

ADVERSARIAL REGULATION:

A Case Study of the Newbay Controversy

by:

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ABSTRACT

In 1987, the Newbay Corporation's proposal to site, construct, and operate a coal-fired cogeneration power plant on the shores of the Seekonk River in East Providence, Rhode Island first appeared on the regulatory agenda. The proposed development generated a passionate public controversy between local residents whose neighborhoods and communities would be impacted upon and the developer who planned to build the facility. After six years of public debate, court battles and millions of dollars in legal fees, the project is now undergoing review by the Rhode Island Coastal Resources Management Council; the last regulatory hurdle before construction can begin.

The scope, magnitude, and duration of the battle concerning the Newbay project make it an excellent case study for evaluating our existing regulatory institutions. It illustrates the consequences of regulatory fragmentation, the implications of the expanding opportunities for citizen participation, and the ramifications of the growing judicial role in public decision making. The inability of our current regulatory framework to cope with proposals like Newbay and the ensuing controversy necessitates the formation of recommendations which could enable our regulatory system to better promote a cohesive public interest.

First of all, the energy facility siting system in place in Rhode Island needs streamlining. This can be achieved by remodeling the Energy Facility Siting Act and expanding the jurisdiction of the Energy Facility Siting Board. In addition, citizen access to our regulatory model needs to be channeled in a manner that involves constructive, non-polarized participation. Finally, the administrative agencies should be granted more flexibility and authority in the conduct of their regulatory function. As a result, the courts would be less liable to reverse the actions and decisions of the duly constituted regulatory agencies. In the end, the legitimacy of our administrative process would be restored.