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Civility or Creativity?:
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Public Controversies on Waste Incinerators

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Abstract

The field of dispute resolution has marked a turning point with Dispute Systems Design (DSD) since the late 1980s. Since then, rather than on developing dispute resolution procedures for individual case, the more emphasis has been on adopting a broader perspective, asking how alternative dispute resolution procedures can be most effectively used to form an integrated system for dealing not with just a single dispute, but with the frequent stream of disputes in specific organization or communities. Some researchers find there exist overarching principles for designing effective dispute resolution systems.

Dr. Kim applies the recent theory of DSD to the most frequent public disputes in the past 10 years in Korea, that is, siting controversies on waste management facilities. He diagnoses the current Korean dispute system design associated with waste management facilities, juxtaposes the overarching principles of DSD on the current Korean dispute system design with some actual case studies, and finally recommends some innovation in the current DSD in Korea. Dr. Kim suggests that the major problem in current disputes in Korea to tackle first might not be the matter of civility of disputants or (how to educate them), but the matter of creativity of disputants, or (how to motivate them first) which hinges on the appropriate structures or design of the integrated dispute system.

Keywords: Dispute Systems Design (DSD), Korea, Waste Facility Controversy

JEL codes: Z00

Introduction

The impasse in siting and operating waste facilities, such as incinerators and landfills, is a major problem of significance throughout the industrialized countries. This issue is inherently challenging because waste facilities are viewed as beneficial by a region as a whole but perceived to be noxious by the community asked to host them. These facilities so called “Locally Unwanted Land Uses (LULUs) are almost always opposed by communities who regard the facility as a loss (e.g. possible reduction in property value or threats to environmental quality).

To overcome this dilemma, many scholars and experts argue more participatory approaches to siting policies (Susskind, 1990; Barry Rabe, 1994). Other keywords as prescriptions to the problem include trust building, voluntary process, fairness, full compensation, and so forth (Pertney, 1985; Mitchell, et al., 1986; Kunreuther, et al., 1996). As the fundamental sources for the problems, many people simply posit that government officials are not willing to involve stakeholding communities from the beginning of the process. Angry residents are also blamed for their uncivilized demonstrations or hostile activities against the government. Both are diagnosed that they lack necessary negotiation skills. Based on these diagnosis on personal or disposition factors of the actors around controversies, the solution might be education or capacity building for them so that government officials realize the importance of involving public earlier and citizens are more civilized as to negotiate face-to-face with the government in a very calm manner.

However, in this research, I deal with the issue with different assumption that there may be more fundamental problem in making them behave inefficient when the problem of siting

controversies have been persistent and exasperating in Korea. The question is why there have been so many frequent siting controversies in Korea and why people cannot learn from them. To answer these questions, I need to look the problem systematically rather than to investigate a few single cases. The most frequent public disputes in Korea for the past ten years (1995-2006) is municipal waste facility related disputes (Table 1).

| | Category | Frequency |
|----------------------------|---|-------------------|
| Waste Treatment Facilities | Municipal wastes | 75 (22.3%) |
| | Rural/Industrial wastes | 11 (3.3%) |
| | Hazardous wastes | 3 (0.9%) |
| Public Service Facilities | Crematorium | 15 (4.5%) |
| | Military facilities | 6 (1.8%) |
| | Cultural/Sports facilities | 16 (4.7%) |
| | Public office buildings | 14 (4.2%) |
| | Other public service facilities | 6 (1.8%) |
| Local Development | Local development projects | 24 (7.1%) |
| | Tourist facilities | 25 (7.4%) |
| | Local zoning | 16 (4.7%) |
| Infrastructure | Road (Highway, Subway, Tunnel) | 34 (10.1%) |
| | Rail roads | 17 (5.0%) |
| | Ports (Air/ Sea) | 5 (1.5%) |
| | Power plants (Hydroelectric, Thermal) | 14 (4.2%) |
| | Nuclear power plants (waste facilities) | 8 (2.4%) |
| | Dam/ Water Protection regulations | 17 (5.0%) |
| | Water supply facilities | 13 (3.9%) |
| | Sewerage facilities | 18 (5.3%) |

Table 1. Types of Public Disputes in Korea (1995-2006: Total 337 cases) (Ha and Lee, 2007)

As a very useful framework, I borrow the concept of Dispute System Design (DSD) (Ury, Brett and Goldbert, 1988).

Dispute Systems Design

As an emerging field in the world of dispute resolution, Dispute Systems Design (DSD) broadened the perspective of dispute resolution by adopting systematic perspective to ask how the dispute resolution procedures can be most effectively used to form an integrated system for dealing with not just a single dispute, but with the stream of disputes that arise in nearly all

relationships, organizations, and communities (Ury, Brett, and Goldberg, 1989). DSD is not interested in developing individual dispute resolution procedures such as negotiation, mediation, and arbitration.

DSD has been tried in many public and private sector to improve the dispute resolution systems such as U.S. Forest Service, regional water policy and management, health care-insurance industries, manufacturing companies, high-tech industries, municipal cities, schools, and family cases (Ury, Brett, and Goldberg, 1988; Kelly, 1989; Slaikou, 1989; Murray, 1989, 1990; Goldberg and Brett, 1991; Rowe, 1991; O'Connor, 1992; Slaikou and Hasson, 1992; McKinney, 1992; Manring, 1993; Ury, 1995; Shakun, 1995; Costantino, 1996; Zinsser, 1996; Bendersky, 1998; Lynch, 2002; Bingham, 2002). All applications of DSD deal with the question of how the system can persuade people or organizations to talk more and fight less.

Ordinary cases in waste facility controversy in Korea feature litigation to court, striking, threatening to break off the relationship, or physically attacking each other. Then, the issue might be how the system can encourage them instead to negotiate their differences. In other words, poorly designed system may hinder people's capacity to negotiation. It may be not the case that system may not work due to the lack of negotiation skill.

Dispute Systems Designers depict the central feature of a dispute resolution system as in the figure 1 below. Occurring disputes are inputs in the system, and the output is costs and benefits. Those include transaction costs, level of satisfaction with the outcomes, impact on the relationship, and the frequency with which disputes recur. In the middle between the input and the output, there come the procedures people actually use for resolving their disputes. Four main

factors directly affect the procedures in use are the procedures available, the parties' motivations, the parties' skills, and the resources available.

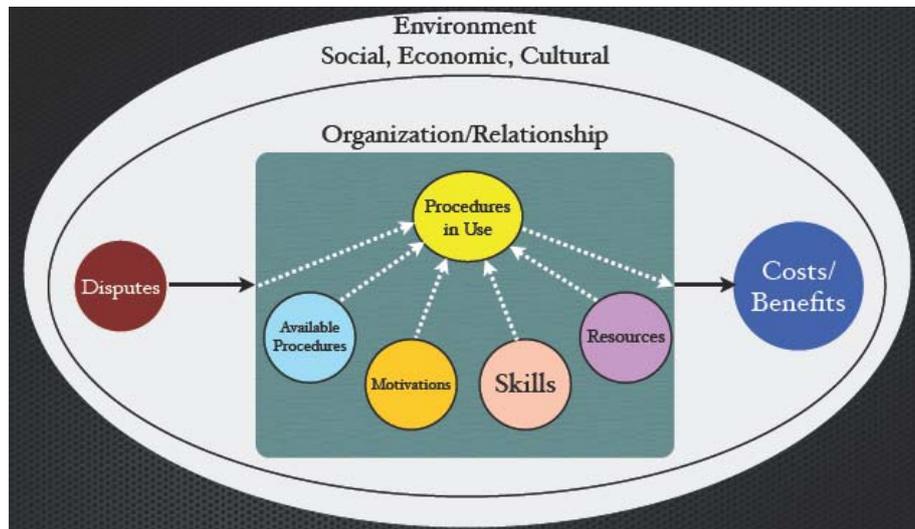


Figure 1. Model of a Dispute Resolution System (Ury, Brett, and Boldberg, 1988)

Encompassing all components, a larger social, economic, and cultural environment exist and indirectly affect the procedures used. A dispute resolution system consists of all relationships between the components. For example, when environmental groups may oppose to the plans of developers and major infrastructure constructions, they tend to use striking, demonstration, media conference, or litigation. Problem-solving, or interest-based negotiation may be virtually unknown. People and organizations involved in a dispute do not necessarily need a prescribed procedure to engage in interests-based negotiation, but such a procedure can help.

However, even with a negotiation procedure in place, the parties may lack the motivation to negotiate. Sometimes, stakeholders may be reluctant to talk from the beginning for fear of retaliation. Or they fear that outcomes may be rarely satisfactory to them. Or, the motivation to

strike out weighs the motivation to use negotiation in terms of raising compensation package. Thus, it is very important to explore the motivations that lie behind the use of different procedures is a key task in designing the system. Especially, knowing what motivates the parties to use high-cost procedures is crucial for the designer who seeks a better system.

Now, if there is an appropriate dispute resolution procedure, and motivation, then the next issue is the skill and capacity, such as communication and negotiation. Enhancing skills is particularly important when the behavior of key individuals may be a primary reason for frequent disputes. Finally, even if interests-based negotiation procedures are available, their use may be hampered by a lack of the people, information, or institutions that make them work effectively. Frequently missing resource is people who are able to assist disputants to resolve their disputes with facilitation or mediation.

In sum, designing a dispute resolution system is somewhat like designing a flood control system. Like rainfall, conflict is inevitable. Properly controlled, it can be a boon. However, too much in the wrong place can create a problem. The challenge is to build a structure that will direct disputes along a low-cost path to resolution. In the design of any dispute resolution system, design experts suggest six crucial principles. They are:

1. Put the focus on interests;

Three major ways to resolve a dispute are to reconcile underlying interests, to determine who is right, and to determine who has more power. Empirical evidence shows that, in general, it is less costly and more rewarding to focus on interests than to focus on rights, which in turn is less costly and more rewarding than to focus on power. The straightforward principle that follows is to encourage the parties to resolve disputes

by reconciling their interests wherever it is possible through negotiation or mediation. There are four ways to do this: Design appropriate procedures, strengthen motivation, enhance skills, and provide resources.

2. Build in “loop-backs” to negotiation;

Interests-based procedures will not always resolve disputes, yet a rights or power contest can be excessively costly. The wise designer will thus build in procedures that encourage the disputants to turn back from such contests to negotiation. Those are what we all “loop-back” procedures. It is useful to distinguish such procedures on the basis of whether they encourage disputants to “loop back” from a rights contest or from a power contest.

3. Provide low-cost rights and power back-ups;

A key part of an effective dispute resolution system is low-cost procedures for providing a final resolution based on rights or power. Such procedures serve as a back-up should interests-based negotiation fail to resolve the dispute.

4. Build in consultation before, feedback after;

A fourth design principle is to prevent unnecessary conflict and head off future disputes. This may be done through notification and consultation, as well as through post-dispute analysis and feedback.

5. Arrange procedures in a low-to-high cost sequence;

The initial four design principles suggest the creation of a sequence of procedures, from

interests-based negotiation to loop-back procedures to back-up procedures. The sequence can be imagined as a series of steps up a dispute resolution ladder (Figure 2)

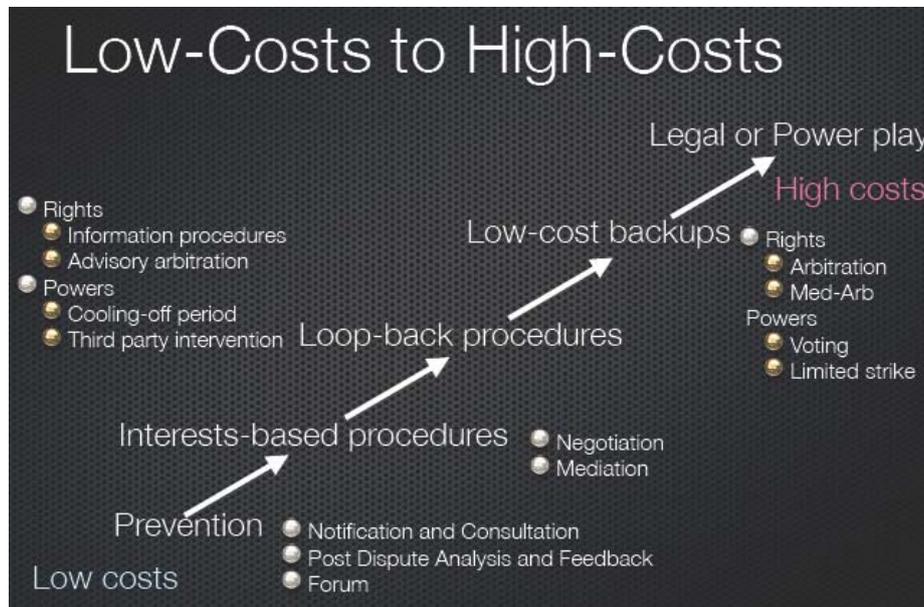


Figure 2. Low-costs to high costs sequence of dispute resolution

6. Provide the necessary motivation, skills, and resources.

A final principle cuts across all others. Make sure the procedures work by providing the motivation to use them, the relevant skills, and the necessary resources. Without the necessary motivation, skills, and resources, procedures might well fail.

Application of DSD to Korean cases

To diagnose the Korean dispute resolution system regarding waste management facilities, researcher set time scope of the cases since 1995, because a new procedural system was enacted in 1995, so-called, “Act for Facilitating for Waste Treatment Facility Siting and Aid for Affected Area (“Pye-Chok-Bup)” which was effective on June 30, 1996. The regional scoping was made within seven metropolitan cities including Seoul Metropolitan area, which account for 87% of

the total municipal wastes in Korea. Within the time limit for research, cases in rural areas are excluded.

The number of cases is nineteen and researchers select twelve representative cases out of them (Table 2). For example, the city of Seoul include four cases in Mokdong, Nowon, Kangnam, and Mapo since 1995.

Table 2. Case selections

| Jurisdiction | Site |
|--------------|--|
| Seoul (4) | Mokdong, Nowon, Kangnam, Mapo |
| Kyung-gi | Paju, Kwangmyoug, Guri, Soowon, Ansung, Yicheon, Pucheon, Gunpo, Yongin, Ansan |
| Incheon (2) | Cheongra, Songdo |
| Taejeon (1) | Taeduck |
| Taegu (1) | Chilgok |
| Ulsan (1) | Sungam |

Since the types of disputes in all cases are different, researchers develop a framework to sort out the types using a case cube for waste management facility disputes. All cases can be located in any place in a cube with three axes; locational characteristics (Urban, Rurban, and isolated), Procedure (Siting, and Operating), and Regional Scope (Single Jurisdiction, Multi-Jurisdiction, Joint Use) (Figure 3.)

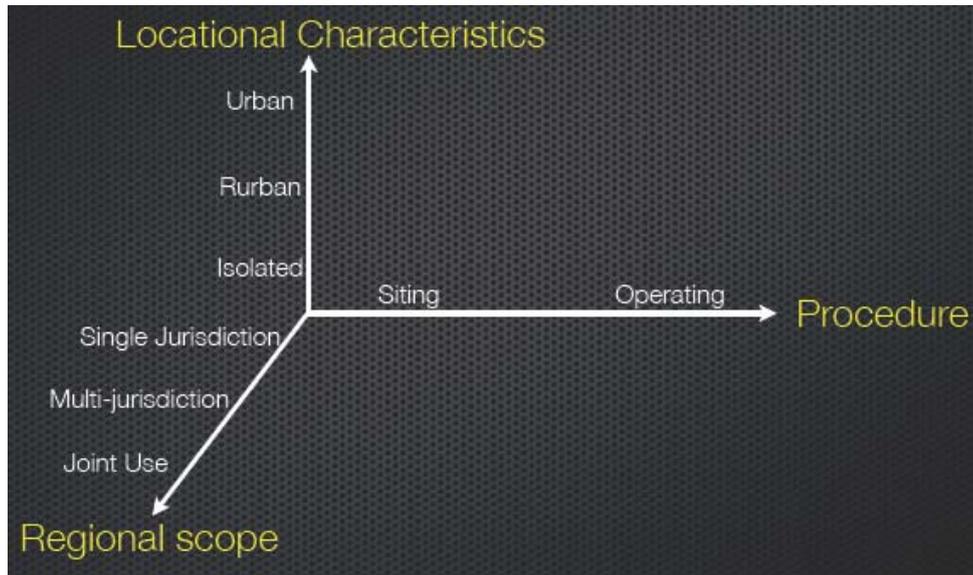


Figure 3. Case cube for waste management facility disputes in Korea

What researchers find in locating cases is that the cases are evolving and not static. For example, the dispute case started in a single jurisdiction in rurban area but the case evolved into a case of the multi-jurisdictional use. And as rurban areas became urbanized, new disputes came into being even when siting issue was done. The representative case is one in PaJu, Kyung Ki province. (Figure 4.)

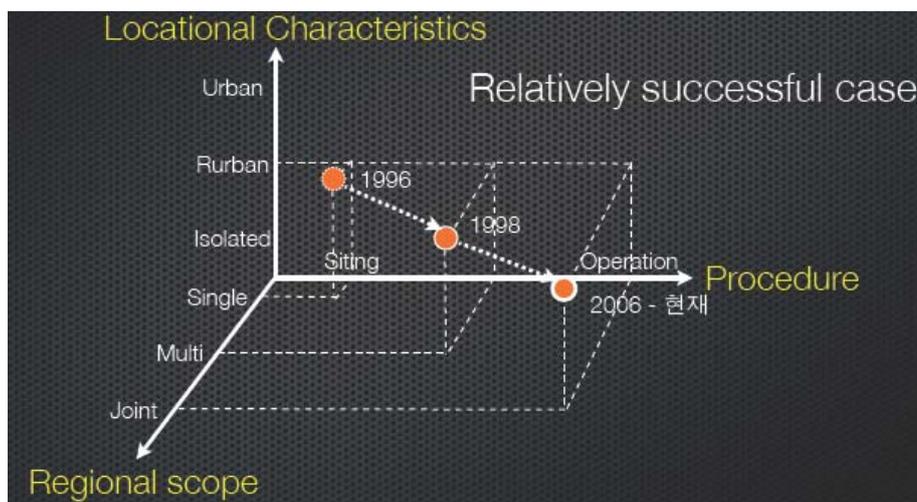


Figure 4. Evolving Case in Paju

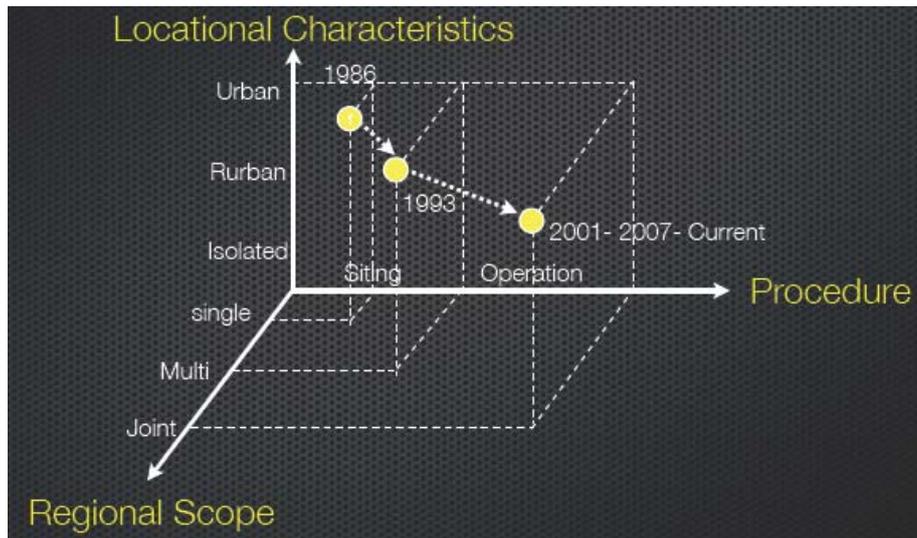
As the output from the system, research evaluate the time between planning to finished construction of the facility as the cost component and try to estimate the administrative costs in managing disputes. In the case of Paju as a relatively successful case, it took seven years from the initiation of the participatory process to the end of construction (Figure 5).



Figure 5. Time spent in Paju Case

Administrative costs include the cost of public presentations, public hearings, public meetings, advertisement in the form of brochures, various financial aids as incentives for community, and especially domestic or international site visits for site selection committee members, and costs of legal suits. If there are less and less administrative costs to facilitate the dispute resolution, the system proves to be more efficient. In the Paju case, there were no litigation process fortunately, and all kinds of public gatherings and international tours with residents, and various development project aid for hosting community as much as 14 billion wons.

In the case of Mokdong in Seoul also, the case shows evolution from single jurisdictional issue to multi jurisdictional one with more residents due to urbanization (Figure 6.)



(Figure 6. Joint Use case in Mokdong, Seoul)

Most striking things in Mokdong case is the time spent and administrative costs in their effort to resolve the dispute. It is still in litigation process. But, it took six years since the city government announced its plan to use Mokdong’s facility jointly with other nearby jurisdictions until the government acted preemptively after the negotiation failed with residents (Figure 7).



Figure 7. Time spent in Mokdong Case in Seoul

The city government convened more than 200 meetings with citizen representatives for six years and host four public presentations and hearings and site tours with residents. But they end up with physical collision with residents for three months in early 2007 and use policy forces. The relations between the government and citizens became tense and adversarial after the power game. To diagnose the dispute resolution system in more detail, researchers look into the four

components such as available procedure, motivation, skill, and resources.

Available procedure

Korea has had a very distinct available procedure in terms of waste treatment facility siting. In 1995, the parliament passed a very progressive act to reduce the costs incurred from delayed disputes regarding waste treatment facilities. The new act, “The Act for Facilitating for Waste Treatment Facility Siting and Aid for Affected Area” prescribes the procedure to compose siting selection committee with citizen representatives and other experts, and even local politicians. The distinct feature in the Act is that the Act secure the right of resident to ask for compensation only when they are regarded as affected by the facility. The regulation kindly enumerates what kinds of incentives the hosting communities can ask for as compensation. However, the existence of participatory structure is not always appropriate and effective in dispute resolution. Researchers found the procedure itself might create unwanted motivation for local citizens and government officials as well.

Motivation

In an efficient and effective dispute resolution system, residents and government officials should be provided with incentive or motivation to engage in an interest-based dialogue. At the first look at the available procedure of ‘Pye-Chok Bup,’ it may seem that people can participate in the process and engage in negotiation with government officials regarding the siting decision. But, the system itself does not provide any incentive for residents, especially ones who are supposed to host the facility according to the site selection committee’s decision while their decision is believed to be based on objective criteria.

First of all, site selection committee members are delegated by the local assembly. They may

involve people who live in hosting candidate communities or not. But, only after the site selection committee decide the site and the Ministry of Environment approve the decision, then the governmental officials can have talks with designated hosting community residents regarding the compensation issues. The siting decision is already made and then the negotiation issue is what kinds of compensation the community can get. However, angry residents who do not acknowledge the decision, or are not happy about the compensation, or are not regarded as affected residents, do not have any incentive to talk with government officials, because the most important decision is already made. If they are provided the opportunity to compare the benefits of compensation and the costs of hosting the facility in a process, they may come to the table to talk. But, they do not have any right to change the siting decision when the Ministry of Environment approves while they do not have any information on the compensation as a package.

What is more problematic is that the selection of the local residents who can participate in the committee to aid affected area is made by local assembly too. In such a case, the resident representative may not be necessarily real representatives for the host community. If the government can affect the composition of the local resident representatives who discuss the compensation package, they have incentive to fill the roster with people who are sympathetic to the siting decision with compensation. But, angry residents in the hosting community are not well representatives. Then they tend to organize another organization outside in order to block the government decision. What is worse from this situation is that communities are divided between the pro and the con and the relationships become pretty adverse.

On the side of the government officials, there are less incentive to engage in interests-based

negotiations with angry hosting residents who are against the project. They usually regard their job in the department of waste management as menial task and tend to leave to another easier tasks after a few years experience. So, there are short-term turnover in manpower in such departments. Their administrative activities lose the continuity. For residents, this often creates situations where different government officials say different words on the same issue.

Skills

Most hosting community representatives, once they are elected to fight the government decision, tend to find useful information regarding the tactics and strategies to resist effectively government decisions. They often ask for a citizen organization or forum which consists of many residents and civil organizations with much experience of fighting against government siting decisions. Their strategies are often adopted from these of adversarial labor-management disputes or negotiation. Their styles of negotiation are far from these of interest-based negotiation. Government officials have rare opportunity to be trained in negotiation. So, some government officials are heralded as successful negotiators when they show persistence to meet angry representatives and put up with all admonitions and face them with alcoholic beverages to the point where they are persuaded by their will.

Resources

No cases showed the use of outside neutral facilitator or mediator, because they have difficulty to locate such neutral professionals, if any. They do not trust their neutrality and they fear that the neutral may hamper the process to their disadvantage.

All things considered, researcher suggest recommendations according to the dispute systems

design principles.

Principle 1: Put the focus on interests.

- To reduce the time spent on dispute resolution, people can bring interests-based negotiation as early as possible. There should be “committee for siting agreement” right after the site selection committee’s decision, but before siting approval by the Ministry of Environment. This committee should replace the current committee to aid affected area so that the new committee members who are hosting community residents can negotiate much broader issues to create a package deal with the final decision of siting. In this manner, they can have motivations to engage in interests-based negotiation.
- Use conflict assessment by professional neutrals when to identify citizen representative members in the committee for siting agreement and convene the first meeting with well balanced community members, pro, con, and neutral. The neutrals can suggest the design of the necessary process.
- As the decision rule in the committee for siting agreement, encourage them to pursue ‘consensus’ or ‘supermajority rule’ but within a certain deadline.
- Establish ad-hoc task-force type committee for different kinds of disputes rather than siting controversy without specific term for membership
- Decision by the committee for siting agreement should be approved by the affected residents again through notice-and-comments period.
- Create expert pool in local government in terms of conflict management with various mandates and incentives.
- Insert the clause in the current act that encourage the use of neutral facilitator and

mediator

Principle 2. Build in “Loop-backs” to negotiation

- Negotiation inside the committee for Siting Agreement should have a deadline.
- When direct negotiation falls, there can be a buffer period in order to cool off and then to consider the assistance of facilitator or mediator, or to try non-binding advisory arbitration by the third party.

Principle 3. Provide low-cost rights and power backups

- When the assisted negotiation or arbitration fails, disputants should be able to use binding arbitration or final-offer arbitration.
- If the siting agreement by the Committee faces several resistance from the residents, there should be a chance to use referendum among the residents.

Conclusion

Existing prescriptions to enhance the dispute resolution in waste treatment facility disputes tend to deal with dispositional deficiency of actors and assume the rule of the game is given.

However, unless available procedures are not appropriate enough to encourage interests-based negotiation as early as possible or provide motivation for stakeholders to come to the table, the skills itself are not working to solve the problem. The systematic approach should be incorporated in improving dispute resolution system.

Another misperception from decisionmakers and stakeholders is that they tend to regard available procedures as the all dispute resolution system. They tend to ascribe the failure of the

system to the lack of civility (of lack of skills) of the disputants. So, they tend to focus on the establishment of available procedures and education, ignoring the question of how the available procedures affect the actor's motivation to use interests-based negotiation.

Thus, the first and foremost important question should be "how to motivate disputants to use appropriate available procedures, if any." Then improving skills and building capacity can make intended impacts on the performance of the system. As a conclusion, there is much to be desired in the current available procedure. They need to be changed to enhance motivation for people to engage in interests-based negotiation as early as possible. What is interesting is that in most cases which can be regarded as relatively successful in resolving disputes, government officials rather roundabout or detour the current regulations to engage in negotiations with angry residents.

Dispute Systems design is a political task. It is not easy to persuade actors who are accustomed to conventional wisdom or old system. The way to persuade them is to create a successful case using suggested changes in the system and publicize a few successful cases to the whole system.

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