

LLRW DISPOSAL FACILITY SITE SELECTION IN CONNECTICUT: WILL IT SUCCEED THE SECOND TIME AROUND?

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ABSTRACT

In June 1991, after conducting a statewide, step-wise site screening process (i.e., a decide/announce/defend approach), the Connecticut Hazardous Waste Management Service (CHWMS) selected three candidate sites for a low-level radioactive waste (LLRW) disposal facility. The CHWMS planned to select a preferred site for a facility from among the three after the initial stages of site characterization. Legislation was enacted in 1992 that directed the CHWMS to terminate that site selection process and to prepare a new plan for a new site selection process.

The CHWMS has prepared and, as required in the 1992 law, submitted to the Connecticut General Assembly a new siting plan. The new plan proposes a volunteer approach to siting a LLRW disposal facility. The General Assembly has until April 1, 1993 to approve, reject or modify the new siting plan.

Under the proposed volunteer approach, the CHWMS will only consider a site that has been approved by the electorate of a community in a community-wide referendum. The approach is entirely voluntary. There is nothing in the approach compelling communities to participate. Rather, the approach depends on a series of incentives to induce communities to get involved. The approach is voluntary not just in siting but throughout the development and operation of the facility.

A major feature of the approach is the facility development agreement which will be a contract between the community and the CHWMS. This agreement, negotiated between the community and the CHWMS and approved by the community in the referendum, will set out the community's and the CHWMS' rights and responsibilities related to control over the development and operation of the facility, programs to address the potential social and economic impacts, compensation for hosting the facility, and other opportunities to meet the community's needs.

INTRODUCTION

Connecticut is a member of the Northeast Interstate Low-Level Radioactive Waste Management Compact (Northeast LLRW Compact). The other member of the Northeast LLRW Compact is New Jersey. The Northeast Interstate Low-Level Radioactive Waste Commission (Northeast Compact Commission), the Northeast LLRW Compact's governing body, has designated both Connecticut and New Jersey as host states for disposal facilities. The Northeast Compact Commission has recommended that, for purposes of planning for each state's facility, the siting agency for the state should use projected volumes and characteristics of the LLRW generated in its own state.

In 1987 Connecticut enacted legislation that assigns major responsibilities for developing a LLRW disposal facility in Connecticut to the Connecticut Hazardous Waste Management Service (CHWMS). The CHWMS is required to:

- Prepare and revise, as necessary, a LLRW Management Plan for the state;
- Select a site for a LLRW disposal facility;
- Select a disposal technology to be used at the site;
- Select a firm to obtain the necessary approvals for the facility and to develop and operate it; and,
- Serve as the custodial agency for the facility.

The CHWMS is a nonregulatory, quasi-public agency established by state law in 1983. When originally established,

the CHWMS was responsible for planning for and promoting the appropriate management of hazardous waste (i.e., waste covered under the federal Resource Conservation and Recovery Act) generated in Connecticut. The CHWMS' LLRW responsibilities are in addition to its hazardous waste responsibilities.

The CHWMS is directed by a 10-member Board of Directors, six of whom are currently voting members. Each of the voting directors is appointed by the Governor for a staggered four-year term. One director must be appointed from each of Connecticut's six Congressional districts. Two of the directors must represent the public, two the business community and two the scientific community. The Governor, with the consent of both houses of the General Assembly, appoints one of the directors as the Chairperson of the Board. The Chairperson also serves as the Executive Officer of the CHWMS. The four non-voting directors, representing various state agencies, will become voting members when a preferred site is selected for a LLRW disposal facility.

THE FIRST SITING PROCESS

In November, 1990, after considerable public review and comment, the CHWMS completed preparation of its first Site Selection Plan. The Plan called for a stepwise screening of the state using published, statewide data to identify three candidate sites. A preferred site would be selected from among the candidate sites based on the results of on-site testing. The site selection criteria closely followed state and federal statutory

and regulatory requirements. The Plan specified that the results of intermediate steps in the site screening process would not be made public until after the candidate sites had been identified. Prior to adopting the Plan, the CHWMS entered into a contract with Battelle Memorial Institute for assistance with site screening, selection and characterization.

The CHWMS Board of Directors had decided that it wanted to be closely involved in the selection of the three candidate sites and to do it in a way that precluded the political and parochial pressures that are inevitably associated with a siting process. To meet these two goals, a geographically neutral approach was developed for candidate site selection. Thus far, Connecticut is the only state developing a LLRW disposal facility that has undertaken such an approach.

In June 1991 the CHWMS, with assistance from Battelle, conducted a three day workshop, open to the public, in which eight sites were presented to the Board. Data on the sites were presented in a way that did not disclose the geographic locations of the sites. Three candidate sites were selected by the Board after which the locations of the sites were revealed to the Board, local elected officials and the public.

The three sites were approximately 15 miles northeast of Hartford and they were all within approximately 2 miles of each other. While each of the sites had few houses on them, there were some suburban developments and rural community centers close to them.

While reviewing preliminary drafts of the report on the site screening process, the CHWMS discovered two errors made in the screening process. Both errors were corrected and neither affected the selection of the eight sites that were presented to the Board or the Board's selection of the three candidate sites, but both could have done so. These discoveries raised serious concerns for the CHWMS and the public. To address the concerns, the CHWMS decided to undertake an independent quality review of the site screening process and to postpone any on-site studies until the review was complete. The CHWMS entered into a contract with TRC Environmental Consultants, Inc. to conduct the independent quality review.

Legislation enacted in May 1992, before the independent quality review could be completed, directed the CHWMS to terminate its site selection activities and to prepare a new plan for a new site selection process.

The CHWMS' first siting process is perhaps the purest example of the decide/announce/ defend siting approach. Up until the time the location of the sites selected by the Board was announced to the Board and, simultaneously, to local elected officials and the public, only the contractor and CHWMS staff had been informed of the results of any of the intermediate steps in the site screening process. There is no question that the process was fair and objective. Similarly, there is little doubt that the process was technically and legally defensible. Nonetheless, the process failed. While that failure *can be attributed* to a number of factors, it appears that the primary reason is simply that a decide/ announce/defend approach (i.e., imposing a siting decision on an unwilling community) will not be successful for a LLRW disposal facility in Connecticut, given the current political and social cli-

mate. In fact such an approach is unlikely to be successful in many states and for many types of locally unwanted land uses.

THE NEW SITING PROCESS

In addition to stopping the first siting process, the 1992 legislation directed the CHWMS to prepare a plan for a new siting process and to submit it to the Connecticut General Assembly by February 1, 1993. The General Assembly allotted itself 60 days to approve, reject or modify the plan submitted by the CHWMS. Under the legislation, if the General Assembly does not act on the plan within the 60 days, the plan is considered approved.

After the first siting process was stopped, the CHWMS began to identify other siting approaches that have been attempted or proposed for LLRW disposal facilities and for other types of facilities. After careful analysis of its alternatives, the CHWMS decided to propose a volunteer approach to site selection. The CHWMS undertook an intensive effort to develop a volunteer approach and, after significant public involvement, completed preparation of the plan and submitted it to the General Assembly on February 1, 1993.

In the volunteer approach proposed by the Service, the Service will only consider a site that has been approved by the electorate of a town^{*} in a town-wide referendum. The approach is entirely voluntary. Only towns that want to participate in the process will be considered.

The CHWMS has proposed that it will develop and undertake another step-wise, statewide site screening approach, if, and only if, the volunteer approach does not produce a site that protects public health and safety.

The CHWMS would begin the volunteer approach with an intensive and extensive public information effort designed to inform the public and local officials about the volunteer approach. The CHWMS would provide grants to towns and regional governmental organizations to develop and undertake public information and education programs.

During the public information effort, the CHWMS would formally invite towns to participate in the process and would set a date by which a town must notify the CHWMS that it wants to participate. The CHWMS has not specified in the Plan what form of local approval would be necessary for a town to become a participant. However, a town would at least have to follow its established procedures to accept funds outside of the normal budget process. For many towns, this requires approval at a town meeting.

"Participation in the process" means that a town would:

1. Identify a site, in consultation with and with the assistance of the CHWMS;
2. Negotiate a facility development agreement with the CHWMS; and
3. Ultimately, hold a town-wide referendum on the site and the facility development agreement.

The CHWMS would only consider a site that has been approved in referendum along with its accompanying facility development agreement.

A town would always be able to withdraw from the volunteer process. Up until the approval in a referendum of the

* "Town" means something different in Connecticut than in most other states. All of the land in Connecticut is incorporated into towns. There is no un-incorporated land. There are 169 towns and they are the primary unit of local government. There is no county government in the state.

facility development agreement, a town could withdraw at any time and for any reason. After approval of the facility development agreement, the town would follow the procedures for withdrawing that it had negotiated in the agreement.

The Plan would establish a series of incentives for towns to participate in the volunteer process.

1. A town that participates in the volunteer process through the holding of a referendum, regardless of the outcome of the referendum, would be exempt from a subsequent stepwise, statewide site screening process. Such a process would be undertaken if the volunteer approach does not result in a safe site.
2. The CHWMS would cover all of the town's costs to participate in the process, including grants to help identify sites, for assistance in negotiations, for holding a referendum and for public participation efforts.
3. The CHWMS would compensate towns for becoming participants. A town that decides to participate would be paid \$250,000. If it were the first town to so notify the CHWMS, it would be compensated an additional \$100,000. If the town stays in the process for six months, identifies a site and negotiates in good faith with the CHWMS, at the end of six months the town would be compensated an additional \$250,000. A town that approves a site and facility development agreement at referendum would be compensated an additional \$1 million. This compensation would carry no restrictions or obligations.
4. Perhaps most importantly, the CHWMS is prepared, in a volunteer approach, to share control over the development and operation of a facility with the volunteer town. The mechanism for sharing control would be the facility development agreement.

The facility development agreement would be a contract between the town and the CHWMS. This would bring contract law, in addition to state and federal law, to bear on facility development and operation. It would provide more guarantees to a town than might otherwise be available. The CHWMS intends to require the facility developer/operator to negotiate and enter into a separate facility development agreement with the town.

The facility development agreement would cover at least four primary areas.

1. It would cover provisions and mechanisms for local control over the development and operation of the facility, which may address health and safety concerns as well as other issues.
2. The agreement would cover programs to address the potential social and economic impacts of the facility.

This would include existing programs, such as payment-in-lieu-of-taxes and the property value guarantee program, as well as new programs.

3. It would cover the amount and the form of the compensation to be paid to the town for hosting the facility. The CHWMS would begin negotiations by offering payments of \$2 million prior to operations and \$1 million per year for each year of operation with an inflation adjustor. This would be in addition to the existing assessment on facility gross receipts which is projected to provide between \$500,000 and \$750,000 per year.
4. The agreement would address other programs and measures identified by the town to assist it and its region in meeting other needs.

The facility development agreement would always include a provision, negotiated and approved by the town, specifying procedures and conditions under which a town could withdraw its site or close the facility.

The Plan recognizes the benefits of, and encourages towns to form, regional groups to participate in the volunteer approach. This is reflected in the compensation provisions for participating. In each instance, a town in which a site is located would be paid more if it participates in the process in cooperation with its neighbors rather than by itself. In addition, each neighboring town that participates would be compensated.

In a volunteer approach, as in a stepwise site screening approach, a site must be capable of protecting public health and safety and the environment and it must meet all of the site suitability requirements in state and federal law and regulations. However, in a volunteer approach, as opposed to a site screening approach, a town can establish any additional requirements that it thinks appropriate for a site. If a town establishes additional requirements that are so restrictive that a potential site cannot be identified in the town, a referendum could not be held and, consequently, the town could not be exempted from a subsequent statewide, site screening process.

CONCLUSION

If approved by the General Assembly, the CHWMS will begin implementing the plan for a volunteer approach to siting a LLRW disposal facility. At present, it does not appear that a decide/announce/defend approach to siting can be successful in Connecticut or in many other states. The CHWMS believes that with the incentives, controls and measures proposed in the new siting plan and with an intensive public outreach effort, it has a reasonable chance of finding a suitable site through the volunteer approach.