

Article for *Radwaste Solutions Magazine*

By Kathryn V. Haynes

Submitted March 24, 2000

In 1984, I accepted the position of Associate Director of the Southeast Compact Commission, believing that the implementation of the Low-Level Radioactive Waste Policy Act was a worthy cause. I firmly believed that the Act would be fully implemented.

I was not so naive as to think that it would be easy. By that time in my career, I already had considerable experience in implementing controversial projects—public water fluoridation, sex education in public schools, and hazardous waste facilities. After two years in the North Carolina governor's office working to site a hazardous waste treatment facility, I understood that providing access to disposal facilities is a political problem and that I was taking on a big challenge.

I believed the Act would be successfully implemented primarily because it is the right thing to do—it would protect health and safety and it would put the equity decisions where they belong, at the state level. Although I recognized that this was a daring experiment in public policy, I believed that the Act could and would be implemented because the concept benefited from such universal favor. Rarely has a bill gone through Congress with such resounding support from the states, federal agencies, and industry.

“Where is that support now?” one might ask. It is true that the Act no longer enjoys universal support. Hundreds of millions of dollars have been spent to develop new facilities, yet only one new disposal facility has been opened since 1980, Envirocare of Utah. Indeed, my home state of North Carolina failed to fulfill its commitment to provide a facility after accepting almost \$80 million from the Southeast Compact Commission; the Commission has levied sanctions against North Carolina and is seeking return of the funds by July 10, 2000, but the matter remains unsettled. Many waste generators ceased promoting regional facilities after South Carolina changed the rules of the game by keeping the Barnwell facility open after its scheduled closing date in 1993. Absent strong and universal encouragement from waste generators and without the threat of the “Take-Title” provision of the Act, elected officials lacked the courage to support these political “hot potatoes.” Some of the authors of the Act, now in high positions in the Clinton administration, even obstructed the transfer of federal land for a facility in Ward Valley, California. Indeed, the actual enforceability of compacts is being tested in the federal courts in Nebraska. Industry, state and federal government are now divided or disinterested in support of the Act.

Nevertheless, almost sixteen years later, I still believe that the intent, if not the letter, of the Act has been and will continue to be successfully implemented. However, my reasons for this belief have changed considerably.

I believe new disposal capacity will be created because industry needs access to safe waste disposal.

I believe new disposal capacity will be created because of the law of supply and demand. Where there is demand for a service there will be an industrious capitalist not too far behind as well as a state which is pleased to collect the resulting economic rewards.

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In recent years, a number of companies have shown an interest in developing new disposal facilities.

I believe the Act will be implemented successfully because it remains the most promising alternative to provide for this waste stream. Congress does not want the responsibility of designating a location for commercial low-level radioactive waste disposal. No one seems to want the Department of Energy to take responsibility for this waste, least of all the Department. While some argue that the process should be turned over to the private sector, I fail to understand how this would make it easier for private companies to develop sites. The setbacks in facility siting experienced by private companies in recent years have been related to local, state, and federal political factors—not to the compact system. Moreover, without the benefit of the exclusionary authority granted under the Act, the states of Washington and South Carolina would be unwilling to continue operating the existing disposal sites.

Finally, and perhaps most importantly, I believe the Act should remain national policy because of the following achievements that have taken place since the legislation was enacted in 1980.

- State responsibility. Congress asked states to take responsibility for providing access to low-level radioactive waste disposal facilities for their generators. States have pursued this responsibility for twenty years.
- Regional cooperation. Congress encouraged states to form compacts to share in the responsibility. To date, states have formed and Congress has ratified ten interstate compacts.
- Access to disposal. Generators across the nation have had almost continuous access to disposal facilities for twenty years. Exceptions would include denial of access to Michigan (November, 1990-July, 1995), North Carolina (July 1, 1995-present), and several regions and states outside of the Northwest and Southeast compacts for a portion of 1993.

- Equity. Exclusionary authority was the primary tool that Congress provided states to allow them to control the amount of waste they were required to accept. Each state could determine what constituted an equitable burden, and no state that joined a compact and developed a site would be faced with being the sole national disposal location. The Supreme Court has upheld the Constitutionality of exclusionary authority, and the several regions that have chosen to utilize this authority have done so successfully. The ability to control the amount of waste from out-of-region generators remains the basis on which the Northwest Compact continues to operate and is the impetus for the new Atlantic Compact, which will allow South Carolina to phase down its national role and eventually to provide disposal capacity to member states only. The equity provisions of the Act form the cornerstone of a successful federal waste policy.

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- Inter-regional cooperation. Several issues (such as the need for a uniform manifesting system and the need for waste to flow across regional lines for treatment and processing) have been handled successfully in the past twenty years through interstate and inter-regional cooperation. States and compacts have shown that they can work together on common problems through organizations such as the Low-Level Radioactive Waste Forum.

Although my reasons have changed, I continue to think that the current system is workable. While the current configuration of facilities may not look exactly like some people envisioned, the original objectives of the Act--state responsibility, equity, and access--are being and will continue to be met.

And I still think it is the right thing to do.