

SOCIO-ECONOMIC ISSUES OF HIGH-LEVEL WASTE REPOSITORIES

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ISSUES IN IMPLEMENTING THE  
FINANCIAL ASSISTANCE PROVISIONS OF THE NWPA

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ABSTRACT

The Nuclear Waste Policy Act provides for an extensive program of grants to States, Indian tribes, and local governments as part of the process of siting and developing a geologic repository. This paper describes the recipients, uses, and timing of each of these grants, identifies implementation issues on which the Act is silent or requires further interpretation, and identifies implementation decisions facing the Department of Energy and affected States, tribes, and local communities.

OVERVIEW

The Nuclear Waste Policy Act of 1982 (NWPA or Act) assigns considerable responsibility to the Department of Energy (DOE) with respect to the socioeconomic impacts of siting, constructing, operating, and decommissioning a nuclear waste repository. There are four major elements of this responsibility:

- (1) Assessing socioeconomic impacts;
- (2) Avoiding and minimizing socioeconomic impacts;
- (3) Consulting and cooperating with States and Indian tribes; and
- (4) Providing grants to States and Indian tribes.

The first two of these elements reflect the need for the DOE to assess and plan to manage the impacts of its own activities; the latter two elements reflect the recognition that States and tribes will wish to conduct their own independent, but parallel, impact assessment and management efforts, and Congress' desire that the DOE should consult and cooperate with States and tribes, as well as provide financial assistance, to support these parallel efforts.

This paper focuses on the fourth element: grants to States, tribes, and local governments. The Act includes programs of grants to States, tribes, and local governments in conjunction with the Interim Storage program, the Monitored Retrievable Storage program, and Test and Evaluation Facilities, as well as the Geologic Repository Deployment program. This paper is confined to those grants specifically related to the geologic repository program, as provided for by Subtitle A of the Act.

The paper begins by identifying those sections of the Act that provide for grants related to siting a geologic repository and describing the major purpose of each. It then describes the eligible recipients, acceptable uses, and timing of each grant, and notes some of the points on which the Act is silent or requires further interpretation. Finally, the paper discusses several decisions facing

the DOE and the States in the implementation of these grant programs.

GRANT PROVISIONS AND PURPOSES

The Act provides for four types of grants from the DOE to States, Indian tribes, or local governments:

- (1) Grants for the purpose of supporting State or tribal participation in the consultation and cooperation (C&C) process [Sections 116(c)(1)(A) and 118(b)(1)];
- (2) Grants for the purpose of enabling States or tribes to review DOE activities, perform independent assessments, and prepare requests for impact assistance [Sections 116(c)(1)(B) and 118(b)(2)(A)];
- (3) Grants in lieu of taxes that States, tribes, and units of general local government would receive were they authorized to tax repository property and activities [Sections 116(c)(3) and 118(b)(4)]; and
- (4) Grants designed to mitigate the impacts on States and tribes of developing a repository [Sections 116(c)(2)(A) and 118(b)(3)(A)].

RECIPIENTS, USES, AND TIMING

This section describes the recipients, uses, and timing of each of these grants and notes related issues on which the Act is silent or requires further interpretation.

Grants to Support Participation Activities

The Act provides that the DOE make grants available to those States and tribes that are notified that they contain a "potentially acceptable site" for a repository [Sections 116(c)(1)(A) and 118(b)(1)]. These grants are to support the States' and tribes' participation in activities specified in Sections 116 or 117 or authorized in C&C agreements. The major purpose of these grants seems to be facilitation of the interaction between the DOE and the States and tribes in the early siting process. These grants terminate when site *characterization ends*.

### Grants to Support Impact Assessment Activities

The Act provides for assessment grants to States or affected Indian tribes in which site characterization has been authorized [Sections 116(c)(1)(B) and 118(b)(2)(a)]. The Act does not explicitly provide these grants to units of local government.

The Act specifies that assessment grants are for the following purposes:

- determining potential economic, social, public health and safety, and environmental impacts;
- developing a request for impact assistance;
- monitoring, testing, and evaluating site-characterization programs;
- providing information to State residents regarding any activities of the State, the DOE, or the Nuclear Regulatory Commission (NRC); and
- requesting information from, and making comments and recommendations to, the DOE regarding any repository-related activity.

Assessment grants commence with site characterization and terminate 1 year after: (1) the DOE notifies the State or tribe that site-characterization activities at the candidate site have ended; or (2) the President disapproves the site; or (3) the NRC disapproves an application for construction.

### Grants-In-Lieu-Of-Taxes (GILOT)

The NWPA authorizes payments to States, Indian tribes, and units of general local government in lieu of funds the State, tribe, or local government would receive were it authorized to tax the repository [Sections 116(c)(3) and 118(b)(4)]. These governing bodies are not authorized to tax the repository because it is a Federal project, and therefore, exempt from local, State, and tribal taxes. These grants are to be made to States and units of general local government in whose jurisdiction the President approves a site for characterization.

Section 2(28) of the NWPA defines the term "unit of general local government" to mean "any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State" (emphasis added). By specifying "units of general local government," the NWPA raises questions about special districts receiving GILOT payments. (Water and sewage service, for example, is often supplied by single-purpose special districts that may not have the same boundaries, governing body, or revenue bases as general-purpose local governments.)

The Act requires that the Secretary make annual GILOT payments during two phases of the repository program: (1) following Presidential approval of a site for site characterization, and (2) during repository development and operation.

### Grants to Assist Mitigation Activities

The NWPA requires that the DOE provide to a State or affected Indian tribe financial and technical assistance designed to mitigate the impacts of developing a repository if such assistance is requested [Sections 116(c)(2)(A) and 118(b)(3)(A)]. These sections provide for impact mitigation assistance to States and Indian tribes, but they do

not specifically mention assistance for local governments as do the impact assistance provisions for the Federal Interim Storage (FIS) and Monitored Retrievable Storage (MRS) programs.

The Act requires that financial and technical assistance be provided to mitigate any economic, social, public health and safety, and environmental impacts of constructing a repository. A State or tribe will first receive an impact assessment grant, as discussed in the previous section, to assess the expected impacts of a repository and to develop a request for impact assistance. The DOE is required to seek to enter into a binding written agreement with the State or affected tribe that will specify the exact amount and type of assistance to be provided and the procedures to be followed in providing this assistance.

A State's or affected tribe's impact assessment report is due when characterization is complete and before the Secretary recommends the site to the President for application for construction authorization. The NRC must issue a final decision by January 1, 1989, for the first repository, or within 3 years following the date when the application is submitted, whichever occurs later. The Act specifies that assistance shall commence within 6 months following the start of construction, if such assistance is requested. A host government may not receive mitigation assistance beyond 2 years after licensing to receive and possess waste, except as provided for in written agreement with the DOE.

### IMPLEMENTATION DECISIONS

The implementation decisions discussed in this section relate, in some cases, to those points on which the Act is silent or requires further interpretation; in other cases, the decisions are clearly required by the Act. These decisions are not just of interest to the DOE; the States and other potentially affected parties should recognize the impact these decisions will have on their activities. The decisions will determine the type, amount, and duration of support that can be sponsored by the DOE. The following discussion is organized into decisions relating to recipients, uses, and timing of grants.

#### Decisions Concerning Recipients of Grants

The nature and level of impacts, and the level of concern about repository issues, will be greater in the locality of a proposed or actual site than elsewhere in the State. It is also likely that the interests of residents of the site locale may differ, at times, from the interests of other residents of the State. Nonetheless, the Act does not specify a mechanism through which the DOE is to interact directly with local citizens or their local governing bodies; nor does it give the DOE a clear mandate to attempt to influence a State's interactions with sub-State units of government. Hence, the DOE and the States are faced with the following decisions:

- Will the States be the sole participant and the representative of local interests or will sub-State units of government participate in these assessments and discussions?
- Will financial assistance for participation in siting activities, for impact review and assessment efforts, and for impact mitigation be given to local units of government, and how will that assistance be allocated?

- Does the DOE have a role in the intra-State allocation of the grants?

Another decision related to recipients concerns the grants-in-lieu-of-taxes. It was noted earlier that special districts are not specifically mentioned as recipients of these grants, in spite of the fact that special districts are often responsible for dealing with impacts that cross the jurisdictional boundaries of general units of local government. Closely related to this silence regarding revenues for special districts is the larger question of providing revenues for general units of government of localities that will be close enough to sites to experience impacts but that are not "host communities" *per se*. Section 116(c)(3) provides for grants in lieu of taxes only to those local governments "in which a site for a repository is approved" [emphasis added]. These questions present the DOE and the States with the need to decide:

- By what means can financial assistance to offset increased public costs be made available to units of local government that may experience impacts of repository siting and development, but that do not actually contain candidate sites?
- Who should be responsible for addressing this issue?

#### Decisions Concerning Uses of Grants

The size of the mitigation grants [Sections 116(c)(2)(A) and 118(b)(3)(A)] will be specified in written agreements between the DOE and the States and tribes, based on requests made to the DOE. These requests will be supported by impact reports submitted by the State or tribe to the DOE following site characterization. The impact reports may themselves have been prepared with support provided by DOE grants provided under Sections 116(c)(2)(B) and 118(b)(3)(B). The DOE will evaluate these requests, and the supporting impact reports, in light of its own parallel assessment of impacts conducted pursuant to preparing the Environmental Assessment and Environmental Impact Statement for the site.

In view of the above, the DOE and the States and tribes will need to make the following decisions:

- What criteria will be used to judge the reasonableness of State or tribe impact mitigation requests?
- What criteria will be used to judge the adequacy and accuracy of impact reports accompanying those requests?

Final negotiations on levels of impact mitigation grants might be facilitated by more extensive interaction between the parties in the assessment of the nature and level of impacts, and of means to avoid, minimize, or mitigate impacts. This potential function of the consultation and cooperation process suggests an additional decision that the parties must make:

- To what extent, and in what manner, should the DOE and the States and tribes attempt to coordinate their impact assessment and mitigation planning efforts?

Another issue related to the use of grants concerns addressing the value of real property, and of industrial and commercial activity, associated with repository siting, development and operation. Such assessment is required in determining appropriate

levels of grants in lieu of taxes. Two major decisions face the DOE and the States, tribes, and local governments in this regard:

- By what method should the value of such property and activity be assessed?
- Who should be responsible for conducting such assessment, especially gathering and verifying the data used?

#### Decisions Concerning Timing of Grants

There are two important issues related to the timing of grants to mitigate impacts. The first concerns the possibility that a community may need to develop or improve its infrastructure of roads, sewer and water service, utilities, housing, and so forth, before the arrival of large numbers of repository construction workers. Sections 116(c)(2)(A) and 118(b)(3)(A) are explicit in providing mitigation grants only "following the initiation of construction activities." Grants in lieu of taxes for site characterization, and for repository development and operation, may provide some flexibility in this area. However, these grants are not designated for impact mitigation activities, but rather to allow this particular Federal activity to contribute to local revenue. In addition, there is no assurance that these grants would be adequate for the task of funding major infrastructure improvements prior to construction.

The decisions facing the DOE and the States and tribes, then, are:

- Should financial assistance in the form of "front-end financing" for local infrastructure be provided by the DOE, if needed?
- By what authorization could such assistance be made available?
- If "front end financing" from the DOE were not available, through what mechanisms could those problems be addressed?

The second issue related to timing of grants is created by the stipulation in Section 116(c)(4)(C) of the Act that, except for grants-in-lieu-of-taxes, "no Federal funds shall be made available to such State . . ." at the end of two years following NRC licensing, except for "such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into . . . during such 2 year period." This stipulation of the Act seems to imply that impact mitigation assistance -- based on reports and requests that could be submitted three or more years before construction -- may not be adjusted to reflect the levels of impacts that actually occur unless the impact mitigation agreement, or some other agreement developed during the C&C process, provides for such adjustment.

The decisions that the DOE and the States and tribes must make in this regard are:

- What provisions should be made to adjust the level of mitigation assistance after repository construction and operation are underway?
- How could such provisions be implemented?

## CONCLUSION

The Nuclear Waste Policy Act of 1982 is rather specific compared to much other legislation. The Act, however, leaves many issues open to clarification and interpretation. The resolution of these issues will dictate the form of much of the interaction between the States, tribes, and localities and the DOE in their parallel efforts to assess and mitigate socioeconomic impacts. It is incumbent upon all those involved to attempt to reach the required decisions both fairly and expeditiously.