

SEEKING THE WIN/WIN ALTERNATIVE: NEGOTIATIONS FOR REGIONAL ACCESS 1993-1996

Kathryn Visocki and Sherol S. Bremen
Southeast Compact Commission
for Low-Level Radioactive Waste Management

ABSTRACT

The Low-Level Radioactive Waste Policy Act (The Policy Act or LLWPA) of 1980 gave each state responsibility for dealing with its own low-level radioactive wastes (LLRW), and encouraged them to align themselves in regional compacts in order to do so. Now, many years and millions of dollars later, states and compacts are fighting legal and other battles to site the low-level radioactive waste disposal facilities so essential to continuing the power generation, medical research, and industrial activities enjoyed by United States citizens today.

Delays in siting are causing a new set of problems associated with an interim period beginning in 1993 and lasting for variable durations from region to region. Existing disposal facilities will close, and the new generation of disposal facilities will not yet be open. In the Southeast, the first regional disposal facility in Barnwell, South Carolina is scheduled to close on December 31, 1992. A second regional facility is being sited in North Carolina, but it is not scheduled to open until February of 1996. The authors outline the possible options for low-level radio-active waste management in the Southeast during its three-year interim period and explain the process being used by the Southeast Compact Commission to explore the feasibility of each option.

The authors conclude that ultimately the implementation of the LLWPA will be successful.

BACKGROUND

During the 1960's and 1970's, industry disposed of most LLRW at six privately managed sites. In 1980, Congress drastically changed the way LLRW would be managed in the United States. Three sites were closed during 1975-78, leaving sites in South Carolina, Washington, and Nevada. Then in 1979, after a series of packaging and transportation incidents occurred involving low-level radioactive waste, the governors of the "sited" states asked Congress to determine a more equitable way to allocate responsibility for management of the nation's LLRW.

With the unanimous support of the National Governor's Association, Congress passed the Low-Level Waste Policy Act. The Policy Act gave individual states responsibility for managing their own radioactive waste. Recognizing that far fewer than fifty disposal sites would be needed at one time, however, Congress encouraged states to enter into regional compacts to cooperatively develop disposal facilities. As an incentive for forming such compacts, Congress gave the compacts authority to restrict the use of their regional facilities to wastes generated within their compact regions.

By 1983, seven compacts had been formed. However, it became clear that none were close to opening new regional disposal facilities. To address this, Congress amended the Low-Level Waste Policy Act in 1985. The amended Policy Act addressed the desire of the sited states to have a date after which they would no longer be required to accept the rest of the nation's wastes. It also recognized the need of the unsited states and compacts for adequate time to develop new regional disposal capacity. The amended Act required the sited states to keep their sites open to the rest of the nation until 1993, but set limits on the volume of wastes to be accepted at their sites. In exchange for continued access to the three disposal facilities, the unsited states and compacts were made to pay to the sited states escalating disposal surcharges during the seven-year period, and to meet specified milestones in

1986, 1988, 1990, and 1992, or face penalty surcharges and possible access denial.

Today there are nine compacts. Two plan to use the existing facility in Hanford, Washington and seven are working to develop new disposal facilities. In the mid-1980's, the authors of the Policy Act envisioned that its implementation would be close to completion today. The Policy Act established a milestone of January 1, 1992 for the filing of license applications to operate low-level radioactive disposal facilities for non-sited regions or states. However, on January 1, 1992 only the Southwest (CA), Central Midwest (IL), and Central (NB) Compacts had submitted completed license applications. Other compacts and states remain in the process of final site selection. It appears that the siting process will continue to be a protracted one and that most compacts will not yet have operating regional facilities by the end of 1992 when the three sited states close their borders to the nation's wastes.

Experience in the Southeast Compact

The Southeast Compact was formed in 1983 when the eight member states joined together to deal with low-level radioactive waste (LLRW) on a regional basis as authorized by the Policy Act of 1980. Under the Southeast Compact law, as ratified by Congress in late 1985, the Barnwell, South Carolina facility was identified to serve as the regional facility until December 31, 1992 and the second regional facility was scheduled to be in operation not later than December 31, 1991.

Following a lengthy designation process, North Carolina was subsequently named by the Southeast Compact Commission in September, 1986, as the host state for the second regional facility. To ensure that the state fulfilled its responsibilities under the Compact, the 1987 North Carolina General Assembly passed the "North Carolina LLRW Management Authority Act of 1987" which created a timetable for siting the facility and established the Low-Level Radioactive Waste

Management Authority (the Authority), the entity responsible for implementing the program. The siting process was begun by the state in late 1987; but in late 1989, it became apparent that the December 31, 1991 goal for opening the North Carolina facility would probably not be achieved.

North Carolina has undertaken a task that no other state or region has previously completed, and unforeseen technical and legal problems have caused the project to fall behind. The schedule released by the Authority in July, 1991 indicates that the North Carolina facility will not be operational before February of 1996.

In August of 1990, the Southeast Compact Commission formally identified as one of its major objectives the development of a contingency plan for dealing with regional LLRW during the interim period between the closure of the Barnwell, South Carolina facility and the projected opening of the North Carolina facility.

The Challenge of the Interim Period

One of the greatest challenges facing compacts today is what to do with low-level radioactive waste during the period between the closure of the three existing sites, and the opening of the new generation of regional facilities. The situation appears quite worrisome to state officials who face the possibility of being asked in 1996 to take title to waste generated in their state. In 1996, the "Take-Title" provisions of the Policy Act allow generators to request their state to take title to, and possession of, their waste if a disposal facility is not available. Further, the Policy Act requires the states to do so. The liability implications of the Take-Title provisions are staggering to consider and serve to create a crisis atmosphere associated with the interim period.

The Take-Title Provision presents somewhat less alarm in the Southeast, perhaps partly because the second regional facility is scheduled to be operational by early 1996. It seems unlikely that generators would bother to invoke the Take-Title Provision for the sake of storing waste for an additional two months past the January 1, 1996 deadline. There are, however, several other significant issues related to the interim period from 1993 to 1996 that are actually of far greater concern to the Southeast Compact Commission.

The single most important issue related to the interim period for the Southeast Compact Commission is the potential diversion of resources from the development of the second regional facility in North Carolina. If the Barnwell facility closes at the end of 1992, the current source of revenues used to fund development of the North Carolina facility would be eliminated as it is financed from surcharges on wastes disposed at the Barnwell facility. In addition, if the Southeast Compact Commission is forced to pursue other strategies for managing LLRW during the interim period, its efforts to support the development of the regional facility in North Carolina will be diluted. Further, it is likely that the project would suffer a loss of support from generators if they are forced to expend additional money and resources to provide storage for their wastes.

In September, 1990, the Commission distributed to the southeast generators a survey asking for information relative to the management of LLRW during the interim period. Based on the results of that survey, the Commission realized

that some generators would not be capable of dealing with their waste by utilizing on-site storage. This meant the Commission needed to consider other options for the interim period. Consequently, several options were identified for consideration.

In April, 1991, the Commission authorized the appointment of a task force to study the issue of regional waste management during the interim period and to make a recommendation to the Commission as to the preferred option. In order to fully evaluate and give proper consideration to all of the available options, the task force met with and received information from generators, the general public, other Commissioners, and representatives of the governments of the states in the Southeast Compact and other compacts.

Interim Period LLRW Management Alternatives

The Task Force considered a variety of alternatives for addressing LLRW management needs during the interim period. In general, suggested alternatives fall into three categories: temporary storage within the region, negotiation with other compacts for storage or disposal of waste from the Southeast Region, and continued use of the Barnwell facility. In its analysis of the three alternatives, the Task Force focused on the following criteria to determine compatibility with the Commission's mission and long-range goals:

- To what extent does this option affect public health and safety and the environment?
- What percentage of the waste will this option manage? For what percentage of the interim time period can this option be made available?
- To what extent does this option support the efforts of (provide incentives for) North Carolina to site a disposal facility in a timely manner?
- Does this option provide mechanisms for funding the siting activities in North Carolina and for the Commission budget? What is the relative cost of the option? What are the other economic impacts of this option?
- To what extent does this option ensure regional unity and cooperation? Does it support the compact process in the Southeast? Does it support the implementation of a regional compact system nationwide?

Other factors raised by Commissioners, generators, legislators and the public were also considered. For example, the relative cost of each option was reviewed on a limited basis, but was found to be difficult to evaluate due to an inability to predict future prices. Likelihood of success was also determined to be a difficult factor to evaluate. Likewise, all of the options under consideration had significant obstacles to success and were found to be accompanied by considerable uncertainty.

The Task Force assembled their analysis into two reports which they submitted to the Commission in October of 1991.* After studying the reports, the Commission adopted a resolution declaring that disposal at Barnwell was the option which would be the most protective of health and safety and the environment, and requesting that the South Carolina General Assembly keep the Barnwell facility open as a regional disposal facility until the second regional facility is operational.

Bridging the Interim Period Gap

Implementing this recommendation successfully will not come easily. Continuing the operations at the Barnwell facility past December 31, 1992 will require action by the South Carolina legislature. (Both South Carolina Law and the Southeast Compact Law specify that Barnwell will cease to serve as a regional facility on December 31, 1992.) Tempers have always run hot on this issue in the South Carolina General Assembly and the 1992 session will be no exception. At the time this article was drafted, the session had not yet started, but the issue was already being debated in the news media. Legislators from Barnwell and its surrounding counties are supportive of continuing to operate the disposal facility. Other legislators, including the Speaker of the House, Robert J. Sheheen, have publicly announced their adamant opposition. But it is too early to predict a tally of the votes. The majority have not expressed an opinion publicly, and there are many new faces in the legislature this session.

It is clear in South Carolina that people still believe it is unfair for that state to bear the burden for waste from other states. The difference of opinion lies in which tactic will be quickest and most successful in getting South Carolina out of the disposal business. Many South Carolinians believe that North Carolina is dragging its feet in siting and they are skeptical that North Carolina will ever actually open a disposal facility for the region. This skepticism is made worse by the fact that North Carolina failed in 1990 to fulfill its part of a regional agreement for the management of hazardous waste. Therefore, some South Carolinians maintain that continued access to the Barnwell facility will only serve to ease the pressure on North Carolina and slow progress.

The authors speculate that if an agreement is to be successfully negotiated to keep Barnwell open past 1992, the South Carolina legislature will need something significant in return after staunchly insisting on its closure for over a decade. This compromise will have to involve more than mere words of assurance that South Carolina will soon be out of the disposal business, and much more than monetary compensation for the sacrifices made by South Carolina. A proposal made by Governor Campbell included a suggestion that North Carolina be required to meet certain siting milestones, and that the failure to meet such milestones result in the payment

of \$5 million to South Carolina. While it's unclear how much influence will be exerted by Campbell, this may plant the seed for a suitable compromise agreement among the states. It is far too early, however, to predict the outcome of this issue in the South Carolina legislature.

The fact that the South Carolina General Assembly may also discuss the possibility of taking out-of-region waste after 1992 has caused quite a stir across the nation, raising false hopes among other states and compacts that they will not need to site facilities in their own regions. The Southeast Compact Commission, however, has the final say on this issue. Even if the South Carolina Legislature were to decide to make the Barnwell facility available to waste across the nation, the Southeast Compact Commission has the power to deny access to its regional facility for waste outside the southeast region. In making this decision, the Commission will certainly need to weigh the potential impact on facility siting in other regions.

SUMMARY

During the 1980's and 1990's, states and compacts have experienced delays and cost overruns in siting low-level radioactive waste disposal sites.

Due to the protracted siting schedule in North Carolina, the Southeast Compact Commission faces a three-year interim period when it is possible that no regional disposal facility will be available. Whereas the Southeast Compact Commission has recommended the continued use of the Barnwell facility as a regional facility for the interim period, the decision lies in the hands of the South Carolina General Assembly, and this decision may not be reached until June of 1992. Meanwhile, the Commission continues to pursue its other options for waste management after 1992.

While critics contend that implementation of the LLWPA has been largely unsuccessful, few, if any, have been able to offer politically acceptable solutions to the LLRW management problem. The problem remains that there is no state that is willing to provide a LLRW disposal facility for the rest of the nation's waste. The regional waste disposal system envisioned by the LLWPA remains the most acceptable solution to the states for their LLRW waste disposal problem. Although it is taking longer than anyone ever envisioned, we believe that the additional costs and time are necessary and justifiable. Indeed, considering the difficulty of building anything related to waste in the 1990's, we find it remarkable that three states (CA, NE and IL) are nearing the construction phase.

Great strides have been made since 1980 in developing a new system for LLRW management in the United States. Ultimately, we believe that the implementation of the regional compact system will be successful.

* "SECC, Report One: Alternatives for Managing LLRW during the Interim Period Between the Closing of the Barnwell Facility in 1992 and the Opening of the North Carolina Facility." "SECC, Report Two: An Evaluation of Options for LLRW Management in the Southeast Region During the Interim Period 1993-1996."