

From: Lizard Blizzard [REDACTED] Sent: Thursday, January 12, 2017 2:18 PM To: Consent Based Siting
Subject: waste

Producing and siting nuclear waste anywhere is insane. Time to stop producing it, this dinosaur has to go, there is absolutely no safety in this.

From: Teresa McFarland [REDACTED]
Sent: Thursday, January 12, 2017 2:28 PM
To: Consent Based Siting
Subject: Comment on Draft Document

Dear Sirs:

After quickly reviewing the draft document related to consent based siting, I see that you have failed to address the most important issue: the need to immediately STOP producing nuclear waste. Anything short of this is criminally dangerous. Please be aware that many, many Americans will mobilize to stop you from siting these death facilities anywhere.

Sincerely,
Teresa McFarland

From: Dennis [REDACTED]
Sent: Thursday, January 12, 2017 4:56 PM
To: Consent Based Siting
Subject: Alternative - The Roy Process for Neutralizing Nuclear Waste cost effectively

Dennis F. Nester
Goodyear, Arizona
[REDACTED]

'Safe' burial of nuclear waste is scientifically impossible, you can and must reduce long-lived invisible, deadly nuclear waste radioactivity to zero. It can be done by backwards engineering it at each nuclear power plant. In addition, electricity can be made from the decay heat. The late Dr. Radha Roy, professor of physics emeritus, made a world wide Associated Press story in 1979 after the Three Mile Island partial meltdown. He was offered 5 million dollars to shelve the Roy Process, Dr. Roy said, "no way. Then President Reagan signed the 1982 Nuclear Waste Policy Act which limited science to 'burial'. Politically suppressing alternatives.

A correct Geiger counter reading tells the story. The Fukushima Japan nuclear reactor meltdowns contaminated the world with invisible, deadly man-made radiation. Most disease rates increased worldwide from 1945, the beginning of the atomic age according to governments statistics. Today, we can only minimize exposure to invisible, deadly radioactive fallout. There is a way to backwards engineer nuclear waste to zero radioactivity. The decay heat can be used to generate electricity while ELIMINATING nuclear waste. The late Dr. Roy estimated costs to conduct a test in 1979 to neutralize some Cesium 137 at 2 million dollars and take 2 weeks.

From an Email:

I think its simply amazing, but the Asians understood this long ago and represented the dance of the Universe as that symbol for the ying and the yang.
Dr. Roy was in a way another Tesla and represented a great danger to the psychopaths trying to eat the earth and everyone on it. He was a political prisoner of the bankers like Tesla, Werner von Braun, and others who have come to the US with a dream and woken up to a nightmare.

No Time To Waste: E.I.S. - The Roy Process
for Neutralizing Nuclear Waste - About 18 min.
<http://www.youtube.com/watch?v=XnGHSnDXLgQ&feature=youtu.be>

Video: Fukushima Kill List 2016
<https://www.youtube.com/watch?v=4MpTJ4ykgCw&feature=youtu.be>

The Roy Process Patent Claim
<http://web.archive.org/.../additional-uses-royprocess.html>

Nuclear Storage: Explosive Developments by Chris Busby
[http://www.youtube.com/watch?v=nAI5IKAWhk0%](http://www.youtube.com/watch?v=nAI5IKAWhk0%25)

From: David G. Victor [REDACTED]
Sent: Friday, January 13, 2017 12:06 PM
To: Teresa Sforza
CC: Ted Quinn; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; Consent Based Siting
Subject: Re: Nuclear waste storage efforts under a new administration

My assessment is that the politics of getting legislative approval for consolidated storage have become a little bit easier to manage. In part that is because people have been working on this problem now for several years and sponsorship of relevant legislation is going up as is political pressure. But the biggest factor is unified government. Quite simply, without unified government almost nothing gets through Congress. Unified government, by itself, does not solve all problems. The Republicans have a huge agenda of many contentious topics to address and the coalition of Republicans could easily fracture long before they get to this issue. It's also important to remember that the politics of making this happen still require a deal be struck between the people who are focused on restarting Yucca Mountain and those who want to consolidate storage. In the last few days a bill has been introduced to block consolidated storage until Yucca is resolved. So the two need to go together

David

Sent from limited typing device

On Jan 13, 2017, at 11:49 AM, Teresa Sforza [REDACTED] wrote:

Hi folks - Teri Sforza from the OC Register here. I'm trying to get a read on prospects for movement on the nuclear waste storage issue under a Trump administration.

Congressman Issa and co. introduced a bill yesterday that would speed up contracting out of the service, and the DOE released new guidelines yesterday on consent-based siting....

What are the changes you expect to see in policy and approach to the problem under the new administration? Thoughts and analysis most welcome.

I'll be working on this early next week. Thanks for your help.

Teri Sforza
Orange County Register/Southern California News Group

[REDACTED]
[REDACTED]
[REDACTED]

From: Michelle Schumacher [REDACTED]
Sent: Sunday, January 15, 2017 7:16 AM
To: Consent Based Siting
Subject: SONGS - Nuclear Waste Storage

We would like the waste removed from SONGS in San Clemente California - it should be turned into INERT glass chips as the technology allows for this radioactive garbage to be safely converted, we have all paid into having the waste properly and safely done away with - however the federal government has dropped the ball and not lived up to their promises,

Thank you

From: Steve Brittle [REDACTED]
Sent: Monday, January 16, 2017 10:21 AM
To: Consent Based Siting
Subject: comments on draft Consent Based Siting

Don't Waste Arizona, Inc. (DWAZ) is a non-profit environmental organization dedicated to the protection and preservation of the environment in Arizona. DWAZ is especially concerned about environmental justice, nuclear waste issues, especially in ethnic minority communities, and related transportation risk issues. DWAZ is headquartered at [REDACTED], and may be reached at [REDACTED].

I attended the meeting held in Tempe, Arizona, on behalf of DWAZ, and made it clear in my comments then that this was an entirely bogus and fraudulent process meant by design to convince the majority of Americans that it was a legitimate consent based decision making process when it clearly wasn't.

The meetings were never held anywhere near the actual locations in Texas and New Mexico where the DOE is actually planning these facilities. These issues were pointed out by people who drove the extraordinary distances from these locations to remind you that you were not fooling them or the rest of us.

The panel of speakers were really condescending and rude to anyone who dared to question of the assertions being spewed by panelists, especially if they raised safety and storage concerns, or even concerns about low-level contamination and public exposures, and minimized and ridiculed any concerns about the wisdom or safety of transportation. Browbeating people is not a way to accept their comments or concerns

The mentions of environmental justice concerns by the panel were also just a ruse, just pretending to care and giving lip service, but with no conviction or sincerity.

The consent-based siting process is just a scam designed to make the unsuspecting public think that DOE actually was concerned about what the public is concerned about, all the while just covering up what DOE already plans to do, which is to force these

facilities into areas that do not want them, and to put all of America at risk by transporting all of these wastes on our highways and railways.

Stephen M. Brittle
President

From: Mary Olson [REDACTED]
Sent: Monday, January 16, 2017 10:42 AM
To: secretary@energy.gov
CC: Consent Based Siting; DWR
Subject: 192 REQUESTS: stop liquid radioactive shipments between Ontario and South Carolina
Attachments: MONIZnuketruckpetition.pdf

Secure | https://secure.avaaz.org/en/petition/Ernie_Moniz_US_Secretary_of_Energy_STO

Robert Alvarez: Safeg... | www.icrp.org/docs/IC | NuclearIsDirty Calend... | Progress Energy looki... | A Tick...

The world's largest and most effective online campaigning con

Ernie Moniz, US Secy of Energy: STOP plan to truck highly radioactive liquid from Canada to South Carolina. Sign by



200

192

In 2017 there may be 150+ trucks on our interstate highways between ONTARIO Canada and SOUTH CAROLINA, bearing LIQUID so highly radioactive it delivers a lethal radiation dose in seconds if not shielded, and even with shields will throw chest-X-rays per hour to anyone in the next lane...Five to 10 states in US could be impacted--and Ontario folks too!

Any and all water ways could be impacted by even a minor spill.

This does not need to happen! Secretary Moniz—you have the power to order a full Environmental Impact Statement and Security Review for these shipments! It is still your Department of Energy (DOE) that will move (or not) these trucks.

This waste is not SAFE now behind fences. It will not be safer on public interstate and US highways through numerous communities, across rivers and through farmlands. There are many hazards that your talented staff at DOE have not even considered.

We, in the concerned citizen community have filed a civil lawsuit requesting full reviews. The suite is still pending--but you, Secretary Moniz could order these actions with one phone call or email. You still have time, your impact with your staff is still in force. This could be part of your LEGACY! DOE obeying environmental law. Think of it as your successor queues up!

One hundred and ninety two concerned and potentially impacted people signed (attached here) the petition posted here: <http://tinyurl.com/stopnuketrucks> . Listening to people; hopefully it will not be a thing of the past. Please STAND FOR IT here and now.

If you need more information, please do not hesitate to contact me.

THANK YOU,

Mary Olson
Nuclear Information and Resource Service, Southeast

██████████
██████████
████████████████████████████████████████

#	Name	Country
1	Edie Kantrowitz	United States of America
2	Susan Dehler	United States of America
3	Jean Fallon	United States of America
4	Judith Henkewick	United States of America
5	G.T. Koch	United States of America
6	Lorraine Fontana	United States of America
7	Ellen Rosser	United States of America
8	Ellen E Barfield	United States of America
9	Peter Smith	Canada
10	Debralee Williams	United States of America
11	Ryuichi Nakamura	Japan
12	Brennain Lloyd	Canada
13	Tina Volz-Bongar	United States of America
14	Jay Sweeney	United States of America
15	Barbara Warren	United States of America
16	Marcia Slatkin	United States of America
17	Erica Gray	United States of America
18	Dan Fullerton	United States of America
19	paul Gallimore	United States of America
20	Farrell Brody	United States of America
21	Winthrop Southworth	United States of America
22	Lisa Harrison	United States of America
23	Mary Jane Williams	Other
24	Ruth MacLean	Canada
25	Pat Almonrode	United States of America
26	Tom Siracuse	Japan
27	Sylvia Shih	United States of America
28	Elizabeth Segal	United States of America
29	Patricia Alessandrini	United States of America
30	David Williams	United States of America
31	Sally Shaw	United States of America
32	Deborah Livingston	United States of America
33	francesch	France
34	Linda Seeley	United States of America
35	Joan Brannigan	United States of America
36	Lew Patrie	United States of America
37	Carol Polsgrove	United States of America
38	Gracia Janes	Canada
39	Don Clark	United States of America
40	Regina Birchem	United States of America

#	Name	Country
41	Val Eisman	United States of America
42	Ellen Thomas	United States of America
43	Geoffrey Small	United States of America
44	Stephen Brittle	United States of America
45	Anne Craig	United States of America
46	James Sheeler	United States of America
47	MaryAnn watjen	United States of America
48	Paul Palmer	United States of America
49	Eileen Mahood-Jose	United States of America
50	Beverly Fernandez	Canada
51	Nancy Allen	United States of America
52	Pat Marida	United States of America
53	carol jagiello	United States of America
54	Mary Olson	United States of America
55	Howard Mock	United States of America
56	Deborah Kushner	United States of America
57	Kay Cumbow	United States of America
58	Sally Gellert	United States of America
59	Susan Zeiger	Argentina
60	Sandra Irene Rodgers	United States of America
61	Jenise Porter	United States of America
62	Jane Laping	United States of America
63	Carol Masuda	United States of America
64	Ayman Fadel	United States of America
65	John Montgomery	United States of America
66	Marsha Miller	United States of America
67	Denise Bielby Vanselow	Canada
68	Patrick & Margaret PECORARO	United States of America
69	Angela Bischoff	Canada
70	Sheila Geist	United States of America
71	Rita Lyons	United States of America
72	Noreen Thompsen	United States of America
73	Helga Fellay	United States of America
74	Judith Karas	United States of America
75	Ann Dutt	United States of America
76	Rob	United States of America
77	Jeanne Shaw	United States of America
78	Gary Shaw	United States of America
79	Rachel Clark	United States of America
80	Marvin Lewis	United States of America

#	Name	Country
81	Dave Parrish	Japan
82	Vic Macks	United States of America
83	cathy sims	United States of America
84	Kim	United States of America
85	Ziggy Kleinau	Canada
86	Deborah Wagner	United States of America
87	Dr. Susan Spieler	United States of America
88	D DARRIGO	United States of America
89	Stuart Thomas	United States of America
90	lynda Schneekloth	United States of America
91	Kris Tollefsen-Cunningham	United States of America
92	Rita DeMaria	United States of America
93	Kirsten Mitchell	United States of America
94	Dennis Nester	United States of America
95	constance Cantwell	United States of America
96	Mary Thomas	United States of America
97	Lee Blackburn	United States of America
98	Peter Eliscu	United States of America
99	Nazarius Cavan	United States of America
100	Jenny Lisak	United States of America
101	Michael J. Keegan	United States of America
102	Mary Collins	United States of America
103	Gerald Rudolph	United States of America
104	Barbara Warren	United States of America
105	Susan Norton	United States of America
106	Laura Lance	United States of America
107	Harvey Schaktman	United States of America
108	K Barnes	United States of America
109	Ruby Warren	United States of America
110	C. J. Erickson	United States of America
111	Kenneth Gibson	United States of America
112	Nan Streicker	United States of America
113	Joan Goddard	United States of America
114	Robert Napoli	United States of America
115	Robin Lloyd	United States of America
116	Wayne Borders	United States of America
117	Kimon Kotos	United States of America
118	Kathleen Rude	United States of America
119	Dawn Rubbert	United States of America
120	Catherine Stanford	United States of America

#	Name	Country
121	Sue D. Torreyson	United States of America
122	Pamela Hughes	United States of America
123	Sandy McComb	United States of America
124	Glenn Carroll	United States of America
125	susan michetti	United States of America
126	Pam	United States of America
127	Marcia Heath	United States of America
128	Jan Boudart	United States of America
129	Sonia Ingram	United States of America
130	Carolyn Ballard	United States of America
131	Kingsley Osborn	United States of America
132	Julie Wert	United States of America
133	Jill Gough	United Kingdom
134	Lorraine Barlett	United States of America
135	Linda Chimenti	United States of America
136	Jill McManus	United States of America
137	penny miller	United States of America
138	Steve L.	United States of America
139	Maryanne Rackoff	France
140	Peggy Olsen	United States of America
141	Lisa	United States of America
142	Dennis Keyes	United States of America
143	Patricia Borchmann	United States of America
144	Vera Scroggins	United States of America
145	John Paul Clark	United States of America
146	Steve Eklund	United States of America
147	Minnie Ruffin	United States of America
148	Linda Tesser	United States of America
149	Carole Edelsky	United States of America
150	Jessica	United States of America
151	Alice Slater	United States of America
152	Andrew Weatherly	United States of America
153	Laurie Gates	United States of America
154	Jean Verthein	United States of America
155	Tony Santiago	United States of America
156	Chris Davenport	United States of America
157	Michel Lee	United States of America
158	Carol McGeehan	United States of America
159	Kathryn Dodgson	United States of America
160	Chip Des	United States of America

#	Name	Country
161	Dauida Sara	United States of America
162	Kristine Crisman	United States of America
163	Pamela Ross-Gilbertson	United States of America
164	Jean Gramlich	United States of America
165	Joel Masser	United States of America
166	Nancy Vann	United States of America
167	Connie Kline	United States of America
168	Joseph Golino	United States of America
169	Liz Allen	United States of America
170	Vincent Brancato	United States of America
171	Paula Gotsch	United States of America
172	Karen Inserra	United States of America
173	Wendy Goetz	United States of America
174	Jacob Oblander	United States of America
175	reb english	United States of America
176	Marnelle Curtis	United States of America
177	Chris Williams	United States of America
178	2950 Washtenaw Apt 2B	United States of America
179	Kerry s. Cooke	United States of America
180	Kathy Vaughn	United States of America
181	M. Cartmill	United States of America
182	David Hughes	United States of America
183	Judith Singsen	United States of America
184	Karin Eckert	United States of America
185	Elizabeth Zimmer-Lloyd	United States of America
186	Lee Stanfield	United States of America
187	RUTH H LOVINSOHN	United States of America
188	Deborah Louis	United States of America
189	Gail Thomas	United States of America
190	DeborahSquier	United Kingdom
191	Julia Hall	United States of America
192	Jan Corderman	United States of America

From: John Jaeger [REDACTED]
Sent: Thursday, January 26, 2017 8:10 PM
To: Consent Based Siting
CC: Teri Sforza
Subject: Yucca Mountain

Dear President Trump, Congress, and Department of Energy:

For the past few weeks, I have been contemplating how to get this message through to the new President, and now the OC Register has provided me your website as part of its important front page story today. Thank you, OC Register.

Harry Reid is responsible for delaying the storage of thousands of tons of nuclear waste nationwide, at an outrageous cost to all taxpayers. He is one of the most irresponsible, selfish representatives of the modern era. How he and a small crew of obstructionists could pull off this horrific feat is testimony to the sorry state of American politics.

If the Yucca Mountain site were to be designated federal property, as Barack Obama did so recently to so much land, it would be under the exclusive purview of the federal government.

Either declare it a National Park, or else create a new designation to serve that specific purpose of storing nuclear waste. Interested citizens could visit it, if any were interested. Appointment only, one or two days a year.

John Jaeger
[REDACTED]

From: John Heaton [REDACTED]
Sent: Tuesday, January 31, 2017 12:42 PM
To: Consent Based Siting
Subject: Consent Based Siting Doc Comments
Attachments: ELEA-Holtec Consent Process Comment 1-31-17.docx

1/31/2017

RE: Response to Consent Siting Process and Assumptions:

Dear Sir:

- In paragraph 3 you emphasize the need for “a” pilot consolidated interim storage facility. It is well known that both Holtec and WCS have applied for a license or in the case of Holtec will apply for a license in March of 2017. These are both private companies that have chosen to compete with one another. For you to suggest only one will be the winner and the other the loser by suggesting that only one will be accepted is:

1. A disservice to one or the other when, in fact, siting a facility during 25 years has been virtually impossible

2. There is enough SNF to support the activities of both facilities

3. Removing competition by choosing only one eliminates the competition between the two companies with the utilities or DOE for best price

4. Eliminates the competition for quality and new innovation

5. Eliminates the utilities in the case of WCS that are using a Holtec system, while on the other hand, the Holtec system can take any canister

6. The assumption that a pilot is needed to demonstrate the concept is grossly erroneous because interim storage has been in existence for some 30 years as has the transportation

of SNF in this country.

7. Why would you want to eliminate Holtec who has 52% of the storage in the country or NAC/Areva who together have some 43% of the country's storage? They both have a

significant role to play

The idea of a pilot is an antiquated concept in this case and represents a political strategy rather than a solution. Interim storage is well known, scientifically well accepted and plays a

major role in a system for ultimate disposal.

The limiting of the volume to be stored is also a major question in judgment when it is clear that both companies will be expecting more volume than that proposed, and they will build

their business plan around the volume allowed. Low volume equals high price and high volume will equal lower price.

Recommendation is to change wording to “two or more” consolidated interim storage facilities.

- In paragraph 3.2 the facility described has an obvious bias toward an old traditional above ground cask system. The subsurface system anticipated by Holtec would not need a fabrication facility for casks as described.

Recommendation is to eliminate the term “pilot” and describe the newest innovation that creates the safest, most secure and most versatile system in the world by Holtec as well as the old antiquated systems previously used.

Other recommendations:

- By adopting an unlimited volume capacity by the two competitors paragraph 3.3 could be eliminated, because both facilities would move forward aggressively.
- Phase I. Please add Step 7 which would allow a community who has completed Phase 1 to receive a grant that would compensate them for expenses already incurred.
- Phase II. Please add a Step for reimbursement to the community for any and all expenses associated with this phase which have already been incurred.
- Phase IV. Not including the state expressly in any agreement is a mistake that will end up like Yucca or Utah. It should be made clear that the state must be included.
- When DOE is competing facilities it should be made clear the incentives are fixed and the same to winners so that in the competition the incentives are not denigrated in the bidding process. If the incentives are lost for taking the countries SNF, the community and state will be less than enchanted about having and supporting a facility.

John Heaton

From: Rick McLeod [REDACTED]
Sent: Wednesday, February 15, 2017 9:50 AM
To: Consent Based Siting
CC: Amy Merry
Subject: Response to Draft Consent-Based Siting Process
Attachments: SRSCRO Comments - Draft Consent-Based Siting Process - 2-15-17.docx

Attached you will find our feedback and comments on the draft consent-based siting process.

Thanks,

Rick McLeod
President/CEO
SRSCRO

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

February 15, 2017

U.S. Department of Energy
Office of Nuclear Energy
Draft Consent-Based Siting Process
1000 Independence Ave. SW.
Washington, DC 20585

RE: Response to Draft Consent-Based Siting Process

Our organization – the Savannah River Site Community Reuse Organization (SRSCRO) is the U. S. Department of Energy’s designated Community Reuse Organization. We are charged with developing and implementing a comprehensive strategy to diversify the economy of a five-county region in the Central Savannah River Area (CSRA) of Georgia and South Carolina.

The SRSCRO is governed by a 22-member Board of Directors composed of business, government and academic leaders from both Georgia and South Carolina. Initially, its mission was to develop and implement a regional economic development plan utilizing technology-based facilities at the Savannah River Site. Today, SRSCRO remains focused on diversifying the region’s economy by supporting new business ventures that create new jobs in our region.

The SRSCRO Board of Directors recognizes that the Savannah River Site has a major impact on our region’s economy as the principal employer, a major purchaser of goods and services and an institution with technical capabilities that can serve as the basis for the development and/or expansion of private employment in the region.

The SRSCRO provided comments on the Invitation for Public Comment (IPC) concerning the design of a fair and effective process for a consent-based approach of an integrated waste management system to transport, store, and dispose of spent nuclear fuel and high-level radioactive waste from commercial electricity generation, as well national defense activities on July 21, 2016.

In these comments, we noted that the consent based siting process is just one process in a sequence of activities and discrete tasks which need to be accomplished for a consent-based approach to work effectively. Furthermore, we believed it is extremely important that all of the sequences of tasks are followed. Developing a consent based approach to siting may be just one of these activities but if it is implemented out of sequence, all efforts may be for naught.

The meeting summary from the April 11th Atlanta, Georgia consent-based IPC meeting did not reflect the strong opinions from both sides that establishment of a non-DOE entity to perform these sequence of tasks needs to be first. I don't know how any host community could sign on to an agreement without having some special purpose, independent organization behind the agreement with the legal authority to make it binding.

This is not addressed in the Draft Consent-Based Siting Process but needs to be. In addition, below is a list of comments, questions, and concerns, we would like to see resolved and answered before the Draft Consent-Based Siting Process becomes final.

1. Again, the document does not address who signs and who has authority to sign the agreement for the Government, the State, or local Community.
2. A research and development (R&D) facility is addressed in DOE's concept for the Consolidated Interim Storage facility but not as part of the Pilot Interim Storage facility. Is this an oversight? As noted in the document, DOE plans to build on experienced gained through the development of the pilot storage facility. It seems that DOE would want a similar or prototype R&D facility at the pilot facility as a test case.
3. DOE does not address "exit ramps" in this document. If one or more of the parties decide to exit the process, mechanisms for this to occur should be addressed in the consent-based siting process.
4. Why is there no mention of Yucca Mountain in this document, especially if it is DOE's intent to co-locate the pilot or consolidated storage facility with a geologic repository?
5. It appears the document identifies the interim period to be between 41½ years to 102 years per Phase V of the draft steps in the siting process. Does DOE really consider this period of time to be "Interim"?
6. Phase I of the draft steps in the siting process appears to address the steps for each type of facility. This assumes to include the pilot storage facility. However, all of the following phases only address the interim storage facility and the repository. Was the pilot facility specifically left out of Phase II-Phase V for a reason? It should be addressed and a rough estimate of schedule included in the final document.
7. We support the funding opportunity through grants or other methods for communities interested in learning more about consent-based siting, nuclear waste management, siting considerations, and the role a waste management facility (or facilities) may play in the community as addressed in Step 3 of Phase I. However, Step 4 in Phase I seems to limit the

response to the funding opportunity to only communities with an initial interest in learning more about consenting to host an interim storage facility or repository. The same wording “for communities interested in learning more about consent-based siting, nuclear waste management, siting considerations, and the role a waste management facility (or facilities)” should be included in Step 4 as well.

Thank you for allowing our voice to be heard.

DRAFT

From: Generette, Lloyd [REDACTED]
Sent: Thursday, March 02, 2017 8:20 AM
To: Consent Based Siting
Subject: Comments on Consent Based Siting Process
Attachments: ConsentBasedSitingProcessComments2017.docx

Please see the above attached comments.

Sincerely,
Lloyd Generette

Comment on Draft Consent-Based Siting Process

- The Consent Based Policy Act should be drafted and enacted by the Congress. As with the Nuclear Waste Policy Act, the federal government would assume liability for not siting an interim facility or repository based on the legal commitment between a local community, state **and** the federal government. After a timetable for the establishment a site is developed, the act shall prevent disruption of the project timetable due to the outcome of congressional and presidential elections as occurred with the Yucca Mountain project. This is not to defend the selection of Yucca Mountain as a final repository location but to illustrate how the process has been corrupted in the past.

From: Jaynee Reeves [REDACTED]
Sent: Thursday, March 02, 2017 1:47 PM
To: Consent Based Siting
CC: Pamela Webster; Daniel Schinhofen; Lewis Lacy; [REDACTED];
[REDACTED]; Cash Jaszczak; [REDACTED]; Lorina F. Dellinger
Subject: Nye County NV's Consent Based Siting Process Comments
Attachments: Nye County Consent based siting plan comments final 2 28 17.pdf

DOE/NE Spent Fuel and Waste Disposition office,

Nye County, NV respectfully submits the attached comments on DOE's Consent Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes.

Please acknowledge receipt. Thank you.

Dan Schinhofen, Chair
Nye County Commission
[REDACTED]



Jayne Reeves
Administrative Secretary
Nye County Administration
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Nye County is an Equal Opportunity Employer & Provider

**This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. Should the intended recipient of this electronic communication be a member of a public body within the State of Nevada be aware that it is a violation of the Nevada Open Meeting Law to use electronic communications to circumvent the spirit or letter of the Open Meeting Law (NRS Chapter 241) to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail, in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and conspicuously designated as "E-Contract Intended," this email does not constitute a contract offer, a contract amendment, or an acceptance of a counteroffer. This email does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Nye County, Nevada, Comments on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste

March 2017

Nye County appreciates the opportunity to provide comments on this document. By way of introduction to the specific comments, several general comments that help with the context of the specific comments are appropriate. These should help illustrate why Nye County reacts so negatively to the Department of Energy attempts to subvert the will of Congress, revisit considerations already decided in law, and create, without direct congressional involvement, a new high-level waste disposal strategy.

The *Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste* document was released by the Department of Energy on January 12, 2017. In an accompanying Federal Register notice,¹ the Department noted that it was designing a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of commercial spent nuclear fuel and high-level radioactive waste. In such a consent-based siting approach, the Department noted that it would work with communities, Tribal Governments and States across the country that express interest in hosting federal consolidated interim storage facilities and disposal facilities for spent nuclear fuel and high-level radioactive waste as part of an integrated waste management system. The Department also noted that it was seeking input on the document.

The sequence of events resulting in the Blue Ribbon Commission on America's Nuclear Future Report to the Secretary in 2012,² and the Department of Energy, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*,³ the precursors to the activity resulting in the *Draft Consent-Based Siting Process* document, were the result of deliberate actions by the Obama administration to fulfill commitments to dismantle the Yucca Mountain project made during Senator Obama's campaign for the presidency. These actions contravened existing law, and in fact were made without seeking the input and the consent of Congress.

In May 2007, Senator Obama's campaign for the presidency began in earnest, and opposition to Yucca Mountain was an essential element in the strategy to win Nevada's electoral votes. In a May 2007 letter to the *Las Vegas Review Journal*,⁴ he stated: "[a]fter spending billions of dollars on the Yucca Mountain Project, there are still significant questions about whether nuclear waste can be safely stored there. I believe a better short-term solution is to store nuclear waste on-site at the reactors where it is protected, or at a designated facility in the state where it is produced, until we find a safe, long-term disposal solution that is based on sound science. In the meantime, I believe all spending on Yucca Mountain should be redirected to other uses, such as improving the safety and security of spent fuel at plant sites around the country and exploring other long-term disposal options." In an October 2007 letter⁵ to Senator Reid, who at that time was the Senate Majority Leader, and Senator Barbara Boxer, then chair of the Senate Environment and Public Works Committee, he called on the leaders to abandon the project. He stated: "[i]n short, the selection of Yucca Mountain has failed, the time for debate on this site is over, and it is time to start exploring new alternatives for safe, long-term solutions based on sound science." After the election, Senator Obama traveled to Las Vegas to meet with Senator Reid. After the meeting Reid was interviewed by a reporter and asked about the fate of the Yucca Mountain Project in an Obama

¹ 82 FR 4333 January 13, 2017

² Blue Ribbon Commission on America's Nuclear Future, *Report to the Secretary of Energy*. January 2012

³ U.S. Department of Energy, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*. January 2013.

⁴ Barack Obama, "Barack Obama Explains Yucca Mountain Stance." Letter to the Editor. *Las Vegas Review-Journal*. May 20, 2007.

⁵ Zachary Scott Edwards, "Yucca Nuclear Storage 'Has Failed.'" *Las Vegas Review-Journal*. October 31, 2007.

administration. Reid stated: “[I]isten, Yucca Mountain’s gone. Obama’s president, Yucca Mountain’s history.”⁶

By January 21, 2009, Steven Chu was Secretary of Energy, and actively working to dismantle the Yucca Mountain Project, initially by testifying that the science of the Yucca Mountain site was bad: “[w]hile it’s fair to say that the whole history of Yucca Mountain was more political than scientific, but also, very truthfully, I can say that given what we know today the repository looks less and less good. So now we’re in a situation where it can’t move forward.”⁷ When challenged and unable to present evidence to support his claim, Chu’s argument—and the administration’s argument against Yucca Mountain—changed to: *it’s unworkable*. To satisfy commitments made during the presidential campaign, the Secretary of Energy, without technical basis, and without consulting Congress, attempted to withdraw, with prejudice, the License Application that law⁸ directed the Department of Energy to prepare and submit to the Nuclear Regulatory Commission. In testimony⁹ before the House Committee on Science and Technology on March 3, 2010, Secretary Chu stated that in 2010 the Department of Energy would discontinue its application to the Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain, noting that both he and the president had made it clear that Yucca Mountain was not an option. On March 3, 2010, the Department of Energy filed its motion to withdraw the License Application with prejudice.¹⁰

The Department also unilaterally ceased work on the Yucca Mountain Project. Under an equitable interpretation of President Obama’s scientific integrity policy,¹¹ the Nuclear Regulatory Commission’s Safety Evaluation Report¹² which was nearing completion at that time,¹³ should have been released so the

⁶ Steve Tetreault, “Waste Critics See Opening,” *Las Vegas Review-Journal*. November 10, 2008.

⁷ Steven Chu, cited in March 24, 2010, House Appropriations Subcommittee Hearing questioning.

⁸ Nuclear Waste Policy Act of 1992, *Public Law 97-425*, as amended by *Public Law 100-203*, and, Joint Resolution Approving the Site at Yucca Mountain, Nevada, for the Development of a Repository for the Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel, Pursuant to the Nuclear Waste Policy Act of 1982. *Public Law 107-200*. July 23, 2002.

⁹ Steven Chu, *Statement of Secretary Steven Chu, U.S. Department of Energy, Before the Committee on Science and Technology, U.S. House of Representatives: FY 2011 Budget Hearing*. March 3, 2010.

¹⁰ U.S. Nuclear Regulatory Commission, *U.S. Department of Energy’s Motion to Withdraw*, Atomic Safety and Licensing Board, Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04. March 3, 2010.

¹¹ Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies; Subject: Scientific Integrity*. White House, Office of the Press Secretary. March 9, 2009: “(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards; and (d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions”

¹² U.S. Nuclear Regulatory Commission, *Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada*. NUREG-1949, in five volumes.

¹³ In testimony before Congress, a Nuclear Regulatory Commission staff member testified that Volume 3 of the Safety Evaluation Report was complete in September 2010, when Chairman Jaczko directed that all work on the report stop. (Janet Kotra, Nuclear Regulatory Commission senior project manager, *Testimony Before Congressional Subcommittee on Environment and the Economy, Committee on Energy and Commerce*. Transcript pp. 11, 12. June 24, 2011.) Further testimony by the official responsible for leading the review of the license application noted that Volume 3 could have been ready for publication in September 2010 but was slowed because of direction from Jaczko not to issue the document before November 2010. Staff expected to issue Volume 3 in November 2010 and the other three volumes by March 2011. (Newton Kingman Stablein, Nuclear Regulatory Commission Chief of Project Management Branch, *Ibid.* pp 18,19) They went on to recount that in September 2010, commission staff were directed to stop all work on the Safety Evaluation Report volumes.

public had an opportunity to judge the soundness of the Yucca Mountain science for themselves. It seems likely that the only reason for withholding its publication was to allow the administration to attempt to maintain the façade that the actions had technical merit. To release them would have been potentially embarrassing to the president and Senator Reid, both of whom had argued that the science of Yucca Mountain was unsound. While the Safety Evaluation Report ultimately was completed and released, it required lawsuits to force the federal government to follow the existing law.¹⁴

Missing from these actions was an indication of how Congress might react to the Department of Energy unilaterally deciding that the national policy codified in the Nuclear Waste Policy Act was no longer appropriate. Secretary of Energy Chu was, in effect, assuming the authority and taking responsibility for ignoring the will of Congress. Such unilateral action had been undertaken once before by Secretary of Energy Harrington with disastrous results;¹⁵ the major difference in this situation was that the President was openly and actively participating in the effort.

In testimony¹⁶ before the House Committee on Science and Technology on March 3, 2010, Secretary Chu also stated that to deal with waste management, the administration would conduct a comprehensive review of the back end of the fuel cycle to provide recommendations for developing a solution to managing the nation's used nuclear fuel and its nuclear waste. This was the Blue Ribbon Commission on America's Nuclear Future, created by presidential directive.¹⁷ The Commission was to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel and nuclear waste. Also, the Commission was to consider and analyze a broad range of technological and policy alternatives, and where appropriate, identify potential statutory changes. (emphasis added) The Commission was clear in stating that it was not a siting commission and did not propose any specific sites for any component of the waste management system; however, it did note that it recognized that current law establishes Yucca Mountain as the site for the first U.S. repository for spent fuel and high-level waste, provided the license application submitted by the Department of Energy meets relevant requirements. The Commission completed its report¹⁸ in 2012 and made a number of recommendations; the first recommendation was for a new, consent-based approach to siting future nuclear waste management Facilities. This recommendation was key to the current Department effort to develop a consent-based siting process for consolidated storage and disposal facilities for spent nuclear fuel and high-level radioactive waste, and was integral to the development of the Department of Energy strategy to manage used nuclear fuel and high-level radioactive waste.¹⁹

¹⁴ In response to petitions from affected stakeholders, and in a protracted hearing, the Court of Appeals for the District of Columbia Circuit found that the president may not decline to follow a statutory mandate or prohibition simply because of policy objections and directed that the Nuclear Regulatory Commission must follow the Nuclear Waste Policy Act and complete its review of the Yucca Mountain License Application. (U.S. Court of Appeals for the District of Columbia Circuit, *In Re: Aiken County, et al., Petitioners. On Petition for Writ of Mandamus*. No. 11-1271. August 13, 2013)

¹⁵ Secretary of Energy John Harrington indefinitely suspended siting work for the second repository program on May 28, 1986. Congress reacted negatively, ultimately amending the Nuclear Waste Policy Act and selecting Yucca Mountain as the only site to be studied for the first repository program (see, for example, Chapter 7, Voegelé and Vieth, *Waste of a Mountain*. Nye County Press. 2016)

¹⁶ Steven Chu, *Statement of Secretary Steven Chu, U.S. Department of Energy, Before the Committee on Science and Technology, U.S. House of Representatives: FY 2011 Budget Hearing*. March 3, 2010.

¹⁷ Barack Obama, *Presidential Memorandum: Memorandum for the Secretary of Energy: Blue Ribbon Commission on America's Nuclear Future*. White House. Office of the Press Secretary. January 29, 2010.

¹⁸ Blue Ribbon Commission on America's Nuclear Future, *Report to the Secretary of Energy*. January 2012

¹⁹ U.S. Department of Energy, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*. January 2013

The commission's recommendation for a consent-based siting process is predicated on examples of international success that are not relevant to the U.S. political structure, or in the case of the Waste Isolation Pilot Plant, by the Commission's admission "no one could have designed the process that was ultimately followed ahead of time nor could that process ever be replicated."²⁰ The commission's recommendation also is not sensitive to the history of development of existing law. In developing the legislation that led to the Nuclear Waste Policy Act, the question of whether the State in which the proposed repository site was to be located should have veto authority was examined. A major issue following the 1976 announcement of the National Waste Terminal Storage program²¹ and its search for sites for a high-level radioactive waste repository was whether a State had the authority to veto the federal government's siting decision. This became an overarching issue of great importance in drafting the 1982 Nuclear Waste Policy Act. The decision not to give States a veto was deliberate and long debated, and the consensus was — no. Congress retained the siting decision to itself.

The government organization with the most authoritative knowledge and perspective was the General Accounting Office. Its spokesman was the Comptroller General, who testified regarding these issues and carefully documented the agency's opinion.²² While the General Accounting Office could not make a decision for Congress, it could provide authoritative research, analysis, and advice about the issue and the potential consequences. In response to a congressional committee request, the General Accounting Office provided specific guidance in early 1981²³ regarding federal preemption: "[w]e further concluded that if all State concurrence efforts fail, the federal government may have to act unilaterally to override State and local opposition and select the best repository site available. The waste problem is already of such paramount importance that a solution must be obtained, even if one or more segments of the public are dissatisfied." The State Planning Council created under President Carter did not support the political position that States should have an absolute veto, and agreed that States should not have veto authority. The recommendation of the State Planning Council regarding the final siting decision for a high-level radioactive waste repository was for a statutorily defined conflict resolution mechanism that called upon the president or the Congress to make the final siting decision if the parties reached an impasse.²⁴

There were attempts to introduce provisions for a State veto in developing the Nuclear Waste Policy Act. Congressman Dingell believed that the Department of Energy may have exceeded its authority in giving certain States a veto over the establishment of nuclear waste repositories; he stated he was unaware of any statutory provision authorizing the Department to share decision-making responsibilities with the States. Senator McGovern offered an amendment to the 1978 Energy Research and Development Administration authorization bill that would have amended the Energy Reorganization Act of 1974²⁵ to prohibit contracting for or construction of a radioactive waste storage facility in the event a State legislature disapproved of the use of a particular site in the State. After a colloquy regarding the advisability of adopting the amendment, a majority of the Senate voted to lay it on the table.²⁶ Senator Church observed "... for years we have been trying to find a permanent depository for the wastes we have already created. As yet, we have not found a State government that has been willing to accept that depository. I think that

²⁰ Blue Ribbon Commission on America's Nuclear Future, *Report to the Secretary of Energy*. January 2012. p. 49.

²¹ Luther J. Carter, *Nuclear Imperatives and the Public Trust: Dealing with Radioactive Waste*. Washington, D.C.: Resources for the Future, 1987, p.148.

²² General Accounting Office, *The Nation's Nuclear Waste—Proposal for Organization and Siting*. EMD-79-77. B164052. June 21, 1979.

²³ General Accounting Office, *Is Spent Fuel or Waste from Reprocessed Spent Fuel Simpler to Dispose Of?* EMD-81-78. June 12, 1981. See Transmittal Letter from Acting Comptroller General.

²⁴ Richard W. Riley, chairman, and Vice Chairman Paul R. Hess, State Planning Council, "Appendix C: Executive Summary of the Interim Report of the State Planning Council to the President," in E. William Colglazer Jr., editor, *Politics of Nuclear Waste*. New York: Pergamon Press, 1982

²⁵ Energy Reorganization Act of 1974, *Public Law 93-438*

²⁶ 123 Cong Rec. S11643-11650 (daily ed. July 12, 1977).

it is a suggestion of what lies in store for the country if we adopt this amendment in its present form. The problem we face would become unsolvable.”

Moreover, Senator Proxmire was insistent on the protection of States’ rights to the maximum possible extent; he had a hold placed on the Waste Policy Act bill and was threatening to filibuster, which would have, in effect, killed the bill for that session of Congress. Two options were considered: first, a notice of disapproval submitted by the State would not be automatically effective unless one house of Congress supported the State’s position. This would put the burden of effecting the disapproval on the State, which was seen as comparable to the Department of Energy’s position that the site was suitable. Under the second option, which was accepted, the notice of disapproval was automatically effective unless both houses of Congress voted to override it. Senator Proxmire believed that no other action could do more to put the host State on an equal footing with the Department of Energy. In late December 1982, the last hurdle to the passage to the Nuclear Waste Policy Act was overcome. At the end of a four-year effort, the bill became law.²⁷

The Nuclear Waste Policy Act did address the issue of the role of the States in the decision making process. Section 116(b)(2) of the Nuclear Waste Policy Act includes provisions for a Notice of Disapproval: “[u]pon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval.” By giving the State the opportunity to file a Notice of Disapproval to the Department’s site recommendation, which became effective unless Congress subsequently passed a notice of siting approval, the Act effectively set the level of authority of the Department and the State to be equal. Then, Congress got to make the final decision.

While the Nuclear Waste Policy Act does not include provisions for a State veto, or in other words, consent to development of a high-level waste facility in a State, section 117 (b) of the Nuclear Waste Policy Act does include provisions for a Consultation and Cooperation agreement: “.... the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository.” This covers essentially everything other than an outright veto; and, as noted, the Act included provisions for a Notice of Disapproval to be submitted by the selected State that would have to be overridden by both Houses of Congress.

The Act specified that the Department of Energy was required to enter into a Consultation-and-Cooperation agreement with the State for the purpose of addressing and resolving issues related to decision-making about the facility and the conditions surrounding its siting and operation. The Department attempted to initiate that effort with the State of Nevada, and were disregarded.²⁸ It was the position of the political leadership in Nevada to totally reject the determination that Yucca Mountain was suitable for characterization for a repository for high-level radioactive waste because the site selection process was so badly flawed and the Department of Energy could not be trusted.²⁹

²⁷ Luther Carter, *Nuclear Imperatives and the Public Trust*, pp. 224–226. See also Robert Vandenbosch and Susanne F. Vandenbosch, *Nuclear Stalemate: Political and Scientific Controversies*. Salt Lake City: University of Utah Press. 2007, p. 54.

²⁸ U.S. Department of Energy, *Draft Mission Plan Amendment*. DOE/RW-0128. Office of Civilian Radioactive Waste Management, Washington, D.C. January 1987.

²⁹ Governor Richard Bryan, *Testimony Before the Hearing on the Nuclear Waste Program*. Senate Committee on Energy and Natural Resources. S. Hrg. 100-230. Part 3. April 29, 1987

Ignoring the carefully crafted Nuclear Waste Policy Act provisions for a Consultation and Cooperation agreement, and the provisions for a Notice of Disapproval to be submitted by the selected State that would have to be overridden by both Houses of Congress, the Blue Ribbon Commission report and the Department of Energy Strategy assume that Congress will enact new legislation to direct the proposed consent-based strategy to manage used nuclear fuel and high-level radioactive waste.

That Strategy formed the basis for the proposed Senate legislation introduced in 2013 and 2015. The Nuclear Waste Administration Act of 2015— S. 854,³⁰ introduced in the Senate on March 24, 2015, establishes a Nuclear Waste Administration to provide for the permanent disposal of nuclear waste, including the siting, construction, and operation of **additional**³¹ repositories, a test and evaluation facility, and pilot and additional storage facilities.

The bill was sponsored by Senators Lamar Alexander (R-TN), Lisa Murkowski, (R-AK), Dianne Feinstein, (D-CA), and Maria Cantwell (D-WA) and is the same as S. 1240—the Nuclear Waste Administration Act of 2013 introduced in the 113th Congress. While this bill explicitly states it will terminate those authorities of the Secretary regarding siting, construction, and operation of repositories, storage facilities, or test and evaluation facilities which were not transferred to the Administrator, it did not address directly the issue of changing the law designating Yucca Mountain for development of a repository. Clarification for this can be found in the March 4, 2015 words of the Chairman Alexander of the Appropriations Subcommittee on Energy & Water Development:³² “[I]et me be clear: Yucca Mountain can and should be part of the solution. Federal law designates Yucca Mountain as the nation’s repository for used nuclear fuel. To continue to oppose Yucca Mountain because of radiation concerns is to ignore science – as well as the law. The next steps on Yucca Mountain include completing a supplemental environmental impact statement and restarting the hearings before the Atomic Safety and Licensing Board, which were suspended in September 2011. Money is available for these activities, and I want to hear why there is no request to use it.”

Of particular note, the language of S. 854 does not revoke the provisions of the Joint Resolution Approving the Site at Yucca Mountain, Nevada, for the Development of a Repository for the Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel.³³

The House, however, has not shown an inclination to support the Department of Energy Strategy to the exclusion of Yucca Mountain. Chairman Shimkus of the House subcommittee with responsibility for management of nuclear waste, has made clear the House support is for moving forward with Yucca Mountain and not replacing it with an interim storage program: “[w]e’re open to interim but there always has to be a nexus to Yucca, otherwise you’re not going to have interim.” And: “[w]e in the Federal Government have an obligation to uphold the law to dispose of commercial spent nuclear fuel, as well as honor the commitment made to States who host sites to support our nuclear defense activities, including South Carolina, Idaho, and Washington State.” Shimkus also emphasized the bipartisan support that exists today in the House, which reflects that evident in the development of the Nuclear Waste Policy Act: “[I]et me state at the outset that the issue of the nation’s nuclear waste management policy is not a

³⁰ U.S. Senate, *Nuclear Waste Administration Act of 2015: S. 854*. 114th Congress. Introduced in the Senate on March 24, 2015. <https://www.congress.gov/bill/114th-congress/senate-bill/854?q=%7B%22search%22%3A%5B%22Nuclear+Waste+Administration+Act+of+2015%22%5D%7D>.

³¹ Word used in bill summary: <https://www.congress.gov/bill/114th-congress/senate-bill/854>

³² Senator Lamar Alexander, Chairman Appropriations Subcommittee on Energy & Water Development, *Hearing on FY16 Nuclear Regulatory Commission Budget: Opening Statement*. March 4, 2015.

³³ Joint Resolution Approving the Site at Yucca Mountain, Nevada, for the Development of a Repository for the Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel, Pursuant to the Nuclear Waste Policy Act of 1982. *Public Law 107-200*. July 23, 2002.

partisan issue. The House of Representatives has repeatedly supported Yucca Mountain in an overwhelming and bipartisan manner. Last summer, efforts to abandon Yucca Mountain were defeated on the House floor with the body voting four to one in favor of Yucca Mountain. This includes nearly 2/3 of the Chamber's Democrats.”

In summary, the issue of a State veto and Consultation and Cooperation were Congress' solution to a consent-based process, and were addressed and decided in the Nuclear Waste Policy Act as amended. Congress did not support a consent-based approach to siting. From 1983 to 2008, there was bipartisan support for the Nuclear Waste Policy Act and the Department of Energy followed the directives of law in determining the suitability of the Yucca Mountain site. All of the lawsuits against the selection of the Yucca Mountain site were dismissed, although the time of compliance in the Environmental Protection Agency standard was remanded and repromulgated. In 2008 a new administration decided, without consulting Congress, not to follow the law, dismantled the legally mandated program, which had filed the required license application, which was under review by the Nuclear Regulatory Commission staff, and attempted to create a new consent-based high-level waste disposal strategy with an assumption that Congress would support the new concept. The administration has refused to seek funding for the program. It created a Blue Ribbon Commission on America's Nuclear Future, the recommendations of which were embodied in a new Department of Energy Strategy for a consent-based approach to siting high-level waste storage and disposal facilities. While the Department assumes congressional support for changing existing law, neither house has shown a predisposition to abandon the Yucca Mountain program.

Specific Comments by Section of the Draft Consent-Based Siting Process Document

1 Introduction

The Administration's Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste,³⁴ notes that it is seeking to develop “a phased, adaptive, and consent-based approach to siting and implementing a comprehensive management and disposal system” for spent nuclear fuel and high-level radioactive waste. This Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste attempts to implement that strategy without clear direction from Congress as an entity to do so. The Strategy is based on the Blue Ribbon Commission on America's Nuclear Future report³⁵ to the Secretary of Energy that was produced because the administration unilaterally decided not to follow existing law, dismantled the Yucca Mountain program, and was forced to do something in an attempt to forestall further criticism and damages arising from the Department of Energy finding itself in default on legitimate contracts to take title to the nation's spent nuclear fuel.

The concept of a consent-based approach to siting high-level nuclear waste facilities is not new. In early 1978, the Department of Energy was directed by President Carter to convene a task force to study disposal of high-level radioactive waste. Members of the task force were to be drawn from numerous federal agencies so that all aspects associated with the effort—including a valid technical solution that was acceptable politically—could be developed.

President Carter eventually developed a set of overarching principles related to radioactive waste management.³⁶ These included: federal, state, and local institutions would work collaboratively; State consultation and concurrence would lead to an acceptable solution of the waste disposal problem only if

³⁴ U.S. Department of Energy, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*, January 2013.

³⁵ Blue Ribbon Commission on America's Nuclear Future, *Report to the Secretary of Energy*, January 2012.

³⁶ See, for example, Michael Voegele and Donald Vieth. *Waste of a Mountain*. Nye County Press. 2016 Chapter 5.

the states participated as partners in the program being put forward; and the right of federal preemption if relations between the federal government and the state reached an impasse was to be preserved. (emphasis added). Carter's principles were well known at the time a few years later when debate began on the legislation that eventually became the Nuclear Waste Policy Act.

It is important to note that Congress debated the issue of a State veto — in other words consent— and rather than concurrence, as in the Carter principles, opted for cooperation, and a Notice of Disapproval that would have to be overridden by both Houses of Congress. Congress found that the Department could not relinquish its authority under the Energy Reorganization Act of 1974³⁷

Clearly Congress was aware of the difference between concurrence and cooperation, as amendments were offered during work on the Nuclear Waste Policy Act in attempts to give veto authority to a State selected to host a repository. Ultimately, Congress elected to retain that authority.

No convincing argument is presented in the Draft Consent-Based Siting Process document that would suggest that Congress, objectively revisiting the arguments underlying the Nuclear Waste Policy Act, would reach a conclusion supportive of the Department's Strategy for consent-based siting. Moreover, there is no realism in the approach to recognize the amount of time that would be needed to implement this draft consent-based siting process. There are several significant time line issues that must be addressed satisfactorily if the United States is to develop consent based, consolidated interim storage ahead of a repository.³⁸ To avoid the types of criticism levied against development of the current regulations, it would be appropriate to wait until new policy has been developed and codified in an amended Nuclear Waste Policy Act before promulgation of new standards and regulations. In summary, they are:

Change United States disposal policy and enact it in law:

1. Change the law, HJR 87, PL 107-200, designating Yucca Mountain for the development of a repository.
2. Bring new nuclear waste legislation to the floor of the Senate, overcoming existing House support for Yucca Mountain
3. Change the longstanding focus of Congress from disposal to storage
4. Change the funding concepts embodied in the Nuclear Waste Policy Act to allow the Nuclear Waste fund to be used to pay for interim storage
5. Reverse the Congressional policy not to give states or tribes veto or consent authority, and to reserve to Congress the authority to override a state or tribal disapproval

Items 1 through 5 all deal with changing United States disposal policy and enacting it in law. It is very difficult to estimate the amount of time that it would take to change the Nuclear Waste Policy Act; it is also difficult to imagine that all five of these impediments could be overcome in a single action. Suffice it to say that it is not likely that the action could be initiated today, given the current stances of the House and Senate, and that it is not likely that the dismantlement of the Nuclear Waste Policy Act could occur on a schedule faster than it took to develop it, considering the major policy changes that would have to be worked out. An estimate of 2 to 4 years to enact these changes years is probably optimistic.

³⁷ Energy Reorganization Act of 1974, *Public Law 93-438*.

³⁸ See: Michael D Voegele, and Donald Vieth. *The Time Needed to Implement the Blue Ribbon Commission Recommendation on Interim Storage*. WM2013 Conference, February 24 – 28, 2013, Phoenix, Arizona USA. Paper 13124

Promulgate new Regulations:

6. Promulgate interim storage facility siting regulations to reflect the new policies after such changes to policy and law
7. Complete already underway changes to storage and transportation regulations, possibly incorporating changes to reflect changes to waste disposal law
8. Promulgate new repository siting regulations if the interim storage facility was to support repository development

There is precedent for developing regulations and standards to implement the Nuclear Waste Policy Act (items 6, 7 and 8). The legislative guidance for the Yucca Mountain site specific regulations was given in 1992, and the required National Academy of Sciences input was available by 1995. Drafts of the Environmental Protection Agency, Nuclear Regulatory Commission, and Department of Energy regulations were available by 1999, and were finalized by 2002. Lawsuits over the licensing regulations dragged out the process another 6 to 7 years, but the siting criteria were not overturned. From the completion of the National Academy of Sciences guidance to application of the siting criteria took 7 years, which is probably not an unreasonable estimate of the minimum amount of time to develop these types of regulations, given the Blue Ribbon Commission recommendations for the types of regulations, the fact that to strictly meet the recommendation the regulations could not be developed parallel, and the sophistication of the opponents of nuclear power and waste disposal in prolonging such matters.

Identify Sites:

9. Identify volunteer sites, negotiate agreements, and get Congressional approval for negotiated benefits packages

It does not seem likely that the time that would be required to identify sites, negotiate agreements, and get Congressional approval for negotiated benefits packages could be much less than 1 or 2 years. To be consistent with the Blue Ribbon Commission recommendations, this too could not start until the previous steps were complete.

Build Facility

10. Design, license and develop the interim storage facility

Considering the first three sets of activities to proceed sequentially results in an estimate of the amount of time to prepare for initiation of siting an independent storage facility on the order of 10 to 12 years. Adding the time to design, license, and develop an interim storage facility, in a location where the local community wanted it, which is on the order of 12 years, results in a total time to get to operation of a federal independent storage facility on the order of 25 years.

The Department of Energy Strategy and the Draft Consent-Based Siting Process document optimistically speculate that a pilot interim storage facility and an interim storage facility would relieve pressure on the United States government to take possession of the spent nuclear fuel in storage at the nation's nuclear power plants. The utility owners have legitimate contracts requiring the federal government to take title and possession of this spent nuclear fuel by January 31, 1998. The government is obviously in default on these contracts and damages have been awarded to a number of utilities. Those settlements assumed that the government would begin to take the spent nuclear fuel in 2017; clearly additional lawsuits and increased damage payments are to be expected.

Searching for a volunteer site for an interim storage facility with a promise of the state able to veto the facility at any time makes little sense because the state government and its acceptance could change during the time it would take to develop the facility, even assuming that Congress would reverse its long-standing position. Following the existing law and completing the Yucca Mountain licensing hearing makes more sense.

2 Rationale for Moving Forward with a Consent-Based Siting Process

The Draft Consent-Based Siting Process document notes that the Department of Energy concludes, grounded in conclusions reached by previous studies and real-world experience with siting controversial facilities in the United States and elsewhere, that a consent-based process is more likely to deliver successful outcomes. It is important to note that the international examples of successful consent-based siting cited by the Blue Ribbon Commission on America's Nuclear Future are not relevant to the United States political situation. In the Scandinavian examples, there was no sovereign State entity involved in the siting. Local communities negotiated directly with the federal government. In Nevada, the local community, as well as the situs county and eight of the surrounding counties have resolutions asking that the Yucca Mountain license application hearings be conducted. This is not consent in the sense of the Department of Energy document; it is however, an acknowledgement, by the Counties and local community, of acceptance of the Yucca Mountain Project.

As to siting experience in the United States, the Waste Isolation Pilot Plant was not sited by a consent-based process. The critical words in the Blue Ribbon Commission report are *have an opportunity to decide*, which means that the community or state can say yes, we accept, or they can say no, we do not accept. The commission's definition also gives the absolute veto authority to the state with whom the federal government is negotiating. The absolute veto was a concession to which the chair of the House Armed Services Committee, Mel Price, in directing the siting of the Waste Isolation Pilot Plant, would not agree.

The issue of a consent-based siting process for the Waste Isolation Pilot Plant has been summarized succinctly.³⁹ When the Waste Isolation Pilot Plant authorization bill came to the House floor for a vote, Price agreed to reverse his committee's recommendation and include funding for Waste Isolation Pilot Plant *but without state participation in decision making*. Without consulting New Mexico officials, he offered an amendment stipulating that the plant be constructed solely as a defense facility and that any state veto be prohibited. "Unfortunately, the Waste Isolation Pilot Plant project has become embroiled in bureaucratic politics within the current administration and in the politics of the state of New Mexico," Price said in a speech. "I think that even those in the highest levels of management in the Department of Energy will admit that the project has been mishandled by the Department." His amendment, he said, "will simply return the project to the same status that it was when it was first presented to our committee." *The inclusion of the prohibition of state veto language, he added, reflected the fact that a state government could not thwart the federal government's will.* "I do not believe that any member of this body would agree to the expenditure of federal funds for the purposes of constructing any kind of a federal project which, after its completion, could not be used as a result of political action within a state," he said. (emphasis added)

Without acknowledgement of Price's action to prevent a state veto, the Blue Ribbon Commission continued to foster the perception that the site selection process for the Waste Isolation Pilot Plant was consent-based.

³⁹ Chuck McCutcheon, *Nuclear Reaction: The Politics Of Opening A Radioactive Waste Disposal Site*. Albuquerque, NM: University of New Mexico Press, 2002 p. 72

Regarding the “conclusions reached by previous studies,” the National Academy of Sciences’ study⁴⁰ was done at the request of the Department of Energy, and asked the for advice on operational strategies for the development of a geologic repository for high-level waste. In the letter requesting this study, the Department sought advice on strategies it could pursue for staging the design, construction, operation, and closure of a repository in a safe, secure, cost effective, and societally acceptable fashion. The report does not directly address the consent of the host state. Rather, it focused on achieving the degree of technical and societal consensus needed to begin waste emplacement, rather than on the emplacement of all waste. In other words, this is in the context of adaptive staging, and consensus could just as easily be interpreted to mean a successful license application.

3 Types of Facilities

The Draft Consent-Based Siting Process document notes that “DOE is committed to working with tribal, state, and local authorities, including state regional groups, to address transportation issues and respond to the concerns of affected communities.” Unfortunately, there is convincing evidence that the Department of Energy does not take this “commitment” seriously.

The Department of Energy has a significant quantity of special nuclear material, referred to as U-233 (uranium-233), although the uranium content of this material by isotope is 76% U-235 and 10% U-233. Small quantities of U-232 make this material radiologically hot, leading to a requirement for remote handling. The material is from the Consolidated Edison Uranium Solidification Project and exists in a ceramic matrix solidified in small stainless steel canisters. Because of the mounting costs of this cleanup, the Department proposed a new approach to dispose of this material directly, without further processing. The approach is to dispose the material in shallow trenches at the Nevada National Security Site. The Department’s rationale that these uranium materials can be considered low-level radioactive waste is based on the argument that the materials meet the requirements of the Nevada National Security Site Waste Acceptance Criteria document, which references the Nuclear Regulatory Commission’s 10 CFR Part 61 rule regulating commercial low level waste disposal.⁴¹

Notwithstanding the fact that the material is 76% U-235 and not dissimilar to the materials that would be disposed in a repository at Yucca Mountain as high-level waste, the Department of Energy refused to meet with Nye County officials to discuss disposal of this material even though the material was to be buried in Area 5 of the Nevada National Security Site, which is located entirely in Nye County. This does not speak well of a “commitment” to working with tribal, state, and local authorities, including state regional groups, to address and respond to the concerns of affected communities

3.2 Pilot Interim Storage

The Draft Consent-Based Siting Process document notes that the Department of Energy Strategy calls for the development of a pilot interim storage facility with the capability to transfer large dry storage canisters from transportation casks into dry storage. The current concept for this type of facility includes constructing and operating a canister handling building, a canister transfer facility, and a storage cask fabrication facility.

Missing from this concept is the ability to anticipate and accommodate the needs of the eventual repository waste package design. Depending on the medium selected for an eventual repository, and the

⁴⁰ National Research Council of the National Academies, *One Step at a Time: The Staged Development of Geologic Repositories for High-Level Radioactive Waste*, 2003.

⁴¹ See: Michael Voegelé, Joseph Ziegler, and Darrell Lacy. *Disposal of U-233 as Low Level Waste at the Nevada Nuclear Security Site*. WM2014 Conference, March 2 – 6, 2014, Phoenix, Arizona, USA Paper 14175

thermal loading strategies, waste package capacities could be very different. Without advance knowledge of these requirements, significant reworking, and repackaging, could be required. Regardless of whether this is to be done at the storage facility or repository, additional handling means additional worker exposure, which would be exacerbated if the canisters were to be repackaged.

A better solution would be to implement a repository design that could accommodate the storage canisters in waste packages, as was the case for Yucca Mountain.

3.3 Consolidated Interim Storage

The Draft Consent-Based Siting Process document notes that the storage facility could potentially be co-located with the pilot facility and/or a geologic repository, and could accommodate a much broader variety of storage systems. Under current law there are a number of restrictions and limitations. Nuclear Waste Policy Act:

114 (d) The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to subtitle C of this Act, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

141 (g) Limitation. No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 112. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository

145 (b) Limitation. The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a Repository

148 (d) Licensing conditions. Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that –(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository

These limitations are incorporated in 10 CFR Part 72 for an independent spent fuel storage installation or monitored retrievable storage facility owned and operated by the Department of Energy.⁴²

There are legitimate and sound reasons for these restrictions and limitations. First, there were concerns that if an interim storage facility were developed before a repository was licensed, the interim storage facility could become the *de facto* final resting place for the wastes. These concerns date back to the early 1970s when the government, faced by failures in the repository program, attempted to develop the

⁴² U.S. Nuclear Regulatory Commission. Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste. 10 CFR 72.96.

Retrievable Surface Storage Facility program.⁴³

The primary comments that caused the termination of the Retrievable Surface Storage Facility approach to management of the high-level radioactive wastes were from the Environmental Protection Agency regarding the Draft Environmental Statement. The Environmental Protection Agency's critical words⁴⁴ included:

“[t]he development of an environmentally acceptable system for permanent disposal of nuclear generated radioactive waste would appear to be a high priority program that is essential for the development of nuclear power. However, the draft statement does not ... reflect either the priority attached to this overall program by the AEC nor an indication for the resources required. Because of the overwhelming need to develop an environmentally acceptable ultimate disposal method and the realization that there is a risk of failure in any research and development effort, we believe that work on promising alternatives should be pursued concurrently. A major concern ... is the possibility that economic factors could later dictate utilization of the facility as a permanent repository, contrary to the stated intent to make the RSSF interim in nature. Economic factors would consist mainly of the fiscal investment attendant to its construction and the activities which arise in the commercial segment of the economy to support its operation. Since there are controlling environmental factors that must be considered before final disposition of the RSSF, it is important that these factors never be allowed to become secondary to economic factors in the decision making process. Vigorous and timely pursuit of ultimate disposal techniques would assist in negating such a possibility.” (emphasis added)

The second concern was a fundamental underlying principle of the Nuclear Waste Policy Act—no one state would have to take all of the wastes. This is why there were prohibitions for co-locating a repository and interim storage facility in the same state.

The Draft Consent-Based Siting Process document and the Department of Energy Strategy document assume that Congress would be willing to develop new legislation that would obviate these restrictions and limitations. However, it is equally likely that debate on legislation to replace the Nuclear Waste Policy Act would result in these restrictions and limitations being retained.

3.4 Deep Geologic Disposal

The Draft Consent-Based Siting Process document notes that “[a]fter the President’s March 2015 finding that the development of a repository for defense high-level radioactive waste only is required, DOE also has been planning for a separate repository for the disposal of SNF and HLW resulting from atomic energy defense activities and/or DOE research and development activities (hereinafter referred to as a defense waste repository).”

Nuclear Waste Policy Act Section 8(b)(1) notes that ... “the President shall evaluate the use of disposal capacity at one or more repositories ... for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.” And Section 8(b)(2) notes “[u]nless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such

⁴³ See: Michael D. Voegelé and Donald L. Vieth. *Waste of a Mountain*. Chapter 5

⁴⁴ Environmental Protection Agency, *Letter from Sheldon Meyers to Robert Seamans*. November 15, 1974

subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I for the disposal of such waste.” (emphasis added)

The highlighted material in the above portion of the Nuclear Waste Policy Act is explicit in the factors that the president is to consider in making the determination of the need for a separate defense waste only repository. Nowhere in these factors is a provision for a presidential decision based simply on the fact that the administration elected not to follow the law, dismantle the Yucca Mountain program, and attempt to make progress by substituting a repository for defense wastes only.

Furthermore, the Government Accountability Office, in reviewing the president’s decision noted that:⁴⁵ “[t]he information that the Department of Energy (DOE) provided to the President about whether a separate defense waste repository was required did not quantify cited benefits, when possible, show how these benefits could be achieved, or show the risks if certain benefits could not be realized as planned,” further illustrating that the decision was made without regard to the requirements of the Nuclear Waste Policy Act.

The Draft Consent-Based Siting Process document also notes that borehole disposal is another form of deep geologic disposal that may be appropriate for smaller waste forms. For the purposes of this commentary, it is sufficient to note that here as well, the Department of Energy has performed poorly in interaction with local communities to obtain permission to perform even the experiments without nuclear material.

4 General Design Principles for a Consent-Based Siting Process

Consistent with the significant time line issues discussed in the comments for Section 1 that must be addressed satisfactorily if the United States is to develop consent based, consolidated interim storage ahead of a repository, there are multiple concerns for the proposed General Design Principles for a Consent-Based Siting Process. The design principles do not recognize the importance of the role of the Nuclear Regulatory Commission, particularly its authorities and regulations. The design principles appear to be more focused on an Environmental Impact Statement approach than the rigorous demonstration of safety required by the Nuclear Regulatory Commission. While the design principles recognize the importance of the priority of safety, they neglect the early determination of the quality of the site and its importance in an early determination of the potential for the site to meet stringent safety requirements. It fails to provide sufficient background to allow the participants to comprehend the level of preparedness each party of the agreement will have when they sit down for the first time to initiate discussions. To illustrate the point here, it is appropriate to rearrange and group the design principles as follows. The first grouping, illustrates the importance of the role for the Nuclear Regulatory Commission.

Group 1

- Regulatory Requirements
- Prioritization of Safety

While the Nuclear Regulatory Commission certainly is interested in the environmental impacts of the proposed action—the second grouping— its principal focus will be on the demonstration of safety. Siting

⁴⁵ U.S. Government Accountability Office. *Nuclear Waste: Benefits and Costs Should be Better Understood before DOE Commits to a Separate Repository for Defense Waste*. GAO-17-174. January, 2017. Note that the report responded to a request from the Chairman and Ranking Member of the Senate Armed Services Subcommittee on Strategic Forces asking GAO to review DOE’s efforts to permanently dispose of defense HLW separate from commercial SNF

criteria, which will have to be a part of determining whether or not a given site has the potential to meet the stringent safety requirements, are not mentioned in the design criteria, yet there is no other way to begin to determine whether there is a valid reason for considering a site for nuclear facility. Without site specific data and early evaluations of the validity of a site, there is little reason to pursue negotiations with a community or the other entities that need to concur.

There must be a valid surrogate evaluation method for assessing the likelihood that a particular site will be able to meet the Nuclear Regulatory Commission licensing requirements. Even grants to develop data bases to make early determinations of the potential suitability of a site need to be based on some likelihood for potential for a successful safety demonstration. There can be little doubt that, as in the case of the Nuclear Waste Negotiator⁴⁶ established under the amendment of the Nuclear Waste Policy Act, communities with no intention of committing to the development of a facility will be more than happy to apply for grants to study a site.

Incidentally, while it may seem as though there is an existing generic repository licensing regulation, the Nuclear Regulatory Commission has gone on record that the only reason that they did not change Part 60 when Part 63⁴⁷ was promulgated for Yucca Mountain using a new risk informed - performance based strategy was that they did not believe that there was a need for Part 60. From a presentation at a Nuclear Waste Technical Review Board meeting, the Nuclear Regulatory Commission said:

“Part 63 does not have separate quantitative subsystem requirements. There is a reason it doesn’t. We walked away from that in 63. I thought we made it clear when we published 63 that we said the only reason they stayed in 60 was, it was a matter of efficiency. We weren’t going to bother to change it, because there was no need for 60 I believe we tried to make it clear that the NRC has no intention of ever going back to quantitative subsystem requirements”⁴⁸

Similarly, there is an expectation that the Siting Guidelines of 10 CFR 960,⁴⁹ which are based on subsystem performance requirements as well, are generically applicable for siting a repository. Careful examination of those Guidelines will show that they are linked inextricably to Part 60 and therefore, not supported by current Nuclear Regulatory Commission logic.

A Nuclear Regulatory Commission license will require the preparation of an Environmental Impact Statement in order for the Nuclear Regulatory Commission to fulfill its responsibilities under 10 CFR Part 51.⁵⁰ The second group of design criteria reflect criteria expected to be part of an Environmental Impact Statement process.

Group 2

- Environmental Responsibility
- Trust Relationship with Indian Tribes
- Environmental Justice
- Equal Treatment and Full Consideration of Impacts

⁴⁶ Nuclear Waste Policy Act. *Public Law 97-425 as amended by Public Law 100-203*. Title IV.

⁴⁷ U.S. Nuclear Regulatory Commission. 10 CFR Part 60, *Disposal of High-Level Radioactive Wastes in Geologic Repositories*. And: 10 CFR Part 63, *Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada*.

⁴⁸ McCartin, T. 2012. *United States Nuclear Waste Technical Review Board, Spring Board Meeting*. Transcript from March 7, 2012.

⁴⁹ 10 CFR Part 960, *General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories*

⁵⁰ U.S. Nuclear Regulatory Commission. 10 CFR Part 51. *Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions*.

- Community Well-being
- Transparency

While not the principal concern of the Nuclear Regulatory Commission in granting a nuclear facility license, these are legitimate considerations. Precedent exists to demonstrate the expectations of both the Nuclear Regulatory Commission in accepting an Environmental Impact Statement and the community affected by the proposed action. It is difficult to see anything new here.

The third group of design criteria reflect an initiative of the Department of Energy to encourage community participation.

Group 3

- Stepwise and Collaborative Decision-Making that is Objective and Science-Based
- Informed Participation

Here the Department of Energy completely misses the fact that there exists international precedent. A widely accepted approach for documenting the basis for the understanding of the disposal system, describing the key arguments for its safety, and acknowledging the unresolved uncertainties and of their safety significance is a document known as a Safety Case.⁵¹ The Safety Case is developed to support all aspects of development of the disposal concept and elucidates the approaches for the management of issues related to such development. This provides a basis for making decisions relating to the development, operation, and closure of the facility, and allows attention be focused areas where further understanding of those aspects influencing the safety of the geological disposal facility is needed. The development of a Safety Case and supporting safety assessments for review by the regulator and other interested parties is central to the development, operation, and closure of a geological disposal facility.

The development, including the siting, design, construction, operation, and closure, of a geologic disposal facility is likely to take place over several decades. In most countries, plans for repository development envision the disposal facility being developed in a series of steps. The Safety Case serves an important role in informing stakeholders about the progress being made as these steps proceed. The steps involve decisions about identifying sites as possible candidates, screening against well-defined criteria, performing site characterization studies on those sites selected for further evaluation, recommending a site for development as a repository, participating in the licensing proceedings for the repository facility, and the construction, operation, closure, and decommissioning of the facility. Each of these steps involves, in an iterative manner: the accumulation and assessment of necessary data; the development of disposal concepts; studies for design and safety assessment with progressively improving data; technical and regulatory reviews; public consultations; and political decisions. The Safety Case helps support transparency and provides information, which matures with the evolution of the program, to all stakeholders. The step by step approach, together with the consideration of a range of options for the disposal facility, is expected to be responsive to new information and advances in technologies; address social-political aspects; and preserve the option of retrieving the waste after its emplacement if deemed appropriate.

At the heart of a Safety Case is the synthesis of evidence, analyses, and arguments that quantify and substantiate a claim that a repository will be safe after closure and the time of reliance on active control and monitoring of the facility. The Safety Case becomes more comprehensive and rigorous as a program

⁵¹ International Atomic Energy Agency, 2006, *Geological Disposal Of Radioactive Waste*, IAEA Safety Standards Series No. WS-R-4 International Atomic Energy Agency and the Organisation for Economic Co-operation and Development / Nuclear Energy Agency, Vienna. And. Organisation for Economic Co-operation and Development, 2004, *Post-Closure Safety Case For Geological Repositories: Nature And Purpose*, Nuclear Energy Agency No. 3679

progresses, and can be a key part of decision making at several steps in the repository planning and implementation process. A key function of the Safety Case is to provide a platform for informed discussion whereby interested parties can assess their own levels of confidence in a project, determine any reservations they may have about the project at a given planning and development stage, and identify the issues that may be a cause for concern or on which further work may be required. Safety assessments are carried out periodically throughout repository planning, construction, operation, and closure phases, and are used to develop and progressively update the Safety Case.

A safety assessment is an analysis to predict the long-term performance of the overall system and its impact and confidence in the assessment of safety, where the performance measure is radiological impact or some other global measure of impact on safety.⁵² Within the current U.S. regulatory framework, performance assessment is defined essentially synonymously with this definition of safety assessment.

A safety assessment addresses the ability of a site and repository facility design to meet the applicable technical requirements and provide for the safety functions. Safety assessment includes quantification of the overall level of performance, analysis of the associated uncertainties and comparison with the relevant design requirements and safety standards. As site investigations progress, safety assessments become increasingly refined, and at the end of a site investigation, sufficient data will be available to support a safety assessment to demonstrate compliance with regulatory safety standards. Safety assessments also identify any significant deficiencies in scientific understanding, data, or analysis that might affect the results presented. Depending on the stage of development, safety assessments may be used to aid in focusing research, and their results may be used to assess compliance with the various safety objectives and standards

It is noted in passing that the Department of Energy actions in dismantling the Yucca Mountain program were neither objective nor science based; the Department of Energy track record is not stellar.

The fourth group reflects a Department of Energy assumption that Congress would reverse its position about a State veto.

Group 4

- Voluntariness/Right to Withdraw

As has been mentioned numerous times in these comments, Congress has not in the past considered it appropriate to allow a State to veto a siting decision for a spent nuclear fuel or high-level waste facility and codified that in law in the Nuclear Waste Policy Act. The first attempt was made, in 1978, to introduce an absolute veto into legislation related to siting the high-level radioactive waste repository. This attempt was made by Senator McGovern and is documented in a letter from the General Accounting Office to Representative John Dingell, chair of the Commerce Committee.⁵³ Dingell requested background information and the General Accounting Office provided a detailed letter report that explained the general background on a state veto, which included McGovern's legislative attempt. Representative Dingell was concerned about the Department of Energy's apparent commitment to state veto authority in agreements with various states. The Comptroller General noted:

“The lack of such authority, before the enactment of the DOE Organization Act, was recognized in Senate debate on the 1978 ERDA authorization bill. Senator McGovern offered an amendment to the

⁵² Organisation for Economic Co-operation and Development, 1999, *Confidence in the Long-Term Safety of Deep Geological Repositories: Its Development and Communication*, Nuclear Energy Agency Vienna

⁵³ Comptroller General of the United States, *Letter to Representative John Dingell*. June 19, 1978.

bill which would have amended the Energy Act of 1974 to prohibit contracting for or construction of a radioactive waste storage facility in the event a state legislature by resolution or law, or a state-wide referendum, disapproves of the use of a particular site in the state. After a colloquy regarding the advisability of adopting the amendment, a majority of the Senate voted to “lay it on the table.”⁵⁴

5 Siting Process

5.1 Draft Steps in the Siting Process

In addition to the comments provided on the design criteria of Section 4, it is important to note that timing of the development of the legislation and regulations is critical to the success of the program. One of the most severe criticisms of the Yucca Mountain program was that the regulations were changed to fit the site. In reality, regulations were changed because an unsaturated zone site had not been considered when the original regulations were promulgated. To compound the situation, when Congress acted to select Yucca Mountain as the only site to be studied, it selected the one site/medium type that was not considered when the Nuclear Regulatory Commission and Environmental Protection Agency regulations were developed

The only way to prevent such criticism for the proposed program would be to ensure that the legislation, standards, regulations, and siting criteria are developed sequentially. With regard to the phases for the draft steps in the siting process, there are a number of places where this concern is not appreciated. First, before any consent-based siting process can begin, there must be new legislation that clearly indicates that Congress has reversed its position on a State veto, is willing to authorize a consent-based program, and has decided what to do about Yucca Mountain. Only then is it realistic to begin the process of seeking a volunteer site. However, before any decisions can be made about entering into agreements with each community or State, it is imperative that all of the standards, regulations, and siting criteria are in place, and these must be developed sequentially if the government is to avoid criticism of the regulations being changed to fit the site. First, there must be an Environmental Protection Agency standard if one is to be applicable.

Even if the site under consideration is for an independent spent fuel storage installation or monitored retrievable storage facility, the linkages to an eventual repository are sufficiently important to require an understanding of what the applicable regulatory criteria for a repository will be.

Next, the applicable Nuclear Regulatory Commission regulations must be promulgated; these must be risk informed and probability based. This is very important because of a significant potential regulatory dilemma. While a volunteer site must be able to perform an early assessment of its likely suitability, without siting criteria, there is no way to even begin to know what data to collect. This is further complicated by the fact that simple screening criteria have no basis in the risk informed - performance based strategy that forms the basis for current Nuclear Regulatory Commission regulations. While this is especially true for a repository, it is also germane for a storage facility. Examination of 10 CFR Part 72 indicates limited detail pertaining to site screening factors. This is likely due to the fact that a utility considering an independent spent fuel storage installation likely would be locating it on or near the same reactor site. Reactor siting would have been evaluated using the siting criteria of 10 CFR 100 Appendix A⁵⁵; the safety of the independent spent fuel storage installation would likely be assessed using the same criteria and safety arguments.

⁵⁴ 123 Cong Rec. S11643-11650 (daily ed. July 12,1977)

⁵⁵ U.S. Nuclear Regulatory Commission. 10 CFR 100. *Reactor Site Criteria*. Appendix A.

The discussion on *Prioritization of Safety* does not provide insight of its true importance. It fails to note the significance of the safety determination as the fundamental basis for a politically legitimate siting. This is important because the primary purpose of consent-based siting is to establish the political legitimacy of the action. This status only can be fully achieved when a site is acknowledged to be demonstratively safe. Downey, in his paper on the Waste Isolation Pilot Plant, noted that any decision to site a demonstratively unsafe repository, however authoritative that decision may be, is likely to be (politically) illegitimate. He further noted that achieving consensus about the likely safety of a military repository (or any repository) is a necessary prerequisite for its political legitimacy.⁵⁶

For Phase II, in which the implementing organization conducts a preliminary site assessment, there is a need to specify that data that are to be collected by the organization supporting the community and the implementing organization. Again, without, a clear understanding of the regulatory requirements for assessing performance, it is not possible to perform a defensible assessment. Here too, the risk informed - performance based nature of any new Nuclear Regulatory Commission organization will dictate the information needed. It likely will not be simple deterministic criteria lists that characterize this Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste

The Draft Consent-Based Siting Process document does not acknowledge the importance of performing work to an Nuclear Regulatory Commission accepted Quality Assurance Plan. All parties collecting data and performing analyses that have a bearing on an eventual license application need to have approved Quality Assurance Plans.

Additionally, there are several important points that do not seem to be addressed:

- Nowhere in the sequence of events of developing a storage or disposal facility is the issue and acquisition of land acquisition noted.
- Nowhere in the sequence of events of developing a storage or disposal facility is the issue and acquisition of water right or mineral rights noted.
- Nowhere in the sequence of events of developing a storage or disposal facility is the issue of getting permission to conduct site exploration or characterization work noted.
- Nowhere in the sequence of events of developing a storage or disposal facility who will own the land under consideration while it is being investigated and assessed.
- Nowhere in the sequence of events of developing a storage and disposal facility how the site will be protected while it is being considered.
- It should note that since the state is part of the Community, it would facilitate the issuance of all permits and authorities necessary to execute formal and detailed site characterization.
- When the final agreement is signed with the determination by the Implementing Organization and the Community that the site is suitable and it is time to initiate the preparation of the license application, who will own the land and hold the water rights and other mineral rights to the site? If land has to be condemned, at this point the state should acquire the land and water and mineral

⁵⁶ Gary L. Downey, "Politics and Technology in Repository Siting: Military Versus Commercial Nuclear Waste at WIPP 1972–1985." *Technology in Science*. 1985. Vol. 7, p 52.

rights when they decide to request a detailed assessment of the site. The land and water and mineral should be transferred to the federal government when the binding agreement is finalized.

6 Siting Considerations

6.2 Siting Considerations

While it has been pointed out earlier, these criteria reflect items important to the preparation of an Environmental Impact Statement. While this is important, the ability to comply with risk informed - performance based Nuclear Regulatory Commission criteria is more important. Furthermore, if more than one site is to be evaluated, an agreed upon basis for comparative evaluations is required. While an Environmental Impact Statement is a logical place to do a final analysis if multiple sites have been characterized and assessed, an Environmental Impact Statement is of little use at early stages of investigation. That was the role of the 10 CFR 960 in comparing multiple sites identified in the Nuclear Waste Policy Act siting program. In particular, Appendix III and Appendix IV of 10 CFR Part 960 were created guide the application of the siting guidelines at different stages of the site screening process and define the types of information required for the nomination of sites as suitable for site characterization. Unfortunately, the 10 CFR Siting Guidelines were based on the subsystem requirements of 10 CFR Part 60 and therefore do not reflect current Nuclear Regulatory Commission thinking. There for they would need to be redone to address a new repository regulation. As similar problems could face the siting of an independent spent fuel storage installation, screening criteria for such an installation would also be needed.

The words of Dr. Critz George, the Department of Energy official responsible for developing the 10 CFR Part 960 Siting Guidelines are worth considering here:

“I was personally involved in developing the repository siting guidelines, with all the consultation prescribed by the Nuclear Waste Policy Act. In virtually every case, the comments forthcoming from those consultations were blatant attempts to doctor the guidelines so as to exclude their states or communities by whatever means could be contrived. No severe winter weather, no nearby surface water, no underground water, no mountains, no states without nuclear power plants, no tourism, no food industry or farming, no impact on protected lands or scenic vistas, no affected population. The list went on. There was little or no cooperation that could be construed as helpful”⁵⁷

6.5 Site Assessment Considerations

The importance of these criteria can only be judged by their importance to the assessment of performance. This is what the Nuclear Regulatory Commission means by risk informed - performance based strategy; 10 CFR Part 63 was written in a particular way to keep a site from being disqualified by deterministic criteria that had insignificant importance to the demonstration of safety. The list of criteria presented may or may not be relevant to assessing the safety of a spent nuclear fuel or high-level radioactive waste storage or disposal facility.

In essence, this is an argument that there would need to be some simple yet defensible safety assessment modeling capability quite early in the search for acceptable sites. For an independent spent fuel storage installation, it could be source term, population distribution, meteorology, and accident conditions including seismicity. For a repository, it would also have to include geologic conditions and hydrology.

⁵⁷ Quoted in: Michael D. Voegele and Donald L. Vieth. *Waste of a Mountain*. Chapter 1

From: dave popoff [REDACTED]
Sent: Sunday, March 05, 2017 8:31 PM
To: Consent Based Siting
Subject: Consent-based siting public comment

I support the Blue Ribbon Commission on America's Nuclear Future's recommendation to implement an explicitly adaptive, staged and consent-based approach to nuclear waste disposal. And I welcome the opportunity provided by the U.S. Department of Energy to submit comments on the agency's nascent effort to design a consent-based siting process.

Achieving consent-based siting, if done right, could lay the foundation for a fair and just process for siting a nuclear waste management facility that will well position the federal government – after decades of failure – to meet its nuclear waste management commitments and begin to restore the loss of trust and confidence in its ability to find a viable and permanent solution to our waste crisis.

I support and urge the DOE to apply the following 10 Criteria for Community Consent:

- 1) **Informed** - Communities must know what they are consenting to at each stage of the process. Early and often public engagement activities should offer the public, community leaders, experts and agency representatives frequent opportunities to exchange information. Information must be accessible and offered through a variety of platforms. The full range of cost and risks associated with the project must be disclosed and verified, as well as alternatives being considered. Achieving informed consent is not an end, but an ongoing exercise that responds to new information and findings as well as new generations.
- 2) **Inclusive** - Consent should be granted by those most impacted, including states, tribes and communities. A broad range of state, tribal and local stakeholders should be included in the decision-making process, and efforts must be made to increase the number of community members who recognize themselves and their communities as stakeholders in the siting process. People and entities that would financially benefit from the siting process should be clearly disclosed.
- 3) **Collaborative** - Consent can't be achieved through a top-down process. Activities related to outreach, engagement and education must be planned in coordination with appropriate stakeholders. Any agreements or decision-making must result from mutual input and understanding, and must be responsive to the concerns of citizens.
- 4) **Just** - Consent should not be bought. Financial compensation and other incentives must be reasonable, not used as coercion, and negotiated with full public disclosure.
- 5) **Transparent** - Consent must be pursued through an open process. Consent can be achieved and maintained through trust. Open access to information includes disclosure of funding and any conflicts of interest with the sources of information. All meetings, hearings and communications must be open to the public and on record.
- 6) **Legitimate** - A consent-based siting process must not just be the policy of the Department of Energy, but the law of the land.
- 7) **Balanced** - Consent will require sharing of power among federal executive and legislative branches, and state and local governments and communities. Negotiating and decision-making power must be shared among affected federal, state and local entities, including those in the transportation sector. States also should be granted some authority over regulation of the facility.

8) Flexible - Consent can be withdrawn. The consent-based siting process must provide ample opportunity and defined moments to correct course or completely withdrawal from the siting process.

9) Contractual - States, tribes and communities must have clear recourse if the terms of consent are breached.

10) Tailored – The consent process must be responsive to each situation. While these common elements should be applied to any consent-based process, any approach must be tailored to the specific, unique needs of the particular state, tribe and communities where a waste dump is being considered.

Thank you for your consideration.

Sincerely,

dave popoff

99114

From: Mello, Greg <Alert> [REDACTED]
Sent: Monday, April 03, 2017 10:53 AM
To: Consent Based Siting
CC: [REDACTED]; Patty Hughs
Subject: Concerns; clarification requested; request to meet this week (corrected version)

[I have corrected the previous email by adding the email address of Ed and Patty Hughes, Quay County ranchers, which I forgot.]

Re: Consent-Based Siting, with reference to Quay and Otero counties, NM

Dear Sir or Madam:

My organization has been loosely following the progress of the consent-based siting process in New Mexico. We are concerned that the contractors in both locations are telling people that the activities of DOE at these sites will not, of a certainty, lead toward waste being possibly disposed there in the future.

This is a false representation; of course the research planned is to be done with an eye to possible future waste disposal at these locations.

Is there a way of correcting this, on the record, in these communities?

My second question goes to the nature of "consent" in "consent-based siting." In Quay County, a large number of citizens have come out to meetings all over the County and have expressed their opposition to the planned borehole. Unfortunately, DOE and its contractor Enercon have not been present at most of these meetings -- perhaps all of them -- despite invitations. A week ago on March 27, the Quay County Commission voted to reject the borehole project in what I gather were terms even stronger than before. (That resolution has not been posted on line yet -- look on [this page](#) or call the Commission.)

My question is, when is a "No to the borehole" registered as non-consent in this process? Is Quay Co. now off the short list of possible DOE borehole sites?

My third question concerns the status of the Otero Co. site. What is that status?

I am in Washington this week, mostly on Capitol Hill. Would someone from your office be available to meet and discuss these three questions?

I am copying Ed and Patty Hughes, who are in Quay County and will be able to answer detailed questions about recent events there.

Best,

Greg Mello

--

Greg Mello

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

From: Wilson, Shelly [REDACTED]
Sent: Thursday, April 13, 2017 6:13 AM
To: Consent Based Siting
Subject: SCDHEC Comments
Attachments: Consent Based Siting 2.docx

Thank you for the opportunity to comment on the proposed consent based siting process. Attached please find comments from the SC Department of Health and Environmental Control.

Please let me know if you have any questions.

Thank you,

Shelly Wilson
Permitting and Federal Facilities Liaison
Environmental Affairs
S.C. Dept. of Health & Environmental Control

[REDACTED]
[REDACTED]

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



Department of Energy Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste

Comments from the

South Carolina Department of Health and Environmental Control
(SCDHEC)

April 13, 2017

- 1) The Nuclear Waste Policy Act designates Yucca Mountain as the central federal repository for spent fuel and high level waste. No other central disposal option is legal at this time.
- 2) Should any other additional management facilities be considered (such as for interim storage) and legally allowed, SCDHEC does support a consent-based siting approach.
- 3) The potential host state for any additional management facilities should have a strong decision-making voice that is required by law, as in the examples given below.
- 4) Section 3116 of the 2005 National Defense Authorization Act authorizes a strong state decision-making voice by requiring coverage under a "State-issued permit." Coverage under an appropriate state permitting process ensures that a state has had the opportunity to consider all technical aspects of a facility and undertake appropriate public participation activities. A state issued permit also allows the state an ongoing oversight role for continuing facility operation as well as ultimate closure.
- 5) The Federal Facility Compliance Act of 1992 outlined an excellent and successful process for consent-based siting of mixed waste treatment, addressing both technical and equity aspects.
 - a. The Act contained a schedule for the process.
 - b. The Act required the Department of Energy to submit a proposal to the affected state.
 - c. The Act required approval, modification or disapproval of the proposal by the state environmental agency, followed by issuance of an order requiring compliance, if the proposal was approved.
 - d. The Act allowed for penalties to be assessed for non-compliance with the order.
 - e. The Act required the host state to consult with "...any other State in which a facility affected by the plan is located..." establishing the concept of equity discussions between states.
- 6) The Hazardous Waste Permit issued by New Mexico for the Waste Isolation Pilot Plant is another good example of a strong state decision making voice. The permit process

allowed for state consideration of siting and construction concerns, as well as provision of an ongoing and defined oversight role.

- 7) Federal legislation should be passed that defines a strong potential host state decision making process as part of consent-based siting for any facilities additional to Yucca Mountain. The legislation should require that the state decision consist of the following at a minimum:
 - a. Approval of state elected officials and
 - b. Approval from the state environmental agency in the form of an issued permit.
 - i. The legislation should also authorize the state to determine the permit type and conditions, allow for assessment of penalties, and define the scope and life of the facility in enforceable conditions, if the state desires. The legislation should also ensure that the facility is authorized only if it continues operation under a state issued permit.
 - ii. The legislation should also authorize the state to incorporate equity considerations of its choosing in the issued permit. Equity considerations would consist of any other elements that would make hosting a national/regional facility equitable for the host state.
 - iii. The legislation should allow for discussions between affected states, regionally or nationally to address equity considerations raised by a host state.
 - iv. The legislation should allow for provision of federal funding to the host state if needed to conduct equity discussions, public participation, technical review and/or oversight activities.

From: Donald Pay [REDACTED]
Sent: Thursday, April 13, 2017 12:22 PM
To: Consent Based Siting
Subject: Draft Consent-Based Siting Process

Dear Sir/Madam:

These comments respond to The Department of Energy's Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes. Thank you for letting the public weigh in on this important matter.

Part 2. (Page 3, first paragraph):

The Department of Energy pursuing consent-based siting absent specific Congressional action needed "...to implement some of the steps and design principles outlined in this report...."

First, it is not clear in this Draft which specific steps and design principles do not have adequate authorization from Congress. It is imperative that this be documented and forthrightly admitted with some specificity. What particular steps and points in this Draft Consent-Based Siting Process do not have statutory authority?

In light of this stunning admission it seems disingenuous for DOE to be selling various projects (eg., the deep borehole disposal test, or interim storage) by telling communities or states they will have the power through the consent-based process to veto a project or to vote on a project. What community would trust that Congress would honor any consent-based process that began without necessary Congressional authorization?

The first step in this process should be to flesh out the statutory underpinnings of the consent-based process. Until that happens much of the consent-based process will be seen to be more PR smokescreen than a real process.

Part 3. (Page 3, third paragraph and Page 5, fourth paragraph):

These paragraphs mention the deep borehole disposal of certain defense radioactive wastes. I have closely followed the process by which the "test" of borehole disposal is being sold to local communities and states, and I am appalled at the repeated failure of DOE to address concerns about the supposed "consent-based process." It was a secretive and dishonest approach in which local communities were set up to be the patsy, and it resulted in massive blowback once citizens found out that secret affirmations of support were extracted from Governors or certain state institutions before anyone knew what was going on.

DOE did revise the process once citizens made it clear they weren't to be kept in the dark and lied to by DOE and the few state or local officials who knew of the "test." However, it is clear to me that the revised process is not that much better. There seems to be a reliance on enhanced PR in the current iteration of selling the "test" of the borehole concept. In South Dakota, the test was once being sold as a "science project," but, apparently, polls or focus tests conducted by the east coast PR firm hired by the South Dakota contractors determined that a better approach might be to focus on how much money the community will pull in. So, science has given way to finding a community that is comfortable with a form of communal prostitution.

Part 4. (Page 6 and 7):

I appreciate listing of the general design principles. However, as mentioned before, several of these principles (Informed Participation, Equal Treatment and Full Consideration of Impacts, Community Well-Being, Vountaryness/Right to Withdraw, Transparency) have no (or limited) statutory basis. In regard to Transparency,

DOE's Request for Proposals and contracting process in the deep borehole disposal test prevented access to information on a timely basis.

You mention "right to withdraw," but don't mention the right of a community or state to actually prevent itself from being named a host community. Can a community or state vote to exempt itself from being named a host community or state.

Footnote 15 on page 6 is very important. Most people, I think, would feel much more comfortable if an independent commission with clear statutory authority was in place before any siting process, consent-based or not, is implemented. People do not trust DOE or Congress.

Part 5 (Page 8, second paragraph):

It is clear any general plan for consent-based process will have to be "flexible and adaptive." However, there must be a way to lock in certain steps, if that is what the community or state desires. Various "off-ramps" should be allowed at appropriate stages, but those "off-ramps" should be flexible or adaptive so as to meet state or local laws. People must be assured that should they change their minds, they do have a way to exit the siting process. Thus, for example, if a states' or communities' citizens desire to use their Constitutional powers to conduct an initiative or referendum on the siting process at certain (or any) point(s) in the siting process, that should be accepted by the siting authority as controlling. Federal preemption in this regard must be addressed by Congress to allow state and local votes to opt in or opt out of the process, and to have those decisions be legally accepted.

Part 5 (Pages 9-13):

I very much appreciate several off-ramps (Steps 3, 4, 5, 6, 8, 10, and 13) have been provided in the consent-based siting process. That seems fair. However, steps 2, 4, 5 and probably from step 6 onward, indicate that there is a significant monetary incentive that is contemplated to gain consent. This seems more akin to prostitution than consent.

Step 5 indicates "proximity to major population centers" will be an exclusion factor in deciding which sites are selected. How does this address environmental justice when rural populations are the only ones likely to be selected as neighbors to this facility? How does this take into consideration the affects of climate change that might affect migration of populations from current high density areas to lower ones?

Part 5.4 (Pages 13-14):

Certainly states and tribes need to be involved in the process, but it must be stressed that tribal leaders and state elected officials and agency heads do not hold ultimate authority. The people in the state and tribal members hold that authority. Too often DOE hears only the opinions of leaders or the elite, and are then surprised that controversy erupts at a later date. That is why I continue to stress the empowerment of people, not leaders, in this process.

Part 6 (Pages 14-18):

It is unclear to me whether the goal is to keep a number of alternative hosts involved throughout the process or to focus in on one host community from relatively early on. Keeping a number of potential host sites involved through site characterization vastly increases costs, but it also allows for a much greater choice for ultimate selection of the best alternative. It also decreases risk should a selected site bow out due to failure to consent. Related to this is tiering of NEPA requirements: To what extent will the NEPA process be tiered during this process, and involve looking at various potential host communities as alternatives?

Part 6.2 (Page 15, fourth paragraph):

Many rural communities and counties in the Midwest and West have a history of resisting and outright opposing land use planning, zoning, or community planning efforts. These are generally areas that don't have a lot of development that conflicts with the community norms that have been established since statehood. In many instances there is a distrust of such legal instruments because people view them as restricting property rights. As a result, many of these communities have little ability to legally say "no" to developers who find a willing seller and want to site various projects in these areas, even if community sentiment is completely opposed to that development.

The DOE has selected Haakon County as one of its four potential deep borehole disposal "test" sites. Although there is considerable opposition in that community to the project, there is much concern that there isn't a legal handle which citizens can use to make their opposition heard in a way that could stand legal scrutiny. The borehole test, you see, would be completely out of bounds of the community norm, but the suggested community planning process suggested here would also be outside the community norm. I might not like it. You might not like it. But that is reality in many communities, which just want to be left alone.

It must be stated that the proposed borehole disposal "test" siting did not originate within the community or the county. It originated with a consulting firm (RESPEC) that has done at least 40 years of work on high-level radioactive waste issues for the Department of Energy. It found one landowner with past ties to a partner (South Dakota School of Mines and Technology) of RESPEC. SDSM&T is headed by Heather Wilson, who has had ties with Sandia Labs and other institutions within the Department of Defense and the Department of Energy. Ms. Wilson showed up on campus exactly at the time when grants were being handed out for testing shale as a disposal medium for high-level radioactive waste and when proposals were being contemplated for the borehole test. That county has no zoning powers, a fact that would be known by a prime pusher of this project, Governor Daugaard. You probably can see why almost everyone thinks the fix is in, and consent-based siting is a nice phrase meant to hide sculduggery.

Part 7 (Pages 18-19):

There has to be a discussion of who has the power to consent. Are we limiting the consent to one state official (the Governor) and perhaps to a county commission? Or is the consenting power allowed to devolve to a much broader constituency through initiative/referendum votes that will be held just as valid by the federal government. Back in the 1980s South Dakota had an initiative that set up a process for a statewide vote on any high-level radioactive waste facility. Would that process be welcomed as part of a consent-based siting decision?

Thank you for this opportunity to comment. Please keep me informed of subsequent progress and decisions on Consent-Based Siting.

Donald Pay

[REDACTED]
[REDACTED]

From: Kara Colton [REDACTED]
Sent: Friday, April 14, 2017 8:13 AM
To: Consent Based Siting
CC: Kirshenberg, Seth <Alert>; Megan Casper
Subject: Energy Communities Alliance (ECA) Comments on DOE's Draft Consent-Based Siting Process
Attachments: ECA Comments on Draft Consent-Based Siting Process FINAL.pdf

Please find attached comments from the Energy Communities Alliance (ECA) on the Department of Energy's Draft Consent-Based Siting Process. As always, we appreciate DOE's outreach efforts and the opportunity to provide input. If you have any questions, please contact Kara Colton, ECA's Director of Nuclear Energy Programs, at [REDACTED], or by email at [REDACTED]; or Seth Kirshenberg, ECA's Executive Director, at [REDACTED], or by email at [REDACTED].

Thank you,
Kara



Kara S. Colton
Director of Nuclear Energy Programs | Energy Communities Alliance

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] E-mail message is confidential, is intended only for the named recipients above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at [REDACTED] and delete this E-mail message. Thank you.



**COMMENTS
ON BEHALF OF ENERGY COMMUNITIES ALLIANCE**

SUBMITTED TO THE

**U.S. DEPARTMENT OF ENERGY
ON**

**DRAFT CONSENT-BASED SITING PROCESS FOR CONSOLIDATED
STORAGE AND DISPOSAL FACILITIES FOR SPENT NUCLEAR FUEL
AND HIGH-LEVEL RADIOACTIVE WASTE**

APRIL 14, 2017

Submitter's Name/Affiliation: Energy Communities Alliance
Contact: Kara Colton, Director of Nuclear Energy Programs
Email: [REDACTED]
Phone: [REDACTED]

COMMENTS ON THE DRAFT CONSENT-BASED SITING REPORT
AND ECA RECOMMENDATIONS

The Energy Communities Alliance (ECA) appreciates the many opportunities the Department of Energy (DOE) extended to stakeholders throughout its process to design and propose a consent-based siting process. While it is uncertain whether the “consent-based siting” effort will continue under the new Administration, since the 2013 release of DOE’s Strategy, the Department has supported ECA working closely with each other and with DOE officials to meaningfully highlight our concerns and priorities while trying to address the challenges related to storing and disposing of the nation’s high-level nuclear waste (HLW) and spent-nuclear fuel (SNF).

ECA’s comments on DOE’s “*Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste,*” (DOE’s Draft CBS Process) released on January 12, 2017, follow. Regardless of the path forward, ECA is urging DOE, Congress and the Administration to maintain transparency, collaboration, respect for taxpayers dollars already spent, and most importantly, momentum.

ECA Recommendations

Throughout discussions of designing a consent-based siting process, ECA’s top recommendation to DOE has been to:

- 1. Finish the Yucca Mountain licensing review and modify the Nuclear Waste Policy Act (NWPA) to authorize consideration of alternative sites for interim storage or permanent disposal – including Yucca Mountain – in parallel.**

The Nuclear Waste Policy Act is the law of the land and it is important to allow the licensing process to proceed so that sound science – rather than political science – forms the basis of decision-making; and to re-establish trust that DOE will follow the law. This is especially important given any host community will ultimately want to negotiate and ratify a legally-

Submitter's Name/Affiliation: Energy Communities Alliance

Contact: Kara Colton, Director of Nuclear Energy Programs

Email: [REDACTED]

Phone: [REDACTED]

enforceable consent-based siting agreement with the federal government before agreeing to host a nuclear waste storage or disposal facility. Given DOE's past efforts to withdraw the Yucca Mountain license application, to terminate the MOX project in South Carolina and missed milestones in DOE's environmental cleanup, the Department will have to tangibly demonstrate to a host community that it will operate per the terms of a consent-based siting agreement regardless of political shifts in order to achieve public acceptance and support.

In regards to alternatives such as private consolidated interim storage proposals from the Eddy Lea Energy Alliance and Waste Control Specialists, or clarifying waste definitions to reflect composition rather than origin, all could enhance a nuclear waste management system that includes Yucca Mountain. They are nearer-term alternatives that can increase the robustness of approach by ensuring "all eggs are not and will not be in one basket."

In addition, ECA outlined eight other recommendations to DOE in the effort to design a consent-based siting process:

- 2. Continue working with local governments to define and identify components of "consent".**
- 3. Identify the necessary process – including the order that each step should be accomplished – to move a consent-based siting process forward.**
- 4. As part of a consent-based siting process, Congress/Administration must provide resources and funding for education, outreach, feasibility studies and research and development aspects for waste management and disposal. In addition, DOE must use this funding to assist local governments and communities interested in hosting sites or involvement in waste management and disposal missions to educate the local community and hire independent third party scientists and engineers.**
- 5. DOE should develop a list of suitable disposal mediums (salt, granite, etc.) and indicate where they exist to inform potential public interest and feasibility studies.**

Submitter's Name/Affiliation: Energy Communities Alliance

Contact: Kara Colton, Director of Nuclear Energy Programs

Email: [REDACTED]

Phone: [REDACTED]

6. **A new entity focused solely on high-level nuclear waste (HLW) and spent nuclear fuel (SNF) management and disposal should be established and empowered to consent on behalf of the federal government.**
7. **DOE must first develop an initial list of the types of incentives/compensation the federal government is willing to offer for host communities for taking on this mission and to preclude wasting time and resources.**
8. **DOE, the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) should begin to develop scientifically-based health and environmental standards, model state laws and regulations to guide the siting process.**
9. **If tangible progress cannot be made in a timely manner, the federal government should provide funding for communities that have become *de facto* interim storage sites for defense HLW and commercial SNF at decommissioned nuclear reactor sites. The funds will be used to help those communities offset the impacts of storing waste beyond the timeframe originally expected.**

In large part, these recommendations encompass many of the design principles DOE identifies in the *Draft CBS Process* for effective consent-based siting process: **Prioritization of Safety, Environmental Responsibility, Regulatory Requirements, Trust Relationship, Informed Participation, Equal Treatment and Full Consideration of Impacts, Community Well-being, Voluntariness/Right to Withdraw; Transparency; and Stepwise and Collaborative Decision-Making that is Objective and Science-Based.** Local, state and federal governments will share the responsibility for ensuring these principles are the foundation of any policy-making and are demonstrable to the public.

To that end, ECA especially appreciates DOE's acknowledgement that informed participation will require providing financial and technical resources to communities to enable effective

Submitter's Name/Affiliation: Energy Communities Alliance

Contact: Kara Colton, Director of Nuclear Energy Programs

Email: [REDACTED]

Phone: [REDACTED]

participation and informed decision-making. As we have stated in earlier comments submitted to DOE, “informed consent can only be reached if affected local governments and their communities fully understand the benefits and risks that are associated with siting, constructing, operating and hosting a nuclear waste storage or disposal facility. Financial resources must be provided to support outreach and education programs that allow local governments to hire their own third party experts to undertake independent analyses, develop educational materials for distribution, and to create their own opportunities for public comment.”

ECA also appreciates DOE’s idea that potential hosts could use this funding for community planning, economic development or visioning exercises to determine how hosting a facility works with its long-term objectives. ECA agrees that this would be very useful, but without an idea of the specific level of funding that will be requested/made available for these activities – or how many potential host communities would be eligible to receive them – building local support to introduce the conversation is more difficult.

One aspect of the process ECA believes could be very helpful for potentially interested local governments to have as they begin to engage their communities is an initial list of the types of incentives/compensation DOE is willing to offer host communities taking on this mission. While there is widespread acceptance that “one size will not fit all,” simply knowing potential benefits (funding for infrastructure or education, new national lab mission, for example) can help community and state leaders begin the discussion. As ECA previously commented, the more information DOE can provide to potential hosts at the outset, the more informed the decision-making process will be, and the more a potential host will be able to gauge whether “consent” can be reached.

ECA does appreciate DOE’s efforts to outline the five phases and specific steps of each phase in the Draft CBS process. ECA had asked DOE to provide the steps and the order in which they must be taken in order to better understand the projected timeline. However, the rough estimates of schedule and absence of real projected costs per phase does not provide confidence that DOE

Submitter's Name/Affiliation: Energy Communities Alliance

Contact: Kara Colton, Director of Nuclear Energy Programs

Email: [REDACTED]

Phone: [REDACTED]

can begin operation of a pilot interim storage facility by 2021, a larger interim storage facility by 2025 or a repository by 2048 using the consent-based siting process. Furthermore, the analysis does not compare the timeline for implementing a consent-based siting process in such a way that it can be compared to other waste disposition strategies such as moving forward to open Yucca Mountain.

What ECA Still Needs to Know

ECA finds that the Draft CBS Process still leaves a number of key questions unanswered:

- Who are the “necessary parties” that must approve the agreement?
- Who at the local, state and federal level is authorized to sign a formal consent agreement?
- How will consent ultimately be measured?
- How will proposed agreements be evaluated and by whom?
- How can funding over time for waste management and disposal be assured?
- What off-ramps exist in the consent-based siting process and at what point in the process can consent no longer be withdrawn?
- Will DOE or a new implementing organization develop a preliminary list of incentives they will consider for potential host communities to assist them as they begin evaluating whether support exists to pursue hosting a facility?
- What oversight roles does the federal government envision for host communities and states in the development, operation and closure/decommissioning of the proposed facility?
- When a facility ultimately closes, how will the federal government continue to support the host community?

ECA agrees with DOE that “timely and frequent” engagement with stakeholders is critical, as stated throughout the report. However, the Draft CBS process assumes this engagement will answer many of these questions in the absence of guidance from DOE. DOE needs to provide

Submitter's Name/Affiliation: Energy Communities Alliance
Contact: Kara Colton, Director of Nuclear Energy Programs
Email: [REDACTED]
Phone: [REDACTED]

more information to ensure potential hosts fully understand what options can be considered and what options are non-starters.

Finally, as an organization comprised of local communities, ECA appreciates that the Draft reflects an understanding that the local community is generally most affected by any siting process. However, while the word “community” is used throughout the report, it is used very broadly to encompass state government, Congressional delegations as well as any Tribal governing body. ECA strongly recommends that if the process is to move forward, DOE needs to more specifically define the roles and responsibilities for each impacted party.

In conclusion, ECA appreciates the many opportunities we have had to provide input on DOE's consent-based siting initiative. We thank former Acting Assistant Secretary John Kotek, Andrew Griffith, Melissa Bates, Andrew Richards, Nancy Buschman and their colleagues in DOE's Office of Nuclear Energy for their engagement with local governments and support for ECA.

ECA looks forward to continuing to work with DOE in the future on any initiative to safely manage and dispose of high-level nuclear waste and spent nuclear fuel. It is imperative that the issue is addressed with respect to existing law, with an understanding that legislative change is likely to be required, and most importantly, with urgency. ECA communities accepted a national security mission when it was most necessary, and the federal government must fulfill its end of the bargain to move that waste out of our communities as safely and expeditiously as possible.

From: Jim Williams [REDACTED]
Sent: Friday, April 14, 2017 8:37 AM
To: Consent Based Siting
CC: Bob J. Halstead; Whalen, Cheryl Louise (DPTEC); Connie Nakahara; Eletha Trujillo; Holly Taylor; Justin Cochran; Ken Niles [REDACTED] Kerry Martin; Maury Galbraith; Rich Baker; Scott Ramsay; Tammy C. Ottmer
Subject: WIEB HLRW Comments on Draft CBS Process
Attachments: Draft CBS Process 2017-01-12 WIEB comments.docx

To: U.S. DoE, Office of Nuclear Energy (NE-8)
From: WIEB High-Level Radioactive Waste Committee
Re: **Draft Consent-Based Siting Process (Jan. 12, 2017)**
Document citation: 82 FR 4333; Document number: 2017-00670
Date: April 14, 2017

We appreciate the opportunity to review and consider the document cited above. We also recognize and appreciate the DoE-NE process that led to this report, and DoE's request for comment on this draft report. The following comments reflect the review of committee members Ken Niles (OR), Cheryl Whalen (WA), Scott Ramsay (WY), Justin Cochran (CA), Rich Baker (AZ), and Bob Halstead (NV).

1. The Draft Steps are Useful

The suggested steps (17 steps in 5 phases) are very useful as a general guide in siting individual facilities needed as part of a national waste disposition strategy, and as a set of expectations for the siting process. They reflect suggestions by persons who have considered difficult siting processes. They have limitations, however, which we hope will be considered in ongoing efforts.

2. Differences Among “Affected Communities”

As discussed on page 8, the affected community in the contemplated siting process includes the local and state governments, Congressional delegations, and affected Tribal governing bodies. The draft steps assume that the consent-based siting process will bring these parties into consensus, but does not address situations in which consensus is not achieved—either because the parties have differing criteria or concerns, or because criteria are differently weighted among the parties.

The next draft should include a carefully-considered section on “resolving differences” when consensus is not achieved. One example is presented by the July 29, 2016 NETWG report (“Consent-Based Siting and Indian Tribes”, pg. 2-6), which addresses potential state-tribal disagreement and concludes that legal principles require resolution in favor of the directly affected tribe. Other examples involve potential disagreement between the affected state and locality, or among affected localities, or between an affected locality and a tribe, or by an adjacent state or tribe,

One way for DOE (as “implementing organization”) to resolve potential differences within/among the affected community is to state that it will walk away from situations in which such conflicts arise and resist reasonable efforts at resolution. Another is for DOE to make itself a party rather than a facilitator. We do not argue for either approach. We do, however, suggest that the draft process consider the contingencies.

3. Transportation at the “Destination End,” Within the “Affected Community”

The draft siting process does not mention “transportation” until Phase V (License, Construct, Operate), Step 15. Even if the reference is limited to transportation within the “affected community” (not to cross-country transport through corridor communities), this is much too

late in the process, as demonstrated by the Private Fuel Storage process in Utah and the Yucca Mountain process in Nevada.

Transportation within the affected community should be specifically addressed in Step 6 (“community requests preliminary assessment of site”) and specifically included in Steps 7 and 8 (preliminary and detailed site assessment).

4. The Program Context for Successful Facility Siting

The draft appears to assume that DOE can successfully site any of the facilities identified in Section 3 so long as it follows the general design principles outlined in Section 4 and the phases and steps outlined in Section 5. This places an undue burden on the facility siting.

Well-considered design principles and siting steps are necessary but not sufficient. Also needed, as a necessary pre-condition, is a coherent and persuasive national strategy for disposition of the nation’s SNF and HLW.....a strategy that considers current objectives, options and alternatives, not just those inherited from the past. Without such a strategy, siting may be hampered by doubt that the facilities are really necessary, or really the best available means to achieve national ends.

5. Adaptation and “One Step at a Time”

As long as it is operating within a coherent and persuasive national strategy, DOE *should* “adapt” to address changing conditions, rather than rigidly persist despite such changes. However, DOE strategy *should not* be simply to follow an “adaptive” path of least (political or other) resistance, wherever such a path might lead.¹

In advocating “adaptation”, the draft cites the 2003 NAS study, “One Step at a Time”², whose recommendations apply to the 100-year construction-operations-monitoring period--after repository licensing but prior to final closure, when the issue is no longer whether the facility should be developed but whether its construction and operation assure that it will function as licensed over the subsequent 10,000 years. In applying “adaptation” to facility siting, the draft is applying the term in a very different context than that addressed by NAS in 2003.

It may well be (as stated on pg. 8) that “any consent-based siting process—by its nature—(must) be flexible and adaptive”, but the basis is not found in the 2003 NAS study, which does not address siting.

6. The Types and Purposes of Facilities Need Further Definition

While the proposed siting steps are useful, the types of facilities to which such steps would apply are not adequately defined, either here or in DOE’s 2013 “Strategy”:

- Is a “pilot” facility intended to be small (say 8,000 MT or less)? Is it intended to accept SNF from nearby shutdown sites or from a wider area? Is the purpose to address perceived storage safety issues that persist despite the NRC’s 2015 “Waste Confidence” decision? Is the purpose to limit the breach-of-contract fiscal drain? Is it intended to morph into a larger facility for extended storage of much larger quantities, Or, it intended to morph into a larger facility, to which SNF would be shipped from much larger area?

¹ “If you don’t know where you are going any road can take you there”— Lewis Carroll, Alice in Wonderland.

² National Research Council of the National Academies, One Step at a Time: The Staged Development of Geologic Repositories for High-Level Radioactive Waste, 2003. <https://www.nap.edu/read/10611/chapter/1>.

- Is a “consolidated” storage facility” intended to accept SNF from across the entire country? Is it intended for SNF at shutdown sites, or also for SNF in pools at still operating reactor sites? Is it intended for potentially indefinite storage, if the nation cannot site a geologic repository or appropriate the funds needed to construct, operate and monitor such a facility over 100 years? Is it intended for potential use in Gen IV electricity generation? If so, should siting criteria address such potentials?
- Is deep borehole disposal intended only for small strontium and cesium capsules generated at defense facilities? Is it intended for potential on-site disposal of such capsules? Would any geologic repository suitable for disposal of SNF also be suitable for disposal of smaller strontium and cesium capsules?
- The draft notes (pg.3) that final disposal “can be expected to take decades”. If so, what are the current ends, means, and options for waste “disposition”? Are these limited to those anticipated in 1982? A coherent strategy that relates the range of current federal objectives to the current and prospectively-available means, and the means to the program options would provide a more convincing context for consent-based siting.

7. Design Principles

In the draft (pg. 6) DOE commits to adhere to an ambitious set of design principles in its dealings with prospective site communities—e.g. informed participation; full consideration of impacts; community well-being; right to withdraw, etc. This is admirable, but requires some discussion regarding how these principles might be applied in a way that demonstrates to all parties (at each stage) that the principles have, in fact, been adhered to. It also requires some discussion regarding how these principles do or do not apply to other affected parties in a national waste disposition program—e.g. origin communities, corridor communities.

8. Updated Regulations for a Geologic Repository

Section 6.4 (pg. 16) states that “the Administration understands the need for the EPA to develop a set of generic, non-site-specific, repository safety standards.....but that “early phases (of the siting processes) can go forward in parallel with regulatory action by the EPA and NRC....”

We believe that:

- It is very desirable that both a coherent national strategy for disposition of the nation’s SNF and HLW (discussed in comment #4 above), and generic, non-site specific repository standards be developed *prior* to embarking on siting.
- It is very desirable that generic, non-site-specific, repository safety standards reflect recent recommendations by the NWTRB, in their November 2015 Report to the U.S. Congress and the Secretary of Energy.³⁴
- DOE should advocate the above steps, understanding that its siting processes are more likely to succeed if undertaken in context of a coherent national program.

9. Site Assessment Considerations

Section 6.5 identifies a set of “site assessment considerations” (in addition, presumably, to consent in the affected community) for the types of facilities addressed in Section 3. Many of these considerations have already been addressed, on a national basis, in a June 2012

³ “If you don’t know where you are going any road can take you there”— Lewis Carroll, Alice in Wonderland.

⁴ “Designing a Process for Selecting a Site for a Deep-Mined, Geologic Repository...”, November 2015.

report prepared by Oak Ridge National Laboratory⁵. It would be useful if DOE could develop similar sets of considerations for other key components of its waste disposition program: at-reactor storage and transportation.

⁵ “Application of Spatial Data Modeling Systems, Geographical Information Systems (GIS), and Transportation Routing Optimization Methods for Evaluating Integrated Deployment of Interim Spent Fuel Storage Installations and Advanced Nuclear Plants”, June 2012, ORNL/TM-2012/237.

From: Jennifer Baker [REDACTED]
Sent: Friday, April 14, 2017 8:51 AM
To: Consent Based Siting
Subject: Comments of the Yankton Sioux Tribe
Attachments: 17 04 14 Yankton Sioux Tribe Comments with Attachments.pdf

To Whom It May Concern,

Attached please find the comments of the Yankton Sioux Tribe regarding the Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes.

Thank you,

Jennifer S. Baker, Senior Associate*
Fredericks Peebles & Morgan LLP

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

*Admitted in New Mexico, Oklahoma, the Navajo Nation, the Yankton Sioux Tribe, and the Rosebud Sioux Tribe; not admitted in Colorado

[REDACTED]

Confidentiality Notice - This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain information that is confidential or legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that you must not read or play this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is Strictly Prohibited. If you have received this transmission in error, please immediately notify the sender by telephone or return e-mail and delete the original transmission and its attachments without reading or saving in any manner. Thank you.

Wagner, SD 57380



OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JODY ZEPHIER, VICE CHAIRMAN
GLENFORD "SAM" SULLY, SECRETARY
LEO O'CONNOR, TREASURER

COUNCIL:
JASON COOKE
GREGORY COURNOYER Jr.
DIANE MERRICK
ROSEANNE WADE
MONA WRIGHT

**COMMENTS OF THE YANKTON SIOUX TRIBE ON
DRAFT CONSENT-BASED SITING PROCESS FOR CONSOLIDATED STORAGE
AND DISPOSAL FACILITIES FOR SPENT NUCLEAR FUEL AND HIGH-LEVEL
RADIOACTIVE WASTES**

April 14, 2017

INTRODUCTION AND SUMMARY

Thank you for this opportunity to submit comments on the Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes ("Draft Process"). These comments are provided to protect the Yankton Sioux Tribe's ("Tribe") sacred and cultural sites; spiritual practices; water and other usufructuary rights including, but not limited to, hunting, fishing, and gathering; resources; and the best interests of the Tribe's membership; as well as to remind the Department of Energy ("DOE") and other federal agencies of their federal trust responsibility to the Tribe. The Tribe appreciates the DOE's acknowledgement in the Draft Process of the federal government's trust responsibility and tribal treaty rights and interests that extend beyond present-day reservation boundaries. However, the Tribe urges the DOE to incorporate further safeguards into the consent-based siting process to ensure compliance with the federal trust responsibility and to provide necessary clarification for further public consideration as described below.

First and foremost, the Tribe is staunchly opposed to the placement of any form of nuclear storage facility on lands in which it has jurisdictional, possessory, or other interests. Such lands include, but are not limited to, the present-day recognized reservation, the reservation established

by the 1858 Treaty with the Yankton Sioux, the lands reserved to the Tribe through the 1851 Fort Laramie Treaty, the Tribe's aboriginal title territory, and the Tribe's ancestral lands. Such territory includes lands located in present-day South Dakota, North Dakota, Wyoming, Montana, Nebraska, and Iowa. Further, the Tribe is adamantly opposed to the placement of any form of nuclear storage facility in any area in such proximity to the Tribe's lands that the Tribe's sacred and cultural sites, spiritual practices, water and other usufructuary rights, and other resources could potentially be impacted by the facility either directly or indirectly. This includes aquifers and other bodies of water that the Tribe relies on for drinking water, fishing, ceremony, agriculture, and other purposes. The Tribe is particularly concerned about deep borehole disposal, and has passed a resolution, attached hereto, prohibiting the placement of nuclear boreholes or radioactive waste on or near the Tribe's land and resources including its reservation, treaty lands with usufructuary rights, lands to which the Yankton Sioux Tribe has aboriginal title, and water sources that the Yankton Sioux Tribe uses for consumption or cultural and religious purposes including the Ogallala Aquifer.

In addition, the Tribe has a number of specific concerns and questions regarding various aspects of the Draft Process. These concerns, identified by the corresponding section of the Draft Process, are as follows:

Section 4. General Design Principles for a Consent-Based Siting Process

With respect to the "*Trust Relationship with Indian Tribes*," the Tribe recognizes that the DOE is attempting to some extent to fulfill its federal trust responsibility. However, this section states that "the process will *take into account* siting impacts on sacred tribal lands, and other areas and resources of religious or cultural significance." (Emphasis added.) However, merely taking these impacts into account is insufficient. The DOE must ensure that, absent a tribe's consent, the process will *not allow* siting in such a way that sacred tribal lands, and other areas and resources

of religious or cultural significance, are not impacted. Further, the interests and rights of the Tribe and other tribes extend beyond religious and cultural resources. This requirement of the siting process must also apply to all land and resources including a tribe's reservation, treaty lands, lands to which a tribe has aboriginal title, and water sources that the a tribe uses for consumption or cultural and religious purposes – and should not be limited to areas of religious or cultural significance.

The subsection titled “*Equal Treatment and Full Consideration of Impacts*” is likewise inadequate to meet the DOE's trust responsibility. This subsection states that the siting process will consider parties who “are or may be reasonably affected.” This standard is insufficient when tribes are parties. The DOE or other implementing organization must *ensure* the protection of tribal lands and tribally significant sites and resources. Any possibility of the placement of storage and disposal facilities affecting these tribal interests must disqualify that location.

The Tribe has serious concerns about the lack of clarity regarding “*Voluntariness/Right to Withdraw*” and who precisely has authority to volunteer for the siting process and to sign off on a binding agreement. Nowhere in the Draft Process does the DOE identify the specific individual, position, or governing body that possesses such authority.

Section 5.1 Early Engagement and Outreach

Similarly, Section 5.1 fails to define the term “affected Tribal governing body.” This term must be defined in the process, and must include the governing body of any tribe that may be impacted by the siting of the facility.

Section 5.1 also states that development of repository standards “will take time and could occur in parallel with other preliminary repository siting efforts.” It is impossible for the Tribe and the general public to fully assess the Draft Process without being able to take into account those unestablished standards.

Section 5.2 Draft Steps in the Siting Process

With respect to **Step 2**, the term “potentially interested communities and stakeholders” is not defined. At a minimum, this term must be defined to include tribes that may be affected by the siting of the facility.

Step 5 identifies readily detectable factors that could exclude a community from further consideration. This step must be amended to include the lack of a potentially impacted tribe’s consent as an exclusionary factor.

Step 9 identifies laws with which the implementing organization must comply. The DOE limited this list to environmental law. The list must further include laws intended to protect tribes and tribal resources including, but not limited to, the National Historic Preservation Act, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act.

Step 9 states that the implementing organization will issue a Notice of Intent to Prepare an Environmental Impact Statement (“EIS”) “*where appropriate.*” (Emphasis added.) Due to the nature of and inherent risks posed by a nuclear storage facility, an EIS must be required for *any* siting process, as any such undertaking will significantly affect the quality of the human environment. 42 U.S.C. § 4332(C).

Step 9 fails to distinguish “community that has a site” and a “potentially affected community.” This is a crucial distinction as the rights of the respective communities during the siting process differ.

With respect to **Step 11**, potentially affected communities – or at minimum, potentially affected tribes, must have input on the terms and conditions of an agreement.

Regarding **Step 16**, the closure and decommissioning process must require removal of the facility as well as remediation of the affected surroundings. With respect to borehole disposal, the

siting process must also include a process or procedure to govern the duties of the implementing organization to remove any equipment in the event of an unsuccessful attempt to drill the borehole.

Finally, **Step 17** requires the implementing organization and the community to continue to monitor the facility site, but it fails to specify how long the site must be monitored.

Section 5.4 Key Role of Tribes and States

Section 5.4 requires the implementing organization to follow certain policies and guidance pertaining to tribes. The Tribe urges the DOE to adopt the “free, prior and informed consent” standard mandated by the United Nations Declaration on the Rights of Indigenous Peoples.

This section provides that the DOE will initiate and maintain communications with host tribes and states. Such communications must also be extended to *potentially affected* tribes.

Section 6.1 The Role of Siting Considerations in a Consent-Based Siting Process

As stated above with respect to Section 5.2, Step 5, the exclusionary factors must include proximity tribal lands and resources absent a tribe’s consent.

Section 6.1 fails to define or identify “independent regulators.” Such clarification is necessary for the Tribe to be able to adequately assess the Draft Process.

Section 6.2 Siting Considerations

This section provides that “proximity to or impacts on sacred tribal lands” will be given special consideration. This special consideration must not be limited to sacred tribal lands, but must also include tribal treaty lands in which a tribe retains usufructuary rights, aboriginal title lands, and ancestral lands of a tribe.

Section 6.4 Regulatory Framework for Siting Geologic Repositories

Section 6.4 states that the Nuclear Regulatory Commission has not yet begun necessary rulemaking with respect to geological disposal. The Tribe cannot adequately assess the Draft Process without being adequately informed by such regulations.

7. Conclusion and Opportunities for Providing Further Input

Issue 2: In order to assure the Tribe, as a potentially interested community, of adequate opportunities for information sharing, expert assistance, and meaningful participation, the DOE and/or implementing organization must comply with the Tribe's consultation protocols, attached hereto.

Issue 5: The DOE can best ensure that the Tribe's concerns and interests are adequately addressed *and protected* by first identifying whether a facility at the site in question could potentially impact the Tribe's sacred and cultural sites; spiritual practices; water and other usufructuary rights including, but not limited to, hunting, fishing, and gathering; resources; or lands in which it has jurisdictional, possessory, or other interests. The DOE or implementing organization must reach out to the Tribe for information and input in determining whether a site has potential to impact the aforementioned rights and interests and therefore whether the DOE or implementing organization must engage in consultation. Second, if a sited location does have potential to impact the aforementioned rights and interest of the Tribe, the DOE or implementing organization must engage in consultation with the Tribe in accordance with the Tribe's consultation policy. Finally, the DOE or implementing organization must obtain the Tribe's free, prior and informed consent before approving any site that has potential to impact the Tribe's aforementioned interests.

Issue 6: The DOE can best engage with the Tribe by following the steps above that respond to Issue 5.

CONCLUSION

In summary, we recommend that the Draft Process be altered to comply with the federal trust responsibility and federal laws pertaining to Indian tribes as set forth above. We expect that

Comments of the Yankton Sioux Tribe On the Draft Consent-Based Siting Process
April 14, 2017

the DOE will take these comments into consideration in this and future actions, and that the recommendations contained herein will be incorporated into the consent-based siting process.

Wagner, SD 57380

OFFICERS:
ROBERT FLYING HAWK, CHAIRMAN
JODY ZEPHIER, VICE CHAIRMAN
GLENFORD "SAM" SULLY, SECRETARY
LEO O'CONNOR, TREASURER

MONA WRIGHT



COUNCIL:
JASON COOKE
GREGORY COURNOYER Jr.
DIANE MERRICK
ROSEANNE WADE

YANKTON SIOUX TRIBE
Business and Claims Committee
RESOLUTION NO. 2017-40

Opposition to Deep Borehole Disposal of Nuclear Fuel and Other Used Fuel Disposition Near Yankton Sioux Tribal, Treaty, and Aboriginal Lands and Resources

- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians that is not subject to the Indian Reorganization Act of 1934; and
- WHEREAS:** The Yankton Sioux Tribe is an unincorporated Tribe of Indians operating under an amended Constitution and By-Laws approved on April 24, 1963; June 16, 1975 and March 23, 1990; and
- WHEREAS:** The Yankton Sioux Tribe's Business and Claims Committee is the elected body constituted for the purpose of conducting the business of and serving the best interest of the Yankton Sioux Tribe and its membership; and
- WHEREAS:** The U.S. Department of Energy ("DOE") has been investigating deep borehole disposal of spent nuclear fuel and other radioactive waste forms in South Dakota; and
- WHEREAS:** DOE is preparing to determine the future site of nuclear waste boreholes through a content-based siting process to establish "an integrated waste management system to transport, store, and dispose of commercial spent nuclear fuel and high level defense radioactive waste;" and
- WHEREAS:** DOE reports that it will work with communities, tribal governments, and states across the country that express interest in hosting any facilities; and
- WHEREAS:** DOE has issued its Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes and comments on the draft are due to the agency on or before April 14, 2017; and

Sioux Tribe uses for consumption or cultural and religious purposes including the Ogallala Aquifer.

NOW THEREFORE BE IT FINALLY RESOLVED, that DOE must avoid any siting or placement of nuclear boreholes or radioactive waste on or near the Yankton Sioux Tribe's land and resources mentioned above.

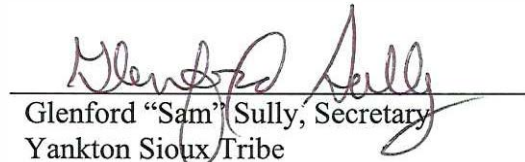
CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM, the above and foregoing resolution was duly authorized and passed by the Yankton Sioux Tribe's Business and Claims Committee on the 10 day of April 2017 at a meeting held at the Tribal Headquarters, Wagner, South Dakota on the Yankton Sioux Reservation, by a vote of 6 in favor, 0 opposed, 1 abstain, 2 absent, **MOTION CARRIED.**

ATTEST



Robert Flying Hawk, Chairman
Yankton Sioux Tribe
Business and Claims Committee



Glenford "Sam" Sully, Secretary
Yankton Sioux Tribe
Business and Claims Committee



Ihanktonwan Consultation Wo'ope

Protocols for Consultation with the Yankton Sioux Tribe

I. Purpose

The purpose of these protocols is to provide federal agencies with standards with which they must comply when engaging in consultation with the Yankton Sioux Tribe in order to ensure that consultation is meaningful and will fulfill the purpose and intent of Executive Order 13175 as well as applicable federal statutes, regulations, and agency policies, manuals, and Secretarial Orders. Consultation shall create understanding, commitment, and trust between the parties, and should be used to identify opportunities and solve problems.

II. Scope

These consultation protocols apply to any effort by a federal agency to consult with the Yankton Sioux Tribe pursuant to federal law(s), including but not limited to the National Environmental Policy Act implementing regulations (40 C.F.R. Part 1500), the National Historic Preservation Act (16 U.S.C. § 470 et seq.) and implementing regulations (36 C.F.R. Part 800), the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.) and implementing regulations (43 C.F.R. Part 10), the American Indian Religious Freedom Act (42 U.S.C. §§ 1996 & 1996a), the Archeological Resources Protection Act of 1979 (16 U.S.C. §§ 470aa-mm), Executive Order 13175, and Executive Order 12989.

III. Protocols

A. Cultural Protocols

1. Relationship-building should be at the center of any consultation, as this is a primary cultural protocol for the Ihanktonwan. Relationship building cannot occur through just one meeting, or by telephone or email. It requires time, trust, and respect for the relationship.
2. Agencies must recognize that water is viewed as the first medicine, and it must be honored and protected. Water is vital to the spiritual practices, culture, and health of the Ihanktonwan.
3. Agencies shall respect the fact that Yankton Sioux Tribal members have experience and knowledge that makes them uniquely qualified to identify Ihanktonwan cultural resources, and shall weigh their views accordingly.



4. Agencies must recognize that certain members of the Tribe possess inherent abilities and historical knowledge passed down through generations that make those tribal members uniquely equipped and able to identify sites of spiritual, cultural, and historical interest. These skills and knowledge should be utilized through tribal surveys of areas that may be impacted by a proposed action.
5. Agencies must recognize and respect the cultural practice of speaking in a “circular” manner, which may mean that it takes time for a speaker to arrive at the ultimate point but which conveys relevant information necessary to a proper understanding of that point.
6. Elders must be respected.
7. Agencies must recognize the Ihanktonwan practice reciprocity, which means that if remains are unearthed, something must be given back in return to restore balance. There are consequences dictated by the universe for disturbing graves and remains, and this should be avoided.
8. Agencies must respect the practice of making offerings.
9. Sharing a meal at the conclusion of a meeting is customary and expected.

B. Behavioral Protocols

1. Parties shall respect each participant and respect each other’s diversity.
2. Parties shall speak with respect, courtesy, dignity, care, and moderation to maintain an amicable atmosphere.
3. Parties shall avoid the use of language of dominance and/or oppression.
4. Parties shall refrain from disruptive gestures or actions.
5. Parties shall avoid tactics to induce intimidation. This includes manner of dress. Parties should dress in traditional or civilian clothing.
6. Parties shall treat everyone involved in a consultation meeting, particularly elders, with respect.
7. When an individual is speaking, all parties must refrain from interrupting that individual.
8. Parties shall not be dismissive of any statement made, but rather, shall acknowledge and value all contributions and bring them into consideration in any decision.
9. Parties shall refrain from reaching any decision until consultation has concluded and sufficient information has been exchanged.



10. Parties shall contribute and express opinions with complete freedom.
11. Parties shall carefully examine the views of others and accept valid points when made by others.
12. Parties shall focus on the subject of the consultation and avoid extraneous conversation.

C. Procedural Protocols

1. Consultation shall only include government-to-government, in-person meetings with the Tribe's General Council. Consultation shall not be conducted via telephone or written correspondence unless expressly agreed to by the Chairman of the Yankton Sioux Tribe ("Tribe") in writing.
2. A meeting shall not be considered consultation unless the relevant federal agency is represented at the meeting by an individual with decision-making authority over the proposed federal action at issue.
3. Multi-tribal or public meetings shall not be considered consultation unless expressly agreed to by the Chairman of the Tribe in writing unless the meeting is comprised exclusively of the federal agency and the Oceti Sakowin.
4. The consultation process shall commence as early as possible. Initial notification by a federal agency to the Tribe of a proposed action shall occur within two weeks of the federal agency becoming aware of the proposed action.
5. A federal agency shall contact the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee for the Tribe to notify the Tribe of a proposed federal action and initiate the consultation process. If the proposed federal action is expected to impact tribal cultural, spiritual, or historical resources, the federal agency shall also contact the Tribal Historic Preservation Officer. Notification pursuant to this protocol does not constitute consultation, but merely initiates the consultation process.
6. The consultation process shall include a pre-consultation meeting at which preliminary information shall be exchanged and an overview of the proposed federal action shall be provided, to be scheduled by the Chairman of the Tribe and/or his staff.
7. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of the potential impacts on the Tribe of the proposed federal action.
8. During or prior to the pre-consultation meeting, the relevant federal agency shall inform the Tribe of which federal officials will make the final decision with respect to the proposed federal action.



9. Each consultation meeting shall be scheduled by the Chairman of the Tribe and his staff.
10. The pre-consultation meeting and consultation meetings shall be held at a time and location convenient for the Tribe.
11. Consultation meetings shall be scheduled a least thirty-five (35) days in advance to allow for adequate notice to the General Council, which is comprised of tribal members age 18 years and older and which is the governing body of the Tribe.
12. All meetings shall be opened with a prayer.
13. All meetings shall be closed with a prayer.
14. All meetings shall be followed by a meal or include a meal as part of the necessary relationship-building.
15. Consultation meetings shall not designate an end time, but shall continue until all have had an opportunity to speak.
16. The federal agency shall provide the services of a court reporter to record each consultation meeting. A transcription of each meeting shall be provided to the Tribe within ten (10) days following said consultation meeting.
17. Prior to the final consultation meeting, the parties shall mutually agree that the following consultation shall be the final consultation meeting. If agreement cannot be reached to terminate consultation after the subsequent meeting, the subsequent meeting shall not be deemed the final meeting. No party shall unreasonably withhold consent to terminate consultation, but consultation shall continue until each party is satisfied that meaningful consultation has been achieved.
18. While there is no set number of meetings required for consultation to be deemed sufficient, consultation shall consist of no less than two meetings and shall not be considered complete until the parties are satisfied that all necessary information has been adequately exchanged.



Summary of Consultation Steps:

1. Federal agency learns of proposed federal action that may affect the Yankton Sioux Tribe.
2. Federal agency promptly (within two weeks) notifies the Chairman of the Tribe and the Ihanktonwan Treaty Steering Committee (and the Tribal Historic Preservation Officer for the Tribe if the proposed action is expected to impact tribal cultural, spiritual, or historic resources) of the proposed action. The consultation process is thus initiated.
3. The Chairman and/or his staff schedules a pre-consultation meeting.
4. A pre-consultation meeting is held.
 - a. Opening Prayer
 - b. Meeting
 - c. Closing Prayer
 - d. Meal (may also occur during the midpoint of the meeting)
5. The Chairman or his staff schedules a consultation meeting.
6. A consultation meeting is held.
 - a. Opening Prayer
 - b. Meeting
 - c. Closing Prayer
 - d. Meal (may also occur during the midpoint of the meeting)
7. Federal agency provides the Chairman of the Tribe with a transcript of the consultation meeting within 10 days.
8. Repeat steps 5-7 until meaningful consultation has been fully achieved, mutually agreeing prior to the final meeting that it will be the final consultation meeting.

D. Governmental Protocols

1. Federal agencies shall respect the unique legal and political relationship between the United States and the Yankton Sioux Tribe.
2. Consultation shall be conducted in accordance with Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which requires the “free, prior and informed consent” of an Indian tribe prior to adopting and implementing legislative or administrative measures that may affect it.
3. Consultation shall be meaningful and shall include collaboration with tribal officials.



4. The Yankton Sioux Tribe's views shall be incorporated into a federal agency's decision-making process.
5. Consultation shall be conducted and resulting agency decisions shall be made in such a way that the government-to-government relationship between the Tribe and the United States is strengthened. The Yankton Sioux Tribe shall be considered as a collaborative partner with the federal agency.
6. Federal agencies shall recognize the Yankton Sioux Tribe's right to self-government and its inherent sovereign powers. Federal agencies shall be respectful of the Tribe's sovereignty.
7. Federal agencies shall acknowledge and abide by the treaties between the United States and the Yankton Sioux Tribe.
8. Federal agency actions during and after consultation shall reflect the trust responsibility of the United States to the Yankton Sioux Tribe.

IV. Compliance

All parties shall comply with the protocols contained herein when engaging in the consultation process. Should a party fail to comply with one or more protocols, the other party shall notify the non-compliant party of the violation and the parties shall mutually agree upon a time and location for a meeting between the parties to resolve the matter. The goal of this meeting shall be to restore balance and reduce or eliminate discord by talking through the violation and reaching a mutual understanding to move forward in compliance with the protocols. Should the non-compliant party fail to participate in this meeting or fail to correct its non-compliant behavior in subsequent meetings, the other party may pursue legal remedies through enforcement of these protocols in Yankton Sioux Tribal Court.

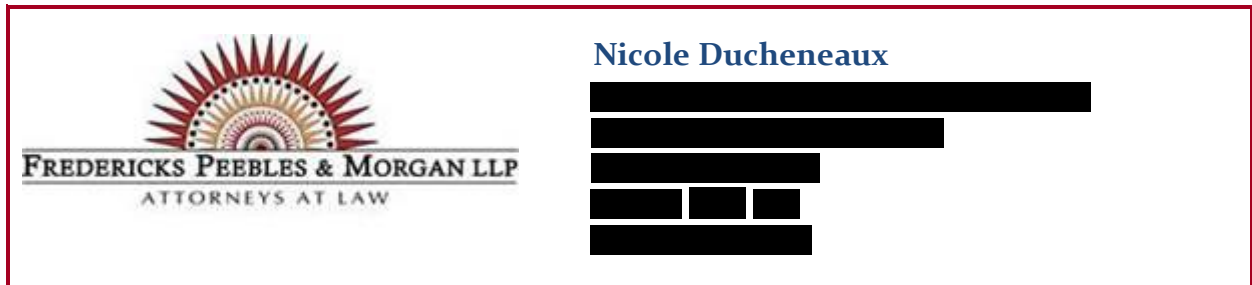
From: Nicole Ducheneaux [REDACTED]
Sent: Friday, April 14, 2017 12:10 PM
To: Consent Based Siting
CC: NE Filing; 'Harold Frazier'; 'Matt Vogel'; 'Remi Bald Eagle'; 'David Nelson'
Subject: Comments in Response to Request for Public Comment on Draft Consent-Based Siting Process
Attachments: Letter Re Cheyenne River Sioux Tribe Comments in Response to Request for....pdf

To Whom It May Concern:

Attached hereto are Comments of the Cheyenne River Sioux Tribe, a federally-recognized Tribe, in Response to Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High Level Radioactive Wastes, 82 Fed. Reg. 4333 (Jan. 13, 2017).

The Tribe has also submitted these by fax, Federal Express, and on online at regulations.gov.

Please do not hesitate to contact me if you have any difficulty accessing this document.



The information contained in this e-mail transmission (including any accompanying attachment (s) is intended solely for its authorized recipient (s) and may be confidential and /or legally privileged. If you are not an intended recipient, or responsible for delivering some or all of this transmission to an intended recipient, you have received this transmission in error and are hereby notified that you are strictly prohibited from reading, copying, printing, distributing, or disclosing any of the information contained in it. In that event, please contact us immediately by telephone at [REDACTED] or by email at [REDACTED] and delete the original and all copies of this transmission including any attachments without reading or saving in any manner. If you are a client of our firm, this confirms that communication to you by e-mail is an acceptable way to transmit attorney-client information. Thank you.

CHAIRMAN
Harold C. Frazier

SECRETARY
EvAnn White Feather

TREASURER
Benita Clark

VICE-CHAIRMAN
Robert Chasing Hawk



TRIBAL COUNCIL MEMBERS

DISTRICT 1
Bernita In the Woods
Bryce In the Woods

DISTRICT 2
Theodore Knife, Jr.

DISTRICT 3
Edward Widow
John Kessler

DISTRICT 4
Jim Pearman
Kevin Keckler
Merrie Miller-White Bull
Mark Knight

DISTRICT 5
Ryman LeBeau
Raymond Uses The Knife
Robert Chasing Hawk
Derek Bartlett

DISTRICT 6
Tuffy Thompson
Wade "Tater" Ward

April 14, 2017

VIA FEDERAL EXPRESS, EMAIL, FAX

Tracking No. [REDACTED]
U.S. Department of Energy
Office of Nuclear Energy
Draft Consent-Based Siting Process
1000 Independence Ave. SW
Washington, DC 20585
Email: consentbasedsiting@hq.doe.gov
Fax No. 202-586-0544

Re: Cheyenne River Sioux Tribe Comments in Response to Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes, 82 Fed. Reg. 4333 (Jan. 13, 2017)

Dear Office of Nuclear Energy,

As the Chairman of the Cheyenne River Sioux Tribe ("Tribe"), I am contacting the Office of Nuclear Energy to submit the Tribe's official comments on the Department of Energy's ("DOE") Consent-Based Siting Process ("Process"), pursuant to the Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes, 82 Fed. Reg. 4333 (Jan. 13, 2017). I understand that the purpose of the Process is to locate sites around the country for the drilling of a hole to receive and store commercial spent nuclear fuel and high level defense radioactive waste. I further understand that DOE will locate such a site with the consent of the local community.

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

To be clear, the Cheyenne River Sioux Tribe adamantly opposes nuclear waste disposal on its Reservation located in north-central South Dakota, which was set aside for us as a permanent homeland by the Act March 2, 1889, ch 105, 25 Stat. 88. (Map of Cheyenne River Sioux Reservation is enclosed herewith.) The Tribe **will not** consent to siting of nuclear waste on our Reservation. However, our rights extend beyond our Reservation borders as a matter of federal law and they are rights for which the United States owes us a fiduciary duty. Therefore, the purpose of these comments below is to insist that DOE impose procedures as a part of its Process that meets the United States' duty to the Tribe in the event that the agency considers a site that impacts the Tribe's rights or trust resources.

The Tribe's Off-Reservation Rights

- **Reserved water rights**: The Tribe enjoys reserved water rights in the Missouri River Basin as well as related groundwater in an amount sufficient to fulfill the purposes of the Reservation. *See Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546, 600 (1963). These reserved water rights are a trust resource for which the United States owes a fiduciary duty. These rights are a function of the Tribe's extant treaty rights. *See Treaty of Fort Laramie with the Sioux, Etc.*, 11 Stat. 749 (Sep. 17, 1851); *Treaty with the Sioux – Brule, Oglala, Mniconjou, Yantonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arc, and Santee*, 15 Stat. 635 (Apr. 29, 1868).
- **Hunting and fishing rights**: The Tribe enjoys hunting and fishing rights in Lake Oahe, the reservoir of the Missouri River that are subject to the United States trust duty. These rights are a function of the Tribe's extant treaty rights and have been preserved by Congress. *See Treaty of Fort Laramie with the Sioux, Etc.*, 11 Stat. 749 (Sep. 17, 1851); *Treaty with the Sioux – Brule, Oglala, Mniconjou, Yantonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arc, and Santee*, 15 Stat. 635 (Apr. 29, 1868); Act of Sep. 3, 1954, Pub. L. 83-776, 68 Stat. 1191.
- **Historic, spiritual, and cultural resources**: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially with the boundaries of its lands reserved to the Tribe in the *See Treaty of Fort Laramie with the Sioux, Etc.*, 11 Stat. 749 (Sep. 17, 1851) (Map of 1851 Territory enclosed herewith).

United States' Trust Duty

The United States has a two-fold trust duty to the Tribe. Courts have long recognized the "existence of a general trust relationship between the United States and the Indian people." *United States v. Mitchell*, 463 U.S. 206, 225 (1983). The courts are clear that "**any** Federal government action is subject to the United States' fiduciary responsibilities toward the Indian tribes." *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) (emphasis in original) (citing *Seminole Nation v. United States*, 316 U.S. 268, 297 (1942)).

Secondly, the federal government has a specific duty to protect the trust relationship established by the 1851 and 1868 Fort Laramie Treaties. The Tribe was a party to the 1851 and 1868 Fort Laramie Treaties, which reserved land and water to the Tribe in order to fulfill the purpose of the Reservation to provide for self-sufficiency. *See Winters*, 207 U.S. 564 (1908). The reserved water right recognized in the *Winters* doctrine, and reserved for the Tribe, includes the right to clean, safe water. *See, e.g., United States v. Gila River Irrigation Dist.*, 920 F. Supp. 1444, 1448 (D. Ariz. 1996). Likewise, the Tribe has retained its right to hunt, fish, and gather on the Reservation and on parts of the Missouri River. Act of September 3, 1954, Pub. L. 83-766, 68 Stat. 1191; *South Dakota v. Bourland*, 508 U.S. 679, 697 (1993) (noting that Congress explicitly has reserved the Cheyenne River Sioux Tribe's original treaty rights, including the right to hunt and fish, on Lake Oahe); *see also United States v. Dion*, 476 U.S. 734, 738 (1986) ("Indians enjoy exclusive treaty rights to hunt and fish on lands reserved to them . . ."). The Tribe's water rights include a right to water that is sufficient in amount and quality to support hunting and fishing rights. *United States v. Adair*, 723 F.2d 1394, 1409, 1411 (9th Cir. 1983). As a result of the federal government's trust responsibilities to the Tribe, the DOE must ensure in its Consent-Based Siting Process that such trust responsibilities are persevered.

The United States Must Consult on the Tribe's Rights and Has a Duty to Protect Them

The United States and the DOE's trust relationship does not only extend to the content-based siting process, but the United States must also engage in meaningful pre-decisional consultation on projects that will affect the Tribe's treaty rights. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000); DOE Order 144.1, Dep't of Energy American Indian Tribal Government Interactions & Policy (Jan. 16, 2009).

"In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party." *Seminole Nation*, 316 U.S. at 296-67 (1942). Instead, "it has charged itself with moral obligations of the highest responsibility and trust." *Id.* Pursuant to their trust duty, agencies are required to "consult with Indian tribes in the decision-making process to avoid adverse effects on treaty resources." *Klamath Tribes v. United States*, No. 10-2130, 1996 WL 924509 (D. Or. 1996) (quoting *Lac Courte Oreille Band of Indians v. Wisconsin*, 668 F. Supp. 133, 140 (W.D. Wis. 1987); *Ctr. for Biological Diversity v. Salazar*, No. 10-2130, 2011 WL 60000497, at *11 (D. Ariz. Nov. 30, 2011). It is not a discretionary duty. *Ctr. for Biological Diversity*, at *11.

The duty to consult is binding on an agency when the agency has an announced a consultation policy and the Tribes have come to rely on that policy. *Yankton Sioux Tribe v. Kempthorne*, 442 F. Supp. 2d 774, 784 (D. S.D. 2006); *see also Oglala Sioux Tribe v. Andrus*, 603 F.2d 707 (8th Cir. 1979); *Lower Brule Sioux Tribe v. Deer*, 911 F. Supp. 395 (D. S.D. 1995); *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 58 (D.C. Cir. 1991); *Indian Educators Fed'n Local 4524 of Am. Fed'n of Teachers, AFL-CIO v. Kempthorne*, 541 F. Supp. 2d 257, 264-65 (D. D.C. 2008). At a minimum, this requires that the agency give fair notice of its intentions, which requires, "telling the truth and keeping promises." *Yankton Sioux Tribe*, 442 F.Supp.2d at 784 (citing *Lower Brule Tribe*, 911 F Supp. at 399). An agency's failure to provide tribes with accurate information necessary to meaningfully consult before a decision is made, is agency failure to meet

its consultation obligation. *Id.* at 785; *see also* *Cheyenne River Sioux Tribe v. Jewell*, No. 3:15-03072, 2016 WL 4625672 (D. S.D. Sep. 6, 2016).

The federal government has further obligations to tribes under the National Historic Preservation Act (“NHPA”) and the Religious Freedom Restoration Act (“RFRA”). The NHPA was enacted to preserve historic resources in the midst of modern projects and requires agencies to fully consider the effects of its actions on historic, cultural, and sacred sites. Section 106 of the NHPA requires that prior to issuance of any federal funding, permit, or license, agencies must take into consideration the effects of that “undertaking” on historic properties. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. The § 106 process also requires consultation between agencies and Indian Tribes on federally funded or authorized “undertakings” that could affect sites that are on, or could be eligible for, listing in the National Register, including sites that are culturally significant to Indian Tribes. 54 U.S.C. § 302706. An agency official must “ensure” that the process provides Tribes with “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties . . . , articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(ii)(A). This requirement imposes on agencies a “reasonable and good faith effort” by agencies to consult with Tribes in a “manner respectful of tribal sovereignty.” *Id.* 36 C.F.R. § 800.2(c)(2)(ii)(B); *see also id.* § 800.3(f) (any Tribe that “requests in writing to be a consulting party shall be one”).

Under RFRA, the “Government shall not substantially burden a person’s exercise of religion” unless the Government “demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b). Tribal religious practices are significantly tied to oral tradition, ancestral lands, and natural resources. The Tribe is concerned that the DOE’s consent-based citing process does not effectively evaluate locations for that may interfere with tribal religious practices.

Further, the DOE is required to meet certain analysis standards when investigating sites for nuclear waste borehole locations where such locations affect an Indian tribe’s interests. The DOE along with several other departments of the United States Federal Government, has entered into a Memorandum of Understanding on Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites. The Memorandum acknowledges that federal agencies hold in trust many culturally important sites held sacred by Indian tribes and federal agencies are responsible for analyzing the potential effects of agency projects carried out, funded, or permitted on historic properties of traditional cultural and religious importance to Indian tribes including sacred sites. Additionally, international law, treaties, and jurisprudence has repeatedly affirmed the right of Free Prior Informed Consent. *See Declaration on the Rights of Indigenous People*, art. 10, United Nations (Mar. 2008). The purpose of Free Prior Informed Consent (FPIC) is to establish bottom up participation and consultation of an Indigenous population prior to the beginning of a development on ancestral land or using resources within the Indigenous population’s territory. *Id.*

Tribe's Request Concerning DOE's Draft Process

As the United States federal government has a trust responsibility to the Cheyenne River Sioux Tribe, as well as other federally recognized tribal nations, the Consent-Based Siting Process should outline adequate procedures to engage in consultation with any and all affected tribal nations well in advance of any decision. Specifically, should ***any*** proposed waste site impact ***any*** resource of the Cheyenne River Sioux Tribe listed above, as a function of its fiduciary duty to the Tribe and as a matter of federal law, DOE's processes must encompass the following ***at a minimum***:

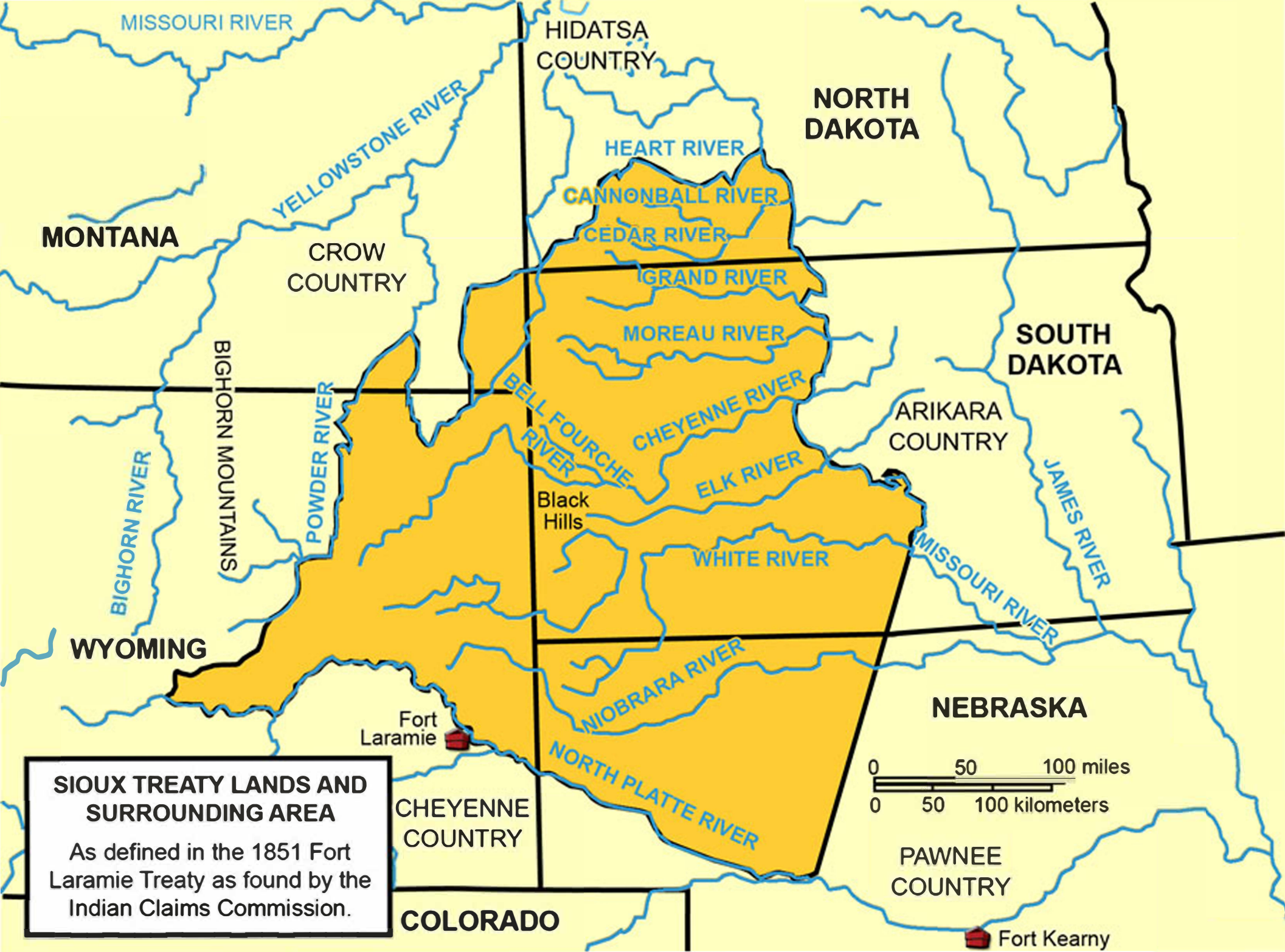
- Provide the Tribe with all pertinent information before consultation in a timely manner;
- Coordinate with the Tribe before consultation begins, especially with development of an agreement on consultation timelines before consultation even begins;
- Consult only with Tribal representatives who have been authorized to engage in government-to-government consultation by the Tribal government;
- Make every effort to conduct Tribal consultation at the seat of Tribal government, Eagle Butte, South Dakota, or elsewhere on the Cheyenne River Reservation;
- Ensure that federal participants in Tribal consultation have actual decision-making authority;
- Provide written confirmation that the agency has considered Tribal comments and concerns and the agency's response, whether positive or negative; and
- Obtain resolution of approval from the Tribe that the agency has satisfactorily consulted with the Tribe and the Tribe agrees with the agency's response to Tribal concerns in each instance.

I appreciate DOE's request for comments on this important issue. Please do not hesitate to contact me if you should have any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'H. Frazier', with a long horizontal flourish extending to the right.

Harold Frazier
Chairman, Cheyenne River Sioux Tribe



SIoux TREATY LANDS AND SURROUNDING AREA

As defined in the 1851 Fort Laramie Treaty as found by the Indian Claims Commission.

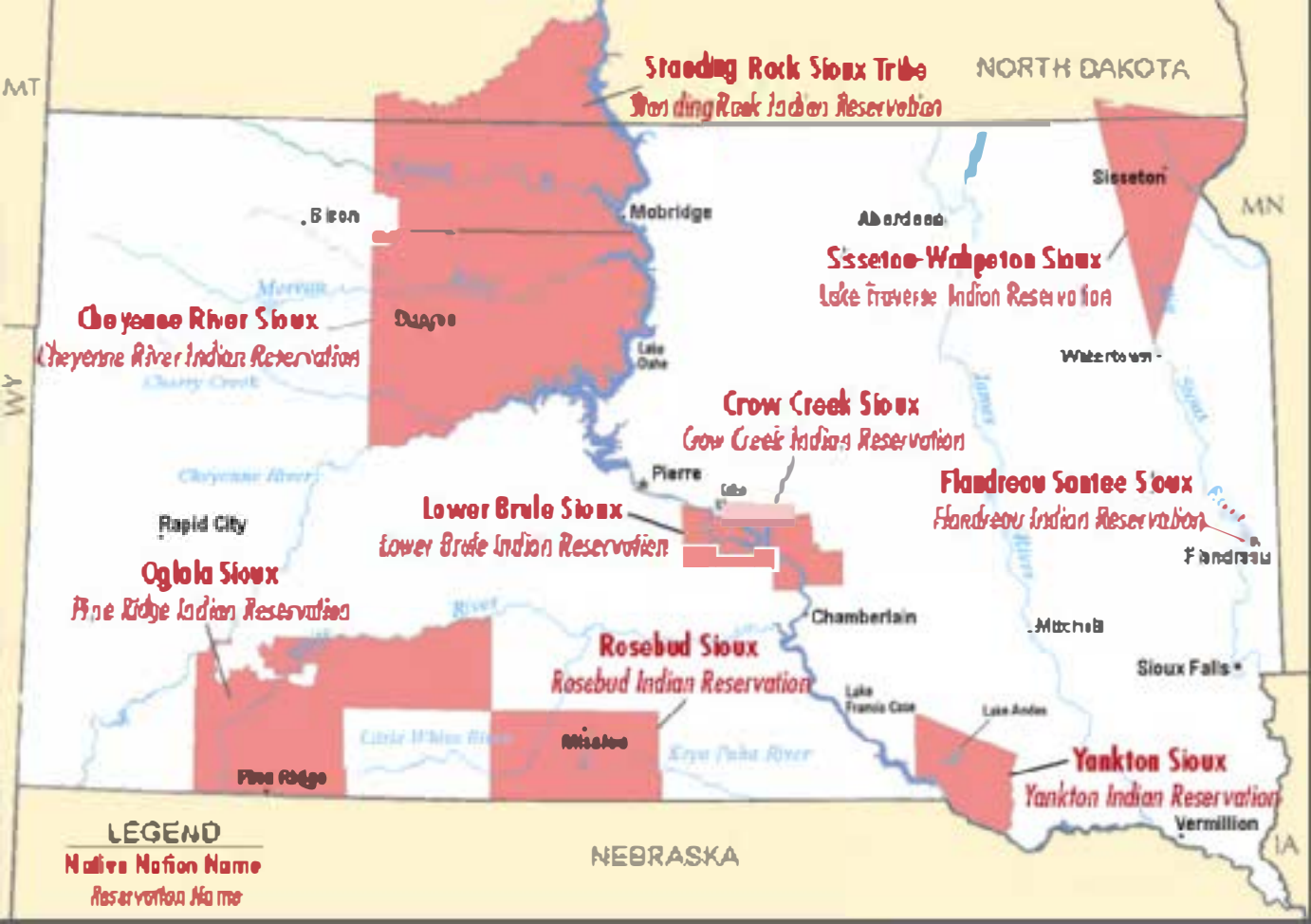
COLORADO

NORTH DAKOTA

SOUTH DAKOTA

NEBRASKA

PAWNEE COUNTRY



Standing Rock Sioux Tribe

Standing Rock Indian Reservation

NORTH DAKOTA

Sisseton

Sisseton-Wabpeton Sioux

Lake Traverse Indian Reservation

Wabpeton

Cheyenne River Sioux

Cheyenne River Indian Reservation

Sioux

Crow Creek Sioux

Crow Creek Indian Reservation

Lower Brule Sioux

Lower Brule Indian Reservation

Flandreau Santee Sioux

Flandreau Indian Reservation

Oglala Sioux

Pine Ridge Indian Reservation

Rosebud Sioux

Rosebud Indian Reservation

Yankton Sioux

Yankton Indian Reservation

LEGEND

Native Nation Name
Reservation Name

NEBRASKA

From: Talia T. Martin [REDACTED]
Sent: Friday, April 14, 2017 12:53 PM
To: Consent Based Siting
Subject: Shoshone Bannock Tribes comments on Draft Consent Based Siting
Attachments: SBT Comments_Draft Consent Based Siting_04142017.pdf

Submitting comments on the Draft Consent Based Siting Document.

Sincerely,

Talia T. Martin

Director of Tribal/DOE-AIP

Shoshone-Bannock Tribes Tribal Department of Energy

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

The SHOSHONE-BANNOCK TRIBES



Tribal DOE Program

██████████
Fort Hall, ID 83203
██████████
██████████

Tribal DOE Administration
Cultural Resources /
Heritage Tribal Office (HETO)
Environmental Monitoring

April 14, 2017

U.S. Department of Energy
Office of Nuclear Energy
Draft Consent-Based Siting Process
1000 Independence Ave. SW
Washington, DC 20585

RE: Shoshone-Bannock Tribes' Comments on the *Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste (January 12, 2017)*

To the Office of Nuclear Energy:

The Shoshone-Bannock Tribes Tribal DOE and Heritage Tribal Office are pleased to provide comments and input on the above-referenced consent-based siting document. On page 18, the document offers seven questions that would benefit DOE's siting process. Accordingly, we generally align our comments according to those questions.

First, we emphasize the need to protect the environment and human health and safety. We have a duty to protect air, water, land, and people and other life. Any siting decisions must be the least likely to impact the human environment in the event of spills or accidents or natural disasters. For example, in the event of a human or natural disaster, what site(s) will be least likely to impact air, groundwater, surface water, and the land on which the people rely? In the siting process, we urge the DOE not to rely solely on present scientific understanding of the environment, but also on Native American traditional knowledge from potentially affected Indian tribes and/or those tribes within a several hundred mile radius from any proposed site(s). Combining such knowledge may provide a more thorough, and thus a more robust, framework from which to base siting decisions.

In the implementation of the siting process, we suggest that DOE reach out to potentially affected Indian tribes to initiate the sharing and integration of traditional

knowledge. DOE should provide sufficient resources for tribes to work together in tribal working groups, and then jointly with DOE staff/scientists.

Second, DOE could assure communities with access to information by developing an online information repository, email notifications for those interested, document repository at local libraries and/or local and tribal government offices, and by holding meetings locally.

Regarding DOE's questions #3-5, please see the first point made above. Similarly, we encourage the DOE to create sufficient opportunities for tribal governments to provide input on the siting process. Again, this might be in terms of supporting tribal working groups who would then work in concert with DOE staff to improve the siting process and implementation. For example, Canada's Adaptive Phase Approach for siting, created a policy derived from Nuclear Waste Management Organization's meetings and reports working with the First Nations (aboriginal) people of Canada. They commit to implementing an approach utilizing affected First Nation's Traditional Knowledge Plan's in all aspects of the design, siting, construction, and operating phases. In the United States, this approach can be valuable by strengthening the trust-responsibility relationship with the Tribes. Utilizing Native American input can provide the traditional perspective that which engineers, chemists, geologists etc, cannot provide for the DOE.

The Tribes also wish to emphasize several points about siting considerations. Under Section 6.5, DOE notes that site assessments would go through a phased process. First, factors such as proximity to major population center, national parks, and other areas of special significance would be used to exclude a site from consideration. In this phase, we urge the DOE to consult with Indian tribes and include sacred sites and special cultural areas as part of the "other areas of special significance." Tribes must be consulted early in the process, before the public and stakeholders, as tribes are sovereign. Tribes must not be placed in the category of stakeholders or public. For a second phase of the site assessments, DOE offers a list of possible factors that would be used to analyze site suitability or unsuitability. We urge the DOE to factor in risks to groundwater and air contamination. Is the site located near a large aquifer? In the event of a catastrophe, how can a site largely prevent radiation exposure to water and air?

Furthermore, DOE must not infringe on treaties with Indian tribes. Treaties are the supreme law of the land and with DOE being a trustee of Tribes, we expect that DOE will add this factor into the first phase of its siting assessments and considerations.

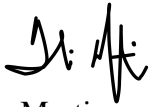
Additionally, these second-phase factors must include tribal cultural resources, historic properties, and any places of traditional and religious use. DOE must comply with all federal laws, executive orders and DOE orders regarding the protection and preservation of tribal cultural resources. These laws include the National Historic Preservation Act, National Environmental Protection Act, Native American Graves Protection Act, DOE Order 141.1, EO 13007, and others. Another consideration when determining siting is the visual landscape. Tribes have strong ties to the landscape and

surroundings. Not only the tangible items are held sacred to Tribes, but there is also the intangible, the feeling of place.

We cannot stress enough that DOE should site any future nuclear waste repository far from Indian tribal reservation lands, and entirely disconnected from our surface and ground water supplies. When our people were being forced onto reservation lands, those lands were terribly small in size with few resources for our people to survive. The reservations were small and isolated. Typically they were not productive lands. And we were left with very minute amounts of water in comparison to what our people once had. Water is another sacred and important resource to tribal people as it gives life to everything. While Tribal people still hunt, fish, gather, and hold ceremonies on inherent ancestral lands and treaty lands outside the reservations, the reservations essentially are the only remaining lands on which our communities may continue to grow for generations to come. May the DOE not infringe on the remaining resources of our Tribal nations. And may this factor be paramount in the DOE's site considerations and assessments.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Talia Martin', with a stylized flourish at the end.

Talia Martin,
Shoshone-Bannock Tribes Tribal DOE Program Director

CC:

Fort Hall Business Council
Monte Sanford PhD, Environmental Consultant
Larae Bill, Cultural Specialist

From: Bob J. Halstead [REDACTED]
Sent: Friday, April 14, 2017 2:54 PM
To: Consent Based Siting; Bates, Melissa (HQ)
CC: Shawnee J. Hughes
Subject: State of Nevada Comments on Draft CBS Process
Attachments: Comments to DOE on CBS Draft Process 4 14 2017.pdf

Dear DOE: Our comments are attached. Thank you. Best, Bob Halstead

Robert J. Halstead
Executive Director
State of Nevada - Office of the Governor
Agency for Nuclear Projects
[REDACTED]



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS



April 14, 2017

Melissa Bates
Acting Team Lead
Office of Integrated Waste Management, Spent Fuel and Waste Disposition
Office of Nuclear Energy
U.S. Department of Energy
Draft Consent-Based Siting Process
1000 Independence Avenue SW
Washington, DC 20585

Dear Ms. Bates:

We are writing in response to your *Federal Register* Notice of January 13, 2017, requesting comments on U.S. Department of Energy, *Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes* (January 2017).

We appreciate the Department's continued commitment to consent-based siting, following the 2012 recommendations of the Blue Ribbon Commission on America's Nuclear Future (BRC) and the findings of DOE's own public input process. DOE's commitment to consent-based siting in this Draft Process document does not, however, change Nevada's opposition to Yucca Mountain. Governor Brian Sandoval has clearly stated that Nevada will not consent to disposal or storage of spent nuclear fuel and high-level radioactive waste in Nevada.

In our previous letters to the Department regarding consent-based siting, we have emphasized the necessity of defining at the beginning of the process the written consent agreement that would be required at the end of the process. We again urge DOE to support the approach taken in The Nuclear Waste Informed Consent Act, introduced in the 115th Congress as S.95 by Senators Dean Heller and Catherine Cortez Masto, and as H.R. 456 by Representatives Dina Titus, Ruben Kihuen, and Jacky Rosen. We believe the Secretary of Energy should be required to obtain written consent from any potential host state, affected Indian tribe, host county, and county adjacent to the host county impacted by transportation, before expending any funds from the Nuclear Waste Fund for repository construction.

We have also urged the Department to give greater attention to stakeholder concerns about nuclear waste transportation impacts in the facility siting process. The National Academy of Sciences (NAS) Committee on Transportation of Radioactive Waste documented the radiological and social impacts of nuclear waste shipments and recommended comprehensive transportation safety and security measures to address these impacts in their report *Going the Distance? The Safe Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste in the United*

States (2006). The BRC Final Report in 2012 recommended adoption of all the transportation safety and security recommendations made by the NAS. It is imperative that the final Consent-Based Siting Process include a commitment to the full implementation of the BRC and NAS safety and security measures before the commencement of any shipments of spent nuclear fuel or high-level radioactive waste to interim storage or disposal facilities.

Thank you for the opportunity to review and comment upon this document.

Respectfully,



Robert Halstead
Executive Director


Cc: Office of the Governor
Office of the Attorney General
Congressional Delegation
Chairman of the Nevada Commission on Nuclear Projects

From: REKOLA, Kaitlin [REDACTED]
Sent: Friday, April 14, 2017 4:52 PM
To: Consent Based Siting
CC: Secretary Perry; Fygi, Eric; [REDACTED]
Subject: NEI Response to DOE Request for Comments on Draft Consent-Based Siting Process
Attachments: Nuclear Energy Institute Cover Letter and Comments on Consent Based Siting Process as Filed 04 14 2017.pdf

Deputy Assistant Secretary Griffith,

On behalf of the commercial nuclear industry, attached please find NEI's cover letter and response to DOE's "Request for Public Comment on the Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for High-Level Radioactive Waste" (82 Fed. Reg. 4,333 (Jan. 17, 2017)).

We thank the Department in advance for its consideration of NEI's comments.



Kaitlin E. Rekola
Staff Counsel

Nuclear Energy Institute
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]



This electronic message transmission contains information from the Nuclear Energy Institute, Inc. The information is intended solely for the use of the addressee and its use by any other person is not authorized. If you are not the intended recipient, you have received this communication in error, and any review, use, disclosure, copying or distribution of the contents of this communication is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately by telephone or by electronic mail and permanently delete the original message. IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this

communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Sent through www.intermedia.com

[REDACTED]

April 14, 2017

Submitted Via Regulations.gov and Electronic Mail [REDACTED]

Mr. Andrew R. Griffith
Deputy Assistant Secretary for Spent Fuel and Waste Disposition
U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Ave., SW
Washington D.C. 20585

Subject: Response of the Nuclear Energy Institute to the U.S. Department of Energy Request for Comment on the Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes, 82 Fed. Reg. 4,333 (Jan. 13, 2017)

Dear Deputy Assistant Secretary Griffith:

On behalf of the commercial nuclear industry, the Nuclear Energy Institute, Inc. (“NEI”)¹ submits the following comments in response to the U.S. Department of Energy (“DOE”) request for public comment on the Department’s “Draft Consent-Based Siting Process” (“Draft Process”)(82 Fed. Reg. 4,333 (Jan. 13, 2017)). Fundamentally, while we appreciate the Department seeking stakeholder comment on the Draft Process, given that the President’s 2018 budget request seeks funding to restart Yucca Mountain licensing activities and initiate consolidated interim storage, we recommend that DOE reevaluate the expenditure of resources to develop a consent-based siting process at this point.²

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

² Office of Management and Budget, America First: A Budget Blueprint to Make America Great Again at 19 (Mar. 2017) (requesting funding “to restart licensing activities for the Yucca Mountain nuclear waste repository and initiate a robust interim storage program”).

Mr. Andrew Griffith

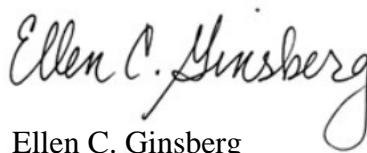
April 14, 2017

Page 2

We respectfully note that the Department must satisfy the requirements of the Nuclear Waste Policy Act, the law currently in force and under which the proposed Yucca Mountain project remains the only Spent Nuclear Fuel and High-Level Waste repository authorized to date. Further, any new siting process DOE establishes should not be imposed on projects where siting assent has already been obtained or is currently being negotiated, as is the case for the interim storage projects proposed for Andrews County, Texas and southeast New Mexico. Finally, DOE has an obligation to nuclear utilities and their customers, as well as other stakeholders, not to divert money from the Nuclear Waste Fund (NWF) for programs not authorized by the Nuclear Waste Policy Act. Thus, NWF money should not be used to explore the siting of a new repository.

The following comments selectively address the detailed proposals DOE included in its draft process. We thank the Department in advance for its consideration of NEI's response.

Sincerely,

A handwritten signature in cursive script that reads "Ellen C. Ginsberg". The signature is written in black ink and is positioned above the printed name.

Ellen C. Ginsberg

cc: The Honorable Rick Perry, Secretary, U.S. Department of Energy
Eric J. Fygi, Esq., Deputy General Counsel, U.S. Department of Energy
Margaret Doane, Esq., General Counsel, U.S. Nuclear Regulatory Commission

NEI RESPONSE TO DOE DRAFT CONSENT-BASED SITING PROCESS FOR CONSOLIDATED STORAGE AND DISPOSAL FACILITIES FOR SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

I. Introduction

On behalf of the commercial nuclear industry, the Nuclear Energy Institute, Inc. (“NEI”)¹ submits these comments on the U.S. Department of Energy (“DOE” or “Department”) “Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste,” (“Draft Process”).² NEI appreciates DOE’s recognition of the pressing need for an integrated waste management system to provide storage and disposal of the nation’s spent nuclear fuel and high-level radioactive waste.

Although the Department believes “that a consent-based siting process is more likely to deliver successful outcomes,”³ we encourage DOE to re-focus its resources to support the completion of the U.S. Nuclear Regulatory Commission’s (“NRC”) licensing process for DOE’s Yucca Mountain repository license application and to assist in the development of consolidated interim storage facilities such as those proposed to be located in Texas and New Mexico.

Embedded in the Draft Process is the Department’s presumption that its January 2013 integrated waste management strategy will be implemented rather than the congressionally approved approach outlined in the Nuclear Waste Policy Act (“NWPA” or “the Act”).⁴ As recently as three years ago, the U.S. Court of Appeals confirmed⁵ that the NWPA continues in force and, as such, we urge DOE to reevaluate its strategy and adjust it to maximize progress in compliance with that law until congress directs otherwise.

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, material licenses, and other organizations and individuals involved in the nuclear energy industry.

² *Request for Public Comment on Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-level Radioactive Wastes*, 82 Fed. Reg. 4333 (Jan. 13, 2017) Docket Number: DOE_FRDOC 0001; *Draft Consent-Based Siting Process for Consolidated Interim Storage Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste* (January 12, 2017) (“Draft Process”).

³ Draft Process, at 2.

⁴ See U.S. Dep’t. of Energy, *Integrated Waste Management Consent-Based Siting* (2016) (“DOE Consent-Based Siting Booklet”); See Nuclear Waste Policy Act of 1982, H.R. 3809, 97th Cong. Pub. L. 97-425 (1982) (“NWPA”).

⁵ *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013), reh’g en banc denied.

DOE identifies three potential facilities as part of its vision for an integrated waste management system:⁶ a pilot interim storage facility; a larger consolidated interim storage facility; and one or more geological repositories. In an effort to implement that vision, the Department has invested time and resources in understanding and constructing a potential consent-based siting process. The Department also has investigated the potential for a private initiative to take the lead on constructing and managing a consolidated interim storage facility. And DOE has begun developing plans for a separate defense waste repository.⁷

While the Department's efforts to gather stakeholder input on a draft consent-based siting process are commendable, the development of a consent-based process did not receive substantial support in congress and cannot substitute for the requirements of the current law. The views of this administration as expressed in the 2018 budget request would seem to offer the impetus for DOE to pivot back to participating in the licensing of Yucca Mountain as well as supporting private initiatives for consolidated interim storage.⁸

II. Used Fuel Disposal and Storage

a. Geological Repository

The nation's current nuclear waste disposal policy is set forth in the NWPAs. First and foremost, DOE should satisfy all of its existing obligations under the NWPAs. Although DOE seeks to construct a fair consent-based siting process, the Department undermines the potential for success by its continuing failure to comply with the Act.⁹ We continue to believe that DOE's

⁶ Draft Process, at 3.

⁷ NEI's views on the listed actions are laid out in the following documents: *Response of the Nuclear Energy Institute to the U.S. Department of Energy Request for Comment on the Draft Plan for a Defense Waste Repository*, 81 Fed. Reg. 91,925 (Dec. 19, 2016) (submitted Mar. 20, 2017) ("Defense Comments"); *Nuclear Energy Institute's Response to U.S. Department of Energy's Request For Information on Private Initiatives to Develop Consolidated Interim Storage Facilities* (81 Fed. Reg. 74,779 (Oct. 27, 2016)(submitted January 27, 2017) ("RFI Private Initiatives"); *Response of the Nuclear Energy Institute to DOE Invitation for Public Comment to Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities*, 80 Fed. Reg. 79,872 (Dec. 23, 2015) (submitted July 29, 2016) ("IPC Consent-Based Siting").

⁸ Office of Management and Budget, *America First: A Budget Blueprint to Make America Great Again*, at 19 (Mar. 16, 2017) https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf.

⁹ In enacting the NWPAs, Congress developed, and the President signed into law, a carefully-crafted process that provided an unparalleled opportunity for state, local, and tribal participation in the siting process, including the right to a state siting veto. More than seven years have passed since the Department unilaterally determined that Yucca Mountain was "not a workable option," terminated the program, and tried to withdraw its license application. *NARUC v. DOE*, 680 F.3d 819, 821 (D.C. Cir. 2012). That notwithstanding, section 160 of the NWPAs designates Yucca Mountain, Nevada as the sole site to be characterized for a spent nuclear fuel and high-level waste repository. 42 U.S.C. § 10172. The NWPAs requires the Secretary to conduct "an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site" and "and terminate all site specific activities . . . at all candidate sites other than the Yucca Mountain site." 42 U.S.C. § 10172(a)(1)-(2). In addition, section 161(a) of the NWPAs prohibits the Secretary from "conduct[ing] site-specific activities with respect to a second repository unless

unilateral termination of the nuclear waste repository project at Yucca Mountain in 2010 was unfair to the nuclear electric customers and utilities that have paid more than \$20 billion into the Nuclear Waste Fund,¹⁰ to the utilities with decommissioned nuclear plants who wish to allow their sites to be returned to potentially unrestricted uses, to the local jurisdictions that supported (and continue to support) the Yucca Mountain project, and to the nation's taxpayers who must now pay for DOE's inaction.

b. Consolidated Interim Storage Facility

In parallel with pursuing a license for Yucca Mountain, DOE can leverage the significant progress private developers have made in achieving support from their respective communities and states for consolidated storage facilities. NEI agrees with DOE that private initiatives afford the Department a promising alternative to government-owned storage facilities,¹¹ would complement (but not replace) DOE's nuclear waste management system, and offer potential financial savings for the government. Waste Control Specialists ("WCS") and Holtec International ("Holtec") are pursuing consolidated storage facilities in Texas and New Mexico respectively.

As emphasized in NEI's 2016 comments, the Department's proposed consent-based siting process should not be grafted onto those existing projects.¹² Mandating that those projects follow a new siting process would create delay and increase costs for the potential host jurisdictions of and the consumers for the storage services. Both WCS and Holtec have expended considerable effort to gain the consent of their respective host states and communities. Where local jurisdictions and states have voluntarily engaged in negotiations with the interim storage facility developers, DOE should not intervene. Further, DOE should not delay these projects on the chance that other communities also might be willing to host a facility.

i. Holtec International

On April 29, 2015, Holtec International announced that it had signed a memorandum of agreement ("MOA") with the Eddy-Lea Energy Alliance – a company owned by New Mexico's

Congress has specifically authorized and appropriated funds for such activities."
42 U.S.C. § 10172(a).

¹⁰ U.S. Dep't of Energy, Office of the Inspector General and Office of Audits and Inspection, "*Audit Report: Department of Energy Nuclear Waste Fund's Fiscal year 2016 Financial Statement Audit*," OAI-FS-17-04 (2016); The Nuclear Waste Fund is established in the NWPA, § 302(c), 42 U.S.C. 10222(c).

¹¹ Office of Nuclear Energy, U.S. Dep't of Energy, *Request for Information on Approaches Involving Private Initiatives for Consolidated Interim Storage Facilities*, 81 Fed. Reg. 74779 (Oct. 27, 2016)(DOE Request for Information on Private Initiatives to Develop Consolidated Interim Storage Facilities, at 1-2 (October 27, 2016) <https://www.energy.gov/ne/downloads/private-isf>.

¹² See IPC Consent-Based Siting, at 3.

Eddy and Lea counties and the cities of Carlsbad and Hobbs. The MOA sets forth the parties' intent to establish a facility to store commercial used nuclear fuel until a geologic repository for permanent disposal becomes available. Holtec submitted its application for a NRC license on March 31, 2017.

As the Department of Energy has been disposing of long-lived low-level radioactive wastes ("LLRW") in the Waste Isolation Pilot Plant in Eddy County since 1999, and in 2010 URENCO USA began operating a nuclear fuel enrichment facility in Lea County, the counties are familiar with nuclear operations generally. We also understand that Holtec has undertaken activities and engaged in extensive outreach to facilitate the development of the community's and the state's "consent." The importance of these efforts was confirmed when, after months of discussions with the local community/counties and state government officials, New Mexico Governor Susana Martinez expressed to U.S. Secretary of Energy Dr. Ernest Moniz "support of the community leaders who continue to spearhead the effort to bring a consolidated interim storage facility for spent fuel to southeastern New Mexico."¹³

ii. Waste Control Specialists

On April 28, 2016, Waste Control Specialists submitted to the NRC a license application to construct and operate a consolidated interim storage facility at its 14,000 acre facility in Andrews County, Texas. The facility would be built adjacent to WCS's existing low-level radioactive waste disposal facilities.¹⁴

WCS's history of safe disposal operations has been a significant factor in obtaining consent for the facility. Construction of the first hazardous waste landfill began in 1995 at the WCS Andrews County Facility. WCS now holds multiple state and federal licenses and permits to treat, store, and dispose of LLRW at its Andrews County facility.¹⁵

WCS has made a significant effort to earn consent from the local community and the State of Texas. When WCS presented its proposal to Andrews County in December 2014, the Andrews

¹³ Letter from the Honorable Susana Martinez, Governor of New Mexico, to Dr. Ernest Moniz, Secretary of U.S. Department of Energy, April 10, 2015 (letter discussed the support from New Mexico to bring a consolidated interim storage facility to southeastern New Mexico).

¹⁴ See generally WCS's website, <http://www.wcstexas.com/about-wcs/economic-impact>); <http://wcsstorage.com/project-overview/>; <http://wcsstorage.com/faq/> (provides information on a range of issues and activities related to WCS's progression).

¹⁵ WCS operates several other independent storage and disposal facilities: a Hazardous Waste Facility, a Byproduct Disposal Facility, a LLRW storage pad, a Federal Waste Facility, and the Texas Compact Waste Facility. WCS began disposing of commercial LLRW disposal from the Texas Compact (consisting of the States of Texas and Vermont) in 2012. In 2013, WCS began providing similar disposal options for DOE at the Federal Waste Facility. The Texas legislature began allowing LLRW disposal from additional states in 2011 and in 2014. Additionally, the WCS LLRW license was amended to allow the disposal of large quantities of depleted uranium.

County Commissioners Court unanimously adopted a resolution of support. The resolution notes that Andrews County currently receives five percent of the gross receipts from disposals at the two operating LLRW facilities (thus far totaling over \$7.85 million to Andrews County), expected to total more than \$3 million per year. Further, the county resolution notes that the Texas Commission on Environmental Quality issued a report noting that a consolidated interim storage facility in Texas “is not only feasible but could be highly successful,” provided the project “minimizes local and state opposition through stakeholder meetings, finding volunteer communities, financial incentives, and a process that is considered fair and technically rigorous.”¹⁶

WCS has fostered consent for its operations through its positive history and outreach. The opportunity for public participation offered as part of the NRC’s licensing process will provide an additional avenue for stakeholders to express their views and interact with project developers.

III. Questions Identified in the DOE Draft Process

The questions identified in the DOE Draft Process are similar to and in some cases the same as the questions identified in the 2016 Invitation for Public Comment. Therefore, our answers to questions 1-5 are similar to our 2016 comments and we refer the Department to our earlier comments for additional detail.¹⁷

Draft Process Question 1: What specific design elements and implementation steps should be included to ensure that the siting process, as a whole reflects the principles discussed in Section 4 and produces outcomes consistent with those principles?

DOE’s Draft Process includes eleven general design principles deemed necessary for a successful consent-based siting process.¹⁸ The Department states that the principles build on input gathered during the initial public engagement phase.¹⁹ NEI’s July 2016 comments proposed similar elements necessary to ensure a fair siting process:

¹⁶ In the Commissioners Court of Andrews County, Texas, *A resolution in support of establishing a site in Andrews County for consolidated interim storage of spent nuclear fuel and high-level radioactive waste*, at 2 (passed January 20, 2015) <https://www.nei.org/CorporateSite/media/filefolder/Backgrounders/White-Papers/Andrews-County-Texas-Resolution-on-WCS-Interim-Storage-Facility.pdf?ext=.pdf>.

¹⁷ See IPC Consent-Based Siting.

¹⁸ The General Design Principles for a Consent-based Siting Process outlined in the draft process include: (1) Prioritization of Safety; (2) Environmental Responsibility; (3) Regulatory Requirements; (4) Trust Relationship with Indian Tribes; (5) Environmental Justice; (6) Informed Participation; (7) Equal Treatment and Full Consideration of Impacts; (8) Community Well-Being; (9) Voluntariness/Right to Withdraw; (10) Transparency; and (11) Stepwise and Collaborative Decision-Making that is Objective and Science Based.

¹⁹ Draft Process, at 6.

- Opportunity for interested parties to express their views
- Availability of sufficient resources to evaluate differing views
- Flexibility in the terms of the siting framework and the form of consent
- Transparency and a rational decision-making process
- A defined and expeditious schedule for milestones and decision-making
- Compliance with the obligations of the decision made.

The elements we proposed also are consistent with those identified by the 2012 Blue Ribbon Commission Report.²⁰ Properly implementing them will maximize the likelihood of obtaining consent and engendering the trust necessary to make that consent durable. Decisions made by the project developer (be it the government or a private entity) and by the state and local jurisdiction that would host the facility²¹ are more likely to lead to broad-based consent if the decision-makers are credible. Credibility and trust are more likely to be established if the decision-maker explains the bases for the choice being made in a timely, objective, and comprehensible manner.

It is important that DOE not seek to apply the general design principles in a restrictive, one-size-fits-all approach to “consent.”²² Potential host communities may have different local customs, different views on federal, state and local government action, and different views on siting industrial facilities generally as well as nuclear storage or disposal facilities in particular. Those kinds of differences require that the Department develop a flexible siting framework (i.e., the process and the form of consent may need to differ from location to location, from state to state and among tribal governments). DOE also should anticipate that those differences are likely to manifest themselves in communities imposing various conditions on the government or a private developer.²³

²⁰ See U.S. Dept. Energy, *Report to the Secretary of Energy from the Blue Ribbon Commission on America’s Nuclear Future* (January 2012) (“Blue Ribbon Commission”); DOE Consent Based Siting Booklet, p. 10.

²¹ In its report, the Blue Ribbon Commission addressed the need for transparency in the siting process, defining “transparent” as the opportunity for all stakeholders to understand key decisions and engage in the process in a meaningful way. Similarly, in its Consent-Based Siting Booklet, DOE also recognizes the need to: “establish and maintain the information-sharing and transparency mechanisms that will be needed to build confidence in the process, assure all participants that they are working from the same shared basis of knowledge, and establish trust that future facilities will be sited and operated in a manner that fully protects the public and the environment. DOE has endorsed the proposition that prospective host jurisdictions must be recognized as partners . . .” Report of the Blue Ribbon Commission at Sec. 6, p. 47; DOE Consent Based Siting Booklet at p. 12.

²² See DOE Consent-Based Siting Booklet, pp. 10-12.

²³ We recognize that, at least at this time, it is difficult if not impossible to identify all the ways in which a siting process might be tailored to fit the circumstances of a particular situation, but the process must include flexibility.

Draft Process Question 2: What provisions are needed to assure potentially interested communities of adequate opportunities for information sharing, expert assistance, and meaningful participation?

Experience strongly suggests that consent to the siting of a new nuclear waste facility will not be obtained unless the host community, the host state, and the public have a fairly in-depth understanding of the project. Proponents and opponents should have an opportunity to air their views. Meaningful and constructive interaction can be formal or informal. Interactions may take the form of public meetings or written comments and responses. Particularly with respect to siting a nuclear waste storage facility, DOE should explain to interested members of the public how the facility will fit into an integrated waste disposal program. This information will allow local jurisdictions and the state to consider the program's expected duration, potential monetary and other benefits, and potential costs. When that engagement begins and how frequently it occurs are likely to be more important than the specific process that governs the engagement.

Draft Process Question 3: How can the process be improved to maximize opportunities for mutual learning and collaboration between potentially interested communities and the implementing organization?

A consent-based siting process could include the opportunity for local jurisdictions to obtain funds for expert assistance to help evaluate the project.²⁴ Potential host communities and states will likely expect to receive funds for studies and other evaluations to ensure that they can base their opinion on accurate information. The mechanics of the funding may take the form of a grant by a federal or state government entity, or a private project sponsor.²⁵ By offering financial resources to the affected parties as part of the siting process, DOE will maximize the communities' ability to learn about the project, which in turn, will likely lead to more meaningful collaboration.

Draft Process Question 4: How can the process ensure communities have adequate opportunity to demonstrate interest in continuing in or opting out of the siting process?

It would be unrealistic to propose a siting process with the expectation that there will be unanimity in support of a decision to locate and operate a nuclear waste storage or disposal facility in a particular community or state. There may be individual citizens, legislators, or policymakers who, for whatever reason, simply do not support such a facility. That should not, therefore, be the measure of consent.

²⁴ See DOE Consent-Based Siting Booklet, p. 11.

²⁵ See 10 C.F.R. §§ 63.21(c)(16), 63.32(b)(4).

It is crucial that once an agreement to host a facility is made, it must be able to withstand changes in politics and administrations. Project developers (whether the government or a private entity) require sufficient certainty so that they can make a decision to expend time and resources based on the likelihood of the project's success. The form of the agreement may vary, but it should be enforceable.

Draft Process Question 5: How can the process ensure that regional concerns and interests, including the concerns and interests of neighboring Tribes and states and any transboundary issues or impacts, are adequately addressed?

As stated herein and in NEI's 2016 response to the Invitation for Public Comment, the process should be transparent and inclusive. How early engagement begins and how frequently it occurs are more important than the kind of engagement undertaken. Working with concerned parties from the early stages of project development should allow issues to be addressed in a timely fashion and solutions to be developed with the stakeholders at the table.

From: Kevin Kamps [REDACTED]
Sent: Friday, April 14, 2017 9:00 PM
To: Consent Based Siting
Subject: Public comments

Dear DOE "Consent Based Siting,"

Please incorporate by reference, as if re-written herein, in their entirety, my previous comments regarding this subject matter, including both oral and written comments, from Dec. 23, 2015 to the present, during the DOE Consent-Based Siting public comment proceeding.

Likewise, please incorporate by reference, as if re-written herein, in their entirety, my previous comments regarding this subject matter, and related subject matter, from March 2010 to January 2012, during the Blue Ribbon Commission on America's Nuclear Future proceeding.

Your incorporation of my previous comments into your *Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste* has left a lot to be desired.

Thank you.

Kevin Kamps, Beyond Nuclear

--
Kevin Kamps
Radioactive Waste Watchdog
Beyond Nuclear

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Beyond Nuclear aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abandon both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

From: Timothy Fox [REDACTED]
Sent: Tuesday, April 18, 2017 6:05 AM
To: Consent Based Siting
Subject: Status Update

I'm curious to know if the DOE under the Trump Administration plans to move forward with finalizing a consent-based siting process for nuclear waste storage.

Best, Tim

Timothy Fox
Vice President
ClearView Energy Partners, LLC

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Rosemary Doyle [REDACTED]
Sent: Tuesday, April 25, 2017 1:43 PM
To: Consent Based Siting
Subject: recycling of nuclear spent fuel

I have learned that a recycling process called pyrochemical has been developed by Argonne National Laboratory (Univ. of Chicago). Please consider this new scientific discovery as a life saving device for the citizenry along the transportation routes of transporting spent fuel.

Rosemary Doyle
[REDACTED]



Virus-free [REDACTED]

CALIFORNIA ENERGY COMMISSION

ROBERT B. WEISENMILLER, CHAIR



April 13, 2017

United States Department of Energy
Office of Nuclear Energy
Draft Consent-Based Siting
1000 Independence Ave SW
Washington, D.C. 20585

RE: Request for Public Comment on Draft Consent-Based Siting (CBS) Process and Siting Considerations for Nuclear Waste Storage and Disposal Facilities [FR Doc. 2017–00670]

Dear Department of Energy Representative:

As Chair of the California Energy Commission¹ appointed by Governor Edmund G. Brown Jr. and as the State's Liaison Officer to the United States Nuclear Regulatory Commission (NRC), I applaud the Department of Energy's (DOE) invitation for public comment on this critical issue and appreciate the opportunity to submit comments on this important subject. I welcome the dialogue for developing a new, comprehensive, consent-based approach to siting facilities intended for storing and disposing of all forms of nuclear waste.

I provide the NRC with information on matters pertinent to California, including the state's radiological health, emergency preparedness, Energy Commission and California Public Utility Commission actions, and state nuclear safety matters. California's unique combination of seismicity, coastal nuclear facilities, and major urban centers dictate a commitment to safety in matters pertaining to the management of high-level radioactive waste. As the California State Liaison Officer, I will persist in recommending that DOE act expeditiously in seeking voluntary storage and disposal facilities.² The citizens of California continue to express their desire that

1 The California State Energy Resources Conservation and Development Commission (Energy Commission) is California's primary energy policy and planning agency, with core functions that include evaluating and proposing mitigation for public health, safety, and environmental impacts of proposed thermal power plants, including nuclear reactors.

2 Letter to the U.S. Department of Energy from Chair Robert B. Weisenmiller regarding the Response to IPC "Invitation for Public Comment to Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities" [FR Doc. 2015-32346].

federal agencies fulfill statutory obligations in securing the safe storage, transport, and timely removal of radioactive waste from their communities.³

In fulfilling California law⁴, the Energy Commission as a subject matter expert regularly evaluates—and takes appropriate responsive action regarding—possible federal decision-making that would impact California’s existing nuclear reactors, environmental resources, and public health and safety.⁵ Consequently, the Energy Commission has taken a particular interest in DOE’s proposal for a geologic repository to dispose of spent nuclear fuel (SNF) and high-level waste.⁶ These actions include submitted comments representing California on the *Supplement to the U.S. Department of Energy’s Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada* (Docket ID: NRC-2015-0051).⁷ The Energy Commission has focused on issues related to nuclear power plant decommissioning and the long-term storage of SNF and high-level waste on site.⁸ Expressing support in the 2015 *IEPR* for legislation cosponsored by U.S. Senator Dianne Feinstein (D-Calif.) to establish a Nuclear Waste Administration, a consent-based siting process for repositories and storage facilities, and a pilot program for interim spent fuel storage as identified in the Nuclear Waste Administration Act of 2015.⁹ Moreover, at the DOE Consent-Based Siting (CBS) public meeting held April 26, 2016, in Sacramento, California, I provided the keynote speech. On June 22, 2016, Robert Oglesby, Executive Director of the Energy

3 June 22, 2016. San Onofre Community Engagement Panel on Consolidated Interim Storage. Content available at https://www.songscommunity.com/cep-events/062216_event.asp.

4 Section 25303, subdivision (c), of the California Public Resource Code. In the absence of a long-term nuclear waste storage facility, the Commission shall assess the potential state and local costs and impacts associated with accumulating waste at California’s nuclear power plants. The Commission shall further assess other key policy and planning issues that will affect the future role of nuclear power plants in the state.

5 The Warren-Alquist Act designates the Energy Commission as the state’s primary agency for energy policy and planning. Senate Bill 1389 (Bowen and Sher, Chapter 568, Statutes of 2002) requires that the Commission adopt and transmit to the Governor and Legislature a report of findings every two years in the *Integrated Energy Policy Report*.

6 Energy Commission is a party to the underlying proceeding before the Atomic Safety Licensing Board titled *In the Matter of the U.S. Department of Energy (High Level Waste Repository)*, Docket No. 63-001-HLW (High Level Waste Repository Proceeding).

7 Letter to Secretary of U.S. Nuclear Regulatory Commission from the California Energy Commission regarding the “Supplement to the U.S. Department of Energy’s Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Waste at Yucca Mountain, Nye County, Nevada” (Docket ID: NRC-2015-0051). NRC Accession Number ML15344A101.

8 Letter to Secretary of U.S. Nuclear Regulatory Commission from the California Energy Commission regarding, San Onofre Nuclear Generating Station (SONGS) – License Amendments Regarding the Revision to Emergency Plan and Emergency Action Levels (TAC Nos. MF3838 through MF3843). NRC Accession Number ML15135A304.

9 Senate Coalition Introduces Comprehensive Nuclear Waste Legislation, March 24, 2015. Retrieved from <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=472C5FD2-3A9A-41F2-B0DB-CF6F9C9570C4>.

Commission, presented at the San Onofre Community Engagement Panel Meeting on Consolidated Interim Storage.¹⁰

Accumulated experience has shown that successful nuclear waste management requires a transparent and inclusive public process that builds trust and fully addresses facility considerations.¹¹ A transparent, inclusive public process stresses the importance of providing financial and technical resources to interested communities, allowing them to fully and equitably participate in the CBS process. In support of this process, this letter responds to the DOE's request for comments in the above-referenced matter.¹²

My comments relate to the following questions posed by the DOE in the draft CBS document.¹³

1. *What specific design elements and implementation steps should be included to ensure that the siting process, as a whole, reflects the principles discussed in Section 4 and produces outcomes consistent with those principles??*

To achieve an equitable and ethical agreement as outlined by the principles in section 4, the negotiation requires engagement of the affected entities in a transparent process while ensuring appropriate financial support and informational resources. In support of informed consent, the affected community must clearly understand the nature and consequences of a generational waste storage facility before formulating a binding agreement. To this end, the degree of regional versus federal oversight must be fairly balanced, and the DOE should provide a preliminary outline of expected and negotiable authorities regarding the waste facility.

As I recommended, stewardship and custodial responsibility must be shared during development, construction, and long-term storage.¹⁴ Intergenerational fairness and equity should be explicit and effectively defined in the preliminary roles and responsibilities. As recommended by the *Blue Ribbon Commission on America's Nuclear Future Report to the Secretary of Energy* (BRC), the affected entities should retain—or where appropriate, be delegated—direct authority over aspects of regulation, permitting, and operations where oversight below the federal level can be exercised effectively and in a way that helps protect

10 San Onofre Community Engagement Panel Meeting on Consolidated Interim Storage. June 22, 2016.

Information available at https://www.songscommunity.com/cep-events/062216_event.asp.

11 *Blue Ribbon Commission on America's Nuclear Future, Report to the Secretary of Energy*, Chapter 6, January 2012. Retrieved from <http://energy.gov/ne/downloads/blue-ribboncommission-americas-nuclear-future-reportsecretary-energy>.

12 U.S. Department of Energy, *Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste*, January 12, 2017, Docket ID 2017-00670. Retrieved from <https://www.energy.gov/ne/downloads/consent-based-siting-process>,

13 *Ibid.*, U.S. Department of Energy Docket ID 2017-00670.

14 *Ibid.*, Letter to the U.S. Department of Energy from Chair Robert B. Weisenmiller (Reference 2).

the interests and gains the confidence of affected communities and citizens.¹⁵ DOE must provide an initial outline of the meaningful roles stakeholders have in developing testing protocols, selecting test facilities, and selecting personnel.

2. What provisions are needed to assure potentially interested communities of adequate opportunities for information sharing, expert assistance, and meaningful participation?

In supporting community access to expert assistance, state-appointed technical and scientific experts can serve and represent the public as part of an independent advisory panel that can provide an impartial perspective. In supporting meaningful participation by interested communities, DOE should engage state agencies and regional entities with relevant expertise. As the process develops, communities affected by potential transport routes will need to be informed and included in the process. Inclusion is especially important for nearby communities that will bear the heaviest shipment traffic and any risk of downstream contamination. Where environmental justice communities will be impacted, additional measures should be implemented to collaborate with community partners to ensure these vulnerable populations are engaged, informed, and included in the process.

In addition to interested communities, CBS should require early and frequent consultation with governors of potential host states. These consultations should be coupled with public hearings before selecting a site for developing a storage facility and for characterizing a repository. A written consent agreement with the governor or authorized state official and supported by the legislature, in addition to local and tribal governments, would be required upon a final determination of site suitability but before submission of a license application to the U.S. Nuclear Regulatory Commission. Consequently, state inclusion should consist of the host state governor, affected units of local government (including contiguous counties impacted by transportation), state agencies that have oversight or regulatory authority, and any affected American Indian tribe.

3. How can the process be improved to maximize opportunities for mutual learning and collaboration between potentially interested communities and the implementing organization?

Information can be easily disseminated through an interactive website, providing supporting documentation that covers both the pro and con arguments. The DOE will need to develop the appropriate tools and resources to support early engagement and to assist the public—including individuals, state agencies, stakeholders, or members of organizations—with meaningful participation in the programs and proceedings. Some means of direct, reciprocal

¹⁵ *Blue Ribbon Commission on America's Nuclear Future, Report to the Secretary of Energy*, January 2012. Retrieved from <http://energy.gov/ne/downloads/blue-ribboncommission-americas-nuclear-future-reportsecretary-energy>.

communication between federal and state agencies must be established early in this process to best support the safe and uneventful transport and storage of radioactive materials and SNF. By implementing best practices, federal agencies working with states, affected stakeholders, and industry will need to design a coordinated system.

Learning solutions could include a national education program that consists of reputable scientific literature, video programs consisting of independent reports, and panel debates or discussions that present all sides of the issue. This effort will require a comprehensive approach to communicate the technical and scientific issues across multilingual communities. Any program will need to support multiple languages and cover a broad spectrum of background knowledge. To this end, impacted communities should be consulted for input on the most effective educational and communication models for their community.

4. How can the process ensure communities have adequate opportunity to demonstrate interest in continuing in or opting out of the siting process?

Two actions that support community engagement and are crucial in developing a consent-based, adaptive, staged process intended to maintain the public trust and support are:

1. Formation of a citizens' advisory/oversight board composed of state and local government representatives, community representatives, and affected stakeholders that are engaged at the earliest stages of the process.
2. Expansion and enhancement of the current role of the states, the public, and other stakeholders in the CBS process.

5. How can the process ensure that regional concerns and interests, including the concerns and interests of neighboring Tribes and states and any transboundary issues or impacts, are adequately addressed?

Siting a facility or identifying potential sites triggers and sets a destination for SNF transport and determines potential transportation routes and associated impacts. To reduce transportation impacts at both the origin site and along the adjacent route segments, DOE must coordinate its activities with state agencies to achieve efficient and effective removal. Western governors believe that the safe and uneventful transport of radioactive materials and SNF must be paramount in all federal policies regarding such transportation.¹⁶ To achieve the best possible outcome, Congress or the DOE will need to explicitly address the current deficiencies in communication and collaboration.

¹⁶ Western Governors' Association Policy Resolution 2016-03, *Transportation of Radioactive Waste, Radioactive Materials, and Spent Nuclear Fuel*, December 4, 2015. Retrieved from <http://westgov.org/policies/307-other/1078-transportation-of-radioactive-waste-radioactive-materials-and-spent-nuclear-fuel>.

I stated that a critical condition for program acceptance and consent is confidence among representatives of affected states, entities, and prospective corridor communities in the system, components, security, and processes.¹⁷ Waste origin site coordination and site preparedness will require extensive lead time; consequently, early inclusion of state agencies and affected parties will be critical in route preparation, scheduling, planning, and deployment. To obtain the appropriate level of program buy in, confidence must be developed by engaging with representatives of the affected parties in a process involving a comprehensive program evaluation. Confidence in a broader program for route preparation, transport processes, and removal priorities requires a central role for affected states and stakeholders.

6. *How can the Department best engage with local, state, regional, and tribal entities in the review of this draft siting process?*

No additional recommendations.

7. *Are there other issues that should be considered in the siting process?*

Three key issues that federal agencies must avoid are (1) losing technical and scientific credibility, (2) underestimating or ignoring the transportation impacts, and (3) failing to achieve stakeholder confidence. Public fear of nuclear materials and radiation, coupled with a distrust of the federal government, creates a significant barrier to nuclear siting. Successful design and implementation of a CBS process will be defined by the perceived nature of the initial federal efforts when early failures or stumbles will only justify and reinforce negative bias. It is critical that the early stages of the process be founded in integrity and transparency so that federal CBS activities are perceived as fair, balanced, and equitable.

Adverse Economic and Social Impacts

Adverse economic and social impacts are potentially as important as health and safety issues; special government efforts, possibly advisory groups, will be needed to manage social and economic impacts before and during shipments.²⁸ Recent developments and research in social risks need to be considered due to the size and scope of this process. Potential economic benefits should also be assessed and considered for impacted communities, while advisory groups identify environmental equity efforts to ensure that workforce development and training opportunities for local communities are included in the selection process.

Because of the intergenerational nature of a permanent repository, the fair treatment defined in statute and code may be insufficient, requiring federal agencies to expand environmental

17 Chair Robert B. Weisenmiller keynote remarks at the Department of Energy's consent-based siting initiative third public meeting in Sacramento, California. Retrieved from <https://www.energy.gov/ne/downloads/consent-based-siting-public-meeting-sacramento-april-26-2016>.

justice legislation to protect those individuals or communities most likely to disproportionately bear the burdens imposed by a nuclear waste repository. Efforts to effectively address fairness and equity in the CBS program will require partnership, coordination, and support. In efforts to pool all available knowledge of the impacted community and bring it into the process, a dedicated environmental justice advisory team may be needed to focus outreach on local affected members and stakeholders with a background and understanding of the community.¹⁸

Transportation Considerations

As I stated, the safe, uneventful transport of radioactive materials and SNF must be paramount in all federal policies regarding such transportation and with regard to all transportation modes, including truck and railway.¹⁹ The Western Governors' Association believes it is the responsibility of the generators of SNF and high-level radioactive waste and the federal government, not the states and tribes, to pay for all costs associated with assuring safe transportation, responding effectively to accidents and emergencies that may occur, and otherwise assuring public health and safety.²⁰ These include costs associated with evaluating routes and inspecting and escorting shipments.

As evidenced by the WIPP program, significant lead time is required to develop and establish the required processes for any significant shipping campaign.²¹ It could be argued that informed consent has not been given if the host and adjacent communities are not fully informed of the associated transport logistics and risks. Coupling the development of the waste transportation issues to consent-based siting might be the proper method and should be reviewed. Since the location of all stored waste is known and two possible interim sites have been identified, development and planning of the various elements of the transportation campaign should begin in earnest. Federal agencies should make an effort to review and take advantage of the work and knowledge found in many of the state collaborative efforts such as the Western Governors' Association and Western Interstate Energy Board.²²

It has been estimated that advanced planning time frames on the order of a decade would be required to develop a coordinated transport strategy and the associated logistics and physical infrastructure.²³ Defining priority shipping factors and developing a shipping schedule are likely

18 California Energy Commission Public Adviser's Office. Environmental Justice Resources. Retrieved from http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html.

19 Ibid, Letter to the U.S. Department of Energy from Chair Robert B. Weisenmiller (Reference 2).

20 Ibid, Western Governors' Association Policy Resolution 2016-03.

21 WIPP Transportation Safety Program History. Retrieved from <http://www.westgov.org/102-articles/initiatives/229-wga-wipp-transportation-safety-program-history>

22 Niles, Ken, and Rick Moore, "The WIPP Transportation Program at 10 Years: Making the Case for Above-Regulatory Procedures," Waste Management Symposium, March 2009, at p. 4 (available at http://www.brc.gov/sites/default/files/comments/attachments/above-regulatory_transport.pdf).

23 Presentation of Lisa Janairo, Midwest Council of State Governments, to the BRC Transportation and Storage Subcommittee, Nov. 2, 2010 (accessible at <http://www.brc.gov/index.php?q=meeting/open-meeting-3>).

to become contentious issues. Especially when considering the unique risk profile that older decommissioning facilities and stranded ISFSIs have due to less direct management oversight, security, and regulatory monitoring than operating facilities. Identification of shipment priority should begin early in this process since early identification provides the essential lead time required to develop the transportation procedures, routes, policies, and supporting infrastructure.

As recommended by the National Academies of Science report on the safe transport of SNF, it is important that the DOE begin identifying and prioritizing sites so that an initial shipment schedule can be developed.²⁴ A first step in this process is engaging with impacted communities. California communities near decommissioning sites desire the rapid development of a storage facility to remove waste from decommissioning sites. Shipment priority and scheduling should be based upon a risk assessment with older decommissioning facilities slotted into the first tier, followed by operating sites. Planning and preparations for shipments from at risk decommissioning sites, such as San Onofre and Humboldt Bay, should be given priority, as I recommended in the *IEPR*.²⁵ ISFSIs in regions exposed to seismic or weather events should be first on the list. In support of early planning, the DOE must recognize that transportation impacts require a fuller assessment than what was performed for the *2008 Environmental Impact Assessment for the Yucca Mountain Project*. Program design must avoid impacts when possible and mitigate when impacts cannot be avoided.

Siting Considerations

Criteria for examining and comparing geotechnical issues of potentially acceptable sites must be comprehensive, robust, and vetted through a rigorous peer review process. An essential element in examining and developing said criteria is the BRC recommendation for an independent scientific and technical oversight of the nuclear waste management program. As advised by the BRC, credible review of key aspects of the program on an *ad hoc* basis by independent organizations are useful in providing guidance, enhancing public confidence, and vetting the technical competence of the organization's work.

The BRC report outlines the importance of having an established generic standard in place for comparison of sites, and comparison among sites. It is critical that generic regulatory requirements for site compliance be in place before the beginning of site characterization. To maintain both technical, scientific credibility and stakeholder confidence, site screening should not proceed without final generic safety standards and regulations. This is essential in providing potential hosts the most comprehensive basis set so that informed judgments can be

²⁴ Transportation Research Board and National Research Council. *Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States*. Washington, D.C.: The National Academies Press, 2006. Doi: 10.17226/11538.

²⁵ California Energy Commission. *2015 Integrated Energy Policy Report*, February 2016, Publication Number: CEC-100-2015-001-CMF. Retrieved from http://www.energy.ca.gov/2015_energy_policy/index.html.

developed concerning short and long-term potential impacts and risks over the duration of planned repository construction and operation.

Congress or the DOE must address questions on to what extent any agreement is valid if a new administration, with congressional support, can rewrite the terms as evidenced by the Nuclear Waste Policy Act amendments of 1987. There is still significant uncertainty on how to protect a process and program that is longer than any term of office or human lifespan. A CBS process that communities and stakeholders nationwide find legitimate, effective, trustworthy, and practical will require careful reflection and attention to procedures in developing and implementing core principles of consent and addressing challenges that can undermine them.

We appreciate the opportunity to comment on the design of a consent-based siting process and request that you consider these comments before developing an integrated waste management system to transport, store, and dispose of commercial spent nuclear fuel and high-level radioactive waste. Please send any future notices, correspondence, and documents related to these comments to Justin Cochran, Ph.D., Senior Nuclear Policy Advisor, California Energy Commission, [REDACTED], or via email at [REDACTED].

Sincerely,



ROBERT B. WEISENMILLER
Chair and State Liaison Officer to NRC

cc:

Robert P. Oglesby, Executive Director, California Energy Commission

Kourtney Vaccaro, Chief Counsel, California Energy Commission

Justin Cochran, Senior Nuclear Policy Advisor, California Energy Commission



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Daniel T. Blue, JR
Senate Democratic Leader
North Carolina
President, NCSL

Raúl E. Burciaga
Director
Legislative Council Service
New Mexico
Staff Chair, NCSL

William T. Pound
Executive Director

April 10, 2017

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Ave, S.W.
Washington, D.C. 20585

RE: U.S. Department of Energy's (DOE) Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste

Dear Secretary Perry,

The National Conference of State Legislatures (NCSL), the bi-partisan organization representing the legislatures of our nation's states, territories, and commonwealths, appreciates the opportunity to comment on the U.S. Department of Energy's (DOE) Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste. We commend the agency for continuing the process of implementing a consent based siting process for the disposal of spent nuclear fuel and high-level radioactive waste, as based on the recommendations from the Blue Ribbon Commission (BRC) on America's Nuclear Future.

NCSL has long supported efforts by both the previous administration and Congress to address issues that accompany spent nuclear fuel storage and high level radioactive waste management. We recognize that while nuclear power is an integral part of a national energy plan, issues including storage and disposal of spent nuclear fuel must be confronted. It has been a pillar of NCSL's Radioactive Waste Management policy that the siting of facilities for both interim storage and long-term disposal, be the result of a consent-based approach, and that it involve all affected levels of government, including state legislatures.

NCSL recognizes that the consent and siting process in the United States is inherently unique, and DOE's aim with its draft guidance is to offer general direction and guidance, rather than act as a rigid blueprint. However, as DOE proceeds with finalizing the Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste, NCSL strongly encourages the following:

Denver

[Redacted]

Washington

[Redacted]

[Redacted]

April 14, 2017

p. 2

The Role of State Legislatures

A state's consent is best determined through its policy making process that is conducted by the legislative branch and then implemented by the executive branch. This allows for states to fully assess, from numerous viewpoints, various potential impacts of the creation of a nuclear waste repository, and would ensure that the many interests and the voices of a state have a role in the process.

Within DOE's draft, the role of community consent in the siting process is included throughout. However, DOE's definition of "community" in Section 5.1 is loosely defined as "the broad and inclusive participation," of, "local and state government, Congressional delegations," and, "Tribal governing bod[ies]." While NCSL recognizes the agency's efforts to not limit consent solely to the locality in which a storage facility resides, NCSL believes 'community' must be defined with more depth and should identify which aspects of local and state government should be involved in the siting process, while also defining the roles varying levels of government play in the process.

For example, Phase IV which outlines the agreement portion of the siting process, names the "community" as negotiating and executing an agreement to host a facility. DOE must take the steps to further define which aspect of the 'community' has the jurisdiction to enter into such an agreement. NCSL urges you to redefine "community" to ensure the state's consent.

NCSL appreciates the draft stating in Section 5.4, that "states are the fundamental building blocks of the U.S. federal system [and]...have jurisdiction over local authorities," as well as noting legislation which recognizes the fundamental and distinct roles of "states in the U.S. federal system," and specific "mechanisms for involving," state governments "in the process of siting, constructing, and operating repositories and storage facilities." However, we must reiterate that it is vital that state legislatures be explicitly named so the department remains consistent with the Nuclear Waste Policy Act of 1982 section 117, which states that DOE "shall consult and cooperate with the Governor and legislature of each State." NCSL strongly encourages DOE to include this language to ensure adherence to this requirement as it moves forward in finalizing its consent-based siting process.

Transportation of Hazardous Waste

NCSL is pleased to see DOE's "commitment [towards] working with tribal, state and local authorities...to address transportation issues," that accompany the "shipment of materials to a storage or disposal facility" in Section 3. As DOE proceeds with developing the associated infrastructure, NCSL strongly urges the assurance of safe and reliable modes of transportation of radioactive wastes. DOE should seek to enter into a memorandum of understanding with each corridor state to spell out responsibilities, liability, compensation, response time, cleanup, shipping, planning and other duties connected with emergency situations. State, local, and tribal governments should also be given both the funding and technical assistance for ongoing emergency preparedness, and should be involved in a meaningful manner with regard to all elements of the transportation system including radiation emissions standards, cask designs, and transportation equipment.

Financing During the Siting Process

The draft indicates in Phase I, Step 3, that "additional funding opportunities may be issued in later steps of the process based on Tribal, state, community and program needs." However, funding

availability should be explicitly outlined in each step of the process in which it is offered to ensure the federal government provides fair and equitable compensation to state, local and tribal governments of host states. NCSL supports federal funds for independent oversight activities by state executive and legislative branches so that the host state may participate in and conduct its own assessments of a proposed waste repository site and disposal technology. Additionally, The Nuclear Waste Fund should serve as the source for such nuclear waste management, with funds being isolated for developing permanent disposal and consolidated interim storage facilities. The Fund should not be subject to non-related federal discretionary spending.

For example in Phase I, Step 6, DOE does not indicate if funding is available for a community to hire “their own experts to help them” in order to decide if “the community” should proceed “to a preliminary assessment and continue their involvement with the siting process.” A lack of funding availability notification could significantly hamper a state’s willingness, and ability to continue the consent siting process.

Additional Comments

Finally, the draft begins in Section 2, by stating the consent process could be applied by “any federal implementing organization, including a nuclear waste management entity.” Rather than establish a new federal entity, NCSL urges the creation of a public-private partnership to manage this back end of the nuclear cycle.

NCSL has an extensive history of working on issues related to nuclear waste management and would welcome the opportunity to work with DOE as you finalize the Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste. Further details on NCSL’s positions on consent based siting can be found in [NCSL’s Radioactive Waste Management policy directive](#).

Please contact NCSL staff, Ben Husch [REDACTED] and Kristen Hildreth [REDACTED] with any additional questions.

Sincerely,



Speaker Robin Vos
Wisconsin State Assembly
Co-Chair, NCSL Standing Committees




Delegate Sally Jameson
Maryland House of Delegates
Co-Chair, NCSL Standing Committees



Document Details

Docket ID: DOE-HQ-2017-0011 [↻](#)

Docket Title: Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes: Extension of Comment Period [*](#)[↻](#)

Document File: 

Docket Phase: Request for Comment (RFC)

Phase Sequence: 1

Original Document ID: DOE_FRDOC_0001-DRAFT-0445

Current Document ID: DOE-HQ-2017-0011-DRAFT-0007

Title: Comment on FR Doc # 2017-00670 [↻](#)

Number of Attachments: 0

Document Type: PUBLIC SUBMISSIONS [*](#)[↻](#)

Document Subtype: Public Comment [↻](#)

Comment on Document ID: DOE-HQ-2017-0011-0001 [↻](#)

Comment on Document Title: Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes: Extension of Comment Period [↻](#)

Status: Pending_Post [↻](#)

Received Date: 01/24/2017 [*](#)[↻](#)

Date Posted: [↻](#)

Posting Restriction: No restrictions [↻](#)

Submission Type: Web

Number of Submissions: 1 [*](#)

Document Optional Details

Submitter Info


Comment: No radioactive waste storage in Texas. [*](#)[↻](#)

First Name: Brenda [*](#)[↻](#)

Middle Name: [↻](#)

Last Name: Wyrick [*](#)[↻](#)

Mailing Address: [REDACTED] [*](#)[↻](#)

Mailing Address 2: None *🌐
City: [REDACTED] *🌐
Country: United States 🌐
State or Province: [REDACTED] 🌐
ZIP/Postal Code: [REDACTED] *🌐
Email Address: [REDACTED] 🌐
Phone Number: [REDACTED] 🌐
Fax Number: 🌐
Organization Name: 🌐
Submitter's Representative: 🌐
Government Agency Type: 🌐
Government Agency: 🌐
Cover Page: 

Document Optional Details

Status Set Date: 04/28/2017
Current Assignee: Bacon, Cuttie (DOE)
Status Set By: Freeman, Yohanna (DOE)
Comment Start Date: 🌐
Comment Due Date: 🌐
Legacy ID:
Tracking Number: 1k1-8ucc-g1q3 🌐
Total Page Count Including Attachments: 1

Submitter Info

Comment: No radioactive waste storage in Texas. *🌐
First Name: Brenda *🌐
Middle Name: 🌐
Last Name: Wyrick *🌐
Mailing Address: [REDACTED] *🌐
Mailing Address 2: None *🌐

City: [REDACTED] * 🌐

Country: United States 🌐

State or Province: [REDACTED] 🌐

ZIP/Postal Code: [REDACTED] * 🌐

Email Address: [REDACTED] 🌐

Phone Number: [REDACTED] 🌐


Fax Number: 🌐

Organization Name: 🌐

Submitter's Representative: 🌐

Government Agency Type: 🌐

Government Agency: 🌐

Cover Page: 




Document Details

Docket ID:	DOE-HQ-2017-0011
Docket Title:	Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes: Extension of Comment Period
Document File:	
Docket Phase:	Request for Comment (RFC)
Phase Sequence:	1
Original Document ID:	DOE_FRDOC_0001-DRAFT-0437
Current Document ID:	DOE-HQ-2017-0011-DRAFT-0008
Title:	Comment on FR Doc # 2017-00670
Number of Attachments:	0
Document Type:	PUBLIC SUBMISSIONS
Document Subtype:	Public Comment
Comment on Document ID:	DOE-HQ-2017-0011-0001
Comment on Document Title:	Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Wastes: Extension of Comment Period
Status:	Pending_Post
Received Date:	01/13/2017
Date Posted:	
Posting Restriction:	No restrictions
Submission Type:	Web
Number of Submissions:	1

Document Optional Details

Submitter Info

Comment:	I don't want this anywhere on Earth. If we weren't playing with something we have little understanding of to begin with, this wouldn't be an issue. This "spent" waste isn't "spent". It has the capacity to cause so much harm that trying to keep it anywhere Earth-side is folly.
First Name:	Croitiene
Middle Name:	

Last Name: ganMoryn *🌐
Mailing Address: [REDACTED] *🌐
Mailing Address 2: NA *🌐
City: [REDACTED] *🌐
Country: United States 🌐
State or Province: [REDACTED] 🌐
ZIP/Postal Code: [REDACTED] *🌐
Email Address: [REDACTED] 🌐
Phone Number: [REDACTED] 🌐
Fax Number: NA 🌐
Organization Name: 🌐
Submitter's Representative: 🌐
Government Agency Type: 🌐
Government Agency: 🌐
Cover Page: 


Document Optional Details


Status Set Date: 04/28/2017
Current Assignee: Bacon, Cuttie (DOE)
Status Set By: Freeman, Yohanna (DOE)
Comment Start Date: 🌐
Comment Due Date: 🌐
Legacy ID:
Tracking Number: 1k1-8u58-19kr 🌐
Total Page Count Including Attachments: 1



Submitter Info


Comment: I don't want this anywhere on Earth. If we weren't playing with something we have little understanding of to begin with, this wouldn't be an issue. This "spent" waste isn't "spent". It has the capacity to cause so much harm that trying to keep it anywhere Earth-side is folly. *🌐



First Name: Croitiene *🌐


Middle Name: 



Last Name: ganMoryn * 



Mailing Address:  * 



Mailing Address 2: NA * 



City:  * 


Country: United States 


State or Province:  


ZIP/Postal Code:  * 


Email Address:  


Phone Number:  

Fax Number: NA 

Organization Name: 

Submitter's Representative: 

Government Agency Type: 

Government Agency: 

Cover Page: 