

DELEGATION: EJ Hook Fact Sheet

Summary of the Law

Most federal pollution control laws authorize the U.S. Environmental Protection Agency (EPA) to delegate its responsibility to state and tribal governments. This can include authority for permitting, monitoring, and enforcement. Programs that can be delegated include regulation of water and air pollution, hazardous and solid waste, and drinking water.

Delegation means that the authority to operate an environmental regulatory program has been shifted from EPA to a state agency or tribal government. Then the state agency or tribal government is responsible for carrying out the provisions of the law.

The process for delegation includes a formal application by a state or tribal government for federal authorization; determination by EPA of whether the state or tribal government is adequate; approval or disapproval by EPA of the program; and EPA oversight or withdrawal of delegated authority, as appropriate.

Environmental Justice Hooks

Community residents can use the delegation process to focus attention on environmental justice challenges. They can provide written information and testimony. Useful information relates to adequacy of personnel, funding, and authority of the state or tribal government to carry out the program.

Illustrations of provisions and examples of where community residents can use delegation to address environmental justice include the following measures:

- 1) **Clean Air Act:** EPA can impose sanctions against a state if it determines that they are necessary to ensure that the State Implementation Plan (SIP) meets the requirements of the Clean Air Act [42 U.S.C. §7410(m)]. One sanction, short of program withdrawal, that EPA can impose if a state's transit plan does not conform to its SIP is withholding federal highway funds for the state.
- 2) **Clean Water Act:** EPA can make grants to assist states in administering water programs. The Clean Water Act requires EPA to withhold grant monies from states that fail to conduct adequate water quality monitoring and reporting [33 U.S.C. §1256].
- 3) **Resource Conservation and Recovery Act:** EPA is entitled to participate in the public notice-and-comment period on state-issued permits. If the state has been delegated EPA's "omnibus authority" but fails to address factors identified by EPA, EPA can seek to have the state include additional permit condition.
- 4) **Permit Override:** Under certain programs, EPA can review state-issued permits (e.g. water discharge, dredge-and-fill) and object in writing to the issue of any permit as "being outside the guidelines and requirements" of the act. If the state fails to address EPA's objections following a public hearing, EPA may issue its own federal version of the permit.