



**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**

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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-

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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.**

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- 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

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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

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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

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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.