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Evaluating the Use of Good Neighbor Agreements for Environmental and Community Protection: Final Report

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Final Report

EVALUATING THE USE OF GOOD NEIGHBOR AGREEMENTS FOR ENVIRONMENTAL AND COMMUNITY PROTECTION

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EXECUTIVE SUMMARY

Community groups in the United States occasionally enter into negotiated agreements with local communities to alleviate negative environmental and public health impacts associated with polluting industries. These so-called Good Neighbor Agreements (GNAs) take a variety of forms, but typically commit the company to mitigate the offending practices in exchange for the community group's commitment to stop legal and public relations challenges to business operations. Many community activists believe that GNAs are a promising tool for community empowerment. This premise is explored in the following review of 11 GNA case studies.

The overall conclusion and recommendation emerging from this study is that GNAs are, in fact, a process worth pursuing in the right circumstances. Those circumstances are varied, but at a minimum, require a company with the potential to address community concerns while maintaining economic viability, and a community group with sufficient leverage, resources and skill to move through the often long process. Five specific findings are offered:

(1) Environmental GNAs are Rare. Although the "GNA approach" has been in existence for several years, it is still a fairly rare strategy used by community organizations to address environmental, public health, and nuisance concerns.

(2) The GNAs Studied are Generally Quite Effective. The case studies strongly suggest that when used in appropriate circumstances, the GNA approach can be (and often is) an effective and appropriate approach for a community group to address environmentally-oriented company/community conflicts.

(3) The Northern Plains GNA is Atypical. The arrangement between Northern Plains and its partners with the Stillwater Mine is unusually sophisticated in terms of the scope and complexity of the agreement, and the community group resources committed to the GNAs successful implementation.

(4) Formal—i.e., Written and Legally Binding—GNAs are Highly Desirable, but May Not Be Essential to Achieving Implementation Success. Although there is not a direct correlation between the formality of the agreements and their degree of implementation success, having a written and binding agreement offers additional opportunities to ensure compliance should the signatory company become uncooperative.

(5) GNAs Are Best Viewed as a (Long and Difficult) Process. Successfully utilizing the "GNA approach" requires navigating three very different stages typically spanning several years: (Stage # 1) getting the company to the negotiation table, (Stage # 2) GNA negotiation/design, and (Stage # 3) implementation.

GNAs are not needed everywhere. But where the safety net of environmental law and regulation is inadequate, GNAs can be a valuable tool for community activists.

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Appendices

List of Acronyms

BAAQCD	Bay Area Air Quality Control District
BCC	Buffalo Common Council
BLM	U.S. Bureau of Land Management
BREATHE	Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions
BRL	Bowie Resources Ltd.
CAC	Citizens Advisory Council
CAFO	Confined Animal Feeding Operation
C/LRTC	Community/Labor Refinery Tracking Committee
CBE	Communities for a Better Environment
CCN	Concerned Citizens of Norco
COCOA	Citizens of Owyhee County Organized Association
CRC	Cottonwood Resource Council, Crockett/Rodeo Coalition
CWG	Community Working Group
ECO	Environmental Community Organization
EIS	Environmental Impact Statement
GNA	Good Neighbor Agreement
GNC	Good Neighbor Committee
LABB	Louisiana Bucket Brigade
NFCWG	North Fork Coal Working Group
NPRC	Northern Plains Resource Council (or Northern Plains)
OCA	Ohio Citizen Action

R&H	Rohm and Haas
RP	Rhone-Poulenc Basic Chemicals Company
SBESC	Seneca Babcock Environmental Subcommittee
SEA	Shoreline Environmental Alliance
SPA	Stillwater Protective Association
SMC	Stillwater Mining Company
TRI	Toxic Release Inventory
TUEF	Texans United Education Fund
TWC	Texas Water Commission
WCTC	West County Toxics Coalition
WSERC	Western Slope Environmental Resource Council

INTRODUCTION

The body of this Good Neighbor Agreement (GNA) evaluation report is relatively brief, with most details and supporting material presented in a long series of appendices. The report begins with this introductory section explaining what a GNA is and why and how we conducted the evaluation. This is followed by an overview of the cases investigated for this report, and an assessment of their success. Knowledge gained from these case studies is then summarized as key findings, followed by concluding remarks. The appendices that follow the main report contain a wealth of information, primarily focusing on further describing the case studies (particularly the Northern Plains arrangement with Stillwater Mine) and the research methodology.

WHAT ARE GOOD NEIGHBOR AGREEMENTS?

In many locations throughout the United States, communities suffer negative environmental and social impacts from neighboring industries. Conflicts are particularly common in areas dominated by industries such as petrochemicals, manufacturing, and mining. A variety of federal, state, and local laws, and their associated permitting programs, provide some protections for local communities. However, these protections are frequently viewed by communities as inadequate, often failing to recognize and address the full range of local concerns, and enforced by agencies with a limited set of remedies and, frequently, declining budgets and staffs. Additionally, these protections can create regulatory costs and uncertainties detrimental to the companies and, in many cases, the communities as well. Communities, companies, and governments often see a need for better solutions.

Increasingly, community organizations—sometimes in conjunction with local governments—are choosing to address these conflicts through the use of agreements negotiated directly with the local companies. These so-called Good Neighbor Agreements (GNAs) take a variety of forms, but typically are documents promising company concessions and behavioral changes designed to reduce (and more fully disclose) negative community impacts. Despite the positive sentiments evoked by the "Good Neighbor" terminology, these concessions are typically the product of hard-fought negotiations, and then, are only offered in exchange for a community commitment to stop litigation, a permit challenge, or some other form of activism against the company.

WHY EVALUATE GNAS?

In the summer of 2001, the Northern Plains Resource Council (hereafter "Northern Plains" or NPRC) contracted with the Natural Resources Law Center and Anne Fitzgerald Associates to conduct a three-year study of environmental GNAs. There were several motivations for this study. First and foremost, Northern Plains is already a signatory and active participant in a GNA with the Stillwater Mine (Montana), one of the

world's largest producers of platinum and palladium.[1] While this is enough to make Northern Plains an expert on the design and implementation of GNAs, the organization's experience with GNAs is nonetheless limited to this one example. In order to potentially improve the functioning of this arrangement and to guide ongoing discussions about potential new GNAs in other substantive areas (e.g., coalbed methane development), Northern Plains felt that the organization could benefit from an outside perspective and from a comparison of the Northern Plains GNA experience with others nationally. This evaluation and review was to have at least two additional benefits. First, it would allow the organization to better respond to the dozens of inquiries flooding in from other community organizations considering the adoption of environmental GNAs, and similarly, to better share knowledge among other groups that, like Northern Plains, had some first-hand experience with GNAs. And secondly, such a review would be helpful in guiding funders anxious to assist communities in the resolution of environmental problems. Much like the community groups and companies that sign GNAs, the funding community is interesting in generating maximizing return on its investments. An evaluation of GNA performance could greatly inform these decisions.

These various motivations came together when the William and Flora Hewlett Foundation, a long-time supporter of Northern Plains and their GNA arrangement, offered to fund a three-year evaluation of GNAs, with the intention of generating information that could be of use to Northern Plains, other community organizations with or considering GNAs, and the funding community.

RESEARCH METHODS

This study is primarily based on a review of 11 case studies, with the majority of data collection being accomplished through a written survey, the review of written documents where available (including the GNA itself), oral interviews, and three workshops held in Montana (at the end of year 1, 2 and 3 of research). This work was done collaboratively among the research team, with most survey work and the literature review being coordinated by the Natural Resources Law Center, most phone communications conducted by Anne Fitzgerald Associates, and the hosting of workshops by Northern Plains. The case study approach was seen as essential since there is not a rich GNA literature, and since our goal is to identify lessons and trends that relate to the use of GNAs in practice.

In all of this work, our communications were with the community groups—and not the companies—involved in the GNAs. This focus on community groups persists in the analysis of data and the formulation of conclusions. A companion study from the perspective of the companies would undoubtedly be a worthwhile effort, but was considered beyond the scope and intended audience of this investigation.

[1] Palladium is a primary component in catalytic converters used to reduce automobile emissions. Only 3 mines worldwide produce palladium.

The GNA Network

A key source of information and insight in this study was the community leaders and their consultants directly involved in the negotiation and implementation of the GNAs studied. This so-called "GNA network" was consulted frequently during the study, including in three workshops held in Montana. Some of the key contributors are listed below in Table 1:

Table 1. Participants in the GNA Network

- Richard Abraham, Texans United Education Fund
- Rachael Belz, Ohio Citizen Action
- Darlene Bos, Northern Plains Resource Council (Montana)
- Arleen Boyd, Stillwater Protective Association (Montana)
- Ruth Breech, Ohio Citizen Action
- Aaron Browning, Northern Plains Resource Council (Montana)
- Dawn Caldarelli, Seneca-Babcock Environmental Sub-Committee (New York)
- Janet Callaghan, Shoreline Environmental Alliance (Rodeo/Crockett, California)
- Iris Carter, Concerned Citizens of Norco (Louisiana)
- Joan Chadez, Citizens of Owyhee County Organized Association (Idaho)
- Henry Clark, West County Toxics Coalition (Richmond, California)
- Ilene Dobbin, Citizens of Owyhee County Organized Association (Idaho)
- Sarah Eeles, West County Toxics Coalition (Richmond, California)
- Teresa Erickson, Northern Plains Resource Council (Montana)
- Jack Heyneman, Stillwater Protective Association (Montana)
- Jerry Iverson, Cottonwood Resource Council (Montana)
- Kasha Kessler, Shoreline Environmental Alliance (Rodeo/Crockett, California)
- Robyn Morrison, Western Slope Environmental Resource Council (Paonia, Colorado)
- Denny Larson, Refinery Reform Campaign (San Francisco)
- Bill Nowak, Buffalo Common Council (New York)
- Jeremy Puckett, Western Slope Environmental Resource Council (Paonia, Colorado)
- Michael Reisner, Northern Plains Resource Council (Montana)
- Anne Rolfes, Louisiana Bucket Brigade
- Jane Shellenberger, Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions (Colorado)
- Amy Singer, Northern Plains Resource Council (Montana)
- Garland Smith, Citizens of Owyhee County Organized Association (Idaho)
- Wilma Subra, Louisiana Bucket Brigade
- Tara Thomas, Western Slope Environmental Resource Council (Paonia, Colorado)
- Ed von Bleichert, Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions (Colorado)
- Bob Wendelgass, Clean Water Action (Philadelphia, Pennsylvania)
- And others …

EVALUATION METRICS

Very little documentation exists regarding our relatively small set of case studies, a reality that has influenced our selection of research methods. Given our small sample size and our reliance on subjective opinions, we sought to provide some structure to our qualitative conclusions by subjecting each case to the same set of evaluation metrics. The selection of these metrics was not only driven by our data limitations and related methodological constraints, but was also influenced by the broad goals of this study. Our desire is to accomplish more than a simple determination of success or failure, but to also develop a better understanding of why efforts succeed or fail, and what transferable lessons can be pulled from this collective experience. Based on this set of reasons, we ultimately selected a research approach that relies primarily on 3 evaluation metrics, listed below in order of importance (most important listed first):

1. *Actual program activities versus promised activities*. To the extent that the GNA requires specific actions (or inactions) at predetermined times (or under specific circumstances), these standards provide a useful way to evaluate activities, outputs, and potentially, outcomes.

2. *Participant satisfaction and self-assessment*. Presumably, participants have a good idea of the suite of problem-solving options available to them, and of the costs and benefits of pursuing the GNA strategy. Thus, their degree of satisfaction with the GNA is a useful metric of the strategy.

3. *GNA success versus other problem-solving opportunities*. Communities can use a variety of approaches to modify and/or control the activities of neighboring companies. Ultimately, the efficacy of the GNA approach must be considered with respect to what is potentially achievable using other tools—including those of a regulatory, judicial, economic, and/or political nature.

Two additional metrics were also utilized to complement and further refine the analysis of case study information:

4. *Self-assessment of keys to success and failure*. Success or failure can often hinge on the availability of a key resource or circumstance that is best understood by participants active in the negotiation and implementation of the GNA. By understanding the keys to success and failure, informed judgments can be made about the potential merits, application and transferability of the GNA approach.

5. *Internal logic of the problem-solving strategy used in the GNA*. One way to explain the success or failure of a problem-solving strategy in a given situation is through an institutional analysis approach that evaluates how the GNA effort has changed rules influencing relationships, behaviors, and activities of key participants, and whether or not this happened as intended.

A detailed discussion of the evaluation methodology is provided in Appendix F.

CASE STUDIES

SELECTION OF CASES

The research approach used in this study is based on the analysis of case studies. Locating GNA case studies was a difficult process for many reasons. For starters, the term "Good Neighbor Agreement" is poorly defined and is used inconsistently in a variety of contexts; thus, it is difficult to decide what types of arrangements should be included. In this investigation, we've decided to primarily focus on arrangements with the following characteristics:

1. Feature a written agreement (i.e., an actual GNA document)[2];
2. Located in the United States[3];
3. Concerned primarily with environmental pollution or natural resource impacts and/or the associated impacts on human populations[4]; and
4. Prominently involve one or more non-profit community groups.

These criteria reflect our need for cases offering parallels to the Northern Plains GNA with the Stillwater Mine.

No central or comprehensive listing of GNAs currently exist. Based on our review of the relevant—but exceedingly sparse and dispersed—literature (see Appendix A), and our investigation of numerous Internet-based leads, we identified about 15 cases that potentially fit our criteria. These cases were narrowed from a body of roughly 50 self-defined GNAs in the United States.

Once this set of potential case studies was identified, we contacted key members of the relevant community organizations and, where appropriate, followed through with a general survey (see Appendix B). The decision to use a survey was based on our need to develop a working knowledge of each case, to collect information in a standardized manner (to facilitate comparisons), and to cultivate relationships with community leaders that can contribute to, and ultimately use, this research. The survey was also useful in fine-tuning our selection of case studies, since it is fruitless to pursue cases where we

[2] Our thinking was two-fold: (1) that a written agreement would be necessary to locate and compile a case study, and (2) that only a formal agreement would offer the promise of solving the issue of concern. This guideline was violated by our inclusion of the Rohm and Haas agreement with Ohio Citizen Action. As discussed later (particularly in finding # 4), the inclusion of this case study provided to be very worthwhile, as the case illustrates a highly informal GNA model that can be very successful.

[3] We do not have a full picture of GNA activity overseas, with the exception of the effort being led by Friends of the Earth Scotland (see http://www.foe-scotland.org.uk/nation/gna_report.pdf).

[4] Note that the phrase "environmental GNAs" is defined herein to include agreements focused on human health impacts associated with air, land or water pollution. This clarification is needed to distinguish these GNAs from those focused on topics such as collective bargaining and banking, areas where some GNA activity is believed to exist.

could not find an appropriate contact person, and thus, could not acquire a minimum level of documentation. Based on this mix of technical and practical criteria, we ultimately chose to include 11 case studies. [5]

OVERVIEW OF CASES

The case studies featured in this study are briefly summarized below (listed here by name of participating company & primary community group(s)). More detailed reviews can be found in Appendix D and, for the Stillwater/Northern Plains case, Appendix C. The case studies (Appendix D) were primarily compiled from surveys (Appendix B) and from the limited documentation available, particularly the GNAs themselves. In drafting the Stillwater/Northern Plains case study, Anne Fitzgerald Associates supplemented this information with a series of personal interviews.

- Bowie Resources & Western Slope Environmental Resource Council (WSERC). (Paonia, Colorado.) The GNA is primarily designed to limit truck and rail traffic and noise associated with increased production at a coal mine. The GNA, adopted in 2000, was an outgrowth of a federal coal permit challenge which threatened to delay mine expansion for several years. The GNA provided the community with a mechanism for addressing the traffic issues—which was not covered in the EIS—and allowed the company to move forward quickly with expansion.

- Chevron Refinery & West County Toxics Coalition (WCTC), Communities for a Better Environment (CBE), and People Do!. (Richmond, California.) The GNA was inspired by a variety of public health and nuisance concerns associated with pollution discharges and Clean Air Act violations from the Chevron refinery. When the refinery sought a state air quality permit to (ironically) start manufacturing new "clean fuels," a permit challenge was initiated, prompting GNA negotiations leading to adoption of an agreement in 1992 calling for reduced pollution, increased monitoring, and investments in the local economy.

- Rhone-Poulenc & Texans United Education Fund (TUEF). (Manchester-Houston, Texas.) The GNA addresses the community's public health and nuisance (odors, noise, traffic) concerns associated with emissions from a chemical plant. A major chemical spill and a pending permit mobilized the community to seek the GNA, which was adopted in 1992 as part of the permit issued by the Texas Water Commission.

- Rohm and Haas & Ohio Citizen Action (OCA) and Environmental Community Organization. (Cincinnati, Ohio.) The agreement addresses air quality and noise issues associated with a chemical plant. In response to public pressures resulting from an aggressive canvassing and media strategy, the company agreed in 1991 to an

[5] The 11 cases actually cover 13 GNAs (since the 3 Seneca-Babcock industries are treated as one case). Additionally, some of our advisors and members of our GNA network have experience with multiple cases, which undoubtedly increases the value of their opinions and insights.

informal and non-binding agreement that addresses the public health and nuisance concerns through a Community Advisory Council.

- Seneca-Babcock industries (PVS Chemicals, BOC Gases, and Natural Environmental, Inc.) & Buffalo Common Council and Seneca Babcock Environmental Subcommittee (SBESC). (Buffalo, New York.) The GNA is actually a series of three agreements addressing a variety of environmental, public health, and nuisance concerns associated with three chemical companies. Bad publicity (in part due to spills) and governmental pressure prompted negotiations leading to agreements signed in 1995-1997 focusing on pollution prevention, community notification and involvement, and public health and safety.

- Shell Oil & Concerned Citizens of Norco (CCN). (Norco, Louisiana.) The GNA is the culmination of a lengthy and bitter fight concerning public health and nuisance impacts experienced by families living adjacent to a refinery and a chemical plant. The agreement promises funds to relocate the most affected individuals.

- Stillwater Mining Company & Northern Plains Resource Council (NPRC), Stillwater Protective Association, and Cottonwood Resource Council. (Billings, Montana.) The GNA addresses concerns relating to environmental protection and the community impacts of new workers being brought in to increase production at a palladium mine. Community groups used pending permits and threatened lawsuits together with a negative publicity campaign to force a negotiated agreement in 2000 that addresses key community concerns while allowing mine operations/expansion to proceed. (See Appendix C for a detailed discussion.)

- Sun Oil & Community/Labor Refinery Tracking Committee (C/LRTC) and the City of Philadelphia. (Philadelphia, Pennsylvania.) The GNA addresses public health and quality of life issues associated with sulfur dioxide emissions from a refinery. Negotiation and adoption of the GNA derived from a lawsuit inspired by Clean Air Act violations. The GNA was enacted in 1997 as a consent decree to the lawsuit, which has since expired.

- Syntex Chemicals & Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions (BREATHE). (Boulder, Colorado.) The GNA mitigates the public health and nuisance impacts of air emissions from a pharmaceutical company. The agreement, initiated by the company and adopted in 1995, was inspired by high emissions reported in the Toxic Release Inventory and by threats by citizens and local government to block needed building permits for a proposed expansion.

- Unocal & Shoreline Environmental Alliance (SEA), Communities for a Better Environment, and the Crocket/Rodeo Coalition. (Crockett/Rodeo, California.) The GNA addresses public health concerns associated with chemical releases from a refinery. Several highly dangerous spills/releases prompted citizens to challenge the refinery's expansion permits, leading to negotiations that culminated in the agreement in 1995.

- Idaho Dairies & Citizens of Owyhee County Organized Association (COCOA). (Marsing, Idaho). The GNA addresses the impacts on water and air quality associated with large-scale dairy operations, particularly the disposal of manure. Negotiations were prompted by a citizen challenge of a water permit needed by the dairy. The GNA, signed in 1998, is included in the state water permit. Originally the GNA applied to only one dairy but was later extended to a second dairy owned by the same operator.

SIMILARITIES AND DIFFERENCES

Overall, the cases offer enough similarities to ensure that comparisons are meaningful, while featuring sufficient variation to support useful contrasts. Appendix E provides a statistical summary of the information gathered; the following paragraphs summarize some key highlights.

Perhaps the strongest similarity among the cases is the history of how the GNA came into being. With remarkably few exceptions, the following narrative appears to be an accurate summary of each of our case studies:

> *A company (normally profitable) repeatedly ignores community complaints about pollution (nuisance, public health, and environmental concerns) and related impacts until a time at which it needs a new permit (often as part of its expansion plans) or it violates an existing permit (e.g., a sulfur dioxide spill). This provides a focal point for community opposition, and can provide an opportunity for community groups, by now often organized into local coalitions, to threaten a lawsuit, a permit challenge, and/or other forms of and activism. This tactic is generally augmented by a public relations campaign. The intent of the community is rarely to close the company, but rather to force resolution of community concerns outside the scope of, or beyond the apparent interest or ability of, governmental regulators. Fearing a lawsuit—where delays are as much a concern for the company as a potential negative verdict—or the rejection of permits, and wanting to turn bad publicity into good, companies accept (often begrudgingly) a community's offer to negotiate. The resulting GNA outlines a plan for addressing community concerns, often employing creative remedies not usually available through regulatory or litigation mechanisms. The breadth and strength of the resulting GNA is closely correlated to the amount of leverage held by the community group at the time of negotiation.*[6]

[6] The experience of the Stillwater Mine GNA, for example, follows this pattern. The relationship between the mine and the local community became strained in 1997-1998, when the company sought the permits necessary to significantly expand production, to build a new impoundment, and to establish "man camps" for new workers. These modifications threatened to produce a variety of environmental, public health, and nuisance problems. Nonetheless, the permitting and EIS processes led by the U.S. Forest Service and the

The greatest point of difference among the case studies is arguably the size of the community groups involved. Annual budgets of these groups range from $500 to $2.1 million dollars; similarly, the number of paid staff positions range from 0 to 170. There is also significant variation in the industries involved, ranging from dairies to mines to refineries. However, in many respects, these industries are ultimately quite similar in that they each produce emissions (pollution) that are mobile and, thus, problematic to neighboring communities. Addressing these transboundary impacts—what economists call *externalities*—is notoriously difficult, as polluting industries usually lack the economic incentives to change behavior since the benefits of this changed behavior are unlikely to show up as profits on the company's balance sheet. For this reason, environmental law imposes regulations on polluting industries, and tools such as citizen lawsuits and permit challenges empower communities to help ensure that regulations are enforced even when the relevant agencies fail to act. Public relations pressure can also provide a source of leverage promoting changed company behavior. A "good neighbor," therefore, is one that has reached a point at which it becomes more profitable to cease the offending behavior than to continue and face community opposition.[7]

THE IMPLEMENTATION RECORD

The implementation record of the case studies is more similar than different, and is generally positive. The degree to which GNA commitments have been honored reflects many factors, including not only the strength of the agreements, but also the attitudes of the companies involved, the vigilance of the community groups, the age (and stage) of the agreements, and the ease to which community concerns are readily resolved through technological fixes or other readily-identifiable strategies.[8]

One of the most successful cases is the most informal of the GNAs investigated: the agreement between Rohm and Haas and Ohio Citizen Action. In this case, chloromethane emissions have been reduced dramatically (almost entirely), while idling trucks have been removed from the neighborhood. What this GNA lacks in legal formality it apparently compensates for in the strength of the community group (Ohio Citizen Action) and the cooperative spirit of the plant manager.

Implementation of the two mining-related GNA cases also has gone well. The contract between Bowie Resources and the Western Slope Environmental Resource Council

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Montana Department of Environmental Quality approved the expansion plan, triggering a lawsuit by the Stillwater Protective Association. Concerned about the costs, delays, uncertainties, negative publicity, and incomplete solutions often typical of litigation, the mine and community activists soon agreed to negotiate a GNA. By 2000, a legally binding agreement was in place that provides land, water and community protections, and that gives locals access to the mine's operations. (A brief description of this case is found in Appendix D; a detailed discussion is found in Appendix C.)

[7] Despite the near uniform (and well-justified) frustration with regulatory agencies expressed by the community groups in this study, it is worth noting that the very fact that often small community groups have been able to entice companies to negotiate GNAs is evidence that the US system of environmental regulation has real strengths.

[8] Implementation histories are included as part of the case studies in Appendix D.

(WSERC), for example, has resulted in rerouting of truck traffic to a new load-out facility and the implementation of noise mitigation measures. Some elements of the agreement did not survive the company's recent bankruptcy proceedings, although this has not yet proved to be problematic. The agreement between Stillwater Mine and Northern Plains (and others) also has been successful in many ways. The establishment of the busing program for mine workers is among the most visible accomplishments, although for this and many other issues addressed by the GNA, implementation has required a large commitment of staff time and ongoing pressure on the mine—which has recently changed ownership. If not for the GNA provision requiring the mine to fund some of Northern Plains' oversight expenses, the level of progress achieved would likely be noticeably lessened.

Two cases involving chemical companies also appear successful and largely complete, although in both cases a lack of data regarding implementation and the difficulty in identifying individuals still involved in the cases makes detailed assessments difficult. The oldest of the two agreements is the GNA between Rhone-Poulenc and Texans United Education Fund, which appears to have achieved the goal of involving the Citizens Advisory Committee (CAC) in many aspects of company planning and decision making regarding health and nuisance (odors, noise, traffic) concerns. In the GNA between BREATHE and Syntex Chemicals (Boulder), the emissions reduction program is also believed to have been relatively successful, however, BREATHE has dissolved and very little monitoring data exists to track compliance with the terms negotiated.

Another of the mature agreements is the GNA between the Community/Labor Refinery Tracking Committee and Sun Oil (Philadelphia) which expired with the federal consent decree in which it was enacted. Most items, including installation of the sulfur recovery units, were implemented, but implementation required constant pressure from the community, and the local air quality has not noticeably improved.

Somewhat similar implementation histories are associated with two refineries in California. The GNA between Chevron and the West County Toxics Coalition (WCTC) (Richmond) has featured partial implementation success, as leakless valves were installed and a community health center was established. Fenceline monitoring and long-term funding of the health center have not been achieved, however, as community attention has shifted to other issues. The GNA between Unocal and Shoreline Environmental Alliance (SEA) (Crockett/Rodeo) has also produced some successes, but overall the implementation history has been disappointing as both the company and the community groups have gone through transitions. Since the GNA was signed, SEA and CBE are no longer strong and vibrant organizations; similarly, the Unocal facility has been sold twice (and is now Conoco/Phillips). Some health studies were completed, mitigation funds were awarded, and emergency warning equipment is now in place, but many other provisions are likely to remain unaddressed. These cases illustrate the long-term challenge of GNA implementation.

The most recent of our refinery cases involves Shell Oil and Concerned Citizens of Norco. The deal negotiated is clearly a mixed bag, as most citizens covered by the

agreement have now been able to relocate (a few families have chosen to stay), but compensation for property and moving expenses has been low and difficult to obtain, and long-term health care issues remain unaddressed. The GNA was clearly beneficial, but it was nonetheless a very partial and ultimately inadequate solution to the most horrific of the cases in this study.

A mixed track record also characterizes the GNAs negotiated between the three Buffalo, New York companies (PVS Chemicals, BOC Gases, and Natural Environmental, Inc.) with the Seneca Babcock Environmental Subcommittee (SBESC) and Buffalo Common Council (BCC). The most successful of the three has been the agreement with National Environmental Inc., which has now addressed most community concerns relating to truck traffic and noise. The implementation record with BOC Gases and PVS Chemicals has been spotty at best. The problems with BOC Gases stem from the facility "going remote" (i.e., becoming largely computerized and mechanized). The most notable success from the PVS Chemicals GNA has been the establishment of the CAN system, a computerized telephone system used to alert community residents of spills or other emergencies.

The remaining case study is the GNA between Idaho Dairies and Citizens of Owyhee County Organized Association (COCOA). Initial progress under this GNA is encouraging, particularly the voluntary extension of the GNA to a second dairy and the establishment of water monitoring programs. However, the financial and staff demands on COCOA remain high, and the impact of the dairies on local water resources has not been addressed; thus, much work remains to be accomplished.

EVALUATING SUCCESS

As stated earlier, three primary "metrics" are being employed to measure the degree to which the GNAs studied are considered successful: (1) actual program activities versus promised activities; (2) participant satisfaction and self-assessment; and (3) GNA success versus other problem-solving opportunities. Each metric is difficult to apply in practice, and each tells only part of the story of how useful and appropriate the GNA approach has been. Presumably, the first and, perhaps, the third metric can be applied by an independent observer with adequate data, whereas the second metric comes directly from the opinions of the community group participants. However, as a practical matter, it is difficult to limit community group member opinions to just the second metric, as the study was highly reliant on basic data from community group participants. Also problematic is the fact that the cases are in different stages of completion. For these and other reasons, the evaluations offered by both the study authors and the community group participants are both highly subjective and inherently qualitative. Fortunately, there are only a few areas of disagreement, and these are relatively minor.

The opinions on GNA success provided by community group members (in survey data) are summarized below in Table 2:

Table 2. Overall Success of GNAs (as reported by community group members)			
Name of Community Group	Commitments Honored [a] Rating: 1 to 10 (10 is best)	Overall Success [b] Rating: 1 to 10 (10 is best)	Would you do it (the GNA) again?
TUEF	9.5	9.5	Yes
WSERC	10	9	Yes
WCTC	9, 10 [9.5]	8, 10 [9.0]	Yes, Yes
NPRC	9	9	Unsure
OCA	9.5	9	Yes
BREATHE	7-8, 8 [7.8]	8, 9 [8.5]	Unsure, Most Likely
C/LRTC	8	8	Unsure
COCOA	8	8	Yes
LABB	10	7	Unsure
SBESC/BCC	5-6, 7 [6.3]	5, 6	Yes, Yes
SEA	4	5	No
AVERAGES	*8.3*	*8.0*	

- a = evaluation metric # 1; b = evaluation metric # 2.
- WSERC = Western Slope Environmental Resource Council; WCTC = West County Toxics Coalition; TUEF = Texans United Education Fund; OCA = Ohio Citizen Action; SBESC = Seneca-Babcock Environmental Subcommittee; NPRC = Northern Plains Resource Council; C/LRTC = Community/Labor Refinery Tracking Committee; BREATHE = Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions; SEA = Shoreline Environmental Alliance; LABB = Louisiana Bucket Brigade; COCOA = Citizens of Owyhee County Organized Association.
- Multiple responses mean more than one individual completed a survey. Multiple responses from a single group are averaged [shown in brackets] for purposes of calculating the overall averages.
- The SBESC ratings are for all 3 GNAs combined (of which one was generally successful and two were not).

Based on the information available, these "self assessments" offered by the community group participants seem reasonable with very few exceptions.[9] Specifically, the GNA ranking by the WCTC representatives now seem generous given the recent "backsliding" of the company (e.g., declining support of the health center), while the GNA ranking by the SEA representative appears somewhat pessimistic given that the initial failure to relocate the school and the ongoing problem with the distribution of mitigation fund money are not problems that can be described as a failure of the company to honor commitments.[10] Also somewhat questionable is the description by the LABB representative that GNA commitments in the Norco case have been completely honored (10 out of 10). This ranking does not reflect recent difficulties with relocation, but was likely a reasonable response at the time the survey was completed.[11] Also, it is

[9] These "independent evaluations" come exclusively from the lead author, Doug Kenney.
[10] Implementation histories are provided as part of the case studies in Appendix D, and summarized in implementation tables. Due to data limitations, there is no implementation table for the BREATHE case.
[11] At the time the surveys were conducted, we did not have the cooperation of a member of CCN (Concerned Citizens of Norco), so we relied upon the judgment of technical consultants associated with LABB (Louisiana Bucket Brigade). Over the course of the study, we recruited a CCN member to the GNA network and updated our knowledge of this case significantly.

worthwhile to note that the rankings offered by the SBESC/BCC respondents were an attempt to collectively summarize the response of three different GNAs, one of which has clearly been successful (with Natural Environmental, Inc.) while the other two have been only marginally beneficial (with BOC Gases and PVS Chemicals).

The third of our primary evaluation metrics—a comparison of GNA success versus other problem-solving opportunities—is particularly difficult to apply, given that it requires a judgment regarding the outcomes potentially achievable using other problem-solving techniques. Nonetheless, two observations are worth noting. First, in every case, the GNA was not the first technique used to resolve the problem, nor was it used in isolation from other techniques and tools (such as lawsuits, permit challenges, public relations, and so on). To the contrary, the GNA approach was used as a way to harness these other techniques and tools into a coordinated problem-solving effort finally capable of yielding results. Secondly, this coordinated problem-solving effort (of which the GNA was the centerpiece) undoubtedly achieved a long list of outcomes likely impossible through other means. The high flexibility of the GNA tool is apparent from even a cursory review of the type of concessions gained by communities: e.g. citizen/community involvement in company operations, outside reviews of facilities, relocation of families, worker busing programs, elimination of nuisances (e.g., idling buses), community investments (e.g., health centers, parks), information sharing, and so on. The fact that only one survey respondent pledged not to use a GNA in future disputes (while a majority said they would) further illustrates the opinion that this tool can accomplish outcomes not readily available through other means.

FINDINGS

The information and analysis featured in this report support five major themes and conclusions regarding the current state of environmental GNAs:

(1) ENVIRONMENTAL GNAS ARE RARE. *Although the "GNA approach" has been in existence for several years, it is still a fairly rare strategy used by community organizations to address environmental, public health, and nuisance concerns.*

Of course, the manner in which GNAs are defined shapes the number of identified case studies. The range of GNA studies is larger if the defining criteria are relaxed, and if non-environmental GNAs are included. For example, a variety of GNAs have been pursued (including many by Ohio Citizen Action) that we chose not to investigate because of their informality ("handshake GNAs"); similarly, we found evidence of GNAs in non-environmental fields such as collective bargaining and labor relations. The lack of GNAs in the environmental field is reflective of the strong history of relying on regulation, litigation outcomes and permitting processes, and perhaps more importantly, a history of activists trying to eliminate "offending" industries completely.[12] Authors of

[12] Many of the industries featured in these case studies are frequently targeted by the so-called NIMBY movement (Not In My BackYard).

GNAs, in contrast, do not seek to drive industry out of the region, but rather seek to shape industry practices to better respect and protect community values. It is this quality, more than any other, that is at the heart of the "good neighbor" terminology.

(2) THE GNAS STUDIED ARE GENERALLY QUITE EFFECTIVE. *The case studies strongly suggest that when used in appropriate circumstances, the GNA approach can be (and often is) an effective and appropriate approach for a community group to address environmentally-oriented company-community conflicts.*

Most of the members in our GNA network are happy with their arrangements, and for good reason. If the SBESC case study is disaggregated into 3 cases, this study features 13 GNAs of which 10 are likely to meet most definitions of success. Even those that are problematic—i.e., the SBESC arrangements with BOC Gases and PVS Chemicals, and the SEA arrangement with Unocal (now Conoco/Phillips)—have been partially successful (although the future of BOC Gases is in question). It is important to note, however, that this success has come at a significant price in terms of personnel and budget; as discussed below (particularly in findings # 3 and 5), achieving success through the GNA approach normally requires a significant amount of effort and resources.

(3) THE NORTHERN PLAINS GNA IS ATYPICAL. *The arrangement between Northern Plains and its partners with the Stillwater Mine is unusually sophisticated in terms of the scope and complexity of the agreement, and the community group resources committed to the GNA's successful implementation.*

There is much that other groups could learn from the NPRC GNA with the Stillwater Mine, but perhaps most important is that the complexity of the GNA should not exceed the capacity of the community group to ensure monitoring and implementation. While this GNA is clearly successful, it is not an appropriate model for groups without a comparable level of resources and longevity. One source of implementation resources is funding from the mine for NPRC's GNA monitoring and oversight expenses—a concession that most members of our GNA network found remarkable and desirable in future GNAs.[13] As the apparent "Cadillac" of GNAs, this GNA undoubtedly offers some useful insights about what future GNAs should look like, but at the same time, it likely presents a model that is unrealistic for groups with lesser resources.

It is important to note, however, that while we conclude that the vast organizational resources of NPRC are essential to the implementation of its GNA, and that organizational resources (i.e., budget and staffing) in general are an extremely valuable asset to groups considering GNAs, such resources are not always essential. COCOA, BREATHE and SBESC, for example, have all produced notable successes using GNAs,

[13] The argument has been made that accepting implementation money from the company can potentially lead to cooptation. While this may be a concern in some cases, a more serious concern is community groups without sufficient resources to monitor and ensure implementation.

while operating on a *collective* annual budget of under $20,000 annually.[14] Organizations lacking extensive resources are clearly at a disadvantage when using the GNA tool (and all other problem-solving tools for that matter), but it is a disadvantage that can often be overcome by a sound strategy and committed leadership (as described in finding # 5).

(4) FORMAL—I.E., WRITTEN AND LEGALLY BINDING—GNAS ARE HIGHLY DESIRABLE, BUT MAY NOT BE ESSENTIAL TO ACHIEVING IMPLEMENTATION SUCCESS.
Although there is not a direct correlation between the formality of the agreements and their degree of implementation success, having a written and binding agreement offers additional opportunities to ensure compliance should the signatory company become uncooperative.

This finding is largely influenced by the approach used by Ohio Citizen Action (OCA) which relies on canvassing and letter writing to pressure companies to agree to address problems, but does not require signed contracts or agreements. This approach has been used with great success in the OCA case with Rohm and Haas (described herein), and in other contexts as well—including the ongoing campaign with AK Steel.[15] This compares favorably with the most "legally bulletproof" of the agreements—the now-expired arrangement between C/LRTC and Sun Oil (Philadelphia) enacted in a federal consent decree—where the company's implementation record was considered good but not exceptional (estimated by the community representative as 80 percent compliance), and was achieved only under constant community pressure. It is likely that most community groups will conclude, wisely, that formal agreements provide a valuable source of ongoing leverage useful in ensuring GNA implementation.[16] But the case studies reviewed in this study suggest that formal agreements are not always essential, and conversely, that signed and apparently legally-binding agreements do not ensure successful implementation.

[14] Budget information for WCTC is not available, but is likely quite modest as well. In contrast, NPRC has an annual budget of approximately $800,000.

[15] Already, the AK Steel campaign has turned over 30,000 letters from citizens into company commitments to spend $65 million on air pollution controls.

[16] Designing an agreement that companies cannot easily "dodge" or "escape from" is a common goal of groups pursing GNAs, and is a challenge where legal expertise can be extremely beneficial. In negotiating with a company, it is good idea for the community group to have an understanding of contract law. A brief primer on contract law is provided as Appendix H. Enforcement of agreements is always an overriding concern. One of the most promising approaches to ensure enforcement is to have a GNA enacted as part of a federal consent decree, which empowers the community group to return to the judge for enforcement (if necessary) during the life of the decree. Another strategy is to have the terms of a GNA enacted as part of a permit. No approach, however, is truly "bulletproof," as changes in ownership and company bankruptcy, and other factors, can test even the most carefully constructed agreements. Whether or not a GNA survives a change in ownership can vary from state to state as the rules differ. If your state does not offer adequate protections, a group may be able to address the issue through the use of covenants, or by making acceptance of the GNA a condition of a permit (if the agency will agree). Strategies to make a GNA survive a company bankruptcy are also multi-faceted, but can include the use of escrow accounts, performance bonds, or even obtaining a security interest in the property. Regardless of the challenge faced, good (and creative) legal advice during agreement negotiation can be highly beneficial.

(5) GNAs Are Best Viewed as a (Long and Difficult) Process. *Successfully utilizing the "GNA approach" requires navigating three very different stages typically spanning several years: (Stage # 1) getting the company to the negotiation table, (Stage # 2) GNA negotiation/design, and (Stage # 3) implementation.*

Successfully addressing the problems of concern in a GNA requires completion of all three stages; the process can fail at any of these stages. The key to negotiating this process is best defined in terms of leverage and resources. Both of these variables can be—and typically need to be—augmented and maintained by the community group throughout the GNA process. This requires planning and strategic thinking. Leverage can come from many sources, from exploiting legal requirements (both substantive and procedural), to gaining access to company information (and technical knowledge), to applying traditional, grass-roots activism. Also critical is the importance of a "focal point," such as a permit application or an emergency discharge. Large, well-established community groups—i.e., those with extensive staffing and funding resources—are best positioned to take advantage of these ingredients, but as suggested earlier, several strategies exist that smaller community groups can potentially use to augment leverage and/or resources, or to reduce the administrative burdens typically associated with applying the GNA approach. Strategies include: self-executing agreements (e.g., upfront payments or one-time actions; transferring enforcement to an agency, such as in a permit), or requiring the company to finance some of the community group's implementation activities. Smaller groups may also find it advantageous to form partnerships or coalitions with other entities[17], thereby broadening the base of organizational resources.[18] Finally, we acknowledge that a single motivated activist can be remarkably effective. As usual, there appears to be no substitute for leadership and personal commitment.

Our findings regarding the salience of leverage and resources are summarized below in Tables 3 through 5. These topics are also discussed extensively in the GNA Handbook prepared by the NPRC as part of this study.

[17] It is worth noting that members of the GNA network report that mainstream national environmental groups are rarely helpful to groups pursuing GNAs. In fact, community organizations seeking GNAs are frequently criticized by environmentalists and environmental justice advocates for "selling-out."
[18] COCOA, for example, is now a member of the Idaho Rural Council.

Table 3. Prerequisites to Using the GNA Approach Successfully: Stage 1: Forcing the Company to Negotiate	
Sources of Leverage	• Company needs a permit or similar public approval • Company is vulnerable to a lawsuit (particularly related to environmental law compliance) • Company requires/desires good public relations (or must avoid bad publicity) in order to maintain or expand profitability • A change in company personnel/ownership creates an opportunity for a new relationship
Resources / Strategies	• Litigation and/or permit challenge • Publicity, media relations, and activist strategies (e.g., letter writing, editorials, demonstrations) • Leadership; willingness of leaders (on both sides) to "try something new" • Knowledge of the company's needs/desires • Environmental data (e.g., monitoring results)
Other Advice / Observations	• Have a very clear idea of what you want before entering a negotiation; have a "bottom line" established • Articulate the possibility of a win-win solution • Pick your fights carefully, and be prepared to deliver on threats • Begin research on the company and its manufacturing processes; consult outside experts if needed • Beware being coopted or diverted through a company-controlled Citizens Advisory Council

Table 4. Prerequisites to Using the GNA Approach Successfully: Stage 2: GNA Negotiation and Design	
Sources of Leverage	• Must have something valuable to offer (e.g., drop a permit challenge or lawsuit; end bad publicity; assist in permit approval and generating good publicity) • Must have demands/requests that the company can theoretically meet
Resources / Strategies	• Negotiation skills/training; coherent negotiating strategy • Adequate understanding of technical issues (e.g., science, law); must have appropriate data (e.g., monitoring data, company profile) • Must have a strategy for structuring an agreement that facilitates implementation and real problem-solving (e.g., the agreement must provide leverage/resources for implementation)
Other Advice / Observations	During GNA Negotiation: • Select negotiators carefully • Transcribe negotiations • Establish and enforce negotiation deadlines; understand that many companies' strategies are designed to wear down communities (e.g., delays during negotiation, providing too much information, agreeing to things they plan to later fight during implementation, etc.) • Maintain community organization and activism throughout the process; maintain a unified front; guard against cooptation • Cultivate and maintain an image of reasonableness, credibility and professionalism In the GNA Document: • Anticipate the implementation demands of all concessions: to the extent possible front-load the agreement by getting provisions that don't require ongoing monitoring or enforcement; schedule company concessions to come before community group concessions • Strive to make agreements legally binding; consider having agreements embedded in federal court consent decrees or in permit conditions • Establish a process to deal with future, unanticipated issues (e.g., the sale or bankruptcy of the company); assume that the company will eventually try to walk away from the agreement

Table 5. Prerequisites to Using the GNA Approach Successfully: Stage 3: Implementation of the Agreement	
Sources of Leverage	• Best leverage is a strategically designed agreement (e.g., self-executing; timing of concessions is equal or front-loaded in the community group's favor; legally binding, readily enforceable and transferable) • Demonstrate a commitment to monitoring, oversight, and follow-through; maintain contact with company and the public regarding GNA compliance; be vigilant • Publicize and celebrate achievements
Resources / Strategies	• Budget sufficient funding, staff, and expertise to allow ongoing monitoring and oversight; maintain public and community group commitment/interest past GNA negotiation (when initial enthusiasm fades) • If necessary, consider relying upon an outside agency to oversee or assist in implementation (e.g., a state agency that adopted the GNA in a permit)
Other Advice / Observations	• Have the company finance some of the community group's implementation costs • Be prepared to endure a long, labor intensive process • Constantly groom new leaders

CONCLUDING THOUGHTS AND RECOMMENDATIONS

The overall conclusion and recommendation emerging from this study is that GNAs are a process worth pursuing in the right circumstances. Those circumstances are varied, but at a minimum, require a company with the potential to address community concerns while maintaining economic viability, and a community group with sufficient leverage, resources and skill to move through the often long process. While most of the GNAs we identified were still working to fully achieve the GNA goals, the successes achieved to date have clearly identified that GNAs, as a tool, can be very effective. Of course in each case, the GNA tool needs to be compared to other options available. It is worth remembering that many communities throughout the United States have found ways to co-exist with industry without resorting to GNAs. National regulations regarding air and water pollution, for example, are often sufficient to protect environmental resources and public health. Additionally, many agencies can be relied upon to fight for community protections. GNAs are not needed everywhere. But where this governmental safety net is inadequate, GNAs can be a valuable addition to the toolbox of community activists. Like all tools, the trick is simply to use it in the right circumstances and in the right manner.

Two more specific recommendations are, first, to maintain in some form the GNA network established in this project. The Northern Plains Resource Council (NPRC) has established a web site and listserv dedicated to this purpose, building on and supplementing the networking role so admirably carried for many years by Communities for a Better Environment (California) and by dedicated individuals such as Sanford Lewis and Denny Larson. Additionally, Northern Plains has produced a GNA handbook to educate fellow community groups considering GNAs. These are wise and commendable efforts that should be maintained. Secondly, we encourage the funding community to consider grant-making to community groups with a defensible strategy and argument for pursuing a GNA. Just as grants designed to support activism and litigation are ultimately judged by funders on a return-on-investment calculus, so too should funding decisions regarding GNAs—we do not advocate any special status or subsidy for GNAs. Maximizing this return-on-investment suggests only funding GNAs where the prerequisites for success can be met, and where both the funder and community group are committed to the long-term GNA process.

APPENDIX A: SELECTED GNA LITERATURE

Adriatico, Marianne, *The Good Neighbor Agreement: Environmental Excellence Without Compromise*, 5 Hastings W.-N.W. J. Envtl. L. & Pol'y 285 (Spring 1999).

Friends of the Earth Scotland, *Love Thy Neighbour? The potential for Good Neighbour Agreements in Scotland*. June 2004. (See http://www.foe-scotland.org.uk/nation/gna_report.pdf)

Illsley, Barbara, *Good Neighbour Agreements: the first step to environmental justice?*, Local Environment, vol. 7, no. 1, 69-79 (2002).

Lewis, Sanford, and Diane Henkels, *Good Neighbor Agreements: A Tool for Environmental and Social Justice*, Social Justice, vol. 23, no. 4 (Dec. 2, 1996).

Lewis, Sanford, The Good Neighbor Handbook, *2nd ed.*, Apex Press (1993).

Lewis, Sanford, *Precedents for Corporate-Community Compacts and Good Neighbor Agreements*, gnp.enviroweb.org/compxpr2.html (March 1996).

Peters, Alison, *Cooperative Pollution Prevention: The Syntex Chemicals Agreement*, Pollution Prevention Review 23 (Spring 1996).

Siegel, Janet V., *Negotiating For Environmental Justice: Turning Polluters Into "Good Neighbors" Through Collaborative Bargaining*,10 N.Y.U. Envtl. L.J. 147 (2002).

Additional literature and materials specific to the case studies are referenced at the end of the case studies summaries in Appendix D.

APPENDIX B: GNA SURVEY

Community Group Participant Survey

Instructions: The questions below include both "check box" and "short answer" types. Please write your answers in the space provided. If more space is needed, please attach additional sheets of paper and indicate which question(s) you are responding to.

Note that the term "Company" in this questionnaire refers to the company with which the good neighbor agreement (GNA) was negotiated.

Additional Documents. In addition to the survey, we are requesting copies of several documents, if available. *Providing these documents—especially the GNA itself—will significantly reduce the time and effort required to complete the questionnaire.* Please consult the cover letter to see which documents we already have. The desired documents are:

- The signed GNA and any relevant supporting documentation (attachments, appendices, and/or agreements drafted pursuant to a provision in the GNA).
- Published articles about your GNA or which prominently feature your GNA (e.g., newspaper, newsletter, scientific journal, law review, editorials, etc.)
- Documentation of the GNA negotiation process itself (timeline, meeting minutes, progress reports, correspondence between community groups and company, etc.)
- Implementation documents or reports (e.g., results of GNA-mandated environmental audits).
- Internal or external GNA evaluation studies or reports.
- Breakdown of costs (for your group and the company, if known) relating to any aspect of negotiating and implementing the GNA.
- Environmental compliance data collected or received pursuant to the GNA.
- Material(s) describing your community group (size, goals, history, accomplishments, etc.).

We realize this is a lot of material to request, but this information is generally not available elsewhere. We will pay for photocopying and postage charges *in addition to* the $50 payment to cover your time.

Your Contact Information

1. Your name: _____
2. Your title/affiliation with community group: _____
3. This is a ____ paid staff position ____ volunteer position.
4. Your mailing address: _____
   _____
5. Your phone number: ( ) _____ - _____
6. Your fax number: ( ) _____ - _____
7. Your email address: _____

Note: At the end of the survey, you will have the option of requesting anonymity.

General Information about your Community Group

8. Name of group: _____
9. Mailing address (*only if different than question # 4*): _____
   _____
10. Web site: _____
11. Year founded: _____
12. Number of paid staff: _____
13. Annual operating budget (*general estimate*): $ _____
14. Major source(s) of funding (*check all that apply*):
    ___ individual & member contributions ..(approximate percentage of total budget: _____%)
    ___ government grants …… (approximate percentage of total budget: _____%)
    ___ foundation grants ……. (approximate percentage of total budget: _____%)
    ___ the "Company" …….. (approximate percentage of total budget: _____%)
    ___ other ……. (approximate percentage of total budget: _____%)

General Characteristics of the Company and the Community-Company Relationship

15. Approximately what year did "the Company" begin operations in your community? _____
16. Approximately how many local residents does "the Company" employ? _____
17. On a scale of 1 to 10, how important is "the Company" to the local economy? (*1 = not important; 5 = moderately important; 10 = extremely important*). _____
18. On the same scale of 1 of 10, how important is the *sector* represented by "the Company" (e.g., mining, petrochemicals) to the local economy? _____
19. At the time of GNA negotiation, "the Company" was: (*check all that apply*)
    ___ profitable (i.e., in "good" financial health)
    ___ expanding ___stable in size ___shrinking
    ___ seeking financing
    ___ privately owned ___ publicly traded ___don't know
    ___ concerned about public opinion
    ___ perceived publicly as committed to environmental concerns
20. Is "the Company" currently a subsidiary of another company? ___ yes (name:_____)
    ___no ___don't know
21. Who is the appropriate contact person(s) at "the Company" regarding the GNA? (*Please provide one or more names, with complete contact information.*) _____
    _____
    _____

Incidents/Events Which Led to the Negotiation of the GNA

22. Which of the following types of issues prompted community concern about "the Company"? (*Check all that apply. If more than one category is selected, please number them in order of significance; 1 = most significant, 2 = second most significant, etc.)*

___ nuisance and quality of life issues (e.g., noise, traffic, odors)
___ local economic or fiscal issues (e.g., jobs, overburdened community services)
___ impacts on the environment (e.g., habitat loss, pollution)
___ public health concerns (e.g., toxic releases/spills, illnesses)
___ other (*include as part of the description below*)

Please describe the specific issue(s) of greatest concern: _____

_____

_____

_____

23. What types of actions did your group take prior to negotiating the GNA? (*Check all that apply*.)

Working with Relevant Agencies and Governments:

___ participation in public hearings; commenting on public documents (e.g., EIS)
___ appeal of local, state or federal permit decision or other government action
___ urge regulatory agencies to better enforce existing laws/rules
___ urge agencies and/or other governmental bodies to adopt new rules or legislation
___ other related action (specify): _____

Lawsuits:

___ lawsuit initiated by the community group
___ lawsuit initiated by another party, but joined/supported by the community group
___ campaign/lobby for federal/state/local agency to bring suit against Company
___ other (specify): _____

Consultation with the Company:

___ written correspondence to Company expressing concerns
___ meeting(s) with Company representatives
___ other related action (specify): _____

Publicity and Grassroots Activism:

___ negative publicity campaigns (media coverage, petitions, demonstrations, protests)
___ boycotts (of the "Company")
___ support/oppose political candidates
___ other related action (specify): _____

Any other types of actions (specify): _____

_____

24. What final event, or sequence of events, resulted in the decision to negotiate a GNA?

_____

_____

_____

25. Who first raised the idea of negotiating a GNA? (*If possible, please list the person by name, and indicate their affiliation and title*.) _____

_____

Participants in GNA Negotiation Process

26. In addition to "the Company," who else was involved in the GNA negotiation?

___ your group
___ other citizen group(s) (Please list: _____)
___ union representatives
___ local government representatives
___ regulatory agency representatives (which agency: _____)
___ independent consultants or technical experts
___ members of the general public (not directly affiliated with the above parties)
___ others (*please list*): _____

27. Please list the names, titles, and affiliations of the primary negotiators (for all participating interests):

_____

_____

_____

28. In the GNA negotiations, did your group (and/or your partners, if any) have adequate access to:

- Lawyers & legal expertise ___ yes ___ no ___ don't know
- Technical consultants ___ yes ___ no ___ don't know
- Trained negotiators ___ yes ___ no ___ don't know
- Technical/economic data ___ yes ___ no ___ don't know

Interests of Parties in the GNA Negotiations

29. What were the specific commitments that the community group wanted from "the Company"? (*Check all that apply. Note that these are the items "wanted," not necessarily those achieved.*)

- o Specific Remediation and Mitigation Measures.
  - ___ specific pollution prevention/reduction/remediation goals
  - ___ traffic mitigation provisions
  - ___ worker transportation/housing provisions
  - ___ investments in local community
    - ___ local hiring
    - ___ job training
    - ___ infrastructure improvements
    - ___ contributions to local charities
  - ___ other specific remediation and mitigation measures (describe): _____
    _____
    _____
- o Information, Audits, Inspections and Monitoring.
  - ___ commitment to perform regular environmental audits and/or monitoring
  - ___ community access to relevant environmental data held by the Company
  - ___ access to company accident prevention and response plan
  - ___ whistleblower protections (for Company employees divulging information)
  - ___ advance notice to the community of any proposed changes in operations
- o Ongoing Role of Community Group in Company Practices
  - ___ active community involvement in audits, monitoring, and/or inspections
  - ___ community group representation on Company planning, advisory and/or decision-making bodies
  - ___ financial support of the community group named in the GNA
- o Other Desired Commitments (describe): _____

30. What specific commitments did "the Company" want from the community group? (*Check all that apply*.)

- ___ dismissal of pending lawsuit
- ___ assurances that a lawsuit would not be filed
- ___ end protests or negative publicity
- ___ generate positive publicity for the Company
- ___ confidentiality agreement
- ___ other (specify): _____

31. If a regulatory agency of any kind took part in the negotiations, what was its interest and how did that affect the final agreement? _____

_____

32. In your opinion, what was the primary reason that "the Company" agreed to negotiate a GNA? ____

_____

33. Please list any issues discussed during the GNA negotiation process which were not incorporated into the final agreement: _____

_____

Negotiation Costs

34. How long did the GNA negotiation process take, from the first meeting or correspondence suggesting a GNA to obtaining all required signatures of the final agreement? _____

35. If possible, please estimate the total costs of negotiating the GNA:

$_____ was spent by community group (___% or $_____ for consultants/outside experts)

$_____ was spent by company

Please attach any data that further summarizes the costs and time demands of the negotiation process.

The Final Agreement

36. Do you believe the GNA is legally binding? ___ yes ___ no ___ unsure

37. Is the GNA integrated with a state/federal regulatory action? ___ yes ___ no ___ don't know

If yes, please explain: _____

38. If "the Company" is sold, will the GNA remain in effect? ___ yes ___ no ___ unsure

If "the Company" has already changed ownership since the GNA was negotiated, please describe the change of ownership, listing past and current owners and any relevant dates: _____

_____

_____

39. Does "the Company" provide funding to your community group to ensure its continued participation in GNA-related activities? ___ yes ___ no. If yes, how much per year: $ _____

Implementation of the GNA

40. Overall on a scale of 1 to 10, to what extent have the commitments listed in the GNA been honored, or are on schedule to be honored? (*1 = not at all; 10 = everything implemented as planned*). _____

41. Please describe any problems encountered in the implementation process: _____
_____
_____

42. Have any subsequent modifications been made to the original GNA? ___ yes ___ no
If so, please describe (include any provisions which have been deleted or abandoned): _____
_____

43. Does the GNA include specific procedures for dispute resolution? ___ yes ___ no
How have implementation disputes been resolved? _____
_____

44. If possible, please estimate the total costs (thus far) of implementing the GNA?
$_____ spent by community group (___% or $_____ for consultants/outside experts)
$_____ spent by "the Company"

45. If possible, please estimate expected future costs of implementing the GNA?
$_____ to be spent by community group (___% or $_____ for consultants/outside experts)
$_____ to be spent by "the company"

Lessons Learned and General Impressions:

46. If similar disputes with this or a different company were to arise in the future, would negotiating another GNA be your preferred course of action? ___ yes ___ no ___ unsure
If no, what would you do instead? _____

47. If you had the chance to negotiate the GNA over again, what would you do differently regarding ….
- … the negotiation process? _____
_____
- … the structure of the agreement? _____
_____
- … the specific content of the agreement? _____
_____

48. Were there any unexpected benefits to your group and/or community resulting from this whole experience? _____

49. Please rate the overall "success" of your GNA on a scale of 1 to 10: _____
(*1 = total disappointment; 10 = a complete success*)

50. What, if any, concerns do you have about the viability of your community group to monitor the GNA and/or ensure its commitments under the GNA over the term of the agreement? _____
_____
_____

51. Any final advice to other community groups considering use of a GNA? _____
_____
_____

52. Is there anything important about your GNA that we failed to ask about? If yes, please tell us now:
_____
_____

Thank you very much for your time!

Confidentiality. It is our preference to list your name as an interview subject, and to give you credit for the answers provided. Before publication, you will be given the opportunity to review and correct any case study write-ups about your GNA effort. Nonetheless, you can remain confidential if desired.

Can we use your name in project publications? ___yes ___no

Payment. We are happy to provide you with $50 in thanks for your efforts. Unless you provide an alternate address below or indicate another recipient, we will address and send the check to the person and address listed in questions 1-6.

Please provide a rough estimate of your copying and mailing expenses (*if any*): $ _____
Alternative address and/or recipient (*only if applicable*): _____
_____

Thanks again for your assistance. You will, of course, be provided with the results when available.

RETURN TO. Use the envelope provided, or mail to: Doug Kenney, Natural Resources Law Center, University of Colorado School of Law, UCB 401, Boulder, CO, 80309-0401.

APPENDIX C: STILLWATER MINE GNA CASE STUDY

Finding a Path to Accord:
A Case Study of a Good Neighbor Agreement

Northern Plains Resource Council
Cottonwood Resource Council, Stillwater Protective Association
and
Stillwater Mining Company

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Tammi Tragakiss, Margaret Vermillion, Michele Reinhart

May 2002
Updated August 2004

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Stillwater Mining Company

You cannot shake hands with a closed fist.
Indira Gandhi

Case Study Overview

This case study documents the Stillwater Good Neighbor Agreement (GNA), an unprecedented contract between the Northern Plains Resource Council (Northern Plains), Cottonwood Resource Council (CRC), Stillwater Protective Association (SPA), and the Stillwater Mining Company (SMC), to protect the environment and at the same time, avoid costly, time-consuming litigation. A number of people involved in the GNA process were interviewed, and written records reviewed in an effort to produce a report of the Stillwater GNA and how it came to be. Although there is much to be learned and applied from this particular GNA, it should be emphasized that each situation is different, and there is no 'boilerplate' solution for all. However, it is always important to build trust and work toward a common goal, especially when addressing crucial environmental and social impacts.

Introduction

Montana is a land of riches. Its environment encompasses mountains, rivers, open ranges, endless sky, and veins beneath the earth that still hold untapped treasures of rare ores. It is also a land of complex political forces that have a history of colliding in struggles for control of Montana's abundant heritage of natural resources.

Imagine for a moment what Montana might look like if cooperation and mutual trust were to replace the too-often adversarial approach between corporations and community action groups. A new approach might instead resemble an agreement among good neighbors to treat the land and its many resources with respect, with an eye toward actions that would benefit the earth and its inhabitants in a sustainable future.

In fact, that is exactly what has been happening in two Montana counties over the past few years. Northern Plains and two affiliated citizen groups, CRC and SPA, forged a contract with the SMC to protect and conserve fragile watersheds in danger of degradation due to mining practices, and to preserve the character of local communities threatened by increased development and the influx of workers associated with such a project. The Stillwater GNA also helps protect the rural nature of the region, and builds relationships damaged by years of conflict over opposing visions of what is right and necessary for Montana's long-term environmental, economic and community health.

Overview

The comprehensive and complex Stillwater GNA, signed in May 2000, is the result of long and often difficult negotiations, a journey undertaken jointly by Northern Plains, SPA, CRC, and

SMC. Thus, this case study, which highlights essential components of a landmark GNA, from inception to implementation, can be used as a tool to examine, analyze and, as appropriate, apply lessons learned. What follows is the story of bringing the GNA to life, a collaborative, sometimes arduous, and ultimately worthwhile path to accord.

The largest mining operation in Montana, SMC is one of only three worldwide producers of platinum and palladium. An important resource throughout the world, palladium is a primary component of catalytic converters that reduce vehicle emissions. Thus, SMC plays a pivotal role in both global resource production and local environmental protection.

Northern Plains is an established and respected grassroots action group, with a broad base of local support, combined with staff and consultant expertise, and a record of community organizing spanning 30 years. Northern Plains focuses on issues of land stewardship, preservation of family farms, ranches and small businesses, and providing information and tools for citizen action. Recognizing the need to balance the quest for economic gain with social and environmental responsibility, Northern Plains strives to protect Montana's water, land, air, and quality of life.

Affiliated with Northern Plains, both CRC and SPA organize and represent local communities affected by similar environmental, social and economic impacts of mining and development, in this case resulting from two separate SMC mines drawing from one vein of ore. Since the mid-70s, SPA has dealt with socio-economic and environmental consequences related to the Stillwater mine, now in its 14th year of production. The organization has galvanized citizen and community protection efforts, and has been a formidable force in keeping mining interests in check. CRC, founded as a voice for citizen concerns in 1988, has as its current focus the East Boulder mine, which is projected to begin production in the fall of 2002. CRC works to ensure sound practices and norms relating to waste and water quality, and to address environmental and social impacts of the mine's future operations. Both organizations are deeply committed to citizen involvement and environmental action.

A history of inadequate enforcement and erosion of state environmental laws made the GNA seem like a worthwhile gamble to Northern Plains, CRC and SPA, as all three organizations had long focused on helping citizens have an effective voice in social, economic, and environmental decisions that affect their lives. A GNA had the potential to protect the health and ecological integrity of the Stillwater and East Boulder Rivers and surrounding areas, where concern had been escalating about the harmful effects of the Stillwater mine on the local community and environment. The three citizen groups sought to raise the bar within the mining industry on environmental and community protection, and compel SMC to use the best available technologies to minimize the impact of mining in both watersheds.

The GNA is a legally binding contract, which guarantees land, water and community protections in Sweet Grass and Stillwater counties, gives unprecedented access to information on SMC's mining practices, and leverages citizen clout to block harmful consequences of mining operations. The GNA provides for citizen oversight and involvement in determining practices used to extract and process ore from SMC mines. Well crafted and unambiguous, the GNA serves as a road map to indicate intent and direction in addressing complex environmental and

social issues affecting the communities represented by CRC and SPA. The objectives of the GNA are to:

- Minimize adverse impacts of mining operations on the local community and environment
- Facilitate open communication among all GNA parties
- Provide opportunities for citizen participation in decision making
- Legally bind current and future mine owners to the GNA, for the life of the mine
- Avoid or reduce the need for lawsuits to resolve disputes

The Stillwater GNA is a powerful tool that supplements and exceeds federal and state legal requirements. Highlights of the contract include the following:

- Water quality protection, such as expanded monitoring to ensure that water quality is not degraded and fishing operations are not disturbed due to mining activities
- Investigation of improved mining technologies
- Incorporation, of conflict resolution methods, such as arbitration, to minimize or avoid future legal challenges, whenever possible
- Traffic reduction measures, such as restricting the use of private vehicles, improving car-pooling programs, and providing buses between the mine and population centers
- Conservation easements on company-owned land, including ranches used for land-application of wastewater
- Consultation with local citizen groups before property acquisition for future tailings and waste rock disposal, or for developing employee housing sites
- Independent environmental performance audits at least every 5 years, funded by SMC
- Citizen access to information regarding environmental compliance and performance, including the right to inspect environmental audit results and mine operations
- SMC funding for technical and scientific consultants necessary for local citizens to understand mining operations and effectively participate in the SMC decision-making process

Three committees, comprising members of SPA, CRC , Northern Plains, and representatives of SMC, are the formal entities that oversee the GNA:

- Two Oversight Committees focus on issues specific to the mine in each of their geographic areas. The two committees monitor all aspects of GNA implementation, resolve any new issues that may arise, and keep lines of communication open among all parties.
- The Responsible Mining Practices and Technology Committee identifies, investigates and recommends innovative methods to reduce waste and increase environmental protections in the areas affected by the mines. Currently, the Committee is working on waste and water issues surrounding the Hertzler and Boe sites.

History and Process

The path to accord was built on a foundation of citizen action addressing local water quality and mining issues. The efforts of the three citizen groups to organize residents and encourage active participation in local decision making have long focused on social and environmental protection. As a result, a well-seasoned pool of citizen leaders with roots in the community was available to participate in the GNA negotiation process. Without such active citizen membership, achieving the GNA would not have been possible.

The forces leading to a GNA were in motion long before the negotiating process began. SMC had been a Montana presence since assuming ownership of the Stillwater mine in 1994. Economic and regulatory forces of the time were favorable, as the global demand for palladium increased. SMC wanted to capitalize on this higher demand for palladium by bringing the East Boulder project on-line. The company also sought removal of production caps and permission to build an additional tailings impoundment at the Stillwater mine. The Hertzler Impoundment, as it was called, was to include construction of a 700+ acre waste management facility, a tailing pipeline corridor, and a nearly 200 acre water management facility. Local fears were that the plan would destroy open space, increase noise pollution, and have adverse affects on wildlife and on property values. The specter of such harmful consequences galvanized citizen groups to voice their concerns.

The history of activism among the three citizen-based organizations runs long and deep. For years, Northern Plains, SPA and CRC have participated in numerous public permitting processes, including at least four Environmental Impact Statement (EIS) challenges to the Nye Mine and another to the East Boulder project. In fact, the lack of success with the EIS process and the use of citizen lawsuits to resolve complaints helped provide impetus to pursue a GNA.

In the mid-1990s, CRC challenged SMC's application for a waiver from Montana's non-degradation policy. After three years of conflict, SMC and CRC agreed to drop the issue and take it up again at a later date. In early 1998, CRC challenged yet another SMC application, this time for a discharge permit for the new East Boulder mine and for proposed construction of a dormitory, or *man camp*, to house mine employees away from the population center.

On the other side of the mountain, SPA was fighting the lifting of production caps at the Stillwater mine. At that time, SMC was seeking specific changes to its environmental permit, including the elimination of a 2000 ton-per-day production cap, permission to construct the Hertzler tailings impoundment, and expansion of the mine's footprint. The final EIS supported all the changes SMC sought. In early 1999, SPA sued the Montana Department of Environmental Quality (MDEQ) over this Record of Decision that essentially resulted in no change for the way SMC conducted operations. SPA's pending lawsuit was put on hold as SPA explored the GNA's prospect of success as an alternative to legal action.

Jerry Iverson, CRC member, emphasizes the value of citizen group leverage and power in challenging mine operations: "One of the most important elements of CRC's success is that we have for years actively lobbied at the legislature, testified at public hearings, provided comments on numerous Environmental Impact Statements (EIS), sponsored candidate forums, educated the public on the Hard Rock Impact Plan, and written letters to the editors of local papers. We've done everything, and people know us. And when the state and the mining company acted in a way we believed was improper, we sued. That's how you build leverage."

Citizen group leverage would continue to be a powerful force for change. In August 1998, a guest editorial in the NY Times by CRC member Tom McGuane gave needed exposure to SMC's plan to open a second mine in East Boulder, and establish a *man camp* to house workers, which would certainly have negative impacts on the local area, such as added traffic, and

potential problems with mine workers who were not integrated into the community. Bill Nettles, then SMC CEO, responded with his perspective on the issues, as did the Times. Press coverage served to put SMC on notice that they were being watched. Citizen groups vowed that SMC would have to deliver on their promises to be both community-friendly and environmentally responsible.

New SMC company leadership, not wed to traditional mining industry approaches, was willing to consider new ways of doing business. Local activists praised the CEO as a man of his word who would honor commitments. SMC provided employment for a significant number of local residents, and to the company's credit, had a record of complying with state and federal regulations. SMC believed a GNA could help avoid production delays resulting from legal challenges to expansion plans, provide SMC a positive profile as a "good neighbor" in Montana, and possibly increase its profitability.

In the summer of 1998, informal yet strategic meetings with local activists, residents, and mine representatives helped identify issues and harness the forces that would lead to negotiating the GNA. A handshake agreement committed SMC to build a man camp near the populated area of Big Timber and try to resolve other differences with the community.

Establishment of a formal GNA held interest for both sides because it met the needs of dissimilar players who otherwise might not have found reasons to collaborate. A shared benefit of the GNA is that it reduces and even eliminates expensive, time-consuming, adversary-creating legal suits, which none of the parties wanted. In addition, the GNA provided a golden opportunity for Northern Plains, CRC, SPA, and SMC to share in a win-win situation for organizations that on the surface did not appear to have compatible interests.

However, common interests did exist among the parties, even if motivated by differing needs. It was at this intersection of interests and needs that useful movement occurred, and a valuable strategy emerged: public influence on environmental protection can exert a positive impact on the world of profit making and stockholders, especially when citizens have the necessary information. Michael Reisner, Northern Plains strategic support coordinator who participated throughout the GNA process, says, "A big issue was opening up public access to information on the mining company's internal decision making, so we can try to resolve problems."

The GNA process also helped to facilitate cooperation among the parties. Chris Allen, SMC Vice President, concurs, "The heart of the GNA rests upon the principles of mutual trust and respect. We are not always going to agree with each other, and some issues may be sufficiently important to drive us to arbitration. But, if our playing field is both level and clearly defined, and the principles upon which this Agreement was founded remain our touchstone, then I believe the GNA will prosper."

From the perspective of SMC, the uncertainty of the legal arena was key. Delays in production often were a costly and time-consuming consequence of lawsuits. SMC was ready to move forward with their expansion plans, and saw valuable potential benefits as a result of negotiating a GNA.

The variety and depth of forces and issues surrounding the evolution of the GNA were formidable. Each party began with an agenda based on constituencies and interests, which were sometimes compatible, but often at odds. Questions of water quality, waste disposal, pollution, traffic, wildlife habitat, employee housing, culture and esthetics, combined with potential legal hassles, and definitions of what is the "right" way to protect the environment, all swirled in a maelstrom of often opposing beliefs and behaviors.

This was where the hard work of bringing people together to benefit the local environment and community began. Tammi Tragakiss, CRC Chair and negotiating team member, says, "Volunteer members spent years building leverage, and many months contributing countless hours and hard work to developing and negotiating the GNA." It was a daunting task that required research, preparation and numerous meetings to bring the issues to the table and find agreement. Frustrating delays and disappointments interspersed with milestones of success marked the path to accord, which ultimately culminated in the signing of the GNA nearly two years later.

Negotiations

Arriving at a negotiated agreement is never easy. Intuition and common sense are helpful, but do not take the place of finely honed negotiating skills. The art of knowing how to establish goals, bargain instead of debate, articulate a bottom line, speak in one voice, and know when to stay and when to walk are critical skills to ensure citizen clout. Margaret Vermillion, CRC negotiating team member, gets right to the point, "It's important to have courage, be personable and isolate personal dislikes, be objective, stick to your guns, be honest and forthright, don't be beaten by insulting comments, and have a good team."

An intensive negotiation skills training was the catalyst that produced competent and confident citizen teams. Jim Thomas, an expert negotiator, educated staff and citizen group members in the art of striking a deal. He says his task was "to detach them from reliance on logic, rhetoric and debate, and focus instead on using leverage in deal-making; to focus on the goal, rather than proving who was right or wrong. The likelihood of persuading the other side with a combative stance approaches zero, and tends to alienate people from what they want and can obtain." Jack Heyneman, a SPA negotiating team member, expressed a sense shared by many: "The negotiation training was pivotal. We would never have known how to go about being tough-minded without it."

A great help in the process of negotiating the GNA was Northern Plains' staff member Michael Reisner, an attorney who served as legal language interpreter and more. In addition, Jim Kuipers, technical consultant and a former hard-rock miner with intimate knowledge of the mining industry, was, and continues to be, a bridge to understanding technical data. Daryl Jensen, SPA Oversight Committee member, acknowledges Northern Plains as a source of valuable expertise and leadership. He says, "Citizen groups are great, but without the staff work of Northern Plains, we couldn't have won it."

Among the vital factors contributing to open and productive negotiations were the continuing opportunities to build trust and cooperation among Northern Plains-affiliated committee members and SMC representatives. Jim Thomas characterizes SMC as a worthy adversary and a

good player. Richard Parks, Technology Committee member says, “Without Bill Nettles’ leadership, the negotiations would have come unglued. He told his people it had to happen.”

A commitment to the same goal kept the collective “eye on the prize” during difficult negotiations. Negotiating team member, Paul Hawks, says, “We had every right to be an equal playing partner, because we represented our local community. Something happens when you know you have permission to do what you believe in. No one gave us permission; we just picked up the mantle.”

Given the spectrum of perspectives and uncertainties, some essential elements characterized the successful training and subsequent GNA negotiations:

- Commitment to resolve areas of conflict to attain the goal
- Willingness to do “homework” and prepare for meetings
- Agreed-upon tactical ground rules, and process for consensus decisions
- Delegation of primary responsibility for each issue among team members
- Commitment to call for a caucus as often as necessary
- Creation of negotiating “envelopes” for top, target, and bottom lines
- Expression of positions in a unified voice
- Focus on bargaining, not debating, as an effective negotiation tool
- Well-run and recorded meetings, limited to involved parties
- Walk-away points for key issues

Citizen groups were frustrated by the outcome of prior adversarial approaches, such as lawsuits, and saw the GNA as a viable alternative to expensive, time- and resource-consuming legal actions that didn’t always result in long-term victories. Jerry Iverson, CRC Oversight Committee member, says, “There’s a risk in a lawsuit; you don’t know where it will go. It can go beyond what you originally intended.”

Accord

Although the GNA is an alternative to legal wrangling, participating citizen groups emphatically did not give up their right to sue in the future. The GNA remains in effect unless citizen groups decide to proceed with litigation. Should that occur, conservation easements to protect over 4,000 acres of open space will continue, SMC will keep employee housing near existing towns, and will maintain their commitment to bus mine employees to and from work.

In addition, there was approval of a plan to mitigate impacts to the Hertzler Ranch in Stillwater Valley as a result of SMC tailings impoundment. The Hertzler Mitigation Plan will give SPA the power to ensure the collection of baseline data and site monitoring to curtail or control any negative impacts.

In the final agreement, citizen group negotiators prevailed in securing the right to monitor water quality and to inspect the mines and waste-treatment facilities. CRC members Paul Hawks and Jerry Iverson remark, “This is the first GNA in the hard rock mining industry. It is a profound shift from the usual legal battles and threats that have dominated the discussion of natural resource issues. We believe we can work together to solve problems. Both sides can take credit for seeking a better way; only time will tell if we can succeed.”

Challenges and Lessons Learned

Drafting the GNA required commitment by all involved parties, and a willingness to dedicate time and resources, even amidst doubt about the GNA's potential for success. Chris Allen, SMC Vice President, comments, "SMC entered the GNA with decidedly mixed emotions. This ambivalence was born of many things, but it all boiled down to one word – uncertainty. A year ago, the path forward looked murky. Today, the landscape is better illuminated, and it seems to us that the prospect of failure recedes the longer we work together."

The GNA has faced and withstood initial challenges, such as delays in establishing trigger levels, lifting the production cap on the Nye mine, and comprehending and incorporating complex technical and scientific information. A particularly difficult point of contention shows signs of progress as SMC improves its record of notifying citizens of meetings and other important information in a timely manner. SMC and the Councils have not always completed agreements by established due dates, but the groups demonstrate flexibility as long as they see movement toward compliance.

According to Paul Hawks, "A major challenge has been changing the work habits and perspective of the corporation, bringing citizens on board for decision making, and keeping the community apprised about the timeline, and what's happening to keep them in the decision making process. We were pushing that process all the time, and still are. We're finally seeing a change. At last, they recognize that we're not going to put roadblocks in their way. Our interest is to do what is best for the community, which might be good for SMC, too."

Another central challenge to the GNA has been sustaining active involvement of community members and mine representatives. As is often the case, when the "front line" burns out or moves on, it is essential to have others step forward. The vitality of the GNA depends on continued infusion of motivated committee members who derive satisfaction from contributing and making a difference over the long-term. Arleen Boyd, SPA negotiation team member remarks, "Over the years, people have given enormous time and talent to solve problems in our area. In my best moments, I believe this will continue to happen."

The Stillwater GNA, although a signed contract, is still a work in progress. Its long-term viability will be measured by the extent to which it protects local communities and watersheds, and keeps both from development and further degradation. An indicator of GNA usefulness will be its ability to define this collaborative approach as an option for resolving other natural resource conflicts that impact the character and integrity of local communities. This is especially true if SMC is bought by an entity less willing to negotiate or honor the spirit of the accord.

Can the GNA be a driving force to develop cleaner mining technologies, and more environmentally sustainable ways to extract needed metals? Will it work to protect communities from the negative social impacts of unbridled development? Concerned citizen groups hope SMC will show "good faith" in both the technical and human aspects of mining operations. SPA Oversight Committee member, Dot Gallagher concludes, "We hope the Stillwater GNA will set a trend for other places and other times. It's bigger than this Valley."

The most important lessons from the GNA process focus on collaboration, negotiation, and the need to search for common ground, especially among players motivated by disparate agendas. However, many involved in the GNA process emphasized that each situation will be different and there will be no boilerplate solution for every situation. Although there are many perspectives, a common theme emerged from the key players on both sides of the GNA: Do your best to build trust based on sincere desires for a common goal, then commit to working together to forge a lasting agreement to be good neighbors.

Current Realities

Implementation and future compliance with the GNA is guided by local, regional, and global economic conditions. Since the signing of the GNA, many changes have marked the landscape, including a decline in the world price for palladium group metals. Global economic factors have exerted great influence on the way companies conduct business and attempt to satisfy shareholders. In recent times, SMC faced financial woes when expansions at the Stillwater and East Boulder operations coincided with plummeting global prices for platinum and palladium. Press coverage (Big Timber Pioneer, February 15-21, 2002; Northern Miner, February 1, 2002) reports that SMC has paused in its plan to expand mining operations, and has completed a $60 million financing by issuing about 10% of its outstanding shares, in an effort to improve its financial structure.

However, since the signing of the GNA, SMC's operations have expanded in an effort to maintain a production rate that will keep the company solvent. At the East Boulder mine, surface infrastructure is complete and Stillwater crews are completing the underground facilities and mine development. SMC officials say they need to address the reality of a "lower cash-flow environment" while keeping their options open should prices improve and demand increases.

A few years ago, SMC took steps to abandon a program to provide bus transportation to mine employees. After feeling intense pressure from the Councils and the community, SMC continued the bus transportation program. Over the years, SMC has realized bussing is an essential part of its operations and maintaining safety on the narrow winding county roads.

In looking at the potential for a sustainable GNA, there is uncertainty about SMC's future stability and profits, the influence of such change on the Montana landscape, and the willingness of SMC to honor its key commitments to the environment and local communities.

Changes in SMC management have provided a challenge. Those who were instrumental in making the Agreement happen are gone, including Bill Nettles, Chris Allen, and Bob Taylor.

In addition, SMC also has a new owner and a new board. In June 2003, Stillwater's shareholders voted in favor of selling SMC to the Russian company Norilsk Nickel. On June 23, Norilsk bought 51 percent of Stillwater Mining Co. The price was $100 million in cash and about 877,000 ounces of palladium. On Aug. 27, Norilsk boosted its ownership to 56 percent by paying $7.50 per share for another 5 percent of Stillwater stock.

Fortunately, the Good Neighbor Agreement is tied to the ore body and transfers with ownership. Therefore, it remains as a legally binding contract that Norilsk must uphold. Members of SMC's

board reaffirmed to the Councils in August 2004 that SMC is proud of the Agreement and firmly committed to its ongoing implementation.

SMC continues to use and explore some of the best available environmental control technologies to manage its waste and water disposal. Through the Agreement's Responsible Mining Practices and Technology Committee, SMC, the Councils, and third party contractors have embarked on the paste pilot project to explore applying paste - a slurry of dewatered mine tailings – on the surface land. SMC already applies paste with small amounts of concrete back below ground. Through implementing paste technology, SMC can reduce the size of its environmental foot print, extend the life of its current impoundment facilities, and reduce the need for additional large impoundment storage for tailings waste.

To improve SMC's water operations, the Council's technical consultants – Kuipers and Associates – are drafting a Water Optimization or "mass balance" plan that outlines additional steps SMC can take to become a "zero discharge facility," meaning no water would be discharged to groundwater or surface water. The plan outlines further actions SMC can take to nearly eliminate nitrogen in the water – a by-product of the explosives SMC uses underground. High amounts of nitrogen in water can be unsafe to drink and can alter the biological integrity of the river.

One area of contention has been how frequently annual biological monitoring should be conducted on the East Boulder River. Biomonitoring consists of sampling aquatic inspects and algae at several sites along the river to determine if SMC is impacting the health of the East Boulder River and riparian areas downstream from the mine. The Councils would like to see annual biological monitoring happen, whereas SMC prefers conducting biological monitoring every three years. After SMC refused to conduct biological monitoring in August 2003, members of Cottonwood Resource Council did the sampling with the assistance of Kuipers and Associates. SMC has agreed to do biomonitoring in 2004 and the dispute over the frequency of monitoring will be revisited in 2005. Neither SMC nor the Councils used the Agreement's provisions for arbitration, allowing the parties to maintain a positive dialogue.

Despite a few points of contention, the Councils applaud Stillwater Mining Company for its environmental excellence, and recommended SMC as a recipient for The Bureau of Land Management's 2003 Hard Rock Mining Award, which SMC received. The award recognizes environmentally sound mineral development operations on public and private lands and acknowledges successful partnering efforts to ensure a safe and productive hardrock mining industry.

The Agreement's ongoing maintenance can be intense, but its benefits have been abundant and ongoing. The Councils and the community are thankful for the busing program, conservation easements, integration of employees into local communities, ability for local citizens to have access to critical information, opportunity to participate in the mine's decision making process, and environmental and water quality safeguards above and beyond regulatory standards. The parties to the Agreement are proud of these accomplishments and the Councils hope that the Agreement's success will continue to bear fruit both now, and in the years to follow. Time will tell.

Good Neighbor Agreement Players

NEGOTIATING TEAMS

Cottonwood Resource Council
Connie Anderson, Paul Hawks, Jerry Iverson,
Tammi Tragakiss, Margaret Vermillion

Stillwater Protective Association
Arleen Boyd, Jack Heyneman, Daryl Jensen, Noel Keogh

Stillwater Mining Company
Chris Allen, John Andrews (until departure), Bill Nettles

COMMITTEES

East Boulder Oversight Committee
Paul Hawks, Jerry Iverson, Tammi Tragakiss

Stillwater Oversight Committee
Arleen Boyd, Dot Gallagher, Jack Heyneman, Daryl Jensen,

Technology Committee
Henry Connor, Charlie French, Richard Parks, Dale Robinson, Chan Welin,

TECHNICAL SUPPORT AND CONSULTANTS

Loren Bahls, Jim Kuipers, Michael Reisner, Jim Thomas

A Profile of Citizen Group Facts and Issues
at time of GNA Negotiations

CITIZEN GROUP	**Stillwater Protective Association (SPA)**	**Cottonwood Resource Council (CRC)**
MINE PROFILE	STILLWATER MINE • Near Nye • 600 employees • Operating since 1986 • Stillwater River watershed	EAST BOULDER MINE • Near Big Timber • 300 contract employees (during GNA negotiations) • In development phase • East Boulder River watershed
CONCERNS	• Impoundment (Hertzler site) a. Amount of waste b. Dissatisfaction with EIS-proposed options c. Expanding SMC 'footprint' d. Risk to river • Production cap removal (from 2,000 tons/day) a. Potential 2-to-3-fold increase in number of workers b. New 'man camps' that separate workers from community c. More traffic, employee cars, accidents, noise, dust, pollution • Culture and esthetics a. River degradation b. Quality of life	• Worker housing, especially 'man camps' • Water treatment and tailings ponds (Boe Ranch) • Maintenance of production cap at 2000 tons per day • Road safety and traffic reduction
TECHNOLOGY COMMITTEE FOCUS	Responsible for identifying best practices and methods to decrease or eliminate adverse environmental impacts. Current issues: Water monitoring and tailings disposal methods, such as *paste technology*, zero discharge, and post-closure water management plan	
OVERSIGHT COMMITTEE FOCUS	• As ultimate decision-making body, charged with maintaining open lines of communication, and addressing significant issues that may develop • Decision-making by voting, majority prevails. Tie vote leads to informal attempts to gain agreement, and if unsuccessful, to binding arbitration	

Stillwater GNA Timeline

Winter 1997: SMC requests a permit amendment to remove production cap and build a 30-year impoundment at the Hertzler Ranch site

March 1998: SPA participates in EIS process, objects to removing cap at Nye site and adding a 30-year impoundment 7 miles from the mine site

July 1998: CRC voices concern about planned employee housing (man camps) at yet-to-open East Boulder mine, wanting instead, to promote 'smart growth' of workers and families becoming integrated in local towns

August 1998: Guest editorials appear in NY Times

August 1998: CRC, SPA, Northern Plains meet and decide to cooperate to ask SMC to discuss a GNA

January 1999: US Forest Service and Montana Department of Environmental Quality (MDEQ) issue joint EIS *record of decision* on Stillwater Mine, lifting the 2000 tons per day production cap

February 1999: SPA notifies MDEQ of intent to sue, and formulation of a GNA as an alternative to legal action. After a 3-month delay, SPA withdraws the suit, but retains the intent to challenge mining practices in court

March 1999: SPA and CRC communicate with SMC CEO, Bill Nettles, asking to begin negotiating a GNA

April 1999: Northern Plains sends a letter to SMC to learn potential points for negotiation

May 1999: Northern Plains, CRC, and SPA staff and members receive negotiation skills training

June 1999: Preliminary meetings are followed by formal GNA negotiations with Northern Plains, CRC, SPA and SMC

February 2000: Negotiations stall, then resume after discussions leading to SMC modifications of the contract

May 2000: GNA signed

June 2003: SMC Sold to Norilsk Nickel

APPENDIX D: GNA CASE STUDY SUMMARIES

Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions (BREATHE) & City of Boulder

and

Syntex Chemicals

Introduction

In 1995, Syntex Chemicals signed a Good Neighbor Agreement ("GNA") with the Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions ("BREATHE") and the City of Boulder ("City"). The purpose of the GNA was to mitigate the health hazards associated with the release of hazardous air emissions from existing operations and future expansions at the Boulder Syntex facility.

The Parties

BREATHE was formed in 1989 by a group of local residents. The group's purpose was to fight for reduced air emissions at local manufacturing facilities. The group had an annual operating budget of about $2,000 derived from member contributions and foundation grants. There were no paid staff. This community group is no longer active.

The Syntex facility began operating in Boulder in the 1950's as Arapahoe Chemicals. At the time of the GNA, Syntex Chemicals, an international pharmaceutical manufacturer, owned the facility and employed 250-300 local residents. The company was profitable, expanding, publicly traded, and "aware of" (as opposed to "concerned about") public opinion. The chemical manufacturing sector does not represent an important part of the local economy (1 on a scale of 10).[19]

The City of Boulder was also a party to the GNA. The City became involved in the negotiations as a result of Syntex's attempts to get a city building permit for facility modifications needed to increase production.

Nature of the Dispute

In 1991, Boulder residents learned from Toxic Release Inventory ("TRI") reports that a local zip code had the highest air emissions in the state, and that the Syntex plant was at the top of the TRI

[19] Ratings and other opinions are taken primarily from BREATHE's responses to the GNA survey.

list. In 1992, Syntex sought state and local approvals for a major expansion at the Boulder plant. To mitigate the effects of increased air emissions, Syntex proposed building a thermal oxidizer to capture and burn emissions, thereby reducing current plant emissions by about 85 percent, even with the increase in production. Following a bitter year-long debate precipitated by the City's insistence on a "use review" process, Syntex decided to withdraw its proposal and moved the expansion operations overseas.

In the fall of 1994, after being acquired by Roche Pharmaceuticals, Syntex again applied for a construction permit to modify its existing facility in order to produce an AIDS drug (ganciclovir) which was growing in demand. By this time, BREATHE had received a grant that enabled them to hire an attorney who was knowledgeable about air toxics. The community group demanded and received a place at the table during the state and city discussions about Syntex's proposed modifications.

The issues of primary concern to BREATHE were public health concerns, impacts on the environment, and nuisance and quality of life issues. Prior to negotiating the GNA, BREATHE had undertaken numerous actions, including participating in public hearings and commenting on public documents; appealing local and state permit decisions; urging regulatory agencies to better enforce existing laws; writing to and meeting with company officials; and negative publicity campaigns.

Negotiation of the GNA

The GNA was actually proposed by Syntex, and the community group did not have confidence in the GNA process, according to Jane Shellenberger, former president of BREATHE. She states that it was not a priority for them as it seemed like a public relations tactic on their part. Nevertheless, representatives from BREATHE, the City, and Syntex all sat at the table together to negotiate the specifics of the GNA. The leverage for these discussions came from the City's refusal to issue a building permit until the issue of toxic emissions was resolved.

BREATHE sought a number of commitments from the company, many of which were not included in the GNA. In particular, BREATHE representatives wanted specific reductions in dioxins emitted and reductions in the use and discharge of other chlorinated compounds. They felt there was too much emphasis on "end-of-pipe" treatment and not enough on front-end prevention. The company proposed the GNA as a way to obtain their building permit as well as to end negative publicity and generate positive publicity for the company. The final agreement included the following provisions:

- Syntex agreed to:
  - install a thermal oxidizer,
  - testing and monitoring requirements including documentation of burn efficiency by a third party,
  - a fugitive emission reduction plan, and
  - an independent facility review by an outside consultant selected by all three parties.
- The City and BREATHE agreed to:

- o not require Syntex to go through the use review process for the proposed modification or for the building of the TDD itself, and
- o drop their insistence on limiting emissions due to future expansions in the GNA.

Negotiations extended over a six-month period. The survey respondents felt that they had adequate access to lawyers and legal expertise, technical consultants, and technical/economic data, but not to trained negotiators. The GNA is a legally binding document. It is not part of a state or federal regulatory action. If the company is sold, the GNA will remain in effect.

Costs

BREATHE estimates it spent $8-10,000 on the negotiation process, 80 percent of which went to outside consultants. The group did not spend anything on implementation other than the time of the group members (unpaid volunteers). It is not known how much the company spent on negotiating or implementing the GNA. The company did not provide any funding to BREATHE to assure its continued participation in the implementation process. City of Boulder employees who participated in the process were paid by the City to oversee implementation as part of their normal job responsibilities.

Implementation

BREATHE estimates that 70-80% of the commitments in the GNA have been honored. The problem with implementation has been BREATHE's lack of technical expertise to determine whether the company actually complied with the audit and testing requirements. No subsequent modifications have been made to the original GNA. The agreement does contain an enforcement provision that states that any party to the GNA is authorized to bring a civil action in state district court seeking specific performance of the terms of the agreement, or any other legal or equitable remedies. This provision has never been invoked. It must be noted that the group has essentially dissolved as of the time of this study because most of the provisions had been honored.

Lessons Learned

The two survey respondents gave their GNA an overall success rating of 8 and 9 out of 10. They would possibly be willing to negotiate another GNA if similar circumstances were to arise in the future, but both are wary of the use of a GNA as a public relations tool by the company instead of as a way to reduce pollution. If they had it to do over again they would keep the negotiation process in the public eye; focus more on the concurrent building of the community group to prevent burnout and dissolution; anticipate the possible break-up of the group and build in contingencies; and obtain formal commitments pertaining to reduction in chemical use.

Unexpected benefits of the GNA process include an increase in anonymous involvement from company staff (and former staff); much more community awareness and scrutiny of the

company; and, on a personal level, empowerment through public speaking and the general effectiveness of a small group.

Advice from BREATHE to other groups considering a GNA includes: reserve the right to be critical of the company's actions; reserve the right to negotiate additional agreements as future issues arise; allow for ample on-going review and monitoring of the agreement; be careful of public relations ploys; don't confine yourself to the terms of pre-existing templates for an agreement; be bold and innovative; and ask for more than you want. Advice contained in the article referenced below (written by the Director of the Office of Environmental Affairs of the City of Boulder) is that you have to get people talking; be sensitive to timing; work on a deadline; keep the process open; try to involve all interested parties; and make flexible use of what each party has to offer while recognizing the situation's dynamics.

References

1. GNA
2. GNA Survey response and workshop briefing by Jane Shellenberger and Ed von Bleichert, BREATHE, Boulder, CO [On file with the Natural Resources Law Center (2002)].
3. Alison Peters, "Cooperative Pollution Prevention: The Syntex Chemicals Agreement," Pollution Prevention Review 23 (Spring 1996).

Citizens of Owyhee County Organized Association (COCOA)

and

Idaho Dairies (not the true business names)

Introduction

In October 1998, a Good Neighbor Agreement ("GNA") was signed by the Citizens of Owyhee County Organized Association ("COCOA") and a dairy located in Owyhee County. At the time the GNA was signed, the owner was operating one dairy. Since that time, he opened a second dairy and agreed that this second dairy would also follow the GNA. Because of the small size of the local community, COCOA has asked that we not refer to the dairies abiding by the GNA by their incorporated title. Hence, the companies will be referred to as "the Dairies" throughout this document. The purpose of the GNA was to address community concerns regarding the impact of dairies on the local community. The greatest concerns were in relation to the impacts on both water quality and air quality from liquid manure being applied to agricultural fields through pivots/end guns. COCOA was concerned with the change in levels of ammonia and nitrates found in local wells. The area in question has sandy soils and shallow ground water, creating concerns within the community that ground water is also susceptible to contamination. The conditions of the GNA have been included in the water right transfer permit issued by the Idaho Department of Water Resources ("IDWR").

The Parties

COCOA is a non-profit grassroots citizens group comprised of farmers and rural citizens, many of whom have resided in the community for a number of generations. The group is made up of volunteers and has an annual operating budget of approximately $14,000 generated primarily by foundation grants, with a small portion of the budget coming in via individual and member contributions. A portion of the foundation grants received by COCOA is due to the fact that the organization is a chapter of the Idaho Rural Council.

Since 1996, three commercial sized dairies moved into the Marsing and Homedale areas of Owyhee County. Two of these dairies abide by the GNA created, while the third has chosen not to participate in any of the GNA negotiations or conditions. The Dairies at issue are regarded as moderately important to the local economy. In general, the sector represented by the Dairies is not perceived to be of great importance to the local economy (1 on a scale of 10).[20] This rating was given in light of the fact that Idaho is the sixth largest dairy state in the nation, and as such, these Dairies represent only a small fraction of the dairy sector as a whole. At the time the GNA was negotiated, the Dairies were profitable, expanding, and privately owned.

[20] Ratings and other opinions are taken primarily from COCOA's responses to the GNA survey.

Nature of the Dispute

The commercial size Dairies moved into Owyhee County between Marsing and Homedale in 1998. The Dairies moved cattle to the area prior to obtaining a water permit. COCOA recognized this as an opportunity to try to stop the Dairies from being established by protesting their water permit. Local citizens were concerned with how the Dairies were impacting the air and water quality of Owyhee County. The most significant issues were public health concerns, the impacts on the environments, and nuisance and quality of life issues. In addition to the protesting of the water permit, the group began to test the water of their own individual wells and hired a professional hydrologist at their own expense.

The Dairies are located within a half-mile radius of one another, and are within two miles of the Snake River. There are also waste-holding ponds full of manure. Citizens have noticed a dramatic change in water quality since the building of the two Dairies. The water is described as "murky" with a noticeable amount of sand in the water. COCOA believes that the volume of water used by the Dairies, combined with the location of the Dairies, have a direct relation to the water quality problems. It is noted that the Dairies convert irrigation water from a typical use into a "commercial" use. This commercial use consumes high volumes of water twelve months out of the year, rather than just using water from April through October (the time period of the "typical" use). During the winter months, when the aquifer may not be recharging quickly, pumping in the sandy soils may cause draw-down effects on surrounding domestic wells. Citizens have also noticed an increase in the presence of sulfur and ammonia in domestic wells after the Dairies began pumping water twelve months a year. It was the protesting of one the Dairies' water permit by COCOA that resulted in the decision to negotiate a GNA.

Prior to negotiating the GNA, COCOA participated in public hearings, urged regulatory agencies to better enforce existing laws/rules, urged agencies and/or other governmental bodies to adopt new rules, and protested the water permit used by the Dairies. COCOA, in working directly with the Dairies, sent written correspondence to the Dairies expressing their concerns, met with Dairy representatives, and hired their own hydro-geologist to assist in the monitoring of water quality. The monitoring of personal wells occurred on a monthly basis. The Idaho Division of Environmental Quality and the Idaho State Department of Agriculture were contacted to study the water. The two departments agreed to conduct a five-year water project to monitor wells around the Dairies.

Both of the Dairies are owned by the same person, and have agreed to follow the GNA. There is a third dairy in the region, but the management of this dairy has chosen not to be a party to the GNA at all. The two dairies that are owned by the same person have separate water permits. Under the GNA, the dairy that signed off on the agreement has allowed COCOA to test water from wells located on the dairy. The second dairy also allows the testing of water, even though they are not named parties to the GNA.

Negotiation of the GNA

The Dairies' willingness to negotiate a GNA was prompted by COCOA's challenge of a water

permit. At the time, the Dairies had been using water beyond what had been allocated to them, and had then applied for a water transfer permit. Every large dairy (more than approximately 300 total head) must obtain written approval for the dairy use of water from the IDWR. This is accomplished by filing an application for a new water right permit or an application to transfer an existing water right to the dairy. After hearing COCOA's complaints, the IDWR made the negotiated GNA terms part of the water transfer, an approach supported by the Dairies and IDWR.

During the negotiations, COCOA felt that they did not have adequate access to lawyers and legal expertise, technical consultants, trained negotiators, or technical/economic data.

COCOA began the process wanting the following commitments from the Dairies:

- Specific remediation and mitigation measures in relation to specific pollution prevention
- Traffic mitigation provisions
- Commitment from the Dairies to perform regular environmental monitoring
- Community access to relevant environmental data held by the Dairies
- Advance notice to the community of any proposed changes in operations
- Active community involvement in audits, monitoring, and/or inspections

The bottom line issue for the Dairies was for COCOA to end all protests and negative publicity targeted toward the Dairies.

The resulting GNA contained the following major provisions:

- Dairies agreed to allow the testing of water from wells located on the dairy. The conditions were included in their water transfer permit issued by the IDWR.
  - Dairies are required to submit a detailed plan for the monitoring program to the department for review and approval prior to diversion and use of water. The plan shall provide for testing of water from at least one well hydrologically up-gradient from the Dairy and at least one well hydrologically down-gradient from the Dairy.
  - If the Dairies do not comply with the conditions of approval for this permit, the IDWR may revoke the permit.
- The operation of the Dairies will not cause contamination of ground water and/or drinking water.
- There will be no discharge of pollutants into water except as permitted by state and federal agencies.
- Agreed to a maximum density of animals per acre.
- Agreed that the facility would not be a nuisance as defined by Idaho regulations.
- Lights on the Dairies shall be shielded to keep the light source pointing down and inside the property lines of the Dairy.
- The lagoon is to be lined with a grade of vinyl appropriate for manure management.
- The settling ponds are also to be lined with vinyl or concrete.
- The best available odor controlling practices are to be used in manure storage structures.
- The Dairy agreed to requirements relating to the total capacity of manure storage structures. These structures must also have adequate diversions to contain any spillage or rupture.
- There must be an EPA approved clean-up plan in place for the manure storage facilities.

- Requirements were established as to what may be deposited in the manure storage structures.
- The Dairies agreed that the water consultant will select the monitoring wells and will determine if a test well is needed.
- If the Dairies close, they agree to submit to an EPA closure plan for the facility
- COCOA agreed to:
    - End protests and negative publicity targeted toward the Dairies.

The negotiation process lasted approximately one month. The GNA is a legally binding contract. The GNA has been integrated with a state regulatory action, where the IDWR adopted the conditions of the GNA into the dairies' water permit. If the Dairy is sold, the GNA will remain in effect. The Dairy does not provide funding to COCOA to ensure its continued participation in GNA-related activities. The Dairy does, however, pay for its share of the cost for a hydrologist to conduct water monitoring. This money is not paid to COCOA directly.

Costs

COCOA estimates that they have spent a total of $4,500 on the negotiation of the GNA. The total cost thus far of implementing the GNA is estimated to be $13,000. The largest expenditure was the hiring of a hydro-geologist to set up the water quality monitoring system. COCOA expects to spend $10,000 to maintain the conditions of the GNA. The Dairies do not provide funding to COCOA to ensure its continued participation in GNA-related activities; however, Dairy management does pay for his own water testing.

Implementation

COCOA rates the GNA as a general success in terms of the extent to which commitments have been honored. One lingering problem has been the inadequate resolution of the pest and odor issues. The Dairies were not using effective pest control measures, and continued to sprinkle liquid manure onto fields using irrigation pivots and end guns. This practice attracts flies and creates extremely foul odors. Also, by using more water than was allowed by the water permits, the Dairies were not abiding by the conditions of the water permits In response, COCOA brought the problem to the attention of the Dairies and to the Idaho Department of Water Resources. Additionally, COCOA has been constantly patrolling the area to verify that conditions are being followed by the Dairies. There have been no subsequent modifications made to the original GNA. The Dairies has recently applied for a new permit, raising the potential for additional negotiations. The GNA does not include specific procedures for dispute resolution.

Additional details regarding the status of implementation activities are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Water Quality	▪ Water testing has been conducted monthly and data has been submitted to COCOA ▪ Testing of wells ▪ Monitors have locks on them; able to determine if monitors have been tampered with ▪ Operation of the Confined Animal Feeding Operation (CAFO) has not caused contamination of ground water or drinking water ▪ Negotiating for three test wells (2 paid for by Dairy, 1 paid for by COCOA) ▪ No pollutants have been discharged to surface or ground water except as allowed by permit ▪ Dairy paid two years in advance for monthly water testing. Thereafter, the dairy has paid a hydrologist selected by COCOA to conduct monthly testing	
Property Issues	▪ The maximum density of animals has not exceeded five Animal Units per acre ▪ The CAFO has not been a nuisance as defined by Idaho Code §52-101	
Site Requirements o Manure storage structure capacity is sufficient for 180 days at maximum capacity (animal units) o All manure storage facilities have adequate diversions, dike walls, or curbs and direct any spillage or runoff to appropriately-sized areas o All manure storage facilities have EPA approved clean-up plan o CAFO has given public notice within 24 hours of any spillage or rupture of storage facilities	▪ Lights for the CAFO have been placed and shielded to direct the light source down and inside the CAFO property lines ▪ The lagoon has been lined with vinyl ▪ Settling ponds have been lined with vinyl or concrete ▪ All manure storage structures employ the best available odor controlling practices (much improved) ▪ Consultant selected monitoring wells and deter-mined if test well required	▪ Although settling ponds have been lined with vinyl, the liners are being ripped apart when settling ponds are cleaned out by front loaders

	▪ Animal parts and afterbirth have not been deposited in manure storage structures	
General Requirements ▪ Adequate housekeeping practices have been maintained to prevent creation of a nuisance ▪ Dead animals have not been picked up more than three times every 48 hours. The pick-up storage area is not within 500 feet of a public road. A panel has been constructed to block public view of the storage area ▪ The ratio for liquid manure application is five parts water to one part lagoon mixture	▪ Facilities have been designed and located with full consideration of: proximity to adjacent uses, effect on surrounding properties, and reduction of nuisance factors	▪
Facility Closure ▪ If dairy ceased operation, a closure plan is to be submitted to the EPA (with duplicates submitted to the Idaho DEQ, Owyhee County Public Health Dept., Idaho Soil conservation District, and COCOA), and removal and disposal of livestock waste is to be completed within ninety days of the final day of facility operation ▪ EPA regulations are to be followed for the closure and clean up of CAFO facilities ▪ In the event that the dairy is sold or leased to another individual or entity, this agreement remains in effect as a condition of the sale		▪ Level of implementation not known because the dairy has not ceased operations

Lessons Learned

COCOA gives their GNA an overall success rating of 7 out of 10. If similar disputes were to arise in the future, negotiating another GNA would be their preferred course of action. If they had to do it over again, they would have added shallow test wells, and testing for hydrogen sulfide and odors, to their negotiating process. They also would have added a provision to the GNA asking for funds to hire an attorney. One unexpected benefit of the GNA experience was that some of the neighbors seemed to bond together, and it was also viewed as an outlet to keep people involved in their community. COCOA is concerned about the potential financial burdens

of the GNA over the length of time that the Dairies are in operation. Their advice to others considering negotiating a GNA is to involve a professional to assist in the production of a binding contract.

References

1. GNA
2. GNA Survey response (as later revised) by Ilene Dobbin, COCOA, Marsing, ID (on file with Natural Resources Law Center).
3. Briefing on GNA implementation by Ilene Dobbin and Joan Chadez (July 2003).
4. Briefing on GNA implementation by Ilene Dobbin (June 2004).

Community/Labor Refinery Tracking Committee

and

Sun Oil

Introduction

In December 1997, a Good Neighbor Agreement ("GNA") was signed by the Community/Labor Refinery Tracking Committee ("C/LRTC"), the City of Philadelphia ("City"), and Sun Oil Company ("Sun"). The GNA was in the form of a Consent Decree negotiated as a settlement to a lawsuit brought by C/LRTC against Sun for violations of the Clean Air Act. As Sun has complied with all of the provisions of the Decree, the GNA is no longer in effect.

The Parties

Formed in 1993 with the help of the local chapter of Clean Water Action ("CWA"), the C/LRTC is a coalition of organizations, workers, and individuals from South and Southwest Philadelphia who are working to improve the quality of life for the communities that are impacted by Sun Oil Refinery's pollution. There are no paid staff, and the group operates on an annual budget of $5,000-6,000 derived mostly from foundation grants (90%) and individual contributions (10%). The mission of the C/LRTC is to bring together residents and workers to create a powerful voice to protect the communities' health, economic security and quality of life.

Sun bought the Philadelphia refinery in 1990. Sun and the refinery sector in general are moderately important to the local economy (4 on a scale of 10). At the time the GNA was negotiated, Sun was profitable, stable in size, publicly traded, concerned about public opinion, and perceived publicly as committed to environmental concerns.

Nature of the Dispute

A number of issues prompted community concern about Sun's operations, including public health concerns, nuisance and quality of life issues, and impacts on the environment. Prior to negotiating the GNA, C/LRTC had urged state regulatory agencies to better enforce existing laws, written letters to Sun expressing their concerns, met with company representatives, and conducted negative publicity campaigns. In 1995, after learning of multiple incidents in which the refinery emitted illegally high levels of sulfur dioxide, the C/LRTC sent a 60-day notice of intent to sue the company under the citizens suit provisions of the Clean Air Act.

Negotiation of the GNA

Following the filing of C/LRTC's lawsuit, it took approximately two and a half years to

negotiate a settlement ("Consent Decree"). During the negotiations, C/LRTC had adequate access to lawyers and legal expertise and technical consultants, but did not utilize trained negotiators. They also felt that there was not adequate access to technical and/or economic data.

C/LRTC was looking for specific commitments with respect to pollution prevention, reduction, and remediation as well as an active involvement in audits, monitoring, and plant inspections. In agreeing to negotiate, Sun was seeking a dismissal of the pending lawsuit, an end to protests, and positive publicity. The City intervened in the lawsuit to collect a share of the fines paid by the company as part of the settlement.

The major provisions of the Consent Decree are as follows:

- Sun agreed to invest more than $5 million to improve its air pollution controls to decrease the release of sulfur dioxide, smoke and odors, including installation of color TV cameras and video recorders for observing flares.
- Sun agreed to pay $500,000 in pollution penalties, with $150,000 going directly to the City, $200,000 going to projects that would benefit the environment and health of the communities around the facility, and $150,000 going toward establishing a community emergency notification system.
- Sun agreed to provide more information to residents on activities at the refinery, including:
  - Quarterly reports concerning various operations,
  - Incident investigation reports on significant airborne releases of contaminants,
  - Notification of planned maintenance or repairs along with environmental impact studies seven days in advance, and
  - Notification of emergency repairs.
- Both the City and C/LRTC had the right to conduct site visits to observe operations and inspect monitoring records.
- The parties agreed to establish a three member Operating Committee to carry out certain provisions of the Consent Decree.
- Sun agreed to pay stipulated penalties if it failed to comply.

C/LRTC also sought a better fenceline monitoring system but this issue was not addressed in the final agreement.

As a lawsuit settlement, the Consent Decree was a legally binding document but was not part of a state or federal regulatory permit. If the company had been sold, the GNA would have remained in effect. The agreement contained specific dispute resolution procedures for any disputes that might have arisen under the Consent Decree. The result of the proposed implementation provisions are discussed later in this case summary.

Costs

C/LRTC spent $0 on the negotiation process. Organizing support was provided on a pro bono basis by Clean Water Action. Legal representation was provided on a contingency basis by the Public Interest Law Center of Philadelphia ("PILCOP"). As part of the agreement, Sun paid PILCOP $75,000 plus $4,500 per quarter until Sun's obligations were met. The company spent

an estimated $5,500,000 on implementing the agreement. Sun did not provide funding to C/LRTC to ensure its continued participation in GNA-related activities.

Implementation

This GNA (i.e., the Consent Decree) was negotiated to reduce the high levels of sulfur dioxide emissions being produced by Sunoco. The community group threatened to sue Sunoco unless they worked to improve the situation. To date, the timeline of this GNA is over, hence, the agreement is no longer in existence. The primary issues negotiated included public health, nuisance, noise, traffic, environmental impact, and air issues. A fair number of the implementation strategies have been achieved, but only through a great deal of work on the part of the community groups. C/LRTC estimates that Sun honored 80% of its commitments.[21] Some of the process improvements listed in the GNA were not made due to technical reasons. Today, a number of the community members that worked on the GNA have left, leaving only a few active members remaining. To address remaining issues, the groups are currently seeking to meet with the tracking committee to discuss areas for improvement. No subsequent modifications were made to the GNA.

Additional details regarding the status of implementation provisions are presented in the following table:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Sulfur Recovery Unit	▪ Sulfur recovery unit was installed	
▪ Provide incident investigation reports pertaining to events resulting in a significant release of contaminants to the air to C/LRTC for review	▪ Reports were received	▪ Although the reports were received, it was only after the community group requested them; they did not come automatically
Evaluate potential methods to reduce emission of fine particles in the Point Breeze FCCU. ▪ Submit report with recommendations to C/LRTC within 120 days of GNA going into effect.		▪ Air is not particularly cleaner
Quarterly Reports to C/LRTC	▪ Reports were received	▪ Although the reports were received, it was only after the community group requested them; they did not come automatically

*In light of the current status and small size of the group, the committee was unable to assess the implementation status of several provisions.

[21] Ratings and other opinions are taken primarily from C/LRTC's responses to the GNA survey.

Lessons Learned

C/LRTC gives their GNA an overall success rating of 8 out of 10. Bob Wendelgass, State Director of Clean Water Action and participant in the process, is unsure if he would seek to negotiate another GNA under similar circumstances in the future. If he had it to do over again, he would have liked the GNA to last longer than the Consent Decree did. He reports that a significant amount of work went into getting the siren system and other projects implemented which stretched the resources of the community group.

References

1. GNA (Consent Decree)
2. GNA Survey response and workshop briefing by Bob Wendelgass, CWA, Philadelphia, PA [On file with the Natural Resources Law Center (2002)].
3. "Sun Oil Reaches Good Neighbor Agreement with Neighbors/Workers 12/30/97 (Cover Note from Bob Wendelgass, Clean Water Action-Philadelphia to Denny Larson, Coordinator of the National Oil Refinery Action Network (NORAN) (CBE)," at http://www.igc.org/cbesf/flash.html
4. "More Control Over Sun," South Philadelphia Review, Jan. 8, 1998.
5. Briefing on GNA implementation by Anne Fitzgerald (July 2003).

Concerned Citizens of Norco (CCN)

and

Shell Oil

Introduction

In 2002, Shell Oil Company negotiated a Good Neighbor Agreement ("GNA") with the Concerned Citizens of Norco ("CCN"). The primary purpose of the agreement was the relocation of the residents from the Diamond community immediately adjacent to the refinery in Norco, LA. The GNA is a legally binding commitment that was negotiated in response to long-standing community health concerns and pressure by supporting non-governmental organizations ("NGO").

The Parties

CCN is comprised of the affected neighbors in the Diamond community. In the GNA process, CCN was advised and supported by the Louisiana Bucket Brigade ("LABB"). Founded in 2000, LABB is a non-profit organization that works with community groups. There are three full-time and three part-time employees. The LABB has an annual operating budget of $225,000 which is generated by individual and member contributions (12%), government grants (8%), and foundation grants (80%). The LABB provided hands on support to the CCN to force Shell to agree to the relocation demand.

A number of other NGOs also participated in the GNA negotiations and support activities, including Earthjustice, Xavier Deep South Center for Environmental Justice, Commonweal, Refinery Reform Campaign, and the Environmental Health Fund.

Shell Oil began operations in Norco in 1915. The company employs only one resident of the neighboring community. The oil industry and Shell Oil are both very important to the local economy. At the time the GNA was negotiated, Shell was profitable, expanding, publicly traded, and concerned about public opinion.

Nature of the Dispute

The Diamond community is 100 percent African-American and sandwiched between the Shell Chemical facility and Shell/Motiva refinery. Community members are rarely employed at these facilities. A number of residents have developed strange cancers and many people have had respiratory problems. Additionally, two members of the community were killed in an explosion in the 1970s, and there was a massive explosion in 1988. Due to these chronic public health issues, the community had been fighting for relocation for twenty years.

Prior to negotiating the GNA, the community took a number of actions, including participating in public hearings and commenting on public documents; urging regulatory agencies to better enforce existing laws; initiating personal injury lawsuits (note that the community lost a law suit demanding relocation in 1997); writing to and meeting with company representatives, and conducting negative publicity campaigns. One other action that the community took was to monitor the refinery's stack discharges as well as the resulting air quality. Samples were collected exposing violations of state air standards, photographs were taken and a web cam used to expose flaring abuses, and Shell's public records were researched to expose other examples of "bad behavior."

Negotiation of the GNA

During 1999 and 2000, due to community activism, Shell offered to relocate two of the four streets in the Diamond community. These two streets were nearest the fenceline with the chemical facility. Some of the community members accepted the offer, while others did not, creating division within the ranks of community members that had long argued for relocation of all four blocks. In June 2001, the Coming Clean Initiative, a national consortium of environmental groups, visited the Diamond Community, meeting with community and Shell plant and corporate officials. This effort created further pressure on Shell to relocate all four streets.

In June 2002, Shell made an offer to purchase and relocate property owners or provide $25,000 home improvement loans (20 percent forgiven each year) to all Diamond community members. Community members had two months to sign up for the program, an option exercised by all but two property owners.

According to Anne Rolfes, the unquestionable catalyst for Shell making the final offer (i.e., the GNA) was the aggressive organizing and media campaign.[22] One prominent example involved the World Summit on Sustainable Development held in Johannesburg in August of 2002. Shell knew that the activists and the community would be there on a world stage bringing up the issue of the Norco refinery. This presented a significant threat to Shell since they wanted to present their global program of Sustainable Development, but they knew that they would have to explain the apparent community "abuse" that was occurring in Norco. Shell knew that its opponents were well organized and had the resources to carry out their negative publicity campaign. Shell was also "vulnerable" at this point due to some other negative international publicity around the same timeframe. At the point Shell agreed to a relocation plan, Anne Rolfes believes that Shell was just tired of the relentless pressure on a world stage and wanted to put the situation behind them so they would not be further embarrassed. Iris Carter of CCN expressed a similar sentiment, explaining that it was the "drama"—i.e., the constant repeating of heart-wrenching stories of citizen health issues—that pushed the company to settle the dispute.

Shell proposed the relocation plan as a way to do what the community wanted without losing face. They combined relocation with a number of other programs which were proposed by Shell itself and not really a result of the negotiation process. Note that the community's main focus

[22] Ratings and other opinions are taken primarily from LABB's responses to the GNA survey.

was relocation; at that point they simply did not care about other issues such as pollution prevention or effects on the local economy because they would no longer be living in the shadow of the refinery if they were relocated.

Negotiation of the GNA focused on determining a fair price to be paid to the landowners. In addition, the company sought an end to protests and negative publicity as well as positive publicity for the company. (The activist groups involved in the GNA campaign made it clear to the company that the campaign would not stop during negotiations.) It took approximately three months to finalize the agreement. Participants included the Concerned Citizens of Norco, the Louisiana Bucket Brigade, Refinery Reform, Environmental Health fund, Subra Company, Earthjustice, Commonweal, along with company representatives. Anne Rolfes felt that during the negotiations the community group and its supporters had adequate access to lawyers, legal expertise and technical consultants, but not to trained negotiators and company technical and economic data. However, she would have liked to have obtained a better deal for landowners than they ultimately achieved.

The GNA is considered by CCN to be a legally binding document that is not integrated with a state or federal regulatory action. As the buyout is happening over a period of six months to a year, a future transfer of ownership of the company should have no effect on the agreement. The current status of implementation is presented later.

Costs

The costs of negotiating the GNA included $8,000 for a facilitator (split between Shell and the community) and $1,000 for conference calls to link out of town participants to the negotiating sessions and to conduct strategy sessions. In addition, members of the seven participants representing NGOs contributed an average of 15 hours per person per week. The company did not provide any funding to the community group or the NGOs to ensure their continued participation in monitoring the implementation of the GNA.

The costs of the implementation process so far include $5,000 spent by the Louisiana Bucket Brigade and $3 million spent by Shell.

Implementation

This GNA was negotiated by residents of Norco, Louisiana and Shell Oil, Co. Shell's answer to community concerns was to relocate the residents to another area. However, once they offered to move the residents, the company began to improve their air monitoring system. Shell drafted legal documents indicating to the residents that they were being paid fair market value for their homes. Yet, this fair market value did not take into account the loss of culture and historical ties to the community. Families have been split because some individuals simply do not want to leave the community even though they know that it is not a safe environment. Approximately 85% of the neighborhood is being relocated. Generally, it is reported that Shell had more input in the decision making than the community groups. In this instance, the community groups

found themselves faced with Shell's version of a GNA, termed a "Good Neighbor Initiative." It is important to recognize that this "Initiative" is different from a GNA (initiated by community groups to address concerns about an area company).

If this situation should be encountered again in the future, the community groups recommend the residents have more of a voice as to what is going to be the end result. They also encourage the residents to take a "hard stand" with these companies. Additionally, the residents should band together with other groups to try to get significant legislation passed, and to help politicians recognize that change is needed. The community groups here express frustration with the number of inconsistencies. Provisions allocating health care and associated costs to Shell have not been solidified. There are concerns that the health study may not be done properly. No subsequent modifications have been made to the agreement. Some of the paperwork is taking longer than expected, and some of the contractors who are working with the community on behalf of Shell have been rude, impacting company-community relations.

Additional details about the status of implementation provisions are provided in the following table:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
All eligible owners and renters who wished to do so were to sign up for the Diamond Options Program by August 31, 2002	▪ Provision implemented (a few families choose to stay)	
Shell to pay a temporary relocation allowance to families who chose to have extensive renovations done to their homes		▪ No knowledge of any temporary relocation allowance being paid to any families
Shell paid the following expenses to owners or renters who were moving out: ▪ miscellaneous expenses ▪ moving allowance ▪ rent disruption allowance ▪ professional service allowance ▪ clear site bonus ▪ equity advance	▪ Moving allowance provision implemented ▪ Rent disruption allowance provision implemented ▪ Professional service allowance provision implemented ▪ Clear site bonus provision given ▪ Equity advance provision implemented.	▪ Misc. expenses were not distributed according to the original GNA. Originally, Shell agreed to provide $15,000 per household for misc. expenses. Instead, Shell distributed $15,000 per family (for example, the $15,000 to be allocated to one household was divided into thirds and distributed to three biologically related family members serving as the heads of their own households).
All home improvements and property sales to be completed by Dec. 31, 2002		▪ Incomplete; only one home in Norco has had all improvements completed, as of July 2004.

Lessons Learned

Anne Rolfes rates the overall success of the GNA a 7 on a scale of 10. She was happy that the company agreed to the relocation, but she wishes the residents had received higher prices for their homes. An unexpected benefit to her organization was achieving credibility with Shell and being able to use this credibility in other battles. If she had a chance to do it over again she would have had more training for the negotiation team prior to meeting with the company. Her advice to other groups considering a GNA is to try to get what you want in a closed time frame so you don't have the headache of having to monitor the company into the future. The group is still in negotiations with Shell regarding a health clinic that has yet to be determined. There are also concerns that very few residents, other than those attending the meetings, were made aware of the GNA provisions.

References

1. GNA Survey response and workshop briefing by Anne Rolfes, Louisiana Bucket Brigade.
2. Memo from Wilma Subra, Jan. 21, 2003.
3. Briefing on GNA implementation by Iris Carter, CCN (July 2003).
4. Briefing on GNA implementation by Iris Carter, CCN (July 2004).

Northern Plains Resource Council, Stillwater Protective Association, Cottonwood Resource Council

and

Stillwater Mining

Introduction

In May 2000, a Good Neighbor Agreement ("Agreement") was signed by the Northern Plains Resource Council ("Northern Plains"), the Stillwater Protective Association ("SPA"), the Cottonwood Resource Council ("CRC"), and the Stillwater Mining Company ("SMC"). The purpose of the Agreement was to ensure that SMC would protect local watersheds from environmental degradation due to mining activities and mitigate the impact of the influx of mine workers on the local communities.

The Parties

Northern Plains was founded in 1971. With a staff of 15 and an annual operating budget of $800,000, Northern Plains is committed to land stewardship, to the preservation of family farms and ranches and small businesses, and to providing the information and tools necessary to give citizens an effective voice in decisions that affect their lives. Recognizing the need to balance the quest for economic gain with social and environmental responsibility, Northern Plains strives to protect Montana's water, land, air, and unique quality of life in order to pass them on, unimpaired, to future generations.

Both SPA and CRC are citizens groups that are affiliated with the Northern Plains. These groups were founded in 1978 and 1988, respectively, to respond to the potential environmental and social impacts that local mining operations and other commercial developments posed to the local community.

Stillwater Mining Company owns both the Nye and East Boulder mines which are the subjects of the Agreement. The Nye mine began operations in 1986 and the East Boulder mine began operations in 1998. Both mines produce platinum and palladium, drawing from the same vein of ore which is 28 miles long and 10 feet wide. Between them the mines employ 1460 workers. The company and the mining industry in general are moderately important to the local economy. At the time the Agreement was negotiated, SMC was profitable, expanding, seeking funding, concerned about public opinion, and perceived by the public to be committed to environmental concerns.

Nature of the Dispute

The price of palladium began to increase dramatically in 1997. Anticipating a shortfall in palladium, SMC management sought to expand their operations. Their plans included opening the East Boulder mine, increasing production at Nye above the current production cap, and opening a new tailings impoundment on company owned property eight miles downstream from the mine. All of these projects required state approval. In addition, in 1998, SMC sought a Montana Pollution Discharge Elimination System ("MPDES") permit for discharging wastewater into the East Boulder River from the East Boulder mine as well as approval for construction of a new "man camp" to house mine employees.

Both the SPA and CRC were concerned with SMC's expansion plans and participated in the permitting and approval processes to the extent possible. Unfortunately, the citizens groups ultimately felt that their concerns were not being adequately addressed by the government agencies involved. SPA subsequently filed an intent to sue the Montana Department of Environmental Quality ("MDEQ") based on what they felt was approval of an inadequate Environmental Impact Statement ("EIS"). CRC also considered filing suit over the MPDES permit. One CRC member wrote an editorial for the NY Times exposing the potential negative impacts of the East Boulder mine on the local area. Because SMC is a publicly traded company, and because at the time, several "green" funds had a stake in the company, SMC was especially sensitive to accusations that it does not live up to expectations regarding environmental protection. The pending and threatened lawsuits in addition to the local and national publicity of the dispute, coupled with SMC's determination to proceed with the expansion, resulted in a very contentious situation in Sweet Grass County as both sides braced for a protracted battle.

About this time, Tom McGuane, a CRC member, arranged a meeting between members of the local community and SMC management. The results of this meeting were encouraging. Paul Hawks, the then-chairman of CRC, followed up with a letter requesting a second meeting. At the same time SPA requested a meeting with SMC. Fortunately, SMC was open to pursuing a dialogue with the citizens groups, and the parties, including support staff from Northern Plains, took the first tentative steps toward negotiating a Good Neighbor Agreement.

Negotiation of the GNA

Both sides took negotiation of the Agreement seriously. The citizens groups identified key negotiators who underwent two days of training with a professional negotiator in preparation for the process. At the initial meeting in June 1999, 28 issues were put on the table. Over the course of the next 11 months, the parties had numerous meetings, sometimes productive, often contentious, with the ultimate success occurring in May of 2000: a signed Agreement that was truly a joint effort of all of the parties. During the negotiations, the citizens groups demanded and received adequate access to legal advice, technical consultants, and company data to facilitate their understanding of the issues and to equalize the expertise of the parties.

The citizens groups originally sought a number of specific commitments in the areas of pollution prevention and remediation, traffic mitigation, worker transportation and housing, investments in

the local infrastructure, regular environmental audits and monitoring, community access to company environmental data, community participation in environmental audits and monitoring, advance notice of any changes in operations, and financial support of the community groups to ensure their continued participation in Agreement-related activities.[23] The company likewise sought specific commitments, including dismissal of all pending lawsuits, assurances that no further lawsuits challenging their operations in court would be filed, ending negative publicity, generating positive publicity, and a confidentiality agreement to ensure that confidential company information shared with the community groups would go no further. Concessions were made on both sides, with the overall result representing acceptable compromises on all of the major issues, although many issues discussed along the way did not appear in the final agreement.

The SMC Good Neighbor Agreement is a legally binding document. The agreement will continue in effect until mining operations have ceased, the mine sites have been closed and reclaimed, all SMC performance bonds are released, and the water quality of all discharges from the mines has returned to "baseline" quality. In addition, provision was made in the agreement for the Agreement to be binding on any and all future purchasers of the mines.

The GNA contains the following major provisions:

- Mitigation of environmental impacts at the new tailings impoundment,
- Mitigation of socioeconomic impacts due to the influx of new workers,
- Environmental audit performed every five years,
- Citizen participation in all state inspections and the ability to conduct an independent citizen inspection,
- Establishment of conservation easements on over 2,000 acres of company-owned farm and ranch land,
- Access to almost all environmental performance data,
- A commitment to investigate improved mining technologies,
- Extensive water quality monitoring, agronomic application of wastewater, and a long-term goal of zero discharge,
- Traffic mitigation and control at each site including a busing plan for workers,
- Oversight and technology committees featuring equal participation from the citizens groups and SMC,
- Confidentiality agreement,
- Mechanism for dispute resolution, and
- Funding provisions that state the specific amounts that SMC will provide for implementation purposes as well as providing funding to the citizens groups for their continued participation in Agreement-related activities.

The most current status of implementation provisions are discussed later in this case study summary.

[23] Ratings and other opinions are taken primarily from NPRC's responses to the GNA survey.

Costs

Detailed cost records are not available. However, Northern Plains estimates that they spent at least 3,000 hours of staff time and $63,000 on consultants and outside experts during the negotiation process. The Agreement has cost SMC a minimum of $4 million per year to implement. In addition, SMC provides Northern Plains with money each year to offset the cost of participating in the implementation and monitoring of the GNA. The amount of money is negotiated each year, but cannot exceed $135,000 and has averaged approximately $120,000 in the first four years of the Agreement. The company's costs are expected to decrease only slightly in future years as specific implementation plans are completed.

Implementation

The NPRC indicates that a majority of the commitments listed in the GNA have been honored. Problems have been encountered where the company did not keep the citizens groups informed of changes in operations as well as with the worker busing provisions. A year-long dispute exists about the level at which long-term water quality monitoring should be maintained. The busing dispute was resolved under tremendous public and worker pressure put on the company to continue this popular program. The purpose of negotiating this Agreement was to ensure environmental excellence in two counties, to include community oversight and awareness, and to implement new technologies to deal with waste from the mine. The community groups recognized the need to develop some type of dispute resolution tool to be used when working with the mining company. The community groups stated that the Agreement process involved more work then they had anticipated. The groups are pleased with the resulting Agreement and believe they have developed a very sound process. This is supported through quarterly meetings with the company as well as meetings with a committee focused on responsible mining practices and new technologies to reduce mine waste. Most meetings are transcribed to preserve a record for the future. It was important to Northern Plains to be able to hire experts, but there was the concern that SMC would view these experts as a hindrance. However, SMC has frequently benefited from hiring these experts. For both Northern Plains and SMC, community support has grown substantially. Northern Plains states that having an expert who was also a miner was a huge advantage because he truly cared about the process and could relate to the mine owners. It must be noted that Northern Plains had more legal leverage at the time the Agreement was negotiated than what is currently available. During negotiations, SMC had applied for a permit and Northern Plains was able to use the permit process as leverage. At the time, SMC could afford to commit to the provisions suggested by Northern Plains. However, a majority interest in SMC is now controlled by a Russian mining giant with a very poor environmental record. The Russians have pledged to honor the Agreement with Northern Plains and its affiliates, but the company is now more insulated against American market pressures and perceptions.

Additional details about the status of implementation activities are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Disclosure of Information	▪ All information as required by the GNA, including confidential information, was disclosed by SMC	▪ The timing of the disclosure is not always optimal, but it is eventually disclosed
Funding for Program Maintenance	▪ A majority of programs have been funded	▪ A dispute exists about the level of future funding for water quality monitoring; the company has indicated funding beyond the first five years of the Agreement may be up for grabs.
Council Participation	▪ The Councils have been allowed to participate in all aspects of the audits, reports, studies, projects, plans, and sampling completed by Third Parties	
Establishment of New Technologies Team	▪ The Councils and their consultants have taken over this function due to lack of SMC initiation. The Company is receptive to this new dynamic.	
Access to Premises	▪ Councils have been allowed to enter mine premises and inspect mine facilities, conduct Citizen Sampling, take photographs, and meet with relevant SMC employees	
Creation and Donation of Conservation Easements to Montana Land Reliance	▪ Donated conservation easements to Montana Land Reliance	▪ The implementation of this provision took longer than expected ▪ Only four of six easements signed
Mine-Sponsored Housing	▪ The company dropped plans for mine-sponsored housing	
Busing and Traffic Plans	▪ SMC developed, implemented and funded comprehensive busing and traffic reduction plans for the East Boulder and Stillwater Mines	
Commercial Traffic Reduction Plan	▪ SMC developed, implemented and funded a comprehensive commercial traffic reduction plan	

Environmental Audit Program	▪ SMC established, implemented, maintained and funded an environmental audit program	
Reclamation Plan	▪ Consultants working with NPRC in response to SMC's current permit and reclamation action	▪ State agency delay in moving the reclamation and bond process forward has delayed implementation
Tailings and Waste Rock Project	▪ SMC participated in and funded tailings and waste rock project ▪ Independent waste rock characterization is underway	▪ SMC is about a year behind in implementing the waste pilot project. More time may be needed to test new tailings technology prior to negotiating implementation.
Notification of Permit Modifications or Amendments	▪ SMC disclosed and provided Councils with an opportunity to review and comment on all Amendments and Revisions to the mine operating permits and MPDES permits no later than 3 months prior to the commencement of the permitting process	▪ Implementation of provision is acceptable, but SMC is sometimes late in their notifications ▪ Difficulty because both parties have different definitions of what constitutes an "amendment"
Water Program ▪ SMC designed, implemented and maintained electronic database of all water data ▪ SMC funded a third party review and water quality reports ▪ SMC developed, implemented, maintained, and funded the supplemental monitoring programs ▪ SMC participated in and funded supplemental ground water studies ▪ SMC designed, implemented, maintained, and funded the Tiered Trigger Level Framework ▪ SMC designed, implemented, maintained, and funded any programs necessary to implement the response and remedial actions	▪ SMC designed, implemented, maintained, and funded the "Water Program" ▪ SMC has provided Councils with the opportunity to participate in the design, implementation, and oversight of the Water Program ▪ SMC has given Councils at least 72 hours notice of all meetings, inspections, sampling, and monitoring events ▪ Councils receive the required notice approximately 95% of the time ▪ SMC designed, implemented and maintained an expanded reporting program ▪ SMC funded Baseline Fisheries Study and Plan	▪ Councils sometimes do not receive the required notice ▪ Councils have not followed up on the expanded reporting program; the reporting tends to be very technical ▪ The optimization plan has been difficult and will be negotiated next year
Boulder River Watershed Group	▪ SMC contributed to Boulder River Watershed Group	

Main Boulder Road	▪ SMC initiated the process necessary to rebuild the remaining sections of the Main Boulder Road – completed summer of 2003	
Big Timber City Council	▪ SMC initiated additional negotiations with the Big Timber City Council and made significant additional funding contributions toward the expansion of city services	▪ Implementation of this provision has been difficult, but it appears to be moving in the right direction
Mitigation Plan	▪ SMC developed, implemented, and funded Mitigation Plan	▪ Some complaints from local residents about the new tailings impound-ment; being investigated by the Councils.
Purchasing Property	▪ Consulted Councils before purchasing property for future tailings/waste disposal, and has not constructed tailings impoundments	▪ SMC has not moved to purchase any additional property since the Agreement was signed.

Lessons Learned

Speaking for the citizens groups, Northern Plains rates the Agreement as a success. If similar disputes were to arise in the future they would be willing to negotiate another Agreement if it were determined that that was the best alternative under the circumstances. Northern Plains feels that the GNA process was beneficial for the whole community, as it brought more respect for the citizens groups who stood their ground, while at the same time demonstrated their willingness to put in the hard work necessary to forge the agreement. As for the future, Northern Plains does have some concerns whether they will be able to maintain the current level of commitment to the GNA from new members, especially with respect to filling committee positions. Overall, their advice to other groups considering this tool is to make sure they are ready for a lot of hard work and a long term commitment.

References

1. GNA
2. GNA Survey response and workshop briefing by Darlene Bos, NPRC [On file with the Natural Resources Law Center (2002)].
3. Anne Fitzgerald and Laura Goldman, "Finding a Path to Accord: A Case Study of a Good Neighbor Agreement," published by NPRC, June 2002 [herein as Appendix C].
4. John Clayton, "The Stillwater Mine Good Neighbor Agreement," prepared for the Liz Claiborne, Art Ortenberg Foundation, Workshop on Collaborative Resource Management in the Interior West, Red Lodge, MT, October 18-22, 2001.
5. Briefing on GNA implementation by NPRC staffers (July 2003).

Ohio Citizen Action, Environmental Community Organization

and

Rohm and Haas

Introduction

In May 2001, Rohm and Haas Co. ("R&H") made a commitment to Ohio Citizen Action ("OCA") and Environmental Community Organization ("ECO") to improve air quality and reduce noise near its Reading plant near Cincinnati, Ohio. Neighbors of the plant had been complaining about the plant's air, water, and noise pollution for over a decade before their concerns were finally addressed. Between May and December 2001, the company met monthly with a local Community Working Group ("CWG") to work out the details of the agreement. The resulting Good Neighbor Agreement ("GNA") is not a formal written contract, nor is it legally binding.

The Parties

OCA, founded in 1975, is an independent, nonpartisan, nonprofit organization with 150,000 dues paying members and an annual budget of $2.1 million. With a program staff of 20 plus 150 paid canvassers statewide, OCA campaigns on issues from public health and the environment to utility and insurance rates.

ECO is a nonprofit citizen-based industrial air pollution group founded in 1995. This group joined forces with OCA in the Campaign for Safer Neighborhoods to force R&H to address issues of concern to the local community.

R&H bought the Reading plant from Morton Chemicals in 1999. This plant produces specialty chemicals for the PVC plastics industry and employs approximately 200 local residents. R&H is fairly important to the local economy (7 on a scale of 10), and the chemical sector as a whole is very important to the local economy (9 on a scale of 10).[24] At the time the GNA was negotiated, the company was profitable, expanding, publicly traded, and concerned about public opinion.

Nature of the Dispute

Neighbors of the R&H plant had complained about "rotten egg" and "dead fish" odors emanating from the plant for over a decade. More recent complaints included toxic releases of methyl chloride, after-hours diesel truck parking, and emergency response issues. In February 2000, OCA and ECO embarked on a campaign to force plant management to address these issues. As part of the Campaign for Safer Neighborhoods, OCA took numerous actions prior to negotiating

[24] Ratings and other opinions are taken primarily from OCA's response to the GNA survey.

the GNA, including door-to-door canvassing; initiating a letter writing campaign which generated nearly 10,000 letters addressed to the plant manager and over 200 letters to R&H's CEO in Philadelphia; and reviewing company documents to compile a "Citizen Audit" detailing the company's air pollution record, which was released in November 2000.

Immediately following the release of this audit, top management agreed to meet with the citizens' groups. The company established a Community Advisory Council ("CAC") in January 2001. However, many members of the community were upset because they were not invited to attend the meetings. The company finally agreed to meet on a monthly basis with the CWG, composed of community leaders and OCA staff, between May and December of 2001. The purpose of these meetings was to work out the details of their stated commitments to improve air quality and reduce noise pollution. The company agreed to this arrangement with the understanding that as of January 2002, the CWG would be "folded into" the CAC.

Negotiation of the GNA

The specific commitments that the CWG sought were to:

- Eliminate truck parking/idling outside the plant before 7 a.m.,
- Eliminate odors,
- Reduce/eliminate toxic releases of chloromethane, and
- Establish an emergency response and notification plan for neighbors.

In exchange for agreeing to address these issues, R&H sought an end to the canvassing and letter writing and cooperation of the community group with the CAC process.
An independent facilitator was hired by R&H to oversee the monthly CWG meetings. The primary representative from the plant was an environmental engineer who was familiar with the processes where changes were demanded. Neither state nor federal regulatory agencies participated in the meetings.

Unlike most GNAs, the resulting agreement was not a formal written contract. Rather, R&H simply agreed to continue working with the CAC to resolve the issues. The GNA is not legally binding, nor does it embody formal dispute resolution procedures. It is not known if it would remain in effect if the company were sold. The status of each GNA implementation provision will be discussed later in this case study.

Costs

OCA estimates that it spent roughly $3,000 on the negotiation process and another $6,000 on implementation. R&H spent an estimated $10,000 for the meeting facilitator and will spend over $2 million on implementation costs after all process modifications are completed. R&H does not provide funding to any community group to offset the costs of monitoring the GNA.

Implementation

Ohio Citizen Action group typically runs door-to-door and phone canvassing operations to encourage community participation. In addition to the GNA with Rohm & Haas, OCA has an ongoing campaign with Sunoco and a negotiated GNA with Columbus Steel Drum. Thus, the organization has some experience working with GNAs.

Rohm & Haas is a chemical company based out of Philadelphia. OCA meets monthly with the company. During the negotiation and implementation of this GNA, OCA encountered some problems recruiting community members. One notable glitch was a two-month delay in obtaining equipment for one particular process modification. As of the summer of 2004, it was estimated that 95% of the GNA has been implemented. No subsequent modifications have been made to the original GNA.

Additional details about the status of implementation activities are presented in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Reduce Chloromethane (to as near zero as possible)	▪ Implemented to a certain extent (about 95% so far) ▪ 98% recovery efficiency of chloromethane ▪ Company has now applied for minimal permit levels (less than 10 tons per year limit) ▪ Company has had to change out compressors from the 1980s, so this provisions is still being implemented	
Eliminate foul odors that plague neighbors of the plant	▪ Currently being implemented ▪ Pressure from neighborhood assists with day-to-day follow-up ▪ Installed work station technology to improve ventilate and eliminate odors	
Prohibit after hours truck parking and idling outside the plant gate	▪ Implemented ▪ Continues to work with contractors and supplies ▪ Upgraded their gate security	
Establish an emergency response and notification plan with community input	▪ Some community oversight, especially with toxics and odors issues	▪ Still working on better notification for all workers

*There is no formal document for this GNA; these commitments were taken from OCA's press release dated 5/1/01.

Lessons Learned

OCA gives their GNA an overall success rating of 9.5 out of 10.[25] Rachael Belz, Southwest Ohio Director of OCA, would seek to negotiate another GNA under similar circumstances in the future. If she had it to do over again, she would consider trying to get a signed agreement, although that has not been necessary to this point. One unexpected benefit of the GNA process was that the plant manager became more involved with his employees even outside of this process. Another benefit was the great working relationships that developed among the participants. OCA has no concerns about the future of the GNA at this time as the company meets monthly with neighbors and community groups to address any concerns. If the company were to renege on its commitments, the OCA could canvass again at any time to bring them back to the table. Belz' advice to others considering a GNA is that canvassing is a very effective tool.

References

1. GNA Survey response and workshop briefing by Rachael Belz, Ohio Citizen Action. [On file with the Natural Resources Law Center (2002)].
2. May 1, 2001 press release, "Campaign for Safer Neighborhoods, Rohm and Haas Reach Agreement."
3. March 26, 2000, phone conversation with Rachael Belz.
4. OCA's website – ohiocitizen.org.
5. "Neighbors, plant go over fine print of air, noise pact," The Cincinnati Enquirer, May 3, 2001.
6. Briefing on GNA implementation by Rachael Belz, OCA (July 2003).

[25] This figure (of 9.5) was provided orally in July of 2004, updating the original estimate of 9.0 from the written survey in 2002.

Seneca Babcock Environmental Subcommittee (SBESC), Buffalo Common Council (BCC)

and

Seneca-Babcock Industries

Introduction

In 1993, the Seneca-Babcock Environmental Subcommittee (SBESC) and the Buffalo Common Council Good Neighbor Committee (GNC) embarked on a campaign to negotiate Good Neighbor Agreements (GNAs) with polluting industries in the Seneca-Babcock neighborhood of Buffalo, New York. To date, GNAs have been signed with three companies: PVS Chemicals, BOC Gases, and Natural Environmental, Inc. The GNAs are written documents but are not legally binding.

The Parties

The SBESC was formed in 1991 by residents of the Seneca-Babcock neighborhood in response to concerns about the harmful effects of the pollution emitted by local industries. There are no paid staff and the group operates on an annual budget of $500 made up solely of individual contributions.

The GNC of Buffalo is a community, labor, environmental, and academic committee established in 1993 by the Buffalo Common Council (BCC) to negotiate with industries in the Seneca-Babcock neighborhood and along the Buffalo River for reductions in pollution. There is one "very part time" paid staff member. The annual operating budget is approximately $400. The mission of the GNC is to reduce the use, release, and storage of toxic chemicals to protect the health of workers, the community, and the environment.

The three companies that have entered into GNAs with the SBESC are privately owned and concerned about public opinion. These companies are fairly important to the local economy (6-7 on a scale of 10).[26]

Nature of the Dispute

For years, the residents of the Seneca-Babcock neighborhoods have been exposed to pollution from the chemical companies in their midst. The problems ranged from foul odors to accidental releases of toxic chemicals. Finally, a sulfur dioxide release in 1991 galvanized the local residents to join together and take action, forming the SBESC. The primary concerns included impacts on the environment, public health concerns, and nuisance and quality of life issues. The

[26] Ratings and other opinions are taken primarily from responses to the GNA survey.

SBESC met with representatives of several companies in the area in an attempt to open a dialogue about environmental, health, and safety concerns. They also undertook a number of different actions in their efforts to be heard, including participating in public hearings, urging regulatory agencies to better enforce existing laws and/or to adopt new laws, writing to and meeting with company representatives, and conducting negative publicity campaigns. They took their concerns to the Buffalo Common Council ("BCC"), the Dept. of Health (DOH), and the Dept. of Environmental Conservation ("DEC") which agreed to aid them in their efforts to clean up the community. In response, the BCC formed the GNC.

In 1993, following a 2,000 gallon diesel fuel spill into the Buffalo River by one of the targeted Seneca-Babcock companies, the GNC adopted a resolution that called on polluting companies to negotiate GNAs with local citizen's groups. The GNC also enlisted the help and support of regulatory agencies and the state attorney general's office. After no substantial progress was made more than a year after the resolution, the AG's office sent a letter to four companies pressuring them to honor the commitments of the Chemical Manufacturers Association Responsible Care Program in which they participated by meeting with local residents and signing GNAs. The pressure from the BCC and government agencies as well as the bad publicity the polluting companies were receiving finally prompted some of them to sit down and negotiate with the SBESC.

Negotiation of the GNAs

The GNC proposed a Good Neighbor Process as follows:

- Meet quarterly with the company to discuss the company's efforts to achieve three Community Goals which are supported in the Responsible Care Pollution Prevention Code – pollution prevention, protecting community health, and notification and emergency response planning;
- Before starting these meetings, hold a joint press conference to announce the good neighbor process and express hopes for a fruitful dialogue;
- Prior to each meeting, exchange specific information in preparation for the meeting; and
- After three meetings, evaluate the progress made to date and decide on future forms of communication and methods of resolving any remaining differences.

During negotiations with the various companies, the SBESC/GNC generally had adequate access to legal expertise, technical consultants, and technical/economic data, but did not have enough access to trained negotiators.

The SBESC generally sought commitments in the areas of pollution prevention/reduction, traffic mitigation, investments in the local community, emergency response planning, regular environmental audits and community access to environmental information, and an active involvement in audits, monitoring and inspections. The companies sought an end to protests or negative publicity, positive publicity for the company, confidentiality agreements, access to the community to satisfy government public participation requirements under the Responsible Care initiative, and relief from the pressure to negotiate.

The final agreements were tailored to each individual company. Specific provisions include the following:

- Natural Environmental, Inc. (waste processing facility) – GNA signed 5/6/95 prior to the company commencing operations as settlement of permit challenges by the SBESC.
  - Traffic mitigation provisions specifying truck routes and prohibiting incoming truck backups or engine idling.
  - Noise limitations on machinery and prohibitions of certain types of operations (stone or concrete crushing).
  - Limitations on hours of operation.
  - Property upkeep requirements.
  - Prohibition on accepting certain types of waste materials.
  - Installation of plastic dust curtains if necessary.
  - Requirement of advertising all job openings at local community center.
- PVS Chemicals, Inc. (sulfuric acid plant) – GNA signed 5/8/97
  - Environmental assessment to be performed by member of GNC.
  - Report of pollution prevention progress, including plans and initiatives, provided to SBESC annually.
  - Public portions of Process Safety Management Plan, Risk Management Plan, Process Hazard Analysis, and Facility Response Plan provided to SBESC at no charge at same time they are filed with appropriate regulatory agencies.
  - Maintenance of a Continuous Emissions Monitoring System.
  - Continued participation in operation and maintenance of Community Alert Network (CAN) emergency notification system.
  - Participate in neighborhood emergency response drill.
  - Notification provided to SBESC of unusual plant activities such as shut down or start up as well as spills or releases to air, soil, or water.
  - Annual meeting upon request of SBESC.
- BOC Gases (industrial gas producer) – GNA signed in 1997.
  - Annual meeting upon request of community members.
  - Establish and update a repository of documents at the local community center, including TRI data and an emergency response plan.
  - BOC will develop a system for sharing emergency information with potentially affected neighbors.
  - Specific incident follow-up procedures concerning notification and reporting.
  - Maintain public access along the Buffalo River's edge and continue to participate in the City's Greenway efforts.

The GNAs are not legally binding and do not contain specific dispute negotiation procedures. It is not known whether they would remain in effect if the companies were sold.

In addition to the individual GNAs, the GNC also negotiated an agreement with three companies—Buffalo Color, PVS and Allied Signal—to install an automated emergency notification system that dials the numbers of local residents in minutes, giving them warnings and instructions on how to respond in the event of any release. The actual implementation results to date will be discussed later.

Costs

The GNA negotiation and implementation costs for the SBESC have been less than $1,000. The BCC spent about $3,300. The individual company costs are not known. None of the companies provided funding to the SBESC to ensure its continued participation in GNA-related activities.

Implementation

The implementation record for these three GNAs is highly variable and generally disappointing. SBESC considers the agreement with National Environmental to be a success because little pressure was needed to get the company to comply with the provisions. The GNA with BOC Gases, however, is described as a "flop," particularly in the area of safety issues. The community groups fought unsuccessfully to prevent BOC Gases from "going remote" (i.e., automated), an operational modification perceived by the community to elevate the risk of accidents. Finally, it is estimated that about half of the commitments made by PVC Chemicals have been met. Generally, the environmental issues have been addressed, with some improvement resulting from the agreement. The CAN system, a computerized telephone system, was installed so that everyone in the community will be called if there is a spill or release.

In terms of implementation, SBESC states that little was gained from the agreements. However, because of the large amount of energy required in fighting for each item, they will "take what they can get." There is a great deal of frustration with the companies, especially in light of the imbalance of power. SBESC advises others considering such negotiations not to back down from larger, resourceful companies. Generally, there has been some improvement found in the Seneca-Babcock community, but the improvements are far from complete. The nature of the companies may also present some difficulties. For example, one of the companies the community group was working with is now in the process of shutting down, staffed by only a skeleton crew. This is disheartening for the community because the purpose of negotiating agreements with companies is not to force them to shut down, only to improve their environmental practices. One other possible tactic being explored by SBESC is the use of Urban Renewal Plan, whereby redevelopment of the area may be encouraged and environmental hazards may be regulated or removed. In the future, the organization asserts that they need funding to hire a staff that is able to concentrate on future agreements or proposals. In this case, the local government has provided a great deal of assistance, but the SBESC would like to see more assistance from the state Department of Health. SBESC estimates that 50-60% of the GNA commitments have been honored, while BCC estimates that 70% have been honored. No subsequent modifications to the agreements have been made. Problems have arisen when the companies have used stalling tactics to avoid complying with the provisions of the GNAs. Also, the GNC has stopped meeting.

Additional details about the status of implementation activities are provided in the table below:

Natural Environmental, Inc. Commitments (5/6/95)

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Traffic	▪ All company truck traffic approaches the facility from I-190 on Keating St. ▪ NE personnel are on site by 6 a.m. each work day and trucks are not allowed to line up on Kellogg St. ▪ No idling trucks parked outside facility	
Noise	▪ The wood chipping machine is operated at an average of no higher than 80 dB and is not audible from inside the houses on Kellogg St., is operated only when facility doors are closed, and is not operated after 8 p.m. ▪ No stone or concrete crushing	
Hours	▪ Facility only accepts materials from 7 a.m. to 5 p.m. Monday-Friday and 8 a.m. to noon on Saturdays ▪ Processing ends by 11 p.m. Monday-Friday and by 8 p.m. on Saturday	
Property	▪ The property is kept up at all times and any spills are immediately cleaned up	
Toxics	▪ Neither painted/treated wood nor materials containing asbestos are processed	
Plastic Air Curtains	▪ If complaints were received about dust, NE installed plastic curtains on the doorway of the offending truck bay	
Jobs	▪ NE advertised all job openings at the Seneca Babcock Community Center	
Good Neighbor Process	▪ NE has contacted the Lovejoy Councilmember and the Seneca-Babcock Community Center when it anticipated changes to any of these conditions	

BOC Gases Commitments (early 1997?)

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Community Meetings	▪ On request, BOC holds an annual meeting with community members	
Public Information	▪ BOC established and updates a repository of public information at the Old First Ward Community Center	
Emergency Notification	▪ Where needed, BOC developed a system for sharing information with potentially affected neighbors	
In the event of any release, fire, accident, or explosion	▪ BOC supplied the Old First Ward Community Center and the GNC with a one page memo within 24 hours ▪ BOC held a public meeting within 10 days if requested or warranted	
Process Modifications and Public Access	▪ Utilized the Cornell Chemical Information Program to facilitate process modifications ▪ Maintained public access along the Buffalo River	
Future Review	▪ After five years, reviewed the need for the GNA and agreed to terminate and/or revise as deemed mutually appropriate	

PVS Chemicals, Inc. Commitments (5/8/97)

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Plant Access	▪ Allowed member to tour plant and recommend process improvements for pollution prevention	
Reports and Meetings	▪ Provides GNC with annual report on pollution prevention progress ▪ Conducts an annual meeting with GNC (if requested)	
Access to Management and Response Plans	▪ Provided GNC with free copies of the public portions of: (1) the Process Safety Management and Risk Management Plans, (2) the Process Hazard Analysis, and (3) the Facility Response Plan and updates	

Emissions Monitoring System	▪ Has maintained a Continuous Emissions Monitoring System with real time data available to the DEC via modem	
CAN system	▪ Continues to participate in the operation and maintenance of the CAN system	
Emergency Drills and Plume Maps	▪ Has performed an emergency response drill within the S-B neighborhood ▪ Has provided GNC with a copy of plume maps	
Notification of Unusual Activity or Incidents	▪ Notifies the SBESC of unusual plant activities such as shut down or start up ▪ During spills or releases with off-site impacts, notified the SBESC as soon as practical ▪ Provided GNC with a copy of any incident report submitted to the DEC	

Lessons Learned

Dawn Caldarelli, Director of SBESC, gives their GNAs an overall success rating of 5 out of 10, while Bill Nowak of the BCC gives them a 6. They will both continue to seek to negotiate GNAs with other local companies in the future. If Dawn had it to do over again, she would like to speed up the process and possibly come out with a more legally binding document. Bill would also like to see quicker solutions to prevent wearing down community activists. He would also like to obtain full scale agreements with some legal teeth that would contain specific pollution reduction goals. Unexpected benefits of the process were increased knowledge, meeting great people, and implementing the emergency notification system. Dawn and Bill's advice to other groups considering a GNA is to stay committed, don't give up or become intimidated, develop strong strategies to get the companies involved, and hire someone to monitor the company and report back to the group if you are able.

References

1. GNAs
2. GNA Survey response and workshop briefing by Dawn Caldarelli, SBESC, and Bill Nowak, BCC [On file with the Natural Resources Law Center (2002)].
3. Notebook of information and other materials compiled by survey respondents.
4. Briefing on GNA implementation by Dawn Caldarelli, SBESC, and Bill Nowak, BCC (July 2003).
5. Briefing on GNA implementation by Dawn Caldarelli, SBESC (July 2004).

Shoreline Environmental Alliance, CBE, Crocket/Rodeo Coalition

and

Unocal

Introduction

On April 7, 1995, a Good Neighbor Agreement ("GNA") was signed by Union Oil Company of California ("Unocal"), Shoreline Environmental Alliance ("SEA"), Crockett/Rodeo Coalition ("CRC"), and Communities for a Better Environment ("CBE"). The purpose of the GNA was to address issues of concern to the local community regarding accidental chemical releases from the refinery. The agreement is legally binding and presumably still in effect today.

The Parties

CBE is an environmental health and justice non-profit organization, promoting clean air, clean water and the development of toxin-free communities. CBE's three-part strategy consists of grassroots activism, environmental research and legal assistance within underserved urban communities. CBE directly equips residents impacted by industrial pollution with the tools to inform, monitor, and transform their immediate environment.

A direct result of CBE's involvement with the Crockett/Rodeo community and the GNA negotiation process was the formation of the community group SEA in 1994. SEA has a paid staff of three and an annual operating budget of $50,000 derived from individual and member contributions (5%), government grants (75%), and foundation grants (20%).

Unocal began operations in the community in 1879. The refinery employs 200-400 local residents and is moderately important to the local economy. At the time the GNA was negotiated, Unocal was profitable, expanding, and publicly traded.[27]

Nature of the Dispute

In September 1994, Unocal had two separate releases of toxic substances, one of which was potentially deadly hydrogen sulfide gas which hit the local elementary school and sickened many children and teachers. (The first release lasted sixteen days and was the result of the company intentionally keeping on-line a unit known to be leaking.) Complaints from the community fell on deaf ears at Unocal. As community outrage and demands for action grew, there were several public meetings and strategy sessions attended by community leaders, environmental groups, and labor unions. The groups decided to challenge Unocal's expansion permits to try to force them to sign a legally binding GNA. In spite of initial resistance, Unocal finally agreed to negotiate

[27] Ratings and other opinions are taken primarily from SEA's responses to the GNA survey.

after county supervisors directed them to do so if they wanted to be approved for their reformulated fuel construction permits.

The citizens' primary concerns were public health, nuisance and quality of life, and impacts on the environment. Prior to negotiating the GNA, the community groups, as well as individual residents, took numerous actions, including participating in public hearings, appealing permit decisions, urging regulatory agencies to better enforce the laws, filing individual lawsuits, trying to get regulatory agencies to file suit, meetings with company representatives, phone calls, negative publicity campaigns, and community "bucket brigades."

Negotiation of the GNA

Numerous parties took part in the GNA negotiations, including CBE, SEA, CRC, Bayo Vista Housing Project, union reps, local government reps, members of the general public, and Crockett and Rodeo Chamber of Commerce reps. The agreement took eight months to complete, during which time one to three meetings per week were held which lasted up to five hours each. During negotiations, SEA had access to lawyers and legal expertise, trained negotiators, and technical/economic data, but Ms. Kessler felt they did not have access to technical consultants. Denny Larson states that SEA did, in fact, have access to numerous technical consultants such as CBE's scientists, other medical and scientific experts, and Mr. Larson himself, who served as a media/organizing and negotiation advisor.

SEA and other participants sought numerous commitments from Unocal including specific pollution prevention, reduction, and remediation measures; traffic mitigation; investments in the local community; performance of and community involvement in regular environmental audits and monitoring; access to emergency response plans; financial support for the community group(s); and a fenceline monitoring system. One measure that the community desired but did pursue in negotiations was the removal of the only elementary school in the area from the Unocal fenceline. Unocal instead agreed to conduct an area wide risk assessment of all the schools in the vicinity of the plant, both public and private.

At the suggestion of the unions involved in the negotiations, Unocal was asked to sign a simple statement that committed them to negotiating a list of concerns in good faith to resolution (similar to what unions do at the start of contract talks). In agreeing to negotiate, Unocal was seeking to end the challenge to their land use permit for the clean fuels expansion project. However, Unocal subsequently tried to back out of actually signing an agreement to negotiate, and the community groups went to the press and the county planning department that was hearing Unocal's permit case. As a result, the county took the extraordinary step of passing a permit condition that required the company to sign a GNA.

Mr. Larson stated that one successful negotiation tactic was to bring a court reporter to each meeting to take exact minutes that were then written up and approved. This was a very important strategy which prevented Unocal from backing out of signing the agreement to negotiate in good faith. Other important sources of leverage were the revelation that the 16-day leak was 100% preventable and the support of Ed Masry and Erin Brockovitch who filed the

toxic tort cases. Also, leverage was provided by an agreement with the trade unions to not sign a labor contract unless a GNA was signed and the GNA parties to not sign a GNA unless a labor contract was signed.

In the final document, Unocal agreed to the following provisions:

- Health Risk & Medical Monitoring
  - Continue to fund independent health risk assessment;
  - Fund the establishment and operation of a medical clinic for diagnosis and treatment of people affected by the Unocal Catacarb release incident;
  - In the event of a release, work with local health care providers to provide early medical intervention for affected residents;
  - Fund epidemiological study of the health impacts of recent chemical release on the affected members of the community; and
  - Fund an emergency response van.
- Emergency Response and Community Warning
  - Create and fund a health effects database;
  - Participate in a working group to develop a feasible community-based information and notification system that will meet the community's needs; and
  - Fund the purchase and installation of a siren as part of the county community warning system.
- Vegetation and Parks
  - Plant vegetation on land between the refinery and Rodeo;
  - Fund construction of a bike path through Unocal property; and
  - Contribute $5,000 each to Lindsay Museum and to the Carquinez Preservation Trust for trees.
- School Safety Issues
  - Install and maintain a permanent monitoring station at the local elementary school;
  - Provide emergency response education and training to teachers and students; and
  - Contribute $500,000 to the elementary school for chemical safety issues.
- Vocational Training and Local Hiring
  - Fund vocational training at local high school;
  - Announce job opportunities locally; and
  - Institute and fund a local hiring outreach program.
- Transportation
  - Mitigate traffic impacts from construction of the Reformulated Gasoline Project;
  - Contribute $4.5 million to county for local roads; and
  - Discontinue use (and transportation) of anhydrous ammonia by 12/31/01.
- Environmental Issues
  - Install a state-of-the-art fenceline monitoring system;
  - Fund an independent audit of the refinery;
  - Reduce onsite emissions of Volatile Organic Compounds (VOCs), and
  - Make audit and study results available through the Community Advisory Panel.
- Financial Issues
  - Contribute $300,000 annually to local communities and schools;
  - Funds not spent can be carried over to the following year; and
  - Agreement to negotiate continuation of payments after 15 years.

The community groups agreed to drop permit challenges to Unocal's Land Use Permit and the associated Environmental Impact Report as well as the Authority to Construct and Permit to Operate issued by the Bay Area Air Quality Management District.

The GNA assigns the task of developing a process for distribution of the funds within six months to CRC and SEA. It further assigns oversight of the GNA to CRC. Unocal also agreed to submit a quarterly summary to the CAP reporting progress on implementation of the GNA.

The GNA does contain dispute resolution procedures – specifically, mediation – with Unocal agreeing to pay one-half the cost of the mediator. If mediation fails to resolve the dispute, any party may bring a lawsuit; however, the agreement expressly prohibits payment of attorney's fees to the victorious party.

The provision which discusses a change in ownership states that a party may transfer or assign the GNA to a successor as long as "the affiliates, successors, or surviving corporation shall agree in writing to assume all of the obligations hereof." According to Denny Larson, this "clause is as airtight as it gets." However, when the plant was sold the new owners tried to get out of the GNA and only agreed to continue to abide by it when they were "pressed." The most current status of implementation of the GNA provisions are presented later in this case summary.

Costs

No specific cost information was available for negotiation of the GNA. An estimated $45,000 was spent by SEA for implementation, and it is not known how much Unocal spent, but the funding commitments easily exceed several million dollars. The GNA did not specifically provide for funding for oversight and implementation activities performed by SEA or other community groups. Kasha Kessler states that a portion of the annual $100,000 contribution to each community was supposed to go to oversight, but Community Foundation politics prevented this from happening.

Implementation

This toxic substance accident destroyed any previously existing trust held by the county, cities and area agencies. The lack of trust set the stage for negotiating the GNA. The community members decided to focus their attention to finding ways to reduce waste, clean-up materials, provide health care, and implement a monitoring system. At the same time, the refinery had just applied for a land use permit, a permit that the community groups could use as leverage during negotiations. The GNA was negotiated and signed within three months of the accident. Portions of the GNA were adopted into the final permit award, assisting with the enforcement of certain provisions.

As of July 2004, representative Janet Callaghan estimates that approximately 60% of the commitments in the GNA have been honored by Unocal. Some problems have been encountered

with the implementation process. The company previously known as Unocal has since been sold twice, and is now Conoco/Phillips. The subsequent owners have disregarded many sections of the GNA. In fact, no disputes have been resolved following the procedures outlined in the GNA. Unfortunately, SEA is currently a shadow of its former self. When the GNA was first formed, SEA had access to $50,000 for monitoring purposes and was present at meetings. Now, there is no money left and no direct line of communication. Because SEA has not continued its oversight activities, it is unknown how many other commitments have not been met. There are five active board members that meet once a year to help monitor the GNA. Enforcement of the GNA relies solely on the tenacity of the individuals involved. For example, one person receives real-time fenceline monitoring data over the internet, another receives month Conoco/Phillips fenceline emission summary reports, while two others continue to interface with the plant as CAP members. Four SEA members are actively involved in the fenceline monitor upgrade taking place in 2003-2004. Although the plant is supposed to publish quarterly implementation progress reports, the last reports were viewed on May 31, 2002 and in the fall of 2003. Regarding advice for further GNA negotiations, it was noted that it is difficult to maintain a GNA without the necessary funding and follow through.

Because of the difficulty experienced by the community group in obtaining funding to monitor their GNA, the current implementation condition of several provisions are unknown. Additional details about the status of implementation activities are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Health Risk and Medical Monitoring ▪ Pay for medical assessment and treatment of victims ▪ In the event of a subsequent release, work with local health care providers to provide early medical intervention ▪ Contribute up to $238,000 to epidemiological study of the health impacts of the recent chemical release ▪ Provide up to $20,000 to fund an Emergency Response Van	▪ The company paid for medical assessment and treatment of victims ▪ It is difficult to assess the provisions regarding subsequent releases because (a) no "major" releases since the agreement, and (b) the community group lacks access to individuals' medical records ▪ The company was to establish and operate a medical clinic to treat people affected by the release incident for up to 6 months (at $120,000 month); in actuality, the company set up the clinic for 18 months ▪ Funded independent health risk assessment and released a final report	▪ Although the independent health risk assessment was conducted, SEA felt the findings were skewed and followed up with a report of their own
Emergency Response and Community Warning	▪ Funded the purchase and installation of siren as part	

▪ Create and fund a health effects database for refinery chemicals by March 1, 1995 ▪ Participate in a working group to develop a feasible community-based information and notification system ▪ Notification system designed by July 1, 1995 and installed by December 31, 1995	of warning system (although it is unclear if the system really works)	
Vegetation and Parks ▪ Continue funding Lindsay Museum at previous level ▪ Contribute $5,000 to educational programs ▪ Make $5,000 donation to Carquinez Strait Preser-vation Trust for trees ▪ Maintain membership in Carquinez Strait Preservation Trust	▪ The company did a lot regarding vegetation (and is committed to spend $30,000 per year for nine years to vegetate appropriate areas)	▪ The company did little to implement provisions relating to parks ▪ Company was supposed to build bike path through Unocal property, but decided it was a bad idea to invite people into this hazardous area
Transportation ▪ Mitigate traffic impacts from construction of Reformulate Gasoline Project ▪ Contribute $4.5 million to county for local roads	Discontinued use and transportation/storage of anhydrous ammonia	
Environmental Issues ▪ Install a state-of-the-art fenceline monitoring system ▪ Fund independent audit of refinery ▪ Transmit to SEA all written and verbal incident notifications and written materials provided to Community Advisory Panel (CAP) ▪ Make hydrogen sulfide facility study results available through CAP ▪ Do not seek emission reduction credits for any air pollution reductions listed in GNA	▪ Infrared air monitoring system in place ▪ Reduced fugitive emissions of Volatile Organic Compounds (VOCs) by 34% through leakless valves	

Lessons Learned

If similar disputes were to arise in the future, group member Janet Callaghan would choose to negotiate another GNA. In addition, the group could pursue options such as filing suit, "taking to the streets", and applying political pressure. If the group had it to do over again, they would reduce the number of people at the negotiating table; only negotiate issues that dealt directly with the mitigation of the toxic releases; keep the issues more focused; get more money; and have an airtight redress process and legal section. Denny Larson points out that the parties did "take it to the streets" and applied political pressure; that allowed certain provisions in the GNA to be enacted even before the GNA was signed. He also points out that initially Unocal tried to cut a deal with a county supervisor, and if the community groups had not demanded that the process be opened up and more parties allowed a place at the table, there would not have been a GNA. He feels that most of their strength came from the 100% inclusion demand.

One unexpected benefit of the GNA was follow-through on installation of the state-of-the-art fenceline monitoring system. After this system was installed in 1997, there have been no further releases of toxic chemicals into the community.

Kasha's concerns regarding the ability of SEA to monitor the GNA stem from SEA being "hamstrung" from the beginning by the Foundation (which was formed to distribute the mitigation funds). (Mitigation funds are used for a variety of community programs, and are not necessarily reserved for dealing with GNA implementation or the issues at the heart of the GNA.) Her advice to other groups is to go in with a united front, a clear idea of your goals, and make sure your legal section is enforceable and legal action financed. Mr. Larson points out that the difficulties SEA has had with the Foundation are more a reflection on SEA's organizing strength and not that the GNA would not allow for any implementation monitoring funding. Mr. Larson agrees that the provision that "no payment of attorney's fees shall be allowed" should not have been included, at least with respect to citizens' suits filed to force implementation of the agreement.

References

1. GNA
2. GNA Survey response and workshop briefing by Kasha Kessler, SEA [On file with the Natural Resources Law Center (2002)].
3. "The Unocal Agreement," found at gnp.enviroweb.org/unocal.html
4. "The Good Neighbor Agreement," found on the SEA web site at sea.enviroweb.org/gnaintro.html.
5. "An Outline of the Good Neighbor Agreement," downloaded from the SEA web site.
6. Sanford Lewis and Diane Henkels, "Good Neighbor Agreements: A Tool for Environmental and Social Justice," found at www.cpn.org/sections/topics/environment/stories-studies/lewis_henkels.
7. Sanford Lewis, "Precedents for Corporate-Community Compacts and Good Neighbor Agreements," found at gnp.enviroweb.org/compxpr2.html
8. Communities for a Better Environment web site at www.cbecal.org.

9. E-mail from Denny Larson to Doug Kenney dated April 24, 2003.
10. Briefing on GNA implementation by Anne Fitzgerald (July 2003).
11. Briefing on GNA implementation by Janet Callaghan (July 2004).

Texans United Education Fund

and

Rhone-Poulenc

Introduction

In November 1992, a Good Neighbor Agreement ("GNA") was signed by Texans United Education Fund ("TUEF"), members of local neighborhood groups in Manchester, Texas, and Rhone-Poulenc Basic Chemicals Company ("RP"). The purpose of the GNA was to facilitate community input into environmental and safety auditing and decision-making at the plant. The agreement is a legally binding document that was incorporated into the company's incinerator permit issued by the Texas Water Commission ("TWC").

The Parties

TUEF, founded in 1988, is a non-profit public interest organization with a paid staff of one and an annual operating budget of approximately $25,000. Since its inception, TUEF has confronted powerful corporate polluters and ineffective government agencies on pollution-related issues affecting local communities with a focus on chemical plants, refineries and toxic waste sites. TUEF teamed up with local neighborhood associations to work on the GNA. The key to winning the agreement and seeing it implemented was organizing the community and forming a Community Advisory Committee ("CAC") made up of representatives from local neighborhood groups.

RP began operations in Manchester, Texas, in 1970. The company employs approximately 200 local residents. The company and the chemical sector are moderately important to the local economy. At the time the GNA was negotiated, RP was profitable and concerned about public opinion.

Nature of the Dispute

Two types of issues prompted community concern about RP's operations: nuisance and quality of life issues (odors, noise, traffic) and public health concerns (toxic releases/spills and illnesses.) One specific event that galvanized community forces was an accidental release of sulfur dioxide in June 1992 which sent 27 people to area hospitals. Prior to negotiating the GNA, community groups had participated in public hearings; appealed state permit decisions; urged regulatory agencies to better enforce existing laws; wrote to and met with company officials, and conducted negative publicity campaigns.

Three primary factors ultimately motivated the parties to sit down at the bargaining table: community opposition to modification of RP's permit issued by the TWC; the negative publicity

surrounding the sulfur dioxide release; and the community's growing awareness of its right to information. RP was willing to negotiate a GNA when they realized that 1) it would not hurt them, 2) it would improve community relations, and 3) that they would possibly have their permit denied if they did not reach a settlement with TUEF/CAC. The participation of TUEF was a key component of the community's leverage. This was evidenced by RP's attempt to remove TUEF from the final provisions of the agreement.

Negotiation of the GNA

Negotiation of the GNA took a period of approximately six months. TUEF/CAC met directly with the company and their attorneys. TUEF/CAC had access to attorneys but did not need them. They brought negotiating experience to the table but had never been formally trained. TWC was deliberately excluded from the negotiations, but was not completely removed from the process because it had to approve the settlement as it was made part of the company's permit; thus, TWC served as a consultant if any particular regulatory questions arose. Two state senators and one city council member showed up at one or two meetings to lend their support for the citizens' groups. These representatives were also signatories to the final agreement.

The specific commitments sought by TUEF/CAC were pollution prevention/reduction/ remediation goals; traffic mitigation; regular meetings, information, and accountability; commitment to perform regular environmental audits and/or monitoring; community involvement with environmental and safety audits, access to results, and participation in RP's planning, advisory, and/or decision-making process; access to company accident prevention and response plan and relevant environmental data collected by RP; split environmental samples to allow for independent analyses; and radio station alerts whenever an accidental release occurred. In return, RP wanted TUEF/CAC to drop the permit challenge.

In the final agreement, RP agreed to the following provisions:

- Recognize and work with the CAC.
- Upon request, provide financial assistance to the CAC in an amount agreeable to both the CAC and RP to cover administrative costs of the CAC.
- Discuss and negotiate improvement of local emergency notification procedures. The CAC is allowed to have input into the design of this system.
- Notify the CAC of any changes to designated hazardous waste transportation routes and provide the CAC with information regarding frequency of shipments of hazardous waste or materials into the plant.
- Make available to the CAC groundwater and surface water monitoring data as well as providing split samples for independent analysis.
- Provide the CAC with employee health study results and work with the CAC to determine the feasibility of a citizens' health survey. If pursued, RP will help develop the survey and cover the administrative expenses incurred by the CAC in performing the survey (up to $4,000).
- Allow the CAC to participate in emergency response planning involving potential fires, explosions or releases of hazardous substances
- Provide the CAC with information regarding OSHA recordable accidents on a monthly basis.

- Fund and participate in an annual environmental and safety audit program by an independent auditor; allow citizen participation in the audit process; allow citizen inspections of plant operations by appointment at all reasonable times; provide TUEF and the CAC with copies of the audit findings; negotiate in good faith to implement the audit recommendations.
- Maintain an off-site sulfur dioxide monitoring system and keep the CAC advised of major changes to the system.
- Conduct dispersion modeling and prepare hazard assessments or consequence analyses which identify potential plumes of contamination into the community; negotiate modeling scenarios with the CAC and make the results public.
- Household hazardous wastes will not be received by the facility unless RP is requested to do so by TWC and can maintain all permit parameters while processing the waste.

It is not known whether the GNA survived the subsequent permit renewal process which occurs every five years. The actual status of each implementation point will be discussed later in this case study.

Costs

No information is available regarding the costs of negotiating or implementing the GNA. RP did not provide funding to TUEF to ensure its continued participation in GNA-related activities. (TUEF is against this in principle.)

Implementation

Rick Abraham (TUEF Director and survey respondent) estimates that 90-100% of the commitments in the GNA have been honored. As previously stated, this process was initiated after there had been an accident next to the plant. The CAC participated in the permitting process, exercising their right to oppose the permit as "leverage." As part of the emergency notification system, an AM radio station and siren were established to alert the community of any problems. Both the radio station and siren are still in place. The primary concern of the CAC was centered on air pollution. As such, CAC entered into these negotiations looking for opportunities to improve the quality of living in the area. In addition to guarantees regarding air, they also negotiated GNA provisions addressing hazardous waste and water pollution. The purpose of the CAC was to have the opportunity to exercise these provisions. Some were exercised, others were not. Under certain provisions (e.g. preparing a citizens' health survey, requesting financial assistance from Rhone-Poulenc, etc.) it was up to the CAC to request implementation. Other than the provisions where CAC opted not to request implementation, Rhone-Poulenc met their GNA responsibilities. One suggestion presented was to involve groups beyond just local groups, including state and national groups that may assist the group by providing resources. The one problem noted is the difficulty in keeping the community group together and involved. To date, no significant modifications have been made to the original agreement.

Additional details regarding the status of implementation activities are described in the table

below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Recognize and work with Community Advisory Committee (CAC)	▪ Provided documents to CAC and public library unless confidential ▪ Provided representatives to answer questions	▪ Rhone-Poulenc (RP) did not provide financial assistance to CAC, however, this provision was only to be implemented at the request of CAC. ▪ CAC never requested this financial assistance.
Improvement of local emergency notification procedures	▪ CAC provided input into the system design. ▪ Necessary license and approvals obtained within 120 days of signing GNA	
Improve the transportation of hazardous wastes	▪ Advised CAC of changes in transportation routes ▪ Provided CAC information about frequency of shipments ▪ Informed community about the DOT hazardous materials placard system ▪ CAC provided input about RP's efforts to minimize transportation risks ▪ Transportation routes and enforcement policies were provided at first CAC meeting	
Provide CAC with copies of any ground and surface water monitoring analyses on a monthly basis	▪ CAC reps were allowed to be present during sampling procedures to receive split samples	▪ RP was to split samples with CAC on request. CAC never requested the implementation of this provision
Provide CAC with a copy of its 1992 employee health study	▪ The study was provided to CAC ▪ RP worked with CAC to review feasibility of a citizens' health survey	▪ GNA provisions whereby, if a citizens' health survey was conducted, RP would cover administrative expenses and negotiate the possible need for a local off-plant health survey ▪ It was determined that a citizens' health survey was not necessary.
Allow CAC to participate in RP's "tabletop" emergency drills	These drills are still being conducted	
Provide CAC with monthly OSHA recordable accident information	Provision was implemented	

Fund and participate in independent environmental and safety audit program	▪ Initiated first audit procedure within 90 days of receiving modified permit ▪ Allowed citizen participation in the audit process ▪ Allowed other citizen inspections by appointment at all reasonable times ▪ Auditor provided findings of audit to TUEF ▪ Considered recommendations from citizens for implementation	
Maintain off-site SO_2 monitoring	▪ Kept CAC advised of any major changed made to monitoring system ▪ Allowed inspection of system by CAC and TUEF within 90 days of receiving modified permit ▪ Provided CAC and TUEF with all information relevant to system ▪ On request, provided CAC with analytical information ▪ Allowed for follow-up inspections by CAC	
Make groundwater data from RCRA corrective action investigation available to "undersigned citizens"	Provision was implemented	
Conduct "worst case" scenario models	▪ Provided analysis and plume maps to CAC ▪ Negotiated modeling scenarios with CAC	
Do not receive household hazardous wastes at the facility unless able to continue to operate within all permit parameters while processing the waste, and request for receiving the waste was from the TWC.		

Lessons Learned

Speaking on behalf of TUEF, Rick Abraham rates the GNA a nearly complete success.[28] If similar disputes were to arise in the future he would be willing to negotiate another GNA. If he

[28] Ratings and other opinions are taken primarily from TUEF's response to the GNA survey.

had it to do over again he would speed up the process; be more clear on what they want; better prepare the group for the negotiating process; and make the agreement less legal and more easily understood.

As for the future, Rick Abraham does have concerns about his group's ability to address all of the issues involving communities and companies operating in their midst and the fact that there are "too many other companies." Overall, his advice to other groups considering this tool is to be clear, keep it simple and straightforward, keep government agencies out of the process, and "be tough."

References

1. GNA
2. GNA Survey response and workshop briefing by Richard Abraham, Texas United Education Fund. [On file with Natural Resources Law Center (2002).]
3. Texans United Education Fund web site (http://home.flash.net/~tuef).
4. Richard Abraham, "Citizens Negotiate New Rights with Petrochemical Companies in Texas" (undated).
5. Patrick Field, "Community Negotiates Agreement with Local Chemical Plant," Consensus (published by the MIT-Harvard Public Disputes Program), January 1994, no. 21.
6. Briefing on GNA implementation by Richard Abraham, TUEF (July 2003).
7. Briefing on GNA implementation by Richard Abraham (April 2004).

West County Toxics Coalition, CBE, People Do!

and

Chevron Refinery

Introduction

In 1992, a Good Neighbor Agreement ("GNA") was signed by the Richmond, California, Chevron Refinery, the West County Toxics Coalition, Citizens for a Better Environment, and People Do! The agreement incorporated commitments to both reduce/prevent pollution and invest in the local economy. The GNA is a legally binding agreement that was negotiated in response to Clean Air Act violations.

The Parties

The Richmond-based West County Toxics Coalition ("WCTC") was founded with assistance from the National Toxics Campaign. The San Francisco-based Citizens for a Better Environment ("CBE") furnished the group with technical assistance and documentation of the local environmental problem.

Chevron began operating the Richmond refinery in 1980. The company employs about 60 local residents. Chevron and the refinery sector are both very important to the local economy. At the time the GNA was negotiated, Chevron was profitable, expanding, publicly traded and concerned about public opinion.

Nature of the Dispute

Over its long history, Chevron has had innumerable accidents and has been cited for serious violations of almost every conceivable environmental law. The issues of greatest concern to the neighboring community were public health concerns, impacts on the environment, and nuisance and quality of life issues. The community was also very concerned with the potential for fire and explosions and the company's ability to quickly and effectively respond to an emergency.

Prior to negotiating the GNA, the community groups took a number of actions, including participating in public hearings and commenting on public documents; appealing local, state, or federal permit decisions, urging regulatory agencies to better enforce existing laws and/or to adopt new laws; threatening to file a lawsuit; writing to and meeting with company representatives; pressuring elected officials; shareholder resolutions; and conducting negative publicity campaigns. The primary events that resulted in the decision to negotiate a GNA were permit appeals by the community before the Bay Area Air Quality Control District ("BAAQCD"). These meetings occurred because Chevron was applying for permits to make "cleaner fuels" which required various construction projects and process changes.

Negotiation of the GNA

In 1990, the WCTC brought in the Reverend Jesse Jackson to negotiate with Chevron. This meeting included representatives from the WCTC, the National Rainbow Coalition, and the Sierra Club. Chevron was presented a six-point plan that included the following:

- Annually set aside 1 percent of the cost of Chevron's proposed $1 billion modernization for a clean-up fund. Uses of the fund should include employing Richmond's unemployed to help clean up the environment, financing community health care, and purchasing new pollution-reduction technology;
- Establish a 24-hour medical clinic to provide services to those harmed by Richmond's polluting industries;
- Reduce the quantity of toxic waste burned in Chevron's Ortho Chemical plant incinerator;
- Bring together representatives of other polluting industries and pressure them to reduce their companies' toxic emissions;
- Divest from South Africa; and
- Negotiate a timetable for accomplishing the above goals.

While Chevron did not agree to this specific plan, it did agree to negotiate. In return, Chevron sought assurance that a lawsuit would not be filed and sought to generate positive publicity for the company. During the negotiation process, the community groups felt they had adequate access to lawyers and legal expertise, technical consultants, trained negotiators, and technical/economic data.

It took approximately one and a half years to negotiate the GNA. The final agreement contained the following provisions:

- Pollution Elimination
    - Install leakless valves
    - No pollution credits for the valve emission reductions
    - Fenceline air pollution monitoring with community-suggested target chemicals
    - Continue toxic emission reductions
- Local Economic Commitments
    - $5 million over five years to nearby neighbors through United Way and nonprofit service organizations
    - Skilled job training to 100 fenceline neighbors
    - Aggressive pursuit of community-based hiring
- Emergency Response and Health Care Commitments
    - Install sirens/computers and train emergency workers
    - Establish and fund city emergency services coordinator position for 5 years
    - Contribute $2 million to local health center.

The GNA is a legally binding document that was negotiated in compliance with rulings by the BAAQMD as part of the permitting process. If the company is sold, the agreement will remain in effect. The agreement contains no dispute resolution process. The success of the community groups in implementing the GNA provisions is discussed later.

Costs

Cost information is not available for this GNA. Chevron did not provide funding to any community group to ensure its continued participation in the implementation process.

Implementation

The negotiation of this GNA helped to establish one of the first environmental groups in the region. The primary concern in 1986 was how to get Chevron to negotiate with the community group initially. It was not until 1990 that Chevron appeared at the negotiating table, after WCTC came to the meeting with Jesse Jackson. City officials convinced Chevron to negotiate the GNA only after WCTC did a great deal of political organizing. Chevron became concerned with the level of publicity they were receiving. During negotiations, WCTC asked Chevron to provide medical assistance to the surrounding community, to get rid of their incinerator, and to use part of their modernization campaign to clean-up the area, among other things. There was no real progress during negotiations until WCTC discovered that Chevron had applied for a permit to build expansions in order to burn oil. WCTC used this permit as a type of leverage, recognizing that the permit process provided an opportunity for the community group to stall the proposed expansion. It was clear to Chevron that talking to the group may expedite the process.

At that point in the negotiations, WCTC preferred to focus on the economic side of their requests. In the past, Chevron had historically donated a great deal of money to organizations that did not necessarily pertain to the local community. WCTC encouraged Chevron to continue to donate to these organizations, but asked Chevron to donate to the people and projects in the area surrounding the company at the same level. Overall, there have been some gains achieved through the implementation of certain GNA provisions. It is estimated that the company initially honored nearly 100% of its commitments under the GNA. However, it is reported that there has been some "backsliding" and conduct not "continuing in the spirit," causing some neighbors to be unhappy with Chevron. Follow-through is identified as the primary problem, but WCTC is reluctant to enforce the GNA provisions because enforcement would require the use of economic and legal resources. Community groups, such as this one, often focus on one issue at a time. Many members have moved on to the next battle, and as a result, no one is currently monitoring this GNA. No subsequent modifications were made to the agreement.

Additional details regarding the implementation of the GNA are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Elimination of pollution ▪ No pollution credits taken for the valve emission reductions	▪ Chevron installed leakless valves	▪ Fenceline air pollution monitoring did not happen ▪ Have not continued to reduce toxic emissions
Provide economic assistance to the local community ▪ Skilled job training to 100 fenceline neighbors ▪ Seek community-based hiring	▪ Chevron began donating more money to non-profit organizations located in areas surrounding the refinery	▪ Chevron has increased local donations, but it is unclear if Chevron has met the $5 million over five years provision

Provide for emergency response system and health care assistance ▪ Install sirens/computers and train emergency workers ▪ Establish and fund city emergency services coordinator position for 5 years	▪ Initially, Chevron did not follow through with the $2 million contribution they committed to donate toward the building of a local health center ▪ Chevron finally donated the money, but has not continued to fund the health center	▪ Chevron recognized that the GNA only required that they build the health center, but did not require continued funding

*These commitments were gleaned from various press releases and articles, as we do not have a copy of the actual GNA.

Lessons Learned

Survey respondents rated the GNA an 8 and a 10 in terms of overall success.[29] Both respondents would choose to negotiate another GNA under similar circumstances. Unexpected benefits from the process were the feelings of community empowerment and the education received by those who were new to such an endeavor. The primary concern is the ability of the community group to monitor the implementation process. Both respondents consider a GNA to be worth pursuing, but it will not solve all the problems.

References

1. GNA Survey responses and workshop briefing by Dr. Henry Clark, West County Toxics Coalition, and Dr. Sarah Eeles, Richmond, CA [on file with the Natural Resources Law Center (2002)].
2. Robert D. Bullard (ed.), Confronting Environmental Racism, Voices from the Grassroots (1993), pp. 32-36.
3. Good Neighbor Project web page: http://gnp.enviroweb.org/chevron.html.
4. Briefing on GNA implementation by Anne Fitzgerald, on behalf of WCTC and CBE (July 2003).

[29] Ratings and other opinions are taken primarily from the two responses to the GNA survey, as submitted by Drs. Clark and Eeles.

Western Slope Environmental Resource Council

and

Bowie Resources

Introduction

In February 2000, a Good Neighbor Agreement ("GNA")—termed a memorandum of understanding—was signed by the Western Slope Environmental Resource Council ("WSERC") and Bowie Resources Ltd. ("BRL"). The purpose of the GNA was to mitigate potential impacts on the local community resulting from a proposed increase in coal production by several local mines. The GNA is a legally binding document which addresses issues related to truck and rail traffic, noise, and local water supplies.

The Parties

Western Slope Environmental Resource Council ("WSERC"), founded in 1977, is a non-profit organization dedicated to protecting and enhancing the natural environment and quality of life in Delta County, Colorado, and Colorado's Western Slope. WSERC seeks to build an aware and active community that can live with harmony and respect for the land and other natural resources. The group has 250 members and an annual operating budget of approximately $100,000, which is generated by membership dues, special events, donations and grants.

The Concerned Citizens of Garvin Mesa, a group of about 20 local residents, also participated in the GNA negotiations. It was this group's appeal of the permit process which sparked the GNA negotiations in the first place.

Addington Enterprises opened the Bowie mine in the North Fork Valley in 1994 and began operations as BRL. BRL is fairly important to the local economy (8 on a scale of 10), while coal mining in general represents a significant sector of the local economy (6 on a scale of 10).[30] At the time the GNA was negotiated, BRL was expanding, seeking financing, privately owned, and concerned about public opinion.

Nature of the Dispute

Three coal mines operate in the North Fork Valley: Oxbow, Bowie, and West Elk. In 1998, local citizens became concerned over the potential impacts of the three mines' plans to more than double the valley's production from 8.3 million tons in 1998 to nearly 20 million tons in 2003. Of particular concern were the significant increases in rail and truck traffic. Also of concern to nearby residents was BRL's plan to mine the Iron Point deposit underlying a reservoir on Garvin

[30] Ratings and other opinions are taken primarily from WSERC's response to the GNA survey.

Mesa and the increase in noise levels anticipated to accompany the increase in production.

Of the three companies, only BRL needed a new federal coal lease to expand its mining operations. The leasing process, conducted by the Bureau of Land Management ("BLM"), provided citizens with the opportunity to voice their concerns. WSERC distributed a fact sheet that detailed potential impacts and raised questions about the proposed expansion. After a controversial Environmental Impact Statement ("EIS") was approved by both the BLM and the Forest Service, a group called the Concerned Citizens of Garvin Mesa filed an appeal. BLM responded by abandoning the EIS and undertaking a year-long study to look at the valley-wide impact of Oxbow's existing coal lease and the new Iron Point lease requested by BRL. An issues forum was held which was attended by many members of the community including both proponents and opponents of the expansion. As a result of this meeting, the North Fork Coal Working Group ("NFCWG") was formed. This group was composed of representatives from WSERC, the Concerned Citizens of Delta County & Mine Neighbors, irrigation and domestic water companies, Delta and Gunnison Counties, West Elk, Bowie and Oxbow coal mines, the City of Delta, mine employees, and members of the community at large. It was through the efforts of this group that the GNA came to fruition.

Negotiation of the GNA

BRL's willingness to negotiate a GNA was spurred by the realization that until citizens' concerns were addressed, their proposed expansion could be delayed as long as two years by the EIS appeals process. Such a delay would have likely put BRL out of business. However, the majority of the citizens' groups did not want to put their neighbors out of work and were also interested in negotiating an agreement that would avoid a protracted appeals process and would address the specific issues of concern rather than derailing the whole permitting process. Thus, the NFCWG focused primarily on issues that the EIS would not address—the increase in train and truck traffic caused by the expansion.

After five months of weekly meetings, BRL proposed a 5-point plan. This plan became the basis for negotiating a formal Memorandum of Agreement (the GNA) between the mine and WSERC. During the negotiations, WSERC felt that they had adequate access to lawyers and legal expertise, but did not have access to or utilize outside consultants, trained negotiators, or technical/economic data. WSERC identified two issues that were discussed but not incorporated into the final agreement: conservation easements on BRL's private land and contributions to the community not related to rail traffic.

The bottom line issues for WSERC were to:

- get the coal trucks off of Highway 133;
- secure money for railroad safety upgrades;
- ensure significant impact mitigations on Garvin Mesa; and
- not allow an outside appeal to negate the agreement.

BRL's bottom line was that the citizens' groups had to drop all opposition to the EIS and support BRL's application for a new coal lease.

The resulting GNA contained the following major provisions:

- BRL agreed to:
  - Substantial reclamation work;
  - Build a new mine-to-train conveyor and loadout which would eliminate 978 trucks/day;
  - Construct turning and acceleration lanes on Highway 133 as an interim measure;
  - An annual production cap;
  - Pay a penalty if the annual production cap is exceeded;
  - No new mine portals in certain areas;
  - Conduct a baseline noise study;
  - Not exceed baseline noise levels when production increases;
  - Pay a penalty for noise violations;
  - Prepare a state-approved water augmentation plan prior to mining within one mile of Terror Creek Reservoir; and
  - Contribute up to $500,000 to the community rail mitigation trust.
- WSERC agreed to:
  - Support BRL's ongoing permit;
  - Support BRL's pending application to mine the Iron Point Lease;
  - Intervene on behalf of the mine should an appeal by an outside group threaten the GNA; and
  - Formally oppose any stay of the lease resulting from an outside appeal.

It took approximately one year to complete the GNA. The GNA was designed to be a legally enforceable contract. The GNA is not part of a state or federal regulatory action. If the company is sold, the GNA will remain in effect. BRL posted two $1 million performance bonds which will be forfeited to WSERC should BRL default on any or all parts of the GNA (subject to certain contingencies, as discussed later).

Costs

WSERC estimates that they have spent at least $15,000 annually on the negotiation and implementation of the GNA. The primary expenditure is staff time. WSERC expects to spend an additional $10,000-15,000 in the future for implementation. It is not known how much was spent by the company for negotiation or implementation beyond the $500,000 for the rail mitigation trust. BRL does not provide funding to WSERC to ensure its continued participation in GNA-related activities.

Implementation

As of 2002, WSERC rates the GNA a complete success in terms of the extent to which commitments have been honored—although many provisions have been modified. For example, WSERC agreed to change their request for a passing lane on Hwy. 133 to construction of flashing signs. The difference in costs was then applied to rail traffic mitigation. The production cap was also modified at the request of BRL and after several weeks of intense and sometimes

unfriendly debate among the WSERC board. While the GNA does have specific dispute resolution procedures, they have not been used to resolve any disputes thus far.

Based on the GNA, WSERC now has at its disposal approximately $500,000 in mitigation funds (soon to be $800,000), and is now faced with the unusual (but pleasant) task of determining a spending strategy.

Other changes to the GNA were prompted after BRL filed for bankruptcy. Some of these amendments were made at the urging of the bankruptcy judge (e.g., removing some bonding requirements), with others occurring after discussions between WSERC and BRL. It is difficult to determine how a bankruptcy would impact a different GNA in a different industry. The other issue that WSERC has been dealing with is a change in leadership. This has caused the organization to focus energies on areas other than the GNA provisions.

Additional details about the status of implementation activities are provided in the table below:

The GNA Provision:	What Actually Happened:	What Didn't Happen:
Transfer permit for existing silo train load-out area from old Bowie #1 to new Bowie #2 permit.		▪ Unsure if this actually happened
Repair damaged paved portions of Stevens Gulch Road by the end of 2001, w/a $100,000 maximum contribution from mine.	▪ Road has been repaired ▪ The portal that was served by the road is no longer being used – the road is essentially used only as a forest access road now	
Discontinue using Highway 133 stockpile once new Bowie #2 coal storage area becomes operational	▪ Stockpile was removed	▪ The reclamation plan of this area has been modified ▪ The mine is in the process if pursuing alternative mitigate whereby the area would be turned into an orchard
Reclamation work will begin in 2000, with all work completed within 18 months	Provision has been implemented ▪ West portal has been recontoured and reseeded – waiting to see if vegetation will come in ▪ Portal #1 has had 90% of its structural facilities disassembled – current proposal on table to turn the area into a residential area	▪ The original reclamation plan was modified, and the mine is looking at the alternative reclamation of creating a residential area ▪ Alternative reclamation plan proposed because the mine filed for bankruptcy
Examine and report reclamation status of Bowie Portal #1 by the end of 2001	▪ Some reclamation completed	▪ Because of bankruptcy, mine sought assistance from county to create a residential area

		▪ Ceased further reclamation pending county commissioner's review
Cap total production at 5 million tons/year for the life of the Bowie #1 and #2 mines	▪ This has been amended ▪ The new agreement states that this mine can only exceed the cap if both of the other mines in the valley are producing less than 50% of their capacity ▪ Cap is now set at 5.25 million tons because the train cars have been lengthened, so now more can be transported without introducing any additional safety hazards	▪ This has been amended
If production cap is exceeded, the mine is to pay liquidated damages of $1.00/excess ton	▪ Has not been necessary – mine has not exceeded production cap	▪ When the mine filed for bankruptcy, the bankruptcy judge required WSERC to remove the bonds put into place to cover the penalty ▪ Now, there is no bond requirement ▪ The penalty is still enforceable (but WSERC would have to go to court)
Meet with CDOT in the first quarter of 2000 to identify upgrades to Highway 133 (including turning and acceleration lanes) as interim measures; compete within 90 days of receiving permits from CDOT	Provision has been implemented ▪ Turning and acceleration lanes constructed ▪ There is no more truck traffic, now that the new load-out facility has been built	
Install downward focused lighting hoods, baffling or housing around fans, and high grade precision sealed bearings for the conveyer rollers	Provision has been implemented	
Incorporate noise mitigation into the design of new facilities and hold at least one public meeting to disclose noise/light/dust reduction methods	Provision has been implemented ▪ Company did a baseline noise study and used high quality materials to keep noise at the pre-expansion levels ▪ Company is pleased with the higher quality of the system because of the reduced number of repairs ▪ Enclosed and insulated load-out facility	▪ Did an initial reading regarding noise, but have not done a second noise study to follow up

Liquidated damages provision if noise levels are exceeded	▪ Noise levels have not been exceeded	
▪ If permit received to mine under Terror Creek, BRL will not use Garvin Mesa or Garvin Mesa roads to transport coal ▪ BRL will not establish portals on or immediately north of Garvin Mesa for purposes of ingress and egress of men, materials or coal ▪ If BRL uses existing roads for other purposes, BRL will maintain the road during the first week of operation and at least once a month thereafter	Provision has been implemented because there are no facilities above Garvin Mesa at this time	
Restrictions on ventilations fans for Bowie #1 and Bowie #2	Provision has been implemented ▪ Concrete barrier was placed between ventilation fans and Garvin Mesa	
Finalize water augmentation plan, with no secondary mining or longwall mining within one mile of Terror Reservoir until plan is approved		▪ Not sure if this has been implemented
Maintain open door policy including meeting with concerned residents and/or organizations to discuss any of the above items, changes in the current situation, or new problems	▪ This has been implemented to the extent that BRL approached WSERC to discuss the possible impact of the bankruptcy on the GNA	
Contribute up to $500,000 to the Delta County Rail Transportation Mitigation Fund	Provision has been implemented ▪ $500,000 was donated to improve railcrossing safety ▪ BRL submitted their last payment at the beginning of 2004	

Lessons Learned

WSERC gives their GNA an overall success rating of 9 out of 10. Negotiating another GNA would be their preferred course of action if similar disputes were to arise in the future. If they had it to do over again, they would have asked for funds to pay someone to monitor the implementation. Additionally, the bankruptcy contingency is something that should be planned for in the GNA, as is the internal challenge of transferring GNA implementation responsibilities during staff turnovers. One unexpected benefit of the GNA process was that in some circles WSERC acquired a new reputation for being "reasonable." Their advice to others considering a

GNA is to be very clear about why you are choosing this tool, be sure it will get you further than other tools (lawsuits, etc.), and have bottom lines and do not give up on them.

References

1. GNA (Memorandums of Agreement, Performance Bond).
2. GNA Survey response and workshop briefing by Tara Thomas, WSERC [on file with the Natural Resources Law Center (2002)].
3. Paul Larimer, "Out of the Darkness: a Western Colorado Community Meets a Coal Boom Halfway," High Country News, July 31, 2000.
4. Tom Morse, "The Great Paonia Coal Treaties: Negotiations Between Mines, WSERC and Coal Working Group Result in 5 Agreements," The Western Slope Environmental Report, Newsletter of the Western Slope Environmental Resource Council, April 2000.
5. Flyer – "The Western Slope Environmental Resource Council, Dedicated to Protecting the Environment since 1977."
6. Briefing on GNA implementation by Jeremy Puckett, WSERC (July 2003).
7. Briefing on GNA implementation by Jeremy Puckett, WSERC (March 2004).

APPENDIX E: SUMMARY OF SURVEY RESPONSES

by Miriam Stohs and Jessica Chavez, Natural Resources Law Center

Overview of the Parties

- Survey responses received from 11 community groups in 9 states (CA, CO, ID, LA, MT, NY, OH, PA, TX) representing 13 GNAs with 13 companies.
- Annual budgets of community groups range from $500 to $2.1 million per year
- Number of paid staff ranges from 0 to 170.
- Company types:
    - Chemical (3)
    - Dairy
    - Industrial Gas
    - Mining (2)
    - Pharmaceuticals
    - Refinery/Petrochemicals (4)
    - Waste Processing
- Number of local residents employed by the companies: from 0 to 1,460.
- On a scale of 1 to 10, the importance of the sectors that the companies represent to the local economy ranges from 1 to 10, with an average of 6.

Characteristics of Companies at Time of GNA Negotiations

Characteristic	# of Companies
Concerned about public opinion	11
Profitable	9
Publicly traded	7
Expanding	8
Privately owned	5
Seeking financing	2
Perceived as committed to environmental concerns	2
Stable in size	1
Shrinking	0

Issues Prompting Concern

Type of Issue	# of Companies
Nuisance (noise, traffic, odors)	12
Public health concerns	10
Environmental impacts	10
Local economic impacts	1

Examples of "specific issues of greatest concern":

- Public health – strange cancers, breathing problems
- Mining under agricultural water supplies (ditches, reservoirs)
- The potential for fire and explosions
- Releases and spills of hazardous substances to the air and water
- Nuisances (e.g., odors, overnight truck parking)
- Adequacy of the company's emergency response and evacuation plans
- Danger of contamination of domestic water wells and groundwater from dairy activities

Prior Actions Taken

- All groups reported that prior to negotiating the GNA they:
    - Took their concerns to relevant government agencies
    - Consulted with company officials
    - Engaged in publicity campaigns and grassroots activism
- Five groups reported filing or threatening to file lawsuits.
- At least eight groups challenged permit applications.

Examples of specific actions taken by different groups:

- Distribution of a "fact sheet"
- Neighborhood canvassing (letter writing campaign)
- Compile "citizen's audit" based on publicly available documents
- Lobby political candidates
- Write editorial for the NY Times
- Air monitoring by community members
- Media coverage, petitions, demonstrations

Commitments Sought From Company

Commitment	# of GNAs
Pollution mitigation	12
Regular environmental audits	10
Access to environmental data	10
Citizen involvement in audits	10
Traffic mitigation	9
Advance notice of company changes	9
Access to emergency response plan	8
Infrastructure improvements	7
Local monetary contributions	5
Citizen participation in company decisions	4
Local hiring	3
Whistleblower protection	3
Job training	2

Financial support of community group	2
Worker transportation/housing	1
Community relocation	1

Commitments Sought From Community Groups

Commitment	# of GNAs
End negative publicity	9
Generate positive publicity	8
Drop permit challenge	8*
No lawsuit will be filed	3
Dismissal of pending lawsuit	2
Sign confidentiality agreement	1

*Estimate - not specifically asked in survey.

GNA Negotiation Process

Citizens had adequate access to:	# of GNAs
Lawyers and legal expertise	9
Technical consultants	9
Technical/economic data	8
Trained negotiators	3

- *The GNA negotiation process took 2 months to 1.5 years for all GNAs except one, which took 4 years.*

GNA Structure

Feature	# of GNAs
Legally binding	9
Remain in effect after sale	7
Procedure for dispute resolution	6
Integrated with permit	5
Clear termination point	3
Company funding of community group	2
Subsequent modifications	2

GNA Implementation

	# of GNAs
Extent to which commitments were honored:	
40%	1
50 – 60%	1
70 – 80%	5
90 – 100%	7
Rating of overall success (1 – 10):	
5	2
6	1
7	1
8	4
9	4
9.5	1
10	1
Would you do it again?	
Yes	8
Most Likely	1
Unsure	4
no	1

What Would You Do Differently?

- Reduce the number of people at the negotiating table
- Keep the issues more focused
- Get more money
- Have an airtight redress process
- Keep negotiation process in the public eye
- Obtain formal commitment to reduce chemical use
- Focus more on building the community group to prevent burnout and dissolution
- Anticipate possible break-up of group and build in contingencies
- Increase the term of the GNA
- Speed up the process
- Create a more legally binding agreement
- Better prepare the community negotiating group
- Make the GNA less legal and more easily understood
- Ask for funds to monitor the implementation
- Ask for funds to pay for technical consultants

Unexpected Benefits

- Increased respect for community group
- Empowerment of community group
- Increased credibility of community group
- Learning experience
- Plant manager became more involved with employees
- Developed great working relationships between the parties
- Implementation of state of the art monitoring systems
- Greater community awareness
- Water monitoring in place

Concerns About Viability of Group

- Lack of funding
- Insufficient staff /volunteers to monitor GNA
- Staff turnover
- Need for new members to take an active role
- Too many issues and battles to be fought

Final Advice

- Go into the process with a united front
- Make sure legal section is enforceable and legal action financed
- Reserve the right to be critical of company actions
- Be careful of a company's public relations ploys
- Ask for more than you want
- Make sure you are ready for a lot of hard work and a long-term commitment
- If possible, hire someone to monitor the company and report back to the group
- Canvassing is a very effective tool
- Be clear, keep it simple, keep government agencies out of the process, be tough
- Worth pursuing, but won't solve all problems
- Be sure you will get further than using other tools (lawsuits, etc.)
- Have bottom lines and stick to them
- Try to get what you want in a closed timeframe
- Obtain financial commitments prior to entering into negotiation to level the playing field
- Stay committed – don't give up!

Survey Respondent:	WSERC	WCTC	TUEF	OCA	SBESC	NPRC	C/LRTC	BREATHE	SEA	LABB	COCOA
Characteristics of the company at time of GNA negotiation. ***The company was …***											
Profitable		X	X	X		X	X	X	X	X	X
Expanding	X	X		X		X		X	X	X	X
Stable in size							X				
Seeking financing	X					X					
Private / publicly traded	Private	Public	?	Public	Private	Public	Public	Public	Public	Public	Private
Concerned about public opinion	X	X	X	X	X	X	X	X		X	
Characteristics of the GNA document, negotiation process, and the survey respondents' degree of satisfaction.											
How long did GNA negotiation take? (months)	12	12	6	10	1 to 12	12	18	4	8	3	2
Legally binding?	X	X	X			X	X	X	X	X	X
Procedures for dispute resolution?	X		X			X	X	X	X		
Remain in effect after sale?	X	X	?	?	?	X	X	X	?	X	X
Integrated with permit?		X	X				X		X		X
Clear termination point?						X	X			X	
Company funding of community group?						X			X		
Subsequent modifications?	X					X					
Extent commitments honored (1 to 10)	10	9, 10	9.5	9.5	5-6, 7	9	8	7-8, 8	4	10	8
Rating of overall success (1 to 10)	9	8, 10	9.5	9	5, 6	9	8	8, 9	5	7	8
Would you do it again?	Yes	Yes	Yes	Yes	Yes	Unsure	Unsure	Unsure, Most Likely	No	Unsure	Yes

WSERC = Western Slope Environmental Resource Council; WCTC = West County Toxics Coalition; TUEF = Texans United Education Fund; OCA = Ohio Citizen Action; SBESC = Seneca-Babcock Environmental Subcommittee; NPRC = Northern Plains Resource Council; C/LRTC = Community/Labor Refinery Tracking Committee; BREATHE = Boulder Residents for the Elimination of Air Toxics and Hazardous Emissions; SEA = Shoreline Environmental Alliance; LABB = Louisiana Bucket Brigade; COCOA = Citizens of Owyhee County Organized Association. [Some responses later updated by the original survey respondents.]

APPENDIX F: ENVIRONMENTAL GNA EVALUATION METHODOLOGY

ENVIRONMENTAL GOOD NEIGHBOR AGREEMENT EVALUATION METHODOLOGY: AN OVERVIEW

Doug Kenney, Natural Resources Law Center
Revised, September 2002

The following pages describe the general philosophy being used to conduct the evaluation of environmentally oriented *Good Neighbor Agreements*. The term "Good Neighbor Agreement" (GNA) is poorly defined and is used in a variety of contexts to describe arrangements voluntarily negotiated between companies and local communities (or local governments) (Lewis and Henkels, 1996). Communities generally see environmental GNAs as a way of making polluting businesses more accountable for negative public impacts, while companies seek positive publicity for, and avoided community opposition to, business operations.

No central or comprehensive listing of GNAs exists, however, it is estimated that approximately 50 examples exist worldwide.[31] In this study, we are interested in examining GNAs with the following characteristics:

1. Feature a written agreement;
2. Located in the United States;
3. Concerned with environmental issues; and
4. Prominently involve one or more non-profit community groups.

Several techniques have been utilized to find GNAs with these qualities, including key word searching of academic publication databases (e.g., Lexus/Nexus), web searching, phone conversations with prominent leaders in this field (e.g., Sanford Lewis) and GNA oriented organizations (e.g., Communities for a Better Environment), and the review of related documents. The survey has identified just over a dozen candidate GNAs.

CONCEPTUAL AND METHODOLOGICAL ISSUES IN PROGRAM EVALUATION

Everyone conducts evaluations of various types as part of normal daily life. The formal evaluation of management programs and strategies, however, is a specialized task ideally informed by theories and methodologies described mainly in the *program evaluation*

[31] This estimate is provided by Sanford Lewis.

literature. Much of the theoretical literature describes sophisticated, quantitative evaluation methodologies based largely on experimental methods that are often of little practical value in real-world applications where data and budgetary constraints necessitate more qualitative approaches (Patton, 1988). Arguably, the evaluation literature is currently as rich with descriptions about constraints and impediments to formal evaluations, than in advice on conducting pragmatic evaluations. The situation is particularly murky regarding the assessment of efforts concerned with environmental protection and management.[32] Nonetheless, the literature can provide some help in guiding the design of an evaluation protocol.

The formal evaluation of environmental programs and management strategies is a relatively new endeavor. Modern goals such as cost-effectiveness, performance based management, and maximized return-on-investments have recently prompted a variety of evaluations.[33] The purpose of these evaluations can include identifying successes and failures, improving program effectiveness and/or efficiency, guiding funding decisions regarding program expansion or discontinuation, or comparing the efficacy of one program to another. Such evaluations have a long history in many public sectors—particularly in education, health care, welfare, and criminal justice—but are less common regarding the issue of environmental protection. This omission partly reflects the newness of many environmental programs, and the difficulty in linking program activities to frequently nebulous environmental goals such as ecosystem health and ecological sustainability.[34] Several strains of thinking are beginning to congeal, however, into a literature of *environmental program evaluation.*

Techniques seen in environmental program evaluations typically reflect some combination of three different evaluation foci: (1) process analysis, (2) environmental outcome (or impact) assessment, and/or (3) efficiency measurement (Knapp and Kim, 1998a).

- *Process Analysis*. The "process" evaluations typically utilize methodologies pioneered in the *program implementation* literature, and are concerned with describing and assessing activities occurring between program initiation and the presumed future achievement of results.[35] These studies focus on activities (i.e.,

[32] As Knapp and Kim (1998b:349) conclude: "Whereas the state of the art in program evaluation is in flux, the art of environmental program evaluation has no state at all. It has only artists."

[33] Much of the recent evaluation work has focused on Superfund (i.e., CERCLA), the Clean Water Act, the Endangered Species Act, the Safe Drinking Water Act, and related efforts (Rich, 1998).

[34] As Bryner (1998:321) observes, "Program evaluation is particularly challenging in environmental policy. The uncertainty over the causes and consequences of ecological problems makes it difficult to assess the impact of public policies. The long lag time between exposure and evidence of a problem makes it difficult to identify the factors responsible for environmental problems. Pollutants may be transferred to another environmental medium instead of actually being reduced in volume, making evaluation of programs incomplete. The challenges in changing human behavior in ways that are more protective of the environmental are inextricably intertwined with a host of other concerns, from economic growth to individual freedom."

[35] Jeffrey L. Pressman and Aaron Wildavsky are considered the pioneers of this work. This work tends to focus on outputs, rather than on-the-ground outcomes. Environmental outputs can include "the number of hazardous waste site inspected, the number of actions taken to protect the habitat, the number of species

outputs) and decision-making involving challenges such as problem identification, the formulation of solutions, and the processes used to coordinate action.

- *Outcome (or Impact) Assessments*. In contrast to the process oriented evaluations, the outcome (or impact) evaluations draw from the *environmental assessment literature* largely inspired by National Environmental Policy Act (NEPA) compliance. These efforts feature a strong emphasis on defining and measuring environmental indicators and outcomes, often in the context of natural science theories and models used to explain causality.[36] Comparing alternatives is a core element in many impact assessments.

- *Efficiency Evaluations*. These efforts are sometimes also labeled as "economic" evaluations, due to their heavy dependence on *economic theory* and their reliance on methodologies such as benefit/cost analysis, cost-effectiveness studies, compliance cost estimates, and risk assessment. Much like outcome (impact) assessments—and in contrast to most process evaluations—these efforts often emphasize the comparison of alternatives.

Sometimes overlying these three classes of evaluations are studies that "assess how processes work and outcomes are produced within a larger institutional framework" (Bartlett, 1994). These "institutional studies" typically focus on broad parameters such as behavioral incentives, agency/organizational cultures, value systems, and decision rules, and how these larger institutional attributes might be shaped over time by a particular program to create a new institutional context—presumably one more conducive to environmental protection (Kraft, 1998). The literature of *institutional analysis* is useful for guiding these efforts, even though it is not always considered as a core element of the program evaluation field.[37]

As noted above, each focus implicates a different set of tools and methodologies, described in a different tributary of the evaluation literature. Determining which combination of concepts and tools is most applicable in a given evaluation exercise is a complex challenge, especially since many researchers have concluded that several programs are simply not amenable to any type of evaluation. Those researchers suggest that an "evaluability assessment" be conducted before any evaluation effort is considered (e.g., see Wholey, 1983, 1987; Schmidt et al., 1979; Rich, 1998). The primary constraint on environmental program evaluations is the lack of appropriate data, especially as it pertains to environmental indicators and outcomes. This is well illustrated by U.S. General Accounting Office environmental evaluations that tend to reach few conclusions

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recovery plans that have been approved, the number of environmental impact statements that have been submitted, and the amount of pollution in the air or water" (quote by Rich, 1998:32-33 Rich, drawing on research by Rosenbaum, 1991, and Bartlett, 1994).

[36] The selection of appropriate indicators is an active area of research and writing.

[37] Kenney and Lord (1999) provide an explanation of how institutional analysis techniques can be used to assess natural resources and environmental problems and problem-solving strategies.

about program effectiveness, while identifying in detail the data deficiencies that prevent a comprehensive evaluation (Solomon, 1998). These deficiencies include the quality of environmental data, the adequacy of techniques used to gather data, and the integrity of the analytical techniques used to evaluate that data. GAO recommendations, consequently, primarily focus on ways to improve the databases needed for future, methodologically rigorous, evaluations. These recommendations tend to have little practical use in short-term decision-making.

The availability of information is a major consideration in designing a program evaluation. For example, the availability of data often shapes whether the approach selected is quantitative or qualitative. Quantitative approaches often rely on a quasi-experimental or "scientific" approach, and utilize statistical methods to analyze data and support conclusions. Such approaches can be expensive, time-consuming, and impractical where data is not readily available, and may encourage researchers to focus only on those dimensions of a problem that are operational and measurable. Often, more practical evaluations are those that use qualitative methods, such as interviews, observations, and the review of written documents, to support conclusions (Rich, 1998). The status of qualitative approaches has risen in recent decades. As King et al. (1987:15) explain: "The development of evaluation thinking over the past twenty years has led away from the notion that the quantitative research study is the only or even the ideal form for an evaluation."

The efforts of the U.S. Environmental Protection Agency (EPA) highlight several difficulties of program evaluation. Historically, the agency based its evaluations on activity (or output) measures, such as number of permits issued, and was roundly criticized for not measuring what was really important: environmental outcomes (Mintz, 1995; NAPA, 1997). In this respect, the agency was primarily engaged in so-called *formative* evaluations, which are most typical of young programs, are usually reliant on output measures, and are most often conducted internally with the goal of improving program performance. Critics, in contrast, were calling for so-called *summative* evaluations, which are often more appropriate for mature efforts, use outcome data, and are often conducted by (and/or for) outside entities responsible for making decisions about continuing or discontinuing programs.[38] The agency responded in recent years by focusing more on environmental outcomes such as water quality data, thereby balancing process analyses with outcome assessments.[39] This, however, has led to a new methodological problem: trying to link outcomes to EPA activities.

This experience highlights a great paradox in evaluation: focusing on *means* (i.e., processes and outputs) tells you little about *ends* (i.e., impacts and outcomes); focusing

[38] The distinction is credited to Scriven (1967).

[39] One example of this commitment to better integrate outcome measures into program evaluations is the National Performance Measures Strategy (NPMS). According to EPA, the strategy not only "includes traditional measures, such as the number of inspections and enforcement actions conducted each year, it also establishes new outcome measures for evaluating the behavioral and environmental results of our activities. These measures include compliance rates for selected regulated populations, pollutant reductions resulting from enforcement actions, behavioral changes stemming from compliance assistance, and average time for significant violators to return to compliance" (EPA, 2000:3).

on *ends* tells you little about *means*. Without an explicit knowledge of how means and ends are related, it is impossible to generate advice for making programs more successful (Knapp and Kim, 1998b; Wholey et al., 1970).[40] This suggests two related lessons in evaluation design. First, truly valuable evaluations are those pursued from multiple foci, featuring measurements and theories necessary to relate on-the-ground outcomes to program activities and, at the least, to distinguish between the achievements of the program versus what would have happened in its absence. An articulation of this perspective is found in Minnesota law guiding the evaluation of state programs:

> [Evaluations should determine] the degree to which the activities and programs entered into or funded by the state are accomplishing their goals and objectives, including a critical analysis of goals and objectives, measurement of program results and effectiveness, alternative means of achieving the same results, and efficiency in the allocation of resources.[41]

Second, the goal(s) of the evaluation should largely shape the focus and methodology employed, as suggested below in Table 1. For the reason stated above, evaluations designed to improve program functioning are perhaps the most demanding.

TYPES OF EVALUATION EXERCISES

Question to be Answered	Type of Evaluation Required
How is the program being implemented?	Program Review
Is the program in compliance with specified agreements?	Compliance Evaluation
Is the program managed efficiently?	Economy and Efficiency Evaluation
Is the program accomplishing its goals and objectives?	Effectiveness Evaluation
What are alternative ways of reaching the program's goals?	Policy Evaluation

Adapted from figure 4, Evaluation Categories, in *Guide to the Program Evaluation Division*, Office of the Legislative Auditor, State of Minnesota, August 2001, page 7.

[40] "Although data on outcomes provide perhaps the ultimate measures of program success, they offer little of use for making programs successful. Constructive criticism requires not only an assessment of what is achieved but also an understanding of why achievement suffers. Such an understanding requires knowledge of the institutional context" (Knapp and Kim, 1998b:350).

[41] Minn. Stat. §3.971, subd. 2.

CRAFTING THE EVALUATION STRATEGY

An initial review of GNAs has identified several factors that influence what types of approaches and evaluation methodologies are (and are not) possible in this study. While that work is still ongoing, it is sufficiently complete to have produced several insights that have relevance to the design of an evaluation, including:

- In most cases, GNAs are very poorly documented;
- GNAs very greatly in terms of structure, function, goals, subject matters, and other organizational and substantive characteristics;
- Environmentally-focused GNAs are relatively uncommon; and,
- GNAs operate in an environment where success or failure can be greatly influenced by a wide variety of exogenous factors that cannot be controlled for through typical experimental methods (especially given the low sample size available to us).

Additionally, the goals of the evaluation are multi-faceted. One interest of the Northern Plains Resource Council, for example, is to improving the functioning of the Stillwater GNA. However, the William and Flora Hewlett Foundation—the organization funding this work—while sharing this interest, is primarily interested in assessing the general utility of the GNA tool in environmental applications. Both goals necessitate a variety of information gathering and analysis efforts. Combined, these goals give this evaluation exercise an extremely broad focus.

EVALUATION DESIGN DECISIONS

As explained earlier, the design of a particular program evaluation should be based on several considerations, including most prominently the availability of information and the goals of the exercise. In this case, we have a situation where information is generally lacking, and where the goals of the evaluation are multifaceted.[42] This strongly suggests two overarching principles for the evaluation effort. First, the effort should be qualitative and descriptive more so than quantitative (and/or statistical). The universe of GNAs is much too small to consider any sort of statistically oriented evaluation, especially given the difficulty associated with establishing appropriate control groups. Basic descriptions of existing GNAs are a real deficiency in the literature and are an impediment to virtually all types of analysis.[43] These considerations strongly suggest a research strategy primarily reliant on qualitative analyses. Secondly, the effort must feature several lens and/or foci. This evaluation is intended to serve several purposes and several audiences.

[42] Unfortunately, these conclusions all underscore our belief that the evaluation of environmental GNAs will be difficult. On the other hand, the lack of data and understanding about GNAs suggests that even modest insights gained through our evaluation will have real value.

[43] As King et al. observe (1987:11), "description, in as much detail as possible, of the materials, activities, processes, and administrative arrangements that characterize a particular program is an important part of its evaluation."

Users of this study are likely to have a variety of questions regarding GNAs: e.g., How are GNAs being used? Are GNAs achieving their specified goals? How effectively and efficiently are GNAs functioning? Do some GNAs work better than others? How can the use of GNAs be improved? How well do GNAs work in comparison to other approaches? Several types of evaluation studies are implicated by these questions.

While an effort will be made to offer partial answers to all these questions, the evaluation strategy proposed below is primarily an "effectiveness evaluation" aimed at determining the extent to which the set of GNAs studied are achieving their intended goals. This analysis will primarily be conducted from the perspective of the community organizations (rather than the companies involved). A secondary goal is to determine why or why not the GNAs studied are successful. Thus, the proposed analysis is summative more so than formative, in that the primary goal is to assess whether or not the selected GNAs are working, rather than emphasizing how they might be improved.

Five perspectives or "metrics" are listed below to guide evaluation judgments. Note that they offer a blend of objective and subjective analysis, and draw on insights from participants (i.e., insiders) as well as outside analysts. This diversity of metrics and information sources is a product of the multiple objectives of this research, and reflects the challenge of finding adequate information.

The following three metrics will primarily be used to evaluate whether or not the GNAs are working successfully. They are listed in order of importance.

1. *Actual program activities versus promised activities*. To the extent that the GNA requires specific actions (or inactions) at predetermined times (or under specific circumstances), these standards provide a useful way to evaluate activities, outputs, and potentially, outcomes. (This is a time series, or longitudinal, approach.)

   This type of evaluation is highly objective, and depends only on collecting data on activities and requirements. This information should be obtainable through questionnaires and interviews, and the review of the GNA document and any other available records. (Potentially, this may include technical information such as emissions data.)

2. *Participant satisfaction and self-assessment*. Presumably, participants have a good idea of the suite of problem-solving options available to them, and to the costs and benefits of pursuing the GNA strategy. Thus, their degree of satisfaction with the GNA is a useful metric of the strategy.[44]

   This information can be obtained through questionnaires and interviews. Note that it will be useful to solicit opinions from both community leaders and company representatives.

[44] Note that asking a participant to measure their satisfaction can be an easy an effective way for identifying variables such as cost and cost-effectiveness which a party may not be willing (or able) to speak to directly.

3. *GNA success versus other problem-solving opportunities*. Communities can use a variety of approaches to modify and/or control the activities of neighboring companies. Ultimately, the efficacy of the GNA approach must be considered with respect to what is potentially achievable using other tools—including those of a regulatory, judicial, economic, and/or political nature.

   While this assessment will be informed by discussions with GNA participants, it is largely an analytical effort that can occur within the Natural Resources Law Center in consultation with researchers with expertise in other problem-solving strategies and their associated literatures.[45]

Determining why or why not a given effort is successful will be approached from two perspectives. One approach relies on the judgments of participants regarding the availability of key resources and variables, such as leadership, funding, and other categories defined by participants. A second approach involves an analysis by the Natural Resources Law Center using principles of institutional analysis.

4. *Self-assessment of keys to success and failure*. Success or failure can often hinge on the availability of a key resource or circumstance that is best understood by participants active in the negotiation and implementation of the GNA.

   This type of information is readily available in written questionnaires and interviews.

5. *Internal logic of the problem-solving strategy used in the GNA*. One way to explain the success or failure of a problem-solving strategy in a given situation is through an institutional analysis case study that evaluates how the GNA effort has changed rules influencing relationships, behaviors, and activities of key participants, and whether or not this happened as intended.

   This is the type of analysis ideally suited to institutional analysis concepts, and can be conducted by researchers at the Natural Resources Law Center without significant outside input. Before the analysis can be conducted, however, a working knowledge of each case study must be developed. This can be done through written questionnaires, oral interviews, and through the review of relevant documents.

[45] This is a metric where a statistical comparison would be highly desirable, but is impractical given the small sample size of GNAs.

REFERENCES CITED

Bartlett, Robert V. 1994. "Evaluating Environmental Policy Success and Failure." *In*: Environmental Policy in the 1990s, N.J. Vig and M.E. Kraft (editors), pages 167-188. Washington, D.C.: Congressional Quarterly Press.

Byrner, Gary C. 1998. "Congressional Oversight and Program Evaluation: Substitutes or Synonyms?" *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 321-346. Chicago: University of Illinois Press.

EPA (U.S. Environmental Protection Agency). 2000. Annual Report on Enforcement and Compliance Assurance Accomplishments in 1999. Office of Enforcement and Compliance Assurance. July. Washington.

Kenney, Douglas S., and William B. Lord. 1999. Analysis of Institutional Innovation in the Natural Resources and Environmental Realm: The Emergence of Alternative Problem-Solving Strategies in the American West. Boulder: Natural Resources Law Center, University of Colorado School of Law.

King, Jean A., Lynn Lyons Morris, and Carol Taylor Fitz-Gibbon. 1987. How to Assess Program Implementation. Center for the Study of Evaluation. University of California, Los Angeles. Newbury Park, California: Sage Publications.

Knapp, Gerrit J., and Tschangho John Kim. 1998a. "Environmental Program Evaluation: Framing the Subject." *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 1-20. Chicago: University of Illinois Press.

Knapp, Gerrit J., and Tschangho John Kim. 1998b. "Environmental Program Evaluation: Promise and Prospects." *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 347-360. Chicago: University of Illinois Press.

Kraft, Michael E. 1998. "Using Environmental Program Evaluation: Politics, Knowledge and Policy Change." *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 293-320. Chicago: University of Illinois Press.

Lewis, Sanford, and Diane Henkels. 1996. "Good Neighbor Agreements: A Tool for Environmental and Social Justice." Social Justice, 23(4):xx-xx.

Mintz, Joel A. 1995. Enforcement at the EPA: High Stakes and Hard Choices. Austin: University of Texas Press.

NAPA (National Academy of Public Administration). 1997. Resolving the Paradox of Environmental Protection. Washington, D.C.: NAPA.

Patton, Michael Q. 1998. "Integrating Evaluation into a Program for Increased Utility and Cost-Effectiveness." *In*: Evaluation Utilization, J.A. McLaughlin et al. (editors), pages 85-94. New Directions for Program Evaluation 39. San Francisco: Jossey-Bass.

Rich, Robert F. 1998. "Program Evaluation and Environmental Policy: The State of the Art." *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 23-44. Chicago: University of Illinois Press.

Rosenbaum, Walter A. 1991. "Curing Regulatory Incapacity at EPA: What Can Policy Studies Add to Reilly's Rosary?" Paper presented at the annual meeting of the American Political Science Association, Washington, D.C., August 28.

Schmidt, Richard E., John W. Scanlon, and John B. Bell. 1979. Evaluability Assessment: Making Public Programs Work Better. Rockville, Md.: U.S. Department of Health and Human Services, Project Share.

Scriven, Michael. 1967. "The Methodology of Evaluation." *In*: Curriculum Evaluation, R.E. Stake (editor), pages 39-93. American Educational Research Association Monograph Series on Evaluation, No. 1. Chicago: Rand McNally.

Solomon, Lawrence S. 1998. "Evaluation of Environmental Programs: Limitations and Innovative Applications." *In*: Environmental Program Evaluation: A Primer, Gerrit J. Knapp and Tschangho John Kim (editors), pages 45-60. Chicago: University of Illinois Press.

Wholey, John, J.W. Scanlon, H.G. Duffy, J.S. Fukomoto, and L.M. Vogt. 1970. Federal Evaluation Policy: Analyzing the Effects of Public Programs. Washington, D.C.: Urban Institute.

Wholey, Joseph S. 1983. Evaluation and Effective Public Management. Boston: Little, Brown.

Wholey, Joseph S. 1987. Organizational Excellence: Stimulating Quality and Communicating Value. Lexington, Mass.: Heath.

APPENDIX G: NEWSPAPER COVERAGE OF THE GNA WORKSHOP IN 2002

Billings Gazette, August 4, 2002

Knowledge, trust key to agreements

By Dan Burkhart
Of the Gazette Staff

RED LODGE -- Dawn Caldarelli remembers how people in her low-income neighborhood in Buffalo, N.Y., spent generations watching freshly washed sheets sully on the line. Old timers talked about orange snow.

“Everyone had just kind of put up with what they saw without thinking about what it really meant," the single mother of four said.

But Caldarelli, with a degree in psychology and environmental science, knew there were dangers to the health and welfare of the community from the company recycling waste in her neighborhood.

"For decades some nasty chemicals had been making people sick, but the company got away with it because they were doing a good thing - recycling - without anyone looking to see how that was done," she said.

For Caldarelli, this was where she lived. She wasn't going to see her kids get sick.

"We had a high incidence of cancer, but no studies to see if there was a connection. I couldn't get the regulatory agencies to even look at the issue. 'That's it,' I decided. I was going to have to do something myself," she said.

It wasn't easy when she began a campaign to get the media involved. She was threatened. Plant employees demeaned her.

"I was told I wasn't smart enough to understand," she said. "But I didn't need a degree to recognize a 30,000-pound spill of sulfur dioxide was dangerous."

It took time, but Caldarelli eventually persuaded the Buffalo Common Council (the equivalent of a city council) to pressure the chemical company with the eco-friendly name, Environmental Natural Corp., to sit down to negotiate remedies to neighborhood concerns. Trucks carrying toxic chemicals were re-routed away from her community. Pollution prevention measures were beefed up. The company agreed to notify the community when there was a toxic spill or health threatening event.

It was Buffalo's version of a Good Neighbor Agreement, something similar to what citizen groups in Stillwater and Sweet Grass counties did with Stillwater Mining Co. Basically, Good Neighbor Agreements are a way for companies and communities to resolve environmental, health and safety issues without going to court. It allows both sides to sit down face to face to resolve problems. It involves people in corporate decisions and actions.

In Caldarelli's case, it fixed what governmental regulatory agencies didn't.

"The agencies looked the other way. They weren't interested," she said.

Her story was one of many told this past weekend in Red Lodge at a Good Neighbor conference sponsored by the Northern Plains Resource Council.

"In the course of trying to move forward with Good Neighbor Agreements, we were interested in the experience of others," NPRC staff director Teresa Erickson said.

Erickson said the NPRC is interested in trying to use the same kind of agreement with coalbed methane issues.

"We thought it would be useful to bring together others from across the country to collectively refine Good Neighbor Agreements as a tool to solve natural resource conflicts," she said.

The representatives of citizen groups attending told different stories about different conflicts. For Dr. Henry Clark of Richmond, Calif., it was dealing with a petro-chemical company. For Tara Thomas, it was coal mining in Colorado. For Denny Larson it was working in what was called the "cancer crescent," an area saturated with toxic oil and gas residues and residents with an abnormally high rate of cancer.

But despite the different stories, all had much in common. First, they were motivated by the failure of government.

"Regulatory agencies don't do their job," Clark said. "It's partly inertia, partly politics."

Publicity is one tool to persuade companies to discuss agreements that often go beyond the compliance companies have under local, state and federal laws.

"Money talks," Richard Abraham of Texans United said. "Even if a company has good intentions, they answer to stockholders. There has to be an economic benefit to working out the problems."

Sometimes not being tied up in court is enough. Sometimes getting good publicity helps.

"Companies don't like bad press, and they hate delays. It costs them money if we appeal permit decisions," Abraham said.

Many times it's because the community groups find ways to resolve an issue and save the company money. Most citizens don't really want to know technical details about mining or refining, according to Larson. But his group discovered more unhealthy emissions came from leaking valves than out the stacks of refineries.

"We researched leakless valves. They would reduce bad emissions and save the company a lot of money. They could recapture product. Of course, we had to demonstrate the expense of installing them would repay them," he said.

Thomas had a similar experience dealing with Colorado coal companies when it came to noisy trains. With 100 crossings in communities along the route of the coal trains, it was a serious issue. Thomas found there were ball bearings that would reduce the noise.

"I'd rather be gardening than learning about ball bearings," she said. "But you have to know the subject to negotiate."

Patience is required to complete agreements. Clark said his group started addressing refinery issues in 1984. It was in the early 1990s before negotiations began, spurred somewhat by the media attention that came when the Rev. Jessie Jackson arrived to help.

And once agreements are in place, the work isn't done. Anne Rolfes of the Louisiana Bucket Brigade said her organization's name was literal. They provide people with a relatively inexpensive bucket that can test for six different toxic emissions. It's a way of checking how accurate a company's reports are, she said.

For NPRC, dealing with Stillwater Mining was a good deal less contentious than some of the experiences others had. The biggest obstacle was uncertainty, according to Stillwater Mining vice president Chris Allen in an NPRC report.

"SMC entered the GNA with decidedly mixed emotions. This ambivalence was born of many things, but it all boiled down to one word - uncertainty. A year ago, the path forward looked murky. Today, the landscape is better illuminated, and it seems to us that the prospect of failure recedes the longer we work together," he stated.

NPRC and its affiliates - the Stillwater Protective Association and the Cottonwood Resource Council - also had uncertainties. Could the company be held legally accountable? Would there be ongoing cooperation?

In the end the agreement between Stillwater Mining and the citizen groups was a good model for others. It was binding. It went beyond what the company was required to do. It included citizen representatives on two key committees - one for oversight, one for technical developments. It was good publicity for the company.

"The heart of the GNA rests upon the principles of mutual trust and respect. We are not always going to agree with each other, and some issues may be sufficiently important to drive us to arbitration. But, if our playing field is both level and clearly defined, and the

principles upon which this agreement was founded remain our touchstone, then I believe the GNA will prosper," according to Allen.

Caldarelli was one who benefited from the report on the historic Montana agreement.

"Ours is based on memorandums of understanding rather than a legally binding agreement," she said. "That's something we can do better thanks to what we learned at this conference."

APPENDIX H: CONTRACTS: DEFINITIONS AND CONSIDERATIONS

by Jessica Chavez

Introduction

When considering the negotiation of a Good Neighbor Agreement it may be beneficial to understand some of the fundamental terms and concepts that make up the law of contracts. This memo briefly reviews some definitions and considerations regarding contracts. In reviewing this material, keep in mind that for every rule or requirement in contract law, there is often an exception. There are multiple aspects of contract law that are not included in this document—e.g., aspects such as the mirror image rule (how offers and counteroffers relate to each other), parol evidence (dealing with what can come in as evidence when terms of a contract are in dispute), the various defenses that a breaching party may have when not fulfilling the terms of a contract, and remedies or damages available if a party does breach. These are complex issues that require the skill of a practicing attorney familiar with contract law.[46]

Definitions[47]

- Agreement – A manifestation of mutual assent between two or more people.
- Bargain Requirement – Generally, when forming a contract, there must be some sort of a manifestation of mutual assent to the agreed upon exchange.
- Consideration - A contract requires the presence of "consideration." Consideration is present in a bargained-for exchange, where a person making a promise requires something from the other person in return for the promise. Consideration may be thought of as the price of this promise, or something bargained for and given in exchange for the promise.[48]
- Contract – A contract is a promise where the law provides a remedy for the aggrieved party if that promise is broken.
- Offer & Acceptance – Aspects of the "bargain requirement." The offer is typically a proposal presented by one party followed by an acceptance from the other party, manifesting mutual assent.

[46] It must be noted that this document is intended only as an educational tool and is not to be construed as offering any legal advice. When working with the intricacies involved in drafting a contract, it is advisable to seek legal guidance from a licensed attorney.

[47] Each of the definitions included has been summarized from the Restatement (Second) of Contracts. *See* E. ALLAN FARNSWORTH, CONTRACTS (3rd ed. 1999) for a comprehensive treatment of the Restatement (Second) of Contracts. The Restatement was a project instituted by several prominent scholars in 1933. In 1979, a second version was adopted by the American Law Institute. The provisions of the Restatements are generally considered to be authoritative by courts and commentators. However, the Restatements do **not** carry the force of law that is found in a statute or court decision. *See* CHARLES L. KNAPP ET AL., RULES OF CONTRACT LAW (1999).

[48] *See* CHARLES L. KNAPP ET AL., RULES OF CONTRACT LAW 15 (1999).

- Promise – A manifestation of intent to act or not act in a certain way. This promise is made in a way so as to justify another in understanding that the promise is intended to create a commitment.
- Statute of Frauds – A requirement that certain contracts must be in writing, otherwise enforcement may be forbidden. The following contracts are those that generally must be in writing to be enforceable: a contract requiring one to answer for the duty of another; a contract regarding an interest in land; a contract that cannot be completed within one year from the date created; a contract for the sale of goods valued at $500 or more.
- Term – a provision of a contract negotiated by both parties.

Considerations

General Creation of Contracts

The primary approach in the creation of contracts is called a "bargained-for exchange."[49] A bargained-for exchange means that there is a legally enforceable agreement where each party gets something. For example, suppose one person has $1000 to spend on a used car and another person has a car that she is selling for $1000. Transferring title to the car in exchange for the money is a bargained-for exchange. This is different from simply giving the car to someone as a gift because gift promises are not enforceable.[50] When there is a bargained-for exchange, "a promise is said to be 'supported by consideration' because the promisor gets something in exchange for (or as the price of) her promise."[51] This exchange of bargains is also called "consideration." One important aspect of consideration is the concept that "past consideration is not consideration." If a person is willing to give Mr. Smith $1000 in June for helping her move into her apartment the previous January, there is no bargained-for exchange and the gift is not enforceable. Another example may be if a company wants a concession for something that it did in the past ("we closed that portion of the company four months ago, so in exchange we want…") would not necessarily be consideration. Courts often do not like having to determine how much is "enough" consideration and will often leave it up to the parties to determine.[52]

Once the basics of the bargain have been negotiated, there must be an actual offer and acceptance before a contract can be formed. Contract law approaches this aspect by looking for "a particular communication that constitutes an offer and another communication that constitutes an acceptance."[53] An offer is "an expression by one party of assent to certain definite terms, provided that the other party involved in the bargaining transaction will likewise express assent to the same terms."[54] Contract law uses a

[49] ROBERT A. HILLMAN, PRINCIPLES OF CONTRACT LAW 15 (2004).
[50] *Id*.
[51] *Id*.
[52] *Id*. at 26.
[53] *Id*. at 40.
[54] 1 ARTHUR L. CORBIN, CORBIN ON CONTRACTS 28 (2d ed. 1993).

"reasonable person" approach in determining if someone's actions or behavior is an offer to enter into a contract.

Statute of Frauds

The Statute of Frauds generally requires that certain contracts must be in writing, otherwise enforcement may be forbidden. The idea behind this requirement is that the presence of an actual written contract deters people from fraudulently claiming that the parties have an enforceable oral agreement. According to the Restatement (Second), "where any promise in a contract cannot be fully performed within a year from the time the contract is made, all promises in the contract are within the Statute of Frauds [must be in writing] until one party to the contract completes his performance."[55] Even after the one party completes his performance, the provisions regarding the other party are still enforceable.[56]

Unless there is a law in place requiring otherwise, a contract that must be in writing because of the Statute of Frauds is enforceable if it is actually in writing, signed by or on behalf of the parties. The writing must (a) reasonably identify the subject of the contract, (b) indicates that a contract has been made between the parties, and (c) describes in reasonably certain language the essential terms of the promises made when creating the contract.[57]

Misrepresentation, Duress, Undue Influence & Unconscionability

There are several acts of conduct by one party that can influence whether the contract being negotiated is enforceable. Three types of conduct discussed here are acts of misrepresentation, duress, and undue influence. It is often difficult to determine when a specific act or term crosses the line into the realm of misrepresentation, undue influence, or overreaching. This seems to be a constant challenge for lawmakers and courts.

If a party to a contract makes a representation to the others, this representation may be considered to be a fraudulent misrepresentation, depending on the circumstances. A misrepresentation is fraudulent if the maker intends the statement to induce the other party to agree to the contract and the maker (a) know that the statement is not being made according to the facts available, or (b) does not have confidence that he is making the statement truthfully, or (c) knows that he does not have a proper basis for making the statement.[58] This type of misrepresentation is considered "material" if it would likely induce a reasonable person to agree to the contract, or if the maker knows that this would be the likely result.[59] If the misrepresentation relates to one of the essential terms of a proposed contract, and it induces the other person to assent to the agreement, the assent is not effective. The "other" person must have been justified in relying on the misrepresentation. This misrepresentation aspect of contract law may result in the

[55] E. ALLAN FARNSWORTH, CONTRACTS §130 (3rd ed. 1999).
[56] *Id*.
[57] *Id*. at §131.
[58] *Id*. at §162.
[59] *Id*.

contract being prevented from being formed in the first place, or may result in the contract being voidable.[60]

Conduct involving duress often impacts the existence and/or enforceability of a contract.[61] Duress may be present if a party's assent to a contract is induced by the other party's improper threat. If the improper threat leaves the victim with no reasonable alternative, the victim may decide to take action to void the contract (the contract is voidable by the victim).[62] So, when is a threat improper? It is improper if "what is threatened is a crime or a tort, or the threat itself would be a crime or a tort if it resulted in obtaining property."[63] It is also improper if the other party is threatening a criminal prosecution, the threat of a civil suit made in bad faith, or the threat itself is a breach of the duty to deal in good faith.[64] Additionally, a threat is improper if the threatened act would cause harm to the recipient and would not significantly create any benefit to the party making the threat.[65]

Undue influence is another factor to consider when determining if a contract is enforceable. Undue influence is "unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare."[66] If a person agrees to a contract as a result of undue influence, the contract may be voidable by the victim.[67] Undue influence typically relates to the entire contract.

When questioning if a specific term is enforceable, courts also look to see if the contract or term is "unconscionable," a term used to refer to a bargain that is so exceedingly one-sided and detrimental to a party as to suggest a lack of meaningful choice or bargaining power.[68] If a term is unconscionable at the time the contract is created, a court may refuse to enforce the entire contract, may remove the unconscionable term and enforce the rest of the contract, or limit the application of the unconscionable term to avoid any unconscionable result.[69]

It should be noted that, in addition to policies against using undue influence and unconscionability, there is also a general duty of good faith and fair dealing that is imposed on each party to a contract. This good faith and fair dealing duty applies during both the performance and enforcement of the contract.[70]

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[60] *Id*. at §§163-64.
[61] *Id*. at §§174-77.
[62] *Id.* at §175.
[63] *Id*. at §176.
[64] *Id*.
[65] *Id*.
[66] *Id*. at §177.
[67] *Id*.
[68] *Id*. at §208.
[69] *Id*.
[70] *Id.* at §205.

Impossibility of Performance & Impracticability of Performance

Even if the contract is created in good faith by both parties, there may be unforeseeable circumstances that make it difficult for one or both parties to comply with their promises included in the contract. Community groups have come across this situation when the company in question is experiencing financial difficulty and claiming that they are not able to fulfill their end of the bargained-for exchange. Contract law addresses this type of situation under the category "impossibility" of performance and "impracticability" of performance.[71]

"Impossibility" is when one making a promise is literally unable to perform his promise due to circumstances beyond his control.[72] A common example is where a musician rents a music hall to perform for a fee of $3,000. Prior to the concert, the hall burns down. In that case, a supervening event (the fire) made performance impossible. As such, contract law may turn to the concept of "impossibility of performance" to release the music hall management from liability.[73] Not everything that makes performance impossible has this same result. Generally, a court will first look at if the parties to the contract allocated the risk of a specific event (such as a flood or fire) to a party. This may be done by directly expressing the risk through words or through implication as indicated via the parties' negotiations, trade custom, course of dealing, etc. If the parties did not anticipate this type of event at all, the courts must determine where the risk lies.[74] The courts also look at other factors in determining if performance is truly impossible, and if so, who bears the risk. However, a court will not generally excuse a promising party from performing where the party somehow causes the impossibility to occur.[75]

What if an event occurs that does not make it impossible to fulfill a promise, but does make it extremely expensive to fulfill the promise? This situation is termed "impracticability." It is difficult to determine when the results of an event reach the level of impracticability. It is suggested that a "very serious disruption must occur."[76] Courts will look at factors such as if the event alters the essential nature of the contract or contract term, if the event causes a severe shortage, etc.[77] Foreseeable, moderate changes that naturally occur within the contract are typically not enough.

Other Matters

In addition to issues regarding contract law, groups considering GNAs may want to seek professional advice about other related legal issues. For example:

- One community organization investigated the possibility of getting a Federal Consent Decree. This is when the parties, after filing a federal lawsuit, come to an agreement and submit the agreement to a federal judge. That judge has discretion as to if the

[71] *Id*. at §§261-72.
[72] ROBERT A. HILLMAN, PRINCIPLES OF CONTRACT LAW 305 (2004).
[73] *Id*.
[74] *Id*.
[75] *Id*. at 309.
[76] *Id*. at 311.
[77] *Id*.

judge will accept the agreement and approve it. Once it is approved and the judge "signed off on it," the court has essentially agreed to maintain jurisdiction to enforce the agreement.

- When negotiating contract terms, some community organizations involved in this Good Neighbor Agreement study specifically sought out terms that are self-executing, that is, terms that do not require a significant amount of oversight. With a self-executing term in a contract, if the term is not met, it is considered a breach and general breach of contract remedies are available.
- Several community organizations have achieved some success in enforcing contract provisions by including the terms in a permit, such as a water use permit. Investigate all requirements relating to this option as they often require the approval or collaboration of a state agency.
- There may also be remedies available through property law (covenants, easements, etc.). This is a specialized area that may require consulting an attorney working specifically with property law.

Resources

The following is a list of possible resources. The list includes legal treatises, practitioner's guides, and websites that may assist you to further expand your understanding of contract law. The sponsoring organization makes no representations as to the quality or comprehensiveness of the resources listed.

GERALD E. BERENDT ET AL., CONTRACT LAW AND PRACTICE (1998). A commonly used textbook with details on each contract concept and supporting case law.

1 ARTHUR L. CORBIN, CORBIN ON CONTRACTS 28 (2d ed. 1993). A widely used contracts treatise.

E. ALLAN FARNSWORTH, CONTRACTS (3rd ed. 1999). A widely used contracts treatise.

ROBERT A. HILLMAN, PRINCIPLES OF CONTRACT LAW 15 (2004). Short, concise treatise with examples presented in an easy to understand format.

CHARLES L. KNAPP ET AL., RULES OF CONTRACT LAW (1999). A guide that includes the Uniform Commercial Code (guides contract law when the contract involves the sale of goods) and the Restatement (Second) of Contracts (guides general contract law).

JOSEPH M. PERILLO, CALAMARI & PERILLO ON CONTRACTS (5th ed. 2003).

FRED S. STEINGOLD, LEGAL GUIDE FOR STARTING & RUNNING A SMALL BUSINESS (7th ed. 2003). Although this book is targeted to those starting a small business, it includes material discussing the core concepts of contract law.

http://www.findlaw.com. Website that provides links to find a lawyer, search the website, search legal news, search for related cases, and search for statutes (laws) relating to contracts, and virtually every other aspect of the law.

http://www.contract-law.com. Website that provides additional definitions and a series of Frequently Asked Questions regarding contracts.

http://en.wikipedia.org/wiki/Contract. Provides definitions and concepts.