



March 4, 2022

Dr. Kim Petry
Acting Deputy Assistant Secretary
for Spent Fuel and Waste Disposition
U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Submitted via consentbasedsiting@hq.doe.gov

Subject: Decommissioning Plant Coalition Response to DOE's RFI on Using a
Consent-Based Siting Process to Identify Federal Interim Storage Facilities,
86 Fed. Reg. 68,244 (Dec. 1, 2021)

Dear Acting Deputy Assistant Secretary Petry:

The Decommissioning Plant Coalition* (DPC) appreciates the opportunity to provide comments in response to the subject request for information. As discussed more fully in the attachment to this letter, the DPC has long been supportive of efforts to develop public or private centralized interim storage (CIS) capacity as a critical component of an integrated spent nuclear fuel (SNF) and high-level nuclear waste (HLW) management program.

The need for a successful consent-based siting process has become increasingly evident over the past two decades, as the Congress and the Executive Branch have been unable to otherwise address the challenge of siting, constructing, and operating any of the necessary components of an integrated management system. Although our companies safely manage this material and will continue to do so as long as SNF remains on our site, it is not without additional and in some cases unnecessary burden. This failure has not only exacerbated the government's liability for its partial breach of contract but has imposed a burden on the communities in which our plants formerly operated, a burden for which their consent was never requested or granted.

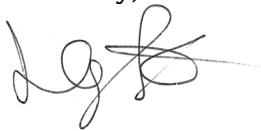
* The DPC is composed of 12 companies who own sites where all nuclear generating facilities have permanently ceased operation and are undergoing decommissioning. These sites/facilities are in California, Connecticut, Florida, Illinois, Maine, Massachusetts, Nebraska, Vermont and Wisconsin.

The failure of the federal government to fulfill contractual commitments established 40 years ago makes clear that, as written, the Nuclear Waste Policy Act, as amended is unlikely to be successfully implemented nor relied upon to establish a multi-generational waste management program. In parallel with, and informed by, the follow-on activities to the RFI, we believe it essential that DOE establish a high-level working group (that includes non-federal interests) to develop a comprehensive legislative amendment package that firmly establishes a consent-based process for both interim storage and permanent disposal facilities, as well as the critical issues of enterprise governance and sustained funding in return for the billions of dollars that are ratepayers have contributed to the federal Nuclear Waste Fund.

Given our expectation that this effort will result in the continued storage of SNF/HLW at our sites for a decade or more, we reiterate our belief that the DOE should exercise authority under existing contracts to prioritize the removal of the material indefinitely stranded at our sites. The simple reality is that but for the government's failure several of our member companies would have gone out of business and the sites made available for repurposing over a decade ago. Over the next decade(s) more will find themselves in this posture and our communities and companies will be forced to operate as de facto federal interim storage sites without consent.

We would be pleased to address any questions that might arise from our views and comments.

Sincerely,

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

Wayne Norton
Chair, DPC Steering Committee

Attachment

Decommissioning Plant Coalition Response to DOE's RFI on Using a Consent-Based Siting Process to Identify Federal Interim Storage Facilities, 86 Fed. Reg. 68,244 (Dec. 1, 2021)

General Comments:

The Decommissioning Plant Coalition[†] (DPC) appreciates and supports this initiative. Despite the efforts of many of our elected federal, State and local representatives, the inability of Congress and the Executive Branch to agree on a path forward for the Nation's effort to address the challenge of siting, constructing and operating facilities for the long-term management of the nation's spent nuclear fuel (SNF) and high-level nuclear waste (HLW) has resulted in a de facto national policy that strands this material at our sites indefinitely. The provisions of the 1982 Nuclear Waste Policy Act and its 1987 amendments (NWPA) have become increasingly ignored; not only has this exacerbated the government's liability for partial breach of the spent fuel contract but it has undermined trust in the agency and imposed a burden on the communities in which our plants formerly operated (as well as our companies) a burden for which their consent was never requested nor granted.

Beginning with our early participation in the programmatic review undertaken by the Blue Ribbon Commission on America's Nuclear Future (BRC), the DPC has advocated the establishment of consolidated interim storage (CIS) capacity as a key element of an integrated program for the management of SNF and HLW. As the BRC indicated in its final report, the benefits of such capacity include, among others, the ability for the government to begin meeting its obligations and reduce taxpayer liabilities, provide flexibility for the waste management program and incrementally develop public confidence in the waste management program. Given the expected timeframe for the development and implementation of a consent-based interim storage program, we would reiterate the BRC recommendation for priority removal of material stranded at our sites.

As suggested in our January 15, 2021 letter to then President-elect Biden, the DPC believes that the establishment of a consent based SNF/HLW regime requires a new discussion with State, Tribal and local governments that entails not just the economic benefits that might be derived from a facility (and/or associated facilities), but a meaningful engagement with and the involvement of these governmental authorities in the programmatic and regulatory framework. Given the expected lifetime of these facilities, we must address their legitimate safety, security and equity issues at the earliest stage.

[†] The DPC is composed of 12 member companies who operated nuclear energy generation plants at sites in 9 states stretching from Maine to California. All units at these sites have permanently ceased operation and are in various stages of decommissioning. For some, the only remaining nuclear activity at the site is the safeguarding of NRC licensed dual purpose storage and transportation systems with spent nuclear fuel (SNF) or greater-than-class-C nuclear waste (GTCC). Absent the failure of the federal government to fulfill statutory and contractual obligations, some of our member companies would have gone out of business and the sites made available for repurposing over a decade ago.

It is clear that neither the Executive nor Congressional branches of the federal government are prepared to pre-emptively enforce site selection for any part of an integrated nuclear waste management system. While the DPC has historically supported the completion of the Yucca Mountain license application, we conclude that the NWPA as written is unlikely to be successfully implemented or relied upon to establish a lasting management program. Accordingly, in addition to the DOE's efforts to establish a federal CIS siting process, we believe that the DOE must establish a high-level working group involving an array of stakeholders to develop a comprehensive legislative amendment package that gives fullest consideration to the role that a multi-generational federal and/or private CIS program plays in an integrated SNF/HLW management program. We urge this be accomplished in parallel with, and informed by, the follow-on activities resulting from responses to this RFI. There are broadly defined governance and budgetary resource issues that impact not just the path toward the establishment of federal CIS capacity, but a truly integrated program. The BRC provided some excellent thinking on these issues and their recommendations should be a part of the working group mandate.

Area 1: Consent-Based Siting Process:

In General:

The RFI lists 7 specific questions. In general, we believe that State, Tribal and local governments need to be provided appropriate resources for engagement with the federal government on all aspects of the program that could lead to federal CIS capacity. As the elected representatives of their citizens, they should be encouraged and empowered to develop enforceable agreements that clearly identify and delineate the circumstances by which such capacity is developed and operated. We do not believe the development of a "one size fits all" template is necessary or useful. Congress should refrain from attempting to define consent prior to the development of an agreement responsive to these governmental entities needs. Responses to selected specific questions follow.

Question 2: What role should Tribal, State, and local governments and officials play in determining consent for a community to host a federal interim storage facility?

The leaders of these governmental entities are the elected representatives of their citizens, broadly defined affected persons. As such, they should be involved from the beginning of any discussion, and with the provision of appropriate technical resources, be involved in developing the nature of any potential facility and related matters to ensure equities are addressed in an enforceable agreement.

Question 3: What benefits or opportunities could encourage local, State, and Tribal governments to consider engaging with the Department as it works to identify federal interim storage sites?

This is perhaps best left for the responses of these governmental entities, but ancillary facilities in support of either a CIS or repository, research and educational capabilities, infrastructure investment are all likely candidates. Most importantly, these entities will need to be given meaningful roles for the long-term planning decisions on the overall spent fuel management program that are to be made.

Question 4: What are barriers or impediments to successful siting of federal interim storage facilities using a consent-based process and how could they be addressed?

Current barriers include the lack of any program leading to the development of a permanent geologic disposal facility, current restrictions that unduly link the siting, licensing and operation of such facilities to progress on the proposed Yucca Mountain repository license and perhaps, most importantly, the lack of direction/policy committing the federal government to enter into an enforceable and durable "consent agreement" with State, Tribal or local governments. There is a large "trust deficiency" in the DOE's ability to implement a decades or centuries long SNF/HLW management program. These impediments can only be addressed through commitment to the establishment of a flexible but enforceable consent regime.

Area 2: Removing Barriers to Meaningful Participation:

In General and Questions 1 and 2 and 5:

Question 1: What barriers might prevent meaningful participation in a consent-based siting process and how could those barriers be mitigated or removed?

Question 2: What resources might be needed to ensure potentially interested communities have adequate opportunities for information sharing, expert assistance, and meaningful participation in the consent-based siting process?

Question 5: What information do communities, governments, or other stakeholders need to engage with the Department on consent-based siting of federal interim storage facilities?

The single largest barrier to meaningful participation in a consent-based siting process is the lack of financial and technical resources that can assure citizens that their State, Tribal or local government leaders can provide independent judgment about a proposal. This can and should be mitigated through "no strings attached" grants. There is an abundance of resources and organizations (NGOs and others) available to inform these governmental leaders and their citizens about the nature of the hazard, the technology that has been

developed to address the hazard and the development of similar facilities in other countries.

Area 3: Interim Storage as Part of a Waste Management System:

In General and Questions 2,3 and 4:

Question 2: What are possible benefits or drawbacks to co-locating multiple facilities within the waste management system or co-locating waste management facilities with manufacturing facilities, research and development infrastructure, or clean energy technologies?

Question 3: To what extent should development of an interim storage facility relate to progress on establishing a permanent repository?

Question 4: What other issues should the Department consider in developing a waste management system?

The economic development potential for a host community only grows as consideration is given to either the co-location of multiple facilities within the management system or other types of energy, manufacturing or R&D infrastructure.

As we have suggested earlier, any linkage between a CIS facility and the establishment of a permanent repository should be a matter left for negotiation between federal, State, Tribal and local governments. The flexibility afforded the development of a comprehensive SNF/HLW system by the development of CIS capacity was recognized by the Blue Ribbon Commission.

As we noted in our introductory comments, the Department (and the Congress) need to give serious attention to the governance and budgetary issues raised by the Blue Ribbon Commission in its final report. Recognition needs to be given to the fact that the responsibility for implementation of a multi-generational program might not be best served in an institution subject to leadership change on a continuing basis with funding subject to the decisions of a separate institution also subject to continuing change. These strike us as core issues in need of resolution.