

## NEED FOR A CHANGE

### AN AMFM PANEL PERSPECTIVE

From the Panel Report - December 1984

Representative Arnie Wight  
House Science & Technology Committee  
New Hampshire Legislature  
Concord, NH

### ABSTRACT

The Panel's preferred long-term alternative to the Office of Civilian Radioactive Waste Management (OCRWM) is a public corporation chartered by Congress.

Its primary activities would be to provide necessary continuity and stability of management, schedule adherence, effective cost control and adequate quality assurance; to select two or more politically and technically excellent and acceptable sites for geologic waste repositories; to construct and operate radioactive waste disposal facilities with both technical excellence and cost-effectiveness; to enhance opportunities for state and tribal participation.

The Panel's preferred long-term alternative to the Office of Civilian Radioactive Waste Management (OCRWM) is a public corporation chartered by Congress. It would be called the Federal Corporation for Waste Management (FEDCORP).

#### Major Features

FEDCORP would have a Board of Directors appointed by the President, subject to confirmation by the Senate. While this implies a substantial measure of political oversight, the FEDCORP directors would essentially comprise a managerial body functioning like the Board of Directors of a private corporation. The organization which it would oversee would have most of the flexibility enjoyed by private business, including financial flexibility and the same opportunity to hire and fire personnel and offer appropriate pay scales as in a private business.

FEDCORP directors would select a Chief Executive Officer (CEO) who would employ a small staff of highly competent individuals, certainly no greater in number than the present OCRWM. FEDCORP would use private contractors to carry out its various functions of site selection, repository construction and waste transportation and emplacement. It would also retain an independent oversight contractor.

Associated with FEDCORP would be a Waste Fund Oversight Commission. In addition, there would be an Advisory Siting Council (ASC) broadly representative of stakeholders and the general public.

The primary activities of FEDCORP would be, first, to provide necessary continuity and stability of management, schedule adherence, effective cost control and adequate quality assurance; second, to select two or more politically and technically excellent and acceptable sites for geologic waste repositories; third, to construct and operate radioactive waste disposal facilities with both technical excellence and cost-effectiveness; and, fourth, to enhance opportunities for state and tribal participation as contained in and directed by the Nuclear Waste Policy Act (NWPA).

### DESCRIPTION OF THE ORGANIZATION

#### Primary Assumptions

The FEDCORP alternative is based on the following assumptions:

- That the Administration and Congress would be willing to open the Nuclear Waste Policy Act to authorize the establishment of a public corporation to manage the high-level radioactive waste program.
- That the transition from the existing organization can be accomplished in a timely and cost-effective manner.
- That the future revenues will be predominantly derived from the entities producing the radioactive waste.
- That one organization can take complete responsibility for radioactive waste siting, financing, and facility construction and operation.

#### Purpose

FEDCORP would be established by Congress and given full authority over management and disposal of civilian radioactive wastes. The Corporation would have three objectives specified in its charter:

To ensure the safe, long-term isolation of radioactive wastes from the environment, in compliance with standards issued by the appropriate federal regulatory bodies.

To plan, construct, and operate all necessary waste management facilities in an expeditious fashion. Although facilities for ultimate storage or disposal may not be completed by 1998, the public corporation would be obligated to begin accepting waste by that date.

To conduct its activities in a cost-effective fashion, financing its programs from fees on nuclear-generated electricity and perhaps defense wastes.

#### Ownership and Control

Congress would establish FEDCORP as a government-chartered corporation with no equity apportionment. The charter would transfer the revenue flow, administration, and accountability of the Nuclear Waste Fund and Interim Storage Fund from the Department of Energy (DOE) to FEDCORP. Although FEDCORP would come into being on the date on which the President signs the new or amended legislation, it would have a specified transition period for assuming all authorities and activities now vested in OCRWM.

The FEDCORP charter would make it a wholly owned instrumentality of the Federal Government, but chartered as a public corporation and governed by a Board of Directors. There would be 7 presidentially appointed directors who would be confirmed by the U.S. Senate. Directors would serve terms of 7 years—arranged on a staggered basis—with no limitation on reappointments. The President, with the consent of the U.S. Senate, would designate one of the directors as the Chairman for a 7-year term. The length and staggering of the directors' terms would provide continuity and insulation from excessive political influence. The directors would appoint a Chief Executive Officer (CEO) to serve at their pleasure and to be an ex officio member of the Board.

The Board of Directors would function as in the private sector. The CEO would be full-time, with an annual salary plus benefits comparable to those of executives holding similar positions in the private sector. Other Board members would serve on a part-time basis, but would meet as frequently and devote as much time as necessary to carry out their responsibilities. Directors' fees would be commensurate with those of equivalent private corporations. The directors in turn would set the compensation of the CEO, providing adequate incentives tied to management performance.

FEDCORP could sue and be sued within the ordinary framework of corporate law. FEDCORP would be subject to regulatory oversight by the Nuclear Regulatory Commission (NRC) and other appropriate federal agencies.

#### Organizational Structure

FEDCORP's operational management would be that of a strong CEO selected by and reporting to a Board of Directors. The CEO would manage the corporation under the general policy guidance of the Board: his/her power would be that normally accorded the CEO of a large private corporation. The CEO, with Board approval, would have authority to select top managers, establish the management structure, and set personnel policies. The CEO would have prime responsibility for day-to-day corporate operations.

#### Advisory Siting Council (ASC)

In view of the significant political aspects of selecting repository sites, FEDCORP would establish an Advisory Siting Council composed of representatives of all legitimate stakeholder groups.

ASC members would be appointed by the FEDCORP Board of Directors. It is intended that the ASC would maintain the function for the specified duration of the siting process for the first and second repositories.

ASC would be responsible for making recommendations to the FEDCORP Board of Directors concerning site selection processes. To assist ASC in carrying out its responsibilities, the FEDCORP Board of Directors would provide it with sufficient staff resources.

#### Institutional Relations

FEDCORP would have the authority and responsibility to implement programs and procedures to permit independent reviews of federal actions under the Nuclear Waste Policy Act. This would include opportunities for public participation, consultation and cooperation agreements, and encouraging the development of state/tribal technical capability through financial assistance.

#### Personnel Practices

FEDCORP would be exempt from all federal Civil Service requirements, salary standards, and personnel ceilings. FEDCORP would be able to offer salaries and benefits commensurate with the responsibilities of its personnel.

FEDCORP would be empowered to hire and fire employees on the same basis as any private corporation. This would facilitate incentives for superior performance and allow management the flexibility to shape personnel resources in line with the business and technical requirements of FEDCORP. Federal employees who transfer to FEDCORP would retain vested retirement benefits.

#### Financial Arrangements

FEDCORP's activities would be funded from a fee on nuclear-generated electricity. Charges for defense wastes would be negotiated and would come from the federal general fund with full-cost recovery. The receipts from the fee would be deposited, as now, in the Nuclear Waste Fund, but the Fund would be removed from the unified federal budget. However, the radioactive waste management program would not be expected to require reauthorization, and expenditures from the Nuclear Waste Fund would not require appropriation.

FEDCORP would replace DOE in the NWA-mandated waste management contracts with nuclear utilities. The FEDCORP Board of Directors would have authority to raise or otherwise modify the fee at any time after soliciting the advice of the Waste Fund Oversight Commission. Such changes would not take effect for 90 days of continuous Congressional session, during which period Congress could overturn a proposed fee change by joint resolution. Responsibility for management of fee revenues would lie directly with the FEDCORP Board of Directors.

FEDCORP would be authorized to borrow money from public or private sources, including the federal Treasury. FEDCORP would be free to invest any temporary surplus from the Nuclear Waste Fund at its own discretion. Consideration would be given to reducing the fee in the event of a net life-cycle surplus.

#### External Accountability

FEDCORP would prepare an annual public report to Congress, states and Indian tribes outlining its activities, accomplishments, plans and expenditures. Congress would have the authority to hold hearings on any aspect of the program at any time, and would have full access to records and reports of the corporation.

The corporation would retain a private accounting firm to prepare annual financial statements on the program.

The corporation would be required by law to utilize the services of an independent oversight contractor to help insure that the FEDCORP mission proceeds on schedule, within the pre-established budget and that strict quality control is maintained.

FEDCORP might well benefit from the services of a Scientific Peer Review Board.

FEDCORP would be accountable to the NRC under the terms of its license, and to other regulatory agencies as appropriate. In this context, FEDCORP would be well served by retaining a special regulatory counsel with experience in NRC and state regulatory processes.

#### Revenue and Cost-Reduction Opportunities

FEDCORP would have chartered authority to contract for revenue-oriented activities other than nuclear waste disposal so long as these activities would relate to and not hinder the main thrust of the waste management program. For example, future economic, political and technological changes may encourage the reuse of high-level radioactive waste and spent reactor fuel and create revenue opportunities for FEDCORP. Such activities could dampen the need for increasing nuclear utility generating fees.

### EVALUATION USING ORGANIZATIONAL TESTS

#### Mission-Oriented

FEDCORP would have a strong mission orientation since it would be an independent organization whose sole responsibility is the waste management program.

#### Ability to Maintain Credibility

FEDCORP's business orientation would enhance its credibility among the nuclear electric utilities which would bear the costs of its activities and require its waste management services. The Advisory Siting Council, by providing direct involvement of major stakeholders in the decisions of most direct concern to them, would provide a strong measure of credibility among states, tribes, and environmental groups, as well as utilities and ratepayers. The availability of information through Congressional hearings and reports of the independent accounting firm and oversight contractor would also build credibility.

#### Stability and Continuity

FEDCORP should have even greater stability than a normal corporation, since its directors would serve lengthy terms. It would be substantially insulated from political influence and therefore its policies would not change frequently in response to short-term political pressures.

#### Programmatic Authority

FEDCORP would have virtually complete programmatic authority. It would still be subject to some restrictions, such as the possibility of Congressional override of increases in the waste fee, but would essentially be able to direct the program with free-enterprise efficiency.

#### Accessibility

Considerable accessibility for the major public concern of siting would be implicit in the Advisory

Siting Council. NRC licensing proceedings and continuing oversight will provide additional access. Beyond these, of course, FEDCORP could be expected to be somewhat more accessible than most corporations because of reporting requirements and the high probability of Congressional displeasure if accessibility were to be limited by the corporation.

#### Responsiveness

FEDCORP would be responsive to the major stakeholders in siting through the mechanism of the Advisory Siting Council and would also be responsive to its regulator, namely the NRC. In addition, FEDCORP would be responsive to Congressional requests for information, briefings and the like and, obviously, to concerns that might lead to amendment of its charter.

#### Internal Flexibility

FEDCORP would have a very large measure of internal flexibility because of its corporate form and strong business orientation.

#### Political Accountability

The directors would be subject to political scrutiny through the appointment and confirmation process, but their lengthy terms would greatly limit any undue exercise of political control over their conduct. The combination of reports to Congress, continuing Congressional interest in radioactive waste management and the prospect of legislative intervention should force an appropriate degree of political accountability on the corporation.

#### Immunity from Political Interference

FEDCORP would be relatively insulated from political interference with its policies. The only avenues for political influence would be through the periodic appointments of directors (only one appointment would occur annually on the 7-person Board) and the Congressional power to hold hearings or, by implication, intervene through legislation.

#### Financial Accountability

FEDCORP's financial activities would be subject to both public and private audits. It would be only moderately less accountable to OMB and Congress since it would be an off-budget entity without the need for periodic authorization or appropriation. Its major accountability to Congress would occur if it sought increases in the waste fee or its borrowing authority.

#### Ability to Stimulate Cost-Effectiveness

The program should benefit from the new corporate style and the more flexible personnel practices. In addition, the Waste Fund Oversight Commission should be a potent stimulus for controlling costs and improving programmatic performance.

#### Technical Excellence

The corporation should be able to hire and retain quality employees given its personnel flexibility. It should also be able to obtain an adequate amount of funding to ensure proper construction and operation of facilities. This combination indicates that FEDCORP would be able to achieve technical excellence. In addition, the advice of the Scientific Peer Review Group should help to maintain the technical quality of the corporation.

## Ease of Transition

Shifting to a public corporation, as opposed either to improving the status quo or creating another federal agency, would be difficult. The complex set of relationships that OCRWM and its forerunners have developed with the various federal agencies, states, tribes, interest groups and other stakeholders would have to be developed anew by FEDCORP. Moreover, all of this would have to be accomplished while an ongoing program is striving to meet tight statutory deadlines.

Nevertheless, the advantages of FEDCORP over the existing entity should overshadow any transitional problems when placed in the context of a 15 to 50-year program. Under these circumstances, a major reorganization should be initiated sooner rather than later if it is to achieve maximum benefits.

### ADVANTAGES AND DISADVANTAGES

In general, FEDCORP would have great strength on the five organizational tests weighted most heavily by the panel: credibility, stability, internal flexibility, political immunity and cost-effectiveness.

#### Six Major Advantages

A government-chartered corporation such as FEDCORP would offer six major advantages. First, the strong business orientation and structure would tend to encourage cost-effectiveness and the timely completion of projects.

Second, the involvement of relevant stakeholder groups in siting decisions through the Advisory Siting Council would provide the basis for broad public support, probably the most essential element in ensuring the long term success of the program.

Third, FEDCORP would be largely free from political influence. This would increase the program's credibility and help to ensure more stable policies and funding.

Fourth, the corporation and its Board would have almost complete financial authority over the program. They would be solely responsible for the collection and distribution of the fees paid by the producers of radioactive wastes. FEDCORP could raise short term capital from a variety of sources in the amounts and the times that are required. Its borrowing and spending would be less subject to changes in political climate and would be much more stable than the alternatives. The program would provide full financial disclosure through public and private audits.

Fifth, FEDCORP would have a great deal of internal flexibility. Its personnel practices would not be subject to federal salary limits, hiring policies, or financial disclosure rules. It thus could obtain the professionals as needed to manage the program and reward them as appropriate. The corporation would also have substantial capability to allocate financial and other resources among its activities in a timely and efficient manner.

Sixth, FEDCORP's corporate form should make it more responsive to the NRC and other regulators than a Federal Government agency would be.

#### Disadvantages

A congressionally chartered public corporation would have the one apparent disadvantage common to any new organizational structure that would be considered, namely the problem of transition. It would be necessary to transfer programmatic authority to FEDCORP from the existing OCRWM, and a period of time would be needed to accomplish this transition efficiently. In that latter context, it must be recognized that the new FEDCORP organization could open for reconsideration many of the programmatic decisions on which the effort is currently very actively proceeding.

It should also be noted that the advantages of FEDCORP which the Panel perceives and which are discussed in the foregoing material, remain to be demonstrated in practice, and discussions of the Panel recognized that these have a potential negative side. As one example, those discussions recognized that FEDCORP could by its structure be less responsive to the stakeholder concerns, and thus it would need to be sensitive to the advice and recommendations of the Advisory Siting Council.

### APPLICABILITY TO PHASES

FEDCORP offers different advantages and disadvantages for different phases of the program. Its Advisory Siting Council would provide a political body composed of the appropriate interest groups to make decisions about siting, the program's most politically charged phase. Beyond siting, FEDCORP's strong managerial orientation would ensure that construction, operation and transportation activities are conducted with appropriate concern with schedule and budget. FEDCORP would probably be less desirable for monitoring after closure, which seems to involve custodial functions best performed by federal or state agencies whose missions are related to the protection of the environment.