

## STATE EXPECTATIONS

Robert H. Neill  
Environmental Evaluation Group  
State of New Mexico  
Santa Fe, New Mexico

### ABSTRACT

Formal statutory responsibilities have been assigned to state governments in the disposal of high level radioactive waste by the Nuclear Waste Policy Act. (PL96-164). The paper addresses the expectations that states may have in obtaining the required information to fulfill their obligations and provides some insight on the manner in which states may organize, address and publish their technical evaluations.

### BACKGROUND

Congress defined a unique role for states in the disposal of high level radioactive waste when it passed the Nuclear Waste Policy Act in December 1982. Authority by a Governor, or a Legislature, to veto, (albeit temporarily), a proposed federal action is unusual and does not exist in the siting of such facilities as a federal penitentiary or a military installation. Thus an additional party has been assigned statutory responsibilities in the disposal of HLW.

No one can be so sanguine or presumptuous to speak for all states in defining their expectations in fulfilling their responsibilities in the disposal of high level waste within their borders. However, we have developed some experience in New Mexico on the WIPP Project which has evolved from a defense transuranic waste disposal facility to one that included 1000 commercial spent fuel assemblies and has more recently been defined to be for the permanent emplacement of defense TRU waste and temporary experimentation with defense high level wastes. There may well be evolutionary changes in the plans for HLW disposal in the state ultimately selected.

As you undoubtedly know, the WIPP Project includes neither state veto authority nor NRC licensing. The explanation generally given for the absence of NRC licensing when the WIPP Authorization Act, (PL96-164), was passed in December 1979 was based on WIPP being a defense project. Somehow that fact did not deter Congress three years later when it required NRC to license a separate defense HLW facility in PL97-402 nor in requiring NRC to regulate the disposal of uranium mill tailings from defense contracts nor for that matter in limiting radioactive waste releases from nuclear medicine applications in military hospitals.

### EXPECTATIONS

Since Congress did not specify the basis under which a state might exercise a veto in the Nuclear Waste Policy Act it appears worthwhile to try and gain some insight on the expectations that states may have in their determination of the adequacy of the information base to conclude that the waste does not pose an undue threat to the health and safety of their citizens. This applies not only to data and information flowing to a state from the federal sector but on analyses flowing from the state as well.

First let me describe the system developed in New Mexico which I believe makes excellent sense and may well be adopted or adapted by other states.

(1) From the very beginning, the technical analyses that relate primarily to the suitability of the site and potential radiation exposure from transportation, operations, and long-term releases were administratively separated from the policy issues that belong to the Governor and the Legislature.

(2) A Task Force composed of three cabinet secretaries of the Executive Branch was established in New Mexico as the focal point for coordinating the State's activities. The Chairman of the Task Force is Ms. Denise Fort, Director of the Environmental Improvement Division. Legislation is currently pending to upgrade the Division to cabinet status.

(3) The Legislature established a Joint Committee on Radioactive Waste in New Mexico composed of four members of the House and four from the Senate. In this respect states would be expected to have fewer committees than the Congress which has had as many as eight committees addressing radioactive waste disposal with varying jurisdictions.

(4) The Environmental Evaluation Group (EEG) was established in 1978 as a state technical review group to review all aspects of the WIPP Project, from site selection to D & D, which relate to the protection of the public health. The group is administratively located in the agency with the primary responsibility to protect the public health and the environment.

(5) The state review group is a full-time, multi-disciplinary group and the responsibilities are not fractionated amongst various state agencies. Disciplines include hydrology, geology, environmental engineering, health physics, and radiological health with consultation in the areas of mining safety, quality assurance, operations and waste certification. In order to maintain credibility, the Group is neither "pro nor anti" but has conscientiously endeavored to maintain professional objectivity.

(6) EEG has published the proceedings of meetings with technical experts to address particular problems or areas essential in establishing a consensus to see if the problem is being adequately addressed by DOE and the state and if not to identify the best means to

address it. Four such major meetings have been convened in New Mexico, the salient arguments have been published and a fifth meeting is scheduled in the near future.

(7) Conducted detailed technical and professional analyses and published results. While volume is not a meaningful parameter to measure worth, EEG's review of the draft Environmental Impact Statement (DEIS) for WIPP exceeded 200 pages. One can expect states to publish the results of their analyses similarly. In over six years, EEG has published 30 reports of which 24 relate to original work EEG believed to be necessary. The other six are reviews of DOE reports. These include the DEIS, the Geological Characterization Report, the Final EIS, the Waste Acceptance Criteria, a series of geological reports, and an environmental analysis on the Cost Reduction Program.

What are some expectations that states may have on information from the federal sector?

#### Information

The most critical item will probably relate to the quantity and timeliness of the flow of information needed to conduct independent technical analyses, and the uncertainties associated with such analyses. A substantial fraction of the work performed by the federal government and its contractors never appears in the form of published reports or papers presented at national meetings. This "grey" area takes the form of in-house memoranda, internal reports, private communications, and private information exchanges between the federal agency and its contractors. There are different perceptions held by the federal and state sectors of the necessary information required by a state to conduct its analyses. Unrealistic extremes range from being stonewalled on problem areas until solutions have been tentatively resolved to requesting copies of all paper generated in a problem area. As an example, EEG believes our requests for timely data and information are modest and totally reasonable. Some DOE representatives might not agree.

#### Participation

States need to be represented more strongly in the planning cycle for national repositories. When the Interagency Review Group on Nuclear Waste Management was established to outline the scope of the national plan for the management and disposal of radioactive waste in a state the participants were drawn only from federal agencies. There should be some level of early state involvement in the planning and in the R & D process necessary to address unanswered technical questions on the repository.

#### Consultation and Cooperation

States expect the process of federal/state partnership and consultation and cooperation to be just that. When cooperation consists of fulfilling minimal legal commitments, it no longer exists. Although cooperation is a very difficult term to define in identifying data and analyses to be provided by both parties, the presence or absence of cooperation is readily recognizable.

In conclusion, the path to resolve honest concerns on risks from high level waste will not be an easy one to follow. People recognize that a repository is not located generically in the United States but in a particular state. And the primary responsibility to insure the protection of the public health and safety of the citizens of a state has been historically based in state and local governments.