

**Policy of Improving Kids' Environment, Inc.**  
**Regarding Initiating or Joining in Litigation**

December 15, 2006

**Introduction**

Improving Kids' Environment, Inc. is committed to doing everything in its power to advance the cause of children's environmental health. However, as a small organization of limited means but extensive expertise, it does most of its work through advocacy, support, and building partnerships with others so as to use their resources in a way that is more protective of children.

We on the IKE Board do not view litigation as a primary tool for achieving IKE's mission, nor do we want IKE to be known as an organization that uses litigation significantly to achieve its goals. We recognize, however, that there may be times and issues for which achieving the goal could be expedited were IKE to join in or initiate litigation. Because of the need to use IKE's resources wisely and because of the possible unintended consequences, actually involving the Corporation in litigation will be undertaken only with Board consent and after consideration of the factors outlined in this policy.

This policy is not intended to be an algorithm that will unerringly generate a Solomonic "yes" or "no." Furthermore, it is not intended to be exhaustive; any potential litigation may present other factors not anticipated here. These considerations are factors the Executive Director and Board should consider before making a decision to initiate or join in litigation.

**Considerations for IKE regarding initiating or joining in litigation**

Threshold Questions

- 1) Is children's environmental health threatened and is litigation the only (or most appropriate) tool to remove or reduce that threat?
- 2) Have there been other, sincere efforts to resolve the issue? What are they and was IKE involved?

Further Considerations

I. Mission Compatibility

1. Is the subject matter of the litigation pertinent to IKE's mission, history of activities and current strategic plan or workplan?
2. How important is the issue being litigated? (Litigation is a big step. IKE should reserve its use of or participation in litigation for truly important.)
3. Is litigation the route most likely to lead to the desired results?
4. Will litigation reduce our effectiveness in this area?

5. What is the likelihood of success? (Sometimes it is important to sue even if the chances of prevailing are low. However, the Board should consider, with the input of the Executive Director and other advisors, as appropriate, whether the legal arguments that would be made by IKE and/or IKE's co-parties are plausible).

## II. Partnership Building

1. Who are the other parties in the litigation (on both sides)?
2. Does IKE have relationships (e.g. contractual, funding support, other) with any of the other parties that could influence a decision?
3. If IKE's involvement will be minimal, does the Board feel comfortable with the lead party making legal arguments and strategic decisions on our behalf?
4. What role, if any, will IKE have in settlement discussions/decisions or other legal strategy decisions?
5. Will IKE add a perspective currently lacking in the case that will help advance protection of children's health? Can it do so without becoming a party to the lawsuit?

## III. Present and Future Resource Commitment

1. What would be IKE's role in the litigation? (Plaintiff, co-plaintiff, intervenor, amicus curiae)?
2. What resources will be required (time and \$\$)?
3. Is joining the litigation fully consistent with IKE's policies, IKE's legal responsibilities as a §501(c)(3) and with all funding, contract or grant agreements?
4. What risks are there? (Use of funds, compromising relationships with agencies, organizations or others, diversion of resources away from other commitments).
5. Is the lawsuit sufficiently well supported without IKE's participation (e.g. when the national environmental groups challenge EPA on an air quality standard, there is little that IKE's participation will add)?

**BOTTOM LINE:** Whether we choose to join or not, are we satisfied that we have had clearly in mind the best interests of the generations of children this organization serves?