

EXPERIENCE OF THE STATE OF UTAH WITH THE  
NWTS PROGRAM

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ABSTRACT

The effective implementation of a nuclear waste repository siting program requires recognition of both the "affirmative" national responsibility for development and construction of a repository, and the "reactive" state responsibility for protection of citizen health and safety. The experience of the state of Utah with the NWTS program indicates that the necessary components of a successful program must include an appropriate time schedule for implementation, an open process for public and state involvement, and complete dissemination of appropriate information for meaningful state and public involvement.

With the advent of nuclear weapons in the 1940's, the United States became a generator of high level nuclear waste. As U.S. energy policy also evolved to include a nuclear component, the production of nuclear waste and the question of how best and where to isolate it until it no longer poses a danger to human health and safety has caused increasing concern.

Whatever the merits or viability of national defense and national energy policies that include nuclear elements, the responsibility for resolving the waste problem clearly resides at the federal level of government.

In recent years, the national commitment to the development of nuclear power has been reflected by the intensity with which an administration pursues the resolution of the waste problem. The Reagan administration commitment to nuclear energy has led to increased waste disposal activity. The administration has also been successful in enacting national legislation designed to clarify the national responsibility and expedite the waste disposal process.

As the Nuclear Waste Policy Act of 1982 indicates, the federal responsibility is affirmative in nature. Technology must be developed, carefully reviewed and monitored. Social costs must be carefully weighed. And most important, the public must be involved in a meaningful way in order to assure public confidence in the outcome. Clearly, the federal objective is the siting and construction of a nuclear waste repository.

On the other hand, the responsibility of a repository candidate state is largely reactive. The traditional state role of protecting the health and safety of citizens dictates a response of careful review and monitoring of any siting activities. The state's objective is for full protection of its citizens and resources.

Serious conflict has erupted as the two levels of government have attempted to carry out their respective responsibilities. It is critical to recognize that in this instance, the process is as important as the outcome itself. The success of the NWTS program will hinge upon the availability of an open, public process for resolution of conflicts.

Ideally, such a process would include: a workable, realistic time schedule; timely availability of all information; close communication between the

parties actually designing and implementing the project; and most importantly, involvement of the states in the development of the decision making process.

Regrettably, the experience of the state of Utah has been far from ideal. The difficulty we have encountered in attempting to monitor and participate in the siting process in an effort to carry out traditional state responsibilities, has resulted in criticism of the overall program. The following observations are made, not to vent frustration, but rather to identify some of the weaknesses in the existing program with the objective of improving the process.

One aspect of the NWTS program which has contributed to the perception of a disjointed program and to the difficulty of state monitor, review and participation, is the unwieldy number of contractors and subcontractors DOE has employed to carry out the program.

During the early stages of our involvement in the program there appeared to be little, if any, communication between contractors doing subsurface (geology) work and contractors doing surface (environmental) work. For example in Utah, where we have five National Parks, the map that accompanied the draft environmental assessment for the Gibson Dome location studies activities failed to note the boundary of Canyonlands National Park--located immediately adjacent to the principal borehole. The left hand clearly did not know what the right hand was doing.

Recognizing this lack of coordination, the state requested a list of all contractors and subcontractors involved with the Paradox Basin studies, their projects and schedules. DOE was unwilling--or unable--to provide us this information. Unfortunately, contractors identities and work agendas have been revealed largely by accident. My favorite example is the case of the visiting air quality consultant from Texas who just happened to be a good friend of the Governor Matheson's former receptionist. Over lunch, the consultant confessed that the "vague" environmental studies he was doing near Canyonlands National Park were in fact, air quality studies for NWTS. He had been instructed not to reveal the purpose of his work in Utah, presumably because the Interior Board of Land Appeals had placed a stay on DOE activities until resolution of a citizen law suit alleging that DOE was not in compliance with the National Environmental Policy Act. It was apparent that the modest number of DOE employees was incapable of keeping track of the contractors and their work.

Our inability to obtain timely information from DOE also led to further suspicion that contractors and subcontractors were running the program. Frequently, we obtained copies of contractor studies via leaks to the press simply because DOE did not know the work had been done, or the studies had not trickled up to the top of the information review process.

The difficulty of acquiring information in a timely fashion seriously hampered the ability of the state to properly review DOE documents. In one instance, we were asked to review the draft of the location studies phase of work before the preceding area phase study was completed. Ironically, we were asked to review that document in one day so that it could be sent as soon as possible to the printers. Until June of last year, documents were sent 4th class mail so that literally most of the time period allocated for state review had passed before the state received its copies.

An equally serious problem has been the tendency to view the data and the underlying studies prepared by the contractors as proprietary information. Not only are studies not made available, but, the information which is eventually provided in "final" DOE documents is reduced to pablum for public consumption. Meaningful state review and input cannot take place when the information to be reviewed is the summary or conclusion of considerable amounts of raw data.

In an effort to obtain the necessary information, the state of Utah filed a Freedom of Information Act request in June of 1982. The response to that request has been meaningless - we still have not received the studies requested. In fact, two months ago at a NWTS conference in Las Vegas, one speaker indicated that nine new studies on the Paradox Basin had been completed - studies requested in the FOIA. We sincerely hope that litigation is not the only means available for obtaining information.

How important is the state review and comments? After all, contractors and subcontractors are the experts in the area. Our experience has been that the state of Utah input has been crucial in identifying potentially serious problems, major oversights, and significant errors. The national park boundary is a notable example, but others reflect the fact that environmental circumstances in the Canyonlands area are unique, and the problems they pose may not be readily apparent, i.e., the visibility of rail routes from state and national park overlooks; the significance of certain Anasazi ruins; nature and strength of seasonal flashflooding; the fragile nature of the desert environment and the difficulty of reclaiming it; the importance of the Colorado River as a major water supply for southwestern United States; and noise and visual impacts of the proposed railroad and transmission routes on state and national parks and BLM scenic overlooks. A review of the state's comments on the DOE documents reveals the necessity of meaningful state review.

Other problems that indicate a lack of program integration are: publication of a draft national siting plan half-way through the completion of the work outlined in that plan; the publication of siting criteria after specific sites have been identified; failure to complete phases in a step-wise process before moving on; failure to follow through on commitments to environmental impact statements and failure to adhere to original time schedules because of stated need to fast track the program.

As a result, the state of Utah has concluded that efforts to develop and/or follow an identifiable siting process were insincere and were done only for the purpose of legitimizing decisions already made.

Prior to the passage of federal legislation, the framework for providing meaningful state and public participation in the siting process existed in the procedures that have evolved under the National Environmental Policy Act and the Administrative Procedures Act. The Department of Energy chose to circumvent the unfortunate attitude expressed by more than one DOE official: the public is incapable of handling the complexity of the issue, and such involvement will only lead to litigation.

While the nuclear Waste Policy Act of 1982 does provide a framework, although much more restrictive than the NEPA and the APA, for state and public involvement, it is most important that this attitude is changed. Without a genuine commitment to carry out the spirit as well as the letter of the law, the public confidence that only an open decision making process can provide will not result.

Unfortunately, the recent February 2, notification to the states identifying potentially acceptable sites and the anticipated schedule of events through the selection of the three sites for location of the exploratory shafts suggests that perhaps the attitude has not changed.

DOE indicates an intent to complete the legislatively required guidelines by July 7, 1982, and states that the public will be provided with the opportunity for comment through official public hearings. These guidelines presumably should provide the basis for the nomination and eventual selection of the three sites for the location of exploratory shafts.

Unfortunately, DOE also states that by the middle of this summer (1983) the DOE will complete environmental assessments on all five nominated sites; hold public hearings on those environmental assessments and make the recommendation to the President of the three sites for the shafts. Not only is it clear that the guidelines for decision making are merely perfunctory, the suggestion that the very critical public participation component of the legislation should be compressed into such limited timeframes is not in keeping with the spirit of the law. The stated commitment to ensure the adequate opportunity for the states and the public to participate in this process is simply not reflected in the proposed schedule of events.

Quite simply, the time gained by quickly narrowing the sites to the three for the location of the exploratory shafts will be lost by the short-circuiting of the public participation process: the political difficulties will simply be exacerbated.

The NWTS program has much to gain by consideration the premise that the process is as important as the outcome.