

# Report to Cabinet

17 January 2024

<b>Subject:</b>	Determining the commencement date of Sandwell’s new boroughwide Smoke Control Area and associated enforcement procedure
<b>Cabinet Member:</b>	Councillor Syeda Khatun Public Health and Communities
<b>Director:</b>	Director of Public Health Liann Brookes-Smith
<b>Key Decision:</b>	Yes This decision is significant in that it effects all communities living and working in all wards of the Borough
<b>Contact Officer:</b>	Air Quality Team Manager Elizabeth Stephens <a href="mailto:elizabeth_stephens@sandwell.gov.uk">elizabeth_stephens@sandwell.gov.uk</a>

## 1 Recommendations

That Cabinet gives approval to:

- 1.1 ‘The Borough of Sandwell Smoke Control Order 2022’ coming into operation on 1<sup>st</sup> July 2024.
- 1.2 The introduction of an enforcement procedure that includes education, engagement and support, with the option to serve civil financial penalty notices (FPNs) for persistent breaches of the rules, reflecting amendments to the Clean Air Act 1993 brought about by the Environment Act 2021 as set out in Appendix 2.



## 2 Reasons for Recommendations

### Legal Duty

- 2.1 Sandwell Council have already committed to the creation of a boroughwide smoke control area following a unanimous decision by Council members in November 2022. In February 2023 the 'Borough of Sandwell Smoke Control Order 2022' was formally declared. The Order refers to the provision to serve civil financial penalty notices for breach of the Order. A copy of the Order is provided in **Appendix 1**
- 2.2 On 2 August 2023 Thérèse Coffey the Secretary of State for the Environment, Food and Rural Affairs (Defra) revoked Sandwell's 52 existing smoke control orders and confirmed the creation of Sandwell's new boroughwide smoke control order (SCO).
- 2.3 There is an expectation from Defra that as a local authority with a Smoke Control Order we will enforce the Order. Defra's 'Air Quality Strategy: Framework for local authority delivery' (August 2023) states the following: *'We expect in most cases, providing information to householders will be sufficient to address smoke emissions in smoke control areas. However, where this is not the case we expect local authorities to enforce the smoke control area. The Environment Act 2021 streamlined enforcement of SCAs by making breaches a civil rather than criminal offence. We have supported these changes with new funding to local authorities over this spending review period. Local authorities with smoke control areas should set a policy stipulating the level of the fine, between £175 and £300. Proceeds from the fine can be used towards enforcement costs'*.
- 2.4 Defra have confirmed in writing to Sandwell's Air Quality team on 9 November 2023, that they are not aware of any other local authority with smoke control areas that will not be implementing this new financial penalty notice enforcement regime. They also reiterated that it *'is important that local authorities use these new powers in order to reduce harmful emissions of PM<sub>2.5</sub> from solid fuel burning'*.



- 2.5 As a local authority we could face legal action for being in breach of a person's human rights specifically Article 2 'Right to Life' and Article 8: 'Respect for your private and family life'. As a local authority we have a duty to *'protect individuals from harm to their health'* – this includes protecting residents from serious pollution.
- 2.6 As a council we have a duty to investigate complaints about smoke. The power to issue a civil financial penalty notice up to £300, is much lower than the alternative of pursuing a criminal Statutory Nuisance offence which has the potential to result in fines of up to £5,000 and even imprisonment. Pursuing a Statutory Nuisance offence is generally more complex, time consuming and costly than serving a civil financial penalty notice. Statutory nuisance investigations can result in frustration and distress by those individuals who continue to be impacted by harmful smoke emissions, whilst the necessary evidence is gathered for prosecution. The option to pursue a Statutory Nuisance complaint remains but would be limited to use in cases where a person persists on breaching the rules after receipt of education, engagement and subsequent issuing of three or more civil penalty notices in a 12-month period.

### **Protecting Public Health**

- 2.7 Once in operation, Sandwell's boroughwide smoke control area will play an important role in minimising harmful smoke emissions from residential and small-scale combustion plants. This is essential if we want to prevent future deterioration in air quality given the increasing popularity of domestic burning.
- 2.8 There is an overwhelming body of scientific evidence demonstrating that burning unauthorised fuels such as unseasoned wood, house coal or items such as household waste, treated wood, or plastics, results in the release of toxic particles and gases. This includes fine particulate matter PM<sub>2.5</sub> – particle 2.5 microns or smaller across, tiny enough to enter the bloodstream through the lungs and even penetrate the brain. Depending on what's being burned the smoke can contain carbon monoxide, nitrogen oxides, carcinogenic compounds like polycyclic aromatic hydrocarbons, or PAHs, and volatile organic compounds, or VOCs. They



may even spit out toxic metals like mercury and arsenic. As a local authority we have a duty to raise awareness of these dangers and to qualify the serious threat to health, with the deterrent of financial penalty.

- 2.9 Domestic burning is one of the main sources of harmful fine particulate matter (PM<sub>2.5</sub>) in urban areas like Sandwell. The main sources of PM<sub>2.5</sub> are from indoor burning such as using solid fuel burning stoves and open fireplaces.
- 2.10 According to Defra's official statistics, domestic burning of solid fuel, which includes wood and coal, is responsible for around 25% of all PM<sub>2.5</sub> pollution in the UK. The other main sources are industrial combustion and processes with solvent use and road transport.
- 2.11 Fine particulate matter (PM<sub>2.5</sub>) is an air pollutant that has a significant impact on human health, it can cause coughs, dizziness, inflamed airways and shortness of breath. It can increase the risk of pneumonia, COPD and lung cancer as well as heart disease and stroke leading to early death. It can also impact pregnancy and the prevent normal development of children's lungs. People already suffering from lung and heart problems are more likely to be affected, along with older people, young children, pregnant women their unborn babies. Exposure to PM<sub>2.5</sub> can also harm the body's respiratory immune response, increasing the risk of respiratory infection – including COVID-19. And in the long-term wood smoke can have carcinogenic effects that go beyond lung cancer, such as increased risk of breast cancer.
- 2.12 The average yearly social-health related cost of heating a household using a wood burning stove in the UK is **£670**, compared with £26.50 for non-condensing gas boiler and £17.50 for a condensing gas boiler. (European Public Health Alliance, 2022).
- 2.13 It is estimated that 8% of households in the UK now have wood burning stoves, making the yearly social-health related costs in Sandwell from wood burning stoves to be circa **£6,978,720**.



2.14 An equality impact assessment provided in **Appendix 8** has been undertaken that demonstrates that the overall impact of enforcing the boroughwide smoke control area is assessed as being net positive. The short and long-term negative costs to population health caused by burning carcinogenic smoky fuels are far greater than any potential negative impacts from its enforcement. The impact on households that are in financial hardship who are currently or likely to use unauthorised, smoky fuels can be mitigated by support with practical information and financial advice and support. As a local authority we have a duty to ensure residents of Sandwell can live well and age well in thriving neighbourhoods. We have a duty to identify and support any household relying on smoky and dangerous fuels to heat their homes, but want to comply with the law, to find a safer and cleaner alternative.

### 3 How does this deliver objectives of the Corporate Plan?

	<p><b>The Best Start in Life for Children and Young People</b>          Young children face a greater risk to their health from ultrafine particulate emissions (PM<sub>2.5</sub>) which is strongly associated with domestic burning and is the largest source of ultrafine particulate matter in urban areas. Exposure to PM<sub>2.5</sub> is shown to have both short and long-term impacts, including respiratory illnesses and impaired lung and cognitive development in children.</p>
	<p><b>People Live Well and Age Well</b>          Air pollution is a key threat to the health of our population and a driver of health inequalities. The boroughwide smoke control area and enforcement policy will reduce health inequalities and increase both the perceived and actual position of Sandwell as a cleaner and safer place to live.</p>
	<p><b>Strong Resilient Communities</b>          By reducing air pollution and in particular PM<sub>2.5</sub> the smoke control area and associated enforcement policy will contribute towards improving the overall health and resilience of our communities.</p>





### **Quality Homes in Thriving Neighbourhoods**

Bringing the smoke control area into operation will ensure that all neighbourhoods in Sandwell would be afforded the same level of protection from harmful emissions that are created by the burning of solid fuels in domestic properties and businesses.

## **4 Context and Key Issues**

- 4.1 The Borough of Sandwell SCO can be bought into operation no sooner than 6 months from the date of confirmation by Defra. This is to ensure that all persons who may be impacted by the SCO are given sufficient information, opportunity and time to understand the rules and where necessary switch to smokeless fuel.
- 4.2 It is proposed that the ‘Borough of Sandwell Smoke Control Order’ should not come into operation until 1<sup>st</sup> July 2024. The earliest date that the SCO could come into operation is February 2024 but postponing its introduction until July 2024 would ensure sufficient time to deliver the necessary communications to residents and businesses. There would also be additional summer months post-implementation to prepare for the changes, given that most solid fuel stoves and fireplaces are not used for heating purposes until the autumn.
- 4.3 Sandwell Council already adheres to the ‘Black Country Local Authorities Enforcement Policy’ which overarches are enforcement of environmental health legislation, including the Clean Air Act 1993 and Environment Act 2021. This policy requires our enforcement procedures to be proportionate, accountable, consistent, transparent and targeted. The policy is based the ‘Principles of Good Regulation’ as required when exercising a specified regulatory function, and in accordance with the Legislative and Regulatory Reform Act 2006, Part 2.

Sandwell’s ‘Smoke Control Area Enforcement Guide’ is also underpinned by the Council’s four ‘E’s approach to enforcement; Engage, Explain, Encourage and Enforce. This approach emerged during the pandemic and is designed to encourage high levels of compliance. This approach will ensure that we:



- Engage with those who may or have breached the rules to understand their awareness of the situation and the reason why they might be burning smoky fuels. Deliver appropriate information, education and advice but also provide people with the opportunity to give a response to us and an agreement that we will listen to and consider this response before taking any further action.
- Explain the purpose of the Smoke Control Area, whilst treating people with dignity and respect. To ensure that we explain the health benefits of compliance both to the individual and their family, as well as the wider social impacts, including the impact on their local community
- Encourage people to act reasonably to the request being made. This will require providing a consistent approach and a willingness by officers to explain why compliance is being requested.
- Enforce only as a last resort. Enforcement is necessary to reinforce the good work that has already been done through the engagement, explanation and encouragement processes but is necessary to demonstrate that there are ultimately consequences for committing an offence.

4.4 A draft of Sandwell's Smoke Control Area Enforcement Guide is provided in **Appendix 2** and confirms:

- Where smoke emission breaches can be enforced, e.g. defines relevant chimneys and moored vessels
- How persons can comply with smoke emission rules
- The level of civil financial penalty that will be imposed for a breach of the rules
- The process for imposing penalty charges on those who break the rules.
- The use of statutory nuisance legislation for serious and or repeat offenders who create smoke emissions that are harmful to health or a nuisance.

4.5 The statutory levels of financial penalty that can be imposed for breaching a smoke control order are set within Schedule 12 of the



Environment Act 2021. The minimum penalty is £175, and the maximum is £300. It is recommended, as laid out in the draft enforcement guide, that the maximum civil penalty of £300 is imposed for all offences with the potential for this to be reduced to £175 for early payment (within 14 days of receipt of the notice). This is to incentivise early payment and reduce the likelihood of non-payment and the time/costs of civil debt recovery.

### **Publicity of the Borough Wide Smoke Control Area**

- 4.1 It is fundamental that we communicate effectively with all persons who may be impacted by the introduction of the boroughwide SCA. Ensuring that the public understand the rules and its purpose, is essential if we want to maximise the level of compliance, reduce unintentional breaches and ultimately protect public health.
- 4.2 A communication plan has been drafted (**see Appendix 3**) which is focused on raising awareness of the boroughwide SCA and will include:
- The date the SCA is going to come into operation
  - Why the SCA is being introduced by highlighting the risks to health from domestic burning and the benefits of reducing smoke.
  - How to comply with the SCA – including information on how to light a fire and minimise smoke emissions. (**see Appendix 4**)
  - FAQs relating to SCA's rules (**see Appendix 5**)
  - Targeted awareness raising for the boating community

### **The Boating Community**

- 4.3 The new boroughwide SCA includes moored boats/vessels. There are currently less than 50 long-term (6 months +) canal moorings in Sandwell, but there are also many itinerant boaters, also known as 'continuous cruisers' on Sandwell's canal network. Most boaters rely on solid fuel e.g. wood or coal for their heating and are therefore the one group in Sandwell most likely to be impacted by the SCA rules.
- 4.4 Although the boating community only make up a tiny proportion of the population of Sandwell, they are the group that is most vulnerable to the health impacts of smoky fuels generated through use of solid fuel for



heating and cooking. Our approach to communicating with boaters will therefore be tailored to ensure effective reach, that they understand the requirements, as well as the health reasons for the SCA and that we provide effective signposting, including where to get support if struggling financially to meet the requirements.

- 4.5 Regard has also been made to Defra's 'Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021'. This also includes working with our partners in the Canal and River Trust, including the preparation of joint publicity and information materials, explaining the purpose of a smoke control area, how to burn without creating smoke, as well as tow path signage.

### **Cost of Living Support**

- 4.6 As the cost of living remains high, driven in the main by high fuel prices, we are very aware that this could increase the likelihood of residents resorting to wood and coal burning as alternatives to gas and electricity for home heating. Although using smoky and unauthorised fuels may be cheaper, their use comes with a huge social-health related cost and financial cost. We therefore need to support our residents, some of whom may be in fuel poverty, to find clean and safe ways to heat their homes. Residents will be provided with information about financial assistance, as well as access to often free energy efficiency measures that will provide year on year savings. Supporting those on a low income and in receipt of government benefits is particularly important, for example many residents will be unaware that they are entitled to help towards home insulation and boiler replacement. Examples of information on financial support and information on energy saving is provided in **Appendix 6**.

## **5 Alternative Options**

- 5.1 Sandwell Council have already undertaken a formal public consultation and committed to the introduction of a boroughwide smoke control area by declaring the 'Borough of Sandwell Smoke Control Order 2022'. Defra are awaiting confirmation of the date that the SCO will come into



force. The only alternative options to the ones recommended in this report are:

- Setting an alternative date for the SCO to come into operation – legally this cannot be before 3 February 2024.
- Not using our powers to serve civil financial penalty notices on those breaching the Order. The decision to recommend the option of using civil FPNs has been determined using an options appraisal as provided in **Appendix 9**, which clearly sets out the risks and benefits of both approaches. It is considered that the potential benefits of having the ability to serve civil financial penalties are far greater than any benefits gained from not using them.
- Setting an alternative financial penalty regime for breaches of the smoke control area. For example, creating an incremental penalty scheme as shown below where fines increase incrementally with subsequent offences.

<b>Civil Penalty Bandings for Emitting Smoke in a Smoke Control Area</b>		
<b>Offence</b>	<b>Civil penalty fine</b>	<b>Enforcement Note</b>
1 <sup>st</sup> offence	£175 (statutory minimum amount)	Penalty to be paid if the liable person(s) has ignored a formal warning, previously issued in line with this policy and have breached the smoke control rules again within 12 months.
2 <sup>nd</sup> offence	£225	Penalty to be paid if the liable person(s) has breached the smoke control rules for a second time, after an initial formal warning and primary fine, within 12 months of the 1 <sup>st</sup> Offence
3 <sup>rd</sup> offence and further offences	£300 (statutory maximum amount)	Penalty to be paid if the person(s) liable has breached the regulations for a third time after a warning, primary and secondary fines within 12



		months of the 2 <sup>nd</sup> Offence, <u>or</u> they are continuously breaching the regulations despite previous fines.
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## 6 Implications

<b>Resources:</b>	<p>The day to day enforcement of the boroughwide SCA will be undertaken by air quality officers in the Pollution Control Team.</p> <p>To further ensure the best public health outcomes from the introduction of the SCA, a request for a 2-year fixed term post for an 'Air Quality Education and Enforcement Officer' is to be submitted. This officer will be tasked with increasing public awareness around the health risks from domestic burning. This will include indoor burning as well as outdoor burning (e.g. bonfires, fire pits, barbeques, garden incinerators) and how to comply with the rules, which are frequently not well understood by residents and can be confusing. The objective is to use this post to maximise the level of compliance with air quality legislation through sustained education and ultimately achieve a better public health outcome for everyone. In addition, by reducing unintentional breaches of legislation, enforcement action will be focused on those who intentionally breach legislation. The costs of this post will be funded through the public health ring-fenced grant and partly by a one-off grant of £11,710 provided by Defra, specifically provided to all local authorities with SCAs to support any additional work arising as a result of the introduction of the Environment Act 2021.</p> <p>The Canal and River Trust have estimated that costs for signage informing boaters that they are entering an SCA, will be approx. £3000.</p>
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	<p>Installation of signage on Sandwell’s canal network is crucial to supporting compliance, as boaters are the ones most likely to be using solid fuel burning stoves. Signs will be required at all entry points into the borough and at the four long-term mooring sites.</p> <p>There will be some additional costs with regards to creating campaign materials and resources, but these costs should not be excessive and should be afforded from the Pollution Control Team’s existing budget.</p>
<p><b>Legal and Governance:</b></p>	<p>Enforcing the boroughwide SCA is strongly aligned with the Government’s Environmental Plan and National Air Quality Strategy 2023, which both place additional responsibilities on local authorities to demonstrate how they are working towards achieving new lower air pollution targets and reduce emissions of fine particulate matter in their areas.</p> <p>Enforcing the SCA also contributes to Sandwell’s Air Quality Action Plan, Sandwell’s Climate Change Strategy and the priorities listed in Sandwell’s Air Quality Annual Status Report.</p> <p>Without the authority to undertake civil financial penalty enforcement the Smoke Control Area would not provide the proposed incentive for compliance and more severe (criminal) enforcement powers would have to be used to redress non-compliance.</p> <p>Enforcement of the new SCA will be undertaken by Council Air Pollution officers with advice and guidance from Sandwell’s legal team as required and will align with Sandwell’s developing integrated enforcement approach as well as being operated in accordance with the Black Country Local Authorities Enforcement Policy.</p>



<p><b>Risk:</b></p>	<p>A project risk register was originally compiled in 2021 and has been reviewed and updated. The risk register is monitored by the Pollution Control Team. Based on the information provided it is the officers' opinion that all significant risks have been identified so far and that arrangements are in place are adequate to manage and mitigate these effectively.</p> <p>A risk assessment has been undertaken and no "red" risks were reported.</p> <p>All data collected will be handled and stored in accordance with the departments existing GDPR controls.</p>
<p><b>Equality:</b></p>	<p>The creation of a boroughwide SCA has created equality by enabling us to take appropriate and proportionate action to reduce the exposure of all of Sandwell's population to harmful pollutants generated by smoky fuel burning as opposed to only 1/5<sup>th</sup> of the borough as was the case up until 2 August 2023.</p> <p>Any households, including boaters, who use solid fuel as their only means of heating and currently use unauthorised fuels, could find the switch to authorised fuels more expensive, which increases the risk of putting them into fuel poverty (i.e. spending more than 10% of their income on heating their homes). However, authorised fuels do burn more efficiently, will cost them less in long-term maintenance of their stoves and chimneys, reduce the risk of fire and risk of harm including potential for carbon monoxide poisoning.</p> <p>There is financial assistance and grants available for all households on low-incomes and we are able to assist those who need help accessing this information. This may be financial or help with improving home insulation or updating their heating provision to make it cheaper and more efficient to run. Households in this position will</p>



	<p>be signposted to sources of financial help and energy saving advice through a variety of communication channels, including press, social media and Sandwell Council's website.</p>
<p><b>Health and Wellbeing:</b></p>	<p>The purpose of the SCA is to take proportionate action to prevent harm caused by air pollution, no matter where people live in Sandwell and to promote health and wellbeing. We know that out of the whole of the West Midlands PM<sub>2.5</sub> concentrations are the highest in Sandwell, and this pollutant particularly affects the most vulnerable in society: children and older people, and those with heart and lung conditions and it is associated with a plethora of adverse health impacts. Air pollution is also recognised as a contributing factor in the onset of heart disease and cancer, plus recent research has suggested links between air quality and stunted lung development in children, exacerbation of degenerative sight loss in adults and dementia in the elderly.</p>
<p><b>Social Value:</b></p>	<p>By being prepared to take proactive action to enforce our Smoke Control Area we can improve local air quality. Enforcing our SCA will have a long-term positive impact by reducing the health-related social costs and subsequent burden on the NHS, who treat and care for those who are exposed both short and long-term to harmful smoke emissions. By enforcing the boroughwide SCA we are reducing existing health inequalities and establishing a long-term health policy that is designed to support longer and healthier lives.</p>
<p><b>Climate Change:</b></p>	<p>This proposal contributes to Sandwell's Climate Change Strategy by supporting efforts to reduce the amount of carbon being released into the air. It is a common misconception that wood burning is carbon neutral when it is in fact a much more complex science. Firstly, to be even remotely 'carbon neutral' the carbon released from wood</p>



	<p>burning must be absorbed by new tree growth. Realistically it can take decades or a century for forests to grow to a size that they are able to reabsorb this additional carbon. Meanwhile this means a greater chance of irreversible climate tipping points before any possible benefits are accrued. Furthermore, solid fuel burning stoves are not energy efficient, for the same amount of heat, wood releases more carbon dioxide than either oil or gas.</p> <p>It is acknowledged that the boroughwide SCA does not ban solid fuel burning stoves, but it will increase awareness of the health harms associated with burning, discourage those from burning who do not need to and where burning does continue will require the use of fuels that emit less carbon.</p>
<p><b>Corporate Parenting:</b></p>	<p>Children are particularly vulnerable to air pollution due to their growing and developing lungs. The SCA supports and cares for the health of all children by establishing blanket rules across the borough that will help limit their exposure to excessive levels of air pollution from domestic burning in all homes in Sandwell.</p>

## 7. Appendices

### Appendix 1 The 'Borough of Sandwell Smoke Control Order 2022'



The Borough Council  
of Sandwell Smoke Cc

### Appendix 2 Draft Sandwell Smoke Control Area Enforcement Guide



SCA Legislation and  
Officer Enforcement C

### Appendix 3 Draft Sandwell Smoke Control Area Communication Plan





Public Engagement  
Plan SCA Draft.docx

## Appendix 4



How to Light a Fire to  
Reduce Smoke Emissi

## Appendix 5 Smoke Control Area FAQ



SCA FAQs mindmap  
(2).pdf

## Appendix 6 Cost of living information and signposting



Help with Heating  
Costs.docx

## Appendix 7 Smoke Control Area Risk Register



SCA - Cabinet Report  
Risk Register October

## Appendix 8 Smoke Control Area Enforcement Equality Impact Assessment



EqIA SCA November  
2023 version 1\_ES .do

## Appendix 9 Options Appraisal – No financial penalty vs civil financial penalty notice for breaches of a Smoke Control Order.



Options Appraisal for  
No Penalty vs Penalty

## 8. Background Papers

The Clean Air Act 1993 – Part III – Smoke Control Areas

<https://www.legislation.gov.uk/ukpga/1993/11/part/III>

The Environment Act 2021 – Schedule 12 – Part 1

<https://www.legislation.gov.uk/ukpga/2021/30/notes/division/18/index.htm>

Environmental Improvement Plan 2023



<https://www.gov.uk/government/publications/environmental-improvement-plan>

Air quality strategy: framework for local authority delivery (updated 25 August 2023)

<https://www.gov.uk/government/publications/the-air-quality-strategy-for-england/air-quality-strategy-framework-for-local-authority-delivery>

Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021

<https://www.bargee-traveller.org.uk/wp-content/uploads/2022/11/20220929-Guidance-for-LAs-on-bring-vessels-in-scope-of-smoke-control-areas-V1.pdf>

Sandwell Annual Status Report for Air Quality 2022

<https://www.sandwell.gov.uk/downloads/download/321/2023-air-quality-annual-status-report>

Sandwell Air Quality Action Plan 2020-2025

<https://www.sandwell.gov.uk/downloads/download/396/air-quality-action-plan-2020-2025>

The health related social costs of air pollution due to residential heating and cooking - European Public Health Alliance (2022)

<https://cedelft.eu/publications/health-related-social-costs-of-air-pollution-due-to-residential-heating-and-cooking/>

The Black Country Local Authority Enforcement Policy

<https://wolverhampton.moderngov.co.uk/documents/s12469/Black%20Country%20enforcement%20policy%20final%20for%20consultation.pdf>

Indoor Wood-Burning Stove and Fireplace Use and Breast Cancer in a Prospective Cohort Study (2017)

<https://ehp.niehs.nih.gov/doi/10.1289/EHP827>

