



**COMMENTS
ON BEHALF OF ENERGY COMMUNITIES ALLIANCE**

SUBMITTED TO THE

**COMMITTEE ON
ENERGY AND NATURAL RESOURCES COMMITTEE
UNITED STATES SENATE
ON**

**DISCUSSION DRAFT OF
COMPREHENSIVE NUCLEAR WASTE LEGISLATION**

**A BILL TO ESTABLISH A NEW ORGANIZATION TO MANAGE
NUCLEAR WASTE, PROVIDE A CONSENSUAL PROCESS FOR SITING
NUCLEAR WASTE FACILITIES, ENSURE ADEQUATE FUNDING FOR
MANAGING NUCLEAR WASTE, AND FOR OTHER PURPOSES**

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EXECUTIVE SUMMARY

The Energy Communities Alliance (ECA) strongly supports the role for local governments outlined in the draft legislation (“Legislation”), specifically in a consensual decision-making process that will make “*local, state and federal governments equal partners.*” We applaud the efforts of this Legislation to ensure that local governments are involved in waste decisions from the beginning. However, the local government role can and should be expanded beyond what is included in the draft.

ECA offers the following recommendations:

- 1. Local governments must be included throughout the entire decision-making process.**
- 2. A consent agreement must be legally enforceable and reflect the terms and conditions under which a community will agree to host a nuclear waste facility.**
- 3. Any new governance structure must aim to limit political influence on nuclear waste management decisions as much as possible to allow the process to move forward once agreed upon by all of the parties identified in the Legislation.**
- 4. A local government representative should serve on any newly created oversight board to ensure local perspectives and concerns are identified and represented.**
- 5. The federal government must indemnify a local government for any accidents or releases that impact their community.**
- 6. Disposition of defense waste must be considered a priority and included as part of a phased, adapted approach to the sequence of waste disposition.**
- 7. Legislation must consider and address the impacts of transportation on local governments.**

In addition to these recommendations, ECA believes legislation should address the management and disposal of legacy waste. Legacy waste management is important to ECA and Section 307 of the Legislation fails to convey a sense of urgency for dealing with the issue and also fails to outline how or when decisions regarding defense nuclear waste will be made. Many local communities currently are the *de facto* storage sites for defense waste and should be given resources to evaluate the impacts of keeping this waste in place for longer than originally

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planned since this waste is not moving to a repository. Maintaining the status quo for defense waste until decisions regarding commercial waste are made increases the risk to human health and the environment in local communities. At Hanford, approximately one million gallons of high-level waste have already leaked from storage tanks that still contain over 50 million gallons of waste. While much attention is paid to the federal government's liability for failing to take commercial SNF, the government also has a responsibility to move defense waste. The failure to move defense waste from local communities has already resulted in missed milestones, failure to meet deadlines, failure to honor agreements with States, fines and litigation-invested resources.

Legislation must also address the impact waste transportation will have on the sender and receiver sites. Local governments are responsible for public education and ensuring the safety of their citizens. Local governments provide vital emergency response services including HAZMAT training and response, as well as core public safety services such as police and fire protection, water and waste water treatment and public health services, which all must be coordinated as part of a transportation plan. Training, equipment, and transportation safety programs for public safety officials and other emergency responders at the local level is extremely important and will help ensure consistency among all affected parties as waste moves across the country.

ECA greatly appreciates the efforts made by Senators Wyden, Murkowski, Feinstein, and Alexander, to propose draft comprehensive nuclear waste management legislation and to make nuclear waste management a priority.

Founded in 1992, ECA members are the sender and receiver sites for nuclear waste, sites that currently produce or formerly produced defense nuclear waste, sites that store and process defense nuclear waste, and the sites that may potentially host a future interim storage facility, reprocessing facility or geologic repository. Our members have jointly prepared the answers to the Senate Committee's questions (set forth in bold). ECA looks forward to providing any assistance we can as your work continues.

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- 1. Should the Administrator take into account, when considering candidate storage facility sites, the extent to which a storage facility would: (a) unduly burden a State in which significant volumes of defense wastes are stored or transuranic wastes are disposed of; or (b) conflict with a compliance agreement requiring the removal of nuclear waste from a site or statutory prohibition on the storage or disposal of nuclear waste at a site? Alternatively, should the State and other non-federal parties seeking to site a candidate storage facility be allowed to determine whether they are unduly burdened? Should the final consent agreement, which would be sent to Congress for ratification, contain an authorizing provision to amend any conflicting compliance agreement or statutory prohibition?**

The decision should be up to the State and local and governments that are impacted by the site. The decision cannot be made by an outside group or organization. If a State is willing to host the facility, the State will need to license or permit the facility and remove any conflicting state laws or statutory prohibitions. The local and State governments are critical to the decision.

Section 304(a)(1) p. 22, lines 20-22, of the Legislation states: *“In siting nuclear waste facilities...the Administrator shall employ a process that allows affected communities to decide whether, and on what terms, the affected communities will host a nuclear waste facility”*.

Section 304(c)(2) of the Legislation provides that the only sites selected for evaluation will be those recommended by a Governor (or duly authorized official) of a State in which the site is located; by the governing body of the affected unit of general local government, and the governing body of an Indian tribe, or by the Nuclear Waste Administrator after consultation with, and with consent of the same. It can be assumed, then, that a State and local government would not apply to be considered if these parties felt already overburdened, and would be willing to amend state law or to amend compliance agreements.

- 2. Should the bill establish a linkage between progress on development of a repository and progress on development of a storage facility. If so, is the linkage proposed in sec 306 of the bill appropriate, too strong, or too loose? If a linkage is needed, should it be**

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determined as part of the negotiations between the state and federal governments and included in the consent agreement rather than in the bill?

ECA's policy is that any new interim storage sites (given that our sites are already serving as *de facto* interim storage) must exist as one part of a permanent solution and not instead of a permanent disposal site. ECA agrees that the efforts to site, construct, and operate a storage facility should occur at the same time as efforts to site, construct, and operate one or more repositories.

ECA recommends that the linkage between interim storage and progress on a repository be negotiated between the federal government, the hosting local government and the State. There should also be agreement between the parties on how "substantial progress" will be defined and what the ramifications will be if it is not achieved. ECA urges the parties to carefully negotiate any provision for suspension of shipments for lack of "substantial progress" and how complicating it may be for securing long-term contractor agreements.

ECA supports the inclusion of other conditions that should be negotiated and included in a Consent Agreement as listed in the Legislation in Section 304 (f)(3), p. 31:

Terms and conditions under paragraph 2(A) shall promote the economic and social well-being of the people living in the vicinity of the repository or storage facility; and (B) may include-

- (i) financial compensation and incentives;*
- (ii) economic development assistance;*
- (iii) operational limitations or requirements;*
- (iv) regulatory oversight authority; and*
- (v) in the case of a storage facility, an enforceable deadline for removing nuclear waste from the storage facility.*

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However, the conditions are very broad and legislation should clearly define the terms. Other conditions to be negotiated as part of the consent agreement could include: what would constitute an unduly burden, how an existing compliance agreement or statutory limitation will be amended, as well as:

- Volume limitations;
- Enforceable milestones that align with an agreed upon definition of “sufficient progress”;
- Penalties (that may include cessation of facility development, waste shipments or imposition of fines) to be incurred by the Federal government in cases of its failure to meet obligations under the consent agreement;
- Triggers for termination of the consent agreement;
- Agreement of indemnification to allow local communities, states or tribes to be compensated for and provided with security against damages or liabilities into the future; and
- Opportunities for future nuclear energy-related missions such as work currently being done by national laboratories or reprocessing or recycling used nuclear fuel.

Local governments are uniquely positioned to negotiate these conditions on behalf of the impacted community; as is a Governor for the impacted State. If certain conditions are met, a local community may be willing to accept a HLW and SNF disposal mission.

ECA agrees that, once negotiated, the consent agreement should be ratified by law, binding on all parties, and not amended or revoked except by mutual agreement by the parties. The consent agreement must also include milestones that are enforceable against both the state and federal government.

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Given the urgent need to address nuclear waste management in the US, ECA advises that Congress and the Administration should actively engage each interested community and State, and provide financial resources to study the scientific data, and to develop public outreach and education programs in order to determine if there is support for a nuclear waste mission.

3. Should the bill establish separate storage and disposal programs with clearly defined requirements for each, with any linkage negotiated in the consent agreement between the federal and non-federal parties, to allow the two programs to run on separate, but parallel tracks, as proposed in the alternatives section 305 (which would replace section 304 (b) – (g) of the draft bill?

Yes, the Legislation should establish separate storage and disposal programs with linkage negotiated between the federal government and non-federal hosts and included in the consent agreement.

While the Nuclear Regulatory Commission (NRC) has licensing standards for a site-specific interim storage facility, standards that reflect current thinking for a permanent repository outside of the Yucca Mountain project do not exist. In addition, neither NRC nor Congress has addressed how the term “interim” is to be legally defined or how long an interim storage facility (unassociated with a commercial reactor site) will be licensed to operate. Policy makers currently use “interim” loosely and have never associated it with a fixed timeframe (10, 50, 100, 500 or more years). If the period for interim storage is not fixed, how will the NRC maintain design standards? Until “interim” is defined by law, potential host communities will continue to have significant concerns that, in the absence of a long-term waste management strategy, interim storage sites will become *de facto* permanent repositories.

ECA is also concerned about the timetable for siting, constructing and opening interim storage facilities and a repository as laid out by DOE in its strategic plan. ECA urges DOE, NRC, and Environmental Protection Agency (EPA) to immediately develop scientifically-based health and environmental standards, model state laws and regulations to guide the siting process and maintain a sense of urgency in developing a comprehensive waste management plan for the

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country. These agencies should also consider whether future policies and technologies to reduce waste volumes, such as closing the fuel cycle and reprocessing used nuclear fuel, can be addressed now.

- 4. To what extent should the siting and consensus approval process for spent fuel storage facilities differ from that for a repository? Should the Administrator be required to conduct sufficient site-specific research (referred to as “characterization” in the bill) on candidate storage sites to determine if they are suitable for storing nuclear waste or only on candidate repository sites to determine if they are suitable for geologic disposal of nuclear waste? Should the Administrator be required to hold public hearings both before and after site characterization (as required by current law in the case of the Yucca Mountain site) or only before site characterization?**

The characterization for storage should be consistent with the present NRC requirements. For a repository, requirements should be different as the time periods for keeping waste on site and the technical aspects are vastly different.

In regards to public involvement and hearings, community engagement is critical at all steps in the process — beginning with the development of the vision, refining the goals and priorities, and at all times when conflicts arise. All parties must take the necessary steps to develop and maintain trust, accountability and openness. The Administration must engage the local governments as part of its outreach. ECA has seen DOE fail several times in communities where it holds meetings without involving the local governments in the planning and implementation of the meeting. Partnerships, which are based on trust, accountability and openness, require a fundamentally different paradigm. When the decision-making process is not transparent community trust will be difficult to maintain.

Trust and accountability flow from the program mission and vision — without an agreement on the goals for the program and a vision for where to go, trust and accountability are difficult to achieve.

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The Administrator needs to ensure that funding and resources are made available as soon as possible for public education. Local citizens that host a facility should know as much as a citizen can possibly know and learn about the health, safety and other issues that are inherent in hosting a site. They are the ones concurring and putting up the resources. Potential host communities must be given the means for education and other activities, including:

- Independent analysis of proposed activities.
- External oversight.
- Facilitating interaction between local, state, regional and federal government.

This raises another important issue - when must consent be reached on a project and when does the consent become binding? Retaining state and local political support through the federal decision-making process, including the NEPA review and analysis, will be critical for the process to succeed. Potential host States and local governments should be given resources to engage in the multi-year site evaluation and selection process necessary before the federal government can formally select an interim storage site or repository, and execute a binding agreement with the state.

5. Should the siting process in Section 304 be streamlined? If so, how?

The timeline for the siting process can be expedited if DOE, EPA and the NRC begin immediately to develop scientifically-based health and environmental standards, an outline of suitable geologic mediums, model state laws, and regulations to guide the siting process and involve the public. The only way to streamline the process is to begin the scientific studies and engage the community immediately.

6. Should the new entity be governed by a single Administrator or by a board of directors?

(a) If by a single Administrator, should the administrator serve for a fixed term? If so, how long should the term of service be? Should the legislation prescribe qualifications for the administrator? If so, what should be the selection criteria? (b) If by a board of

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directors, how many people should comprise the board and how should they be selected?

ECA can support the creation of a new entity dedicated solely to implementing the nuclear waste management program, provided it has clear legislative authority, appropriate autonomy, oversight mechanisms, and access to required funding.

ECA is concerned about creating a new bureaucracy and the amount of time it will take to formally create this new entity. In 1982, it took four years to begin substantive implementation of the NWPA. It will also take time to create a new regulatory structure. For ECA communities, any delay means continued or even increased risks to our communities currently hosting “de facto” HLW storage sites.

ECA urges that any oversight board include a local government representative.

7. The Blue Ribbon Commission recommended establishment of both a board of directors for management oversight (whose “primary role...is not to represent all stakeholder views, but rather to carry out fiduciary responsibilities for management oversight”) and “a larger and more widely representative stakeholder advisory committee.” The draft bill responds to these recommendations, first by establishing a Nuclear Waste Oversight Board of senior federal officials, and, second, by authorizing the Administrator to establish advisory committees. Should the Oversight Board and advisory committee be combined into a single body to perform both management oversight and stakeholder representative functions? Should the focus and membership of any advisory committees be established in legislation or left to the Administrator?

Legislation, not the Administrator, should define the membership of the oversight board to ensure that various views are included in any advice provided.

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ECA does not support combining the Oversight Board and advisory committee into a single body – each should have separate functions and responsibilities.

ECA urges that any oversight board include a local government representative.

8. Dr. Meserve testified in 2012 that representatives of the stakeholders and public utility commissioners should be added to the Nuclear Waste Oversight Board. Would these additions make the Board better to carry out its fiduciary oversight mission effectively?

Yes, ensuring input from the parties that will be most directly affected by a decision on nuclear waste management will help build trust that the federal government is being as inclusive and transparent as possible. ECA urges that any oversight board include a local government representative as well as other appropriate stakeholder representatives.

Specifics as to who is eligible to be appointed to the Board and their responsibilities should be defined in legislation to promote accountability.

A final comment on the Legislation: in Title I, section 103, definitions are provided. However some of the terms outlined in the section, such as “emergency delivery,” “Substantial progress,” “priority” and “non-priority” waste, need to be more clearly explained. For example, what criteria will be used to determine whether or not “substantial progress” is being made in the development of a repository? Who is ultimately responsible for making that determination? The definitions need to be clearer to avoid them becoming an issue later in the process.