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LEADERSHIP INSIGHTS



Lessons Learned on the Front Line of Public Engagement

Elizabeth Swain, Strategic Communications Department Manager and Senior Project Manager

If you have ever sited an infrastructure project of any kind, you have stories to tell. Stories are the frame we put around our experiences—both good and bad. They help us capture lessons, keep our sense of humor and recover from the stress of getting projects delivered on time and on budget.

I'd like to share a few of my stories in the form of lessons I've learned from a lifetime of working on complex controversial issues, mostly involving energy infrastructure.

Project Planning

A U.S. Senator once told me at the outset of his first campaign that the most consequential decisions he would make would be at the very beginning of the race. He was right. I've always remembered that because it applies to infrastructure projects as well.

Ask yourself, is this the right time for my company to be moving forward with a visible and potentially challenging project? Have we laid the reputational groundwork? Are our relationships with decision-makers in good shape? Do I have the right team to bring this to a successful conclusion? Big projects can take a major toll on a company if all the elements for success are not in place.

Get the site right. That is what we hear from non-governmental organizations, with an implicit offer of support for correctly sited projects. I'm still waiting to see that support, but the advice is spot on.

In addition to the environmental and engineering issues that factor into a routing and siting analysis, understanding the affected communities is critical. Land-based aquaculture applications present a case in point. One project selected a former paper company town and is moving forward easily. The other one in a coastal community with strong preservationist values is having a harder time. Upfront research could have saved the latter company time and money. Those first decisions are indeed the most consequential.

Be clear-eyed about project impacts. It's easy to underestimate how the public will react to real or perceived impacts. Project sponsors understand the benefits of expanding electric infrastructure. However, since the benefits side of the ledger is more opaque to the public, they generally perceive the impacts as disproportionate to the benefits.

Mitigation is key. I have learned the hard way that mitigation is best presented up front, rather than held for later negotiations. Unmitigated impacts to resources of public concern can be a potent organizing tool for project opponents.

Project Development

Develop friends before you need them. Grassroots and grasstop allies are essential for publicly visible projects, and these relationships take time to cultivate. Friends offer critical support at community


meetings, regulatory proceedings, online and in the press. Credible third-party champions are an effective counterweight to misinformation from project opponents.

Communicate early and often. Seek every opportunity to spread factual information about your project, don't just rely on one open house. Especially if opposition is forming, you must have a presence on social media, online forums, websites and in person. Talk to service clubs, city chambers, community groups, retirees and anyone who will listen. Keep local officials well-informed and check in regularly to offer them updates and keep track of the pulse in town.

Diffusing Controversy

If you find yourself at loggerheads with a community, there are strategies to engage the public that result in mutually acceptable outcomes. Correctly implemented, a community advisory process gives interested parties a seat at the table and enables a rational dialogue about public values, project purpose and siting considerations. Don't despair. There is always a path forward.

And remember, controversial projects do get permitted. The goal is to be as smart and strategic as possible to save time, money and reputations. When your project is completed, wouldn't you rather be telling a short story with a happy ending? 🐼



From NIMBY to NIMYSOC: How Groundbreaking Atmospheric Studies Helped Change Our View of Pollution Sources

Lou Corio

Senior Air Quality Scientist

Almost everyone is familiar with the term “NIMBY” or “Not In My Back Yard.” Since the early 1980s, it has been a rally cry of sorts for people opposed to local development and its anticipated societal (particularly environmental) impacts. The history of environmental permitting in the U.S. is filled with examples of projects, specifically air pollutant-emitting projects, being challenged by the public flying the NIMBY banner.

In recent years, however, the NIMBY concept has morphed into something more expansive in scope: “NIMYSOC” or “Not In My Yard, State, Or Country.” From an air quality standpoint, what factors have contributed to this far-ranging opposition to new projects?

The notion that people should be paying closer attention to emission sources across

the country or even on the other side of the world is rooted in groundbreaking studies on long-range pollutant transport and global climate impact.

Long-Range Transport Studies

Over the last 50 years, these studies have primarily addressed air pollutants regulated by the Clean Air Act (CAA), such as sulfur dioxide (SO₂), nitrogen oxide (NO_x) and ozone.

Starting in the 1970s, studies in the U.S. and Europe have shown that emissions of SO₂ and NO_x from tall stack sources transform into acidic compounds and are transported to downwind regions before falling to the ground as acid rain. The findings of these studies provided the impetus for amendments to the CAA (in 1990), known as the Acid Rain Program, to reduce the emissions contributing to acid rain.

Curious how air pollution travels across continents?
Find out at
www.powereng.com/nimby



Pollutant Transport. Emissions from sources located locally and in distant upwind regions can contribute significantly to pollution levels in downwind urban areas.

The well-documented success of the Acid Rain Program demonstrated how reducing emissions from sources in upwind regions can improve the environment in regions that are hundreds of miles downwind.

Ozone pollution studies conducted in the 1990s and 2000s showed that in parts of the Northeastern U.S., regional transport via an “elevated reservoir” of ozone and ozone-forming pollutants was the most significant contributor to bad ozone days in downwind areas. (Ozone is not emitted directly by sources but is formed from emitted precursor gases—NO_x and volatile organic compounds.)

For example, in Baltimore, Maryland, regional pollutant transport was found to be responsible for 70% of the ozone problem. Aircraft- and ground-based instruments were used to confirm the presence and concentrations of pollutants many thousands of feet above ground, traveling hundreds of miles with the winds aloft.

Continent-to-continent pollutant transport also has been confirmed through modeling and measurement studies over the past 25 years. Ozone and other pollutants, such as

fine particulate matter, have been shown to be transported from Asia to the U.S. and from the U.S. to Europe.

Global Climate Impact Studies

Outside of the purview of the CAA, intensive studies have been conducted since the late 1960s using global-scale climate models to predict the potential impact of increasing atmospheric greenhouse gas¹ (GHG) levels on temperatures.

These complex computer models simulate the effects of increasing GHG levels on climate by accounting for the physical processes that transfer energy and matter (e.g., gases) between atmosphere, ocean, land and sea ice. As computing power increased over time and the physical processes became better understood and modeled, confidence in modeling results increased.

Global climate model predictions have showed a consistent, ominous trend over time. The earliest predictions showed that increasing atmospheric CO₂ levels would result in average global temperature increases over coming decades. Interestingly, when these first model

predictions were made, global temperature observations in the 1960s and early 1970s showed a modest planetary cooling. As expected, the predictions were given little credence.

Using more complex models, studies conducted by scientists in the 1970s and 1980s continued to show global warming with increasing atmospheric GHG levels. The results presented by the Intergovernmental Panel on Climate Change in the 1990s and 2000s reinforced and fine-tuned the previously-predicted trend, while outlining the potential detrimental effects on society and ecosystems.

U.S. Regional and International Initiatives to Reduce Emissions

The body of evidence generated by these long-range transport and global climate modeling studies spurred the formation of **NIMYSOC** >>> continued on page 10

¹ A GHG is any gas that has the property of absorbing infrared radiation (heat energy) emitted from Earth's surface and radiating it back to the surface, thus creating a greenhouse effect. Carbon dioxide (CO₂), a product of fossil fuel combustion, and methane are two commonly-emitted GHGs.

Adventures in Environmental Due Diligence

Jim Young, P.G. | Senior Geologist

It is not uncommon for environmental consultants to regard due diligence work as basic commodity projects—primarily a means to produce additional work and coach young professionals. Phase I Environmental Site Assessments (ESAs) were among my first project efforts more than 25 years ago. Having completed or managed hundreds of ESAs since then, environmental due diligence projects represent some of the most interesting and downright adventurous work I perform.

In the first year of my career, and one of the first ESAs on my own, I was completing a site reconnaissance of a buy-here, pay-here auto sales and service lot. My sense was there was a lot of repeat service. The owner, trying to persuade me to look the other way, presented me an offer (well, several offers) over the course of

the day: immaculately maintained vehicles at never-before-provided prices, incredibly flexible payment terms, environmental management of his facility, and even potential future ownership!

While ESAs and due diligence work offer both the expected and unexpected, we are always learning something new, and doing so quickly.

This was my first exposure to an entirely hygiene-optional workplace. Several of his employees, clearly having the utmost respect for their employer, were pleased to point out the many environmental skeletons they were hiding. A covered dry well, reportedly used for “management” of

waste oils and other fluids, became a point of contention. By the end of the day, the generous offers made by the owner were notably rescinded.

I’m writing this article for *From the Trenches*, which reminds me of another adventure. A buyer of a rural property—a former service station in the 1940s to 1950s—requested Phase II soil sampling to evaluate potential historic impacts by leaded gasoline. The local municipality was concurrently installing a utility line through the property along an adjoining street, which conveniently made a trench available for sampling.

My field screening of volatile organic compounds (VOCs) resulted in the highest detections I have seen to date—consistently greater than 9,999 parts per million, the extent of my detector’s ability to quantify VOCs in the air. An employee of the municipality happened to see me in the trench while driving by the site and casually offered a particularly meaningful bit of insight...

While excavating the trench the previous week, the contractor’s backhoe created a spark by striking sandstone bedrock in parts of the trench, and the trench was promptly consumed by fire. Needless to say, I hightailed it out of the trench and declined the municipal employee’s offer to collect samples for me. Unsurprisingly, the buyer passed on this acquisition.

Of course, not all adventures have been contentious or downright dangerous.



Drilling time. A track-mounted GeoProbe rig is used to conduct Phase II soil sampling at a former foundry. Over three feet of historic, layered concrete floors are excavated before sampling of subsurface soils can begin.



Soil investigation. A three-foot trench is dug to conduct Phase II soil sampling for metals and other contaminants adjacent to former building foundations.

At a manufacturing facility in western Pennsylvania that used goats instead of lawnmowers, I met an extremely friendly goat that accompanied me for all the exterior work and was quite distressed to see me depart. I have been all but face-to-face with William Penn while on the roof of a high-rise across the street from City Hall in Philadelphia. I have seen and learned in detail how an incredible variety of products are designed, manufactured, transported and used. And perhaps most importantly, I have formed longstanding relationships with clients and property owners that have extended well beyond the site work.

Environmental due diligence work can truly provide interesting and complex projects, despite its adherence to strict industry standards. Ultimately, every site has its own history, which we determine through interviews of current and previous

owners and operators, review of historic aerial photography, fire insurance maps, and other resources often dating back to the 1930s and even to the late 1800s.

Although my work is focused in Pennsylvania, I have completed ESAs or related work throughout much of the U.S., and each site has a distinct geologic and hydrogeologic setting. Every client, buyer, seller, tenant, lender and employee I work with provides a new story or perspective.

While ESAs and due diligence work offer both the expected and unexpected, we are always learning something new, and doing so quickly. There are surely more environmental due diligence projects in my future with many adventures yet to come—although I'd like to avoid any more flaming trenches. 🐐

How do petroleum-impacted trenches erupt in flames?

Gasoline (even highly weathered gasoline in the subsurface for a long period of time) contains a variety of chemical constituents classified as volatile organic compounds (VOCs). VOCs in gasoline include benzene, ethylbenzene, trimethylbenzenes, toluene, and xylenes.

VOCs have a high vapor pressure at room temperature, which commonly results in gradual evaporation of the compound into air. In the story, trenching through the area of significantly petroleum-impacted soils exposed the soil to air. This greatly increased the rate of evaporation, resulting in high concentrations of VOCs in the air.

VOCs are generally flammable at low concentrations (and are toxic in breathing air at much lower concentrations). A single spark was all it took to ignite the vaporized VOCs, resulting in a flaming trench.



NEWS BRIEFS

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NATIONAL NEWS

Air Chief Steps Down from the Agency

On June 26, the Environmental Protection Agency (EPA) announced the resignation of Bill Wehrum, Assistant Administrator for Air and Radiation. Mr. Wehrum was confirmed to the post in November 2017; he also worked in EPA's Air Program from 2005 to 2007 under President George W. Bush. Under Wehrum's leadership, EPA finalized the Affordable Clean Energy (ACE) regulation, which replaced the Obama Administration's Clean Power Plan (CPP). Deputy Assistant Administrator Anne Idsal is slated to take over Wehrum's responsibilities. Ms. Idsal previously served as EPA's regional administrator for Region 6.

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ASTM Proposes Updates to Phase I ESA Standard

The ASTM E50 Committee on Environmental Assessments met in April 2019 to develop revisions, edits and updates to the E1527-13 Standard. The task group has proposed edits to the Non-Scope Considerations appendix to acknowledge contaminants that have

been receiving regulator attention but are not classified by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as hazardous substances, such as per- and polyfluoroalkyl substances (PFAS). These out of scope contaminants may be considered "in scope" for compliance with state regulations or contractual obligations in the updated standard. Minor proposed changes to the standard include: refining the definitions for Controlled Recognized Environmental Conditions and Historical Recognized Environmental Conditions, refining the relationships between the different types of recognized environmental conditions, and requiring historical research of the adjoining properties and surrounding areas in addition to the subject property. The revised E1527 Standard is anticipated to be published in 2020.

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EPA Issues New Policy Concerning Unannounced Inspections

In a July 11 memo from Susan Bodine, Assistant Administrator of the EPA Office of Enforcement and Compliance Assurance (OECA), a final policy was announced to set practices and procedures for effective partnerships with states concerning compliance and enforcement activities. The memo includes an expectation that the EPA Regions provide states with advance notice of facility inspections and come to agreement with the state concerning "whether or when" the facilities are provided advance notice of an inspection.

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EPA Finalizes ACE Rule

On July 8, EPA published the **final ACE Rule**, replacing the CPP. The ACE rule establishes emission guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired electric generating units (EGUs). These guidelines

are based on the use of heat rate improvement (HRI) measures as the best system of emission reduction and includes a list of six candidate technologies (e.g., blade path upgrades on the steam turbine, air heater and duct leakage control and the installation of variable frequency drives). States will establish unit-specific "standards of performance" that include emission limitations achievable using the HRI measures. Unlike the CPP, the ACE rule does not allow the use of emissions averaging or trading between units. States are required to submit plans within three years and coal-fired EGUs will have up to two additional years to reach compliance.

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USFWS Delays Listing Decision on Monarch Butterfly

In late 2014, the U.S. Fish and Wildlife Service (USFWS) found that a petition to list the monarch butterfly under the Endangered Species Act (ESA) presented substantial scientific and commercial information that the listing may be warranted. This past May, the USFWS extended the deadline to determine whether the monarch butterfly warrants ESA protection until December 15, 2020, to allow more time to collect and analyze data. Along with the extension, the USFWS also extended the deadline for right-of-way (ROW) holders to enroll in the Monarch Butterfly Nationwide Candidate Conservation Agreement (CCA) on Energy and Transportation Lands. Enrollment in the CCA would provide enrolled entities take coverage from operation and maintenance of their ROWs, should the species ultimately be listed.

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EPA Announces National Compliance Initiatives for FY2020–2023

On June 12, EPA OECA announced seven enforcement and compliance assurance priorities for the next few years. Six

are considered National Compliance Initiatives (NCI) that will be directed by OECA, while the seventh is an agency-wide effort to continue to reduce childhood lead exposure. Three NCIs are aimed toward improving air quality: reducing excess emissions of volatile organic compounds/hazardous air pollutants (HAP) from stationary sources that have substantial impacts on air quality, reducing hazardous emissions from large hazardous waste generation and treatment facilities, and stopping aftermarket defeat devices for vehicles and other engines. Two NCIs focus on clean water: increasing the percentage of permittees in compliance with National Pollutant Discharge Elimination System (NPDES) permits and reducing noncompliance with drinking water standards at community water systems. The remaining NCI is to reduce the risk of accidental chemical releases at industrial facilities. EPA plans to achieve the goals of the initiatives using a variety of tools, including formal enforcement actions.

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U.S. Legislation Planned Concerning Plastic Waste

On July 18, U.S. Senator Tom Udall and U.S. Representative Alan Lowenthal released an outline of legislation aimed at helping end plastic waste, which they propose to introduce by the end of 2019. The American Chemistry Council (ACC) issued a statement with a commitment to work with Congress to help protect the environment. The ACC also commented that the legislative plans to ban certain plastics would have unintended environmental consequences, referencing a study that shows the alternative to plastic packaging and consumer products would raise environmental costs nearly four-fold. Comments on the bill outline are due by August 21, 2019.

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EPA Finalizes Modifications to NPDES 2017 Construction General Permit

On June 27, EPA finalized the NPDES 2017 Construction General Permit (CGP) modifications following a 45-day comment period that began in December 2018. The modified CGP removed examples of parties that would be considered “operators” under the CGP, clarified operator responsibilities in a multi-operator scenario and modified language in the Construction and Development Effluent Guidelines to clarify that demolition and placement of fill are included as regulated activities. The modified CGP does not affect the expiration date of the current five-year permit term and states are not required to adjust active permits until their renewal timeframe. Permittees who are authorized under the original 2017 CGP do not need to reapply for authorization but should consider these modifications and potential impacts to permitted projects.

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EPA Proposes to Allow Certain Major HAP Sources to Reclassify as Area Sources

On June 25, EPA proposed a rule to allow “major sources” of HAPs subject to Maximum Achievable Control Technology (MACT) standards to reclassify as an area (or minor) source and no longer subject to the standards. This proposed rule overturns EPA’s long-standing “once-in, always-in” policy that determined any facility subject to major source standards would always be subject to those standards even if it deployed pollution control technologies or modernizations to reduce HAPs to below major source levels. In January 2018, EPA published a memo finding that it had no authority to continue to impose these standards once the potential to emit (PTE) HAPs fell below major source levels. EPA is proposing that PTE HAP limits must meet effectiveness criteria of being both legally and practicably enforceable along with specific rule revisions specifying applicability of the MACT general provisions.

Also, there is a requirement for electronic notification when a source reclassifies.

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New PFAS Contamination Data Reveals 712 Sites Nationwide

On July 11, the Environmental Working Group (EWG) and the Social Science Environmental Health Research Institute at Northeastern University released the latest update to their [interactive map](#) identifying sites contaminated by PFAS. The map documents publicly known PFAS impacts in public water systems and at military bases, airports, industrial facilities and firefighter training sites. As of July 2019, 712 locations in 49 states were identified as being impacted by PFAS contamination. Currently, Michigan has the greatest number of identified PFAS-impacted sites—likely due to a statewide PFAS drinking water monitoring program implemented by Michigan in 2018. As EPA and state regulatory agencies implement monitoring programs and standards for PFAS compounds, it is expected that the list of known affected sites will continue to increase.

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EPA Lowering Hazard Standard for Lead in Dust on Floors and Window Sills

As part of EPA’s efforts to reduce childhood lead exposure, the EPA recently evaluated and revised the Dust-Lead Hazard Standard (DLHS). In the final rule published on July 9, EPA lowered the DLHS for floors from 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) to 10 $\mu\text{g}/\text{ft}^2$. In addition, the DLHS for window sills was lowered from 250 $\mu\text{g}/\text{ft}^2$ to 100 $\mu\text{g}/\text{ft}^2$. No change was made to the dust-lead clearance level or the definition of lead-based paint, which is defined as paint or other surface coating that contains lead in excess of 1.0 milligram per square centimeter (mg/cm^2) or 0.5% by weight.

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The revised DLHS applies to pre-1978 homes, certain schools, child-occupied facilities and hospitals. It will become effective on January 6, 2020.

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EPA Evaluates Risk from Electric Power Facilities

On July 25, EPA announced its findings that the risk from Electric Power Generation, Transmission and Distribution facilities does not warrant CERCLA-based financial responsibility requirements to cover the costs of possible hazardous substance releases. EPA is under a court-ordered deadline to take final action on this rulemaking by December 2, 2020. Two additional industries, chemical manufacturing and petroleum and coal products manufacturing, are also required to be evaluated by this deadline.

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STATE NEWS

PADEP Proposes Revision of Maximum Allowable Sulfur Content Limit for Fuel Oil

On July 6, the Pennsylvania Department of Environmental Protection (PADEP) published a proposed revision of the maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil. The proposed rulemaking would amend the current maximum allowable sulfur content limit of 500 ppm (by weight) to 15 ppm (by weight). According to the PADEP, this would allow the Department to address regional haze and visibility impairment, and the decreased SO₂ emissions would also contribute to the attainment or maintenance, or both, of the 2012

annual PM_{2.5} National Ambient Air Quality Standards (NAAQS) within Pennsylvania. Written public comments must be received by the PADEP by September 9, 2019.

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Ohio EPA Releases Revision to Vapor Intrusion Guidance Document

On June 26, Ohio EPA released a draft revision to its vapor intrusion (VI) guidance document: Sample Collection and Evaluation of Vapor Intrusion to Indoor Air for Remedial Response and Voluntary Action Programs. Significant revisions and additions were made to the original guidance, which reflect the EPA Division of Environmental Response and Revitalization's latest understanding of appropriate policies regarding VI. The guidance directs a step-wise approach to the evaluation of VI sites, including the analysis of soil, groundwater, soil vapor, sub-slab vapor and/or indoor air samples. Included in the various changes to the document is an emphasis on the EPA's previously published imminent hazard action levels (especially for Trichloroethylene) and the addition of a new section discussing the evaluation of VI at petroleum release sites. Although developed for use at CERCLA, Resource Conservation and Recovery Act and Voluntary Action Program sites in Ohio, the technical approach provided in the guidance may be appropriate for sites regulated by other agencies, and in other states, where local regulations and guidance are lacking. Public comments are currently under review by the EPA.

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EPA Proposes to Approve Texas SIP Submittals for 2015 Ozone NAAQS

On April 30, EPA proposed to approve the August 17, 2018 infrastructure State Implementation Plan (SIP) submittal and transport submittal from the State of Texas for the 2015 Ozone NAAQS. The submittals address how the existing Texas SIP provides for implementation, maintenance and enforcement of the 2015 O₃ NAAQS, which was revised October 26, 2015. Although the plan approval by EPA does not make any findings related to designation of nonattainment areas or attainment plans, it does fulfill a statutory requirement to submit a SIP within three years after promulgation of new or revised NAAQS.

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Idaho IPDES Program to Issue Stormwater Permits in 2021

In 2018, EPA approved the August 2016 application from the State of Idaho to administer the Idaho Pollutant Discharge Elimination System (IPDES) Program. The transfer of permitting authority from the EPA NPDES Program to the IPDES Program began on July 1, 2018 and will be completed in four, twelve-month phases between 2018 and 2021. The first three phases include publicly-owned treatment works, industrial direct dischargers, and non-stormwater general permits. Permitting authority for construction, industrial and municipal stormwater, along with biosolids and federal facilities, will be transferred to the IPDES Program in the fourth and final phase on July 1, 2021.

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Five Tips for Handling Consumer Protection Investigations

Steven M. Williams | Cohen Seglias Pallas Greenhall & Furman PC

In consumer protection investigations, governmental agencies such as state Attorneys General and the Federal Trade Commission investigate business practices to identify civil or criminal violations of consumer protection laws. While these laws are intended to stop deceptive and fraudulent companies and people that break the law, even good companies can become a target of consumer complaints.

Various state and federal consumer protection laws provide for investigations into “unfair methods of competition” and “unfair or deceptive acts or practices.” The definitions of these phrases can sometimes be quite lengthy and confusing. Frequently, they include acts ranging from deceptive advertising and pyramid schemes to unlawful telephone solicitations, excessive shipping delays, and other conduct that creates a likelihood of confusion or misunderstanding.

Penalties for violating these laws can include civil penalties and the payment of costs and restitution. These penalties, however, often pale in comparison to the injunctive relief and/or forfeiture of the right to do business that can accompany them. Thus, it is imperative that companies handle such investigations properly by employing these steps:

1. Pay attention to the signs. A consumer protection investigation frequently begins with a letter or administrative subpoena demanding an extremely broad amount of information. This often sends companies scrambling for outside counsel before the deadline expires. However, there are often warning signs that trouble may be

brewing beforehand, such as repeated correspondence from governmental investigators asking the company to respond to informal complaints filed by consumers. While the occasional consumer complaint may not warrant the attention of the C-Suite, repeated complaints evidencing a pattern of misconduct should be addressed. A comprehensive and proactive response can help companies avoid the likelihood of an official investigation.

2. Hire experienced counsel. Perhaps this goes without saying, but hiring counsel experienced in consumer protection investigations is essential to a successful outcome. Using the same outside counsel that handles litigation matters for the company may result in an overly contentious exchange with the investigator—while entirely appropriate in litigation this often proves to be extremely harmful in consumer protection investigations.


3. Communicate early and often. While the opening salvo of requests may appear calculated to overwhelm and intimidate the company into an early settlement, it is most often the result of an investigator’s lack of understanding of the company’s operations and record-keeping practices. Investigators do not want to wade through thousands of irrelevant documents any more than the company wants to collect them.

A good starting point is a candid discussion about the nature and extent of the consumer complaints. Challenging the investigation will often force the investigator to explain why the requested documents are relevant. Many investigators will err on the side of limiting their original request to get the

documents they need hence avoiding an undue burden on the company.

4. Lend some perspective. An investigator conducting a consumer protection investigation may be under the impression that 5–10 consumer complaints against the company for a specific transaction or series of transactions is “a lot.” However, this may be a minuscule number when compared to the total number of transactions conducted by the company in a given year. As a result, it is important for counsel to educate the investigator on the full scope of the company’s consumer operations to lend the proper perspective. This may, in turn, lead to the investigation closing early.

5. Use caution when settling. Investigators frequently seek settlements to resolve consumer protection investigations. But these settlements can be onerous, allowing the governmental agency (by agreement) to monitor the activities of the company and investigate matters that would otherwise fall outside of its jurisdiction. These agreements are also frequently publicly filed and may be accompanied by a loud press release that will dog the company on the Internet for years to come. Therefore, it is important to understand all the consequences of any proposed settlement before the company agrees to it.

To avoid unintended consequences, companies who find themselves in the cross hairs of a consumer protection investigation should immediately consult with an attorney who is experienced in these types of investigations. A prompt and targeted response can often prevent a long and expensive investigation. 



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regional U.S. and international organizations focused on developing and implementing emissions reduction measures on a large geographic scale.

For example, the Ozone Transport Commission was founded in 1991 by CAA mandate to address the regional ground-level ozone problem. The Commission has representatives from 12 Northeastern states and the District of Columbia. As another example, in 2015 nearly 200 countries/state parties adopted the Paris Climate Change Agreement, committing to reducing GHG emissions with the goal of limiting the global temperature increase.

A Well-Informed Public

Through the findings of these and other ground-breaking atmospheric studies, the public has come to understand that emissions of a variety of air pollutants can have important environmental impacts well beyond their area of origin.

The Internet and social media platforms rapidly disseminate information and educate

the public on the issues of concern. As a result, the public is more aware of the potential regional-to-global impacts of air emissions, expanding the geographic scope of interest and energizing environmental activism.

An organized and well-funded opposition, usually by national organizations, is also more common today with a particular focus on industrial and power generation sources. Such sources historically have been recognized as large emitters of air pollutants, including GHGs.

Shrinking World, Expanding Opposition

We often hear it said that the world is getting to be a smaller place. The NIMYSOC concept reflects that viewpoint, fueled by the findings of numerous pollutant transport and impact studies and stoked by social media and the Internet.

Large air pollutant emission sources will continue to receive scrutiny from far and wide and should be prepared to defend their projects regardless of their ability to comply with air quality rules. 🌍