

Examination of a Negotiation Model to Address Community Concerns about Innovative Industrial Processes

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Many communities that host industrial facilities fear risks to safety and health, and suffer impacts to the local environment, resources and quality of life.

- **Federal/state regulations fail to address many local risks and impacts.**
- **Community officials refrain from using local law.**
- **Company self-regulation and industrial standards inadequate.**

Company-community relationship marked by ongoing tension, disputes, and adversarial proceedings harmful to both parties.

- **Residents oppose company applications for local permits and wage negative publicity campaigns.**
- **Spills, accidents, nuisance impacts, illnesses occur and intensify fears and polarization. (e.g. over 120 accidents at refineries in recent 2 year period).**

Chevron's most recent accident at Richmond CA refinery (in 2012)



- **Over 11 million pounds of toxic, explosive, and corrosive chemicals stored at refinery.**
- **Numerous air quality violations, unsightly premises, soot, smells, water pollution, complaints disregarded.**
- **Company has spent many years seeking permits for a new “Clean Fuels” program at the refinery.**

Troubled company-community relations also fuel resistance to company-proposed process innovations in facility operations.

- **“Process innovations” essential for company competitiveness, efficiency & sustainability.**
- **Would also enable recycling, pollution reduction, & other societal benefits.**
- **But resisted because of uncertainties about risks and impacts & mistrust...e.g.**
- **Automation vs concerns about safety and loss of jobs.**
- **New chemicals and recyclable materials vs concerns about transport, storage and handling;**
- **New equipment and production schedules vs concerns about noise and traffic;**
- **New construction vs concerns about property values, nuisance impacts, depletion of natural resources, overload of local infrastructure; etc.**

Local factions emerge and pressure community officials to deny permits for proposed innovations and operational changes.

- **Demographic change, NIMBYism, and new quality of life aspirations often involved.**

Process innovations impeded, often stalled or rejected.

To address local concerns and obstacles to process innovation, studies and working experience in land use and municipal law all point to the need for...

Company engagement with its host community or community groups to negotiate and implement an agreement on mutually accepted company responses to the concerns and fears.

- **The agreement may be contractual and legally enforceable or a written understanding based on trust.**
- **It may also be subsequently adopted as local law.**
- **It must be consistent with/supplement existing laws, regulations, property rights.**

This negotiation and compromise approach has proven to be feasible and acceptable to many companies and communities.

Growing support for company-community engagement and negotiation.

- **Corporate social responsibility movement.**
- **SLO and NSC concepts.**
- **Informational regulation.**
- **Experience with Community Benefits Agreements (CBA's) and Good Neighbor Agreements (GNA's).**

Corporate social responsibility (CSR).

- **OECD, GRI, ISO, global companies, etc.**
- **Call for voluntary corporate adoption of progressive policies & practices re human rights, enviro and workplace, cooperation with government, outreach to public, self- audits, reporting, transparency, info sharing, public engagement, fund local infrastructure, sustainability, etc.**
- **ISO 26000: each company to “consider itself as part of, and not separate from, the community in approaching community involvement and development”. (Exxon PNG-LNG model)**

Concepts of company-community relationships.

Social License to Operate (SLO): company operation and destiny ultimately depend on public acceptance...it must create a forum for negotiation to hear and respect the parties to earn credibility, flexibility and capacity...

New Social Contract (NSC): traditional social contract theory links people and government...but companies also govern by creating public benefits and costs and should have a direct and accountable link to host community...this missing link is cause for a new social contract...

INFORMATIONAL REGULATION

Requires company development and public disclosure of information regarding activities and implications for public health & safety, workplace safeguards, environmental protection: e.g. NEPA, MSDS's, RMP & SARA rules.

EPA's Risk Management Plan (RMP) rule and SARA III rules.

- Require company disclosure of information on chemical accident hazards and company safety practices to local emergency officials.**
- Intended to facilitate company-community collaboration on emergency response to major accidents.**
- Have also stimulated community-company negotiations on improving company practices and methods for preventing accidents.**
- Negotiated agreements often reached when company needs public support for local permits to continue or change/innovate operations.**
- Agreements include company commitments to improve safety management, operational practices, maintenance, training; to reduce on-site chemicals, do performance audits and share results with community reps, allow local role in company planning, improve & fund emergency response systems.**
- Presidential task force emphasizes RMP despite national security constraints.**

Experience with Company-Community Negotiation: Community Benefits Agreements/Host Community Agreements

State-mandated negotiation to implement development policies.

- Private developer required to negotiate with host community and interest groups to reach agreement on specific commitments in order to gain state & community acceptance of a proposed project.
- Specify commitments to pay for new community administrative & infrastructure costs and other impact fees, and stipulate company responsibilities for social, environmental and other community issues and needs.
- NY and MA to facilitate landfills, wind energy, new roads, permit gambling casinos, etc.

Voluntary negotiation initiated by private developers to gain community acceptance and permits.

- Involve negotiations and commitments that address a broad range of community concerns, including social programs, jobs & training, enviro protection, etc.
- Intended by developer to gain public support and permits, avoid litigation, delay, etc.
- Intended by community for economic development, secure funding, meet other needs.
- Legal & ethical pitfalls: contract zoning, illegal exactions, extortion, bribery.

Experience with Company-Community Negotiation: Good Neighbor Agreements (GNA's)

Spontaneously developed negotiations in communities troubled by risks & impacts.

- Driven by company need for public support to gain local permits and licenses and by community or interest groups' concerns about risks and impacts.**
- Commitments sought and often gained from companies to prevent/reduce specific risks, prevent/mitigate specific impacts, audit practices and performance, share information, improve emergency response capabilities, monitor pollution levels, evaluate health risks, pay for impacts and restoration, do medical evaluations, etc.**
- Commitments also sought and often gained from companies to contribute to social, health and recreational programs, to provide jobs, training and other benefits**
- Commitments sought and often gained from community and local interest groups to end negative campaigns, litigation, complaints, etc. and to support permit applications, provide positive publicity, and side with company against opponents.**

See studies by D. Kenney, G. Macey, L. Susskind.

Studies of GNA's show that successful negotiation process requires...

- **Company motivation to remain in the community.**
- **Community motivation to keep the company in the community.**
- **Mutual trust, respect, cooperation, compliance with negotiation protocol.**
- **Interest groups agree on a common agenda, company has top level support.**

GNA's (more):

Studies of GNA's also show much more: for example...

- Negotiation process involves leveraging, trade-offs, & interplay between many factors: e.g. urgency of company need for permits, community need for jobs and funding, feasibility of proposed changes in company operations, importance and evidence of health and safety risks, occurrence of recent spills/accidents/harmful incidents, etc.**
- Proposals for prescriptive, tightly scheduled, inflexible and enforceable commitments encounter more resistance from companies.**
- Company commitments based on future research and monitoring create implementation problems.**
- Legitimacy and credibility of negotiation process requires transparency, inclusiveness, information-sharing, ethics & documentation.**
- Concerns of immediate neighbors who are most impacted and local good governance groups should be given priority over outsiders with anti-industry agendas.**
- Negotiated commitments should be sufficiently specific in defining, assigning and scheduling responsibilities to avoid future disputes and misunderstandings.**
- In addition to company and community commitments, negotiation should create an oversight entity and procedures for resolving disputes and dealing with changed circumstances that may arise during implementation.**

Some Guiding Principles:

- **The negotiated agreement should serve as a gap-filling supplement to regulations, municipal ordinances and permits, and company self-regulation.**
- **The impacts to be addressed should include local nuisances such as noise, traffic, odor, debris, unsightly premises, etc. which have not been sufficiently dealt with by community ordinances and permit requirements.**
- **The safety and health risks to be addressed should be proven, or considered plausible on the basis of available information/data on company activities and community or group exposure levels and illnesses; and commitments must not conflict with or undermine existing federal, state and local regulations.**
- **Commitments must not cause transference of impacts and risks to others within or outside the community, nor interfere with community involvement in regional frameworks that allocate responsibilities among several communities, nor cause or continue disproportionate burdens for any sector of the community.**

- **Company commitment of funds for social or economic betterment should not be used to "buy" concessions from the community or groups regarding their concerns about proven or plausible risks to health and safety.**
- **For a citizens group is to be a party to negotiation, its legitimacy should be established by a showing that its interests are consistent with the broader interests of the community.**
- **The negotiation process, the agreement reached, and its implementation must be transparent, documented, and effectively communicated to all in the community.**