means of getting your message across may yield greater dividends (see Section 2), no citizen who has invested hundreds of hours in time, research and probably missed family functions should foreclose any options, especially legal ones.

Recently retired United States Supreme Court Justice William Brennan (reiterating what his “brother” Justice Louis D. Brandies said some 60 years ago) stated that if you cannot prove the correctness of your position to others, you must reevaluate your position. Lois Gibbs’ battle and victory at Love Canal should be enough proof of what Justices Brandies and Brennan practiced during their tenure on the Supreme Court. Remember all options are open. Therefore, do not foreclose any.

What are Public Hearings?

A public hearing is a process in which citizens present facts and views about a proposed agency action. They are agency-sponsored gatherings open to the general public. Public hearings can be called for a number of purposes. For example:

- To gather information (Fact Finding Hearing)
- To get public input on a proposed agency regulation (also known as a rule) with which an agency has proposed to regulate industry. Generally, “rulemaking” is the administrative process by which the legislature’s or Congress’ acts and statutes are put into enforceable regulations by an agency
- To gather public input on whether to issue a permit or license when a company is applying for one because regulations require the company to apply for the permit.

Public hearings are an excellent tool for focusing on issues of environmental concern, to educate the community and to bring the community (whether local or state-wide) together.

They are also good from a political perspective, since they force decision-makers on every level to take a stand. But these hearings do have their drawbacks. One drawback is that they may not always be an effective tool in shaping or changing the law.

The public hearing is supposed to be a collaborative process between the agency and the general public. However, it is important to realize that each side will have its own agenda, the citizens, and the regulated industry or permit applicant and the agency. Additionally, the public hearing is often a one-way street. Citizens and members of the regulated industry or the company seeking a permit present or make their comments to the hearing officer(s). These comments may be transcribed and become part of the administrative record (what an administrative record is will be discussed below). Questions are generally not allowed by one side of the other and the hearing officer will rarely ask questions of the speaker. However, sometimes hearing officers will allow questions. If they do not, oneway a citizen can present a question is by framing it in such a way that it will appear to be clarifying the record. For instance, citizens will normally not be allowed to ask why the permit applicant cannot do whatever it is applying to do in another way. However, one can ask why the permit applicant or the department has not considered an alternative method. It is, therefore, important to realize and consider the utility and effectiveness of public hearings.

One of the major draw backs for citizens is that quite commonly the regulated industry or permit applicant will have been working with the agency for some length of time, maybe as long as two years, before the public hearing is held if a new plant or program is to go into effect. During this pre-regulation or pre-application period, interested citizens who may wish to get involved in the process are left in the dark and may need to play catch-up.

Each state usually has its own equivalent of each federal agency. For example, your state's EPA equivalent may be the Dept. of Environmental

Quality (DEQ) or Natural Resources (DNR). Each state, furthermore, will usually have its own department of natural resources or water quality, its own department of agriculture and/or forestry (which may regulate herbicide and pesticide use), its own department of transportation and its own department of health. Depending on your state's regulatory structure, one or more of these agencies or departments may regulate the issue you are concerned about.

Additionally, check to see if your county, municipality, or town has departments, which regulate any environmental activity.

More and more localities are including environmental issues within their agendas. For example, New York City ("NYC") has its own Department of Environmental Protection (DEP) and its city council has a separate subcommittee on environmental affairs. Boston regulates asbestos use through its Department of Health. Alternatively, NYC regulates asbestos use through both its Department of Buildings and its Department of Environmental Protection, whereas medical waste is regulated both by the Department of Health and Hospitals and its DEP.

Municipalities, counties and towns or township have found that regulating environmental issues produces benefits on two fronts. First, regulation may generate greater revenue via licensing and other fees. Second, they can monitor more closely the activities in their backyard.

This primer will address two types of public hearings:

- Rulemaking (or regulatory) hearings.
- Permit variance or exemption hearings. The differences between these two types of hearings will be discussed shortly.

The differences between these two types of hearings will be discussed shortly.

Public Notices

Before a public hearing can be held, the agency, which will hold the hearing, may be required to give

notice to the public. Where notice is required, it is an outgrowth of the constitutional right to procedural due process under the 5th Amendment for the federal government and under the 14th Amendment for the states. The public notice is the first step in the process. The public notice for a permit application generally differs from a rulemaking notice.

A permit application notice will include the following:

- The time and place of the hearing and the subject matter of the hearing.
- Federal agencies usually allow 30 to 45 days for the notice period and an additional 45 days for written comments; check your state or municipal department's scheduling. In Louisiana, the department will usually provide 20 days from the date notice is given to the hearing date and 10 additional days for written comments.
- The name of the applicant, the location of the facility or activity, and why the applicant is seeking the permit.
- The address and telephone of the office where more information on the permit application may be obtained or where a copy of the draft permits or fact sheet (where applicable) may be inspected or copied.

Rulemaking public notices includes:

- The time and place of the hearing and the subject matter of the hearing.
- The length of the comment period. With rulemaking, the period between notice and public hearing may be very short. In Louisiana the department is usually only required to give 2 weeks notice and an additional 2 weeks to submit written comments.
- The contents of the proposed rule.
- Where to go for more information.

How is notice provided? We will use Louisiana as an example. In Louisiana, state agencies provide notice to the public in three ways. First, the agency will

publish a small notice, usually in the notice section (in the back of the newspaper) of the Baton Rouge State Times, the state's official journal, and in the county or parish daily local paper a short time, usually between 10 and 30 days, before the hearing is to take place.

Another method in which Louisiana departments provide notice to the public is by sending a copy of the notice by mail to any persons requesting a copy and who are on the agency's mailing list. If you are not on a department's mailing list, write to the department's secretary and ask what type of mailing lists it maintains and how your name can be included on them. Additionally, you may be concerned about specific issues and therefore, may wish to notify individual sections within a department requesting that your name be included in that section's notice file (e.g., water permits, or hazardous waste permits). Update the request every six months. Finally, state agencies may publish some notices in their state register. Publication dates vary. However, many states publish them on a monthly basis.

The federal government publishes its notices in the Federal Register usually on a daily basis. It also publishes some notices in local newspapers. EPA usually will try to provide notice of upcoming hearings 30 to 45 days in advance. It will usually publish proposed regulations or changes in regulations in the Federal Register. Draft permits applications, however, are usually published in "major" local newspapers and are not published in the Federal Register (see for example Title 40 of the Code of Federal Regulations section 124). When EPA makes a decision on whether to grant or deny a permit to a company or facility, it will normally only notify people who submitted written comments or who requested such notice.

Federal mailing lists are generally easier to get on than state mailing list. EPA, for example, may compile mailing lists of environmental groups or leaders, civic organizations and even church groups. However, to insure that your name is included on a federal agency's mailing list, you should narrow down the issues you are interested in, and

write or call the public information officer of the division you are interested in (e.g., air, water, hazardous waste) and request that your name be added to the division's mailing list. Contact the public information officer at your EPA regional office or EPA's national headquarters in Washington, D.C. or both.

Why Have Hearings?

Public hearings are one of the few ways in which a government agency gets citizen or community input into what that agency is proposing or considering. An exchange of views and open exploration of the issues may lead to alternatives or changes. However, more importantly, agencies may be required by law to hold public hearings because Congress or the State Legislative branch wants these people to be accountable and accessible to the public.

You've Gotten A Hearing Notice: What Do You Do Now?

If the agency seeks to propose a new regulation, or amend an existing one, it will have to justify its position with policy and technical data. Similarly, when a company applies for a permit it will have to inform the regulating agency of why it should receive the permit and how it plans to comply with the regulations once the permit is issued. These documents, supporting files, and data make-up the administrative record and will be found at the department's offices. In order to review the administrative record, you must first locate it. Request a copy of the record from the agency for citizen review. Agencies are usually not required to furnish copies to interested parties. Therefore, the regular procedure is that you must drive to the agency's offices (usually in the state capital) to review the record. Additionally, agencies normally impose copying charges, which may exceed \$2.00 per page. In order to avoid the expense of driving to see the record and the high service costs for copying, request the agency to place a copy of the record in your local library. Also request that the agency waive its usual copying charges, if any, on grounds that the record is to be used for a public purpose. Regardless

of whether the agency grants your request for a fee waiver or whether you must travel to its offices, review all documents in detail, and make lots of notes.

The administrative record is like a house. It needs to be built up so that if you are not satisfied with the agency's decision you can appeal it to the courts. It is, therefore, very important that you continually build up the record to support your side. Another reason why you should "stack" the administrative record is because your opponent may appeal the department or agency's decision to the courts. Therefore, you must prepare the record for that eventuality (i.e., you want the record to reflect community opposition to every point raised by the opposing side).

The permit application or proposed regulation, minus the supporting data, may also be found at the department's regional or field offices and at a location in the county, usually the county offices or the public library. This will also be the case for any federal agencies; EPA's administrative record will normally be in its regional headquarters.

You Want To Comment. How?

The first thing you should do is see if the agency will hold a public hearing. As was noted earlier, your state's departments are not required to hold public hearings. It is not an automatic right! However, if you want a hearing to be held, but the department has decided not to hold one, request one directly from the department's Director. Alternatively, contact your elected officials and have them persuade the Governor or the department's Director to hold a public hearing. Or do both. You should point out to these officials that the purpose behind public hearings is for public input, and that this issue is critical to your community's well being.

Assuming the department decides to hold a hearing, other problems can arise. For example, if it schedules a hearing during the day or in your state capital or some other location inconvenient to you, petition the department or agency to hold the meeting during non-working hours, such as evenings and/or weekends, and at locations accessible to

the affected public. This, of course, becomes more important when the hearing is for a permit application because you want as many people as possible from the community to be present, each expressing his or her view and assessment of how the permit will affect the community.

In the event the department is unwilling to make the hearing more convenient for you or your organization, do not hesitate to contact your elected officials and the media and ask for their help in pressing the particular department's director to move the hearing date and or location. Persuade them that the point of the hearing is for public input. In addition, one of the most effective things you can do is meet with or call your elected officials prior to the hearing to educate them on the issues and get them to support and back your cause. Remind them that election time is near (if that happens to be the case) and that your support could be important if they want to stay in office.

Try to persuade them to attend the hearing and possibly speak in support of your position. Their presence will add credibility and clout to your position. Elected officials also attract the media, and the media's presence will help you get your message out to the rest of the community.

Prior to the hearing you will want to review the proposed regulations or permit application and the existing administrative record. These documents will contain a number of straightforward questions, requiring straightforward answers. However, they will also be technical in nature. The permit application or proposed regulation will most likely contain engineering data geologic and water quality data or air quality data, depending on the proposed regulation or permit. Unless you have reviewed this type of data before, most people probably won't know how to go about interpreting these documents. This is where the first challenge lies.

How To Get Ready For The Hearing Organize!

There will be a great deal of work to do. Build a coalition with your friends, family, and neighbors

Table 1: Forming Committees

When a group of citizens comes together in an effort to address a given issue, it is a good idea for committees to be formed. This allows everyone to get involved and do something they feel comfortable doing. The following are examples of committees we have seen used and employed successfully.

- Research & Technical Committee
- Alternatives Committee – to research alternatives to the proposed issues
- Media and Publicity Committee
- Fund Raising Committee – to raise money for stamps, copies, etc. all the way up to hiring consultants.
- Action Committee – to make posters, coordinate rallies, etc.
- Mail Committee
- Student Committee – the involvement of students and their teacher(s) is a key element to any strategic plan. First, they are a great resource. Second, this can be an excellent lesson in civics, issues, and dealing with government. Third, you may be helping to shape and mold those

and form committees (see Table I). If possible, build a broad-based organization. Broad-based organizations are much more effective and are more likely to be successful. Decide on your objectives and split the work.

Research

You and the various committees you establish will need to research a whole range of technical and non-technical issues. Citizens can and must do a lot of legwork in researching impacts on a community from potential polluters. If you should decide that you need

an expert (see Table 2), your organization will be better off if it can present the expert with data it has compiled. This will provide you with the opportunity to educate the expert. And after all, education of the public, decision makers, and the media is what this entire process is all about. Why not start early?

Approaching the Issues

One method of approaching the issues in a permit proceeding is the following:

- If you have not had the opportunity or feel that you have not had enough time to review the

Table 2: Items To Be Researched

This list is illustrative only. Your situation may dictate research into other areas.

- Air emissions
- Location of groundwater aquifers
- Water wells, location, and depth
- Location of irrigation wells
- Irrigation pumps for surface water
- Location and quality of surface water used for drinking water sources and free flowing springs
- Seismic lines
- Oil and Gas wells drilled in the area
- Oil and gas pipelines
- Mineral leases
- Geology
- Hydrology
- Groundwater levels – use any locally generated data or data generated by the US Geological Survey (USGS)
- Soil types
- Hydraulic head as it relates to the nearest river.
- Area of flooding
- Flood zone maps
- Surface drainage patterns – use USGS topographical maps
- Discharge from the site-areas impacted
- Houses within a certain radius of the site
- Subdivisions surrounding the site
- Schools
- Place of Worship
- Businesses
- Surrounding land use—review your county’s (and surrounding counties) zoning maps and ordinances
- Traffic Zones and impact on transportation
- Endangered species
- Critical habitats
- Wetlands
- Impact on tourism
- Impact on urban development
- Impact on property values
- Track record of the company – including compliance record in other states as well as your home state
- Economic impact private & public sectors
- Site selection process

Note: discharge figures may be available through data submitted by the company under the Community Right To Know Act and also through The Right-to-Know Network <http://www.rtk.net>

administrative record (i.e. the supporting documents for the proposed regulations or the permit application), request an extension of the review and comment period. The extension should be in writing and be directed to the person listed as the contact person on the public notice as well as the agency director for the state agency in charge of Regional Administrator for a federal agency. Due to the complexity of the issues (and because the regulated community or the permit applicant will frequently have known about the hearing and will have been preparing for it for a long time), you may need additional time to prepare.

- As you are reviewing the proposed regulation or draft permit and its associated administrative record, familiarize yourself with the applicable laws and regulations that govern the proposed regulation or draft permit you support, want to improve or are opposing. Set up a meeting with agency personnel and discuss the proposed regulation or draft permit with them. Press them on what their position is and why. Suggest to them how you would like to see things fashioned. Discuss and advocate your position with the agency staff during the pre-hearing stage. Usually the regulated industry or company has. Therefore, to protect your interests you too need to be pushing for your point.
- The most common flaws in a draft permit application, or proposed regulations are the discrepancies within the document itself. Screen these documents carefully to identify any flaws. Ask yourself the following questions: what is the problem with it? Where can I point to holes in it? Where can I offer suggestions for change or improvement? What does the permit applicant need to do to further inform the public or provide greater safeguards? Has the permit applicant looked ahead and anticipated all your concerns? Are there better, safer, and cleaner alternatives?

Getting Down To It

If you find that you need help interpreting the technical data in the proposed regulation or draft permit application, contact a person with a technical background. Consider the options:

- Contact agency personnel. Schedule a meeting with them in which you request that they explain the technical data to you. Point out to the agency staff-person that unlike the regulated industry you do not have an in-house staff and that agency employees are your only link to understanding the data. Note: the agency or its personnel may not be neutral on the topic or data that you are discussing.
- Network with other environmental groups, they may know of someone who will be able to help. One of the most important things you can do is contact an individual or group that has faced a similar problem or company and seek their advice. For proposed regulations, contact other states with similar regulations and attempt to identify why and how they handled this/these problems.
- Contact high school science teachers and university or college professors. Press them to help you. University and college professors, especially the engineers, scientists and toxicologists, will usually have some knowledge regarding the issue you are looking to solve.
- Experts cost money, a lot of it and you may not have the money to hire one. However, do not hesitate to approach the experts and see if they will volunteer their time for free.

Take advantage of these people's assistance to get to the meat and bones of the proposed regulation or draft permit.

This part of the effort will be the most time consuming, but you will learn a great deal and be a more effective advocate of your cause. At this point, you or your group needs to decide who will comment on which part of the proposed rule or permit. Plan to

pack the hearing room. If you do not, the regulated industry or permit applicant will. Numbers make a difference. They influence the hearing officer. Call on other environmental or citizen groups and any workers or unions whose support you can muster to get involved early on in the process and who can be present at the hearing. Ask if they know of someone who can address issues you don't feel qualified to speak on or didn't think of originally. If the only thing that these groups do is help you fill the room, then you have accomplished much.

What To Look For

Proposed or Amended Regulations:

If the agency is proposing regulations, look to see if existing regulations are in place. Ask yourself, what do these proposed regulations seek to do or change? Study the proposed regulations and prepare case studies of situations around the state that point out or highlight what effect they would have had had these new regulations been in place; would they have been of help or would their implementation

have made the situation worse. Armed with this information, you can counter any points made by the rule's opponents or supporter. To learn about other possible alternatives, review EPA regulations and see how other states have regulated this type of situation.

Permit Applications:

Initially, you will want to review the application and draft permit along with the administrative record. Review the permit application using the criteria outlined in Table 3 as a guide to determine if the site or technology is the best environmental choice. The applicant should be required to provide information, that addresses the broad range issues, which could result in negative impacts. If the issues are not adequately addressed or the application is deficient, use this deficiency to either have the process stalled until everything you seek is complete or to discredit the application or applicant.

Once you have thoroughly reviewed the draft permit, you will want to review the company's compliance

Table 3: Recommendations

The applicant should submit as a part of the siting application, and where applicable a non-technical summary of the positive and negative impacts of the proposed project and the proposed technology. These positive and negative impacts should include but not be limited to the following issues:

- Noxious odors (2-3 miles)
- Dust emissions
- Litter
- Groundwater contamination
- Contaminated surface water runoff
- Increased noise impacts from traffic
- Subsurface methane gas migration to adjacent property and structures
- Gaseous emissions from the site
- Traffic problems in the area adjacent to and on the roads used to service the proposed facility
- Effect on the outdoor lifestyle of residents in the area and adjacent and surrounding areaproperty values
- Impact on future residential or commercial development in the area
- Displacement of existing people in the area
- The applicant should be required to provide information, that could result in negative impacts.

history. Our experience in Louisiana has been the following: for plants or facilities located in Louisiana, we need to review the compliance files for each section (e.g. water, air, hazardous waste, etc.) at the Department of Environmental Quality. Do not look only at the in-state plant(s); target other states the company operates in as well. To find out about a company operation in other states, start by contacting your state's environmental agencies or community or environmental organizations. In Louisiana, sources other than a particular agency include the Citizen Access Unit in the Attorney General's Office and the Louisiana Environmental Action Network (LEAN) in Baton Rouge (the state capital). Nationally, you may wish to contact organizations, which seek to assist citizens for example, Greenpeace, the Center for Health Environment & Justice (703/237-2249) or the Environmental Background Information Center (www.ebic.org).

Inquire if the company has ever been cited for a violation. If it has, then make a copy of thereport and put it in your file. Get as much background on the company as you can, on any environmental or other problems it has ever encountered. Try to find out who is financing the project and what political figures stand to benefit from the proposed regulation or permit application. Publicly held companies are required to file reports (10K and 10Q forms) with the Securities and Exchange Commission (SEC) disclosing their financial situation, and whether they have environmental problems, which bear on their financial health. This information will be of use to you at the hearing and when you are preparing your written comments.

If the company has had no enforcement actions or violation against it, then proceed on the merits of the permit. For example, has the company followed the procedures it needs to in applying for the permit? It is this type of situation where knowledge of the law, regulations, and scientific or engineering data are of key importance. Look to see if the permit application outlines emission or discharge points. Check the various portions of the permit. It will have point source numbers (a point source is an individual

discharge or emission point from the plant, either into a water body or into the air). Each point source will have minimum, maximum, and average amount discharged and the method used to calculate the data. The emission data will either be actual data or EPA estimates (which are approximations from computer models – note that these data are subject to question since they are dependent on which data/factors the model considers).

Positive and Negative Impacts

Background

Permit applications normally put forth the best picture of the proposed plan and the technology. It is necessary for citizens to have in a convenient location, a discussion of all aspects of the proposed facility.

Applicant Track Record

- Has the service area been clearly defined?
- Has the applicant presented his history of site operations and/or ownership? This should not be limited to your state. This history should also include that of the parent company.

Cost/Benefit

- Has the applicant provided a cost/benefit analysis of the public impacts of the proposed project? A listing of those items, which cannot be easily quantified, should be simply listed.

For publicly owned facilities, the applicant should consider if the amount of money spent on the development and maintenance of the proposed technology is in the best interest of the public. The decision on the proposed facility should not be limited purely by financial considerations or convenience.

Site Selection

- What was the specific area or specific mileage radius that was reviewed for site selection?
- Is the site selected the most suitable site available in a specified restricted area?
- Which alternative sites and/or technologies

have been considered?

- Has an in-depth explanation of these considerations been presented?

Zoning

- Is the area zoned properly?
- If the zoning was altered to allow the proposed facility, were the people in the impacted area allowed to comment on the zoning change?
- Is the proposed facility the same or has it been altered since zoning approval was given for the facility by the local authority?

Access Roads

- What are the conditions of roads, highways, and bridges (load limits), which will be used to transport solid waste to the site?
- How accessible are roads which will be required to service the site?
- Do the roads leading to the site flood? Are the roads leading to the site used as school bus routes?
- How will the vehicles using the site impact traffic patterns in the area?
- What type of traffic flow pattern has been planned at the entrance to the site?
- Is the entrance road to be hard-surfaced and landscaped?
- How will daily fugitive dust problems from off and on-site roads as well as site operations be controlled?
- How will litter and mud be controlled on off-site roads used to transport the waste?

Airports

- What is the proximity of the site to airports?
- Has the future development of an airport in the area been investigated?
- Has the applicant considered any future

expansion plans for existing airports?

- Has information been compiled which presents the flight patterns for planes using existing airports and U.S. military airfields?

Historical and Archaeological Sites

- Has the impact of the proposed site on the historical value of the area been addressed?
- What impact will the proposed site have on present and prospective tourism in the area?
- Does the area have the possibility of archaeological significance?
- Has an on-ground archaeological study been performed on the site?

Water Resources

Surface Water

- What will be the impact of the proposed site on the watershed in the area?
- What will be the impact on the existing drainage systems?
- What effect will the site have on the quality and quantity of receiving streams/river?
- What effect will the quality and quantity of water in the drainage system have on the surface and shallow ground water users (agricultural and other business enterprises) in the area?
- How will the leachate be collected, controlled, and disposed? Will it impact surface and subsurface water quality in the area?
- Is the proposed site within the 100 year flood zone area?
- Is there evidence that the proposed site will have adequate water in case of fires?

Groundwater

- In what direction is present groundwater flowing and what effects will the proposed

site have on the flow of groundwater?

- What impact will the proposed site have on existing water wells (shallow and deep) in the surrounding area?
- Has a water well inventory of shallow and deep-water wells in the area and down gradient of the site been performed?
- Has the down gradient geology been investigated?
- Has the applicant identified the location of natural springs in the area?
- What effect will the site development have on natural springs in the area?
- What is the proximity of the aquifer at the site itself and in the surrounding area?
- What is the proximity to recharge zones (surface or near surface) of the aquifer?

Subsidence and Coastal Erosion

- Has information been provided that details the proximity of the site to the existing and future coastline and/or existing and future river channels?
- Has the subsidence rate for the coastal area been presented for the life of the proposed project?
- What is the subsidence rate for the proposed site and the area surrounding the proposed site?
- What are the soil types on the proposed site and are they suitable for the proposed project?

Subsurface Conduits

- What oil and/or gas pipelines and other utilities are present on the proposed site?
- Has information been presented based on historical records as well as on the site investigations of all borings performed on the proposed site?
- Oil and gas exploration and production?

- Seismic activities?
- Soil borings for site investigation? Water wells?
- Unplugged or improperly plugged seismic holes?
- Capped wells?

Flora and Fauna

- What would be the effect of the site on the wildlife habitat?
- Does a threatened and/or endangered species reside and/or migrate within the site?
- Does a threatened and/or endangered species use or reside in the area (5 – mile radius) near the site?
- Is there a plan for non-lethal control of scavenging birds at the site?
- Will a buffer zone of native vegetation be provided around the site?

The Public Hearing

A public hearing is not a forum for debate or argumentative conversation but is the agency's way of soliciting citizens (corporate or otherwise) views before it makes its final decision. In some situations it may be of limited effectiveness. However, by appearing and commenting at the hearing you or your organization should try to achieve the following:

- Find out about the opposing side's interests.
- Enter additional facts and comments into the administrative record directed at the regulated industry or agency's arguments.
- Give the agency a scope of citizen concerns and views.
- Provide the agency with grounds to support your position.

When you are preparing for a hearing prepare concise statements, each covering only a few areas. Submit supporting documents for the public record. Do not try to cram too much information into the

presentation. Include a number of speakers from your organization or group to show the breadth and spectrum of views and the support you represent. At the public hearing, keep in mind that you are educating the public as well as the agency. If an issue is crucial to you, have handouts or fact sheets to distribute to the audience, the news media, and all officials presentation structured in such a manner that the hearing officer can follow your presentation by referring to the handout.

During the hearing, make notes of issues you feel need further clarification or rebuttal. These issues should be addressed during the written comment period following the hearing. At the public hearing, be sure citizens having signs, poster, etc. for the visual effects that the media pick up on.

Hearing Procedure

Regardless of the type of hearing the agency conducts, rulemaking or permit application, the sequence of events at each hearing is usually very similar. If the hearing room is not at the agency's offices, it will usually be in a school or county office building. The following is an outline of what usually takes place:

As you walk into the hearing room you will be asked to fill out a registration form. These forms are the agency's way of keeping track of who was present and represented at the hearing. They also become part of the administrative record. However, these registration forms can be of extreme benefit to you or your organization as well. About halfway through the hearing ask the agency employee at the door to let you copy these forms. Copy all the information contained in them. You now have the beginnings of a mailing list pro and con to use as you see fit, e.g. for recruitment purposes or for mailing your brochures or letters to your opposition.

Should you indicate a desire to speak, approach the hearing officer(s) and discuss with them the order in which they will take speakers. You may want to space your speakers differently based on what you hear from the hearing officer. Usually, the agency

or the permit applicant will make a statement first. As a matter of strategy you may prefer to let the applicant/petitioner, especially in a hearing for a permit application, have its supporters speak first so that you can respond to these speaker's comments directly.

At the beginning of the hearing, the hearing officer will explain the purpose of the hearing and what procedures will be followed. The procedural part of these remarks will explain that the procedure in public hearings is informal. For example, the hearing is not a court of law, therefore, speakers are not sworn in, and the rules of evidence or cross-examination followed in a court of law do not apply.

In order to allow all the people who indicated a desire speak, the hearing officer will set a uniform time limit for each speaker, e.g., 5-7 minutes.

When it is your turn to speak, speak clearly, state your name, and your group affiliation, if any.

Generally, your presentation at the podium should be geared towards the overall issue or impression rather than focusing on details (which should be addressed in your written comments).

Address a few fundamental points or problems (specific technical or scientific issues are better presented in written form).

The hearing officer may not be one of the decision makers, therefore, preserve the major points for your written comments. This will also keep your approach and scope out of your adversary's reach for a while longer and allow you to add to the record later on. Because the hearing officer may not be one of the decisionmakers, it is critical that you find out who the decision maker is and meet with them to present your case.

Always try to follow up oral testimony with written comments. You should also submit written comments or a fact sheet from which you summarized your remarks, so they can be appended to the hearing record or transcript as an exhibit. Be sure to tell the hearing officer, after you have introduced yourself,

that this is what you intend to do.

Your message to the Hearing Officer

In commenting verbally or in writing to the agency, you are attempting to advocate a certain point of view. Keep in mind that the agency is acting according to how it believes the legislature wanted it to act when the law granting the agency authority to make this regulation was enacted. The hearing officer's main function is to keep the record complete. Your job is to convince the agency to adopt the position you are advocating.

The agency's decision makers want to hear that either the proposed regulation or permit has technical problems, that the geology, hydrology or air data are incorrect, or that the law is being misapplied. Sway them into deciding in your favor by arming them with enough information to do so. Use your fact sheet to press this point home.

Just as or more important, however, is that you demonstrate to the agency how diverse your base of support is. Fill the hearing room with your coalition and present the diversity of interests to the agency through each individual speaker. You need to grab the agency's decision maker's hearts and minds at

the same time.

Using the Media

You know the power of the media. State officials and politicians listen to what they see on TV, read in newspapers, or hear on the radio. But television cameras really push the point home. Call every TV station you can in and out of your county or state. The same with newspapers, contact both in-state and out of state papers. Our state officials are very much influenced by news stories in national newspapers like the New York Times, the Washington Post, or the Wall Street Journal. Use the media to your advantage by educating them. Start with the big picture first, then teach them about the specific problems you are trying to solve and why. Prepare a fact sheet. Pull out some of the most catchy facts and sentiments, and prepare a press release.

CHEJ has a manual that can help you with media relations called Media Means

Written Comments

Your main goals in submitting written comments are to persuade the agency and to preserve the record for appeal. Written comments are your best opportunity to present details and technical data because the decision makers and/or their staff read these comments and make decisions based on them. Give the agency specific solutions and alternatives, don't just object.

Sometimes it is useful to frame some of your comments in question form, especially when you are seeking to gain more data or are questioning the data in the proposed rule or permit. The written comments are also an opportunity to request a response to your comments or questions from the public hearing. Try not to rely on the public hearing alone.

When you are arguing your position, focus on the agency and the broader public problems, not only on your specific situation. Put yourself in the seat of the agency decision maker and ask yourself how this decision will:



"I see a parcel of land where subsurface contamination may or may not be present."

- Promote or interfere with the agency's mission.
- Affect the agency's goals and purposes.
- Affect the agency's budget.

Conclusion

- **Be Prepared**

Always have the necessary facts at hand and your homework done in advance.

- **Be Right**

If you are wrong, your willingness to admit it will provide you with greater credibility, not less.

- **Be Practical**

If you know an agency won't budget on a given issue, don't beat your brains out on it. Focus on other issues, which will get you closer to your goal.

- **Be Wise**

Knowing when to push a certain issue or undertake a certain project is a real key to success. Seize opportunities.

- **Be Organized**

Rome wasn't built in a day and certainly wasn't built by one person. Develop leadership. Spread the workload. Plan into the future. Meet often. This not only aids communications, but will help you brainstorm and most of all, re-energize.

Chapter 3

Play “Hard Ball”

How To Take Over Public Hearings

Activists spend endless hours sitting and testifying in public hearings. It’s amazing at how patient local leaders are in these exercises in futility. Hearings are generally convened in inconvenient places, at inconvenient times, with the room set up to intimidate. When the public agency initiates the hearing, count on them to publicize it in the most obscure way possible. If the agency is being asked to hold the hearing by the citizens, count on them to resist.

Public hearing chew up huge amounts of time and burn out leaders. They alienate members who have such a lousy time that they never return to the group. Often, they have no effect on public policy. But local leaders still go to hearings. Here are some reasons why:

- If we don’t go we will be criticized for not participating.
- We don’t want to miss anything. There could be useful information (but I rarely hear specific examples).
- It’s a chance to tell our side. Sure, after the “expert” for the agency’s and polluters drone

on for hours, knowing the news media leave after the first hour.

- Our lawyer told us to enter certain evidence into the record. This usually means people expect to lose and are looking ahead to a court challenge, which as a tactic, usually fails.
- Isn’t that what you’re supposed to do? If they hold a hearing, aren’t we supposed to go?

The typical public hearing is a gross distortion of democracy. Its no accident hearings look the same, since hearing officers get basic training in how to control public hearings.

Sometime ago, CHEJ’s staff went to Homer, LA, to a local hearing on a proposed uranium hex fluoride plant by Louisiana Energy Services (LES). Homer is a small, majority black, low income town near the Arkansas border. A lively group, Citizens Against Nuclear Trash (CANT), was organizing to block the plant.

The hearing was in a high school auditor, which swallowed up the big turnout of over 600 people. Officials and “experts” lined the stage behind

cloth-covered tables, 10 feet above the audience. They had their podium, slid projector, and huge view screen. There were microphones and recorders everywhere. They explained the rules. The experts would speak first, for about 75 minutes (which turned into over 2 hours). Then people could ask questions, if they were polite. Extra police were brought in and placed strategically to ensure security.

Speakers droned on about the wonders of the project. The plant would revive the local economy and provide hundreds of jobs. It’ll be state-of the art, using best available technology, modeled on totally problem-free European plants.

Before the hearing, Senator Bennett Johnston complimented the project. No accidents would occur, but if they did, said Sen. Johnston, there’s absolutely no danger either from radioactive material or poisonous uranium hex fluoride gas.

The TV lights went out and newspaper reporters closed their notebooks shut and left to meet their deadlines. This was the cue for a change of pace. As the lights faded, the county government head took the podium to chair the public Q&A portion of the meeting. He re-explained the rules. One question per customer. No statements. Behave yourself or else.

A few CANT members rose to poke holes in LES’s plan. Is it true LES has no market for their products? Is it true LES has no insurance and no prior experience with this sort of project? Is it true there’s no real plan in case of a uranium hex fluoride gas leak? Is it true no one in Homer would qualify for any of the decent paying jobs? The answers were vague, unclear and often hard to hear.

Up to the mike stepped Roy Mardis, one of CANT’s core leaders. “Gentlemen,” he asked, “You say you won’t come into a town where people don’t want you. Would you be willing to put it to a vote?” “If the majority of the people here showed you they don’t want it, would you accept that?” The company spokesperson replied, “Well, that’d only show a majority of those here.”



“But this is your meeting and here are lots of your folks,” said Roy. “Let’s try it anyway.” Roy turned his back to the company spokesperson and spoke to the audience. “OK people, vote with your feet,” he said, pointing to the back of the hall. As one, 2/3’s of the audience, over 400 people got up and walked out, to the shock of the officials on stage and the startled, scattered applause of a few of the LES supporters in the audience.

The image of 400 people walking out together was very powerful. One CANT member expressed the consensus: “THAT WAS SOLID!” This walk out was a very defiant and effective way to give “testimony” at a hearing.

Do you have to go to public hearings?

No, you don’t. But you can’t ignore them either. As CANT proved, you can treat hearings with scorn and come out of it stronger. If a public hearing neglects your needs, you can boycott it. You can hold a protest outside and denounced it. You can send a speaker in to say you refuse to acknowledge its legitimacy. You

can organize your own “People’s Hearing,” one you run that deals with the truth.

Or you can attend, but insist they take their rules and throw them out the window. Let the people speak first. Make them do it your way, even if this means crying mothers speak, instead of the “techie” hearing officials prefer. Insist officials and “experts” respond point by point. Use the hearing to present specific, concrete demands and insist on “yes” or “no” answers, on the spot.

If they don’t cave in to your demands to do it your way, pull a mass walkout. When denied the dignity of meaningful participation, the United Farm Workers would signal members’ to kneel in prayer and hymn-singing.

At a public hearing, Concerned Citizens of Whole Lake (MI) were shocked when hearing officials turned out the lights when it was citizen’s turn to speak. At the next meeting they showed up with flashlights.

Concerned Residents of Muskegon (MI) showed up at public meetings about contaminated water with water jugs. Their “testimony” took the form of lining up at water fountains to fill their jugs from the city water supply to take back home. They wanted the city to hook up to their neighborhood to this water system.

Hearing official’s routinely adjourned hearings on Concerned Residents of the Yough (PA) when community spokes people turned on the pressure. Fed up with this tactic, CRY organized for one hearing so that when the hearing official went to adjourn, they took over the stage and blocked the exits, literally holding the hearing officers hostage.

At Love Canal, Hooker Chemical officials’ constantly attacked residents’ participation by challenging their “standing” and raising “points of order.” But Lois Gibbs organized her neighbors to destroy this tactic. Every time they would challenge residents’ “standing,” the signal would be given and everybody would stand up. When they argued “Point of Order!” the whole audience would yell “Cheeseburger.” And if the hearing wasn’t addressing their issues, the

crowd would chant the Love Canal slogan, “WE WANT OUT!”

We advise groups to address the media blackout that results from delaying community testimony until after hours of testimony by the government and company experts. Call the news media. Tell them you’re holding a news conference at the hearing site 30 minutes before the hearing time. Tell the media you’re sensitive to their deadlines and that you’re having this news conference so they can get both sides of the story.

One NJ group insisted the hearing begin with the Pledge of Allegiance. They forced hearing officials to scramble to find a flag. They also insisted on singing “America the Beautiful.” But this time, the hearing officials were totally flustered. Halfway through the song, they found they were singing new verses the groups had written to tell their story. Other groups added to this by insisting a local minister (a member of their group) give an opening invocation that also spoke to the group’s concerns.

Citizens Against the North Mountain Site (WV) won their first big victory when their key “testimony” took the form of children’s delegations giving Gov. Arch Moore petitions from the group. The high schools’ spokesperson “testimony” challenged Gov. Moore to “just say no” to dumping toxics, just as young people are challenged by adult’s to say “just say no” to drugs. Of course, the group’s message was enhanced by a large display of banners, signs, balloons, and costumes.

You can go to a hearing as a group, in a motorcade or parade. Set a time and place in your neighborhood for people to meet so they can go to the meeting site all together. It’s more fun. It boosts turnout and your folks enter the meeting room united.

As a hearing in Maryland, Lois Gibbs stunned local leaders with a neat tactic. As she testified, she saw hearing officials weren’t listening. Lois stopped and stood silent at the microphone. After a long pause, the hearing official saw she wasn’t talking. “Er, ah, Ms. Gibbs, are you through?” “No Sir,” she said, “I was

simply waiting for you to start listening. When you’re ready, I’ll continue.”

If you’ve been shutout, silenced, or scorned, you can physically display your response. Some groups show up wearing gags, earplugs and in a couple of instances, with cardboard cutouts over their ears labeled “B-S Protectors.”

Here’s another idea from a group in Alabama. The hearing was in a level hall with folding chairs. The group leader stood and expressed sympathy for public officials who have a hard time understanding how upset people are. She turned her back, faced the audience, and asked people to stand up if they were concerned about Issue #1. Everybody stood. “And if you’re also deeply concerned about (Issue #2), step forward.” Everyone picked up their chairs, moved one step forward, and slammed their chairs down in one loud crash. And the next issue, step forward, chairs down with a crash. And the next. When she read off the last demand, the front row of chairs was in the

face of the hearing officers. Then she turned, took her seat, nose-to-nose with the top official, and said, “Now what are you going to do about it?”

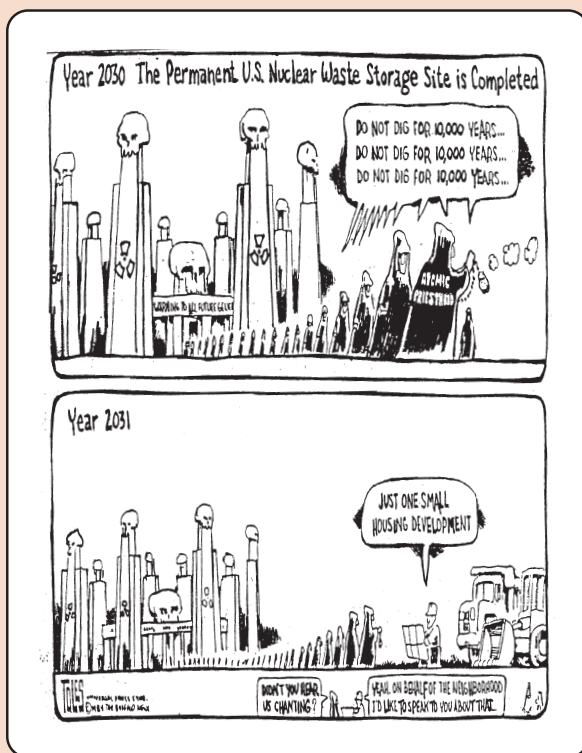
How you handle public hearings is up to you. Hearing officials are trained in methods of control. Your opponents will dissect your reactions in tense post-hearing staff meetings. If you behave, you’re written off as soft. If they control the meeting flow, they’re assured of prime media coverage. If they seduce you into dealing with “just the facts,” they’ve got you in the “Dueling Experts” game they are sure to win.

What ever you decide, you must approach the public hearing with a realistic plan, understanding what you are getting into, and how you can make the public hearing a “win” for your group. You must consider every option. You may want to make a professional researched presentation backed up by hundreds of supporters. Or you may want to boycott the hearing, or even in some cases you may decide to break the rules and disrupt ‘business as usual’. Any one of these can be the right choice, depending on the situation. There is only one choice that is always wrong — ignoring a public hearing opportunity completely and hoping it will turn out okay without any action on your part.

You must have a larger strategy for winning your fight, which recognizes that the public hearing is only part of the process. You must choose your own goals and stick to them, keep your community mobilized and involved, and make sure the decision makers know what you want and feel pressure to provide it.

CHEJ has publications that can help you develop and carry out a total organizing strategy, such as the *Leadership Manual* (P002) and *How to Stop a Proposed Facility* (P069).

A strong turnout and clear presentations at a public hearing often are important steps on the way to victory for a community group. But always remember that your opponent, the polluter or potential polluter, does not wait until the public hearing to begin laying the groundwork for the proposed project. The pol-



luter does not stop pushing their agenda when the public hearing ends. In the fight to make a profit at the expense of your community, the polluter prepares a long-term campaign to get what they want, and they persist until they win or decisively lose. If you want to protect your community's health and safety, you will have to be even more persistent and more strategic. You will also have to keep drawing on the one strength industry can never have — your community.

References

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She served as chairwoman of the recycling rules and regulations committee, which drafted the rules and regulations, required by the statewide solid waste-recycling bill. Works with citizens groups throughout Louisiana and the United States on environmental issues dealing with solid hazardous wastes, oil field waste, groundwater contamination, surface water pollution, air pollution from incinerators and industrial sources, and pesticide issues. Contact at: P.O. Box 9813, New Iberia, Louisiana 70562-9813; Telephone (318) 367-216.

Part 2 was written by:

Portions of Part 2 originally appeared in CHEJ's magazine, *Everyone's Backyard*.

“CHEJ is the strongest environmental organization today – the one that is making the greatest impact on changing the way our society does business.”

Ralph Nader

“CHEJ has been a pioneer nationally in alerting parents to the environmental hazards that can affect the health of their children.”

New York, New York

“Again, thank you for all that you do for us out here. I would have given up a long time ago if I had not connected with CHEJ!”

Claremont, New Hampshire



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