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Risk and Justice: Rethinking the Concept of Compensation

By PATRICK FIELD, HOWARD RAIFFA,
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ABSTRACT: In recent years, environmental justice advocates have made a convincing claim that risky facilities have been disproportionately clustered in poor communities and communities of color. NIM-BYism (not in my backyard) has spread from predominantly white, affluent suburbs to poorer communities of color. In this article, we propose a means of addressing environmental inequities and breaking the siting impasse. We think that poor communities of color might use the proposed siting of risky facilities as a basis for negotiating substantial improvements in the well-being of their communities. We propose to embed siting negotiations in the preparation of broader development packages, jointly created with citizens of poor neighborhoods and communities of color, so that health risks are reduced, the environment is improved, and all residents are better off. As far as justice is concerned, the perceived fairness of the process by which risks are communicated and selected, and risk management strategies are devised, is as important as the actual allocation of risk.

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AMERICA is having a difficult time siting much-needed waste disposal facilities for toxic materials ranging from used motor oil, to industrial solvents, to biomedical waste. Despite the fact that the United States produces somewhere between 275 million and 380 million tons of hazardous waste per year—or more than 1 ton per capita—no large, fully operational, free-standing hazardous waste disposal facility has been sited since 1980.¹ The United States is even having trouble siting power plants, sewage treatment plants, and far less risky sanitary landfills. Industry spokespeople, and the critics of a selfish public unwilling to shoulder its responsibilities, have blamed the “not in my backyard” (NIMBY) phenomenon on affluent, white, suburban residents unwilling to share the burdens of their wasteful habits.

But in the early 1990s, poor people of color made a claim similar to that of white suburbanites: they, too, did not want noxious or risky facilities in their backyards. Some grassroots activists, social scientists, and attorneys had framed the NIMBY problem in a new and compelling way. One need only look at a map of the United States to see that noxious facilities are disproportionately clustered in poor communities and communities of color. To make matters worse, lax

enforcement of, and poor compliance with, existing environmental regulations coupled with slow—some would say halfhearted—cleanups of toxic waste sites in poor communities of color have increased the health and safety risks to these neighborhoods even more. Advocates also argued that, in the process of making siting decisions, poor people and people of color have not had a fair chance to be heard at public hearings, obtain adequate technical advice, or have proceedings conducted in their native language.

Last, advocates contended that proponents have explicitly referenced social characteristics such as race, culture, and income to select sites for risky facilities. Thus not only do inequities exist when we look at facilities in the aggregate over time, but as each new facility is sited, both government and industry use social factors such as race as important determinants in site selection. This is nothing less than racist. Everyone should share equally in the risks of such facilities, not just poor people or people of color. If these claims of the leaders of the environmental justice movement—that environmental decision making has been geographically, procedurally, and socially unfair—are true (and we think they are), then a remedy must be found.

1. Barry George Rabe, *Beyond NIMBY: Hazardous Waste Siting in Canada and the United States* (Washington, DC: Brookings Institution, 1994); Charles Piller, *The Fail-Safe Society: Community Defiance and the End of American Technological Optimism* (New York: Basic Books, 1991). A bibliography of additional sources related to this topic is available from the Consensus Building Institute, 131 Mt. Auburn Street, Cambridge, MA 02138.

SOLVING THE PROBLEM:
SUBSTANTIAL IMPROVEMENT
RATHER THAN SUITABLE
COMPENSATION

Promoters of risky facilities have made an unfortunate mistake. They set out to financially compensate people for the measurable negative im-

pacts of risky facilities. Economic theory suggested that it could be done. After all, we all make implicit trade-offs that, when made explicit, could be used to derive an estimate of how much we value our lives. People ride motorcycles without helmets; people take on hazardous jobs in mining and nuclear waste site cleanup, to name only a few. When asked to make these trade-offs explicitly and collectively, however, people usually react with aversion and anger. Why? Compensation means to make up for, to counterbalance. But how does one counterbalance increased risk of death with financial compensation? How does one pay for putting a child at increased risk of asthma, leukemia, or even death? It seems to us that in a public and political setting, this simply cannot be done. When the question entails involuntary instead of voluntary risk, collective instead of individual risk, and involves people's homes and families and not just their workplace and themselves, financial compensation is not enough. Experts have tried to condense values, in the broad sense, into a common but disagreeable metric of dollars. If communities are going to accept risky facilities, financial compensation and mitigation are not sufficient. Unless decision makers respond to a community's sense of its own needs and priorities, unless host communities find themselves, when all is said and done, better off, citizens, especially those already unduly burdened, will continue to resist the siting of locally unwanted land uses (LULUs).

We would like to propose a means both to break the siting impasse and to improve environmental equity.

Our proposal is that the siting of noxious facilities be embedded in a broader development package, jointly prepared by citizens of poor neighborhoods and communities of color, so that their environment is actually improved, health risks are reduced, and all residents are better off.

Since we have agreed with those who have found that communities of low income and color have received unjust treatment when it comes to the siting of LULUs, readers might wonder why in the world we would propose siting a risky facility in a disadvantaged neighborhood. We think that poor communities of color might use the siting of risky and unwanted facilities as an opportunity to significantly reduce risks in their community and improve residents' lives. Poor communities of color need a practical vehicle to address inequities. The NIMBY problem might be a powerful bargaining chip to help poor communities and communities of color leverage substantial resources. Risky facilities, rather than being yet another imposition forced on disadvantaged communities, could provide an opportunity to make substantial improvements in communities that need and deserve, due to past and current inequities, substantial investment and development.

AN IMAGINED DIALOGUE

Imagine this scenario: the state is desperate. A new low-level radioactive waste facility needs to be sited. Currently, wastes of this kind generated in the state are being shipped across state boundaries for disposal, but neighboring states are discourag-

ing this practice by progressively raising their rates. The governor fears that research facilities in hospitals, universities, and high-technology industry that generate low-level radioactive wastes will be forced to relocate out of state, and with this exodus other industries will follow. The governor has asked his trusted adviser S. Simpson to pull out all the stops to get a radioactive waste facility sited.

Simpson, an astute lawyer and master negotiator, has contacted G. Garrity, a geologist and hydrologist from the most prestigious engineering school in the state, to investigate suitable sites. Their investigation disclosed that the only part of the state with adequate subsurface geology and acceptable groundwater levels is in Kendall County. In particular, two sites were deemed appropriate: one in the wealthy, suburban community of Oakville and one in the inner-city community of Kent, home to a higher percentage of people of color than the rest of the region and also home to many low-income whites.

Simpson has invited O. Otis, a prestigious banker who years ago was a selectman from Oakville, and K. Kass, an adviser to the mayor of Kent, to join Garrity and him in what Simpson has called a facilitated joint brainstorming session about the problem of siting LULUs.

Simpson: Thanks for coming. As I mentioned to you in my letter of invitation, we're here unofficially. In confidence, let me tell you that the governor has asked me to advise him on what to do about a growing crisis in our state: opposition to the siting

of what we call LULUs. The NIMBY attitude is taking its toll in our state.

Kass: I still don't understand why you invited Otis and me to this meeting—what you call a brainstorming session.

Garrity: Simpson asked me to locate some technically suitable, geologically sound sites for a low-level radioactive disposal facility, and I identified one in Oakville and another in Kent.

Simpson: I asked you to come as recognized leaders of your communities to brainstorm with me.

Otis: Well, this is going to be a short meeting if you think you're going to get me to endorse a plan to locate a waste repository in Oakville. That's just not in the cards no matter what the governor tries to do. I'll fight him all the way, and he can't win this one. People in my town will fight any such proposal tooth and nail.

Kass: Well, O., I'll be out the door ahead of you. I'm tired of my community being the dumping ground for the entire state. We've already got more than our share of LULUs. It's just not fair to ask us to suffer more. The governor is going to have one helluva political fight if he tries to ram this down our throats.

Simpson: Hold on. I think I understand and empathize. I'm not trying to force anything down your throats. We're here to see if we can think of some imaginative solution that will make everyone better off. Remember, the governor is willing to use some of the state's resources to break this impasse.

Kass: If your aim is to try to bribe us, forget it. We won't sell out!

Simpson: But, K., substantial resources could be used to redress some of the

serious problems in your community. All I'm asking you to do is to brainstorm with me. Don't think of this as a threat; look at it as an opportunity. Imagine if we helped invent a solution to both facility siting and environmental injustice that made the rest of the state's citizens sit up and take notice. Tell me, what are the key concerns in your community?

Kass: We have serious problems. First, there's public safety. Our kids aren't safe. Kids are getting shot by other kids. We have no foot patrolman. Lead pipes, lead paint, and asbestos seem to be everywhere. Also, we need tennis courts and a municipal pool. We need emergency health care and care for teenage mothers. Some of our elderly citizens live in hovels and don't have any place to meet or play cards. And to top it all off, the few businesses we have are ready to leave.

Simpson: I'm telling you, K., that this may be the opportunity to do something about the litany of problems you've just mentioned. Kent needs and deserves real investment. Unfortunately, we all know, in today's political climate, how difficult that is.

Kass: We don't want to be bought off. We want things to get better. Put together a solid package that improves the health and safety of my community and creates jobs, and then we'll talk.

Otis: But if your community got cold cash, you could spend it as you wanted.

Simpson: What the governor and I have in mind is something far more inventive: a development package that will include the waste repository. It will

be a package that will have to be voted up or down by the citizens of Kent, or any other town. From experience, we know citizens must be convinced that they will be better off on a host of dimensions: public health, public safety, aesthetics, taxes, jobs, and the general quality of life in the town.

Garrity: We have to be honest about this. This is not a zero-risk proposition. There are some modest risks associated with low-level radioactive waste. Of course, these added health risks could be more than offset by other remedial actions that would improve public health—by mitigating the effects of existing lead, asbestos, and radon and by providing better medical emergency facilities and drug treatment centers.

Kass: I'll have no part of this deal if the safety of the people of Kent is in jeopardy. There will be no trade-off of dollars for lives. That's unacceptable—end of story.

Garrity: That's not the trade-off we're proposing. We must create a package that the best scientists can clearly say will improve the health and safety of the people of Kent.

Kass: The package can't improve the lives of residents in my community only marginally. It must improve their lives substantially. Too many times in the past, my community has borne the cost of risky decisions. People are mad. They simply aren't going to accept a slightly better deal, not now.

Simpson: I think this brings up the important point of community acceptance. The development package can't be accepted only because some

outside expert tells the community they're better off. The citizens themselves have to believe they are better off. If the perception remains that the community is not improved, that will mean the status quo, or worse, for property values, bank loans, and further economic development.

Otis: But wait! What's a really good deal? How far might this go? Why shouldn't Kent just keep demanding more from their wish list? I can imagine the holdouts saying, "We don't believe we're better off just yet. We want something in addition. . . ." What's the upper limit?

Simpson: Kent can get a lot, but not everything. We have to commission a study of what would happen if we don't locate a facility anywhere in our state. We would have to pay exorbitant prices and perhaps lose some of our best medical research facilities. That would have to be priced out. Suppose, for example, that the no-build alternative would cost us \$25 million while the cost to build the facility in Kent would be \$10 million. That would leave a surplus of \$15 million. Say half of that were spent on developing the improvement package for Kent.

Otis: Hey, wait a second. Why not use all the savings for improvements in Kent?

Kass: Thank you, O. I never thought I'd hear a banker arguing for increased spending for the poor people of Kent.

Simpson: We need to negotiate how much will be spent. Let's not forget, this package could generate all sorts of long-term gains and losses that we cannot directly cost out: innovative partnerships, leveraging of private

and public grants, and so on. All I want to point out is that there is a natural monetary upper limit, for instance, the cost of going out of state.

Kass: That doesn't follow, if I understood the governor's intent. He will get a lot of political credit if he can locate this facility amicably and at the same time help a truly disadvantaged community. He should be willing to spend more on the Kent combined package than the alternative of going out of state.

Simpson: We're beginning to negotiate, and that's not our assignment. We're supposed to be brainstorming. I take it that you feel that there's some hope that a suitable package might fly. Let's figure out some of the things that have to be done next.

Kass: Well, I would like to see a full menu of things that might be included in the package.

Otis: You should also price the cost of each item so we know what we're talking about.

Garrity: There are students in a public policy program at my university that could help. They would need a small grant.

Simpson: I can provide \$5000. Can they work with you, K.? It's important that this work is kept under wraps until it's done.

Kass: Sure. But if this thing is going to fly, we'll need to be democratic about it. The voters in Kent will want a say in the specifics of any development package.

Otis: Instead of talking about a "package," let's call it an integrated development plan, an IDP. While I have the floor, let me say that there is a role for the banking community here. If

the state gives us the proper incentives, we can make investment loans available so that more capital flows into the community. That will mean jobs. It would have to be designated an experimental development project. It also seems to me that we will have to assemble a consortium of developers. The state can help a lot by offering the developers tax breaks.

Kass: Why subsidize the rich?

Otis: If the developers get tax breaks, their margins will be higher and we can justify more money flowing into the integrated development plan.

Simpson: We're making great progress. Can we take stock at this point of what could block this enterprise?

Garrity: Well, for one thing, we need credibility. If safety statistics are cited by the developers or the state, there will be doubters, and for good reason, given past history. We should arrange a blue ribbon panel of experts who can attest to the fact that the combined package—excuse me, the integrated development plan—will actually improve the health and safety of the community. I can help you form such a group.

Kass: I'm troubled by the exclusivity of this planning cabal. There have to be public meetings in Kent, and, eventually, a vote will have to be taken. The people of Kent must play a significant part in the planning process.

Simpson: I couldn't agree more. We have to brainstorm the process to be followed so that the people of Kent will be convinced that this plan deserves their support.

Kass: That sounds cynical. It's really our plan.

Simpson: No, it's our initial idea, but ultimately, it must be their own plan.

Experience in other places has shown that citizens must be directly involved in the process and take ownership of the process if it is to succeed.

Garrity: So what's the timetable? Do I try to assemble a scientific committee now?

Otis: I'd wait. The idea and suggestions for the composition of such a committee should come from the community.

Simpson: K., it would be a good idea at this point, if you discreetly convened a meeting of about a dozen key people in Kent and let them describe what they might see as a fair process. I would be willing to come to such a meeting if you think it desirable.

GETTING THE SEQUENCING RIGHT

The story we have just begun to tell incorporates four key principles. They are that

- fairness does matter, including perceptions of past inequities;
- discussion about the planning, selection, and implementation of packages that include risky facilities requires meaningful input from all stakeholders;
- the community must be left substantially better off; and
- joint decision makers, including citizens, should have access to the best technical advice available, but technicians should not make policy decisions.

We think these principles should form the foundation of the IDP. These principles are not enough, however. In addition, the sequencing of events in a facility siting process is impor-

tant. In the past, not only have the foregoing principles not been incorporated into the planning process but the sequence of events has either been poorly arranged or key steps simply have been missed. For example, a widespread consensus that risky facilities are needed throughout a region or state has often not been developed. Proposals have been worked out behind closed doors by only experts and a few elected and appointed officials. Compensation has been offered, but in forms that are completely unrelated to the probable risks (or the community's perceptions of those risks) or only as an afterthought to get a community to take the bait.

In contrast to those mistakes, we think an effective process ought to include the following steps.

Step 1: Principled leadership

Up front, the governor or other key leaders must make it clear that an IDP will adhere to the four principles stated previously. Unless leaders promise from the start a fair, inclusive, and technically proficient process that leaves the host community better off, they will sow the seeds of doubt and distrust that have too often blocked facility siting later on.

Step 2: Informal assessment

Prior to any full-scale assessment of the needs of a potential host community, an informal assessment should be done to ensure that the community does have significant needs that can be addressed.

Step 3: Stakeholder involvement

The state must help develop a practical means for citizens of the potential host community to have a meaningful role in developing, approving, and implementing an IDP. Here, a professional neutral, or facilitator, might be of help. The community could select a trained facilitator who can aid the community in convening all the relevant stakeholders.

Step 4: Joint assessment

Once the stakeholder group is convened, communities must help build on the informal needs assessment conducted by the state. Community problems and needs ought to be identified, practical solutions ought to be developed, and their costs ought to be ascertained, all with the aid of citizens. When discussions require technical know-how, the citizen's group should have access to such knowledge. They also ought to have access to the conclusions, assumptions, and limitations of all background technical studies.

Step 5: Citizen choice

Once the most desirable packages have been developed by the citizens' forum, the whole community ought to have the final say in accepting or rejecting the best offer. This means a vote. Because we would want to avoid substantial minorities within the community from having to bear the cost of a facility if they truly believed they would not be better off, the voting rule ought to require more than a simple majority. Before voting, how-

ever, the citizens' forum must be careful to inform and include the community in the ongoing discussion, whether through newsletters, cable access television, or continuing print, radio, and television coverage.

The reader has probably noted that we have left the developer out of the process of managing the work of the forum. While free-market advocates may cringe, we believe the state must take an active role in asserting siting principles, supporting the community in identifying its needs, and helping to develop the IDP. In our view, the citizens' group ought to have a say in the selection of the developer, rather than the developer selecting the site.

Step 6: Iterative learning

Once the IDP has been approved and the developer selected, the involved citizens should not simply disband and go on their way, satisfied that their work is done. The process, from the beginning, ought to be about seeking information (including the opinions of all stakeholders), using that information to make decisions (with stakeholders), and gathering additional information to evaluate and reassess decisions, changing course if necessary, once the results become clear. The community ought to have a continuous process for engaging the facility in decision making. For instance, a community monitoring committee could meet regularly with facility management to discuss ongoing

technical issues and to keep abreast of how the facility is doing with regard to meeting community improvement goals. The state must also continue to set and enforce standards that ensure public health and safety. Even with the state playing a watchdog role, the facility should be held accountable not only to state authorities but directly to the community.

CONCLUSION

In a perfect world, there would be no need to discuss risk and justice. All citizens would have a say in when, where, and how risky facilities were built. Furthermore, all citizens would benefit more equally from the activities that generate noxious side effects than they do today. Perhaps, in an even more perfect world, there would be no crisis in waste management because attention would be focused on waste prevention efforts such as recycling and toxic use reduction. But given this world and all its imperfections, we think that embedding the siting of noxious facilities in a broader development package, jointly developed by citizens of poor neighborhoods and communities of color, could improve people's lives, reduce the health risks they face, and help make all residents better off. On a much broader scale, for the benefit of everyone, such development would help to remedy environmental injustice and overcome NIMBYism. These are two goals well worth achieving.