

Risk Assessment

Risk assessment pretends to evaluate the risks of any new project (particularly chemical-related projects such as an incinerator or a discharge pipe releasing chemicals into a lake). Here is how it works: a few "representative" chemicals are selected from the many chemicals involved in a complex project; their known ability to cause cancer is noted; the number of people to be exposed to the chemicals, and the heaviness of their exposure, are taken into account. Then a mathematical calculation is performed, intending to show how many people will be killed each year by the proposed project.

If the number to be killed is less than one out of every million people exposed, the project is deemed to present "acceptable" risks. Sometimes the government says it is acceptable to kill as many as one out of every 10,000 people exposed, at other times one out of 100,000 is deemed acceptable. Risk assessments for different projects have declared it 'acceptable' to kill differing numbers of citizens. The key point is that the government assumes that it is acceptable to kill citizens.

Think of it this way: if the "science" underlying risk assessment were to improve to the point where we could name the one-in-a-millionth individual to be killed, we could publish that individual's name and address in the newspaper and everyone would see instantly that this was a planned murder by the state. It is only the victim's anonymity that allows the murder to proceed under the guise of "acceptable risk."

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TOXIC HOT SPOTS IN THE AIR

by Michael Belliveau

Residents at the Sunny Acres Mobile Home Park never suspected that cancer causing chemicals spewed daily from the building just across the fence. They couldn't smell anything. Nothing was visible except the well manicured lawns of what looked like an innocuous suburban office park.

Their neighbor, however, was Systron-Donner Corporation, a high tech military contractor that makes components for missile systems. In the middle of residential Concord, California, Systron cleaned its metal parts with two chemicals known to cause cancer. Without warning or apparent concern, Systron released nearly 17,000 pounds of chloroform and methylene chloride into the air from its Concord factory in 1988.¹ Systron faced no direct limits on their toxic pollution under current law, despite the long recognized toxicity of these substances.

Staff at Citizens for a Better Environment (CBE) discovered these toxic emissions in a report Systron filed in response to the new federal "right to know" law (see box at end). When we visited the site we were startled by the proximity of homes to the high tech factory. When we did computer modeling of the dispersion of these toxics into the air we found that Systron's chemical releases posed significant long term cancer risks to hundreds of local residents.

CBE informed the company that they faced stiff fines for failing to warn residents of the mobile home park and surrounding homes that they were being exposed to cancer-causing air pollutants. We cited the warning requirement of Proposition 65, the toxics initiative passed by California voters in 1986.²

Through negotiations between CBE and the company this dispute over Prop 65 violations was favorably settled. Systron chose to eliminate its use of the two carcinogens, rather than warn people of their toxic exposure on an ongoing basis. Systron also paid \$22,000 into a fund that citizens can use to finance investigations and enforcement of Prop 65 violations elsewhere.³

CBE proved, through this first-ever settlement of a toxic air pollution warning case, that Prop 65 could be used to

leverage a dramatic reduction in the use of toxic chemicals without forcing businesses to close their plants. Enforcement of the need to provide proper warnings strongly motivates firms to cease their polluting behavior.

Toxic Hot Spots Are Widespread

Systron-Donner Corporation was not an isolated example of unchecked toxic air emissions. According to air quality agencies, several thousand industrial air polluters spew toxic chemicals into the air on a daily basis in the two major urban regions of the state, the greater Los Angeles and San Francisco Bay areas. These factories may create "toxic hot spots" which are zones around pollution sources where health risks are elevated above the average background risk from pollutants.

Millions of pounds of toxic chemicals are routinely released to the air by these factories each year. Many of these chemicals can cause cancer, birth defects, nervous system toxicity, organ damage or other toxic effects. Years of industry lobbying and government inertia have left most of these substances hopelessly under regulated or completely overlooked. Most people don't realize that polluters can poison the sky until somebody proves harm.

In a pragmatic attempt to expose this charade, state and federal "right to know" laws have been passed. The federal law inventories toxic releases. The state law, Assembly Bill 2588, authored by Assemblymember Lloyd Connelly (D-Sacramento) in 1987, goes further. It states that the worst toxic air polluters must be publicly identified as "high priority" and be required to notify nearby residents of the results of "health risk assessments" (see sidebar) prepared by the polluting facilities.⁴

So far, more than 100 air polluters have been targeted as high priority toxic hot spot facilities in the San Francisco Bay Area and about 300 in the four-county Los Angeles region.

Prop 65: To Poison (With A Warning) or Not To Poison

Hundreds of hazardous chemicals are routinely released to the air every day. In the nearly ten years since the California legislature ordered state agencies to reduce toxic air emissions, only six chemicals have been partially

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regulated. The federal record is worse. The new loophole-ridden federal Clean Air Act Amendments of 1990 allow another ten years of delay before air toxics are to be reduced, though not necessarily eliminated. Meanwhile, the Environmental Protection Agency (EPA) hopes that some corporations will voluntarily reduce toxic air emissions to avoid stricter regulation and citizen complaints in the future.⁵

Against this backdrop of government inaction and wishful thinking, Proposition 65 was enacted as a ballot initiative by California voters in 1986. Although controversial when debated, in fact Prop 65 is mild in its mandate. One of the central provisions of Prop 65 says that if a business with more than 10 employees exposes people to chemicals known to cause cancer or reproductive harm, then the company has to provide them with a "clear and reasonable warning". In other words, you can poison people; just be sure to tell them about it.

Prop 65 creates incentives (rather than mandates) to reduce or eliminate toxic exposures. In theory, because they must provide proper warning, businesses will act to avoid negative public attention and possible liability for alleged injuries or else citizens will rise up to protest or boycott the polluting firm's products. To avoid wholesale reliance on government enforcement, Prop 65 allows anybody to sue a business that exposes people to the listed toxic substances without providing the proper warnings.

In practice, nearly five years after its passage, Prop 65 has had little effect on toxic chemical use by business. Certainly the outright hostility of former Governor Deukmejian, as well as ambiguities in drafting, are factors in Prop 65's tepid impact.

For example, the warning provisions of Prop 65 are routinely violated by toxic air polluters. Businesses post obscure plant gate signs or take out cryptic advertisements in the backpages of the newspaper. Neither method effectively accomplishes a warning of exposure. Only by providing informative warnings directly to the exposed individuals through personal delivery or the mail can companies properly comply with Prop 65.

The dodging of Prop 65 requirements has not gone unchallenged. Environmental groups, led by Citizens for a Better Environment, and the state Attorney General's office, are taking toxic air polluters to task . . . and to court. The pollution prevention promise of Prop 65 remains ripe for citizen action.

What You Don't Know Can Hurt Them

If companies like Systron-Donner don't properly warn people of toxic exposures as required by Proposition 65 they face stiff fines of up to \$2,500 per day per person exposed. Given this powerful leverage, citizens can realistically demand that companies reduce or eliminate toxic chemical use and air emissions. Pollution prevention commitments can be secured in a Prop 65 settlement even though nothing more than proper warning to exposed individuals is actually required.

CBE proved this premise in our successful test case with Systron-Donner. They eliminated carcinogenic solvents (and remained in business). In another case started by CBE, the Attorney General's office won a settlement with Bio-Rad Laboratories of Richmond that resulted in the elimination of chloroform usage and a \$550,000 settlement.⁶

Citizen enforcement of Prop 65 adds one new tactic to organizing campaigns to reduce toxic hazards. CBE will continue our work with community groups and labor unions to enforce Prop 65. We've won the "right to know". Now Prop 65 gives us a 'right to act' to prevent pollution at the source. Let's use it!

How to Target Toxic Polluters

To tap into the Toxics Release Inventory database, contact the Office of Hazardous Materials Data Management, P.O. Box 2815, Sacramento, CA 95812 (916) 322-7236. They will provide a printout or floppy disk of chemical releases by company name, zip code, city, county or chemical name.

To find out which air polluters have been named as "high priority" Toxic Hot Spot facilities contact the Bay Area Air Quality Management District at (415) 771-6000 or in L.A. the South Coast Air Quality Management District at (818) 572-6200. They can also provide access to the Health Risk Assessments and other info on these polluters.

Contact CBE for more information or assistance.

Bhopal Victims Struggle On

Six and a half years after the Union Carbide pesticide plant gassed the city of Bhopal in India, more than 500,000 victims of the world's worst industrial disaster are still waiting for just compensation, adequate health care and meaningful jobs.

With morbidity and mortality rates among the victims rising rapidly, Union Carbide is trying to push through a settlement which will cost the stockholders only fifty cents per share. While continuing to fight that outrageously unfair settlement, the victims are taking matters into their own hands by launching schemes for community health care and organic food production to supplement their meager diets and provide work for partially disabled victims.

But they need your help in getting started. Send contributions and requests for further information to the Bhopal Victims Rehabilitation Fund, Suite 9A, 777 United Nations Plaza, New York, NY 10017 (212/953-6920).

NOTES TO TOXIC HOT SPOTS

1. These toxic air emissions were reported by the company to the state office of Hazardous Materials Data Management in July, 1989 as required by Section 313 of the federal Emergency Response and Community Right-to-Know Act.
2. California Health and Safety Code Section 25249.6 states that "[N]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ...". See Title 22, California Code of Regulations, Section 12000 for the complete list of chemicals.
3. Consent Order, *Citizens for a Better Environment v. Systron-Donner Corporation*, Case C90-04539, Contra Costa County Superior Court, 18 October 91.
4. California Health and Safety Code Section 44300 et seq.
5. AB 1807, authored by Assemblymember Sally Tanner (D-El Monte) in 1983, required the California Air Resources Board (ARB) to identify and then regulate toxic air contaminants so that emissions are reduced to the lowest level achievable through the use of the best available control technology, including bans on chemical uses in favor of safer substitutes. Health and Safety Code Section 39650 et seq. So far the ARB has formally identified only eleven chemicals as toxic air contaminants and has only adopted regulations to partially reduce emissions from just a few sources of six chemicals.
6. Denis Cuff, "Richmond firm fined \$550,000 in toxic case", *West County Times*, April 9, 1991. Bio-Rad was fined an additional \$150,000 for its lack of air quality permits.