

LOCAL GOVERNMENT PARTICIPATION IN THE SITING OF A  
LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY:  
THE TEXAS EXPERIENCE

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ABSTRACT

The Texas Low-Level Radioactive Waste Disposal Authority (the Authority) has been screening the State of Texas for technically suitable areas for the development of a low-level radioactive waste disposal facility. A key element to the success of this effort will be the participation and cooperation of local government officials. Past experience has shown that the influence of local officials on community residents can greatly help or hinder local acceptance of projects similar to this. Participation by local officials and residents in the siting process can help achieve objectives which make a facility not only a safe place to dispose of waste, but also a positive contribution to the community. In Texas, a process is unfolding whereby local communities in areas which have been identified as potential sites will become integral participants in the design, operation, and closure phases of a disposal facility. Ongoing negotiations between the Authority and representatives of the community will be the centerpiece of this approach.

INTRODUCTION

The need for Texas to develop a low-level radioactive waste disposal facility within the state for the disposal of Texas-generated wastes became apparent in 1979. In early 1981, the Texas legislature declared its intent that the State of Texas construct and operate a low-level radioactive waste disposal facility. This was in response not only to the internal needs of the state but also to a previous mandate from the US Congress. The Texas legislature declared, "Loss of capability to dispose of low-level radioactive waste would pose a threat to the health and welfare of the citizens of the state and would ultimately lead to the loss of the benefits of these activities (nuclear medicine, research, industrial activities, and nuclear power plant operations) that are dependent on reliable facilities for low-level radioactive waste disposal."<sup>1</sup> The Texas Low-Level Radioactive Waste Disposal Authority was created and given the responsibility for developing the needed disposal capability for Texas-generated waste. Creating a state authority to deal with the low-level waste issue indicated the legislative determination that the activities which produce low-level waste benefit virtually all Texans and were therefore in the public interest.

The Texas Low-Level Radioactive Waste Disposal Authority (the Authority) recognizes the importance of effective local government and citizen participation in the process of siting a low-level waste facility. Disposing of low-level radioactive waste involves more than finding the most technically suitable disposal site. It involves a whole range of social, economic, and political issues that are important to the final solution. The intense response to the Authority's siting efforts to date demonstrates that residents near the proposed sites have a variety of concerns ranging from fear of

water contamination to the potential negative impacts on a community's quality of life. These concerns must be acknowledged and addressed if a siting effort is to succeed. This paper discusses methods for involving local governments and local citizens in the site selection process.

This paper is drawn from a report prepared for the Authority by the Texas Advisory Commission on Intergovernmental Relations (Texas ACIR) entitled, "Siting a Low-Level Radioactive Waste Disposal Facility in Texas: Local Government Participation, Mitigation, Compensation, and Operator Standards."<sup>2</sup> The full report, which is available from the Authority on request, is partially based on the results of a statewide survey of local government officials. Over 240 officials responded to mail questionnaires, representing 64 percent of Texas' 254 counties. These included county administrators, mayors, city managers, school superintendents, water district managers, and tax appraisers. Their insights were valuable in assessing the effectiveness of various alternatives for local participation.

Three elements of the larger study are relevant to the matter of local government participation in the siting process. Discussed first is the participation process required by Texas law in the site selection process. Next, nonstatutory participation options which were used by the Authority prior to site selection are described. Finally, the approach proposed by the Authority for local involvement after site selection is presented.

STATUTORY OPPORTUNITIES FOR LOCAL PARTICIPATION

The involvement of local government officials and citizens in the siting of the Texas low-level radioactive waste facility is critical to a successful outcome. Local government officials are

sensitive to local needs and concerns and can help assure that these needs and concerns are addressed by state officials. In turn, increased involvement contributes to political acceptance and the overall success of the siting process. Local opposition can make it difficult for the Authority to carry out its charge. The siting process for low-level waste disposal offers numerous opportunities for participation by local government officials and local residents.

The Texas Low-Level Radioactive Waste Disposal Authority Act prescribes several opportunities for involvement by local government officials and local residents in the site selection process, in site licensing procedures, and in the overall management of the Authority.

Upon the selection of the most suitable site, the Board of Directors of the Authority is required to hold a public hearing. This hearing takes place prior to the acquisition of the site. The hearing allows for input from local officials and residents regarding the merits of the site. The purpose of the hearing is to consider whether or not that site should be selected as the disposal site. Subsequent hearings are to be held if the first site chosen is not selected. Before giving notice of the public hearing, the Authority is required to prepare a report detailing the site selection process, the criteria for selection of sites, and summaries of all studies required under the Waste Disposal Act.

Prior to the public hearing, the Authority may appoint a mediator to consider the views of parties interested in the selection of a disposal site. This offers an important opportunity for citizen involvement. The Authority is required to establish the criteria for determining who participates in the mediation meetings. Upon selection of the disposal site, a key provision of the Act directs the Governor to appoint a resident of the county in which the disposal site is proposed to the Board of Directors of the Authority. This person will become a board member prior to the start of construction on the facility. Thus, local interests will have a policy voice virtually from the beginning. Among the decisions to be made by the board prior to construction are: facility design and operating procedures, selecting a site operator, and determining criteria for impact assistance grants.

Prior to issuance of a license to construct and operate the facility, the Bureau of Radiation Control of the Texas Department of Health will hold a public hearing. Under a 1963 agreement with the federal government, the Department of Health has primary regulatory responsibility for state and federal laws governing the use of low-level radioactive materials, waste, and uranium mill tailings. The Bureau will make available to the public a written analysis of the impact of the proposed facility on the environment 30 days before the hearing begins. Also, the law allows local government officials to examine and copy certain records pertaining to licensed activities. If a local government is denied access to certain records, the local government may bring suit to obtain a court order granting access to the records. Once the facility is licensed, any person affected by the issuance of the license may make a written request to the Bureau for a formal hearing. A hearing may also be requested to consider the determination of compliance with Bureau rules. These various opportunities

for public input are intended to further the state policy of protecting public health and safety and the environment.

#### NONSTATUTORY OPPORTUNITIES FOR INVOLVEMENT

In an attempt to heighten awareness of low-level waste issues and to increase public involvement, the Authority has undertaken the following measures:

Public meetings have been held in about 10 counties under consideration as low-level radioactive waste disposal sites. These meetings have provided a forum for discussion of the waste disposal situation in Texas and the concerns of local residents. At each of these town meetings, the Authority has discussed the various aspects of low-level radioactive waste and its disposal. A significant part of each meeting has been a free-flowing question and answer period between the Authority staff and the local citizens. Although these meetings have been held in geographically diverse areas of the state, similar concerns and sentiments have been expressed. These meetings have been well attended.

A modified Keystone Process was employed in two general siting areas of the state. The Keystone Process originated as a way to encourage dialogue between a site developer and affected citizens in the hazardous waste siting process. It is a process which occurs outside the established regulatory framework prior to application for the necessary permits. The intent is to resolve issues of local concern early in the siting process. A variation of this process was undertaken in the Texas low-level siting effort. Review committees in each area were organized in early 1984 and consisted of a variety of concerned citizens appointed by local elected officials. These committees were asked to provide timely citizen input, identify important issues, provide a dialogue between the Authority and the public, and develop a fact-finding report. Although the exercise cannot be called an unqualified success, both committee members and Authority staff felt the experience was fruitful.

Surveys have been commissioned by the Authority to seek citizen input. Both mail and telephone surveys have been used by the Authority. The survey samples have been both regional and statewide in coverage. The Public Policy Research Laboratory at Texas A&M University and the Texas ACIR have conducted these polls. Information received through these surveys has helped the Authority in formulating its public information and education programs.

Site visits have served to expose local government officials and citizens in areas under consideration to the operations of other low-level waste disposal sites currently operating. Several officials have visited the Barnwell facility in South Carolina and the Beatty facility and the Nevada Test Site facility in Nevada. A number of individuals who made the trip came back with a different point of view. One city official stated that his initial concept of the facility was wrong and that it was not as dangerous as he first thought it would be. He suggested that local news media be invited to tour other facilities. The actual operation of a waste facility could then be conveyed to the people in a potential host community by an independent third

party. The Authority intends to continue the use of these tours to the maximum extent possible.

A public comment period is on the agenda of all regularly scheduled meetings of the Authority Board of Directors. Members of the public express their views on low-level waste disposal issues to the Board on these occasions.

A citizens' advisory panel (CAP) advises the Authority Board and staff on low-level waste issues. The CAP has been used extensively in developing siting criteria and evaluating data obtained in site investigations. Members of the CAP include a geologist, a physician, a university professor, a former mayor, a university president, and a farmer who has since been named a Commissioner of the Texas Department of Water Resources.

#### LOCAL PARTICIPATION AFTER SITE SELECTION

The remainder of this paper focuses on local participation after a preferred site is selected. The Authority Board of Directors is expected to name a preferred site in the spring of 1985. Prior to site selection, potential host communities tend to concentrate their resources on opposing the location of the facility in their area. Thus, the effectiveness of many participation methods is limited. It is felt that the potential for more constructive local involvement with state officials will be much greater after a final site is chosen. Once the site is selected, local government officials and area residents will, perhaps, be more likely to cooperate with state officials in ensuring that the facility is acceptable to local citizens. At this point, the Authority intends to work very closely with local officials in the design, construction, and operation of the disposal facility.

The centerpiece of the Authority's approach will be ongoing negotiations with local representatives on virtually all aspects of the disposal facility. The basis for this approach is the Authority's belief that the local residents should have a large role in matters concerning the low-level facility since they are most directly affected. In addition, survey results indicate a willingness on the part of local officials to engage in negotiations with the state. According to local officials, protection of public health, safety, and the environment are very important matters for negotiation, while facility operating procedures and site development and design are somewhat less important. Site monitoring procedures and transportation route and delivery times are also key issues for negotiation.

Several negotiation topics mentioned involve impact mitigation. Mitigation measures attempt to minimize any actual or perceived adverse impacts that the facility may impose on the local community. The Authority plans to make every effort to ensure that appropriate mitigation measures are employed. These measures will be identified through state-local negotiations.

One way to address the need for mitigation measures is through impact assistance grants. Texas law allows the Authority to make impact assistance grants available to eligible political subdivisions. These grants are intended to reimburse the local government entity for "actual costs or to pay expenses anticipated in connection with additional fire, police, educational, utility, public access, and other governmental services, public works

projects, and planning that are required . . . as a result of construction and operation of a disposal site."<sup>3</sup> In order to implement this section of the law, the Board of Directors of the Authority will establish rules for application procedures, criteria for determining adverse effects, priorities of needs, and methods for monitoring the effectiveness of grants made. This process will involve some degree of negotiation with the affected political jurisdictions.

Another possible subject for negotiation is a siting agreement between the local community and the site operator. The Authority Board of Directors may decide to contract the operation of the facility to a private firm, rather than operate it in-house. If so, the Authority is considering the feasibility of requiring the negotiation of a suitable local compensation arrangement between the operator and community. Negotiating siting agreements has become more prevalent in recent hazardous waste siting attempts. A siting agreement, which is a legally binding contract, specifically defines the responsibilities of each party. This agreement incorporates realistic expectations and provisions for working out future conflicts. It forms the basis for an ongoing and cooperative relationship. In addition, negotiations on low-level waste siting have the support of Texas local government officials who were surveyed. Fifty-five percent of survey respondents would be willing to participate in negotiations with a site operator.

There are some inherent risks in conducting negotiations, which the Authority recognizes. Negotiations will not be fruitful unless all influential parties cooperate. Those opposed to the site may refuse to participate or may try to sabotage the proceedings. This attitude may work against opponents in the long run. When the facility eventually goes in, residents will be better off if they have had input on how to make the site more acceptable. With no community input, a site operator will proceed with no knowledge of community needs and desires and may unwittingly worsen the impact on residents. Residents will be better off if adverse effects can be mitigated and if compensation is paid.

Negotiations are often slow, time consuming, and frustrating. However, the process of negotiating can eventually break down barriers. Outrageous demands give way to more reasonable alternatives as negotiating parties begin to understand the viewpoints of their adversaries. A negotiation process cannot solve all problems, but it can produce an agreement with which all parties can live. Agreements developed through negotiation can also decrease the likelihood of prolonged litigation or avoid it altogether.

#### CONCLUSION AND UPDATE ON RECENT LEGISLATIVE ACTIVITY

Substantial citizen involvement and local government participation are important to the success of the Texas low-level waste disposal program. Local involvement helps ensure that a disposal facility is acceptable to local residents. Through the various participation channels described in this paper, local citizens can aid in the decision-making process.

In general, however, local residents in Texas and in the nation are hesitant to accept a low-level waste disposal facility in their community. People associate significant health and environmental risks

with radioactive waste and are skeptical about the ability of government and business to manage it properly. Much of the skepticism is related to public awareness of problems at hazardous waste sites such as Love Canal in New York. Waste disposal sites, both radioactive and non-radioactive, are suspect in the public's mind.

In addition, the public generally fails to distinguish between the low-level waste issue and high-level radioactive waste disposal. A high-level waste disposal site proposed by the US Department of Energy in the Texas Panhandle has generated widespread and vociferous opposition. Other nuclear-related incidents, which have received substantial attention from the news media, such as the accidental mixing of cobalt-60 with steel produced in Ciudad Juarez, Mexico, and construction and quality-control problems that have plagued nuclear power plants under construction in Texas and elsewhere, do nothing to alter the public's negative perceptions.

It will take time and, perhaps, the use of some of the methods outlined in this paper to slowly change the public's negative perception. A few well-publicized success stories would contribute, as well. In the short-term, perhaps more communities like Naturita, Colorado and Edgemont, South Dakota will come forward and actively encourage the siting of a low-level radioactive waste disposal facility in their area.

Although Texas is expected to name a preferred site soon, potential legislative roadblocks loom on the horizon. In January 1985, the Texas Senate passed a resolution directing the Authority to

postpone site selection pending action on legislation which would revise the powers of the Authority. The resolution was non-binding and thus does not legally stop the Authority from naming a preferred site. However, proposed Senate legislation would put a moratorium on site selection and land purchases. Another legislative proposal would delay licensing of the facility until July 1987. Similar legislation has been introduced in the Texas House of Representatives. Another House bill would direct the Authority to give preference to state-owned land in the site selection process. Among the issues raised by the various legislative proposals are: (1) the State should consider alternatives to shallow land burial; and (2) Texas may lack the ability to legally bar out-of-state wastes from its facility. It is too soon to predict whether or not these proposals or others will be passed into law. A good possibility exists, however, that Texas' progress toward establishing a disposal facility could be slowed considerably.

#### REFERENCES

1. Texas Low-Level Radioactive Waste Disposal Authority Act, Tex. Rev. Civ. Stat. Ann. art. 4590f-1, sec. 1.01(a).
2. Texas Advisory Commission on Intergovernmental Relations, Siting a Low-Level Radioactive Waste Disposal Facility in Texas: Local Government Participation, Mitigation, Compensation, and Operator Standards (Austin, Texas: Texas Low-Level Radioactive Waste Disposal Authority, February 1985).
3. Tex. Rev. Civ. Stat. Ann. art. 4590f-1, sec. 4.04.