

A UTILITY PERSPECTIVE ON
THE PROPOSED NORTHEAST INTERSTATE COMPACT

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ABSTRACT

The proposed Northeast Compact on Low-Level Radioactive Waste appears to be stalled in its present form. The Low-Level Waste Policy Act of 1980 encourages states to enter into regional waste compacts where practicable. The Northeast Region, which includes eleven states made up of the six New England states plus New York, New Jersey, Pennsylvania, Delaware, and Maryland, is the largest proposed compact region from the standpoint of low-level radioactive waste volumes. There is also wide variation in volumes among the states. Four states in the region have ratified the Northeast Compact, but the remaining seven states, including the three largest generating states, have not ratified to date. The large states are pivotal in determining whether the compact will move forward. The prime concerns of these large volume generating states appear to be host state selection and responsibility issues, as well as some of the proposed powers and authority of the Regional Commission.

INTRODUCTION

The proposed Northeast Interstate Compact on Low-Level Radioactive Waste Management appears to be stalled in its present form. The eligible party state deadline for joining the compact, June 30, 1984, is fast approaching. Unless some significant motion is made soon by those states that have not yet ratified the compact, a major regional effort could well falter.

As of February 1, 1984, only four of the eleven Northeast states - Connecticut, New Jersey, Delaware, and Maryland have ratified the compact. The remaining seven, including the three largest waste generating states of New York, Pennsylvania, and Massachusetts, have not. The fact that none of the larger waste generating states have ratified is both interesting and significant and may be symptomatic of the main stumbling block to substantial state ratification of the present CONEG Northeast Compact document.

The purpose of this paper is to provide a perspective on the proposed Northeast Interstate Compact as well as discuss some of the more pertinent aspects which have impacted the development of this compact region and to suggest an approach for future compact progress. This paper also focuses on background information pertinent to the Northeast Region and the compact development process, then generally discusses the apparent prime areas of concern with the compact, present status of ratification, and offer a brief perspective of the problem to full regional ratification.

The title may be somewhat misleading, particularly if it suggests to the reader that there is only one valid perspective on the Northeast Compact. In fact, more appropriately, one of the more vexing problems associated with the Northeast Interstate Compact is that there may be too many perspectives, which may be one reason for the slow progress to date of compact ratification. Discussions with representatives of other utility companies throughout the Northeast Region indicate general concern on the relatively slow progress of compact acceptance and the potential problems that may arise for the region.

if adequate disposal facilities are not available after the 1986 deadline.

My perspective is from a background, both in my present capacity as a utility executive in government affairs over the past three years and prior to that as a government official^a who was involved in energy and environmental public policy development, as a member of the New England Regional Commission. My present responsibilities include monitoring nuclear waste issues at the federal and state level and also include assisting in the development of waste programs, not only for the nuclear power industry but for other Massachusetts generators of low-level waste, as well.

BACKGROUND

As those familiar with low-level waste issues are aware, the Congress of the United States enacted in 1980 the Low-Level Waste Policy Act, which places the responsibility for the disposal of low-level radioactive waste squarely on the shoulders of the individual states and encourages states to enter into regional waste compacts where practicable. One proposed compact is that of the Northeast Region, which includes eleven states made up of the six New England states plus New York, New Jersey, Pennsylvania, Delaware, and Maryland. It is the largest proposed compact region from the standpoint of low-level radioactive waste volume, and may, because of its relative population density, geography, and other socio-political factors, be one of the more difficult areas within which to site a waste facility.

The Region

The Northeast Region has over 3,000 users of radioactive materials and produces on average 36 percent of all the low-level radioactive waste generated

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within the country^b. For the years 1979 through 1981 that translated into a volume of about 30,235 cubic meters. Of that amount, 16,662 cubic meters or 55 percent was generated by power reactors. The Northeast has 22 nuclear power plant reactors with operating licenses and 10 reactors under construction. Obviously, not all waste comes from nuclear power reactors. Significant amounts of low-level waste in the Northeast are generated by industry, (i.e. manufacturers of radiopharmaceuticals) and research institutions, hospitals, and medical facilities, which supply both substantial economic benefits as well as extremely important goods and services. For example, in the state of Massachusetts, the greater amount of low-level waste is generated on average from industry and other sources (60 percent) than from its two nuclear power plants (40 percent). Currently, waste is shipped to other parts of the country (primarily Barnwell, South Carolina, and Richland, Washington), and there is no viable existing waste site in the region. The need to site a waste facility is a key concern of the states in the region.

Although the Northeast Region has some of the largest waste generating states in the country, it also has some of the smaller waste generating states. These states include Delaware, New Hampshire, and Rhode Island. Thus, such a diversity in volumes from the states within this region tend to add to the complexity of developing at least a "perceived equity" of disposal arrangements among the states.

Compact Negotiation Process

Arrangements to address development of a cooperative approach among a group of states within the Northeast came about as a result of several different regional groups conducting briefing sessions soon after the authorization of the Low-Level Waste Policy Act. The Coalition of Northeast Governors (CONEG) emerged as the prominent regional organization offering to sponsor negotiations on development of a Northeast Regional Compact. The CONEG group, made up of the Governors of the states of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, also invited the states of Maine, Maryland, and Delaware to participate in the negotiations.

The process used during the negotiation stage for the Northeast Region under the CONEG sponsorship allowed for each state to have up to three credentialed representatives^c at the negotiating table. It was designed such that representatives could come from the legislative branch; one member from the House and the Senate, and one from the executive branch. The actual negotiations took place over an extended time period with open meetings where the public was invited to observe and offer comments during the public comment periods.

This process was considered to be one of the most fair and open processes used by any of the compact regions in the country. It was also thought that such a process would lend itself to the development of a compact document that would have been more easily acceptable than has been the case up to now. One can then ask why the Northeast Compact has not moved ahead to full ratification by all states. In order to get a better understanding, it is necessary to look at the

b. CONEG Report of Technical Subcommittee, October, 1982.

c. A letter from the governors of each state identified its official negotiating members as credentialed representatives.

compact and some of its assumptions.

THE NORTHEAST COMPACT

The proposed Northeast Interstate Low-Level Waste Compact that is currently before the eleven states is perhaps the most detailed and expansive of all the compacts that have been drafted within the U. S. to date. The final draft compact document has ten articles and is over 40 pages long. A comparison of the Northeast Compact in relation to the other proposed regional compacts suggests that the Northeast Compact has gone much further in addressing many concerns, such as liability issues, administrative issues, and dispute resolution procedures that have been identified by various groups and agencies within the region.

The major sections of the compact document include the following ten articles:

- Article 1, Policy and Purpose
- Article 2, Definitions
- Article 3, Rights and Obligations
- Article 4, The Commission
- Article 5, Host States Selection and Development and Operation of a Regional Facility
- Article 6, Other Laws and Regulations
- Article 7, Eligible Parties, Withdrawal, Revocation, Entry Into, Force Termination
- Article 8, Penalties
- Article 9, Compensation Provisions
- Article 10, Serviceability and Construction.

In the approximately 18-month drafting and negotiation period for the Northeast Compact, the credentialed representatives of the eleven states essentially agreed in principle to write the document from a non-host party state perspective with the assumption that one state would come forth and volunteer as the first host state. In the event this did not happen, provisions were made in the compact for a host state selection process (Article 5). This selection process and the associated criteria were designed so that they weighed much more heavily in favor of selecting a large volume waste generating state as the host state. In addition, the host state selection process would be administered by the Regional Commission (Article 4), and they would be responsible for the selection of the host state along with overseeing the operation of the regional disposal program, as outlined in the compact.

When the final version of the Northeast Compact document emerged from the CONEG negotiation process in February, 1983, it was generally viewed as an acceptable document by many of the waste generators in the region. This is not to suggest that it was viewed as a perfect document; few documents are. However, the process and compact principles had the support of the state negotiators, and a congressional deadline for action was nearing; thus, it was thought the compact would meet with agreement in a good number of states and would continue progress towards establishing a disposal facility.

Present Status

During the past year the Northeast Compact has been analyzed from almost every conceivable viewpoint within the region. Reviews, comments, opinions, and suggested changes have come from many agencies and groups, including governmental, public interest, environmental, as well as the affected industry and institutional organizations that generate the waste.

Many review processes are ongoing, and continue to address the Northeast Compact participation as well as other options for dealing with low-level radioactive

waste, under the auspices of the individual states' government committees and/or advisory groups. Some prominent examples are the work of the Massachusetts Special Legislative Commission on Low-Level Waste, the three Northern New England states commission to explore possible options, the New York State Energy Office, and the New York Advisory Committee on Low-Level Radioactive Waste Disposal, and similar groups in Pennsylvania.

These groups have been working hard, in some cases meeting weekly, to address the issues and concerns raised within their states relative to the compact and the safe disposal of low-level radioactive waste. Such commitment suggests a sincere concern for the development of an acceptable regional approach for low-level waste management and serves as a demonstration of their good faith and are to be applauded. It is not clear, however, that an eleven-state Northeast Compact will satisfy the demands of all of the prospective participants. So, while that possibility exists, other options including the formation of smaller compacts on a geographic basis are also being discussed.

At the same time, however, a sense of urgency relative to the 1986 deadline needs to be imparted. Moreover, the question must be raised whether developing an overly detailed document is going down the wrong road. One gets the feeling that the concern to produce the "perfect compact," in which all details and considerations, which the compact may face, are addressed may, in fact, miss the central point. This approach attempts to limit the role of the Regional Commission and as a result, makes the process almost inflexible with most decisions made now rather than later. The compact has tended to be seen as an end in itself, which has clouded the real issue.

Although Connecticut, New Jersey, Delaware, and Maryland have ratified the compact and have stated they are open to discussion on addressing areas of concern, the key to greater regional unity lies with the larger waste generating states of New York, Massachusetts, and Pennsylvania. It is the large waste generating states whose concerns will have to be dealt with if a major Northeast Regional approach is to survive.

A PERSPECTIVE

The prime areas causing the current impasse relative to the large-volume states are the host state selection and responsibility issues and some of the proposed powers and authorities of the Regional Commission. When the compact document was written, the concern on the part of the small states not to become the "dumping grounds" for the large generating states within the region was dominant and manifested itself in the host state selection criteria.

A non-host party state theme also dominated certain other provisions of the compact. For example, with respect to the liability issue, while the host state will bear the ultimate risk, the authority to set the size of the fund remains with the Commission. Today, the theme is a major concern for the big three states who are likely candidates to be the host state under the present compact criteria.

Although, officially, the remaining eligible party states have until June 30, 1984, to ratify the present compact document, it is now apparent that the proposed Northeast Compact document is stalled in a number of key states, particularly those who gener-

ate the larger volumes of waste, and that some changes and compromises will have to be reached if an eleven-state compact is to be adopted. In order for this "stalled situation" to be resolved, it will take strong leadership on the part of the major waste generating states. Formal compact discussion must take place among the three major generating states and must include serious discussions on the selection of the first waste site or host state. Following that, larger generating states must either singly or in tandem propose and ratify an appropriately amended version of the compact document. Such an approach would also serve to provide a mechanism for the four states that have ratified the compact to go back to their legislatures for reconsideration, and hopefully would encourage the involvement and acceptance of the other Northeast states of the new compact arrangement.

It is suggested that any amended compact document embody the following three generic principles:

1. A compact document is but a "means" to an "end;" namely the environmentally safe disposal of low-level radioactive waste;
2. Compact document should be simple and flexible;
3. The host state's role and concerns need to be prominent.

The compact document should embody certain basic principles of a policy nature for low-level waste management and outline the cooperative working arrangement for the member states while providing the proper authority and responsibility role for the host state. Although an individual state's self-interest will always be an issue, there is also a need to look at the broader perspective and perhaps to give up a certain amount of sovereignty in order to reap the benefits of a regional approach.

CONCLUSION

In conclusion, a regional approach to the disposal of low-level radioactive waste would offer the best solution for the Northeast states. Although the states have groups that are working hard on low-level radioactive management issues and regional compact ratification issues, substantial progress within the short time frame does not appear likely until one of the larger states accepts the fact that it will have to host the first regional facility. Currently, several issues are inhibiting the largest generating states from accepting the compact in its present form. These states should take the leadership to address the matter of hosting the first regional facility and, in so doing, bargain for provisions that other states will have to bear fair and equitable responsibilities for future facilities. Such demonstrated leadership would go a long way to help the Northeast Compact over its present stumbling block.

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