10 REASONS TO WITHDRAW FROM THE SOUTHEAST COMPACT

1) Waste Management Control

A North Carolina-only low-level radioactive waste facility (LLRW) would guarantee our state total control over waste management. There would be no need for time-consuming negotiations with other states on issues of siting, disposal charges, inspections, etc.

2) Other States Have Opted to Go It Alone

Texas, New York and Massachusetts are not joining compacts and are planning to site state-only facilities. The path is already paved for single state LLRW management. Furthermore, the LLRW Policy Amendments Act of 1985 mandates that a state "shall be responsible for providing, either by itself or in cooperation with other states, for the disposal of LLRW."

3) Generators Are Held Responsible

A NC facility could utilize a site, where environmentally safe, near one or two nuclear power plants to isolate LLRW. Nuclear reactors generate 87% of the volume and 97% of the radioactivity in LLRW in North Carolina. On-site storage would reduce transportation, and concentrate radioactive waste near the source.

4) The Selection of North Carolina Was Unfair

Dr. Mark Stegeman of the University of North Carolina at Chapel Hill has shown statistically that the states of Georgia, Mississippi and Florida manipulated the host state selection process so each would not be chosen. Earl Mac Cormac, science advisor to Governor Martin called the process an "expensive lottery."

5) Low-Level Does Not Mean Low Hazard

LLRW contains materials in high-level waste, only in smaller concentrations. Since North Carolina has opposed a federal high-level waste dump, should it take on the LLRW problem for the southeastern region? It would take a North Carolina-only facility 320 years to accumulate the amount of waste it could end up with under the Southeast Compact in just 20 years.

6) The Compact Offers No Guarantees for the Future

Because one legislature cannot bind a future one, there are no guarantees that when North Carolina's turn is up in 20 years, that any other state will take its turn and site a facility. Sanctions imposed by the Compact Commission to attempt the keep states from withdrawing cannot be legally enforced. In 20 years, the entire compact could have fallen apart, thereby leaving North Carolina holding the nuclear waste bag.
7) The Compact Commission Has Refused to Address Future Host State Selection

Despite repeated requests at three meetings from the North Carolina Compact Commissioners, the commission has not set up a timetable to choose the next host state or formally endorsed a procedure by which to make that selection. Given the delay, it is questionable whether the Commission takes seriously the issue of there ever being another host state.

8) The Financial Costs of Withdrawal Are Negligible

If North Carolina sets up its own facility, the costs to consumers, who ultimately bear the additional costs, is minimal. The cost, including pre-operational, operational, closure, post-closure and community compensation, for a North Carolina-only facility using enhanced disposal would be less than $1.00 per resident per year. Given the tremendous decrease in waste to be handled if North Carolina goes alone, citizens may be willing to pay the small fee.

9) The Southeast Compact Is Too Large

The Southeast Compact is the largest in the U.S. No other compact has eight members. According to the Department of Energy, the Southeast region generates 50% of the LLRW volume in the nation and nearly 40% of the radioactivity. Should North Carolina take on this enormous radioactive waste legacy?

10) Communities Are Saying No to the Compact

Communities across the state are supporting the repeal of the Southeast Compact. A smaller, state-only facility may be easier to site because communities will not be asked to take waste from seven other states. Smaller facilities may be more acceptable.
CAN RADIOACTIVE WASTE BE SAFELY MANAGED?

Whether or not North Carolina takes the Southeast Compact regional low-level radioactive waste (LLRW) facility or opts to go-it-alone, choosing the right technology is crucial to safeguard the future health and well being of North Carolinians. This is because some of the wastes will remain radioactive for hundreds, even thousands of years.

* Landfills Leak

In humid areas of the country, even state-of-the-art radioactive landfills will eventually leak. All four radioactive landfills in the east have leaked, three have been closed. The poor operating record of these facilities illustrates the need for enhanced disposal.

* At Sheffield, Illinois, nearby farmland has been purchased from the owner because radioactivity has migrated from the disposal site.

* At Maxey Flats, KY, radioactive plutonium has been found approximately one-quarter of a mile from the site boundary.

* At West Valley, New York, federal tax dollars are being used to exhume breached steel radioactive waste containers which were buried only 16 years ago.

* The Barnwell, South Carolina dump has shown signs of contamination underneath the unlined trenches.

Alternatives to Landfills Exist

Leaking landfills threaten groundwater and the human health if radioactivity is taken up through the food chain. Because of these potential dangers, radioactive waste volumes must be reduced, segregated by concentration, longevity and danger to humans and managed in monitored, retrievable systems.

Dartmouth College Medical School
Dartmouth College has built a facility that economically and safely handles the majority of their research and medical wastes. Wastes are compacted and stored for decay in above-ground concrete buildings with special fire and security provisions. The Dartmouth system costs less than shipping waste to a disposal facility.

Ontario Hydro
In Canada, nuclear utility Ontario Hydro segregates waste according to its activity, then manages each category according to its particular needs. The most radioactive materials are packaged in steel cylinders and placed in tile lined holes that are equipped with a drainage and monitoring system. Decayed wastes are removed and placed in large above-ground buildings where they are continued to be monitored. Lower level wastes are placed in other above-ground storage buildings.

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NEAR REACTOR STORAGE OF LOW-LEVEL RADIOACTIVE WASTE

Every nuclear power plant in the U.S. may some day become a de facto radioactive waste dump. This is due the massive and expensive process that dismantling plants would entail. In fact, the technology for taking apart a large reactor vessel has not been completely demonstrated. The decommissioning of a small reactor in Shippingsport, Pa. has proven extremely difficult.

Decommissioning costs range from $50 million to $3 billion per reactor (Public Citizen, 1985). If reactors were dismantled, each plant would create about 1,300 truckloads of low-level radioactive waste (for a 1,100 megawatt pressurized water reactor, US NRC, 1978).

With nearly 100 operating commercial reactors in the country today, and some 66 due for permanent shutdown by 2010, 24 of which are in the Southeast, the merits of near reactor storage of low-level radioactive waste (LLRW) warrant serious consideration.

Where environmentally appropriate, near reactor storage of LLRW can provide the following benefits:

* Minimizes the transportation of radioactive waste on our highways.

* Decreases the number of areas in our state contaminated by radiation.

* Utilizes already trained utility personnel who care for LLRW generated on-site; the site is already regulated and security is in place.

* Since dismantlement of reactors may be too expensive to justify, utilities may choose to entomb reactors with reinforced concrete and erect barriers to keep out intruders. Given the economic realities, plant sites may become waste sites anyway. Keeping LLRW at reactor sites adds a small increment to the vast volume and radioactivity of the reactor itself.

* Selection of new LLRW sites promises to be difficult. Political opposition to waste sites is strong in North Carolina. Citizens may be more willing to accept one or two nuclear power plant sites to house LLRW from all North Carolina generators rather than burden yet another community with radioactive waste.

* The U.S. Nuclear Regulatory Commission allows storage facilities at nuclear power plants for waste generated on and off-site with certain stipulations (U.S. NRC Generic Letter 85-14, August, 1985). In addition, John Hicks, senior vice-president of Duke Power, told the Raleigh News and Observer that "if utilities were forced to handle their own waste, they might be willing to take other waste as a gesture of good faith."

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ECONOMICS OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

The economic impacts to North Carolinians if the state withdraws from the Southeast Compact is an important issue to consider in the withdrawal debate. To date, little reliable information has been available in North Carolina. Utilities claim that withdrawal could cost them millions of dollars; others have speculated that the costs would be small change to ratepayers given the risks associated with hosting a regional facility.

In a recent economic study released by the Clean Water Fund, Dr. Mark Stegeman, economics professor at the University of North Carolina at Chapel Hill, showed that additional costs to consumers would be minimal if North Carolina withdrew from the Southeast Compact, formed a smaller compact or established its own facility.

Stegeman's analysis critiqued Ebasco Services' economic analysis of low-level radioactive waste (LLRW) options for North Carolina, commissioned by the Legislative Services Commission in 1986, showing its bias toward remaining in the Southeast Compact. Stegeman revealed that Ebasco's cost estimates were unjustified and that several economic assumptions were unsubstantiated. Given these problems with the report, Stegeman concluded that Ebasco's results were meaningless.

The costs of withdrawing from the Southeast Compact are small whether North Carolina goes alone or forms a smaller Compact. Ebasco claims that withdrawal would increase disposal charges by $47 to $110 per cubic foot; Stegeman's study shows that withdrawal would increase disposal charges by $7 to $43 per cubic foot. If the entire cost were passed onto consumers, then the annual cost per North Carolina resident would be less than $1.00. This $1.00 includes utilizing an enhanced, retrievable technology, pre-operating, operating, closure, 100-year post-closure costs and compensation to the sited community.

Given the miniscule costs to consumers if North Carolina withdraws from the Southeast Compact, the General Assembly should seriously consider this option. Citizens across the state may be willing to pay a little more in their utility bills and for medical uses of radioactive material to keep the entire region's radioactive waste out of North Carolina.

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FAIRNESS AND GOOD FAITH NEGOTIATIONS
BY THE SOUTHEAST COMPACT

The glue that holds the Southeast Compact together is the understanding that member states will be fair and negotiate in good faith in their deliberations regarding the unpopular subject of low-level radioactive waste (LLRW) disposal. However, the glue may be coming loose.

Since North Carolina was chosen to accept the Southeast regional facility in 1986, Compact Commission has ignored North Carolina’s requests for action. New information has come to light that questions the integrity of the host state selection process and how it was used to serve self-interests.

* Southeast Compact Members Manipulated the Host Selection Outcome

In recent testimony before the NC General Assembly House Water and Air Resources Committee, Dr. Mark Stegeman, economics professor at the University of North Carolina at Chapel Hill, stated that the process for host state selection gave states a strong incentive to manipulate their voting. Furthermore, several states had taken advantage of this procedure. Stegeman showed statistically that Florida, Mississippi and Georgia’s biased voting on criteria for host state selection was not a coincidence and that their votes ensured their own non-selection. North Carolina was the only state that did not help itself in the voting. Stegeman also noted that the biased voting substantially affected the outcome of which state was chosen to host the regional LLRW facility. If North Carolina had only voted slightly different, it would not have been ranked first.

* The Southeast Compact Commission has not Responded to NC’s Concerns

Early in 1987, North Carolina Compact Commissioners requested that future host states, specifically the next one, be chosen now in order to begin the siting process. This would show North Carolina that other states are serious about hosting a future facility and would enable that state ample lead time to proceed with site selection, unlike the breakneck speed at which North Carolina must work to meet its deadline. To date, the Commission has refused to do so, claiming that it needs to develop updated information for the next host state identification. This response and delay is highly suspect. Do Compact members take the rotation of the facility seriously? Why shouldn’t the data that was used to choose North Carolina as the host be used to identify future host states?

Issues of honest negotiation and fairness raise serious doubts about the future of the Southeast Compact. If good faith efforts by the Commission are currently being questioned, what will the future hold if North Carolina accepts the regional facility?

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LEGAL IMPLICATIONS OF WITHDRAWING FROM THE SOUTHEAST COMPACT

One perceived obstacle to North Carolina's withdrawal from the Southeast Compact is the legal implications of that decision. While Congress gave compacts the explicit right to exclude out-of-region waste in the Low-Level Radioactive Waste Policy Act, similar rights for states opting to go alone have been left muddy. Here is a summary of legal issues related to the Southeast Compact and withdrawal.

* The Southeast Compact is a legal agreement among 8 states which has been approved by Congress. NCGS 104F-1 Article 7 (g) gives states the right to break this agreement without reason, limitation (except when a facility is operating) or sanction. "Any party state may withdraw from this compact by enacting a law repealing the Compact."

In addition, the General Assembly of North Carolina, when it passed the Compact in 1983, considered withdrawal in Section 3, 104F-5, "If North Carolina determines at any time that any member state is not acting in good faith in complying with all of the terms of the Compact, then North Carolina shall withdraw immediately." Clearly, withdrawal has been contemplated and considered a legitimate recourse if party states are no longer served by the agreement.

* Case law is mixed on whether a go-it-alone state can exclude waste from other states. If a state acts as a regulator of interstate commerce, it cannot pass laws which discriminate against other states.

However, when the state owns and operates the facility, then it is a market participant and acts as a guardian and trustee for its people. As the Supreme Court has held in the leading case on this subject, "[t]here is no indication of a constitutional plan to limit the ability of the states themselves to operate freely in the free market." Reeves Inc. v. Stake, 447 U.S. 429, 437 (1980).

* North Carolina can restrict access to its facility to other states if there is a legitimate local public interest and the burdens to the other states are only incidental. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). The local benefit is clear. North Carolina will have more control over the facility and take less dangerous radioactive waste; furthermore, since most other states in the country are either members of compacts or have announced plans to go it alone, who is left to be burdened?

* On a more practical level, any other state which would want to send its wastes to a North Carolina-only facility would have to enter into extensive litigation. During the lawsuit, where would the other state's waste go? Another foreseeable action is that Congress could act to allow states to go-it-alone since influential states like Texas, New York and Massachusetts are going that route.

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There seems to be more questions than answers when discussing how the Southeast Compact can ensure that party states will not withdraw in the future. Governor Martin has stated that he supports North Carolina's continued membership in the compact provided that the state can ensure the continued membership of other states. If our state does its duty and hosts the facility for all of the LLRW generated for 20 years in the region, other states might then withdraw from the compact. North Carolina would have received all the burdens of the compact agreement without any of the associated benefits. Can NC guarantee that compact states will share the nuclear waste burden when it's their turn?

On March 26, 1987, the Southeast Compact Commission proposed that certain changes be made regarding the right of compact member states to withdraw from the compact in the future. The Commission recommended that each amend its compact legislation by adding language that:

"The right of a party state to withdraw...shall terminate no later than five years following the commencement of the operation of the second host state disposal facility. Thereafter, a party state may withdraw only with unanimous approval of the Commission and the affirmative consent of Congress."

The changes sought by the Commission appear to be an attempt to allay fears generated by the present "easy to leave" language in the compact. Unfortunately, the Commission's proposed solution is not a viable one. The proposed amendment does not change the compact or add any real certainty to its continuity in the future. The new language is insufficient to guarantee a state's continued membership in the Southeast Compact if it should decide to withdraw beyond the five-year grace period.

Brand and Lowell (D.C. law firm hired this year by the Southeast Compact Commission to answer questions pertaining to withdrawal) recognize that, "no action of a present state legislature can bind a future legislature in perpetuity... to allow a legislature to bind a future legislature is, in effect, to say that a law is irrepealable, a proposition which is inadmissible."

Brand and Lowell go on to conclude that state constitution provisions on impairment of contracts, among other concerns, would "inhibit" future state legislatures from rescinding an agreement made by their predecessors to remain in the compact for perpetuity. However, if future legislatures are not so inhibited, what happens to North Carolina? Does the state sue the withdrawing states? Does the Commission sue? Would North Carolina gain anything? Would North Carolina be compensated for its legal expenses?

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RECLASSIFYING LOW-LEVEL RADIOACTIVE WASTE

Low-level radioactive waste (LLRW) is defined not by what it is, but by what it isn’t. In fact, certain low-level radioactive waste can be as dangerous as high-level radioactive waste. The imprecision of this definition has lead to some extremely long-lived materials, that are readily taken up in the food chain, to be buried in unlined soil trenches at several sites around the country.

Low-level radioactive waste is subdivided into three classes: A, B and C. These sub-classifications are generally based on concentrations of radioactivity in certain materials, but the distinctions are not exact. More precise definitions will be critical for the states and compacts charged with developing programs for waste management.

An example of how different LLRW can be is illustrated by comparing, for instance, a contaminated piece of clothing from a nuclear power plant worker to a filter which is used in a reactor to cleanse water that circulates around the reactor core. The clothing may be only slightly contaminated with radioactivity that is not long-lived and cannot easily be removed from the clothing; the filter and its related sludges, however, contain a brew of long-lived fission products from the reactor core that can easily migrate from the filter and be taken up in the food chain if buried in a radioactive landfill.

There are a number of wastes in the low-level category that should be redefined as high-level radioactive waste. These include: filters, sludges and resins from nuclear plants as well as worn out, irradiated reactor components. Some of these components are dangerous to anyone coming into contact with them for literally thousands of years. The North Carolina General Assembly should consider a redefinition of LLRW and work with Congress and the Nuclear Regulatory Commission to see that it is implemented nationwide.

Several factors need to be considered in developing a comprehensive program to isolate these materials from the biosphere. The amount of radioactivity, the longevity of toxicity, and the kind of material are all key considerations. It would be irresponsible to design a facility to isolate radioactive waste for 100 years if the wastes are dangerous for longer than that period as it would be foolish to place the truly low-level waste in a facility designed for long-lived wastes.

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