

REGULATION UNDER A LOW-LEVEL WASTE

INTERSTATE COMPACT

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ABSTRACT

Recent changes in Federal and Washington State law are discussed, with some detailed emphasis on Federal agencies' concerns about the Northwest Interstate Compact for Low-Level Waste Management. The public perception of the low-level waste industry, the predraft proposals to implement the Northwest Interstate Compact, and the impact of recent technological changes in the low-level waste industry are also discussed. The Northwest states continue to be dedicated to reducing the volume of low-level radioactive waste coming to Washington State for disposal at the earliest possible time.

There have been significant changes in the business of the production and disposal of low-level radioactive waste in the last eight years. These changes have had both technical and political implications and have made dramatic changes in the way every state in the Union, including Washington, views this issue.

These changes include:

- The closing of three of the nation's six low-level waste disposal sites.
- The rapidly changing public perception and attitude about low-level radioactive waste.
- The 1980 Federal Low-Level Waste Policy Act.
- The adoption, by six states in the Northwest area, of the country's first interstate compact on low-level radioactive waste.
- Efforts to create regional compacts in other regions of the country.
- Impacts of the implementation of state-initiated regulatory oversight of low-level radioactive waste disposal.
- The Congressional consent process for state-adopted compacts.
- The impact of technological changes such as high integrity containers and compaction on the low-level waste disposal system.

The Northwest Interstate Compact for Low-Level Waste Management is a product of several major events in Washington and the Northwest states. Both chambers of the Washington State Legislature in 1980 unanimously adopted legislation creating a compact to reduce and regulate the volumes of waste coming to the Hanford site for disposal. Because the measures passed by the two chambers were slightly different, the proposed legislation never became law. As a result, a citizens' committee proposed an initiative to restrict the volumes of waste coming to the state. In the November 1980 election, 75 percent of those voting favored this measure. However, in June of 1981, the Federal District Court in Spokane held that the approved initiative was unconstitutional.

Following negotiations among the Northwest states, the 1981 session of the Washington State Legislature adopted in April 1981, and Governor Spellman signed, the Northwest Interstate Compact. Idaho's legislature took similar action, preceding Washington's by several days, and Oregon adopted the Compact later in the spring. Utah and Hawaii are now full members through legislative action, and Montana, which joined initially by Executive Order, now has legislation pending before its legislature. Alaska and Wyoming are the other states eligible to join the Compact.

Other states have watched our activity with interest and have been making substantial progress in establishing regional groupings and compact language. Washington has made efforts to ensure that the current system of disposal is not disrupted during this developmental period. At the same time, the compacting activity carried on by the Northwest states has clearly notified the nation that there is a firm schedule for a significant reduction of the volume of waste coming here for disposal, a schedule which requires persistent, ongoing efforts if we are to comply with the schedule.

During this interim period a number of significant issues have been identified.

There are potential conflicts in the area of dual or overlapping regulations between Washington and the NRC, and possibly other state and Federal agencies. We have made every effort to make our existing regulatory requirements compatible with NRC and DOT shipping and transportation rules. Oregon has done the same with its transportation permit requirement. It has been our intention to balance our attitude and our programs: There is a price for doing business in the state of Washington; however, we intend to maintain an even-handed and fair approach to permits, fees, and the regulatory process.

There is continuing concern by the citizens of Washington who sincerely want the volume of waste coming here to be drastically reduced as soon as possible. Note, however, that our citizens, while understanding the significant issues, are also impatiently waiting for the system we have proposed and adopted to be fully implemented. There is no intent to supplant existing Federal authority nor to assume any type of preemption.

Giving serious consideration to the compatibility of Washington's requirements with requirements of other states and regions has been a serious issue with us. The fees for disposal now levied in Washington are one of these issues which have had careful review. In the last year, several important changes have been made.

The Perpetual Care and Maintenance Fund was examined closely, and we found a need for substantial additional revenues for sufficiency. To accomplish the objective of adequate funding, contributions were increased. At the same time, we established a Closure Fund, to be used in the event of the site operator not completing the site closure process as specified in the Radioactive Materials License. In addition, a substantial additional tax was added in 1982 through legislative action. The existing site surveillance fee continues unchanged.

The sum of these fees makes our fee/tax requirements essentially compatible with charges being made at the other two existing disposal sites in Nevada and South Carolina.

A potential problem for our Compact concerns the Congressionally authorized date of exclusivity, January 1, 1986, when wastes from non-party state generators can be excluded by operational compacts. Some have speculated that not all regions will have both completed the compacting process and have a disposal site in operation by that date. The question then arises over what will happen to waste if currently available access to existing sites is denied. We in the Northwest have carefully considered this question, and feel there are a number of workable alternatives to deal with this possibility.

Alternatives that have been mentioned include the use of Federal facilities; interim storage by generators and/or the state of origin; or temporary use of existing commercial facilities. Several of the potentially usable Federal sites would not be suitable for a number of reasons, and those that could most likely be used are coincidentally located in the states with existing sites. The use of such sites may impinge upon existing state authority, a situation which might not be acceptable to host states. The increased use of temporary storage, either on or off a generator's site, is a workable solution and should be diligently explored by any state which can foresee finding itself in this situation. The latter alternative, that is, using existing commercial sites, needs to be qualified by the relative position in which a state or region finds itself vis a vis arranging its compact affairs. There must be clear assurances in such regions that compact development is well under way. Minimum requirements could well include the adoption of the regional compact by eligible states, and Congressional consent; site selection with undisputed control over the site and facility operation; and initiation of the official site licensing process. Under these circumstances, temporary provisions, carefully arrived at, might be available to assist for a restricted time.

There have been a number of questions about the Northwest Interstate Compact raised by Federal agency representatives. We do feel that these concerns must be dealt with openly. These questions, posed by the Nuclear Regulatory Commission, the Environmental Protection Agency and the Department of Transportation, we consider as clearly resolvable. They should not deter Congress from acting favorably and quickly on the Compact.

- The definition of low-level radioactive waste, as stated in the Northwest Interstate Compact, defines what low-level waste is. The Federal Low-Level Waste Policy Act describes what low-level waste is not. While, on the surface, the two definitions appear in conflict, we believe they are not, and feel that as Congress deals with the issue the kinship of the two definitions will be recognized.
- The Northwest Interstate Compact language originally projected July 1, 1983, as the time when out-of-region wastes could be excluded. In the consent language before Congress, submitted by Senator Slade Gorton, the exclusionary date has been changed to January 1, 1986, which conforms with the Federal Act. The 1983 date was consistent with our party states' legislative concerns; if consent legislation had been approved by Congress in 1981, its plausibility would have been enhanced. We do feel that, given existing circumstances, the current legislative proposal for consent, with the 1986 date, is more realistic and eliminates an inconsistency noted by Federal agencies, generators, and others.
- The Northwest Interstate Compact deals with a related issue of concern to the party states. It has been described as being outside the purview of the 1980 Federal Low-Level Waste Policy Act. It relates to the working agreement between Oregon and Washington which deals with hazardous (toxic) waste in addition to low-level radioactive waste. In the view of our Compact states, there is a commonality in these issues which allows us to include it because of the interest of the party states. The concern expressed by NRC dealt with a potential precedent which could be established for dealing with nonradiological issues in a Federal act intended specifically for radiological issues. Again, we do not believe this is a problem. The purpose of including this quid pro quo in the Compact language was to further demonstrate the efficacy and desirability of the compacting arrangement. There is no conflict with the Federal Low-Level Waste Policy Act. States have broad constitutional authority to deal with common problems through the compacting process. Specific Federal invitation to deal with the low-level radioactive waste question, in our view, does not exclude dealing with other state interests and concerns. The policy set forth in that legislation does not impinge on our desire to deal specifically with the hazardous waste issue. The states in the Northwest have seen the importance of dealing with both aspects. In fact, the explicit recognition of joint state responsibilities enhances the utility of a regional solution. It reinforces the availability of facilities and is a solidifying provision rather than a divisive one.
- Other concerns include potential regulatory problems arising during the interim period between the time Congress consents to the Compact and the date exclusivity is authorized. The Compact requires that out-of-region states and/or the NRC must inspect

and certify to Washington that shipments originating in their respective jurisdictions are in compliance. We are aware of the concern that others have for this provision, but do not view this as a major difficulty. As the interim period between consent and exclusion grows shorter, the need for reassurances through the conduct of such inspections diminishes. Further, Governor Spellman, in his testimony before the Senate Compact hearings in Seattle in November 1982, said that no regulations would be implemented that would be inconsistent with consent language or the intent of Congress as stated in the Low-Level Waste Policy Act. The inspection, indemnification and certification system currently in place in the Northwest region has been effectively controlling the disposal of out-of-region wastes. We do not believe the regulatory system we will have during the interim period will cause constitutional problems or present an impossible burden for generators, states or Federal agencies. Regulations implementing this provision generally will assure conformance with ongoing Washington requirements.

-- Another problem identified by Federal agencies was that party states will be required to perform periodic inspections of all generators of waste destined for disposal at Hanford, yet states do not have the authority to inspect Federal generators of waste. We believe the existing inspection programs of NRC and the Agreement States could be determined to be maintaining waste generators in compliance with this provision; thus, additional inspections may not be found to be required.

-- The Northwest Compact refers to "waste management", which the Federal agencies have pointed out to us represents a broader concept than "waste disposal". While the Low-Level Waste Policy Act gives responsibility for "disposal" to the states, the NRC has indicated that "waste management" remains exclusively within its province. We apparently need to reaffirm that party states do not intend to infringe upon existing Federal authority dealing with the health and safety aspects of waste disposal. We believe "regional management" as defined by the Compact would not alter existing Federal/state relationships involving the control of transportation or packaging. The Northwest Compact and compact language we have seen prepared for other regions, all continue to rely upon the continuance of the Federal/state relationships which have been established. Rather than debate what is included or excluded by the term, it is best to examine the objectives of the Compact. A careful analysis will make clear that the region is attempting to deal with waste issues as they relate basically to disposal. It is, of course, difficult and perhaps impossible to compartmentalize various aspects of the low-level radioactive waste issue. We seek unified regional action, not a rearrangement of, or an infringement on, existing Federal/state relationships.

-- There has been concern expressed from a variety of sources over the status of the

potential Northwest Interstate Compact regulatory language which was circulated by the Compact Committee during 1982. This issue has apparently identified potential problems for some Federal agencies, non-party states, and waste generators. The preliminary draft provisions were prepared and circulated for comment as a series of concepts developed by the Northwest Interstate Compact Committee. The concepts, after extensive examination, were intended to eventually lead to a formal rule-making process as a required prelude to ultimate adoption of regulations. The Compact Committee has had the opportunity to study these concepts and evaluate those comments which have been made both in written form and in testimony before the Committee. As we move toward full implementation of the Compact, we believe that appropriate revisions will be made in these ideas before a first draft of proposed regulations is formally circulated for comment. The regulations finally adopted to implement the Northwest Interstate Compact will include full consideration of any consent language offered by Congress.

The effects of potential technological changes such as high integrity containers, compaction, and the location of compaction facilities, may well influence the disposal of waste in the Northwest.

High integrity containers have not been approved for use in the state of Washington. Part of our concern rests with the users of such containers, who would propose to increase the liquid content in the containers being disposed. Washington's definition of "liquid" remains at 0.5 percent by volume or 1 gallon of liquid in a container, whichever is less. The sample high integrity containers submitted to us for approval to date have not yet been able to meet our established criteria. I refer specifically to drop tests and testing for the ability to withstand overburden loading.

Because of the unique characteristics at the Hanford site, we believe a high integrity container must be able to maintain its integrity through a 25-foot free fall. It is entirely possible that a container being off-loaded from a trailer at Hanford and suspended from a crane over a trench could drop even further than 25 feet into that trench. It is essential that the container survive such a fall intact. The second criteria requires that a container survive the top loading which would result when the container is placed in the bottom of a trench at Hanford with other containers and backfill materials placed over it to a depth of as much as 40 feet. Additionally, the container would have to maintain its integrity for 300 years. When the ability of a container to withstand these criteria has been demonstrated to us, Washington will carefully consider its use.

Washington and the Northwest Interstate Compact Committee have already been exposed to the question of compaction. In 1982 an unsolicited proposal was received from an organization which suggested compacting waste at a location adjacent to the disposal site at Hanford. The proposal raised a series of questions, perhaps the most important being: Should the Hanford facility, located up to 3000 miles from the generation of much of the country's low-level waste, be the site of the nation's first commercial compaction facility? Our answer to the question was that such facilities

should initially be closer to the point of generation, thereby reducing transportation distances and consequent safety problems.

The development of the Northwest Interstate Compact provides a workable regional framework to limit additional quantities of waste being imported into the region for disposal. Compaction of waste within the state of Washington near the disposal site would do little to reduce the volumes of waste, nor would it reduce transportation distances involved in the shipment of waste.

High integrity containers and compaction techniques are still being developed. They will eventually and significantly impact the waste disposal industry and the volumes of waste disposed in the Northwest, as well as in other regions; but the location of these facilities must match the need.

We anticipate a successful regulatory system for the Northwest Interstate Compact. We are confident that the adopted Compact structure will work well due to:

- The dedication and quick action of the several Northwest states involved.
- The support of our Congressional delegations and their staffs for Congressional consent to the Compact.
- The ability to resolve the areas of concern raised by NRC, DOT and EPA within the Compact framework.
- The continuing work undertaken by state representatives in other regions to develop acceptable compacts. We cannot fully succeed until they succeed.

The message to you from these Northwest states actions should not be misunderstood: We are very serious about reducing the volume of waste disposed in our region to those wastes produced in the eight Northwest states. We are dedicated to assisting, to the maximum extent possible, other states and regions in the development of their compacts and their disposal sites so that we might achieve our objective as soon as possible. We want to maintain the existing disposal system without major disruption while other regional regulatory programs are evolving. While we will be patient within the context of the Federal legislation, unnecessary delays beyond the Congressional schedules will be difficult to justify for the Northwest states. State leadership in resolving this national, regionally focused issue is apparent. Our desire is to play our part in the operation of a regulatory system compatible with other regions, while moving ahead as quickly as is possible.