ENVIRONMENTAL & ENERGY LAW PROGRAM
HARVARD LAW SCHOOL

THE SALATA INSTITUTE
FOR CLIMATE AND SUSTAINABILITY
at Harvard University

Integrating Cumulative Impact Analysis into State Permitting: Key Decision Points

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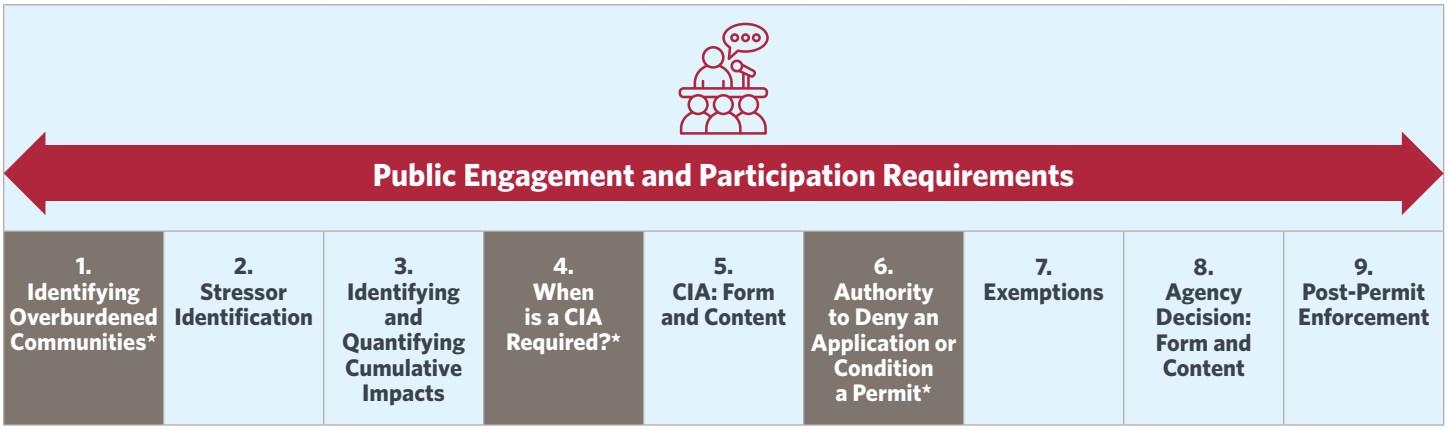
Decisions made by advocates, community members, legislators and regulators will determine the scope, coverage, and protection of a **CIA permitting program**. As summarized here, we examine these "decision points," analyze how existing state programs have addressed each, and consider their practical and legal implications.



* The highlighted cells (Identifying Overburdened Communities, When is a CIA Required?, and Authority to Deny an Application or Condition a Permit) play a particularly important role in determining when and where agencies can provide additional environmental and public health protections in the permitting process.

PUBLIC ENGAGEMENT AND PARTICIPATION REQUIREMENTS

- How should the agency or permit applicant **notify** the community of a proposed project?
- Are **public hearings** required? Is the applicant or agency responsible for holding the hearing(s)?
- Is there an opportunity for the public to **comment**? What responsibility does the applicant or agency have to **respond** to comments?
- What **language** or **disability accommodations** are required?
- Does the **decision-making timeline** ensure an opportunity for community concerns to be considered and incorporated into the permit decision?

1. IDENTIFYING OVERBURDENED COMMUNITIES

- What **criteria** does an agency use to identify overburdened communities?
- What **data** is necessary to quantify the selected criteria? (e.g., demographic, environmental, public health)
- What **thresholds** (e.g., percentage of households) are applied to the selected community identification criteria?
- What **scale** (e.g., census tract or block group) is used to identify communities?
- What **discretion** does the agency have to determine qualifying communities?

2. STRESSOR IDENTIFICATION

- Which stressors are considered when assessing existing community conditions and the impacts of a proposed project?
  - → **Environmental:** mobile sources, contaminated sites, water quality, etc.
  - → **Social:** household income, housing conditions, unemployment, etc.
  - → **Public Health:** cancer rates, childhood lead exposure, etc.

3. IDENTIFYING AND QUANTIFYING CUMULATIVE IMPACTS

- How are **existing** conditions in a community assessed?
  - → What comparative methodology is used to assess how cumulative burdens affect different communities?
  - → What analytical method is used to quantify those burdens?
- How are the **impacts of a proposed project** assessed?

4. WHEN IS A CIA REQUIRED?

- What **types of projects** require completion of a CIA?
- **Where** is the proposed project? (e.g., within or near an overburdened community)
- What types of **permit applications** trigger the need to complete a CIA?
- How much **additional pollution** triggers the requirement to complete a CIA?
- Can **communities petition** for a CIA to be completed?
- Do **Tribes** have explicit authority to require a CIA on Tribal lands?

5. CIA: FORM AND CONTENT

- What **information** does the applicant have to include in the CIA? (assessment of existing conditions and project impacts, proposed strategies to mitigate those impacts, analysis of possible benefits, documentation of and responses to public comments, etc.)

6. AUTHORITY TO DENY AN APPLICATION OR CONDITION A PERMIT

- When is the agency required or authorized to deny an application or condition a permit based on the CIA?
  - → Is the agency's decision **mandatory** ("shall") or **discretionary** ("may")?
  - → Does the authority differ based on whether the facility is new, expanding or continuing existing operations? How are renewals of existing permits treated?
  - → At what **threshold** or pollution limit is the agency authorized to deny an application or condition a permit?
  - → What **conditions** can the agency place on a permit?

7. EXEMPTIONS

- Are there exemptions to the program's CIA requirements?
  - → What **types of projects**, if any, should be eligible for exemptions?
- Are exemptions **mandatory** or **discretionary**?
- At what **stage** in the permitting process does the exemption apply? Is it an exemption from completing a CIA, exemption from permit denial, etc.

8. AGENCY DECISION: FORM AND CONTENT

- Is the CIA decision separate from or incorporated into the **associated permit decision**?
- What information can the agency **consider** outside the CIA?
- How did the agency **document** its decision? What **findings** must the agency make in its decision?

9. POST-PERMIT ENFORCEMENT

- Is the outcome of the CIA process enforceable?
- What are the **consequences** if an applicant fails to comply with specific permit conditions resulting from a CIA decision?

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