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United States General Accounting Office
Washington, DC 20548

December 13, 2002

The Honorable Bob Smith
Ranking Minority Member
Committee on Environment
and Public Works
United States Senate

Subject: *Waste Management: Observations on the Congressionally Approved New Hampshire-Vermont Solid Waste Compact*

Dear Senator Smith:

Managing garbage and other solid waste poses a significant challenge for many communities, particularly small ones.[1] Over the past 4 decades, the amount of waste destined for landfills—the traditional method of solid waste disposal—increased dramatically, from 88 million tons in 1960 to 232 million tons in 2000, or by about 6.6 percent annually. During the same period, significant numbers of landfills closed as federal and state regulatory requirements were strengthened. From 1988 to 2000 alone, about 75 percent of the nation's landfills ceased operation, according to data from the Environmental Protection Agency (EPA). To meet these challenges, some communities have banded together under regional agreements or interstate agreements—sometimes referred to as compacts—that help them jointly manage their waste. Such agreements help participating communities avoid duplication of costs and take advantage of economies of scale.

In 1982, Congress approved an interstate compact between a solid waste management district in New Hampshire and a solid waste management district in Vermont to establish the New Hampshire-Vermont Solid Waste Project. The purpose of the project was to develop joint solid waste disposal and resource recovery facilities, including a waste-to-energy incinerator and a landfill for disposal of the incinerator ash.[2] After the member districts adopted a cooperative agreement to implement the compact, project officials contracted with a waste management company to build the incinerator and to operate and maintain it until 2007. Project officials issued separate contracts for the design and construction of the ash landfill. After disputes arose regarding expansion of the landfill's capacity, the ash landfill was closed in 2001 and project officials entered into a contract to have the

[1]For the purposes of this report, solid waste means the nonhazardous garbage or trash typically generated by industries, businesses, institutions, and households.
[2]Under state law in New Hampshire and Vermont, communities may join together to form waste management districts to manage the disposal of their solid waste.

incinerator ash hauled to a landfill in Massachusetts. Other disputed issues over the years have included the financing of major capital projects, the cost of the incineration services, the cost of the electricity generated by the incinerator, the potential environmental impact of the incinerator and landfill, and other matters.

The federal government plays a role in the implementation of the New Hampshire-Vermont Solid Waste Compact. The project's waste disposal operations must comply with applicable federal environmental laws. Moreover, because the compact required initial congressional approval, the Congress must approve any changes to it. The compact has now been in place for over 20 years, and questions have arisen about the future of waste disposal in the affected region. This report provides information on (1) the structure and operations of the New Hampshire-Vermont Solid Waste Project; (2) how the project's structure and operations compare to those of other interstate waste management projects; and (3) issues that need to be addressed in the future, as the expiration of the incineration contract approaches and the districts consider their options. In addressing the second question, we were unable to identify any other congressionally approved interstate solid waste compacts. However, we identified 10 interstate compacts for the management of low-level radioactive waste and one solid waste agreement that was not congressionally approved[3] and used them as a basis for comparison.

In summary, we found that

- To implement the New Hampshire-Vermont Solid Waste Compact, the two member districts adopted a cooperative agreement that established a two-tiered management structure: a Joint Meeting with representatives from each community in the two districts and a smaller Executive Committee composed of representatives from the Joint Meeting. The Joint Meeting authorizes actions needed to carry out the purposes of the cooperative agreement, such as the acquisition or disposition of property, and adopts the annual budget under which the project operates. The Executive Committee implements the policies and actions authorized by the Joint Meeting, proposes an annual budget, oversees the project's day-to-day operations, and approves all project contracts. Executive Committee members develop a budget sufficient to cover the estimated costs of waste incineration and ash disposal; real estate taxes; bond repayments; and running the project office. Once the budget has been approved, the communities in the member districts are responsible for generating sufficient revenues to pay for their share of the budget, an allocation determined by the waste management districts and based on the percentage of the total waste tonnage that each community generates. The communities are also responsible for organizing a collection site for their waste and its transport to the incinerator.

[3]In 1971, Fairfax County, Virginia; the District of Columbia; and a regional waste management agency, which encompassed these and other jurisdictions (including some in Maryland), entered into a memorandum of understanding to jointly develop an interim landfill. By 1986, the solid waste management project had evolved to include a waste-to-energy incinerator and a landfill; project participants included jurisdictions in Virginia and the District of Columbia. The project is called the I-95 Resource Recovery, Land Reclamation, and Recreation Complex or, more commonly, the "I-95 Complex."

- The structure and operations of the New Hampshire-Vermont Solid Waste Project differ from those of other interstate waste management projects in several ways. For example, the two-tiered structure used in the New Hampshire-Vermont project differs from that of the other projects, each of which has a single governing body. From an operational standpoint, major differences between the New Hampshire-Vermont project and the others include the degree of authority granted to the projects' governing bodies and how clearly the implementing agreements define roles and responsibilities. For example, under the low-level radioactive waste compacts, the projects' governing bodies are specifically defined as independent legal entities, separate and distinct from the participating members. However, the cooperative agreement that implements the New Hampshire-Vermont project is not as explicit, and the question of whether the "project" exists as a separate legal entity has been the subject of litigation. Similarly, the cooperative agreement either does not address important functions that have been retained by the member districts, such as the authority to issue bonds to finance major capital investments, or is unclear about how certain responsibilities are divided between the project and the districts. The New Hampshire-Vermont compact and the other waste management agreements are similar in several respects, however, including the extent to which they address how accounts and records will be maintained, audit services will be engaged, and the agreements will be modified.

- By the time the contract for incineration services expires in July 2007, project officials must address a variety of issues in three broad categories: alternative waste disposal options, the long-term liability of communities in the member districts, and the disposition of project-related land. Much depends on whether the districts decide to dissolve their cooperative agreement and, as a result, are faced with making new arrangements for the disposal of their solid waste. If the agreement is dissolved, project officials must ensure that existing obligations are met. For example, although the ash landfill was officially closed in 2001, project officials are responsible both for ensuring that post-closure maintenance and monitoring requirements will be met over a 30-year period and for establishing a trust fund to meet related financial obligations. Consequently, communities in the member districts may retain certain financial liabilities long after the cooperative agreement is dissolved. Dissolving the agreement would also raise issues regarding the disposition of project-related land. For example, although the member districts jointly own the land on which the incinerator is sited, the company that currently holds the incineration contract has two 10-year options to renew its lease of the incinerator property and could do so whether or not the districts decide to dissolve the cooperative agreement.

Background

The management of the nation's solid waste is regulated under Subtitle D of the Resource Conservation and Recovery Act of 1976, as amended. The statute and EPA's implementing regulations prohibit the "open dumping" of solid waste and the establishment of new open dumps, and required that existing open dumps be

upgraded or closed within specific time frames.[4] Communities are allowed to manage their waste through other means, such as incineration or disposal in sanitary landfills, as long as the alternatives meet certain criteria established to protect public health and the environment. Partly in response to these restrictions, smaller communities throughout the country began to look for cost-effective alternatives to address their solid waste management problems.

By the late 1970s and early 1980s, some neighboring communities along the New Hampshire-Vermont border recognized that they needed to address the limited capacity and environmental problems at their existing landfills and began to explore waste disposal alternatives. In 1979, EPA funded a study that examined the feasibility of developing a joint resource recovery project for Sullivan County in New Hampshire and the Southern Windsor Regional Planning Commission in Vermont. As the study progressed, the member communities in each state formed solid waste management districts and moved toward entering into an interstate agreement or "compact," as authorized under the Resource Conservation and Recovery Act.[5] After the New Hampshire and Vermont legislatures approved the interstate agreement in 1981, EPA and the Congress formally approved the New Hampshire-Vermont Solid Waste Compact in April and October 1982, respectively. Following these approvals, the two solid waste management districts entered into a cooperative agreement to implement the compact and establish a framework for the joint management and disposal of their solid waste.

A Two-Tiered Management Structure Controls Project Operations

In approving the New Hampshire-Vermont compact, the Congress authorized the adoption of cooperative agreements "for the construction, maintenance, and operation of a resource recovery facility or sanitary landfill or both" and established requirements for the contents of such agreements, including "provision for a joint board and/or administrator, responsible for administering the cooperative undertaking and the powers to be exercised thereby." Accordingly, the cooperative agreement that implements the compact provides for a management structure consisting of (1) a governing body called the Joint Meeting, which has representatives from each participating community, and (2) a smaller Executive Committee that oversees the project's day-to-day operations.

The Joint Meeting consists of representatives from the member solid waste districts, who are appointed by the boards of selectmen or city councils in the district communities. In accordance with the rules of their respective solid waste management districts, representatives from New Hampshire communities serve 3-year terms and Vermont's representatives serve 1-year terms. In total, the Joint Meeting has 34 members representing 29 communities in accordance with the terms of the district agreements. Although most of the participating communities have one

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[4]An open dump is any landfill that poses a reasonable probability of adverse effects on health or the environment, as provided for under EPA regulations.

[5]The act authorizes two or more states to enter into agreements or "compacts" for the management of solid waste, hazardous waste, or both; the enforcement of applicable laws; and the establishment of agencies to implement the compacts. For such compacts to be binding, they must be approved by the EPA Administrator and the Congress.

representative to the Joint Meeting, six of them qualify for additional votes based on the amount of waste they generate.[6]

The Joint Meeting is responsible for authorizing the actions needed to carry out the purposes of the cooperative agreement, namely, to meet the solid waste disposal needs of the communities in the member districts. For example, the Joint Meeting was responsible for authorizing the acquisition of land on which the incinerator and landfill were sited and, later, voted to close the landfill. In addition, the Joint Meeting adopts the annual budget under which the project operates and allocates the budget between the two districts based on the total tonnage of waste their communities generated during the prior year.

An 11-member Executive Committee implements the policies and actions authorized by the Joint Meeting, proposes an annual budget, oversees the project's day-to-day operations, and approves all project contracts. In addition, the committee is responsible for appointing a project manager and other project staff as needed. The committee includes individuals in key leadership positions—the chair of the Joint Meeting and the chair and vice-chair of each district—as well as three additional representatives from each solid waste district, whom the respective district's appointed representatives select annually. Members of the Executive Committee serve 1-year terms and may be re-elected.

Executive Committee members develop a budget sufficient to cover (1) waste disposal costs, including incineration services and disposal of the ash; (2) the interest and principal repayment associated with the bonds issued to construct the landfill; and (3) other operating costs, such as real estate taxes, salaries for project staff, and amounts needed to run the project's office. Project officials compute an estimated cost per ton of waste, called a "tipping fee," by dividing the total budgeted costs by the projected waste tonnage. For 2002, the project's budget was about $4.4 million, including $2.2 million for the incineration of 49,000 tons of solid waste.

When the Joint Meeting approves the budget, the members allocate it between the two districts based on the total waste tonnage generated by their respective communities during the prior year. The districts, in turn, determine each community's share based on the volume or tonnage of waste generated in the prior year. Historically, New Hampshire is responsible for about 57 percent of the budget allocation and Vermont's share is about 43 percent. Communities in each member district are responsible for generating sufficient revenue to pay their share of the district's budget and, with few exceptions, obtain this revenue through property tax assessments. The project collects the funds when the project manager bills the communities—or independent waste haulers, in some instances—for each ton of waste delivered to the incinerator based on the tipping fee in the adopted budget.

In addition to contributing a share of the project budget, each community in the member districts is responsible for providing a collection site for its waste and transporting it from the collection site to the incinerator. In some instances, communities make arrangements for joint collection sites or shared waste transport.

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[6]One community has three votes (the maximum allowed) and five communities have two votes.

Key Aspects of the New Hampshire-Vermont Project Differ from Other Waste Management Projects

The structure of the New Hampshire-Vermont Solid Waste Project differs from those of other waste management projects we examined. For example, the New Hampshire-Vermont project has a two-tiered structure that allows each of the 29 communities in the member districts to be represented in a governing body and also provides for a smaller, more manageable Executive Committee to oversee day-to-day operations. In contrast, the low-level radioactive waste projects have fewer participants—about four states, on average—and have a single governing body. In the I-95 Complex project, the participating entities signed a memorandum of understanding that gave Fairfax County full authority to manage all financial and operational aspects of the project, including the contract for incineration services and landfill operations. The structural differences in the waste management agreements may be a reflection of the differences in the number of entities participating in each project.

We also found differences between the New Hampshire-Vermont Solid Waste Project and the other waste management projects we examined from an operational standpoint, based on their implementing agreements.[7] Among the major differences are the extent of the authority granted to the projects' governing bodies compared to the projects' members and how clearly their respective roles and responsibilities are defined in the implementing agreements. For example, under the low-level radioactive waste compacts, the projects' governing bodies are explicitly defined as independent legal entities, separate and distinct from the participating members. In these projects, the relationship between the governing body and member states is clearly defined. For example, some agreements authorize the governing bodies to designate host states for the disposal facilities and to enter into contracts to accomplish project objectives.[8] However, while the cooperative agreement that implements the New Hampshire-Vermont project describes the roles and responsibilities of the Joint Meeting and Executive Committee, it is not explicit about the legal status of these entities. The question of whether the project exists as a separate legal entity has been an issue in litigation involving the project, for example, in a case in which a district representative sought copies of the project's legal bills.[9] Clarifying this issue from the beginning might have allowed the project to avoid some legal problems.

Similarly, problems might have been avoided if the cooperative agreement for the New Hampshire-Vermont Solid Waste Project had addressed the projects' responsibility for certain important functions. For example, the cooperative agreement does not address how major capital projects will be financed; authority to issue long-term debt is addressed only in the agreements for the solid waste

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[7]We compared the cooperative agreement used to implement the New Hampshire-Vermont Solid Waste Compact with the 10 low-level radioactive waste compacts and a memorandum of understanding that was used for the I-95 Complex agreement.

[8]As indicated earlier, instead of having a governing body, the participants in the I-95 Complex project agreed that one county would be responsible for managing the project.

[9]Franklin v. Callum, 804 A.2d 444 (N.H. 2002). As part of its ruling, the court determined that the project is not a separate entity but rather a creation of the two waste management districts.

districts.[10] This omission may have been a factor in an internal dispute over project financing. Specifically, the Joint Meeting recommended the issuance of long-term debt to finance certain costs related to the ash landfill, and one of the member districts issued the bonds. However, a problem arose when the other district did not want to pay its portion of the allocated budget related to bond repayment, arguing that it was not responsible for repayment of bonds issued by the first district. While the problem was eventually resolved through arbitration, it might have been avoided altogether had the cooperative agreement been explicit about who had authority to issue long-term debt for the benefit of the project—and under what circumstances—and who was responsible for repaying it. In contrast to the New Hampshire-Vermont project, the memorandum of understanding used for the I-95 Complex agreement clearly gives the county responsible for managing the project authority to finance the design and construction of waste disposal facilities and to charge the participating entities for their share of the capital costs.[11]

Other operational differences between the New Hampshire-Vermont Solid Waste Project and the other projects we examined, based on their implementing agreements, were in the areas of annual accountability reporting and public access to meetings and records. Under the low-level radioactive waste compacts, the governing bodies must publish annual reports to the governors and legislative bodies of their member states on the projects' operations and finances, including copies of annual budgets and independent audits. In addition, 8 of the 10 low-level radioactive waste compacts included in our comparison require, with certain exceptions, that project meetings and records be open to the public. While the memorandum of understanding for the I-95 Complex does not address either accountability reporting or public access, Fairfax County, which manages the I-95 project, has a process in which the public can gain access to project records. The cooperative agreement for the New Hampshire-Vermont project does not address either area.[12]

We also found some similarities in the operations of the New Hampshire-Vermont project and the other waste management projects based on their implementing agreements. For example, most of the agreements contain provisions requiring the maintenance of accurate accounts and independent audits of the projects' finances. The agreements also contain provisions on amendments by project members and the entry and withdrawal of members from the project.

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[10]For example, the agreement for the New Hampshire district states that the district has authority to incur debt for the purpose of acquiring land and for planning, constructing, and equipping a refuse disposal facility.

[11]The governing bodies established under the low-level radioactive waste compacts do not issue long-term debt to finance major capital projects.

[12]The lack of a clear, consistent policy on access to records became an issue in litigation, after the executive committee denied a district representative's request to review certain invoices from the project's attorney, citing attorney-client privilege. New Hampshire's Supreme Court ultimately ruled in favor of the district representative, holding that the representative was a client of the attorney who provided services to the project, and therefore was entitled to see the project's legal bills. Franklin v. Callum, 804 A.2d 444 (N.H. 2002).

Waste Disposal Options, Long-term Liability of Participating Communities, and Other Matters Will Need to Be Addressed in the Near Future

Officials with the New Hampshire-Vermont Solid Waste Project will have to address a number of important issues relating to waste disposal, long-term liability, and other matters by July 2007, when the project's contract for incineration services expires. Recognizing this need, project officials formed a transition committee to identify more specifically the kinds of questions that will have to be answered and the decisions that will have to be made. The committee is not expected to report its findings until December 2002. However, based on our discussions with project officials and our review of applicable contracts and other project documents, we noted some of the key issues that will need to be resolved.

- *Extension of incineration contract.* Regarding waste disposal, the most critical decision facing project officials is whether to negotiate an extension of the incineration contract. Furthermore, according to project officials, the need to make a decision on the incineration contract is prompting representatives from the member districts to reconsider their participation in the cooperative agreement. If the representatives vote to dissolve the cooperative agreement, then the districts and their participating communities will have to examine waste disposal alternatives, the costs associated with each option, and whether certain communities or districts will make new arrangements to jointly manage their waste or decide to go it alone.

- *Long-term liability of participating communities.* Another set of issues for project officials to consider involves the long-term liability associated with the project's landfill, which was closed in 2001. According to federal and state requirements for the management of solid waste, the New Hampshire-Vermont Solid Waste project, as the permit holder for the ash landfill, is responsible both for meeting post-closure maintenance and monitoring requirements, generally for 30 years, and for maintaining a trust fund or other mechanism to meet related financial obligations. As a result, communities in the member districts may retain certain financial liabilities even after the cooperative agreement is dissolved. Selling or transferring the landfill property is a possibility, but the project—and by definition, the communities in the member districts—would continue to be liable for meeting the technical and financial obligations associated with the permit unless the new owner agreed to assume responsibility.

- *Disposition of project-related land.* If the members of the Joint Meeting vote to dissolve the cooperative agreement, project officials must ensure that existing obligations are met and that land and other assets are disposed of in an orderly manner. Disposition of project-related land, in particular, raises significant issues. For example, although the member districts jointly own the land on which the incinerator is sited, the company that currently holds the incineration contract has two 10-year options to renew its lease of the property and could do so whether or not the cooperative agreement is dissolved. In addition, under the terms of its agreement with the project, the incineration company pays just $100 per year for the lease, a provision that would likely remain in effect in the event that the property was transferred or sold to a new owner. These restrictions could affect the ability of project officials to dispose of the incinerator property by

limiting the potential buyers.[13] Similarly, a restriction on the use of the landfill property could hinder the project's ability to dispose of it. An April 2000 amendment to the cooperative agreement provided that the property could not be used as a municipal sanitary landfill without approval by the town of Newport, New Hampshire, where the property is located.

With only a few years remaining on the contract for incineration services, project officials have already taken some preliminary steps to prepare for the future and ensure that various aspects of the project will be concluded in 2007. For example, when project officials contracted with a company to haul the incinerator ash to a Massachusetts landfill after the project's own landfill was closed, they made sure that the ash hauling contract expires on the same date as the project's contract for incineration services. Project officials also refinanced the bonds that had been issued to pay for expenses related to the design and construction of the ash landfill so that the bond repayments end in 2007 rather than in 2009, as originally scheduled. Finally, after borrowing from the trust fund established for the landfill to pay for its permanent closure, project officials established a repayment schedule that would ensure that the trust fund is fully funded by 2007.

Comments from Project Officials

We provided a summary of our findings to the New Hampshire-Vermont Solid Waste Project to obtain technical comments on the factual accuracy of the contents. Project officials generally agreed with the facts presented and suggested some clarifications and technical corrections, which we incorporated as appropriate.

Scope and Methodology

To gain an understanding of the structure and operations of the New Hampshire-Vermont Solid Waste Project, we interviewed key officials from the Executive Committee, Joint Meeting, and solid waste management districts and reviewed the compact, cooperative agreement, major contracts, and other pertinent documents. To determine how the structure and operations of the New Hampshire-Vermont project compare with those of other interstate waste management projects, we identified other projects and reviewed their implementing agreements. Specifically, we compared the structure and operations of the New Hampshire-Vermont project with 10 low-level radioactive waste compacts and a memorandum of understanding between jurisdictions in Virginia and the District of Columbia. To identify issues that will need to be addressed in the near future, we interviewed key project officials to obtain their views and officials from the New Hampshire Department of Environmental Services to obtain information on the requirements associated with the ash landfill. We also reviewed pertinent documents relating to the environmental, financial, and legal obligations of the project and the member districts. We conducted our review from February through November 2002 in accordance with generally accepted government auditing standards.

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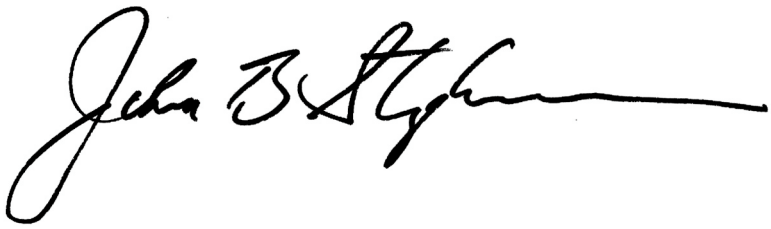
[13]According to project officials, the member districts jointly own more than 50 acres of land, including 6 acres on which the incinerator is sited, and there is no restriction on the districts' ability to dispose of the unencumbered portion of the property.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 7 days from the report date. At that time, we will send copies of this report to interested parties. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov. If you or your staff have questions about this report, please call me at (202) 512-3841. Key contributors to this assignment were Ellen Crocker, Les Mahagan, Richard Johnson, and Cynthia Norris.

Sincerely yours,



John B. Stephenson, Director
Natural Resources and Environment

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