



Kettleman City: Siting a Hazardous Waste Incinerator

Disputes over the siting of waste facilities in communities of color have continued since the disputes in Warren County and Houston. This case study examines the proposed siting in 1988 of a toxic waste incinerator four miles outside Kettleman City, a small farmworker community in the southern portion of California's Central Valley. Another frequently told story in the environmental justice movement, the Kettleman City struggle involved one of the few successful legal efforts to derail the siting of a hazardous waste facility in a community of color.

Chemical Waste Management, Inc. (also known as Chem Waste) which is now part of WMX Technologies has long operated a hazardous waste landfill in Kettleman Hills, an area four miles outside Kettleman City. As you can see from the 1990 demographic information on the next page, Kettleman City is impoverished, and a majority of its population consists of people of color. Less than half of the population over 25 years of age has completed college; the high school dropout rate is 24 percent. Most of the town's residents are employed on farms or in farm-related jobs; less than 10 percent are professionals, managers, or administrators. The poverty rate is a high 31 percent. Average family income is slightly over \$20,000. The majority population is Hispanic; 23 percent of the population is foreign born.

In 1988, Chem Waste proposed adding a hazardous waste incinerator to its Kettleman Hills operation. Chem Waste followed the procedure set out in the Tanner Act (described in Note 2 following the last readings) and negotiated the incinerator proposal with a local assessment committee (or LAsC). Both prodded and supported by Greenpeace and the California Rural Legal Assistance Foundation (a legal-aid organization serving impoverished rural communities in California), residents of Kettleman City strongly opposed the project. Only one citizen of Kettleman City participated on the LAsC.

Barton H. ("Buzz") Thompson, Jr., Robert E. Paradise Professor of Natural Resources Law, and Flora Y. F. Chu, Lecturer, Stanford Law School, prepared this case study as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an environmental matter. Some or all of the characters or events may have been fictionalized for pedagogical purposes. Copyright © 1998 by the Board of Trustees of the Leland Stanford Jr. University. To request permission to use or reproduce case materials, write to Environmental and Natural Resources Law and Policy Program, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 or visit www.stanford.edu/group/law/library/casestudies/lawschool.shtml.

After long and detailed negotiations, the LAsC and Chem Waste reached an agreement on siting the facility in Kettleman Hills. In the agreement, Chem Waste agreed to undertake a variety of measures designed to help ensure the safety of the proposed incinerator. This, however, was not the end of the matter. Chem Waste still needed to obtain a number of governmental permits and to prepare an environmental impact report (or EIR) under the California Environmental Quality Act (or CEQA). The residents of Kettleman City continued to fight the incinerator and ultimately filed a lawsuit, alleging that the 1,000-page EIR did not comply with CEQA. A trial court agreed, finding that the EIR had not sufficiently analyzed the proposed incinerator's impact on air quality and agriculture and, because the EIR did not include an extended Spanish summary, had deprived Kettleman City residents of meaningful participation in the CEQA process. Chem Waste appealed the decision to a higher court, but abandoned the incinerator project before the appeal was decided. Chem Waste said that it was abandoning the project for economic reasons (and indeed there was a general downturn in the market at approximately that point in time).

The following readings provide you with three perspectives on the dispute. The first reading offers the perspective of an academic interested in dispute resolution processes; it focuses on the negotiations between Chem Waste and the LAsC. The second reading tells the story of the Kettleman Hills fight in the words of Luke Cole, a staff attorney at the California Rural Legal Assistance Foundation who filed the winning lawsuit on behalf of Kettleman City residents. The final reading, by the Director of Governmental Affairs of WMX Technologies, gives you the industry's perspective on the Kettleman Hills incinerator and on the environmental justice movement's more general concerns over the siting of waste facilities. Together, they paint a relatively comprehensive and multi-dimensional picture of the Kettleman Hills dispute.

Questions for Thought

1. Imagine that you are a monolingual Spanish-speaking farmworker who resides in Kettleman City. Which of the following questions, if any, do you believe best describes your *principal* concern about Waste Management's proposed incinerator? Which, if any, of the questions are of little or no relevance to you? If you were to rank the importance of the questions, which question would you rank first, second, etc. Are there other issues concerning the incinerator and not listed below that are important to you? Why?

- 👉 Will the incinerator be built in Kettleman Hills?
- 👉 Is the incinerator safe?
- 👉 Will the EIR be translated into Spanish so that those residents who cannot speak Spanish can read it? [Keep in mind that EIRs are typically very lengthy documents written in technical language.]
- 👉 Will governmental agencies consider all information and views before deciding whether to approve or disapprove the incinerator?
- 👉 Are the governmental agencies that will decide whether to approve the

incinerator Afair@ decisionmakers?

- 👉 How much tax revenue and employment will the incinerator bring to Kettleman City?
- 👉 Can concern over the incinerator be used to mobilize a new community organization that will take an active role in combating other problems facing Kettleman City?
- 👉 Can lawyers file a lawsuit regarding the incinerator that would establish a legal precedent@ (e.g., a successful equal protection lawsuit) that other communities can use to combat similar waste projects?
- 👉 How can the total amount of waste being produced in our society be reduced or eliminated?

From the standpoint of your primary concern(s), are you happy with the result in the Kettleman Hills dispute? Why or why not? Do you like the approach that Luke Cole and the California Rural Legal Assistance Foundation took to the proposed incinerator? Would you have done anything differently?

2. How would your answers to the first question differ, if you were a national environmental justice advocate interested in the Kettleman Hills dispute? if you were a concerned state policy maker?

*3. If you had been advising Chem Waste on the incinerator, *and if you believed that the incinerator would not subject the local residents to any greater health risk*, what would you have recommended that Chem Waste do? Do you believe that there is anything that Chem Waste could have done to eliminate the local opposition? Why did the Tanner Act process not work to pave the way for siting the incinerator in Kettleman Hills? How successful do you believe Charles McDermott=s suggestions would have been in trying to get the incinerator sited in Kettleman Hills?

Recall from the last reading that Charles McDermott, WMX=s Director of Government Affairs, recommends three approaches to meeting local opposition:

First, corporations *must* communicate with the communities where they operate or seek to develop. The difference between perceived fears and actual risk can be huge, and the failure to effectively inform and educate local residents about these differences can be fatal. Corporations must also bear in mind that communication functions in two directions; the responsibility to *listen* and thoughtfully address the concerns of the local community cannot be neglected.

Second, corporations should form active partnerships with members of the local community. This would facilitate efforts to communicate effectively, and, more importantly, it would bring community members into the decision making process.

Finally, the corporation must recognize that its partnership with the local community should be economic as well. Corporations= commitment to sharing the reward as well as the risk should extend beyond payment of local taxes to hiring practices, choice of vendors, and other areas.

4. If you had been a resident of Kettleman City and invited to serve on the LAsC, would you have agreed? Why or why not?

In connection with this question, consider the following comments of Luke Cole in praise of what he calls the Apower model@ of environmental justice:

Adherents of the power model believe that the system is stacked and that no amount of participation by itself will change the relations of power that give rise to environmental degradation. Advocates of the power model are convinced that more access to the system means nothing without power within that system. If it is used at all, the public participation process is viewed as a vehicle for organizing communities and a means to community empowerment. By bringing people together to realize and exercise their collective strength, practitioners of the power model target the root of community problems - powerlessness.

Three central ideas define the power model. First, it eschews the public participation process as co-optive. Second, it focuses on the actual leverage point in the process - the decision by officials. Third, it emphasizes strategies to influence the decisionmakers. These strategies offer a significant opportunity for environmental justice advocates.

* * * *

The power model is more concerned with building viable community organizations than with winning any particular permitting battle. The model recognizes that communities must take ownership of the struggle "and ultimately their own communities." Redlining, racism, unemployment, and crime are long-term problems for low-income communities that long outlive fights over particular facilities. Ideally, environmental justice strategies that build local power will have an impact on these long-term problems. Many community organizations created during the heat of local environmental fights have become creative, contributing community forces for social and economic justice.

*5. Do you agree with Charles McDermott that the Adifference between perceived fears [of environmental hazards] and actual risk can be huge@? If so, what do you believe underlies the difference? Is it a lack of knowledge? a distrust of experts? or some other factor or set of factors? And how could the difference be overcome?

Charles McDermott also argues that, although the incinerator posed a health risk, the risk was Anegligible@ and a Ared herring@:

Like most states, California requires that an independent group assess the risk an incinerator would pose. The study uses a statistical model to evaluate the health impact on the most exposed individual—a person who over his or her life span remains within a ten mile radius of the facility twenty four hours a day for the entire twenty year useful life of the incinerator. Using highly conservative assumptions, the study for the Kettleman City project concluded that the number of additional cancer cases potentially attributable to the incinerator would be 3 in 100,000,000. In the United States, roughly one third of the population will contract some form of cancer in their lifetime, which is about 33,000,000 cases in 100,000,000. The health risk posed to the 1400 residents of Kettleman City, therefore, could fairly be described as negligible.

To support his views, McDermott could have cited an opinion of the United States Supreme Court which concluded that United States law does not require that work places be totally risk free:

A safe is not the equivalent of a risk-free. There are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider these activities unsafe. Similarly, a workplace can hardly be considered unsafe unless it threatens the workers with a significant risk of harm. [Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980)]

If you were a resident of Kettleman City, would you be worried about an increased risk of 3 in 100,000,000? Should residents of Kettleman City be worried about risks that small? Should the law protect against risks that small? Could we operate as a society if risks that small were banned?

6. What is the appropriate relationship between a lawyer (or any professional advising a community regarding the siting of a waste facility) and the community? To what degree should the professional actively organize and rally people to oppose a proposed waste facility? Should the professional tell community members when he or she believes that the community members are wrong on a technical or scientific issue? Should the professional provide community members with technical or scientific information that might reduce their enthusiasm for opposing a proposed facility (e.g., information suggesting that the facility is safe and is likely to bring needed income into the community)?

In this regard, Luke Cole in yet another article provides some additional insights into the approach taken in Kettleman City:

Working with several key leaders in the community, [a lawyer and a community worker] held an initial series of three hour meetings in Kettleman City. Each meeting was held in a different home, and all were held on the same day.

At a typical meeting, the community leaders would explain the incinerator proposal to eight to ten residents. The lawyer would then describe parts of the EIR and the County's response to the community's requests. The residents would ask questions, which the leaders and the attorney would answer to the best of their abilities. Discussions among the residents would ensue about the incinerator and why it was to be located in Kettleman City. The conversations were not limited simply to the incinerator, however. Residents would tell stories of health symptoms they had experienced (which they blamed on the existing toxic waste dump), of past dealings with County officials, and of other incidents they felt were important. Since the meetings involved almost entirely monolingual Spanish-speakers, the meetings were held in Spanish, with the community worker translating for the lawyer.

At the end of each meeting, the leaders and the attorney would ask each person present to write a letter of comment on the EIR to the Planning Commission. The letters—almost all in Spanish—questioned the Planning Commission about the incinerator, and also asked to have the EIR documents translated so that Kettleman residents could take part in the process. The meetings were as inclusive as possible: if a person was not literate, he or she would dictate a letter to a more educated Kettleman resident; children were encouraged to write as well. Out of the first three meetings, the community group generated twenty-five letters of comment on the EIR.

At the first meetings, people were asked to hold future meetings in their own homes, with five to eight of their neighbors. The community worker followed up with community leaders to ensure that the meetings continued. Over the course of the following three weeks more house meetings were held, and many more letters were written. When the EIR's public comment period closed, the record contained 162 comments from individuals—126 of them from Kettleman City residents. More importantly, 119 of the comments—seventy-five percent of all comments by individuals on the EIR—were in Spanish.

Although the results of such organizing are difficult to quantify—except, of course, for the large volume of letters—the letter-writing campaign served several important purposes. It brought Kettleman City residents together to learn about and discuss the incinerator. It allowed community leaders to bring Kettleman City residents up to date on the project. It informed the community of upcoming opportunities for participation, including a hearing before the Planning Commission. It encouraged individuals to take action—writing a letter—and to express themselves both in the house meetings and on paper. It validated residents' experiences with and concerns about the incinerator and the siting process by creating an opportunity to discuss and affirm them. People could collectively share other individual problems, tell their stories, and, through that process, see the commonality of their experiences. Lastly, the letter-writing campaign allowed residents to tell their stories to the Planning Commission, to act as experts in their own case.

*7. If you were a member of the California legislature faced with designing a new statutory approach to the siting of hazardous waste facilities, what would you propose in light of the Kettleman Hills dispute? Is it a viable option to not site any new facilities? Why or why not? If new facilities are to be sited, how? What do you think about a proposal to hand the siting decision over to a panel of scientific and technical experts who would choose a limited number of sites that they believe minimize health and other environmental risks? What role, if any, should scientific and technical expertise have in the siting of hazardous waste facilities?

Case Study Readings

Reading A: K.E. Kennedy, "Local Negotiations in Hazardous Waste Incinerator Permitting: A Comparison of Economic and Communication Models in Four Case Studies."

Reading B: Luke W. Cole, "The Struggle of Kettleman City: Lessons for the Movement."

Reading C: Charles J. McDermott, "Balancing the Scales of Environmental Justice."