

ACCESS TO THE SOUTHEAST REGIONAL FACILITY: REPRIEVE OR PARDON?

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ABSTRACT

The Low-Level Radioactive Waste Policy Act as amended by Congress in 1985 gave sited compacts the right to close their facilities to out-of-region waste after 1992. The Northwest Compact plans to exercise this right on January 1 of 1993, and the disposal facility in Beatty, Nevada will be closed on the same date. However, the Southeast Compact Commission is developing an Import Policy which would allow several states and compacts to negotiate for access to the Southeast Regional Disposal Facility in Barnwell, South Carolina for up to eighteen months.

By March of 1993, the Southeast Compact Commission will have signed and implemented agreements with other compacts and states for access to its Regional Disposal Facility in Barnwell, South Carolina, the only facility receiving out-of-region waste after January 1, 1993. The Commission will have been administering these agreements for two months.

This paper will describe the terms and conditions under which South Carolina and the Southeast Compact Commission agreed to provide access to the regional disposal facility to generators in states and regions outside the Southeast Compact region during the period of January 1, 1993-June 30, 1994. Conditions for maintaining access, and the process for contract renewal and revocation will also be discussed.

Authors will also explore key policy issues faced by the Southeast Compact after 1992 and the Compact's role in the implementation of the national compact system as envisioned by the Low-Level Waste Policy Amendments Act of 1985.

INTRODUCTION

On January 1, 1993 a new chapter opened in low-level radioactive waste management. The Low-Level Radioactive Waste Policy Act as amended by Congress (Policy Act) in 1985 gave sited compacts the right to close their facilities to out-of-region waste after 1992. Each of the three sited compacts has chosen to exercise this authority in varying degrees. On January 1, 1993, the Rocky Mountain Compact closed its Beatty, Nevada, low-level radioactive waste disposal facility and began contracting for disposal with the Northwest Compact. The Northwest Compact exercised its authority to exclude all other out-of-region waste from its Hanford, Washington disposal facility.

On January 1, 1993, the Southeast Compact began implementation of its Import Policy governing disposal of out-of-region waste at its regional facility in Barnwell, South Carolina, for the eighteen-month period January 1, 1993 - June 30, 1994. The decision to accept out-of-region LLRW at the Barnwell, South Carolina, facility after 1992 was made possible by legislation enacted by the South Carolina General Assembly on June 4, 1992. This legislation extended operation of Barnwell as a regional facility through 1995, and specified that out-of-region waste could be imported to the facility until June 30, 1994, if authorized by the Southeast Compact Commission. After that time, import would also have to be authorized by a concurrent resolution of the South Carolina General Assembly. The Southeast Compact Commission spent the final months of 1992 fashioning an import policy that would allow certain out-of-region compacts and states continued access to Barnwell for a limited period of time, thus granting them a reprieve, but not a pardon from assuming responsibility for developing their own LLRW management facilities. In this paper we will describe the terms and conditions under which access will be granted during this period, relate the

implementation of the Import Policy to date, and explore upcoming policy issues.

Conditions for Attaining Access

On September 28, 1992, the Southeast Compact Commission passed its *Policy for the Import of LLRW to the Regional Facility for the Period January 1, 1993 - June 30, 1994* (1) (see Table I). To accomplish its objectives, the Import Policy required eligible compacts and unaffiliated states to sign a contract with the Southeast Compact to enable their generators to attain access to Barnwell. The conditions of this Access Contract were designed to require these compacts and unaffiliated states to demonstrate continuing progress in site development during the eighteen-month Import Period.

To enforce other provisions of the Import Policy including the payment of access fees, the Commission asked the operator of its Regional Facility, Chem-Nuclear Systems, Inc., to incorporate a requirement to comply with the provisions of the Import Policy in its standard business arrangements with its customers.

The Import Policy clearly identified continuing compliance with the Low-Level Radioactive Waste Policy Amendments Act as the central criterion for determining whether a compact, unaffiliated state, or jurisdiction would be allowed to contract for access with the Southeast Compact. The Import Policy specified that only those jurisdictions with access to Barnwell on December 31, 1992 would be able to contract for continuing access. This meant that New Hampshire, Rhode Island, Michigan, Puerto Rico, and the District of Columbia were not initially eligible to enter into a contract for access.

As of January 1, 1993, six compacts and four unaffiliated states had signed access contracts with the Southeast Compact. This accounted for all of the jurisdictions determined to be initially eligible for access to Barnwell except the State of

Maine. Maine was unable to execute a contract with the Southeast Compact because of a state law requiring a public referendum to enter into waste disposal contracts. The State of Maine has indicated that, pending the favorable outcome of a public referendum scheduled for November, 1993, it will seek to enter into an Access Contract with the Southeast Compact.

The Southeast Compact Commission did not, however, want to discourage initially ineligible jurisdictions from making future progress towards providing for the management of their LLRW. Therefore, the Commission decided to offer the possibility of future access during the Import Period as a "carrot" to encouraging progress in these jurisdictions. The "carrot" is a provision in the Import Policy detailing a procedure whereby initially ineligible jurisdictions can pursue eligibility status by successfully demonstrating such progress.

To date, however, none of the ineligible jurisdictions have undertaken the eligibility process. The State of New Hampshire has approached the Commission for relief from the eligibility requirements of the Import Policy, presumably under a provision in the Policy which allows states, compacts, and generators to petition the Commission for relief from provisions of the Import Policy. At press time, the Commission's Import Policy Committee is still in the process of developing and finalizing the petitioning provisions. We will talk more about the "Draft Working Petitioning Procedures" in the later sections of this paper.

Conditions for Maintaining Access

The Commission also wanted to make it clear to eligible compacts and states that access to Barnwell during the eighteen month period was merely a reprieve and not a pardon from their site development responsibilities. Each compact and state which is contracting with the Southeast Compact is required to demonstrate continuing progress through submission of periodic progress reports on siting activities. The first such progress report was submitted in December, 1992, as required, by all compacts and states under contract with the Southeast Compact. The Import Policy Committee is currently evaluating this information. Updated reports, which are due in March and September, 1993, will also be evaluated by the Committee. Based upon the results of these analyses, the Committee will make recommendations to the Commission on whether specific access contracts should be continued or terminated. The Import Policy Committee will present its first such recommendations to the Commission in April, 1993.

The Import Policy also contains a provision that allows the Southeast Compact Commission to terminate an access contract with a compact or unaffiliated state if it determines that an

"overt action has been taken by a compact region, designated host state within a compact region, or unaffiliated state, which the Commission determines substantially impedes the state or region's progress in fulfilling its responsibilities for providing, either by itself, or in cooperation with other states, for the disposal of its low-level radioactive waste."

This provision further emphasizes that the Southeast Compact's decision to allow compacts and unaffiliated states continuing access to Barnwell during the Import Period does not give them license to abandon their own siting efforts. In January, 1992, the Commission notified the Central Interstate Compact that recent actions taken by Nebraska, the Compact's host state, might be inconsistent with this provision.

On a more positive note, an amendment made to the Import Policy on November 13, 1992 was intended to reward compact regions or unaffiliated states whose regional facilities come on line during the Import Period. This change was made primarily because of the Southwest Compact's contention that their regional disposal facility could become operational during the Import Period (Table II). Whereas conditions in the September 28, 1992 Import Policy would have obligated generators to continued access fee payments after their own regional facility came on line, the November 13, 1992 amendments provided a mechanism for relieving generators of that obligation. This amendment reflects the Commission's objective of encouraging the implementation of the regional compact system envisioned by the Policy Act.

Access Fees and Waste Volumes

During the development of the Import Policy, the Southeast Compact Commission was faced with the task of determining an appropriate access fee for out-of-region users of the Barnwell Regional Facility. In addition, in order to meet the cash flow needs of the State of South Carolina, the Commission was faced with the need for developing a payment scheme that would ensure a consistent flow of revenue beginning early in the Import Period.

The Import Policy Committee determined that requiring larger generators to pay their fees up front would be the best solution to the cash flow problem. (The Committee defined "Large Generators" as those which projected disposal of greater than 1500 cubic feet of LLRW over the eighteen-month Import Period.) However, in order to determine the actual access fee rate, the Committee needed a better idea of the actual waste volumes that would be disposed at Barnwell over the eighteen months. Thus the Import Policy Committee asked Large Generators to provide projections of the waste volumes they would dispose at Barnwell during the eighteen-month Import Period, based upon a rate of \$220 per cubic foot. The results of the survey revealed total generator projections of 602,000 cubic feet for disposal over the eighteen-month period. In general, the total projection constituted approximately 65% of the waste volumes historically disposed by these generators*. This was probably due to the increase in fees to a rate of \$220 per cubic foot, from the \$40-\$120 surcharges in place at the time, and the requirement to pay the fees on an up front, quarterly basis.

In December, 1992 when CNSI, the site operator, asked generators to commit contractually to their projected waste volumes, the projection plummeted even further. As of December 31, 1992, 54 large generators had committed to dispose of approximately 550,000 cubic feet of LLRW at Barnwell during the eighteen-month period. While generators were not allowed to decrease their volume projections, several

* Conversation with Jack Harrison, CNSI, January 12, 1993.

generators which ordinarily would fall into the Large Generator category, decided to dispose as Small Generators. This decision allows them to avoid paying their access fees up front, but subjects them to a 30% penalty on any waste volumes they dispose in excess of 1500 cubic feet during the Import Period.

All of the required first quarter access fee payments were made on time, and no late penalties were assessed.

Petitioning Provision

Among the amendments made to the Import Policy on November 13, 1992, was a provision allowing generators, states, and compacts to petition the Commission for relief from any of the provisions of the Import Policy. This section was added in recognition of the fact that extraordinary or unforeseen circumstances might warrant granting a deviation or some form of relief from various provisions of the Import Policy. The addition of the petitioning provision was intended to make the Import Policy a more flexible and living document, and to minimize the need for amending the Policy in the future to address individual exceptions. Without the petitioning provision, any future amendments to the Policy would necessitate renegotiation of the access contracts since they incorporate the Import Policy by reference.

The addition of the petitioning provision went a long way in increasing the acceptability of the Import Policy to generators. During the course of the development of the Import Policy, generators raised several concerns which were not addressed in the Policy document originally passed by the Commission on September 28, 1992. One such concern was an Import Policy provision which specified that generators would remain obligated for continuing access fee payments if their compacts or states terminated their access contracts. The objective of this provision was to ensure predictable and adequate revenues to meet South Carolina's requirements for keeping the site open. Generators, however, were concerned that their compacts or states might act to terminate their access contracts for reasons beyond their control, and that generators would be left footing the bill, without access to the facility. Although several generators acknowledged the possibility of this occurring was negligible, the delicate and unpredictable nature of siting politics gave them cause for concern.

The Import Policy Committee is currently in the process of developing the procedures to be used by states, compacts and generators for petitioning the Commission. The Committee has distributed "Draft Working Petitioning Procedures," January 21, 1993(2). These procedures will be considered for approval by the Southeast Compact Commission at its April 14, 1993 meeting in Jackson, Mississippi. In the interim, the Import Committee will use the "Draft Procedures" in the initial processing of any requests it receives. It is possible that the Commission may consider both approval of the "Draft Procedures", and consideration of any petitions which have been declared complete, at its April meeting.

The Commission has already been approached by several generators and states who are interested in using the petitioning provision. The most common case is generators who wish to adjust their volume projections, which in turn would affect the magnitude of access fee and/or penalty payments. Although the Import Policy Committee allowed generators to adjust their initial volume projections upward prior to initiating their business arrangements with the site operator, there were no allowances made for adjustment of volume projec-

tions downward. One generator has indicated his belief that uncertainties associated with a decommissioning project justify downward adjustment of his volume projection.

Other requests have come from those jurisdictions which were determined to be initially ineligible for access, and which wish to be released from eligibility requirements. In the "Draft Working Petitioning Procedures", the Import Policy Committee makes its clear, however, that their interpretation of the Import Policy is such that only those states and compacts which are eligible for access may petition the Commission for any form of relief from the Import Policy. Thus the five jurisdictions which were not eligible to contract for access on December 31, 1992 are required to use the "Process for Determination of Eligibility Status for Negotiation of Access", as detailed in Section VI.C. of the *Import Policy*, in order to become eligible for access. Only after a determination of eligibility would such jurisdictions be eligible to invoke the petitioning process.

The Commission has also received a request for exemption from the requirement to enter into an access contract. Prior to issuance of the "Draft Working Petitioning Procedures", the State of Maine approached the Commission with such a request. Because the procedures had not yet been distributed as a working draft, the Commission was unable to consider Maine's request. The "Draft Working Petitioning Procedures", as proposed, will allow all states and compacts which are eligible for access to use the petition provision. The fact that Maine has not signed an access contract with the Southeast Compact would not preclude it from using the petitioning provision.

In both the development of the Import Policy and in previous decision-making processes, the Southeast Compact Commission has made clear its willingness to involve generators, states and compacts in its decision-making process. The petitioning provision is a prime example of the Commission's willingness to provide a forum for parties affected by Commission decisionmaking. However, members of the Import Policy Committee have made it clear that the Import Policy itself addresses nearly all major points of policy implementation, and that exceptions granted under the petitioning provision will be restricted to extraordinary circumstances.

Upcoming Issues

During the coming months, we expect that much of the Commission's efforts will be focused on routine implementation of the Import Policy, including the processing of petitions, the monitoring of siting efforts, and the evaluation of the periodic progress reports submitted by the various states and compacts.

In addition, the Commission will be following closely both the South Carolina and North Carolina legislatures, which are currently in session and will be until June. The South Carolina Legislature, which last year fought a hotly contested battle over whether to extend operation of the Barnwell facility, will remain tuned in to the issue.

It will be a critical session in the North Carolina legislature since the preferred site selection decision will be made at the end of the year. Issues which may capture the attention of the many new North Carolina legislators include the progress made by other compacts in their siting efforts, the implications of the Supreme Court decision with respect to state responsibilities for managing LLRW, and provisions of the South Carolina legislation passed last year which touch on North

Carolina siting efforts. Integral to the Legislature's ultimate acceptance of the North Carolina facility will be the assurance that other states and compacts are serious about siting their facilities and that the regional compact system will be successfully implemented nationally.

CONCLUSION

One thing that became clear during the Southeast Compact Commission's development and initial implementation of the Import Policy was the cooperative spirit shared by the states, compacts and generators who worked together to make the Import Policy a reality. The real challenge, however, will be continuing that cooperation to finish implementing the regional compact system on a national basis. By allowing out-of-region generators to access the Southeast Compact's regional facility for an additional eighteen months, the State

of South Carolina and the Southeast Compact Commission have granted compacts and states a reprieve from immediate problems of interim LLRW management. This should not be construed as a pardon from ultimate siting responsibilities, but rather as a show of continued support, and a call for a renewed dedication to putting the new regional compact system in place.

REFERENCES

1. Southeast Compact Commission, *Policy for the Import of LLRW to the Regional Facility for the Period January 1, 1993 - June 30, 1994* (September 28, 1992).
2. Southeast Compact Commission, "Draft Working Petitioning Procedures" (January 21, 1993).