INTERSTATE COMPACTING ON LOW-LEVEL RADIOACTIVE WASTES

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INTRODUCTION

My topic for this morning is: "Interstate compacting on low-level waste." The starting point for this discussion will be the Low Level Radioactive Waste Policy Act of 1980 (P.L. 96-573), hereinafter referred to the LLW Policy Act. This Act, which was passed in December of 1980, represents the first explicit statement by the Congress of a national policy governing the management and disposal of commercially generated low level waste.

In his remark's to this morning's panel, Wayne Kerr has provided a thorough summary of the background and events leading up to the passage of the LLW Policy Act. I will focus my remarks on the actions which states have taken over the past fifteen months to implement the institutional regime called for in this Act and conclude with some speculations on where we go from here.

The LLW Policy Act contains three major provisions. First, "each state is responsible for providing the availability of capacity...for the disposal of (commercial) low level radioactive waste generated within its borders..." Second, states are encouraged to enter into interstate compacts for the purpose of carrying out this responsibility. And, third, compacts which receive the consent of Congress may exclude LLW generated outside the region covered by the compact after January 1, 1986.

Thus far only one state, Texas, has declared their intention to "go it alone;" that is, to develop a LLW disposal site for the exclusive use of generators within that state. For the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, the principle focus of their activities has been the effort to establish regional groupings governed by interstate compacts. In order to analyze these activities, it will be useful to begin with a summary of the legal bases of interstate compacts, past experience in their use and application, and the process by which they are established.[a]

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[a] The narrative in the next section draws heavily on Frederick L. Zimmerman and Mitchell Wendell, The Law and Use of Interstate Compacts (Lexington, KY: The Council of State Governments, 1976).

Interstate Compacts

The U.S. Constitution authorizes states, generally, to enter into compacts. The precise language is:

> No state shall, without the consent of Congress,... enter into agreement or compact with another state...
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> (Art. 1, Sec. 10, Cl. 3)

Accordingly, the LLW Policy Act stands more as a statement of policy and purpose by the Congress than a specific grant of authority to the states. This same is true even for the exclusionary authority contained in the Act, since the ability of a group of states to exercise this authority is contingent on the action by a future Congress giving their consent to specific compacts.

Since compacts virtually always are enacted into law by the respective party states, they have the force and effect of statutory law. If there is even any controversy over the construction (i.e. the meaning) of the compact, the legislative history of the states which enacted the compact can serve as a guide to interpreting the intent of the party states in establishing the interstate arrangement. Compacts are also contracts which bind the party states to contractual obligations. Thus, party states may be subject to judicial proceedings if they fail to meet the obligations they incur by joining the compact.

The statutory and contractual nature of compacts makes them the most stable legal instrument for governing multi-state relations aside from the U.S. Constitution and Federal laws.

For the first 150 years of our nation's history the use of compacts was limited primarily to the settlement of boundary disputes. In the 20th century, however, their use has expanded considerably. States have entered into compacts to govern human resources policies covering mental health, higher education, and criminal justice. In the area of natural resources, compacts have been established to regulate flood control, water rights, parks and port facilities, pollution and fisheries. Compacts have also been established to deal with taxation.

It is worth noting that most compacts have been entered into for the purpose of distributing some public good or benefit (e.g. water or park lands) among the member states or to coordinate programs in a policy area in which the member states have

previously committed to take action. We have had relatively little experience in this country with compacts designed to determine which member state will bear the concentrated burdens of private activities (e.g. waste disposal site).[a]

There are basically three stages to the establishment of an interstate compact. Stage One involves negotiation of a draft compact document by delegates from interested states. In Stage Two, the draft compact must be ratified by the legislatures in the states which wish to join the interstate group. Stage Three consists of Congressional consent to compacts previously ratified by state legislatures. It has taken an average of four years and nine months from the time of the first state ratification until Congress gives its consent to a compact. This average time period does not, of course, include the time required for the initial negotiation of the document (Stage One).

The current round of interstate compacting to govern LLW management can be expected to follow the process outlined above. There are, however, several unique aspects of this compacting effort which should be noted. The LLW Policy Act is not the first time Congress has passed a law recognizing the utility of interstate compacts for addressing a particular policy concern.[b] It appears, however, that this is the first time Congress has given such strong preference to interstate compacting on a nationwide basis. Accordingly, the LLW compacting process has been initiated simultaneously in all parts of the country. It has been supported by various national and regional groups which urged the enactment of the LLW Policy Act; these include the President's State Planning Council on Radioactive Waste Management, the National Governor's Association, the National Conference of State Legislatures, the Southern States Energy Board, and the Western Interstate Energy Board.

As a result, negotiators in the several regions have been able to take advantage of the ideas and proposals developed outside their own negotiating group. This appears to have accelerated the compacting process, and it is possible that all three stages

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[a] For a discussion of the problems of public policy making relating to private sector actions characterized by highly concentrated costs and widely distributed benefits, see James Q. Wilson, "The Politics of Regulation," in James W. McKie (ed,) Social Responsibility and the Business Predicament (Washington, D.C.: The Brookings Institution, 1974).

[b] The Crime Control Act of 1934 (48 Stat. 909) and the Federal Water Pollution Control Act of 1956 (70 Sat. 498) are just two examples of Federal laws encouraging compacting by states.

may be completed in less than the average time period cited above. But, while negotiations have begun simultaneously throughout the country, Stage Two will not be completed at the same time in all parts of the nation. This may have significant consequence for the outcomes in Stage Three--Congressional consent--which is required for regions to exercise their exclusionary authority after January 1, 1986.

In the sections that follow, I will describe in more detail the actions which have taken place in each of the three stages and comment on those factors which will affect future actions in each of the three stages.

Stage One -- Negotiating a Draft Compact

Thus far, seven groups of states have organized themselves for the purpose of drafting an interstate compact to govern LLW management. In all cases a formal negotiating group was established consisting of representatives of the interested states. In keeping with recent practice for compact negotiations, most of the negotiators have been chosen by the governors and drawn from the executive branch of state government; although, there are instances of state legislators who have been named to represent the states in negotiations. In a number of states steering committees or policy groups, including key state legislators, have been established to advise the state's negotiator and to insure legislative input into the compact negotiation process.

The negotiations have centered around legal, regulatory, financial, and political factors. For the most part, the resolution of technical issues has been assigned to whatever regional commission, board, or committee will be established under the terms of the compact. One is reminded in this content of the statement of the President's Interagency Review Group on Nuclear Waste Management:

> The resolution of institutional issues required to permit the orderly development and effective implementation of a nuclear waste management program is equally important as the resolution of outstanding technical issues and problems.

At this stage in the process of interstate compacting for LLW management, the so-called institutional issues have clearly predominated. Nor can this emphasis be contributed to the fact that "politicians" have controlled the negotiation process. A

quick check of the rosters of negotiators reveals that individuals with substantial technical background and competence have been heavily involved throughout Stage One in all regions of the country.

The composition of each of the regions is described in Table I. Strictly speaking this table enumerates those states which are listed as "eligible" to join the various draft compacts (more on this later), which explains why some states are listed as being "members" of more than one region. It should be noted that Texas, by choice, has elected not to affiliate with any regional group, whereas California has been left out of the two western groupings as a result of affirmative decisions by the negotiators in these two regional groups.

The status of the Stage One negotiations in these seven groups is as follows:

Northwest -- completed their negotiations in March, 1981

Southeast, Midwest, Central States, and Rocky Mountain States -- all completed their negotiations in February, 1982.

Mid-Atlantic -- expect to complete their negotiations by the end of March, 1982.

Northeast -- expect to complete their negotiations by December, 1982.

These various compacts address a plethora of issues, some real and some imagined. That, of course, is the observation of an outsider looking in; a comment which some insiders may say is gratuitous. For, in fact, all of these issues represent the very real concerns of the negotiators at this stage of the LLW compacting process. Time will tell which of the various elements in these compacts are most important to the successful development of the LLW management regime envisioned in the LLW Policy Act. For now, I would like to discuss what appear to me, to be some of the more significant communalities and differences among and between these various documents.

Management vs. Disposal:

All six compacts are designed to establish a regional system for the management of LLW. In fact, four of the compacts contain explicit language regarding a Regional Management Plan to be

developed by the regional commission or board. As one of the negotiators put it: "From the beginning, we felt that our task was not simply to figure out how to dig a hole in the ground to bury low level waste." The management schemes envisioned by these compacts cover the treatment, packaging, shipping and disposal of LLW.

Membership:

All of the compacts designate a group of states initially eligible to join the compact, require that the legislature of an eligible state enact the compact into law in order to become a full-fledged "party state," and provide for the granting of eligibility status to other states not on the initial list. The only significant variation among the compacts relates to the procedures for the extension of eligibility. The Mid-Atlantic Compact vests this responsibility in the regional commission. The Southeast, Midwest, Central States and Rocky Mountain compacts require a vote by the Regional Commission or Board (ranging from majority to unamious) including the affirmative vote of the host state representative. The Northwest Compact contains the most rigorous procedures, requiring amendment of the original compact by all party state legislatures and the U.S. Congress.

Start-Up of the Compact:

All the compacts take effect when either two or three eligible states have enacted compact legislation; thus, the establishment of the regional compact is not dependent on ratification by all eligible states. In addition, the Midwest and Central States Compacts require the consent of Congress to be fully effective. It can be expected that regional groups will undertake preliminary work in preparation for full scale compact operations prior to Congressional consent. These preliminary activities by Regional Commissions would be legal as long as they are consistent with existing Federal policies and regulations or else lead to a change in Federal policies and regulations to provide for consistency.

Access:

All the compacts provide for the "right of access" to regional facilities as long as party states meet their obligations under the compact. Four of the six compacts contain additional "quid pro quo" language referring to the trade-offs which must or may

take place among party states to the compact.[a] All of the compacts provide for an import ban (the exclusion of waste generated outside the region), and four of the compacts make provision for a ban on exports of waste from the region. All the compacts contain procedures for the waiver of the import/export bans. The import ban under the Northwest Compact is to take effect on July 1, 1983, "if consent is given by Congress;" all other import/export bans take effect on January 1, 1986. The import/export bans under the Mid-Atlantic Compact are to be implemented at the discretion of the Regional Commission; the import/export bans are mandatory under the other five compacts.

Regulation:

In keeping with the management approach described above, all of the compacts place emphasis on the responsibility of party states to regulate generators and/or shippers of LLW. Five of the compacts (the Central States Compact is the exception) require the host states to regulate the regional sites located within their borders. In addition, the Southeast Compact requires party states to ensure that their generators use the "best available...technologies... to minimize the volume of waste requiring disposal," and the Northwest Compact requires non-party states to provide their generators/shippers with a "certificate of compliance" until such time as the import ban in the Northwest goes into effect.

Finances:

All the compacts provide for the assessment of fees by the host state to cover the costs of licensing, regulation, closure, perpetual care, and contingency costs of a regional facility. In addition, the Rocky Mountain Compact includes impact assistance to the host community under its definition of allowable host state fees. Two compacts, the Central States and the Rocky Mountain, require the host state to set fees charged by the operator of a regional facility. While the other four compacts do not mention operator fees, it is argueable that some provisions will have to be made for setting these fees since the operators of regional facilities under the compacts will function as public monopolies. Under the Mid-Atlantic Compact a host state must require a "surety bond" from the operator of a regional facility.

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[a] The "quid pro quo" provisions of these compacts represent the principle of "consideration" which is fundamental to contracts and contract law. In a phrase, you have to give something to get something.

Power of the Regional Commission/Board/Committee:

The six compacts vary considerably in the extent to which they vest power and authority in the regional body created by the compact. At one extreme is the Northwest Compact which establishes a regional committee with little, if any, decision making authority. The Northwest Compact Committee is essentially a vehicle through which a group of sovereign states will (in "good faith") seek to ensure effective management and disposal of LLW within the region. At the other extreme is the Mid-Atlantic Compact (the Central States compact is very similar to the Mid-Atlantic in this respect). The Regional Commission called for in this Compact is intended to be a regional government with significant decision making authority.

The principle basis for this variation is the degree to which siting authority is given over to the regional body. The Northwest Compact Committee has no siting authority. The Rocky Mountain Compact contains a formula for determining who will be a host state. The Southeast and Midwest Compact Commission can designate a host state (by 2/3 vote), but then the host state has the authority for actual siting of a regional facility. The Mid-Atlantic and Central States Compact Commissions are empowered to select a site -- to "put the 'X" on the map!" These differences reflect the collective thinking of the various regional negotiators as to what is both necessary and politically feasible in order to accomplish the ultimate purposes of the LLW Policy Act -- assuring adequate capacity for the management and disposal of commercial LLW in this country.

The variation in regional authority is also reflected by other provisions of these compacts, principly: commission authority over finances, regulation, and import bans; procedures for admitting new states to eligibility and for withdrawal by party states; and the level of budgetary and staffing authority provided to the regional commission.

These are the major similarities and differences among the six compacts drafted to date. Before concluding this discussion of Stage One of the interstate compacting process, however, it would be useful to review the written commentaries offered by the U.S. Nuclear Regulatory Commission and the Utility Nuclear Waste Management Group.[a] The NRC has noted that the emphasis on

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[a] The NRC comments are contained in a series of letters from the Office of State Programs to state officials from the Central States, Rocky Mountain and Northwest regions. The Utility Nuclear Waste Management Group comments are contained in a draft paper "UNWMG position on Issues Associated with Interstate Compacts on Disposal of Low-Level Radioactive Wastes" (dated Jan. 19, 1982).

"management" of LLW in the various compacts goes beyond the scope of compacting authority called for in the LLW Policy Act. While the Act, at one point, specifically refers to "compacts...to provide for the establishment...of regional disposal facilities" (emphasis added), the overall language of the Act is somewhat ambiguous on this point. Since the six regional groups are unanimous in the opinion that the compacts must have a "management" (rather than a narrow "disposal" focus), Congress will have to resolve this matter through the consent process.

With respect to access, both NRC and the UNWMG have noted that the July 1, 1983, exclusionary date in the Northwest Compact is at variance with the January 1, 1986, date in the LLW Policy Act. The drafters of the Northwest Compact have responded by noting that nothing in the U.S. Constitution or the Act prevents Congress from agreeing to this date if they wish to give their consent to the Compact (the key phrase in the Northwest Compact is: the import ban "...of this Compact shall take effect on July 1, 1983, if consent is given by Congress"). On the matter of import/export bans, the NRC has pointed out that the LLW Policy Acts speaks only in terms of import bans and does not provide for the export bans contained in four of the compacts. This is another issue which will have to be resolved in Stage Three since Congress can, notwithstanding the LLW Policy Act, give their consent to compacts which ban exports.

In the regulatory domain, NRC and UNWMG have raised several areas of concern: the potential for redundancy and the corresponding need for coordination among state, regional, and Federal regulatory procedures under the compacts; the requirement for on-site inspections of packaging, specifically at nuclear power plants which are currently not subject to state regulatory control; and the certificate of compliance required of non-party states by the Northwest Compact. With respect to the on-site inspection issue, the NRC has drafted a proposed Sec. 274i Agreement which would enable states to conduct on-site inspections of NRC licensees in order to accomplish the limited regulatory purposes of the compact. In the case of the Northwest's certificate of compliance, a representative of the Compact has indicated that they will be flexible in the implementation of the certificate requirement in an effort to meet the concerns of industry and non-party states.

The UNWMG has indicated their support for volume reduction efforts. However, UNWMG does not believe that volume reduction should be mandatory under the compacts and has raised a concern over the requirement in the Southeast Compact to use the "best available" volume reduction technologies.

In the matter of site selection, the Central States compact requires that, in the absence of a volunteer host state, the Regional Commission shall review applicants for a site within the region and select an applicant for licensing. The NRC has pointed out that this decision may require a determination of licensability of a site which the Commission itself would not make prior to a licensing review of a formal application. This issue is, in fact, broader than the Central States provision. The Mid-Atlantic, Southeast, Midwest, and the Rocky Mountain Compacts also require, in the absence of a volunteer host state, what is essentially a site suitability determination by the regional commission prior to the consideration of a formal application for licensing. The Southern States Energy Board is currently reviewing alternative procedures which regional commissions could use to make "reconaissance level" suitability determinations prior to license review of a formal application.

The NRC has also noted that is such a site suitability determination by a compact commission requires NRC to conduct the licensing review of the application chosen (this would appear to apply only to non-Agreement states in the Central States Compact), it may be necessary for the Congressional consent legislation for such a compact to waive the current requirement that NRC evaluate three alternative sites when considering a license application for a LLW disposal site.

NRC has pointed out that some compact language defining LLW is not consistent with the definition of LLW contained in the LLW Policy Act. The absence of an agreed upon classification system for radwaste, a system that reflects both a legal and a technical consensus, has been a source of low level frustration for the aficionados of radwaste since the dawn of the nuclear age. I have no simple solution for resolving a problem which has limped along for over a generation now, but it can be argued that with the more active involvement of states, and eventually regional commissions, in LLW management it will be even more crucial that such a consensual definition be achieved.

One final comment has not been put in writing but emerged in a recent meeting between NRC staff and representatives of various regional groups. Under existing NRC regulations a utility may apply for an amendment to their operating license to allow them to dispose of LLW on-site, and such on-site disposal is not prohibited under any of the compacts. NRC has sent a letter to all utilities urging them to work with the states to facilitate the development of regional sites for the disposal of all

commercial LLW but several state and industry officials have suggested that it may be necessary to change the compacts and/or Federal law to preclude the possibility of wide-spread on-site disposal practices.

Stage Two -- State Legislative Enactment

Zimmerman and Wendell have noted that compacting among states is fundamentally a legislative process.[a] This point is reflected by the fact that each of these compacts requires the adoption of enabling legislation by the state legislature in order to become a party state. The enabling legislation not only provides a binding statutory commitment to the compact arrangement, it also serves as a vehicle for expressing the individual state's interests and intent as a party to the compact.

Enabling legislation is a bill which, when passed by the legislature and signed by the governor, enacts into state law the proposed interstate compact. The enabling legislation may also contain additional language relating to areas of state jurisdiction, e.g., the enabling legislation may contain a title defining the procedures for the selection of the state's representative to the regional commission. It is not necessary for each party state to enact into law precisely identical versions of the compact, and states will often vary a word or a phrase in the version of the compact they adopt in order to reflect their own intent in joining the compact. However, if a state chooses to vary from the agreed-upon text, it cannot make material changes in the language which could be viewed by the Congress or the Courts as a failure to enter into the contractual agreement contained in the proposed compact. Thus, a more legally sound approach is to incorporate intent language in a separate section of the enabling legislation.

It was noted earlier that these six compacts require ratification by only two or three of the eligible states before the Compact can be sent to Congress for consent, an approach to compacting which has become common in recent decades.[b] Because of this feature, the compacting process will generally proceed on to Stage Three before all eligible or potentially eligible states have completed Stage Two. States which delay in ratifying a compact may, thus, be faced with a "take it or leave it" situation, particularly if Congress has given its consent to a compact that a group of states have adopted. In the case of LLW compacting this problem may be minimized since so many states were actively involved in the various regional negotiations from the beginning, although it has not been eliminated entirely.

[a] Zimmerman and Wendell, p. 20.

[b] Ibid, pp. 17-18.

The issues addressed in Stage Two are essentially the same as those which dominated the negotiations in Stage One, with particular emphasis on the way the compact handles siting authority, the financial arrangements including the amount of financial burden which membership may entail, and the overall composition of the region.

The following is the current status of state legislative enactment for each of the six compacts. The Northwest Compact has been ratified by four state legislatures, Washington, Idaho, Utah and Oregon, and can now be sent to Congress for consent. The Southeast Compact has been ratified by Georgia and enabling legislation has been introduced in five other states (South Carolina, Florida, Alabama, Mississippi, Tennessee). It is anticipated that two to three additional states will ratify this compact during the 1982 legislative sessions, and that the Southeast compact will be sent to Congress for consent by this summer.

The Midwest Compact is being introduced into state legislatures in that region at the present time; however, ratifications are not expected until 1983. During the first half of 1982, the Midwest negotiating group is seeking legislative hearings to identify proposed changes desired by the various state legislatures. These proposed changes will be reviewed in a regional negotiating session later this year, and the compact will be revised as appropriate before it is reintroduced in the state legislatures following the November, 1982, elections.

The Central States Compact has been introduced into the Kansas and Missouri legislatures. It is expected that Kansas will ratify the Compact this year; however, additional ratifications are not expected until 1983. The Rocky Mountain Compact has been introduced into the Colorado and New Mexico legislatures. It is expected that Colorado will ratify the Compact this year. New Mexico failed to ratify the Compact during their 1982 legislative session due to the brevity of the session and parliamentary restrictions. New Mexico and Wyoming may undertake "temporary" membership in the Rocky Mountain Compact through executive order pending ratification of the compact by their respective legislatures in 1983.

The Mid-Atlantic group, as noted earlier, has not completed Stage One negotiations (although this is expected momentarily). Once these negotiations have been completed, officials in the lead states, Virginia, Maryland, and north Carolina, will make a determination as to whether to proceed with state ratification

of the Mid-Atlantic Compact or to pursue ratification of another compact. (the principle options being the Southeast or Midwest Compacts).

Stage Three -- Congressional Consent

In Virginia vs. Tennessee (148 U.S. 503; 1893) the Supreme Court ruled that compacts among states require the consent of Congress only if they "...affect the political balance within the Federal System or affect a power delegated to the national government..."[a] LLW compacts meet both tests of the need for Congressional consent. Congressional consent is given by passing an act of Congress; thus, the normal rules of the legislative process for passage of Federal laws apply.

Consent legislation, incorporating the text of the compact, must be introduced in one or both houses of Congress by an individual member, presumably a Congressman and/or senator from a state which has ratified the compact. Although the Northwest Compact has been sent to Washington, consent legislation has not yet been introduced in either house.

The legislation will be referred to the appropriate committee for hearings and mark-up. Normally the Judiciary Committees of the House and Senate have jurisdiction over consent legislation for interstate compacts; however, given the subject matter of these compacts, it is expected that the Energy Committees will claim jurisdiction. The consent bill may be jointly referred to both the Judiciary and Energy Committees in either chamber.

The Committees will hold hearings and then consider consent legislation. The committees have three basic options as far as acting on consent legislation: (a) they could not report a bill, which means they find the proposed compact unacceptable; (b) they could report consent legislation, meaning that they find the compact acceptable as ratified by the states; or (c) they could adopt a middle course, by reporting consent legislation with conditions. Consent legislation with conditions would be reported if the committee wants to vacate or modify specific provisions of the compact they find unacceptable or to clarify Congressional *intent* regarding those provisions which are vague and require interpretation.

Once the Committee has reported a bill, it goes to the floor for a vote. If it is passed on a floor vote, it goes to the other

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[a] Ibid., p. 21.

chamber for committee consideration and floor action. If the two chambers pass different consent bills for a compact, the difference would be resolved in conference with subsequent floor votes in the House and Senate on the conference report.

What will be the issues that Congress will address in Stage Three of the compacting process? Congress will, of course, be concerned with the substantive provisions of these compacts. Congress will not demand uniformity for the sake of, but in keeping with the national purpose of the LLW Policy Act Congress will want to satisfy itself that there is sufficient communality among several compacts. In particular, the July 1, 1983, exclusionary date of the Northwest Compact is unlikely to pass Congressional muster. Similarly, the Congress can be expected to scrutinize NRC's concerns regarding compact definitions of LLW to insure that there is adequate agreement, among the regions and between the regions and the Federal government, on the waste materials which are to be governed by these compact regimes. Finally, it is doubtful that Congress will reject out of hand the emphasis on management (as opposed to disposal) contained in all the compacts. At the same time, Congress will want to satisfy itself that the regulatory and financial procedures and practices which will be implemented under this management approach will be both reasonable and consistent with Federal policies and procedures.[a]

While events may prove this prediction to be foolhardy, I believe, at this time, that any and all concerns with the substantive provisions of these compacts can be resolved to the mutual satisfaction of Congress and the compacting states. Of far greater concern to Congress will be the two interrelated issues: (a) the composition of regions, and (b) the relationship between the development of new sites and the implementation of regional exclusionary authority.

When Congress purports to deal with a public policy problem by passing a federal law, the emphasis is on a uniform national solution to the problem. When Congress gives its consent to an interstate compact, the emphasis is on state initiative and discretion in the design of a solution. When Congress passes a law like the LLW Policy Act, solution of the policy problem

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[a] It should not be assumed that achieving consistency with Federal policies and procedures must always be achieved through changes in inconsistent state or regional policies and procedures. In keeping with the spirit of the LLW Policy Act, due consideration Should be given to changes at the Federal level. Sometime the states may have a better idea!

addressed in the law requires a delicate balance between national purpose and state interests. The issue of "the composition of regions" reflects this balancing act. Congress has not required states to join any particular regional group or even to enter into a compact at all. But Congress does have a national purpose with respect to regionalization. Congress will want to assure themselves that whatever regions are formed are viable, not only in political terms, but from an economic and technical prospective as well. Further, Congress will want to insure that any state which wants to join a regional group has a reasonable opportunity to do so.

These concerns will be manifested in several ways when Congress considers consent legislation for LLW compacts. Are seven regions too many for now? If so, which of the current regional groups are the most likely candidates for dissolution, and which of the remaining regional groups will the affected states join? What about the "orphan" states? Which, at the moment, means what will happen to California? Will they choose to "go it alone" as Texas has done? Will they be forced into that course of action? Are either of these outcomes reasonable from a state, regional, and/or national perspective? Finally, if Congress gives its consent to compacts which have been ratified by only a small portion of the eligible states, will it lock into place regional LLW compact regimes which are unacceptable to some states that could be considered "natural" members of a region?

The second major concern which Congress must address involves the relationship between the need to develop new LLW disposal sites and the potential effect of the January 1, 1986, exclusionary authority contained in the LLW policy Act. Given the progress which has been made to date in implementing the Act, it is not hard to imagine all three Stages of the compacting process being completed by 1985. But having a nation-wide system of regional compacts in place in 1985 does not insure that each of those regions will have a disposal facility in operation on December 31 of that year. Most experts estimate that it will take three to five years to develop a disposal site (including the site screening and selection, licensing and construction phases). Over the past year and a half a handful of "lead states" have initiated the process of developing LLW disposal site, but, with the exception of Texas, all of these states initiatives have either been put on hold or slowed down to a crawl. It is unlikely that these "lead states" will restart their siting efforts until they have a better sense in how the LLW compacting process will play out -- including all three stages of the process. Accordingly, as of January 1, 1986, it is anticipated that there will be regions in this country without operating disposal sites.

Of particular concern, are the states located in the Great Lakes and northeastern regions of this country.

One way Congress could resolve this potential problem would be to slip the exclusionary date past January 1, 1986. (This could be done either by amending the LLW Policy Act or in the consent legislation which Congress adopts). The exclusionary date, however, has been a powerful factor motivating state officials to proceed expeditiously with the compacting process. If Congress were to slip the date, or even signal the states that it is considering such an action, it would remove one of the most important forcing mechanisms of the LLW Policy Act.

An alternative approach, more in keeping with the philosophy of state responsibility which is the cornerstone of the LLW Policy Act, would be for Congress to encourage regions which have operating disposal sites by mid-decade to agree to accept LLW from the siteless regions for a reasonable period of time after January 1, 1986, until the latter regions have been able to put a disposal site into operation. Under this approach, the sited regions retain their legal authority to ban the import of out-of-regions waste, but they agree not to exercise that authority as long as siteless regions are making a good faith effort to develop disposal sites. In order for this approach to be effective, Congress and the sited regions would have to reach a consensus on what constitutes "a reasonable period of time" and what represents "a good faith effort," a task which could prove to be formidable.

One final point about Stage Three of the LLW compacting process relates to the timing for Congressional Consent of compacts. At least one committee staff person has indicated that he expects his committee to take up the compacts as they are presented to the Congress, rather than waiting until all of them have been ratified by the requisite number of states and sent to Congress. This approach would be justified on the record to date; one region has ratified a compact; five other regions have completed negotiations on a draft compact; a seventh region has promised a draft compact by the end of this year; and no state has declared their unwillingness to implement the LLW Policy Act, either on a regional or state-only basis. In sum, there is a formidable record of state committment to the institutional regime called for in the LLW Policy Act.

Furthermore, if Congress is able to resolve potential concerns with the substantive provisions of compacts which have been ratified by a group of states, but then withholds its consent

to these compacts, this could encourage foot-dragging by those groups of states which have not completed Stage Two. In turn, this would inevitably put off the achievement of the ultimate objective of the LLW Policy Act, that is, the development of the new sites needed to ensure that we, as a nation, have sufficient capacity to dispose safety all of all our commercial low level radioactive wastes.

Conclusion

I would like to close on a philosophical note. There is alot of work yet to be done to implement fully the LLW Policy Act. Undoubtedly there will be some false starts and stubbed-toes along the way; we have seen some examples of this already. But I believe it is fair to say that we are off to a good beginning, and I think the reason for this lies in the basic institutional mechanism which is at the heart of the LLW Policy Act -- a clear statement of policy assigning each state the responsibility for dealing with a particular problem and encouraging them to work together on a regional basis in carrying out this responsibility.

In his paper for this morning's panel Wayne Kerr quoted from Congressional testimony given by the former NRC Chairman Joseph Hendrie. Chairman Hendrie's remarks were in response to a question as to why he had changed his mind and concluded that states, rather than the Federal government, would be more effective instruments for solving the LLW problem in this country:

> I observed the difficulties that we have in what clearly is, and ought to be, a Federal program and responsibility for high-level wastes...I am afraid if the Federal government accepts responsibility to deal with low-level wastes and starts looking for additional sites, we are going to get exactly the same kind of response from the states...I think we can get regional disposal capacity... a lot faster if they are a state responsibility.

This approach to governance must be preserved as we move through the various stages of the LLW compacting process. The ball must be kept in the states' court; particularly, as we move into Stage Three and the Congressional arena. If we deviate from this approach, if we begin to qualify the policy statement of the LLW Policy Act, we will surely make it more difficult to address successfully a public policy problem which we all know can and must be solved.