

Captain Planet Takes on Hazard Transfer: Combining the Forces of Market, Legal and Ethical Decisionmaking to Reduce Toxic Exports

Andrea Giampetro-Meyer*

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I.

INTRODUCTION

Captain Planet is a cartoon superhero who strives to solve environmental problems.¹ He draws power from the natural forces of earth, fire, wind, water and heart. These forces combine and magnify, creating Captain Planet. Captain Planet not only solves environmental problems, but he also inspires others to use their individual power to create change. He reminds those he inspires, “Planeteers,” that, “*The power is yours!*”² This message “cap-

* Professor and Chair, Law & Social Responsibility Department, Sellinger School of Business and Management, Loyola College in Maryland. Special thanks to Michael B. Runnels, Assistant Professor of Law & Social Responsibility at Loyola College, for introducing me to Captain Planet, and suggesting this superhero’s philosophy is relevant to the topic of hazard transfer. Two graduate students, Ken Buben and Ruth Vadi, also provided valuable comments on this article.

1. Welcome to the Captain Planet Website, <http://www.turner.com/planet/> (last visited Jan. 24, 2009).

2. *Id.*

tures the extraordinary ability of one person to make a change.”³ Captain Planet works using strength and wits, and he never inflicts pain on environmental villains. Ultimately, Captain Planet hopes to inspire Planeteers to “continue to work for a cleaner, greener future that celebrates diversity and cultures from every corner of the globe.”⁴

The Captain Planet is a useful way of looking at global attempts to respond to and reduce the transfer of environmental hazards from rich to poor countries.⁵ Often, free trade in hazards—from garbage,⁶ to toxic sludge,⁷ to junked computers bound for “recycling”⁸—yields disaster in countries ill-equipped to handle hazards.⁹ Market-based solutions and legal prohibi-

3. *Id.* Captain Planet’s philosophy is consistent with the ideas of anthropologist Margaret Mead, “Never doubt the power of one individual to change the world. It is the only way it ever happens.” CASSELL COMPANION TO QUOTATIONS 388 (Nigel Rees ed., 1997).

4. Welcome to the Captain Planet Website, <http://www.turner.com/planet/> (last visited Jan. 24, 2009).

5. For a comprehensive description of hazard transfer, see generally JENNIFER CLAPP, TOXIC EXPORTS: THE TRANSFER OF HAZARDOUS WASTES FROM RICH TO POOR COUNTRIES (2001) [hereinafter TOXIC EXPORTS] (describing the dynamic, multifaceted problem of hazard transfer, explaining why political responses to this problem have been lacking, and delineating ideas for positive change).

6. See, e.g., Kathy Marks & Daniel Howden, *The World’s Rubbish Dump: A Garbage Tip that Stretches from Hawaii to Japan*, INDEP., Feb. 5, 2008, available at <http://www.independent.co.uk/environment/the-worlds-rubbish-dump-a-garbage-tip-that-stretches-from-hawaii-to-japan-778016.html> (describing a plastic soup of waste currently floating in the Pacific Ocean).

7. See, e.g., Olanrewaju A. Fagbohun, *The Regulation of Transboundary Shipments of Hazardous Waste: A Case Study of the Dumping of Toxic Waste in Abidjan, Cote d’Ivoire*, 37 H.K. L.J. (2007) [hereinafter DUMPING IN ABIDJAN] (presenting an in-depth description and analysis of a recent, well-documented dump coming from a ship, the *Probo Koala*, which carried toxic sludge from the Netherlands to the Port of Abidjan in Cote d’Ivoire. In this case, the toxic sludge was a highly toxic cocktail of petrochemical waste.); see also Lisa Widawsky, *In My Backyard: How Enabling Hazardous Waste Trade to Developing Nations Can Improve the Basel Convention’s Ability to Achieve Environmental Justice*, 38 ENVTL. L. 577 (2008).

8. See Catherine K. Lin, Linan Yan, and Andrew N. Davis, *Globalization, Extended Producer Responsibility and the Problem of Discarded Computers in China: An Exploratory Proposal for Environmental Protection*, 14 GEO. INT’L ENVTL. L. REV. 525 (2002) [hereinafter *Discarded Computers*]; see also Rob Courtney, *Evolving Hazardous Waste Policy for the Digital Era*, 25 STAN ENVTL. L.J. 199 (2006); see also ELIZABETH GROSSMAN, HIGH TECH TRASH: DIGITAL DEVICES, HIDDEN TOXICS, AND HUMAN HEALTH (2006).

9. Lydia Polgreen, *Neglect and Fraud Blamed for Toxic Dumping in Ivory Coast*, N.Y. TIMES, Nov. 24, 2006, at A. In the case of the *Probo Koala* in September 2006, “[a]t least 10 people died and thousands were sickened after chemical waste pumped from a tanker chartered by Trafigura, a huge petroleum trading company based in the Netherlands, was dumped across Abijan, the capital of Ivory Coast, in the main landfill and near poor neighborhoods.”

tions have helped limit the problems related to hazard transfer. However, each of these approaches has its shortcomings. Even efforts that combine these forces have fallen short in attempts to stop problems in the international trade in toxic waste. This Article suggests that a third power, that of ethical decisionmaking, can magnify the forces of the market and legal decisionmaking, creating the force necessary to respond appropriately to hazard transfer.

Business ethicists consult a traditional algorithm or “test” to assist them as they decide on a course of action. In particular, they ask: *Would the practice be acceptable at home, in the United States, if my country were in a similar stage of economic development?* This test allows for lower ethical standards based upon different levels of economic development, as long as the transnational corporation does not violate core human rights.¹⁰ The primary purpose of this Article is to consider this traditional algorithm and suggest additional questions that fortify the algorithm, thereby making it more useful to corporate managers and officers who contemplate specific actions related to hazard transfer.

Part II of this article explains how international trade in toxic waste has changed over time and describes what hazard transfer from rich to poor countries looks like today. Part III explores the strengths and limitations of market decisionmaking to reduce forms of hazard transfer. Part IV does the same for legal decisionmaking. And Part V highlights ethical decisionmaking and its role in reducing hazard transfer and offers suggestions for reforming the traditional algorithm described in the preceding paragraph. An ethical algorithm that helps those who trade in hazards think through the dilemmas they face empowers them to generate corporate profits while promoting a more sustainable and environmentally just world.

II. HAZARD TRANSFER

In recent decades, citizens both in developing nations and in the United States have been exposed to wastes that were “toxic, poisonous, explosive, corrosive, flammable, eco-toxic, or infec-

10. See *infra* text accompanying notes 97-99 for a discussion of core human values.

tious.”¹¹ Over time, government regulators in the United States have passed and enforced legislation to decrease and eventually eliminate exposure to hazardous waste.¹² Citizens of developed nations take for granted increased health and safety made possible by government regulation. But citizens of developing nations are not as fortunate. While developed nations have improved conditions for their own citizens,¹³ they have increased their export of hazards to developing countries. As a result, citizens of those developing countries have been exposed to more and more dangerous waste.¹⁴

The language of economic globalization makes hazard transfer sound morally neutral. Globalization has created an interconnected world economy, complete with opportunities—from trade¹⁵ to direct foreign investment.¹⁶ While some writers describe hazard transfer as part of the “ugly underbelly of eco-

11. NANCY K. KUBASEK & GARY S. SILVERMAN, ENVIRONMENTAL LAW 444 (6th ed. 2007) [hereinafter ENVIRONMENTAL LAW]. Kubasek describes wastes covered by the Basel Convention.

12. For a comprehensive review of hazardous waste export regulations in the United States and beyond, see Lisa T. Belenky, *Cradle to Border: U.S. Hazardous Waste Export Regulations and International Law*, 17 BERKELEY J. INT’L L. 95 (1999) [hereinafter *Cradle to Border*]. Belenky’s article describes the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and several international treaties, especially the Basel Convention on the Control of Transboundary Movements of Waste and Their Disposal (the Basel Convention).

13. Developed countries have taken steps to reduce or eliminate hazardous waste. For example, companies within the United States have engaged in “clean production,” methods of production that prevent pollution. TOXIC EXPORTS, *supra* note 5, at 127.

14. See generally *id.*

15. Trade in hazards develops as transnational corporations seek to save money and space by transferring toxic waste to countries that are less regulated. Governments in developing countries, which carry heavy debt, seek foreign exchange, even in hazards. Once the hazards arrive in the developing country, regulators are unable to enforce regulations. A good example is the ship dismantling that takes place in Asia, especially in India, Bangladesh, Pakistan, and Turkey. ENVIRONMENTAL LAW, *supra* note 11.

16. See generally GUILLERMO DE LA DEHESA, WHAT DO WE KNOW ABOUT GLOBALIZATION? (2007) (providing an insightful overview of globalization, including a description of how trade policies and direct foreign investment are affected by globalization); see also ALTERNATIVES TO ECONOMIC GLOBALIZATION: A BETTER WORLD IS POSSIBLE (John Cavanagh & Jerry Mander eds., 2d ed. 2004) for a comprehensive reader that considers burdens of globalization, with articles and ideas from eighteen writers from around the world. Direct foreign investment occurs when a company from one country builds a factory in another country. For example, a company might decide to produce electronics or textiles in another country, rather than in the United States.

conomic globalisation,”¹⁷ many others describe it as trade itself—waste transfers are trading opportunities like any other.¹⁸

In the 1980s, it was relatively easy to recognize hazard transfer, as it often took the form of dumping. Dumping, 80s-style, brings to mind images of the *Khian Sea*, the cargo ship famous for its quest to dump 14,000 tons of toxic incinerator ash from Philadelphia in countries around the world.¹⁹ Citizens in the United States and beyond were outraged after the *Khian Sea* dumped approximately 30 million pounds of toxic ash in Haiti as “topsoil fertilizer.”²⁰ The *Khian Sea* continued its dumping expedition, changing its name to *Felicia*, then *Pelacano*.²¹ The cargo ship could not get any country to accept the waste. By 1988, the ship had disposed of the remaining tons of ash, presumably dumping as it traveled around the Indian Ocean, looking for a place to dock.²²

The waste disposal industry knew it could not continue to engage in outright dumping, as the public had lost patience and supported international treaties to prevent another *Khian Sea* incident. The 1989 Basel Convention²³ banned hazardous waste dumping in developing countries, but included a loophole that encouraged companies to invent new, more sophisticated ways to dump. The Convention allowed companies to consider waste as

17. This description comes from the Basel Action Network (BAN), “the world’s only organization focused on confronting the global environmental injustice and economic inefficiency of toxic trade (toxic wastes, products and technologies) and its devastating impacts. Working at the nexus of human rights and environment, [BAN] confront[s] the issues of environmental justice at a macro level, preventing disproportionate and unsustainable dumping of the world’s toxic waste and pollution on our global village’s poorest residents. At the same time [BAN] actively promote[s] the sustainable and just solutions to our consumption and waste crises — banning waste trade, while promoting green, toxic free and democratic design of consumer products.” Basel Action Network: About BAN, http://www.ban.org/main/about_BAN.html (last visited Jan. 24, 2009).

18. JONATHON KRUEGER, INTERNATIONAL TRADE AND THE BASEL CONVENTION 123 (1999) [hereinafter KRUEGER]. Krueger reviews lessons from the Basel experience, as of 1999. He writes, “it is difficult to understate the gap in understanding between those who perceive some hazardous wastes as products or secondary materials and those who believe that the international trade in such wastes must be stopped in order to move our societies toward cleaner production methods.”

19. See Maria A. Mazzocchi, Note, *Amlon Metals, Inc. v. FMC Corp.: U.S. Courts’ Denial of International Environmental Responsibility*, 9 FORDHAM ENVTL. L.J. 155, 156 (1997).

20. *Id.*

21. Press Release, Basel Action Network, Dumping on Haiti, http://www.ban.org/ban_news/dumping_on_Haiti.html (last visited Jan. 24, 2009).

22. *Id.* Greenpeace had alerted ports regarding the *Khian Sea/Felicia/Pelacano*.

23. See *infra* Section IV.

tradeable raw materials for recycling and further use. In the 1990s, companies engaged in creative labeling or outright mislabeling.²⁴ Creative labeling included classifying waste as products,²⁵ recycling,²⁶ or humanitarian aid.²⁷ In addition to creative labeling, companies tried to change the nature of waste so it fell under the exception for raw materials for further recycling and further use. Companies mixed hazards with other products²⁸ and sold waste as an energy source.²⁹

More recently, developed countries have been moving hazardous production processes³⁰ and industries³¹ to developing countries as a form of direct foreign investment. Scholars have raised questions about the potential for this investment to provide long-term economic value. They have also explored the extent to which particular countries have enacted regulatory schemes to protect their citizens from environmental hazards created by highly polluting industries, such as petroleum and electronics production.

As hazard transfer has evolved, a range of stakeholders have participated in attempts to create a framework for hazard transfer consistent with notions of opportunity and fundamental fairness. The key stakeholders active in discussions about hazard transfer are waste generators,³² exporters,³³ non-governmental agencies,³⁴ regulators³⁵ and associations that lobby on behalf of

24. TOXIC EXPORTS, *supra* note 5, at 54.

25. *Id.* at 48.

26. *Id.* at 58-61.

27. *Id.* at 66.

28. *Id.* at 67.

29. *Id.* at 61-62.

30. *E.g.*, Jason Margolis & Mary Kay Magistad, *California/China Workers Reports*, THE WORLD, OCT. 5, 2006, available at <http://www.theworld.org/?q=node/4900> (PRI's The World describes how a U.S. company that was exposing workers to dangerous levels of arsenic moved the work to China after getting fined by the state of California).

31. TOXIC EXPORTS, *supra* note 5, at 9. Clapp uses the phrases "industry flight" and "pollution haven" to describe this trend.

32. *Id.* at 82-86.

33. *Id.*

34. For example, non-governmental agencies (NGOs) such as the Basel Action Network have made the public aware of toxic dumping. Greenpeace has worked as an ally to governments in developing nations. For a more general description of the key role of NGOs in shaping environmental law, see Dan Tarlock, *The Role of Non-governmental Organizations in the Development of International Environmental Law*, 68 CHI-KENT L. REV. 61 (1993); see also Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183 (1997); see also Christiana Ochoa, *The Individual and Customary Law Formation*, 48 VA. J. INT'L L. 119 (2007).

industries.³⁶ These stakeholders have responded to and shaped both market and legal decisionmaking.

III.

THE FORCE OF MARKET DECISIONMAKING

Some businesses that engage in industrial activity externalize costs of production by releasing waste into the environment. Economists refer to pollution as a negative externality.³⁷ Corporations that create products and generate pollution as a by-product count on society to bear part of the cost of the product—the part related to pollution.³⁸ From this perspective, companies have little economic incentive to create products in environmentally friendly ways unless local, state, federal, or international regulators require it. Laws shore up market failures, including pollution.³⁹

Some stakeholders call for market-based or voluntary solutions to environmental degradation. At first glance, it seems illogical to call for market-based solutions to pollution, since market inefficiencies created the problem.⁴⁰ Upon closer examination, however, it seems likely that the market decisionmaking offers some contributions to environmental cleanup.⁴¹ Private companies, who are concerned with being good corporate citizens independent of legal regulation, pursue two voluntary options for environmental protection: (1) they manage the downside of environmental responsibility by reducing cost and

35. Regulators exist at local, state, federal, and international levels.

36. *E.g.*, The Bureau of International Recycling (BIR), <http://www.bir.org/> (last visited Jan. 29, 2009); Institute of Scrap Recycling Industries (ISRI), <http://www.isri.org/AM/Template.cfm?Section=Home1> (last visited Jan. 29, 2009).

37. PAUL KRUGMAN & ROBIN WELLS, MICROECONOMICS 437 (2009) (“[T]he environmental costs of pollution are the best-known and most important example of an external cost—an uncompensated cost that an individual or firm imposes on others.”).

38. *Id.*

39. ENVIRONMENTAL LAW, *supra* note 11, at 144.

40. *Id.* Proponents of using “market forces” to respond to environmental issues want to use market forces to encourage pollution prevention.

41. Some writers view certain forms of market-based and voluntary efforts as villains. David Barnhizer, *Waking from Sustainability’s “Impossible Dream”: The Decisionmaking Realities of Business and Government*, 18 GEO. INT’L ENVTL. L. REV. 595 (2006) [hereinafter *Impossible Dream*].

risk⁴² and (2) they manage the upside of environmental responsibility by generating revenue and creating intangible value.⁴³

When private companies manage the downside of environmental responsibility, they enact policies and procedures that reduce cost and risk. Companies that want to manage cost and risk are likely to engage in assessment and self-policing⁴⁴ as a first step. Companies might then trade in the right to pollute—either as buyers, sellers or traders of pollution allowances.⁴⁵ Another strategy to reduce cost and risk is reducing supply-side costs. For example, a trucking company might reduce the costs of transportation by using fuel-saving technologies that both save money and reduce pollution.⁴⁶

42. DANIEL C. ESTY & ANDREW S. WINSTON, *GREEN TO GOLD: HOW SMART COMPANIES USE ENVIRONMENTAL STRATEGY TO INNOVATE, CREATE VALUE, AND BUILD COMPETITIVE ADVANTAGE* (2006) [hereinafter *GREEN TO GOLD*]; see also *THE GREENING OF BUSINESS* (David A. Rhys ed., 1991).

43. *GREEN TO GOLD*, *supra* note 42.

44. Jodi L. Short & Michael W. Toffel, *Coerced Confessions: Self-Policing in the Shadow of the Regulator*, 24 J. L. ECON. & ORG. 45 (2008). Short and Toffel write that:

These types of initiatives carry promise as well as pitfalls. On the one hand, the incentives of self-policing programs have encouraged many companies to report and correct problems that regulators never would have discovered, suggesting the potential for real improvements in compliance. If compliance does improve at self-policing firms, regulators could shift their scarce enforcement resources to more recalcitrant companies. On the other hand, there is some evidence that self-reported violations are often minor, perhaps masking more serious unreported violations. Without any evidence that self-policing improves compliance, such programs may give industry an unprecedented and unwarranted level of control over its own regulation, raising fears of the “fox guarding the henhouse.” Their study indicated that “self-disclosures are motivated by coercive regulatory enforcement activities. Specifically, facilities were more likely to self-disclose violations if they were recently inspected, subjected to an enforcement action, or narrowly targeted for heightened scrutiny by a US EPA Compliance Incentive Program. We also find some evidence that facilities are more likely to turn themselves in when statutory immunity shields their self-disclosed violations from prosecution, but no evidence that facilities protected by audit privilege are more likely to self-disclose.

Id. at 46-47 (citations omitted).

45. Some industries are better candidates for migration than others, e.g., semiconductor manufacturing.

46. 11/14/2006: Loans to Help Truckers Save Money, Reduce Emissions, <http://yosemite.epa.gov/opa/admpress.nsf/e1fffb2c795ec9b2852570210055ba60/3e718f93846151a4852572260062b7e2!OpenDocument> (last visited Jan. 29, 2009). This initiative is a public-private collaborative effort. The U.S. Environmental Protection Agency has partnered with the Small Business Administration to make loans available to trucking companies to finance the purchase of SmartWay Upgrade Kits. The kits include a variety of devices, from idle-reduction devices, to exhaust after-treatment devices. Government sources indicated that “the kits can improve truck fuel efficiency by 15 percent and save more than \$8,000 in fuel costs annually, while significantly reducing emissions of soot and nitrogen oxides.” This loan initiative uses

Standard-setting by private industry assists companies as they manage the downside of environmental responsibility.⁴⁷ Standards are guidelines, not legal agreements or treaties.⁴⁸ The most well-known private standard setter is the International Organization for Standardization (ISO).⁴⁹ This standard-setting body is a non-governmental organization (NGO). ISO 14000 helps organizations determine how they can take steps to reduce negative environmental impacts.⁵⁰ It also helps them think through how they can comply with relevant laws and regulations. ISO 14001 is more specific: It outlines specifications for company environmental management systems (EMS).⁵¹ Although some writers are skeptical about the potential for voluntary pledges of good behavior to promote positive change,⁵² others have pointed out that companies have incentives for complying with voluntary pledges of good behavior, such as those outlined by ISO standards. Companies might want to comply to attract investors, promote customer loyalty or develop a reputation as a reliable supplier.⁵³

When private companies manage the upside of environmental responsibility, they rely on self-interest to generate revenue and create intangible value.⁵⁴ In essence, some companies today embrace a market for virtue.⁵⁵ They want to both make profits and be earth-friendly.⁵⁶ Some companies' concern for the environ-

SBA Express Loans. Banking partners include Bank of America, Business Loan Express, and Superior Financial Group.

47. David W. Case, *Changing Corporate Behavior Through Environmental Management Systems*, 31 WM. & MARY ENVTL. L. & POL'Y REV. 75 (2006) [hereinafter *EMS*].

48. *Id.* Many of the ISO standards eventually serve as the basis for legislation.

49. ISO – International Organization for Standardization, <http://www.iso.org/iso/home.htm> (last visited Jan. 29, 2009).

50. ISO 14000 Essentials, http://www.iso.org/iso/iso_catalogue/management_standards/iso_9000_iso_14000/iso_14000_essentials.htm (last visited Jan. 9, 2009).

51. *See generally EMS*, *supra* note 47.

52. *Impossible Dream*, *supra* note 41, at 602. Barnhizer writes that “businesses will never honor voluntary codes of practice or treaties that impose no duties, contain no monitoring and investigation systems, and lack effective sanctions and enforcement mechanisms.” *Id.* *See generally* TOXIC EXPORTS, *supra* note 5: “These schemes often grant corporations new ways to circumvent environmental concerns, even as the same firms pose as the new champions of the environment.”

53. TOXIC EXPORTS, *supra* note 5. At this point, the ISO standards get closer to assisting as companies manage the upside of environmental responsibility.

54. Wendy Wagner, *Using Competition-based Regulation to Bridge the Toxics Data Gap*, 83 IND. L.J. 629 (2008) [hereinafter *Competition-based Regulation*].

55. *See generally* DAVID VOGEL, THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY 137 (2006) [hereinafter *MARKET FOR VIRTUE*].

56. *See generally* GREEN TO GOLD, *supra* note 42.

ment is central to their identity and a way they differentiate their brands.⁵⁷ One example is Patagonia, the California-based outdoor clothing and equipment company that has used its efforts to reduce its carbon footprint to distinguish itself from competitors.⁵⁸ Patagonia has made changes in its product design, manufacturing, energy usage, and waste management. The firm has promoted itself as environmentally friendly, and encouraged other firms to follow its lead. Management scholars call such companies forms of social entrepreneurship.⁵⁹ Social entrepreneurs rely on entrepreneurial principles to design and manage an organization that strives to promote societal change in a specific area, such as environmental protection.⁶⁰

Other companies pursue specific projects that serve as overlays to the present business structure. They might pursue specific marketing campaigns that support an environmental cause.⁶¹ For example, a company that produces or sells products generally unrelated to the environment might show its appreciation for a cleaner, greener world by running their physical structures on renewable energy and striving for zero net waste.⁶² Walmart, for instance, has made significant strides in recent years in the area of sustainability. The benefits to companies that manage the upside of environmental responsibility are numerous: increased employee loyalty,⁶³ increased goodwill,⁶⁴ new customers⁶⁵ and different investors.⁶⁶

57. See Michael Jay Polonsky & Colin Jevons, *Understanding Issue Complexity When Building a Socially Responsible Brand*, 18 EUR. BUS. REV. 340 (2006), for a general discussion of corporate social responsibility and branding. See also Jodi L. Short & Michael W. Toffel, *Coerced Confessions: Self-Policing in the Shadow of the Regulator*, 24 J. L. ECON. & ORG. 45 (2008).

58. Charles A. Rarick & Lori S. Feldman, *Patagonia: Climbing to New Highs with a Smaller Carbon Footprint*, 14 J. INT'L ACAD. CASE STUDIES 121 (2008).

59. DAVID BORNSTEIN, *HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURSHIP AND THE POWER OF NEW IDEAS* (2007).

60. This kind of company is like a not-for-profit company.

61. RICHARD EARLE, *THE ART OF CAUSE MARKETING* (2002).

62. Don Mayer, *Corporate Citizenship and Trustworthy Capitalism: Cocreating a More Peaceful Planet*, 44 AM. B. L. J. 237, 281 (2007). Mayer uses Wal-Mart as an example of a company pursuing environmental citizenship.

63. *Id.* at 284.

64. *Id.* at 282.

65. *Id.* at 284. For a more pessimistic view of customers and the extent to which they purchase products with social responsibility in mind, see MARKET FOR VIRTUE, *supra* note 55, at 47-49.

66. S.J. BUDDE, *COMPELLING RETURN: A PRACTICAL GUIDE TO SOCIALLY RESPONSIBLE INVESTING* (2008).

In the area of hazard transfer, most company efforts are directed at managing the downside of environmental responsibility. Companies that want to reduce risk and cost pursue both clean production strategies and clean-up strategies. Clean production strategies focus on preventing environmental harm.⁶⁷ When companies engage in clean production, or “upstream” decisions, they focus on improving industrial processes to make them more efficient in terms of resource use and waste outputs.⁶⁸ When companies engage in cleanup, or “end-of-pipe” decisions, they focus on cleaning up environmental discharges.⁶⁹ With regard to hazard transfer, companies have overwhelmingly preferred cleanup over clean production approaches. End-of-pipe decisions require less of an upfront investment. Companies can also get away with somewhat of a sloppy cleanup. In essence, clean-up strategies are cheaper.⁷⁰

In the future, we may see more companies managing the upside with regard to hazard transfer. Companies may one day decide that a core part of their identity is to take care of their own hazards. For example, a computer company might decide to insist on recycling its products, rather than shipping them overseas. Alternatively, a company might choose a specific marketing campaign related to hazard transfer as part of its general goals. For instance, WalMart might enact a specific campaign to educate the public about the compact fluorescent light bulbs it has promoted as a way to save energy and fight global warming.⁷¹ In particular, the company could come up with an effective way for consumers to recycle the bulbs in the United States. This might be a challenge, as the bulbs contain small amounts of mercury.⁷² Walmart’s goal could be to keep the potential hazard near the source, within the United States.

67. TIM JACKSON, CLEAN PRODUCTION STRATEGIES: DEVELOPING PREVENTATIVE ENVIRONMENTAL MANAGEMENT IN THE INDUSTRIAL ECONOMY (1993).

68. *Id.*

69. *Id.*

70. TOXIC EXPORTS, *supra* note 5, at 127. Clapp writes that “market-based and voluntary initiatives [have] resulted in weak mechanisms and little truly clean technology. . .”

71. Elizabeth Shogren, *CFL Bulbs Have One Hitch: Toxic Mercury*, ALL THINGS CONSIDERED, Feb. 15, 2007, <http://www.npr.org/templates/story/story.php?storyId=7431198>.

72. *Id.*

IV.

THE FORCE OF LEGAL DECISIONMAKING

Law presents another potential way to limit hazard transfers. In the late 1980s, political leaders from around the world enacted the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal.⁷³ The treaty was a response to public outrage over high-profile dumping incidents such as the *Khian Sea*.⁷⁴ In March 1989, thirty-five countries adopted the Basel Convention. By the time it entered into force in 1992, 168 parties had signed the convention.⁷⁵ Like other international environmental agreements, the Basel Convention reflects a balance between the freedom to conduct business and our collective interests in health, safety and protection of the natural world.

The Basel Convention aims to halt dumping. Specifically, it encourages companies to take action to reduce hazardous wastes, to dispose of their waste as close to the source as possible and to reduce the movement of hazardous wastes.⁷⁶ This international treaty acknowledges certain imbalances of power, and it attempts to help countries with less power halt hazard transfer. For example, parties to the convention may decide which hazards they will accept, and the convention asks other parties to respect these decisions.⁷⁷ The convention also states that parties that cannot

73. See generally Kimberly K. Gregory, *The Basel Convention and the International Trade of Hazardous Waste: The Road to the Destruction of Public Health and the Environment is Paved with Good Intentions*, 10-WTR CURRENTS: INT'L TRADE L.J. 80 (2001); Theodore Waugh, *Where Do We Go From Here: Legal Controls and Future Strategies for Addressing the Transportation of Hazardous Waste Across International Borders*, 11 FORDHAM ENVTL. L.J. 477 (2000); William Schneider, *The Basel Convention Ban on Hazardous Waste Exports: Paradigm of Efficacy or Exercise in Futility?*, 20 SUFFOLK TRANSNAT'L L. REV. 247 (1996).

74. This outrage was renewed in August 2006 when a tanker, the *Probo Koala*, dumped toxic sludge in Ivory Coast. See DUMPING IN ABIDJAN, *supra* note 7.

75. For a complete history of the Basel Convention, see KRUEGER *supra* note 18. The United States signed the Convention, but has not yet ratified it. It has been noted that the United States does generally follow international treaties. Michael J. Glennon & Alison L. Stewart, *The United States: Taking Environmental Treaties Seriously*, in ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS 173 (Edith Brown Weiss & Harold K. Jacobson eds. 1998); David Vogel & Timothy Kessler, *How Compliance Happens and Doesn't Happen Domestically*, *Id.* at 19.

76. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal art. 4, para. 2(f), May 5, 1992, 1673 U.N.T.S. 57, available at <http://www.basel.int/text/documents.html>.

77. *Id.* at art. 6.

properly dispose of hazards have no obligation to accept them.⁷⁸ Parties to the convention are therefore not allowed to ship waste to some less developed countries that cannot handle the waste.⁷⁹ The treaty provides that companies that transfer waste must be environmentally careful—they must protect human health and the environment against harm and degradation.⁸⁰

As soon as the international community started enforcing the Basel Convention, companies found ways to circumvent the treaty's requirements.⁸¹ Companies continued to engage in "indiscriminate dumping and sham recycling"⁸² in spite of the convention's rules. In response, international political leaders drafted the 1995 Basel Ban Amendment, which prohibits the export of any hazardous waste from the EU, countries in the Organization for Economic Cooperation and Development (OECD), and Liechtenstein.⁸³ Currently, the Basel Ban is not in force because too few countries have ratified the amendment.⁸⁴

Many European countries have both ratified the convention and moved forward to halt many forms of hazard transfer. Although the United States has not yet ratified the Basel Convention, it has halted many forms of hazard transfer. NGOs such as the Basel Action Network publicize acts of hazard transfer,⁸⁵ counting on the fear of adverse publicity and social sanctions to change corporate behavior.

With some exceptions, the Basel Convention has succeeded in halting outright dumping.⁸⁶ Because of this law, overall international trade in toxic waste has declined significantly.⁸⁷ With the assistance of NGOs, especially Greenpeace, developing nations have generally taken a stronger stand against imports of hazardous waste. They have also started to develop and enforce their own regulatory schemes to protect their citizens and the natural world.⁸⁸

78. *Id.* at art. 8.

79. *Id.* at art. 4, para. 2(e).

80. *Id.* at art. 10, para. 2(b).

81. *See infra* Part II; *see generally* TOXIC EXPORTS, *supra* note 5.

82. TOXIC EXPORTS, *supra* note 5. *See infra* Part II.

83. ENVIRONMENTAL LAW, *supra* note 11.

84. *Id.*

85. What is the Basel Convention?, http://www.ban.org/main/about_basel_conv.html (last visited Jan. 27, 2009).

86. *But see* DUMPING IN ABIDJAN, *supra* note 7.

87. TOXIC EXPORTS, *supra* note 5.

88. *Id.*

In sum, the Basel Convention is successful at halting some of the most brazen forms of hazard transfer, such as outright dumping. The force of law is not, however, a sufficient response to hazard transfer.⁸⁹ Law lacks enough force to put a halt to forms covered by the 1995 Basel Amendment. Companies are still engaging in transfers that fall under the categories of sham recycling and mislabeling. They are also engaging in direct foreign investment in hazardous processes and industries. To encourage transnational corporations to think through their actions with regard to creative forms of hazard transfer and industry migration,⁹⁰ we need to draw upon an additional force—the force of improved ethical decisionmaking.

V.

THE FORCE OF ETHICAL DECISIONMAKING

A. *The Traditional Algorithm*

Business ethics offers another resource for improved decision-making with regard to hazard transfer. This field offers strategies for targeting behavior that falls outside of the reach of environmental laws. It also supplements market-based responses to hazard transfer by challenging individual corporate managers to act independently, and in accordance with moral rules. If individuals make morally sound decisions regarding hazard transfer, the aggregate of all individuals who contribute to improved decision-making can have a significant impact.

Business ethicists consult a traditional algorithm to reflect upon international ethical dilemmas that raise conflicts of relative development.⁹¹ Business ethicist Thomas Donaldson is the

89. See generally *id.*

90. *Id.*

91. The classic ethics algorithm this Article describes and critiques can be found in Thomas Donaldson, *Moral Minimums for Multinationals*, in *ETHICS & INTERNATIONAL AFFAIRS: A READER* 455, 471-73 (Joel H. Rosenthal ed. 1999) [hereinafter *Moral Minimums*]; a similar version of the same argument appears as Thomas Donaldson, *Values in Tension: Ethics Away from Home*, in *THOMAS DONALDSON & PATRICIA H. WERHANE, ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH* 476, 482-84 (8th ed. 2008) [hereinafter *Values in Tension*]. Conflicts of relative development involve situations in which ethical standards conflict because home and host country are at different levels of development. *Id.* The field of applied ethics has created practical tools that help corporate actors make decisions about how to use their personal power to push their corporations in directions consistent with classical ethical principles. The field of environmental ethics, a sub-field of applied ethics, is rich with ideas for improved decisionmaking. For a review of the field of environmental ethics from the mid-1800s to today, see Heidi Gorovitz Robertson,

author of the most useful algorithm that considers a moral minimum for multinationals. His algorithm informs corporations and organizations of the floor they cannot go below when they are faced with an ethical decision involving conflicts of relative economic development.

With regard to hazard transfer, Donaldson's traditional algorithm can guide corporate managers as they decide whether and which hazards to transfer beyond U.S. borders. This algorithm allows for the lowering of ethical standards based upon different levels of economic development, as long as the transnational corporation does not violate core human values. Core human values are values for which we could find overlapping consensus, regardless of religious or political views. Business ethicists have listed these core human values: respect for human dignity, respect for basic rights, and good citizenship.⁹² In this part, I apply the traditional algorithm and offer five supplemental questions that fortify it.

The traditional test or algorithm is: "The practice is permissible if and only if the members of the home country would, under

Seeking a Seat at the Table: Has Law Left Environmental Ethics Behind as It Embraces Bioethics?, 32 WM. & MARY ENVTL. L. & POL'Y REV. 273, 296-305 (2008). Environmental ethics responds to questions about what is right and wrong in an environmental context. *Id.* at 296.

92. *Values in Tension*, *supra* note 91, at 480. Donaldson sets the stage for articulating his classic algorithm by pointing out that "[t]he formal responsibilities of multinationals as defined in domestic and international law, as well as in codes of conduct, are expanding dramatically." *Moral Minimums*, *supra* note 91, at 456. These laws play an important role in outlining societal expectations regarding transnational corporations and their behavior in host countries. *See id.* at 456-57. Donaldson points out that responsibility for improved decisionmaking rests upon a broad collection of actors, including governments, corporate executives, host-country companies and officials, and international organizations. *Id.* at 461. These actors must respond to legal questions, e.g., "What does the law require?" They must also respond to ethical questions, e.g., "What specific rights ought multinationals to respect?" *Id.* at 460.

Donaldson's overall aim is to outline the minimal floor of responsibility transnational corporations owe to others. He writes that, when it comes to shaping ethical behavior, companies must be guided by three principles: (1) respect for core human values, which determine the absolute moral threshold for all business activity; (2) respect for local traditions; and (3) the belief that context matters when deciding what is right and what is wrong. *Values in Tension*, *supra* note 91, at 478. Within this general moral context, Donaldson continues by offering specific algorithms to guide high-level decision makers when they are faced with two kinds of dilemmas that arise when decision makers must clarify the extent to which they should honor their "home" morality. *Id.* at 482-84. He presents two algorithms, one for conflicts of relative development; the other for conflicts stemming from religious or cultural differences. *Id.* This section focuses on the algorithm for the former.

conditions of economic development similar to those of the host country, regard the practice as permissible."⁹³ Thus, if the host country is the United States, a manager in a transnational country would ask: Would the practice be acceptable at home, in the United States, if my country were in a similar stage of economic development? In considering this question, corporate managers must also be mindful of core human values. Thus, they must ask: Is the practice a violation of a core human value (respect for human dignity, respect for basic rights, or good citizenship)?⁹⁴

Donaldson's algorithm applies easily and well to many international ethics questions unrelated to hazard transfer. Suppose, for instance, that a transnational company wants to pay a Mexican factory worker three dollars an hour to laborers, when this same company would pay a U.S. factory worker ten dollars an hour for the same job.⁹⁵ Using Donaldson's algorithm, we will reach a conclusion. First, we would ask: Would the practice be acceptable in the United States if my country were in a similar stage of economic development? Here, that answer is, probably yes.⁹⁶ In the past, when our country was less economically developed, we did not guarantee a minimum wage. The federal government did not approve a minimum wage rate until 1938.⁹⁷

Second, we would ask: Is the practice a violation of a core human value, such as respect for human dignity, respect for basic rights or the practice of good citizenship?⁹⁸ Here, the answer is less certain. We would need more information before we could know for sure.⁹⁹ For example, is three dollars per hour a living wage in Mexico? Is the transnational company really paying this wage rate? Is the transnational company exploiting workers or treating them as indentured servants?

If the transnational company is paying a living wage rate in the host country, although it is lower than wage rates in the U.S., the

93. *Moral Minimums*, *supra* note 91, at 472.

94. *Id.* at 480.

95. *Id.* at 455.

96. It is not necessarily true that just because we did something in that past, we would do it again if conditions were the same again. We might implement state minimum wages laws instead, or pursue some completely different policy.

97. For information on the history of labor rights and the adoption of a minimum wage, see WILLIS J. NORDLUND, *THE QUEST FOR A LIVING WAGE: A HISTORY OF THE FEDERAL MINIMUM WAGE PROGRAM* (1997). See also DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* 137 (2006).

98. *Moral Minimums*, *supra* note 91, at 480.

99. Any ethics algorithm is as good as the facts that go into it.

practice would be ethical. The company complied with a moral minimum. Plus, the company's practice makes business sense—the company saves on labor costs, and provides jobs for workers in Mexico.

In cases of hazard transfer, Donaldson's algorithm provides a good starting point as corporate managers and officers decide whether and what to transfer. Consider this scenario: Suppose, for instance, that a U.S.-based waste handling company is deciding whether to ship a load of used and/or obsolete electronic equipment to a developing country. An alternative is to keep the waste in the United States and recycle it. The company assumes that the developing country will in fact recycle the equipment rather than place it in a landfill. The developing country is eager to accept the shipment and to pursue the recycling opportunity.

First, Donaldson would want corporate managers and officers making the decision to step into the shoes of the country receiving the shipment. Is this particular form of international trade a form that would have been acceptable in the United States during earlier stages of its economic development?¹⁰⁰

This question is difficult to answer. Although the United States has gone through periods of economic history when it has grappled with issues such as child labor and minimum wage standards, it has never been at the receiving end of dumping. We have been exporters, but not importers, of hazards.

Second, Donaldson would want managers and officers to ask whether the practice of shipping obsolete electronic equipment abroad for recycling is a violation of a core human value, such as respect for human dignity, respect for basic rights, good citizenship, or the right to physical security. Here, it is possible that this form of international trade violates the right to physical security posing a risk of negative health effects. Here, we would need more information about how the equipment will be recycled, and the environmental impact of the recycling. Sometimes, recycling processes can create environmental hazards that put individuals at risk. We need more information before making a decision.

B. *The Traditional Algorithm, Fortified for Use in Hazard Transfer Cases*

Because the scenario is complex, corporate managers and officers may need to ask additional questions to help clarify their

100. *Cradle to Border*, *supra* note 12.

decisionmaking process. I suggest five additional questions, questions three through seven, to fortify Donaldson's algorithm.¹⁰¹

THE TRADITIONAL ALGORITHM, FORTIFIED

- (1) Would the practice be acceptable at home, in the United States, if my country were in a similar stage of economic development?
- (2) Is the practice a violation of a core human value (respect for human dignity, respect for basic rights, or good citizenship)?
- (3) Is it possible and practical to eliminate or minimize a hazard?
- (4) Has the exporting company been transparent about the hazard?
- (5) Is the situation an example of toxic imperialism?
- (6) Is the exporting company demonstrating respect?
- (7) Does the practice provide a significant opportunity for economic development?

Regarding question three, corporate managers and officers should ask whether it is possible and practical to eliminate or minimize a hazard. Here, corporate managers and officers need to explore recycling the electronic equipment in the United States. What opportunities exist? How costly are these opportunities? How much cheaper is it to ship the products abroad?

Fourth, managers and officers should ask whether the company plans to be transparent about products they are exporting. Generally, transparency asks a corporation and its actors to report accurately all aspects of their operations to all stakeholders, including investors, business partners and members of local communities. With transparency, countries importing hazards can make rational decisions about which hazards to accept. The U.S. company needs to make transparent the nature of the components of the used and obsolete equipment. The trading partner has a right to know the detailed nature of the trade, including possible harms.

Fifth, managers and officers should ask whether the action is an example of toxic imperialism. Toxic imperialism¹⁰² presents

101. Although these questions are presented as discrete questions, they overlap.

102. The phrase "toxic imperialism" was coined by Greenpeace in 1988 to describe dumping. Joan Martinez-Alier, *Ecological Economics and Ecological Distribution Conflicts*, in 2004 COPENHAGEN GLOBAL CONSCIENCE CONFERENCE PROCEEDINGS 18, 22, available at <http://www.ecocouncil.dk/download/proceedings.pdf> (last visited Feb. 25, 2009). Toxic imperialism is directly related to the environmental justice movement, which asserts that "environmental hazards are inequitably distributed in the United States, with poor people and people of color bearing a greater share of pollution than richer people and white people." LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE*

hazard transfer as an environmental justice issue. This question asks whether the hazard exporter is taking advantage of citizens in another country based in part on the fact that citizens in the importing country are poorer or darker-skinned. Countries have been especially likely to dump hazards in Africa and certain Asian countries, such as India. The 2006 dumping of toxic sludge in Abidjan is one example.¹⁰³ The dismantling and recycling of ships in India, China, Bangladesh, Pakistan, and Turkey is another.¹⁰⁴ In this first scenario, managers and officers need to consider their underlying motives, and make sure they are not creating an environmental injustice.

Sixth, managers and officers should ask whether they are demonstrating respect for the importers. This question assumes that nations (and companies as powerful as nations) should “display a certain attitude—an attitude of equal consideration and respect” toward others.¹⁰⁵ This question is Kantian in that it asks whether exporters are simply using importers as a means to an end. It shows an appreciation for the ideas of universalizing and reversing. For example, corporate actors might ask: What if every corporation engaged in the practice we are considering? How would the United States respond if it were at the receiving end of this trade? Would it be delighted at the opportunity, horrified at the way it was treated, or somewhere in between?

Finally, managers and officers should ask whether the practice provides a significant opportunity for economic development. This question asks “what is in it” for the recipient of hazard

RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 10 (2001). The environmental justice movement consists of “[t]housands of activists in hundreds of communities . . . fighting for their children, their communities, their quality of life, their health—and for ‘environmental justice.’” *Id.*

103. See *supra* note 9.

104. ENVIRONMENTAL LAW, *supra* note 11.

105. Robert E. Goodwin, *International Ethics and the Environmental Crisis*, in ETHICS & INTERNATIONAL AFFAIRS: A READER 435, 442 (Joel H. Rosenthal ed. 1999); see also Edward Goldsmith, *Development as Colonialism*, in A CASE AGAINST THE GLOBAL ECONOMY AND A TURN TOWARD THE LOCAL 253 (Jerry Mander & Edward Goldsmith eds. 1996). Goldsmith describes corporate colonialism today by describing the power transnational corporations have in the developing world. They are now “free to scour the globe and establish themselves wherever labor is the cheapest, environmental laws the laxest, fiscal regimes are the least onerous, and subsidies are the most generous.” *Id.* at 265. Goldsmith adds that “[t]he new corporate colonialism is . . . likely to be more cynical and more ruthless than anything we have seen . . . [i]t is likely to dispossess, impoverish, and marginalize more people, destroy more cultures, and cause more environmental devastation than either the colonialism of old or the development of the last fifty years.” *Id.* at 266.

transfer. Generally, hazard transfer is linked to foreign debt: Developing countries need foreign exchange, and hazard transfer provides it.¹⁰⁶ But it is also helpful to ask whether the importing country that accepts hazard transfer will start on a path toward an improved economic condition, or whether the trade will set local communities and/or the country back? For example, suppose a company ships 50,000 tons of a substance from one country to another, labeling it “fuel” that can be used in a cement plant in a local town.¹⁰⁷ If the substance is indeed fuel, a genuine benefit exists. If the substance is instead industrial waste sludge,¹⁰⁸ a genuine opportunity does not exist.

Now, consider a second scenario: Suppose a U.S.-based semiconductor manufacturer wants to move the dirtiest, most dangerous parts of its operations to China in response to fines levied in the United States for exposing workers to arsenic.¹⁰⁹ An alternative is to keep the operations in the United States and comply with worker safety laws, reducing or eliminating worker exposure to arsenic. The company is unsure about the extent to which the importing country, China, protects workers and the environment.

First, Donaldson would want corporate decisionmakers to ask whether this practice would be acceptable in the United States if the company were in a similar stage of economic development.¹¹⁰ Here, the answer is probably not. In the United States, we have exposed workers to hazardous chemicals. When workers have been exposed, however, and government regulators have discovered the exposure, regulators have imposed fines.

Second, Donaldson would want corporate managers and officers to ask whether the practice is a violation of a core human value, such as respect for human dignity, respect for basic rights, good citizenship, or the right to physical security. Donaldson would want to know the extent of the threat to the physical security of Chinese workers. This question is complicated. Here, the chemical threat is exposure to arsenic, a long-term risk with

106. EDDIE J. GIRDNER & JACK SMITH, *KILLING ME SOFTLY: TOXIC WASTE, CORPORATE PROFIT, AND THE STRUGGLE FOR ENVIRONMENTAL JUSTICE* 118 (2002).

107. *Id.*

108. *Id.*

109. PRI's The World, <http://www.theworld.org/?q=node/4900> (last visited Jan. 27, 2009). Story emphasizes the lack of organized labor; organized labor needs to globalize, cross borders.

110. *Cradle to Border*, *supra* note 12.

delayed health effects.¹¹¹ We would need to know more about whether providing this business opportunity to China and their workers violates their right to physical security, their right to be safe in the context of long-term exposure to arsenic. We also need to balance safety concerns with the alleviation of poverty unsafe business opportunities can provide.

Third, corporate managers and officers should ask whether it is possible and practical to eliminate or minimize a hazard. Here, the answer is “yes.” Employers can use safety devices to minimize long-term exposure to arsenic. Corporate actors should take steps to make sure they eliminate or reduce the hazard. If they export that hazard, they have a duty to let the importer know the nature of the hazard, and how to reduce or eliminate it.

Fourth, managers and officers should ask whether the company plans to be transparent about the product it is exporting. With transparency, host countries can make rational decisions about which hazards to accept. Importing countries such as China need to know the true nature of the trades they accept.

Fifth, managers and officers should ask whether the action is an example of toxic imperialism. This question asks whether the hazard exporter is taking advantage of citizens in another country based in part because those citizens are poor or darker-skinned. In essence, we need to know whether the U.S.-based company is taking advantage of a developing country, its weaker environmental regulations and its impoverished workers.

Sixth, managers and officers should ask whether the exporting company is demonstrating respect. This question assumes that companies should respect others. Is the U.S.-based company merely using China and its workers as a means to an unethical end? What if every corporation sent its dirtiest, most hazardous operations to developing countries? How would the U.S. respond if it was at the receiving end of this trade? Would it be delighted at the opportunity, horrified at the way it was treated, or somewhere in between?

Finally, officers and managers should ask whether the practice provides a significant opportunity for economic development.

111. AXT, a semi-conductor manufacturer, moved its operations to China after California regulators fined the company for exposing workers to arsenic. In the United States, the workforce was largely Chinese immigrants. Now, the process has been moved to Beijing. See *Arsenic Poisoning Work Accident: The AXT Way*, http://www.weitzlux.com/workaccident/news/arsenic_1160.html (last visited Jan. 25, 2009).

This question asks “what is in it” for the recipient of hazard transfer. If China accepts this trade, will it lead to improved economic conditions, or will it set local communities or the country back? To determine whether a genuine opportunity exists, we need to know more about the quality of the business opportunity, and the long-term costs the arsenic exposure could pose for workers and the Chinese health care system.

VI.

CONCLUSION

In today’s global economy, bad corporate actors and environmental villains compromise the potential for worldwide progress. Their self-interest is a powerful force, motivating them to find ways to circumvent legal rules and moral principles. Forward thinking corporations seek to bridge the forces of the market with legal and ethical decisionmaking. When corporate managers and officers consider all three forces, they embody the Captain Planet story. By engaging in sophisticated analysis of a range of forces, they morph Captain Planet into a superhero with extraordinary strength—the strength to halt environmental villains as they attempt to degrade the natural world and threaten the health and safety of vulnerable residents of poor countries. Corporate managers who engage in the sophisticated analysis this Article suggests become Planeteers. They strengthen Captain Planet and underscore the extraordinary ability of one person, one corporate manager or officer, to make a change. Planeteers, “*The power is yours!*”