

SENATE OVERVIEW

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ABSTRACT

This paper was presented by Mr. Lau for Senator Domenici and represents a U.S. Senators' view as to the implementation of the NWA of 1982. The conclusion is that Congress will focus more on states and tribal participation in the future in that there has been evidence that USDOE has not, or the states have not, insisted on effective consultation and cooperation in the HLW disposal area. Senator Domenici believes the NWA of 1982 will not be amended in the near future and that the court's decision on MRS would dictate the pace and the future direction of HLW programs.

INTRODUCTION

Senator Domenici sends his greetings and his regrets. Because of Gramm-Rudman-Hollings, the budget markup has been moved up. As the Chairman of the Senate Budget Committee, he must stay in Washington. However, he understands this Waste Management Conference is one of the most meaningful meetings, by which people like you who share the concern with radioactive waste management gather together to exchange knowledge and experience for the betterment of solving this national concern.

In discussions with Senator Domenici at length on the high-level waste issues, he has asked me to convey his concerns to you today. But first, consider the status of some pending legislation which is of interest to you:

- 1) E&NR will have a markup on Price-Anderson Act this Thursday (3-6-86). It is anticipated that a bill will be reported before the end of March. Then the clock will be running and E&PW would have 120 calendar days to markup a bill or it would lose its jurisdiction. Incidentally, the markup vehicle is the McClure-Simpson Bill (S. 1225).
- 2) Senator Domenici intends to introduce a comprehensive uranium bill soon dealing with the viability of the uranium industry, also mill tailing funds, and uranium enrichment programs. A hearing will be scheduled sometime in April.
- 3) Senator Domenici is also concerned about sub-seabed alternative disposal research. As you know, the President has zeroed this research project, and the Senator feels that it is mandatory by NWA for DOE to seek alternative means of disposal.
- 4) The Senate energy R&D subcommittee will hold hearings on MRS proposal, if and when such a proposal is received, and the whole HLW program.

Frankly, Senator Domenici is quite concerned about the progress, or rather the lack of progress, on the HLW program. First, let us review with you some of the highlights of the Nuclear Waste Policy Act of 1982 (NWA).

When Congress passed the Nuclear Waste Policy Act in December 1982, it provided the framework for making decisions and assigned responsibility for implementing them:

- 1) Sets a schedule for the siting, construction, and operation of HLW repositories.
- 2) Establishes federal policy and responsibility for nuclear waste management.
- 3) Requires the establishment of a fund to cover disposal costs by waste generations.
- 4) And possibly, most important of all, defines the working and decision-making relationships between the Federal Government, State, and Indian Tribes.

It is important in the Sense that it was a "Landmark" Legislation. Never before have States been offered such opportunities to be full "partners" with the Federal Government in making a decision concerning a project with this magnitude.

Senator Domenici's personal involvement of WIPP, in New Mexico, convinced himself that "States should have a significant role in NWA where there are legitimate concerns with respect to public health and safety". Whether it was intended or not, WIPP had dealt with "precedent setting"--precedent as to the future procedures for handling nuclear wastes.

Senator Domenici is not so much concerned with the slippage of schedule by DOE. He feels it is prudent to go slow to resolve public concerns. He also shares Congressman Udall's remark that Ben Rusche has done a great job.

But the Senator is concerned about the disappointing status of "Consultation and Cooperation" agreements between States and the Federal Government. Not surprisingly, the public wants the benefits of nuclear power without the risk of coping with nuclear wastes. Nor is it surprising that States would not be overly enthusiastic about being a Host State. The Senator was surprised to learn, through Mission Plan Hearings, at least the perceptions, from the States' representative the attitude in refusing to contribute into the process, and their unwillingness to enter into formal agreement. One representative said in part: "I'm not sure we need a Consultation and Cooperative agreement at this point...".

NWA allows States the right to participate in a procedure, which DOE, States, and Tribes must negotiate formal agreements through Consultation and Cooperation, and the State ultimately having the "veto right". As Senator Domenici states on the Senate floor during the deliberation of NWA on December 20, 1982, "the process we have in mind must be flexible enough to meet the ends of any particular objection

which needs resolution...It certainly is an important one in that it is a key element in having States or affected Tribes resolve their concerns within the process of Consultation and Cooperation, rather than before the Congress...". Senator Domenici starts to wonder if it was "naive" to think that "partnerships" would work when Congress has decided a national solution for a national problem. With the exception of Washington State and two Indian Tribes, who have been negotiating with DOE, other parties are forfeiting their right to negotiate. Rather, they prefer to leave it to the courts to decide.

In order for public participation to work, the process must be reasonable, open, and accessible. While DOE must provide sufficient and understandable information to the public, the States must have sincere intention for genuine discussion. So far, for the most part, inputs are "litigatory" rather than "contributory". DOE, under the mandate of Congress, might have moved too fast initially to meet some demanding schedules, and was accused of being insensitive to public concerns. DOE has learned its lesson and has moderated a slow and more deliberate process to address these concerns. Also, to be fair to States, the Act also stipulates the deadline of commencing a civil action in 180 days after each decision has been made.

Senator Domenici begins to realize maybe there is a difference between a federal demonstration project vs. a civilian waste site. By formerly requiring the State to play an active "partnership" role and allowing this State to have the right to "veto" the project, Congress may have been overly optimistic

about "good faith" negotiations by all interested parties for solving this national problem in a mutually satisfactory manner.

Evidently, with the opportunity to participate as full partners, the States elect not to get involved in a way anticipated by the Congress. The States may be reluctant to participate in the planning and development process for the sake of avoiding the association of making the final decision.

Senator Domenici fully appreciates the fact that DOE has to improve its credibility to convince the public of the merit of its technological solutions in relationship to the protection of public health and environment. But the States and public must evaluate whether the "courts" should solve our national problem.

CONCLUSION

It is fair to say that a congressional review will be more focused on how States participate in the future. It is also unlikely that NWPA will be amended in the near future. And the courts' decision on MRS would dictate the pace and the future direction of HLW programs.

One thing that has been learned was that litigation processes in New Mexico, concerning WIPP, was constructive in the sense of accomplishment in the final negotiation when there was no agreement. Currently, litigation by the States is applied as the first defense. After all, it is possibly the largest public works project costing \$21-35 billion for the waste repository, that has such participatory processes.