

NEW YORK'S RESPONSE TO THE NATIONAL LLRW DISPOSAL LEGISLATION

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ABSTRACT

The Federal Low Level Radioactive Waste Policy Act (LLRWPA) and its amendments brought about a shift from commercial responsibility to state responsibility for low level radioactive waste (LLRW) disposal. This shift required New York to evaluate various policy options for handling its new LLRW disposal responsibility.

After passage of the 1980 Federal Act, New York participated in efforts which resulted in a proposed interstate compact in the Northeast. Following a review of the proposed compact, as well as other options, New York decided to assume by itself full responsibility for disposing of its LLRW.

In July 1986, New York enacted the New York State LLRW Management Act. This act provides New York with a detailed plan for establishing a LLRW disposal facility by the 1993 federal deadline.

This paper consists of two segments. The first describes the major provisions of the State Act assigning responsibilities to the various agencies involved and reports on their progress. The second segment discusses the current activities of those involved in implementing the State Act with an emphasis on the recent and future activities of the Siting Commission.

THE STATE LLRW MANAGEMENT ACT

The State Act is very comprehensive. It defines all steps necessary to establish a new LLRW disposal facility, assigns specific responsibilities to existing agencies, and creates the LLRW Siting Commission. The Siting Commission is responsible for choosing both a location and disposal method for a LLRW disposal facility in New York State.

The five-member Siting Commission was appointed by Governor Cuomo in May, 1987, and is made up of former Assemblyman Angelo F. Orazio, Chairman and four other Commission Members: Marjory B. Rinaldo Lee: certified professional geologist; Dr. Stanley J. Goldsmith: professor of clinical and nuclear medicine; Dr. H. David Maillie: associate professor of radiation biology and biophysics; and Richard M. Wood; registered professional engineer. Management staff is headed by executive director, Jay Dunkleberger, and includes a counsel, director of communications and communications assistant, project directors for both environmental and engineering responsibilities, and an administrative director. Technical staff includes: an engineering geologist and a hydrogeologist; two LLRW disposal technology specialists; two environmental analysts; two radiological health specialists; and a quality assurance manager. The Siting Commission has a stenographic/clerical staff of four. It will need to cooperate with the other State agencies that have responsibilities for different aspects of LLRW management. These other agencies are:

- the Department of Environmental Conservation (DEC) and the Department of Labor (DOL) which have regulatory responsibilities;

- the Department of Health (DOH) which will provide public information and education; and
- the New York State Energy Research and Development Authority (Energy Authority), which will obtain the required permits and licenses and will construct, operate, and maintain the disposal facility.

The State Act also created an Advisory Committee which provides guidance to the Siting Commission in choosing a site and disposal method, to DEC in its development of regulatory criteria and its certification process, and to DOH in its public information program.

This Advisory Committee, appointed by the Governor, consists of representatives from environmental groups, LLRW generators, the medical community, and a private citizen knowledgeable about LLRW. It also includes the State Geologist; the Commissioners of Health, Labor, the State Energy Office, Transportation and the Secretary of State or their representatives. As the Siting process continues, representatives from local communities affected by the siting process will be added to the Committee. In accordance with the State Act, this Committee holds public meetings on at least a bi-monthly basis.

Regulatory Responsibility

The State Act required that DEC, as the chief regulatory body, prepare regulatory criteria for both the site and disposal method selection processes. An environmental impact statement (EIS) which examines the impacts associated with the facility siting and disposal method

selection criteria was required to provide technical support for DEC's criteria.

DEC will be responsible for certifying that the site and disposal method selections made by the Siting Commission conform to their regulatory criteria. Accordingly, DEC published draft site and method selection regulatory criteria on July 31, 1987 along with the EIS. During August and September 1987, DEC held public hearings to receive comments on its regulatory criteria and EIS from the Siting Commission, concerned citizens, environmental groups, and LLRW generators. DEC's final regulatory criteria and EIS were published on December 31, 1987.

Specific criteria are included in the regulations for three LLRW disposal options: belowground disposal; aboveground engineered monitored disposal, and underground mined repository disposal. Conventional shallow land burial without additional engineered barriers is specifically prohibited. The Act establishes that the Commission may choose different disposal methods for different classes of waste.

The DEC regulatory criteria define the types of areas which are excluded from consideration as sites for a LLRW disposal facility. Examples of areas which are excluded include those areas which have a population density of over 1,000 people per square mile, areas located within state park lands, and areas within lands owned by Native Americans or by the Federal government. Specifically excluded by the Act and the DEC regulatory criteria is the Western New York Nuclear Service Center at West Valley, New York.

The Siting Commission must take into account certain specific factors in the selection of the permanent disposal facility site or sites and disposal method or methods. The nature and probability of potential impacts on public health and safety, including predictable adverse effects, must be evaluated to include: possible accidents during transportation; possible contamination of surface and groundwater; possible fires or explosions from improper storage or disposal; probable environmental impacts; the ability for retrieval or recovery of LLRW; and the nature of the probable impact of such facilities on localities.

Using the DEC regulatory criteria, the Siting Commission must select at least one site. If, however, the Commission finds that having two sites offers significant advantages, it may choose an additional one. The State Act requires that the site or sites selected must be able to dispose of LLRW generated in New York State for at least 30 years.

DEC is currently working on regulations regarding operation, environmental monitoring, closure, and financial assurance for a LLRW disposal facility. Drafts of these regulations will be issued in the near future.

Site Selection Certification

The Siting Commission is scheduled to recommend its site and disposal technology selections to the DEC no later than July 1, 1990. At that time, the Commission must also submit an Environmental Impact Statement (EIS). DEC may act in one of three ways:

- it may certify that the Commission's recommendations meet the criteria;
- it may decide that the Commission's recommendations will meet the criteria with certain modifications; or
- it may refuse to certify the Commission's recommendations.

DEC's certification process, which must be completed within 180 days after submission, will be conducted openly and include local public hearings to provide opportunities for community response. DEC will also publish a final version of the EIS specific to the selected site(s) and disposal method(s).

Construction and Operation

The Energy Authority must move to acquire and hold in the name of the State the property needed for the facility site. After DEC certifies the Commission's site and disposal method selections, the Energy Authority will apply for the required licenses and permits for the construction and operation of New York's LLRW disposal facility.

The Energy Authority will request that DOL issue a license for the handling and receipt of radioactive waste. This license will be primarily concerned with the safety of those employed to handle LLRW. The Energy Authority will ask DEC to issue a permit or permits for the building and operation of a waste disposal facility and any related environmental discharges. These permits will center on the regulation of disposal processes to ensure that public health and safety and the State's ecology are protected.

When the Energy Authority has received the required licenses and permits, it must determine if access is available to disposal facilities outside the State for New York's LLRW. If there is no access to such a facility, the Energy Authority must move to build, operate, and manage permanent LLRW disposal facilities at the selected site or sites. A New York facility, in accordance with the federal and State laws, must be completed and operating by January 1, 1993.

Financing

The State Act contains numerous provisions related to the financing of permanent LLRW disposal capability in New York State. The provisions address the costs resulting from the development, operation, and maintenance of the facility. It also enables the Energy Authority to issue bonds

to raise revenue to cover costs associated with the development of New York's LLRW facility. The State Act, in addressing financial aspects, requires that all costs ultimately should be borne by LLRW generators. The Energy Authority is responsible for financial management of the State Act.

The LLRW activities of the Siting Commission, DEC, and DOH are all supported through assessments on New York's electric utilities which own nuclear power plants having full power operating licenses. The first assessment was paid by December 31, 1986. Future assessments will be levied annually until the disposal facility begins operating.

The Energy Authority will establish user fees to recover all costs associated with the operation of the disposal facility. These fees, which will be paid when LLRW is delivered to the disposal facility, will recover costs associated with facility development and operation, debt service, payments in lieu of taxes, and aid to localities. The utilities will be reimbursed for the assessments levied against them, plus interest, through reduced disposal fees once the facility is operating.

Reimbursement requirements are included in the Act to ensure that the State is reimbursed for any general tax revenue used to develop the disposal facility.

The State Act requires that DEC, in keeping with its regulatory role, issue financial assurance regulations. These will define the financial assurances required for facility closure, post closure monitoring and maintenance, and remedial action, if ever required.

LLRW Generator Data

The State Act requires that LLRW generators in New York State submit annual reports to the Energy Authority which delineate the quantities and classes of waste generated and the manner in which this waste is handled, e.g., stored for decay or transported elsewhere for disposal.

The purpose of these reports is to assist the State in fully characterizing its LLRW stream and in developing future volume, activity, and waste form projections. The Energy Authority developed a report form and has issued regulations which detail procedures for LLRW generators to follow in preparing these reports. The Act further requires the Energy Authority to prepare an annual report to the Governor and the Legislature which categorizes the LLRW generated in New York State by type and origin.

This information will assist in the design and performance assessment of a LLRW facility and foster the development of waste disposal acceptance standards and fee structures for LLRW disposal.

Public Involvement

The involvement of the public in New York's efforts to establish a permanent LLRW disposal facility is crucial. In recognition of this, the State Act ensured that the public will be provided with ample opportunity to comment on the various phases leading to the establishment of New York's disposal facility. DEC was required, and did hold, public hearings on its draft siting criteria.

The State Act reflects considerable input from environmental groups. It is important that the channels of communication among concerned parties that were open during the legislative process remain open during the selection process. The Advisory Committee and the public information and outreach programs are extremely important in this regard.

An extensive public information/outreach program will be conducted by the Siting Commission including monthly meetings which are open to the public. These efforts will be coordinated with the DOH's public information program but will eventually go further in the support of the Commission's efforts in its site and disposal method selections. As the Commission moves forward with its selection processes, public meetings will be held in those areas that may be chosen to host a site.

Public adjudicatory hearings will be held on DEC's certification of the Siting Commission's site and disposal method selection and on DOL's and DEC's licensing process for the construction and operation of the disposal facility.

Impact On Local Governments

The State Act required the DEC to evaluate the impact a LLRW facility can have on local governments in host areas. This evaluation included addressing all phases of the program such as construction, operation, maintenance, closure, and post closure care. DEC was instructed to evaluate programs for mitigating impacts or providing offsetting benefits for any impacts resulting from the siting and operation of a LLRW disposal facility. These recommendations were submitted to the Governor and Legislature in April of 1987.

CURRENT STATUS

New York State has made considerable progress since the passage in July, 1986 of its Low-Level Radioactive Waste Management Act. Although its passage came later than some had hoped, the final product was comprehensive and well planned.

Contractor Solicitation

One of the Commission's first major activities was the issuance of a Request for Proposals (RFP). In December, 1987, the Commission issued an RFP for site and method

selection regarding the disposal of LLRW in New York State. Approximately 70 copies of the RFP were mailed to contractors who were considered potential bidders or who had expressed interest.

The Commission hosted a Pre-bid Conference on Tuesday, January 5, 1988, to provide a forum for responding contractors to ask questions directly of the Commission staff regarding the details of the RFP. Representatives from thirty-nine contractor firms attended the conference. In addition to allowing direct questions, the conference provided baseline information to all contractors who wish to submit proposals so that all responders would have equivalent information.

All proposals were due in the Siting Commission's Office by close of business, February 2, 1988. The proposals are being evaluated according to criteria specified in the RFP. Final contractor selection will be made by the Commission during March, 1988 with a final contract being awarded in May, 1988.

During the length of the contract, the Siting Commission and its staff will be carefully monitoring the contractor's work to ensure that the criteria set forth in the State Act and by the DEC regulations are being satisfied.

Public Awareness

Although the formal siting process has yet to begin, Siting Commission staff has started a progressive public information program. In December, 1987, the Siting Commission sent a letter of introduction to government officials in all counties in New York State. Similarly, the Commission mailed office opening announcements to nearly 1,000 interested persons and agencies representing environmental groups, waste generators, groups responsible for LLRW management, and officials at all levels of government.

In February, 1988, the Siting Commission issued the first copy of its official newsletter LLRW Frontline. This publication will explain and examine Commission responsibilities and activities as the siting process continues. The first issue, which explained the State LLRW Management Act, provided background on LLRW, and examined DEC's siting criteria, was mailed nationwide to interested parties. LLRW Frontline will be published quarterly.

In keeping with its information providing role, Siting Commission representatives will be speaking to groups on its LLRW management responsibilities. Upcoming engagements include presentations to the New York State Association of Counties (NYSAC) and the League of Women Voters.

Commission staff is currently assembling an information packet on LLRW and will be producing an educational film on LLRW and New York's new LLRW

responsibilities. The Siting Commission also maintains a library open to the public in its Albany Offices.

The Advisory Committee required by the Act began functioning in November, 1987, and is expected to have a significant input into the public information process.

During the late summer of 1987, DOH held public meetings that focused on educating people about the Federal and State LLRW Acts, the health effects of LLRW, and how the public may be involved in New York's LLRW program.

In March and again in September of 1987, DOH hosted or participated in conferences on LLRW management. At these conferences, informal discussions among waste generators, environmental groups, the Siting Commission, DEC, and DOH on issues and problems relating to LLRW management were held and were judged to be useful by those who participated.

DOH is continuing its public education program. The second phase of this program is now being prepared in cooperation with the public outreach efforts planned by Siting Commission staff.

Assessments and Generator Reports

The Energy Authority has collected the first year's assessments from New York's affected utilities and has determined the amount of fiscal year 1988-89 assessments. In Spring 1987, the Energy Authority issued LLRW generator reporting regulations and developed and distributed a new statewide survey form and instructions to LLRW generators. The Energy Authority has entered this survey data into a new State database on LLRW and published its first annual report to the Governor and legislature on volumes and characteristics of State generated LLRW.

1988 Milestone Compliance

In December 1987, the Energy Authority prepared documentation and sent it to DOE and the three sited states to demonstrate compliance with the January 1, 1988 federal LLRW milestone. This information included a summary of New York's LLRW management program, a schedule for developing New York's LLRW facilities, and an analysis of the state's compliance with the "siting plan" provisions of the Federal LLRW Policy Act Amendments of 1985. The Energy Authority has requested and anticipates receiving a surcharge rebate of approximately \$400,000 for complying with the 1988 federal milestone.

CONCLUDING REMARKS

Although we in New York State can take pride in our progress to date, we realize that our greatest obstacles are yet to be overcome. There is general agreement among all groups on the need for an adequate disposal facility, but there undoubtedly will be strong differences of opinion as

to the actual site and disposal method(s). New York is blessed with enough precipitation to make us a beautiful green state, with beautiful lakes and rivers. Unfortunately, this will make the selection process all the more difficult.

We recognize that even with the support of leaders of the State's environmental community, we are not immune to the difficulties that can result from the not-in-my-back-

yard syndrome. We recognize that satisfying environmental and "NIMBY" concerns may increase the cost of disposal as well as challenging our ability to meet the January, 1993 federal deadline. In spite of these concerns, our attitude in New York is one of confidence with the expectation of success.