

STATE LEGISLATURES AND THE IMPLEMENTATION OF  
THE NUCLEAR WASTE POLICY ACT OF 1982

The Honorable Dick Hall, Chairman  
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ABSTRACT

In the Nuclear Waste Policy Act (NWPA) of 1982, Congress provided that states and Indian tribes should have an extensive role in the process leading to site selection and construction of federal high-level radioactive waste facilities but without an absolute veto. In a state being considered by the U.S. Department of Energy (DOE) to host a repository, the Secretary of Energy shall consult and cooperate with the governor and legislature of the state to resolve their concerns regarding the public health and safety, environmental, and economic impacts of a repository. Most significantly, if, at the end of the long process of consultation and cooperation, there are unresolved differences of opinion, upon Presidential recommendation of a site, the governor or legislature may submit a notice of disapproval to Congress. Both houses of Congress must act within 90 days to override the state's position. Although not entirely consistent throughout the Act, it is generally acknowledged that legislatures were given recognition commensurate with that of the governor in many of the Act's state participation provisions. By giving legislatures a separate, and (almost) equal role in federal-state repository siting interactions, the NWPA gave DOE the added responsibility and challenge of communicating with state legislatures. This paper reviews the provisions of the Act that require legislative consultation and elaborates on the Mississippi legislature's initiatives designed to govern interactions with DOE. Legislative activities in Nevada and Washington are also highlighted.

CONSULTATION WITH STATE LEGISLATORS

Traditionally, there has been a practice, if not a preference, for federal agency personnel to confer with their counterparts in state agencies on matters requiring state-federal cooperation. In siting nuclear waste repositories under the Nuclear Waste Policy Act, Congress added a new dimension to DOE-state relations by imposing a requirement for the Secretary of Energy to consult and cooperate with the governor and legislature of the affected state.

In developing guidelines for the recommendation of candidate sites, DOE was required to consult with "interested governors." DOE then nominated five sites determined suitable for site characterization following consultation with the governors of affected states and notification of both the governor and the legislature. The Secretary of Energy, the Nuclear Regulatory Commission, and other agencies involved in repository development are required to provide to the governor and legislature timely and complete information regarding the siting, construction, operation, and decommissioning of a repository.

Both the governor and legislature are authorized to participate in the consultation and cooperation process. Before sinking exploratory shafts at a candidate site, DOE must submit a site characterization plan to both the governor and legislature for their review. During site characterization activities, DOE must report to the governor and legislature on its progress. The NWPA does not designate a state representative to negotiate with DOE in developing the written "Consultation and Cooperation" (C&C) agreement, but if

no agreement is reached within the allotted six months, only the governor will be asked to review and comment on a DOE report concerning the status of negotiations and reasons for the impasse.

UNIQUENESS OF LEGISLATORS

Legislators, perhaps more than any other elected officials, are going to be on the front lines of dealing with the public on high-level waste management issues and need to be able to face their constituents and explain why their state has (or has not) been chosen to host a repository. Therefore, their involvement in the repository siting program and providing them with accurate and complete information is essential. Yet consulting with the state legislatures can be somewhat problematic because most legislatures meet for only part of the year. A few, such as Nevada, meet every other year although committee work can still go on during "interim" periods. Legislatures are very diverse bodies representing both urban and rural constituencies, and no one person can speak for the legislature. While their majorities may be of the same political persuasion (Democrat or Republican), the house and senate may not see eye-to-eye on a particular issue. In some states, each house is controlled by a different party. For example, the Assembly in Nevada is dominated by the Republican party while the Senate is controlled by Democrats. Legislators themselves usually have other "careers" because in most states, legislative salaries are nominal. Communicating with the legislatures might also prove to be time consuming since committees in each house can claim jurisdiction over waste matters. While all legislatures now have paid professional staff to assist them with their

deliberations on issues affecting their states, most legislators will assert that they could always use additional staff especially when it comes to dealing with complex technical issues such as nuclear waste management.

#### STATE MECHANISM FOR INTERACTIONS WITH DOE

In discussing state legislative enactments concerning high-level waste repositories, it is important to note that DOE had been conducting geologic studies and investigations for nearly a decade prior to the passage of the Nuclear Waste Policy Act. In Mississippi, when DOE was conducting area characterization studies, a considerable amount of geotechnical information was collected but was not shared with the state since no consultation provisions had been devised by DOE or Congress. As a result of that lack of consultation, the governor, via Executive Order No. 276, effected on February 12, 1979, created the Governor's Select Committee on Nuclear Energy and Nuclear Waste Repository. The Mississippi legislature in a companion move amended the Solid Waste Disposal Law of 1974 by adding sections which articulated the state's desire to participate in DOE's studies of salt domes for geologic disposal of high-level waste. Section 408 of Title 17, Chapter 17, was subsequently added by legislative action in 1980 designating the Mississippi Energy and Transportation Board as the state's initial point of contact on high-level waste matters. Following a request by the governor to DOE to cease field investigations in Mississippi until the area characterization data was released to the state for analysis and a similar request filed under the Freedom of Information Act by the attorney general, House Bill 819 authorized the newly created Energy and Transportation Board "to develop, coordinate, and review all nuclear-related activities in the state." Both houses of the legislature, in an effort to stay on top of the evolving waste disposal issue, established nuclear waste oversight committees. Those committees worked very closely with the staff of the Energy and Transportation Board in monitoring the actions of DOE.

In 1981, the first politically hostile exchanges between the state and the Department of Energy took place at a Nuclear Waste Forum held in Hattiesburg. Governor William Winter expressed his "unalterable opposition" to the siting of a permanent disposal facility for high-level radioactive waste. Echoing that sentiment, the legislature, during a 1981 special session, adopted Senate Concurrent Resolution No. 502. In part, the resolution stated "...the Mississippi Legislature opposes the use of salt domes in Mississippi for storage of high-level radioactive waste...".

Even at the national level, the presence of the Mississippi legislature was felt. Due to the political and technical controversy surrounding the high-level waste disposal issue, President Jimmy Carter created the President's State Planning Council on Radioactive Waste Management on February 12, 1980. Although Mississippi was not originally afforded membership on the Council, after several exchanges between Governor Winter and President Carter, William A. Wilkerson, Chairman of the House Conservation and Water Resources Committee was named as a special advisor to the Council which completed its duties in 1981.

By December 1981, it was clear that Congress would not enact a high-level waste bill during the first session of the 97th Congress. The Mississippi legislature opted to enact its own ground rules. During the first week of the 1982 session, a bill was referred to committees in both houses that would clarify the duties of the Energy and Transportation Board. To advise the Board, a policy advisory council was created which was to be composed of legislators, executive agency personnel, citizens, and officials from counties affected by repository siting activities. A technical advisory council was also proposed. Strong public support followed the bill which was overwhelmingly approved by both houses and signed into law on April 21, 1982. A companion bill regarding transportation of radioactive waste was also enacted during the 1982 session.

The Mississippi legislature's involvement did not end with the passage of the two 1982 bills. In fact, the legislature became more closely involved with the program, as two members from each chamber sit on the Nuclear Waste Policy Advisory Council to the Energy and Transportation Board. That Council has closely monitored the policy-related developments on the high-level waste issue and developed a ten-point policy statement for the state which was adopted by the Energy and Transportation Board. The Council played a vital role in formulating comments on DOE's Siting Guidelines and Draft Environmental Assessments. After Congress passed the Nuclear Waste Policy Act, the legislature in 1983 revised the state's existing law to harmonize with the new federal act.

The Washington State Legislature, in addition to establishing a Nuclear Waste Board to serve as the focal point within the state for interaction with DOE, has also set up a procedure for negotiating and approving a C&C agreement and any subsequent amendments.

Recognizing that the state might have to act on the C&C agreement when the legislature is out of session, Washington State has provided that the legislative leadership will poll their members as to the need for a special session. If one is not called, then the house and senate Energy Committees may consider the recommendation of the Nuclear Waste Board whether to approve the C&C agreement. The Board is the lead agency for negotiating the agreement which is to be handled in consultation with the legislature.

If the site on the Hanford Reservation is recommended to the President to host the first repository, the Board has the responsibility to evaluate DOE's recommendation and must receive comments from the public on the adequacy of the proposed site. A similar process to the one discussed above for approval of the C&C agreement must be followed if the state accepts the President's decision on the nomination of the Hanford site or in submitting a notice of disapproval to the President, Congress, and DOE.

A concurrent resolution passed by the Nevada legislature in 1983 authorized a three-member subcommittee to study the disposal of high-level radioactive waste. Charged with the responsibility of reviewing state and federal waste programs and holding forums for public scrutiny of

these programs, the subcommittee recommended several legislative actions which became law in their next biennial session in 1985. A permanent seven-member joint committee on high-level waste was authorized to continue the oversight work begun by the subcommittee and to work closely with a five-member governor's commission. The Nevada legislature also formalized the role of a local planning group which was composed of representatives of communities and counties affected by repository siting activities. The Nevada legislature has ensured that one voice will speak for the state and has recognized the necessity for providing broad-based state participation. The governor was authorized to negotiate with DOE in formulating a C&C agreement but is required to consult with the legislature during negotiations.

#### National Conference of State Legislatures<sup>1</sup> Activities

Since legislatures were to be involved in the decision making process, National Conference of State Legislatures (NCSL) successfully sought funding from DOE in 1984 to develop a legislative information and education program on high-level waste management and disposal. As part of this program, NCSL has formed an ad hoc Legislative Working Group on High-Level Waste. Appointed by the leadership in their respective houses, members of the working group represent legislators as well

as staff in the states under consideration by DOE. Two meetings have been held since the inception of the working group, which have afforded an opportunity for legislators to be briefed by DOE on the agency's progress in implementing the NWPAA. The working group has heard from various state, tribal, industry, other federal agency representatives and has benefited from site visits to federal waste facilities including the Nevada Test Site and the Savannah River Plant. Office of Civilian Radioactive Waste Management staff attend these meetings and in addition to formal presentations, they are there to respond to questions and concerns. Via roundtable discussions, legislators and staff share opinions and concerns with one another.

Some of the major issues addressed by the working group include:

- the transportation of high-level waste
- liability coverage for repository and transportation activities
- state oversight of defense wastes disposed of at a civilian repository
- the impact of a Monitored Retrievable Storage facility on the transportation system
- the consultation and cooperation process
- the adequacy of DOE's Draft Environmental Assessments, and
- public participation.