



Community Enforcement

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Questions for consideration

- ▶ How do you show the community the ways in which they can use the environmental laws as a tool to prevent future damage?
- ▶ Who can they contact and how?
- ▶ How to register a concern or complaint?
- ▶ Are there such mechanisms in the U.S.?
- ▶ At what government level or levels? Municipal? County or district? State? Federal?
- ▶ What lessons can be learned from existing mechanisms in the U.S.?



Discussion points

- ▶ **Lee DeHihns**

- ▶ Litigation, including citizen suits
- ▶ Engaging social media

- ▶ **Elizabeth Andrews**

- ▶ Legislation
- ▶ Stakeholder engagement, including building community resilience

- ▶ **Bessie Daschbach**

- ▶ ESG engagement and enforcement



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The Role of Citizen Suits under U.S. Environmental Legislation

- ▶ Many U.S. federal environmental laws allow members of the public to initiate lawsuits in federal court against polluters that violate requirements imposed pursuant to federal environmental laws and regulations. These provisions are referred to as authorizations for “citizen suits” providing for community empowerment.
- ▶ Usually, citizen suit provisions require a notice of intent to file the lawsuit to the person or facility believed to be violating federal environmental requirements, as well as the federal or state agency which regulates the requirements.
- ▶ The most often used citizen suit provisions can be found in the federal laws: 42 U.S.C. § 6872 (Resource Conservation and Recovery Act); 33 U.S.C. § 1365 (Clean Water Act); 42 U.S.C. § 2604 (Clean Air Act); 16 U.S.C. § 1540(g) (Endangered Species Act).



How Social Media Can Be Used to Gain Compliance

- ▶ Used in conjunction with or independent of citizen suits.
- ▶ Social media posts in all forms, e.g. Facebook, Twitter, Instagram can be powerful
- ▶ Notice letters and regulatory enforcement rarely pack the outrage that social media can provide
- ▶ The severity or immediacy of a situation can be magnified by social media
- ▶ Dropping Stock values, poor public perceptions and shame can drive compliance faster than litigation. The later “Social” component of ESG discussion will go deeper on this topic.
- ▶ Use Georgia **Sterigenics** example. The company’s website is a global leader in comprehensive sterilization solutions meeting needs in the medical device, pharmaceutical, and food industries



Elizabeth Andrews

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Advantages to Using Legislation to Address Community Environmental Concerns

- ▶ Broader impact
 - ▶ Involves more than just parties before a court in litigation
 - ▶ Can formulate a broader solution than litigation; a judge is limited to parties/issues before the court
- ▶ Less expensive than litigation
- ▶ Does not require a certain level of evidence or burden of proof; instead, it requires political will



Challenges in Using Legislation to Address Community Environmental Concerns

- ▶ Requires access to & interest from legislator(s) (political will)
- ▶ Must survive opposition from special interests
 - ▶ Requires sufficient community consensus
 - ▶ Not a quick or easy fix
- ▶ Limited window of opportunity, if part-time legislature
 - ▶ Difficult for some citizens to attend committee meetings
 - ▶ Difficult to formulate or revise technical solutions
 - ▶ Expensive to hire lobbyists
- ▶ Success depends upon sufficient enforcement, and legislature not overturning law in future



Stakeholder Engagement

- ▶ Longer process than law adoption (unless bill is unsuccessful and reconsidered in subsequent years)
 - ▶ Enables detailed input and analysis
 - ▶ But requires sustained effort by participants
- ▶ Must have a skilled, trusted, informed facilitator and a funding source
- ▶ *For success, must have all necessary voices at the table*



Some Examples / Lessons Learned

- ▶ Stormwater Management/Erosion & Sediment Control Consolidation and Resulting Legislation
- ▶ Migratory Birds Regulation
- ▶ Groundwater Management
- ▶ The RAFT (Resilience Adaptation Feasibility Tool)



Recommended Sources of Additional Information

- ▶ *Getting to Yes: Negotiating Agreement Without Giving In* (2011) by [Roger Fisher](#), [William L. Ury](#), [Bruce Patton](#)
- ▶ International Association of Facilitators – The Value of Facilitation: <https://www.iaf-world.org/site/home/the-value-of-facilitation#:~:text=A%20good%20facilitator%20encourages%20the,the%20leader%20or%20the%20majority>
- ▶ The Resilience Adaptation Feasibility Tool (RAFT) website: <https://raft.ien.virginia.edu/>



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What is ESG?

- ▶ Standards...
- ▶ Grounded in environmental, social, and/or governance considerations...
- ▶ Applied by stakeholders, including investors, lenders, customers and even employees...
- ▶ To evaluate a business's material risks and growth opportunities...
- ▶ And, ultimately, to favorably distinguish businesses making positive contributions based on those considerations.



“E” is for Environmental

- Climate change
- Greenhouse gas emissions
- Carbon footprints
- Energy efficiencies
- Natural resource management
- Pollution mitigation
- Waste management
- Water usage



“S” is for Social

- ▶ Labor standards
- ▶ Wages and benefits
- ▶ Workplace and board diversity
- ▶ Racial justice
- ▶ Pay equity
- ▶ Human rights
- ▶ Community relations
- ▶ Privacy and data protection
- ▶ Health and safety
- ▶ Supply-chain management
- ▶ Consumer protection
- ▶ Animal welfare



“G” is for Governance...of E and S

- ▶ Corporate board composition and structure
- ▶ Sustainability oversight and compliance
- ▶ Executive compensation
- ▶ Shareholder engagement
- ▶ Political contributions and lobbying
- ▶ Bribery and corruption—avoidance



ESG Reporting





BlackRock Chairman and CEO “Dear CEO” letter, 2018

- ▶ “Society is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a **positive contribution to society**. Companies must **benefit all of their stakeholders**, including **shareholders, employees, customers**, and the **communities** in which they operate.....Companies must ask themselves: What role do we play in the community? How are we managing our impact on the environment? Are we working to create a diverse workforce?”



ESG enforcement actions and litigation

- ▶ SEC enforcement actions
 - ▶ Charged Brazilian mining company with misleading investors about the safety of a dam prior to its collapse
 - ▶ Charged investment advisors for “misstatements and omissions,” including one concerning the use of ESG considerations in making investment decisions for management of mutual funds
- ▶ Consumer actions
- ▶ Securities litigation

<https://www.bloomberg.com/news/articles/2023-01-25/class-action-wave-is-coming-for-esg-claims-green-insight>

<https://corpgov.law.harvard.edu/2022/07/25/recent-esg-litigation-and-regulatory-developments>



National Economic and Social Development Plan (PDNES)

- ▶ **Effective Government** will address the territorial development, the statistical system, and social participation as part of its effects/products
- ▶ **Productive Transformation** will work on production chains, agri-food systems, quality employment, financing for development, and sustainable energy
- ▶ **Natural Resources and Environment** will focus on natural resources, ecosystem and environmental quality, climate change, and disaster risk management
- ▶ **Human Development** with equity, will consider among its priorities: social services, social protection and care systems, food access and consumption, monitoring of food and nutritional security; and adequate habitat

<https://unsdg.un.org/un-in-action/cuba>



Linking Environmental Justice and ESG

- ▶ *Making ESG Impact Through Environmental Justice: 3 Approaches*, ACORN Int'l, <https://acornintl.com/issue-48-making-esg-impact-through-environmental-justice-3-approaches/>
 - ▶ *Environmental Justice Needs to Be Prioritized in ESG Programs*, Bloomberg, November 3, 2022, <https://news.bloomberglaw.com/us-law-week/environmental-justice-needs-to-be-prioritized-in-esg-programs>
 - ▶ *Groundtruth: EJ & ESG, Intersected* (podcast), The National Law Review, March 18, 2022, <https://news.bloomberglaw.com/us-law-week/environmental-justice-needs-to-be-prioritized-in-esg-programs>
<https://www.natlawreview.com/article/groundtruth-ej-esg-intersected-podcast>
 - ▶ *Addressing Environmental Justice As part of ESG Initiatives*, Law360, May 24, 2021, <https://www.law360.com/articles/1384123/addressing-environmental-justice-as-part-of-esg-initiatives>
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Thank you

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