

GAUGING THE EFFECT OF COURT RULING ON LLRW

THE U.S. SUPREME COURT ruling that a central provision of the Low-Level Radioactive Waste Policy Amendments Act of 1986 violates the Constitution is not expected to hamper the establishment of regional disposal sites for low-level waste across the country. But producers of radioactive waste remain wary that state governors and other state officials will take advantage of the court decision as a chance to put waste-siting efforts on hold.

An official in at least one state has done just that. Attorney General Richard Blumenthal of Connecticut urged his state's General Assembly to halt efforts to select a waste site while awaiting possible action from Congress. However widespread such sentiments may be, many states and regional compacts continue to move ahead with plans for waste disposal.

The Low-Level Radioactive Waste Policy Amendments Act of 1986 made the states responsible for building waste sites and set a series of deadlines. Penalties for missing deadlines include the threat of loss of access and surcharges to be paid by waste producers. A so-called "take-title" provision would have forced states to assume ownership of wastes and legal liability if they failed to have disposal capacity by 1996. Reversing both a federal district court and a U.S. Court of Appeals, The Supreme Court ruled in June that the take-title provision violated the Tenth Amendment to the Constitution, which reserves certain powers to the states. "In this provision, Congress crossed the line distinguishing encouragement from coercion," wrote Justice Sandra Day O'Connor in a 6-3 decision. In a dissenting opinion, Justice Byron R. White wrote that "Hard public policy choices sometimes require strong measures" and that the take-title provision "was part of a complex interstate agreement about which New York should not now be permitted to complain."

New York State originally challenged

the Federal Government in court in February 1990 on the constitutionality of the waste law after efforts to find a suitable site for a waste facility for the state ran into political gridlock. New York Governor Mario M. Cuomo said that the Supreme Court's decision puts pressure on power utilities to come up with waste storage plans. In interviews with reporters following the decision, he went so far as to suggest that nuclear power plants might be used indefinitely to store low-level wastes from research and medicine as well as from the power plants themselves.

Waste generators in New York remain optimistic that the Court ruling won't have much effect on waste-siting efforts. "Our siting process is moving at a snail's pace and it will continue to do so," says Bennett S. Greenspan, MD, assistant professor of radiology at the University of Rochester and a member of the New York State Low-Level Waste Group. The New York state assembly is considering various pieces of legislation to provide for low-level radioactive waste disposal. One bill would clear the way for building a waste facility in the town of Ashford, where the town board voted in favor of a waste site.

State Responsibility

On the other side of the continent, California legislators are also poised to dictate the future of waste-siting efforts. "The Supreme Court ruling says the states have two choices: They can be responsible and take care of the problem or be irresponsible and force the waste producers to be stuck with it," says Steve Romano, manager of California operations for U.S. Ecology, the firm selected to build and operate low-level waste sites in California and Nebraska.

Three months ago California agreed to hold adjudicatory hearings, which anti-nuclear groups had sought in an effort to forestall construction of a waste facility at a site called Ward Valley. Frustrated by the decision to hold further hearings, U.S.

Ecology has raised the possibility of going to court to prod the state to solve the waste disposal dilemma.

Cost Hindering Research

Shipping costs for low-level waste will continue to drain the budgets of hospitals, research facilities, and other industries. In states that missed the January 1992 milestone for waste facility licensing, hospitals and labs must pay surcharges totaling \$120 per cubic foot, which brings the cost of waste disposal to about \$170 per cubic foot. The cost prohibits most hospitals from shipping waste so they must store it for decay. Storage of all wastes is not possible at major research centers that generate large volumes of waste and use longer-lived radionuclides. Yet on January 1, 1993, the three states with existing waste sites, Washington, South Carolina, and Nevada, will either deny access to states outside of their regional compacts or close altogether.

Authorities in Washington say the Hanford site will accept only waste from within the Rocky Mountain Compact beginning in 1993. The Beatty, Nevada site is scheduled for decommissioning in 1993. The South Carolina legislature recently passed an amendment to accept waste at the Barnwell site until 1994, with additional charges on waste from out-of-region. "Barnwell will be an expensive safety valve," comments Holmes Brown of the Low-Level Waste Forum, an industry group. The Barnwell option could easily disintegrate if officials in South Carolina don't see progress on a new waste facility in neighboring North Carolina, the next host state in the Southeast Compact.

"We're in a very unsettled position," Mr. Brown said at a waste disposal seminar at The Society of Nuclear Medicine Annual Meeting in June. From here on, he said, "Opposition is only going to intensify."

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