

INVOLVING STATE LEGISLATORS IN NUCLEAR ISSUES

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ABSTRACT

This paper will utilize case studies to highlight the problems that can arise when state legislators are not involved early in the decision making process for nuclear projects in a meaningful way. In addition, the paper will emphasize the importance of knowing the interests of those the legislators are seeking to involve and specific examples of successful and challenging public involvement initiatives.

INTRODUCTION

Nuclear cleanup projects that require public involvement—whether by law, regulation or statute—can either be assisted or hampered depending on whether policymakers are involved or not. State legislators are a critical stakeholder group, yet they are often overlooked in the public involvement process. This oversight can create an unnecessary hurdle for project managers to overcome. Understanding how to (1) build and maintain strong relationships with state legislators and legislative staff, (2) tailor outreach programs to effectively engage policymakers and (3) package technical material will help project managers when dealing with policymakers. Additionally, as term limits continue to impact state legislatures and institutional knowledge on complex issues such as the treatment, storage, transportation and disposal of nuclear materials is lost, it becomes more and more important to find effective methods of involving state legislators in these issues.

The four case studies below highlight challenging and successful approaches to state legislative involvement in cleanup projects and methods that legislatures have taken to influence these cleanup projects in the absence of such involvement.

Case Study 1: The Cleanup of the Rocky Flats Environmental Technology Site near Denver, Colorado.

The nuclear weapons program, which was a part of the United States' defense program, was intentionally decentralized with facilities being strategically located across the United States. In 1952 one of these facilities, the 6,550 acre Rocky Flats Plant, was responsible for manufacturing the nuclear trigger device or "pitt." Located 16 miles northwest from the heart of Denver, Colorado, the facility is currently located within a 50-mile radius of 2.2 million people.

When the Cold War ended, the Rocky Flats Plant no longer had a weapons production mission and instead turned to environmental cleanup. The cleanup process at the currently named Rocky Flats Environmental Technology Site will be used to highlight a project that posed a challenging public involvement initiative due to both a history of mistrust surrounding the facility and the Department of Energy and a lack of key stakeholder involvement early in the cleanup initiative.

There was a myriad of stakeholders to involve and some of the most vocal were legislators. There were several local legislators who represented community members and employees and they all shared a significant concern regarding cleanup plans for the facility. The mistrust, which developed due to a lack of ongoing, open communication between the Department of Energy and state legislators took years to overcome.

Rocky Flats had an infamous reputation among the sites in the DOE complex. The secrecy that was required during weapons production coupled with inadequate waste handling practices, led to whistleblower reports of dire conditions at the sites. After years of secrecy and alleged criminal behavior by Rockwell, the contractor at Rocky Flats, the Department of Energy had a mountain to climb before the community would have any trust in their actions.

The road to rebuilding trust was a lengthy one that was established by developing relationships between site managers and key stakeholders, including state legislators. It took a commitment on the parts of site managers, project managers, site engineers and stakeholders to accomplish this task. Several meetings and briefings as well as ongoing, open communication were paramount to rebuilding trust. During this time, the Federal Facilities Environmental Restoration Dialogue was convened to make recommendations to DOE on how to improve outreach at the various sites. This group, which included policymakers, recommended the creation of community advisory boards. A community advisory board was created at the Rocky Flats Site and included one of the most vocal state legislators. This legislator played a key role in the community advisory boards' early years and created a very important link to the Colorado Legislature allowing for direct information sharing on activities at the site. This legislator relied heavily on NCSL to provide him with both technical and policy information on similar activities at other sites across the complex. The legislature was kept abreast of important upcoming decisions and the key role the Colorado Department of Public Health and Environment would play. The legislature provided the necessary budget and authority for CDPHE to adequately monitor and regulate activity at the site.

The DOE would have benefited by building relationships with policymakers during their initial years of operation and those relationships would still have been in place prior to the concerns regarding operation and cleanup.

Case Study 2: The Illinois Spent Nuclear Fuel and High-Level Waste Inspection and Escort Program.

Due to its central geographic location and extensive transportation infrastructure, the state of Illinois is one of the nation's transportation hubs. In addition, Illinois is host to six operating nuclear power stations, a national laboratory and the only operating commercial nuclear storage facility in the United States. Because of the extensive development of the nuclear industry within the state, the Illinois Department of Nuclear Safety (IDNS) was created in 1980. The primary mission of the IDNS is to protect Illinois citizens from radiation hazards.

To fulfill this responsibility, the IDNS developed, what was at the time, one of the most advanced nuclear facility monitoring and emergency response systems in the world. The system, however, was deficient with regard to its immediate response capabilities along transportation routes. Illinois' nuclear profile results in numerous truck and train shipments of spent fuel moving into, out of, and through the state en route to out of state destinations for research or storage purposes. The insufficiencies of the IDNS response system, coupled with the number of shipments travelling within the state, prompted the legislature to mandate that the department establish a more comprehensive inspection and escort program based on a preventative approach to ensuring public health and safety.

The legislatively mandated *Spent Nuclear Fuel and High-Level Waste Inspection and Escort Program*—420 ILCS 5/8 § 8 (a) (9)—was designed to accomplish three main goals with regards to the inspection and escort of spent nuclear fuel and high-level waste shipments. With the opening of the U.S. Department

of Energy's Waste Isolation Pilot Plant in New Mexico, the legislature added transuranic waste shipments to those requiring inspection and escort. The three goals are to:

1. Prevent accidents by allowing only transportation equipment and vehicles that pass rigorous inspections to travel in the state;
2. Provide immediate on scene radiation expertise in the event of an accident during shipment; and
3. Ensure compliance with all U.S. Department of Transportation and U.S. Nuclear Regulatory Commission regulations governing shipment of these materials.

The program, developed in 1983 by IDNS, is carried out by the Department in cooperation with several other Illinois state agencies. The other responsible parties include the Illinois Emergency Management Agency's Division of Nuclear Safety, the Illinois State Police and the Illinois Commerce Commission.

Since the implementation of the inspection and escort program in 1983, more than 480 shipments of spent nuclear fuel have been transported through the state. Only eight of the 403 truck shipments and 81 train shipments have experienced delays. The eight delays were attributed to carrier violations identified during inspection and include paperwork discrepancies and mechanical problems. All violations were rectified on-site, allowing the shipments to proceed without further delays. No transportation accidents have occurred during the twenty years the program has been operating. There have been only minor radiation-related violations that did not result in any measurable radiation dose or risk to the public.

The program is partially funded by fees assessed on commercial shippers of spent nuclear fuel, high-level waste and transuranic waste. The state assesses a fee of \$2,500 per cask for truck shipments and \$4,500 for the first cask and \$3,000 for each additional cask for train shipments.

Although only five waste shipments passed through Illinois in 2000 and eight in 2001, the Illinois Emergency Management Agency's Division of Nuclear Safety is preparing for the time when there will be many shipments each year. The opening of WIPP and the future opening of a high-level waste repository will significantly increase the number of shipments travelling through Illinois and across the country. As the only program of its kind in the country, Illinois is unique among states through which shipments of radioactive waste travel. The forthcoming increase in shipments has states looking to Illinois for leadership and guidance as they look at establishing similar programs.

Case Study 3: The Department of Energy's Waste Isolation Pilot Plant.

The U.S. Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP) became the nation's first operating underground repository for all transuranic radioactive waste left from the research and production of nuclear weapons on March 26, 1999. The City of Carlsbad, New Mexico recognized the need for a waste disposal facility and in the early 1970s supported the idea of siting the WIPP near Carlsbad. On December 29, 1979 Congress passed the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (P.L. 96-164) authorizing the WIPP.

The WIPP Land Withdrawal Act was passed by Congress and signed by President George Bush in 1992. Included in the Act were requirements for oversight and regulation of the WIPP by federal and state agencies and the provision of economic assistance to the state of New Mexico. The U.S. Environmental Protection Agency (EPA) was identified as the WIPP's primary regulator. The Act also limited the waste sent to WIPP to DOE defense related waste, explicitly prohibiting the disposal of spent nuclear fuel and high level radioactive waste at the facility.

The EPA certified that the repository would meet the standards it had established for the facility on May 18, 1998. A 1990 DOE Record of Decision (ROD) made a commitment to conduct another study prior to disposing of waste at the WIPP. A 1998 DOE Record of Decision finalized the agency's decision to dispose of its defense generated transuranic waste at the WIPP once the material has been prepared to meet waste acceptance criteria. The 1998 ROD included the transportation mode decision to be trucks, although rail transportation might be used some time in the future.

The first shipments to the WIPP were scheduled to leave Los Alamos National Laboratory (LANL) in June 1998. The DOE delayed the shipment due to concerns voiced by the New Mexico Environment Department about DOE's characterization of the waste. The first shipment left LANL on March 25, 1999 arriving at the WIPP the following morning. Shipments from the Idaho National Engineering and Environmental Laboratory and the Rocky Flats Environmental Technology Site soon followed.

While the federal government—Department of Energy and the Environmental Protection Agency—provided extensive oversight to the opening of the WIPP, the additional affected parties were involved as well. Western states recognized their responsibility to ensure the safety of their residents while protecting the environment from potential hazards associated with the shipments to WIPP. In response, the Western Governors' Association established a Technical Advisory Group (TAG) responsible for addressing safety issues relative to transportation. The TAG was initially comprised of representatives from the seven states that are along the initial planned transportation corridors—New Mexico, Colorado, Wyoming, Utah, Idaho, Oregon and Washington. It was later expanded to include the states through which shipments will eventually occur—Arizona, California, Nebraska and Nevada. These western states began working with the federal government in 1989 to develop a transportation safety program. Similar activities are coordinated with other states and Native American tribes along the shipping routes by the DOE.

State legislators were not notably involved in the WIPP project. Much of the involvement occurred in the executive branch—especially in New Mexico—the federal level and the very local level. The inclusion of state legislators might have impacted the direction and the timeline of the project as can be seen today with the possible construction and operation of a high-level waste geologic repository.

Case Study 4: The National Conference of State Legislatures Legislative Education Program.

In order to assure state policymakers are appropriately and effectively involved in environmental decision-making, the National Conference of State Legislatures (NCSL)—www.ncsl.org—has designed a legislative outreach program model that includes the use of legislative roundtables, legislative working groups, facility tours, policy briefs, and state briefings including legislative testimony and informational presentations.

NCSL represents the nation's more than 6,400 state legislators and has worked on environmental cleanup issues for more than 28 years.

The basic tenets of NCSL's legislative outreach model include: involvement at the beginning of any decision-making process, access to scientifically sound, broad-based, defensible and understandable information, and direct access to decision-makers.

NCSL works closely with several offices within the Department of Energy to ensure that legislators are involved at varying levels in environmental cleanup related decisions. Specifically, NCSL works with the Office of Environmental Management and the Office of Civilian Radioactive Waste Management. Working through cooperative agreements, NCSL designs legislative roundtables that bring together legislators from states that host or surround DOE facilities that were a part of the former DOE weapons complex. The intent is to bring state legislators from many states together to discuss issues of mutual

concern and to bridge the gap between policymakers from communities who are seen to be “competing” for a limited pool of cleanup dollars. As legislators engage their colleagues, they begin to see that they face many of the same issues and that decisions that are made at one site impact the other sites. The desire is that these policymakers will see the bigger picture and realize that the former weapons complex is one large project and not several individual site projects. This is an important distinction because of the interconnectedness of the waste management practices that exist within the complex. (i.e. The cleanup at one site is dependent upon waste being treated and/or disposed of at another site.)

Facility tours and access to site technical staff allow legislators direct access to the science behind the work at these facilities. During the site tours, legislators also have access to community members, affected Native American Tribes, public interest groups and workers, to ensure that they hear from all of the affected parties. This allows the legislators to determine how best to serve the interest of all of these constituents.

The policy briefs are utilized to provide both concise and accurate information that legislators can utilize to assist them as they craft effective public policy. NCSL also writes two-page fact sheets called LegisBriefs for a quick synopsis of an issue and longer reports (10-12 pages) are produced to provide legislators and legislative staff with in-depth information on a topic. NCSL can also draft model legislation if requested. Monthly and quarterly newsletters are also provided to keep legislators up-to-date on issues of importance.

Providing a unified voice for state legislators has been one goal of NCSL work on nuclear issues. Ensuring that state legislators have a voice in cleanup and waste management decisions is key to the success of any environmental project. State legislators serve a very important role; they represent broader interests than local elected officials and are responsible for appropriating funds for state regulatory agencies. Additionally, state legislators are often the link between Congress and the communities. They should not be overlooked when creating effective public outreach plans.

CONCLUSIONS

As seen in the case studies above, there are various ways in which state legislatures can influence nuclear programs cooperatively and individually within their borders. As with the cleanup of Rocky Flats, keeping the legislature informed of impending decisions by the DOE—via a direct relationship with state legislators and a legislative presence on one of the citizen’s advisory boards—facilitated building trust and allowing for the proper appropriation of funds to departments directly impacted by those decisions. The Illinois legislature—aware of the state’s significant nuclear activity and physical location within the country—was proactive, mandating the creation of a spent nuclear fuel and high-level waste transportation program to ensure the health and safety of its citizens. While state legislators in New Mexico were not very involved in the siting and development of the WIPP, they have been very involved in enhancing additional scientific research opportunities surrounding WIPP activities. Additionally, legislators in other states are studying the WIPP process as the proposed high-level waste repository in Nevada continues on its’ path to being licensed.

The legislative education program of the National Conference of State Legislatures provides resources to state decision makers throughout the country. In addition, NCSL puts legislators in similar situations in contact with one another so they can share ideas and experiences about legislative actions that were successful, and others that were not, within their individual states. NCSL also brings key legislative committees together to discuss issues of concern and provides them with a range of policy options to address these issues. The key role that state legislatures play in the implementation of programs within their boundaries is one that is important not to over look.

REFERENCES

- 1 Colorado Center for Environmental Management, Environmental Decision-Making: Conflict and Consensus. Denver, Colo.: CCEM, 1993.
- 2 Federal Facilities Environmental Restoration Dialogue Committee, Final Report: Consensus Principles and Recommendations For Improving Federal Facilities Cleanup. Washington, DC.: April 1996.
- 3 Illinois Emergency Management Agency, Division of Nuclear Safety, Illinois Spent Nuclear Fuel and High-Level Waste Inspection and Escort Program. Springfield, Ill.: Illinois Emergency Management Agency, 1983.
- 4 Illinois Nuclear Safety Preparedness Act, 420 ILL. COMP. STAT. 5/1-11 (2002).
- 5 National Conference of State Legislatures, Hazardous and Radioactive Materials Program, www.ncsl.org/programs/esnr/hazmats.htm#high. Denver, Colo.: NCSL, 2003.
- 6 National Governors' Association, From Crisis to Commitment: Environmental Cleanup and Compliance at Federal Facilities. Washington, D.C.: NGA, January 1990.
- 7 U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division, Public Participation in Environmental Restoration Activities, Washington, D.C.: U.S. DOE, November 1991.
- 8 U.S. Department of Energy, Carlsbad Field Office, Pioneering Nuclear Waste Disposal. (DOE/CAO-00-3124) Carlsbad, N.M.: U.S. DOE, February 2000.
- 9 Western Governors' Association, Western State Committed to Radioactive Waste Transportation Safety. Denver, Colo.: Western Governors' Association, September 2001.