

**OSB Environment and Natural Resources Section
Environmental Law: Year in Review**

**Using Good Neighbor Agreements to Address Community Complaints
About Industrial Operations**

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1. What is a Good Neighbor Agreement (GNA)?
 - a. A Good Neighbor Agreement is a legally binding document describing how a facility and its neighbors will behave towards each other.
 - b. Typically, a GNA addresses a specific set of impacts that a proposed or existing facility has on its neighbors, such as traffic, noise or pollution.
2. Why Would an Industrial Facility Enter a GNA?
3. Why Would Neighbors or Community Activists Enter a GNA?
4. Is a GNA Enforceable?
 - a. Issues with legal enforceability.
 - i. A GNA should be written so that the community parties can enforce the facility's obligations.
 - ii. The GNA should include commitments, including a covenant not to sue, that can be enforced against the community parties.
 - b. Issues with practical enforceability.
 - i. The GNA can bind only the signatories, not other neighbors or activists who may not be satisfied that the signatories represent their interests.
 - ii. Signatory neighbors may not have the resources to force facility compliance through litigation.
 - c. Due to the limitations of practical enforceability, a successful GNA requires considerable mutual trust.
5. How Does a GNA Come to Life?
 - a. Parties have to commence a dialogue.
 - i. Just starting the dialogue can be the hardest part. The parties are alienated and emotions may be running high.
 - ii. Once the parties are able to listen to each other, the negotiation can be a natural process.
 - iii. Half the challenge may be identifying who is willing and able to speak for the community--this may need to be the most vocal critics of the facility.

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- b. Information exchange.
 - i. Business managers need to hear the concerns and perspectives of the neighbors first hand.
 - ii. Neighbors need to be educated on the facility's processes and they need understand the facility's business constraints.
 - iii. Both sides may need an opportunity to vent their frustrations where the other side can hear them.
- c. Developing technical basis.
 - i. Parties need to develop a basic understanding of the facility's impacts on the neighborhood.
 - 1. They may not agree on the importance of those impacts, but the potential for success is greatest if they can agree at some high level on the general magnitude of the impacts expressed in scientific terms.
 - 2. This may require third-party experts to measure impacts.
 - ii. Neighbors need to have a layman's understanding of the facility's processes. They need to understand what process is producing the impacts, what chemicals are involved and what controls already are limiting those impacts.
- d. Develop alternatives for reducing impacts.
 - i. This step in the negotiations is critical to success, but it can't be rushed. It should not be attempted until b. and c. are substantially completed, otherwise both sides are likely to enter the negotiating phase with unrealistic expectations.
 - ii. The parties should approach this step with a mutual understanding that they are just identifying what is possible, not what is technically feasible or financially viable for the facility.
 - iii. A third-party expert may be necessary to help identify and explain alternatives.
- e. Understanding costs and benefits of alternatives.
 - i. For the alternatives developed in d., the parties need an understanding of the costs and benefits of each alternative.
 - ii. This step may identify obvious low-hanging fruit and obvious non-starters that both parties easily can accept.
- f. Defining what neighbors can do for the facility
 - i. All parties must acknowledge that the GNA is a bargain with commitments on both sides.

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- ii. Potential commitments from neighbors include:
 - 1. Forbearance from challenging permits.
 - 2. Covenant not to sue.
 - 3. Community liaison.
 - 4. Community education.
 - 5. Public support for GNA.
- g. Negotiating commitments.
 - i. This is the step where the classic negotiation occurs.
 - ii. If the other steps have been followed, this step can have a very cooperative tone and can even feel collaborative.
- h. Documenting the agreement.
 - i. This step necessarily involves attorneys.
 - ii. Hopefully the attorneys have been involved all along and they have been exchanging drafts of the agreement as the parties progressed.
- i. Educating the community.
 - i. For a GNA to be successful, the community needs to be aware of it.
 - ii. Ideally, both the facility and the neighbors have been communicating with the community through the process.
 - iii. In the end, the community has to know that the facility has made commitments and that the signatory neighbors are continuing to monitor the facility's compliance with the agreement.
- 6. What Should a GNA Cover?
 - a. Specific actions the facility will take.
 - b. Commitments from neighbors.
 - c. Ongoing forum for dialogue, such as a neighborhood advisory committee.
 - d. Process for addressing neighborhood complaints.
 - e. Progress reporting.
 - f. Dispute resolution process.
- 7. Does a GNA work?
 - a. Entering a GNA works in getting the facility and its neighbors past the immediate hurdle, such as a permit renewal or a threatened suit.
 - b. GNA's for industrial facilities are a relatively new tool. So the track record of long-term success is limited.
 - c. Early experience with the ESCO GNA is promising.