

THE NUCLEAR WASTE POLICY ACT'S GEOLOGIC REPOSITORY
PROGRAM: FEDERAL "STRICT LIABILITY - FULL COMPENSATION"

LEGISLATION URGENTLY NEEDED

Curtis Eschels
Special Assistant for Policy
Office of the Governor
State of Washington

The Nuclear Waste Policy Act does not address the issue of who might be held liable for injuries or damages caused by any activity pursuant to that statute. Two principal reasons for enactment of a federal liability law governing high-level nuclear waste are discussed, and a need for new legislation is established. The major elements of the proposed new legislation are enunciated.

With the passage of the Nuclear Waste Policy Act of 1982 (NWPA), the federal government authorized the most ambitious and difficult peace-time public works program in our nation's history--the deep geologic high-level waste disposal repository program. The mandate of this legislation focused primarily on the United States Department of Energy (USDOE) for implementation. That federal agency was directed, in accordance with a timetable specifically prescribed by Congress, to site, construct, and place in operation two "deep geologic" high-level nuclear waste repositories.

USDOE's assignment is no easy task. Obstacles and roadblocks to NWPA's successful implementation abound. They exist both internally and externally to USDOE, as the history of the first three years of the Act's implementation testifies.

For example, USDOE has failed to meet any of the major decision milestones of the Act in a timely fashion. Externally, litigation currently filed as well as litigation almost certainly to be initiated in the near future will clearly impede USDOE's efforts.

The thesis of this presentation deals with a problem which, if not resolved, places the entire repository program in peril. In reference to the overriding need for Congress to enact a liability policy relating to injuries arising from nuclear incidents caused by the federal government's repository program.

The NWPA is silent on "liability" policy. No other federal statute expressly addresses the subject. The only statute that may touch the area is the forty-year-old "Price-Anderson" Act which, USDOE advises my state, covers the repository program by implication.

In the next few minutes, we will deal with, first, the urgent need for action and, second, a recommended liability policy for Congressional enactment.

THE NEED FOR FEDERAL LIABILITY POLICY

There are two primary reasons for enactment of federal liability legislation.

The first relates to fundamental fairness. The repository program contemplates that one or two states accept on a permanent basis the wastes from throughout the country and from all public and private sources. The program is also supersaturated with federal interests and powers in a manner that "occupies the field" to the virtual exclusion of all state authority.

Not only does the United States own the wastes, but it regulates and controls their movement and disposal. In terms of ultimate decision making in the repository program, states have little power. The states, in a real sense, have very limited control over their destiny in terms of nuclear waste disposal policy.

When this backdrop of federal dominance in the repository program is coupled with the inherently dangerous nature of high-level nuclear wastes themselves, all relevant guideposts point to a federal policy that protects fully those injured during the course of the program's implementation.

The second basic reason for enactment of federal liability legislation involves, directly, the ultimate success or failure of USDOE's NWPA enterprise. Stated simply, without enactment of federal liability legislation, the repository program will be in very extended stormy weather with almost no chance of ever reaching home port - the operation of a repository.

The conclusion is based on the personal experiences of my state in attempting to implement a major element of the Nuclear Waste Policy Act - the "consultation and cooperation" provisions of section 117(a). Washington, alone among eligible states, has participated in "C & C" negotiations. They were initiated in 1983. Over the next two years, it negotiated with USDOE intensively and in good faith. Although a "meeting of the minds" was reached on many, many important issues, negotiations ultimately reached an impasse and were terminated.

Why were these negotiations stopped?

A primary reason was that USDOE would not agree to compensate all persons for injuries that occurred as the result of a nuclear incident involving implementation of the Nuclear Waste Policy Act's repository program.

The teaching of this experience of Washington State can be applied across the board in the NWPA's program. We believe that no state will, under any circumstances, accept a repository within its boundaries without a fight to the last ditch, unless there is a federal policy that compensates the state and all its citizens for nuclear incident-related injuries.

In sum, absent Congressional action on the liability issue, the program would be fatally flawed. None of us would ever see a repository located in our nation under the Nuclear Waste Policy Act.

THE PRESCRIPTION

There are now nine bills pending in Congress, four in the Senate and five in the House of Representatives, pertaining to federal nuclear liability policy. Of note, none of these bills would establish a policy of "strict liability - full compensation" placed directly upon the United States for full compensation for a nuclear incident caused by the implementation of the high-level waste program of NWPA.

Most Congressional activity so far has been in the House of Representatives where, in December 1985, a subcommittee of the Interior and Insular Affairs Committee reported H.R. 3653, sponsored by Committee Chairman Morris Udall. Congressman Udall has indicated that this bill is not yet in its final form.

In the Senate, "mark-up" sessions centering on S. 1225, sponsored by Senators James McClure and Alan Simpson, are being conducted by the Senate Energy and Natural Resources Committee with the first hearing held on February 25, 1986. The other Senate committee with jurisdiction over the nuclear waste disposal issue, the Environment and Public Works Committee chaired by Senator Robert T. Stafford, has not yet initiated such sessions.

None of these bills, in my view, fully satisfy the needs we perceive to prevent the NWPA's imperiled state.

Our prescription for Congressional action calls for a federal policy of "strict liability and full compensation" for the NWPA repository program.

The major elements of our proposal, stated succinctly, are:

1. Strict and direct federal liability for all injuries arising from nuclear incidents during implementation of the NWPA;
2. Full compensation for injuries sustained as a result of a nuclear incident;
3. A hold harmless policy removing states, local governments, and Indian tribes from all liability arising from implementation of the NWPA;
4. Coverage of all high-level radioactive waste, including commercial, defense and transuranic waste; and
5. Inclusion of all of the foregoing elements in a section of law separate and apart from the existing and very complex Price-Anderson structure.

My state is now working with our Congressional delegation and our sister states in a broad-based effort to achieve the NWPA-saving prescription just described. It is our hope that as the USDOE, the nuclear utilities, and others interested in the good health of the NWPA become more informed on the liability issue, they will join us in support of this well-reasoned solution to an extremely serious problem.

The disposal of the nation's high-level nuclear wastes must be accomplished safely and soon. It is in the best interest of the nation and its citizens. Enactment by Congress of "strict liability - full compensation" legislation would be a major step in the drive toward that goal.