STATE EXPERIENCE WITH THE NWTS PROGRAM

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ABSTRACT

The State of Louisiana has united at all levels of government in its response to nuclear waste repository siting in the State. Since 1977 when DOE announced that Vacherie and Rayburn's Domes would be the subject of detailed study, the State Legislature has passed legislation which gives the State maximum control over the project, the Governor has negotiated and maintained a state veto right over repository construction and the Congressional delegation has successfully steered national legislation in directions which strengthen the state government's position.

In 1978, DOE signed the "Principles of Understanding" and undertook not to construct a waste repository if the State objects. Louisiana since that time, has consistently sought to ensure that the "Principles of Understanding" will continue to govern federal relations with the State on nuclear waste siting issues. However, by relying on a political veto, the State remains vulnerable to changes in national administrations and to legislative or judicial challenges to that veto.

HISTORICAL PERSPECTIVE

Consideration of salt domes in Louisiana for nuclear waste disposal predates similar activities in other Gulf Coast states as a result of early study programs at Louisiana State University which began in the mid-60's.

In 1974, Union Carbide, the principal contractor for the Atomic Energy Commission's waste disposal program at Oak Ridge National Laboratories, contracted with LSU to carry out preliminary investigations of the potential of salt domes for isolating nuclear waste. The initial contract of $90,000 with the LSU Institute of Environmental Studies was increased every year until 1982 as LSU continued its contractual relationship with the successor agencies to the AEC.

These salt dome studies were carried out without direct involvement of state government until 1976 when the State of Louisiana was officially informed by the U.S. Energy Research and Development Administration of its regional studies program involving salt domes. In an August, 1976 letter to Governor Edwards, the Manager of Oak Ridge Operations noted LSU's continuing role in the program and expressed particular interest in Vacherie and Rayburn's Domes in Bienville and Webster Parishes. The Governor responded by requesting that the State be kept informed of these activities and designated the Commissioner of the Department of Conservation as the principal point of liaison with the State.

In 1977, the Department of Energy identified Vacherie and Rayburn's Domes, along with salt domes in Mississippi and East Texas, for further study during the Area Studies phase of site identification. A contract was let to LSU to carry out exploratory drilling in support of their ongoing geologic and hydrologic studies at the domes.

Shortly thereafter, the State Legislature expressed concern regarding nuclear waste disposal in salt domes. Act No. 193 of 1977 Regular Session prohibited the use of salt domes for storage or disposal of radioactive wastes and required that DOE notify the Natural Resources Committees of the Legislature, the Department of Natural Resources and the local parish government in advance of any proposed tests.

In January 1978, LSU subcontractors began drilling operations at the two sites. The appearance of drilling rigs activated local concerns, and in late January the Commissioner of the Department of Conservation elected to suspend the drilling and announced that hearings would be held at which DOE should show cause for continued testing at the domes. The "show cause" hearing took place on February 27, 1978, the same day that Governor Edwards and DOE Deputy Secretary John O'Leary signed the "Principles of Understanding" allowing testing to proceed and giving the State of Louisiana a veto over repository construction.

The "Principles of Understanding" are essentially a quid pro quo between use of salt domes for petroleum storage or for radioactive waste disposal. Louisiana allows the Department of Energy to use port facilities and southern salt domes for the Strategic Petroleum Reserve, while DOE pledges "not to contruct any nuclear waste repository in Louisiana if the State objects." The agreement does provide, however, that studies of possible areas in Louisiana will continue with pre-notification of state officials whenever test drilling is to occur. The provisions have caused some confusion because of the assumption in the State Legislature and elsewhere that any proposal to construct a repository would indeed be vetoed, so that the tests would appear to be unnecessary. The current Louisiana administration has taken the position that regardless of the State's intent with respect to the veto, the testing should not be stopped by Louisiana at the risk of invalidating the veto provisions of the agreement. The DOE's authority to offer such a veto was questioned by the DOE General Council in March, 1978, and three months later the U.S. Comptroller

General's Office determined that DOE indeed lacked authority to offer vetos in the absence of specific Congressional authorizing legislation. Nevertheless, DOE has maintained its political commitment to the "Principles of Understanding" to the present day.

In July 1978, the State Legislature passed Act No. 650 strengthening Act No. 193 by requiring that testing must cease if the parties to be notified object in writing to such tests. The Legislature also passed Act No. 327 prohibiting the transportation of high level nuclear waste into the state for disposal in Louisiana or elsewhere.

The following year, in June 1979, DOE approved a Conference Grant of $25,000 to enable Louisiana officials to conduct orientation meetings, provide a forum for public opinion, and fund travel expenses of state and local officials and organizations. This grant was increased to $75,000 in September of the same year.

In February 1980, President Carter issued a national nuclear waste policy statement which characterized relations with states in terms of a state's right to consultation and concurrence. The Department of Natural Resources Secretary requested immediate clarification of this new policy's application to the "Principles of Understanding", and was assured by DOE Secretary Duncan that the "Principles of Understanding" were consistent with consultation and concurrence. Undersecretary Bateman was more explicit in his letter of June 5, 1980 to the Chairman of the House Natural Resources Committee, when he stated that policies contained in the "Principles of Understanding" 'would continue to govern the conduct of our nuclear waste management program in the State of Louisiana.'

In July 1980, the Louisiana Legislature passed a concurrent resolution authorizing the establishment of a joint committee and appropriate staff to carry out consultation and concurrence with DOE. In September President Carter and candidate Ronald Reagan both committed themselves to observe the "Principles of Understanding."

In March 1981, DOE approved a grant for $175,000 to fund the investigations of the Joint Natural Resources Committee and the siting review activities of the Department of Natural Resources. However, under Louisiana law, federal funds may not be expended without Legislative Budget Committee approval. The Committee decided to withhold approval on grounds that acceptance of DOE funding to review repository testing activities implied acceptance of those activities. No funds were released until September 1981, when the Budget Committee determined that it was desirable to monitor and evaluate DOE's activities in the State in order to keep informed and maintain a measure of control over such activities.

In March 1981, Battelle's Office of Nuclear Waste Isolation released ONWI 109 designating Vacherie Dome for further study during the Location Studies phase. This announcement closely coincided with DOE's decision to restructure its national program to include an unlicensed Test and Evaluation Facility (T&E) which would be constructed on an accelerated schedule in salt or other media.

Upon referring to the "Principles of Understanding," State officials discovered two signed versions of the document, one of which committed DOE not to construct a repository in Louisiana if the State objects, the other of which committed DOE not to construct a repository <u>for long-term disposal</u>. This second version would not have given the State a veto over a T&E facility. Governor Treen sought clarification from Secretary Edwards regarding the two versions of the "Principles of Understanding" and their application to the T&E facility. He was informed that DOE recognized only the first version, but that the State would not have a veto over the T&E facility under the 1978 agreement.

This combination of events reactivated the ongoing debate in the Louisiana Legislature concerning the DOE testing program. Opponents of testing argued that it was a waste of taxpayers money for DOE to continue testing in Louisiana since it was well-known that Louisiana would exercise its veto over repository construction. They urged the State Legislature to prohibit testing altogether so that DOE might not devise a way of circumventing the State's veto. This position was opposed by the Governor, who noted that the veto agreement with DOE specifically authorizes continued testing in Louisiana, and prohibition of such testing would abrogate the agreement and cause the State to lose its veto over repository construction.

In July 1981, however, the Louisiana Legislature passed House Bill 53 prohibiting further DOE testing of geologic structures in Louisiana unless the Natural Resources Committees, the Department of Natural Resources and the local parish governments all gave prior written approval for such tests. The Governor, as expected, vetoed the bill in August 1981 on grounds that it would jeopardize the State's veto contained in the "Principles of Understanding."

In July 1982, the Legislature responded by enacting the "Principles of Understanding" into state law. Act No. 794 authorizes testing pursuant to the 1978 Principles and waives the formal notification requirements contained in previous Acts so long as the "Principles of Understanding" remain in effect. If these Principles should be abrogated, the legislation provides that no further tests shall be carried out without prior written approval of the Natural Resources Committees, the Department of Natural Resources, and the local parish government. This Act also specifies that the Governor, not the Legislature, shall have the right to exercise the veto provided in the "Principles of Understanding."

DOE has not initiated the Location Studies phase of site development in Louisiana and very little field work has been carried out since the release of the Area Characterization Report in March 1981. Funding for LSU studies of salt domes, which reached $1 million in Fiscal Year 1981, declined to $400,000 in FY 1982 and was eliminated in FY 1983.

This reduced level of DOE activity has not been unique to Louisiana. A similar slowdown has occurred in Mississippi and more recently in Utah as political considerations have led to Governors' moratoria in those states. DOE has focused on completing the area studies program in Texas and Utah while awaiting Congressional clarification of its program goals and a definition of its relations with the states.

In November 1982, DOE informed the states that it would not be possible to carry out a Location Studies phase prior to selecting a salt site for full characterization, including construction of an exploratory shaft. The salt site decision among four locations in Louisiana, Mississippi, Texas and Utah was to be made in May 1983, and Location Studies were to be folded into the site characterization process.

However, in December 1982, Congress passed the Nuclear Waste Policy Act establishing guidelines and time tables for site characterization, construction and operation of repositories. The DOE was instructed to nominate five sites considered suitable for site characterization and to recommend three of these sites to the President for characterization prior to January 1, 1985. The two sites which are eliminated would not be eligible for future consideration as a second repository, but could be used as back-ups if one or all of the top three were subsequently invalidated. After site characterization is completed the President will recommend by March 31, 1987, one of the three sites to Congress for construction of a repository. The state selected has the right to exercise a veto subject to override by both houses of Congress.

Louisiana's position is unclear in relation to this time table and its implications. At present there are six sites under consideration for nomination for site characterization - four salt sites, a tuff site (Nevada), and a basalt site (Washington). Since only five sites need to be nominated, it is unclear whether the sixth, were it to be Louisiana, would be eliminated from further consideration as the second repository. The Act makes clear that if Louisiana were among the five nominations, but was not recommended for site characterization, there would be no further consideration of the site in the second round. If, however, a Louisiana site was selected for characterization but not recommended for the first repository, it would continue to be available for consideration in the second round.

The Act does not mention Louisiana's veto in relation to the Congressional override, and the colloquies do not make clear whether the "Principles of Understanding" are to govern DOE siting activities without being subject to the override provisions. We are currently awaiting clarification on these issues.

CURRENT STATE ORGANIZATION

Authority

The State of Louisiana's program for monitoring DOE's waste disposal activities derives its authority from a letter from Governor Edwards to Mr. R. J. Hart, Manager of Oak Ridge Operations for ERDA, on September 2, 1976. This letter designated the Commissioner, Louisiana Department of Conservation as principal contact point for the State on waste disposal matters. The Department of Conservation subsequently was incorporated into the Department of Natural Resources under the Environmental Affairs Act of 1979, and the responsibility for interactions with DOE was transferred by administrative action of the Secretary to the Office of Environmental Affairs, Nuclear Energy Division.

The State Legislature acted by passing concurrent resolutions (No. 99 and No. 165) in July 1980 to authorize the establishment of a joint committee for consultation and concurrence.

Executive Agencies

The organizational format adopted by the Governor in 1976 has not materially changed since that time. Louisiana has opted for a single lead agency, the Department of Natural Resources, to coordinate all matters relating to nuclear waste siting in the State.

1. Office of the Governor

The Office of the Governor has been actively involved in policy development through the Director of Federal Relations. The Office negotiated the "Principles of Understanding" and has been largely responsible for the State's strong commitment to that agreement and its relatively low profile in monitoring ongoing activities at the site.

2. Department of Natural Resources

The Department of Natural Resources, as the successor agency to the Department of Conservation, is responsible for advising the Governor on nuclear waste matters, negotiating with the Department of Energy, and coordinating the State's response to repository siting activities. Within the Department, the Nuclear Energy Division of the Office of Environmental Affairs is responsible for day to day project coordination activities. In addition, the Office of Conservation, the Air Quality Division and the Water Pollution Control Division have permitting authority over various aspects of repository siting.

3. Nuclear Energy Division

The Nuclear Energy Division has the primary staff responsibility for project coordination and liaison with the Department of Energy. This Division is the principal focal point for daily interaction with federal agencies and other state governments on nuclear waste disposal. It coordinates all state activities with regard to health, safety, environmental, and socio-economic issues. It also follows federal legislation and maintains liaison with the Congressional delegation, the State Legislature, and local government officials. The Division monitors site developments, distributes information to the public, and reviews technical documentation with the aid of an informal State Technical Review Committee. Since 1980 the legislature has informally delegated much of the day-to-day responsibility for implementing its objectives to the Nuclear Energy Division. The Joint Committee decided to allocate $50,000 from its portion of the DOE grant to enable the Nuclear Energy Division to complete a socio-economic impact analysis of the affected areas. The Committee's activities have largely been confined to legislative policy development, supported by testimony from state officials and visits to DOE facilities.

The State Technical Review Committee on Radioactive Waste Management is composed of eleven members from state agencies, the State Legislature and Louisiana State University. The Committee is chaired by the Office of Environmental Affairs and includes representatives of the Geological Survey, the

Department of Wildlife and Fisheries, the Department of Culture, Recreation and Tourism, the Deparment of Transportation and Development, the House and Senate Committees on Natural Resources, the Capital Area Ground Water Conservation Commission and the LSU Nuclear Engineering Department. The principal function of the Committee is to provide a mechanism to review and evaluate DOE documentation and advise the Secretary of Natural Resources of any technical matters which may have policy significance. The Secretary in turn is the Governor's advisor should executive involvement become necessary.

The Nuclear Energy Division has utilized the grant monies to encourage public understanding of the siting process. It has sponsored three trips to the Nevada Test Site Climax Spent Fuel Facility for state and local officials and state legislators. It also co-sponsored a Symposium on Salt Dome Utilization with Louisiana Tech University in May 1980 at which a broad range of federal and state viewpoints were presented to local officials and citizens, and sponsored a legislative forum on nuclear waste management in 1981.

The largest portion of the grant has been allocated to a socio-economic impact study. Under an inter-agency agreement with the LSU Office of Research, the Nuclear Energy Division and the Joint Legislative Committee on Natural Resources allocated $100,000 to an evaluation of the socio-economic impacts of repository siting on Webster and Bienville Parishes. This study was initiated in March 1982 and is to be completed by September 1983.

Although depending entirely on state agency resources for the review and evaluation of technical documentation, at this time, we anticipate the need for supplementary contractural services in the event Louisiana is selected for full characterization. Approximately $40,000 remains from the DOE grant for hiring technical contractors as the need arises. No decisions will be made regarding the utilization of these funds until DOE has nominated sites for characterization. At that time, a request for additional funds may be appropriate.

4. Louisiana Congressional Delegation

The Louisiana Congressional Delegation has consistently supported the "Principles of Understanding" and has played a major role in obtaining legislation which would discourage the siting of repositories in Louisiana. Senator Johnston was floor manager for the Senate bill on nuclear waste policy which passed the Senate but not the full Congress in December 1980. That bill contained a provision for federal construction of away-from-reactor storage facilities which would have relieved some of the pressure for repository development.

In 1982, Senator Johnston and Representatives Huckaby, Tauzin, Breaux and others in the House delegation were instrumental in working out the final compromises which resulted in passage of the Nuclear Waste Policy Act of 1982. They succeeded in obtaining Congressional authorization not only for an away-from-reactor storage program but also for a feasibility study of a Monitored Retrievable Storage facility which would provide surface storage for 100 years or more. Senator Johnston anticipated that an MRS facility could become an increasingly attractive option for intermediate term storage and remove some of the pressure for repository development in Louisiana. The Act also contains a provision that would permanently exclude from further consideration as a repository, any site that is not chosen for site characterization from DOE's list of five nominees. Senator Johnston anticipates that Louisiana's site will be one of the two not chosen for selection by the President. In addition, Louisiana's delegation supported the two-house Congressional override requirement for any state objections, thereby obtaining the strongest possible state veto provisions, and a measure of statutary support for the "Principles of Understanding."

STATE MANAGEMENT OPTIONS

The State of Louisiana's major achievement has been to negotiate an agreement with DOE which gives the State the right to veto construction of a repository in Louisiana salt domes. Louisiana is the only state to have taken this opportunity in 1978 when DOE briefly adopted a policy of recognizing state veto rights. Through the combined efforts of the Governor, the Congressional delegation and the State Legislature, the State has been remarkably successful in maintaining the veto for five years, despite questions of the legal validity of such vetos.

The veto agreement has had a generally positive effect on the level of stability in the State's relationship with DOE because the veto provides a safety net if the site proves to be unsuitable or unwanted. It is less clear whether the veto has had a positive effect on the political temperature within the State, as the veto's existence has consistently led to demands for the cessation of testing.

The existence of a veto agreement may also have some negative effects on the State. Dependence on the veto has focused Louisiana policy on preserving the veto rather than on evaluating the merits of the project. This approach carries the inherent risk that the State will not be well prepared to exercise its veto on solid technical or procedural grounds. By concentrating State energies on the outcome of the process rather than the process itself, the State may not allocate sufficient resources to its technical review effort and may not be procedurally prepared for making a full technical assessment of the project's merits.

This policy would appear to be based on the assumption that a veto guarantees that DOE will make every effort to manage the program properly in order to avoid activating the veto. This assumption is only as strong as the veto itself. The risks of orienting state policy toward controlling the outcome of the process are that:

1. the veto may be abrogated by a subsequent administration or invalidated by Congress or the courts.

2. assuming the veto survives, the Governor needs sufficient information on which to justify a decision to veto, or not to veto, a recommended repository site.

3. the decision to veto a site qualified by DOE would undoubtedly be challenged in court or referred to Congress for a possible override. The Governor (and the Congressional delegation) would need a thoroughly researched technical basis for defending his position. A purely political veto would be vulnerable to legal reversal or Congressional override.

The State may also wish to consider negotiating a procedural agreement with DOE to establish groundrules for access to information, opportunities for review and comment, schedules for DOE documentation and decision points, and mechanisms for resolving conflicts, monitoring on-site activities, and addressing off-site concerns. The protections afforded by written commitments from DOE may be worth risking the possible public perception that the State is acquiesing in the outcome of the studies. With a veto in hand, a procedural agreement could serve a useful complementary function in defining the ongoing relationship with DOE, as well as providing mutually agreed ground-rules on which to base a possible future veto.

In summary, the organizational structures adopted in 1976 when Governor Edwards was first informed of the regional studies program is still essentially intact, with the Governor's office responsible for policy development and implementation and the Nuclear Energy Division coordinating state activities, monitoring the DOE program and maintaining liaison with federal and state agencies. Although this lead agency approach has worked well through the area studies phase, there will be a need for reassessment of the state's organizational structures if Louisiana is selected for site characterization, given the uncertainties of our veto power.

Now that the long awaited nuclear waste legislation has become a reality, the tasks of working out the nature of state-federal relations and fully comprehending the impact of the Act on potential host states must be instituted. One very important mechanism for meaningful state involvement and participation in the improvement and implementation of the national waste management program is through an organization known as the State Working Group on Radioactive Waste Management. The initial SWG meeting was held in Baton Rouge in June of 1980 and was co-sponsored by the National Governors' Association. Since that time the Group has met on a quarterly basis to discuss individual state program experiences, provide a forum for improved communication by the members with the DOE, and facilitate meaningful state participation in national program. We have made considerable progress over the past two years in that we have obtained a federal grant to help allieviate travel expense, a part-time technical advisor to assist in the day-to-day operations and planning and have an active membership consisting of 13 states in which DOE has on-going feasibility studies for potential repository siting or for use as AFR sites.