

Case

3

Dealing With Bureaucracy and Intergovernmental Relations: The EPA and Hazardous Waste

Lisa Nelson

ABOUT THE ORGANIZATIONS

The *U.S. Environmental Protection Agency (EPA) regional office* is charged with overseeing the restoration of contaminated and hazardous waste sites in its region.

The *City of Bajada* is a mid-sized community in the southwestern United States in need of economic development and eager to move ahead with development plans.

The *Bajada Economic Development Partnership* is a community interest group that advocates developing under-utilized industrial parks and contaminated sites.

The *City of Hillview* is a wealthy college community neighboring Bajada.

Office of Congressmen Jim Fisher, the area's representative, is a booster of economic development projects in his district.

Sus Casas is a nonprofit, affordable housing advocacy group supporting a plan to build low-income housing on the site in question.

ABOUT THE CHARACTERS

Janet Lee, regional hazardous waste clean-up manager, is eager to clean up waste sites but is caught in the middle of bureaucratic red tape from her regional office and demands from a variety of agencies and interests.

Tom Valdez, regional water quality manager, is a politically savvy operator who opposes the development plan on grounds that it would develop a tract he has identified to be conserved as a wetland.

Chris Wilson is the EPA assistant regional administrator and Lee's boss.

INTRODUCTION TO THE PROBLEM

Chris Wilson, EPA's assistant regional manager, spoke with Janet Lee, the manager of hazardous waste cleanup for EPA's Region XV, to let her know she should expect a written request to speed up the approval of a treatment plan for a "brownfields" site. The site is

located in Bajada. The reason for the request, according to Wilson, is that a local economic development board wants to include the property in a redevelopment plan but cannot proceed because of the unresolved liability and cleanup issues at the site.

The Bajada site is one of 160 brownfields sites in the region on which Lee is working. While not as severely threatening to public health as a Superfund site, the property is classified as a brownfields site since it has been vacant for a number of years due to suspected pollution problems. Developers tend to avoid such sites for fear of inheriting environmental liability should they assume ownership of the property. There are more than 400,000 brownfields sites across the nation, contributing to urban blight, sprawl, delinquent taxes, crime, and environmental problems. The EPA has been under considerable pressure to develop ways to reduce the liability threat so that the sites can be redeveloped for new uses.

Superfund

Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) in 1980 in response to growing concern about the threat from hazardous materials. Almost 36,000 sites have been investigated since then and about 2,000 are on the National Priorities List (NPL), the list of worst sites that are eligible for federally funded clean-up. Superfund contains strict liability provisions that require cleanup costs to be shared by anyone having anything to do with the site—including new landowners, whether or not they were involved in the improper disposal of the hazardous waste in the first place. Because the cost of cleaning up the sites can be high, new businesses and developers avoid old industrial sites when looking for new locations. Therefore, the land often sits idle. The EPA has been under pressure to develop a speedier investigative process so that brownfields sites can be cleared for development. Lee thought it ironic to be in the role of the “bureaucrat in the way,” especially after she had spent months dealing with delays while waiting for the EPA’s central office in Washington, D.C. to approve procedures.

The Bajada Site

Lee took out the file on the Bajada site to remind herself of the details. The site is in the northern section of Bajada, a mid-sized (60,000), southwestern city in a larger metropolitan area. The property is near the east boundary of La Placa and the west boundary of Hillview, a wealthy college town. The file contained a two-year-old letter from the city manager in Hillview, requesting to be kept informed of decisions regarding the Bajada site.

The property was formerly a circuit-board plating factory owned by a major corporation. There is groundwater contamination in the underlying aquifer and soil contamination in some areas. The site did not qualify for the NPL because the groundwater contamination poses only a “moderate” health risk rather than the necessary “severe” risk to area drinking water wells. And the soil contamination posed no threats beyond the immediate property. Nevertheless, to be cleared for redevelopment, the soil would have to be treated or removed and a plan developed for remediation of the groundwater contamination.

THE REQUEST

The next day, Lee received an overnight mail package containing the proposal, a list of the project partners, and a map of the project site in question. The fifteen-acre brownfields property is across the street from an underutilized industrial park, the focus of the economic development proposal. On the west edge of the industrial park is property that includes a run-off ditch with the potential to be restored as a wetland. Lee knew from her previous conversation with Wilson that the economic development partnership originally targeted the ditch-wetland property as developable for low-income housing. However, state water quality officials have requested (with the support of Tom Valdez, the regional EPA water quality manager) that the former plating factory property (the brownfields site) be developed instead of the underutilized industrial park so as to leave the ditch for future restoration as a wetland. Valdez has a reputation in the agency for working hard behind the scenes to get political support for his pet projects. However, Valdez and foes of the planned development of the industrial park would have to contend with several powerful partners involved in the development project including the Cities of Bajada and La Placa, Sus Casas (a nonprofit, low-income housing advocacy group), the regional council of governments, the Bajada Chamber of Commerce, and the state Department of Economic Development. Another group, Ducks Unlimited, wanted the contaminated site cleaned and wetlands restored for waterfowl habitat.

An aide to Congressman Jim Fisher, the Bajada area's representative, called Lee to inquire about the status of the Bajada project. Lee said she was still looking at the project proposal and would return the call later in the afternoon. The aide assured Lee that Fisher was very interested in supporting the proposed project.

RULES AND SHARED POWERS

The office procedures that Lee had recently established for processing cleanup requests called for a preliminary prioritization of the sites according to severity of threat, ease of cleanup, and length of time the property had been underutilized or vacant, with longer periods of time ranked higher. Lee now wished she had factored in community needs; that would have allowed her to move the Bajada site to the top priority list and satisfy the array of interests now weighing on the development.

However, Lee also wondered if placing low-income housing on this site rather than the one originally planned would raise concerns about environmental justice. This was a relatively new impact that EPA was required to consider, and the image presented of building low-income housing on a contaminated site invited criticism. She also wondered if the housing advocacy group knew of the alternative proposal to build the housing units on a site other than the one targeted for wetlands renewal. Lee also noticed that the City of Hillview was not a partner listed on the project. A wealthy college community, Hillview would most likely support cleaning up the contaminated site for development and reclaiming the ditch area as a wetland.

To sign off on the project would also require quick approval of a cleanup plan and approval of contractors designated for soil removal and groundwater remediation. Lee won-

dered if any of the companies on the approved contractor list would be available on such short notice to assess the site and write a proposal. Such environmental projects would need approval from the state Department of Environmental Quality, even though the state's Economic Development Department was a project partner. Sorting out that potential conflict would probably require guidance from the governor's office.

Lee could see that her decision about what to do on the Bajada site would have an important effect on the project. A "no" to the cleanup of the brownfields would probably put pressure on developing the wetlands area for low-income housing. A "yes" to the planned clean up would mean that she would need to secure an array of bureaucratic approvals from a number of agencies and interests. A "yes" might also backfire if Hillview or the state Department of Environmental Quality did not like the idea. Clearly, economic development was a legitimate priority for the Bajada area, and the proposal cited studies showing a need for additional affordable housing.

Lee had been a field agent prior to her promotion to the regional office. Her practice had been to visit the actual waste sites and their surroundings, but as an administrator in an office, she was 350 miles away from the site. She liked Wilson, the young regional administrator, but was not sure she trusted Valdez, the water quality expert, who was away from the office most of the time. The office atmosphere was friendly and casual, but hardworking, and there were often small celebrations when projects were completed. Lee was eager to tackle the large backlog of cases remaining from her predecessor, but had felt it necessary to establish fair and impartial procedures for deciding which cases should receive attention first. Her boss, Wilson, encouraged her in this activity but she was concerned that she would so quickly need to ask him to approve making an exception in order to process the Bajada paperwork as soon as possible. On the phone, Wilson had assured her that he would support her decision, but he was now unable to further discuss the situation, as he was away at a senior executive training workshop and unavailable. She would have to decide for herself.

ROLE-PLAY ASSIGNMENT

You are Lee and must decide how to handle the plans for developing and cleaning up the brownfields site and/or developing the adjacent industrial park.

QUESTIONS FOR DISCUSSION

1. What interests or interest groups are involved in the outcome of this decision and on which side of the decision? How should Lee prioritize the conflicting issues at stake in the Bajada proposal?
2. How important is it for someone in Lee's position to develop effective working relationships with people in other government agencies as well as state and local agencies? What relationships should she try to build? How? What groups and inter governmental organizations need to be brought to the case?
3. Are there ethical trade-offs present in this case? If so, what are they? And how should Lee approach the rules for prioritizing cleanup sites?

4. Lee found a note in her in-box from Valdez that said, "This is a case where rules are made to be broken!" Is he right? How should Lee respond?
5. What is your decision? Should you clean up and develop the brownfields site or the adjacent old industrial park? What is your decision regarding the wetlands renewal and affordable housing plan?

SOURCES FOR FURTHER READING

Hird, J. *Superfund: The Political Economy of Environmental Risk*. Baltimore: Johns Hopkins Press, 1994.

Luke, J. *Catalytic Leadership: Strategies for an Interconnected World*. San Francisco: Jossey-Bass Publishers, 1998.

Mazmanian, D.A., and M. E. Kraft. *Toward Sustainable Communities: Transitions and Transformations in Environmental Policy*. Cambridge, MA: MIT Press, 1999.

O'Leary, R., R. F. Durant, D. J. Fiorino, and P. S. Weiland. *Managing for the Environment: Understanding the Legal, Organizational, and Policy Changes*. San Francisco: Jossey-Bass, 1999.