

FEDERAL/STATE PROGRESS ON HIGH- AND LOW- LEVEL WASTE DISPOSAL

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FEDERAL/STATE RELATIONS IN THE NWTS PROGRAM

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ABSTRACT

The conduct of Federal/State relations has been profoundly stressed by the climate of fear pervading public thought on matters of radiation and nuclear safety. Recently-passed Federal legislation for high-level waste disposal clarifies obligations of the States and of Federal agencies and promises new opportunities to establish cooperative efforts.

The National Waste Terminal Storage (NWTS) Program has the objective of providing technology and facilities for permanent safe disposal of commercial high-level radioactive wastes (CHLW), where these wastes are broadly interpreted to include either spent reactor fuel or solidified high-level waste from the reprocessing of such fuel. Broadly, safe disposal is to be achieved by isolation of the wastes from the biosphere. After evaluation of a number of alternative means of isolation in a programmatic environmental impact statement, the Department of Energy (DOE) formally chose mined geologic repositories as the specific technological strategy to achieve isolation (46 FR 26677).

The NWTS Program was instituted in early 1976 with a budget for geologic disposal then equalling about \$6 million. The program has grown very rapidly to the point where expenditures currently exceed \$200 million per year, and will exceed \$300 million in the 1984 fiscal year. This rapid growth in activity and knowledge, and in the numbers of contributors and observers, has added to the difficulties of the Federal/State interactions which are the topic of this paper.

Most of the conference attendees are technologists associated with either the NWTS Program or other nuclear waste activities in government and industry. Accordingly, the views in this paper will be cast in a common-sense framework which the author, also a technologist, has found useful and not from the sophisticated concepts of the political scientist.

This paper is written from the perspective of just over six years in the DOE Headquarters management of the NWTS Program, most of that time spent in close proximity to the so-called Federal/State interface. This is a very personal middle management perspective, not perhaps reflecting the full nature of State interactions enjoyed by the various Secretaries of Energy over that time.

There would be no issue of Federal/State relations if we were talking about the Solar Energy Research Institute. Everybody wanted that facility; DOE was courted vigorously by the States. Instead, however, in the matter of nuclear waste disposal, we have a "product" nobody wants from a "company" nobody trusts. Possibly, that may overstate matters a bit--but not by much!

Nuclear waste facilities are classed with sewage treatment plants, sanitary landfills, prisons, and other so-called "disamenities" which people in general find disagreeable to contemplate. But with nuclear waste there is something more than unpleasantness; there is stark fear. Literally dozens of public meetings held by the NWTS Program have made that quite clear. The nuclear safety controversy that has raged now for nearly 15 years has left a legacy of public fear and suspicion of near-hysterical proportions. That the widely-perceived risks from nuclear waste disposal are totally disproportionate to any reasoned expectation does not make the fear any less real.

This mood of fear is the overpowering underlying reality in which the NWTS Program operates, the force field which drives the political dynamic. Thus, this Program appears on the scene in the States as nothing but bad news. Given that, what has been the nature of our relationships with State governments?

Understanding the Federal relationship with State governments requires a realization that this is not an intercourse between abstractions. The Federal/State interaction is a multitude of person-to-person encounters. The people involved respond to the incentives which they experience and according to their scope of accountability. The incentives depend upon whether one is operating in the Federal or State system and the accountability depends upon whether, in State or Federal government, one is at career staff or policy level. By policy level, of course, is meant the elected officials and their "political" appointees who are most immediately accountable to the voters.

Ultimately, the States are represented by elected individuals who are held responsible for exercising the power of State government. When fear is or becomes the mood of the electorate, they expect their State governments to protect them from the perceived threat; therefore, the incentives for elected State and local officials are completely on the side of resisting the waste repository program.

It is rather easy to conclude from all of this that the Federal/State relationship is inherently adversarial, since the DOE wants to site a repository for CHLW disposal and is driven by technical imperatives into specific States, while those State governments have virtually no incentives other than to resist.

Can the State official have any option other than to resist when faced with the fact of this Program? Under certain preconditions there are cooperative options, but it is very difficult to structure real incentives which favor them. Recent Federal legislation has helped here, as is discussed below. Thus far, however, the one viable condition for a cooperative State posture has been a strong element of State participation so that it is apparent to the people of the State that they are not being "victimized" in some way by unaccountable outsiders. The history of Department programs in nuclear waste management has shown that it is possible, through focused efforts to inform the public, to gain some measure of trust and support in the locale of existing and planned facilities. State-wide constituencies are more difficult to achieve, but even local support lends incentive to State cooperation.

Once achieved, it is hard to maintain a stable basis for cooperation. Nuclear waste disposal and the climate of associated fear is ideal raw material for political challenge of incumbents. The public debate is not disposed to facts and measured tones, once it has been cast in outrage and accusation. With these forces at play, we should admire the almost heroic statesmanship required of State officials for sometimes modest degrees of accommodation to the national interest which this Program serves.

The nature of the problem of waste management presents some inherent difficulties in the organization of effort. Direction of a program such as this requires politically-oriented technologists, which, like philosopher kings, are rare enough that it may be unreasonable to expect unfaltering management of both the technical and the political complexities. The sheer size and scope of any organization which could span the technical, managerial, and political necessities would tend to confound communications with the States. Especially in such a dynamic (i.e., learning) program, the many contributors simply will not often enjoy precisely the same appreciation of evolving facts and policies.

The Nuclear Waste Policy Act of 1982 (P.L. 97-425) now enters the picture and changes the incentives substantially for both the States and the Department of Energy. It does so in two major ways: first, by laying down some rules of the game; and, second, by introducing a "judgment-day" when outstanding disputes and grievances can be carried to the U.S. Congress (where it will be incumbent on DOE to obtain a two-house override of a State objection to a repository site).

The hearings process of the Congress will not, I think, labor interminably with technical disputes on the adequacy of the chosen site. It may try at first, but I believe a few days with the arcane argot of geologists will quickly persuade them that greater discretion would leave such matters to the later license review by the Nuclear Regulatory Commission. I believe that Congress will instead closely examine how well DOE and the States have each played by the rules of the game. This means questioning to what degree each has made a good-faith effort at consultation and cooperation, a policy embedded throughout the Act.

It will be important whether each has met its obligations under the Act and under the consultation and cooperation agreements which the Act requires the parties to negotiate.

Non-cooperative expressions on the part of the States, when not justified by failures of the Federal agencies, will weaken a State's position on judgment day. The Act also imposes numerous requirements on the Department. To the extent that these mutual obligations can be kept in the spotlight, it is very possible that some long-term political incentives can emerge. The public will in effect not tolerate either party endangering its stature on judgment day in the service of some nearer-term affectation. This bodes well.