

## Statement for the Record

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to the  
Senate Energy and Natural Resources Committee

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Chairman Wyden, Ranking Member Murkowski, members of the committee, thank you for the opportunity to speak today about the recently introduced Nuclear Waste Administration Act of 2013. I am Marvin Fertel, President and CEO of the Nuclear Energy Institute (NEI). NEI is responsible for establishing unified nuclear industry policy on regulatory, financial, technical and legislative issues affecting the industry. 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, labor organizations, universities and other organizations and individuals involved in the nuclear energy industry.

We welcome the Senate's leadership in addressing the federal government's role in the safe and secure management and disposal of commercial used nuclear fuel through this legislation. We also applaud Senators Wyden, Murkowski, Feinstein, and Alexander for leading the effort and for releasing a discussion draft to obtain stakeholder comments before introducing the legislation; a process which resulted in beneficial changes. Although the proposed legislation represents a positive start to overhauling the federal program and incorporates some of the stakeholder comments provided on the discussion draft, additional enhancements should be made to ensure the creation of a sustainable integrated program.

Over the past 70 years, applications of nuclear fission – including research, medicine, naval propulsion and power production – have produced immeasurable benefits for our society. They have also resulted in a large and growing inventory of used nuclear fuel and high-level radioactive waste. The commercial nuclear industry and the federal government have demonstrated that they can safely and securely store used nuclear fuel and high-level radioactive material. About 70,000 metric tons of uranium (MTU) of commercial used fuel is safely managed at nuclear energy facilities, but storing the fuel on site was never meant to be a long-term solution. By now, pursuant to the Nuclear Waste Policy Act (NWPA), the Department of Energy (DOE) should have already moved more than 28,000 MTU of reactor fuel from our sites and should be moving an additional 3,000 MTU every year.

Consumers of electricity generated at nuclear energy facilities have committed more than \$35 billion since 1982 to the Nuclear Waste Fund for the federal program that should have begun removing used fuel from commercial nuclear power plant sites 15 years ago. The Department of Energy continues to collect more than \$750 million per year from consumers, and the fund accrues more than \$1 billion in investment income on the remaining balance of over \$28 billion. The collection of Nuclear Waste Fund fees is ongoing, despite the fact that the Department of Energy, without any technical basis, terminated the Yucca Mountain repository project in 2010 and has yet to implement a new program.

The industry and the DOE had been working for decades with considerable success on the development of a deep geologic repository in the United States for used nuclear fuel and high-level radioactive waste, until the program was terminated and the Office of Civilian Radioactive Waste Management (OCRWM) dissolved in 2010. These decisions were not supported by the industry and have resulted in court actions

that would have otherwise been unnecessary. The industry continues to support the completion of the Yucca Mountain licensing process and, as a result of the Administration's actions, the industry has filed suit against DOE challenging the continued collection of the Nuclear Waste Fee in the absence of a federal program. Oral arguments in the case are scheduled for September.

### **The Path to Success**

The nation would be best served by adherence to the following principles that will ensure the establishment of a stable used nuclear fuel management policy and program:

- The United States must have a durable policy supported by a dedicated and sustainable infrastructure to manage used nuclear fuel and high-level radioactive waste responsibly.
- The United States must have a plan for the ultimate disposal of the byproducts from nuclear energy.
- An ideal technical solution is not required to begin implementation of a new policy direction. Evolutionary, and perhaps revolutionary, advances in technology improvements can be incorporated over time without deferring decisions until decades of research are completed.
- The successes and failures of the past must be understood to help guide future innovation, policies, and management, while building public trust in the systems and facilities ultimately developed.

Legislative action is needed to put such an enduring policy and program in place. The industry supports an integrated used nuclear fuel management strategy consisting of six basic elements:

- A new management and disposal organization outside of the Department of Energy (DOE).
- Access to the Nuclear Waste Fund and annual fees for their intended purpose, without reliance on the annual appropriations process but with appropriate Congressional oversight.
- Completion of the Yucca Mountain repository license review. Nuclear electric consumers deserve to know whether Yucca Mountain is a safe site for the permanent disposal of high-level radioactive waste, as billions of dollars and years of independent scientific research suggest.
- A consolidated storage facility for used nuclear fuel and DOE's high-level radioactive waste in a willing host community and state and substantial progress toward developing the Yucca Mountain site and/or a second geologic repository. A consolidated storage facility would enable the DOE or a new management entity to move used nuclear fuel from decommissioned and operating plants long before a repository or recycling facilities begin operations. Used fuel from decommissioned commercial reactor sites without an operating reactor should have priority when shipping commercial used fuel to the storage facility.
- Research, development and demonstration on improved or advanced fuel-cycle technologies to close the nuclear fuel cycle.
- NRC's promulgation of a temporary storage rule and an eventual legislative determination of waste confidence supported by a sustainable federal program founded on the elements above.

Since the Obama Administration suspended the NRC's review of the Yucca Mountain repository license application in 2010, the federal government has not had a viable used fuel management program. The Administration's Blue Ribbon Commission on America's Nuclear Future (BRC), established to recommend a new direction for the program, published its final report in January 2012. Among its key recommendations were:

- A new, consent-based approach to siting future nuclear waste management facilities.
- A new organization dedicated solely to implementing the waste management program and empowered with the authority and resources to succeed.

- Access to the funds nuclear utility ratepayers are providing for the purpose of nuclear waste management.
- Prompt efforts to develop one or more geological disposal facilities.
- Prompt efforts to develop one or more consolidated storage facilities.

The BRC's recommendations are generally consistent with the industry's integrated used nuclear fuel management strategy and are supported by the industry with the exception that the BRC did not address the need to complete the Yucca Mountain licensing process.

In January 2013, the Obama Administration released its "Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste." This strategy is also generally consistent with the industry strategy but is dependent upon Congress to establish direction and create a program.

### **Growing Federal Liability**

Even before the Office of Civilian Radioactive Waste Management was closed, the urgency for DOE to fulfill its statutory and contractual responsibilities to manage used fuel and high-level radioactive waste was growing, as was the associated cost to the taxpayer. The DOE was required by statute and contract to begin moving used fuel from reactor sites in 1998. The taxpayers, through payments from the taxpayer-funded Judgment Fund, are paying for court-awarded damages from DOE's partial breach of its contracts with electric companies. The BRC report estimated that the damage awards from the Judgment Fund will total \$20.8 billion if the federal government begins accepting used fuel in 2020 and may increase by as much as \$500 million for each year after 2020 that DOE does not begin to accept used fuel. To date, approximately \$2 billion has already been paid in damage and settlement awards. This expense, for which the taxpayer receives no benefit, is in addition to monies paid into the Nuclear Waste Fund by consumers of electricity produced from nuclear energy. Given the absence of any federal program, it has become virtually impossible for the DOE to begin to meet its obligation to move used fuel before 2020.

The industry is committed to reducing the growing federal liability through the establishment of a sustainable federal program. The Nuclear Waste Administration Act of 2013 also recognizes the need to reduce the federal liability as quickly as possible. However, the liability can only be reduced through the establishment of a program and execution of the program by the new management entity in a timely manner. The industry disagrees with the provision in the draft legislation which tries to reduce liability by requiring contract holders to settle all claims against the United States as a condition precedent for taking title to and moving used fuel to a storage facility. This forced settlement provision should be removed from the proposed bill. The industry has already demonstrated its commitment to negotiate settlements in good faith. However, the effect of this provision would be a denial of a utility's right under the Standard Contract to have its used fuel taken by the federal government unless the utility agreed to accept a settlement of its breach of contract claims on whatever terms the government wanted to impose. That would effectively deprive the utilities of their contractual rights, under which the government is supposed to take their spent fuel in exchange for many hundreds of millions of dollars in Nuclear Waste Fees paid to the government. A more effective and fairer approach would be to direct the Department of Justice to settle the breach of contract lawsuits on reasonable terms with willing contract holders without imposing conditions on the settlements.

### **A New Federal Used Fuel Management Corporation is Needed**

A key element to the long-term success of a federal program is establishing a new entity to assume program management responsibility from the DOE. Industry and numerous stakeholders support the concept of a federal corporation. The operating characteristics of a new management entity must more closely resemble those of a corporation with a clear mission rather than a federal agency in order to

succeed. The new management entity must come as close as possible to the decision-making and project management capability and discipline that is more characteristic of a corporate organization.

Similar to commercial companies, the chief executive officer of the new management entity should be selected and appointed by a board of directors. The board should be appointed by the President with the advice and consent of the Senate for terms that would span at least two presidential administrations. The industry recommends that at least three members of the board be appointed from entities that contribute or have contributed to the Nuclear Waste Fund and that at least two members of the board be appointed from state public utility commissions or representatives thereof. The legislation should also specify minimum qualifications for board members and define a quorum as being simply more than half of the standing directors. The chairman of the board should be elected by its members. The CEO should not be subjected to the political uncertainties associated with presidential appointments so that he or she, while remaining accountable to the board, can focus entirely on performing the task at hand with the requisite attention to nuclear safety and security that is expected from all employees of a nuclear industrial company. The instability that can be created as a result of the political appointment process is well-illustrated by the now-defunct Office of Civilian Radioactive Waste Management (OCRWM). This office, whose director was appointed by the President and confirmed by the Senate, never realized stable long-term leadership because of the turnover of directors associated with changes at the White House. From 1983 to 2010, OCWRM had six appointed and confirmed directors and nine acting directors. The incumbent director was replaced with every new administration. It is also essential that the CEO of the organization have the authority to hire his or her senior staff and deputies, in consultation with the board as appropriate, rather than having them appointed by the President. Since this new management entity will be in existence as long as commercial nuclear power is used in the United States, and beyond, the CEO must have the flexibility to reorganize the management structure when appropriate, without artificial constraints imposed by legislation.

The Nuclear Waste Administration Act of 2013, as currently structured, would not sufficiently insulate the new Nuclear Waste Administration leadership from the political process since both the administrator and deputy administrator would be appointed by the President with the advice and consent of the Senate, as are the members of the proposed oversight committee. Numerous studies of the management issue have been carried out over the past decades, from the Congressionally mandated Advisory Panel on Alternate Financing and Managing Radioactive Waste Facilities Report in 1984 through the BRC recommendations in 2012. The studies advocate consistently for a management entity with a corporate structure providing continuity, efficiency and an appropriate degree of insulation from undue political influence.

When the new management entity is created, Congress and the Administration should retain an oversight authority, but this role should be structured to avoid creating an impediment to the efficient operation of a new management entity. The Nuclear Waste Administration Act of 2013 addresses Congressional oversight appropriately but, in one instance, reduces this oversight compared to the Nuclear Waste Policy Act by removing Congressional review of changes in the nuclear waste fee. The industry recommends that Congressional oversight over the nuclear waste fee be maintained.

### **Direct Access to Sufficient Funding**

Enduring leadership is essential, but not sufficient in its own right to create a successful and sustainable program. As the Nuclear Waste Administration Act of 2013 recognizes and addresses, a new management entity must have direct access to, and control over, the funds necessary to implement the program. The industry and consumers have provided and continue to provide these funds which should be secure and available to program managers. Unfortunately, this has not been the case. The Congressional budgeting and appropriations processes have resulted in appropriations to OCRWM being

considered in the context of the overall DOE and federal government budget and not simply in the context of the available funds in the Nuclear Waste Fund. Historically, this resulted in lower appropriations than requested which contributed to project and schedule delays. The BRC report, which discusses the Nuclear Waste Fund in great detail, states that “a program that was intended to be fully self-financing now has to compete for limited discretionary funding in the annual appropriations process, while the contractual user fees intended to prevent this from happening are treated just like tax revenues and used to reduce the apparent deficit on the mandatory side of the federal budget (which deals with expenditures and receipts that are not subject to annual appropriations).” Recognizing that these funds were collected with the indisputable intention of supporting clear statutory and contractual obligations, there is not a rational basis for considering their use discretionary.

To avoid perpetuating the current funding limitations and inequities, a new management entity must be given unrestricted access to both the Nuclear Waste Fees and the Nuclear Waste Fund with Congressional oversight of the efficient use of these funds continuing. This will enable the new management entity to appropriately manage and fund, without reliance on Congressional appropriations, the development of storage and disposal facilities consistent with standard industry practices for other large-scale nuclear safety-related projects. The current legislation achieves this goal for the Nuclear Waste Fee payments. The industry, though, believes that the corpus of the Nuclear Waste Fund and its earned interest, in addition to the Nuclear Waste Fees, also must be made available to the new management entity for its intended purpose without being subject to competing appropriations. This, however, could be accomplished with transfers to the new management entity over a reasonable schedule defined within the legislation.

### **Geologic Disposal and Consolidated Storage are Critical**

In the current fuel cycle and in all foreseeable advanced fuel cycles, a geologic repository will be required. Pursuit of a geologic repository and a consolidated storage facility should occur simultaneously, as the Nuclear Waste Administration Act of 2013 would require. A consolidated storage facility would enable the management entity to move used nuclear fuel from shutdown and operating plants long before a repository or recycling facilities begin operations and is the quickest way to stem the increase in damage awards beyond the estimated \$20.8 billion through 2020.

Developing consolidated storage would be an appropriate use of resources and a prudent financial investment that would permit the federal government to begin meeting its obligations, limiting the damages paid by the taxpayers, restoring faith in the federal program, and paving the road for a repository. As the industry is well aware, technical and political hurdles can arise which can significantly delay a project or curtail the operation of a facility. A consolidated storage program is a good contingency in case the repository program suffers delays either as a result of funding issues or unforeseen circumstances. In addition to the industry and the BRC, the National Conference of State Legislatures, the governors of Maine, Maryland, Pennsylvania, and Vermont and many other organizations and political leaders have all called publicly for action to implement the BRC recommendations and, specifically, development of a consolidated storage facility.

Attachment 1 provides a comparison of hypothetical timelines for the development of a consolidated storage facility using a consent-based siting process and the Yucca Mountain repository assuming that both programs are underway in 2014. As the attachment illustrates, the completion date for Yucca Mountain will be highly dependent on the rate at which funds are expended. Despite the fact that the Nuclear Waste Fund has more than sufficient funding to complete the Yucca Mountain project, it is highly unlikely that, in the absence of a new management entity with direct access to the Nuclear Waste Fees and Fund, the program could be appropriated sufficient funding necessary (approaching \$2 billion annually) to complete licensing and construction in the near term. The 2027 opening date for Yucca

Mountain, shown in Attachment 1, assumes successful NRC licensing, efficient management, full funding, and positive support from the State of Nevada. Even if these assumptions are met, it will still be challenging to complete the Yucca Mountain project by 2027; an endeavor that will cost more than \$14 billion in 2012 dollars. Until it is clear that all of these assumptions can be met, the industry strongly believes that it is prudent to pursue consolidated storage in parallel with repository activities. If a second repository is pursued, the siting, licensing, and construction will most likely take close to three decades. By 2040, the damages paid by the taxpayer could be as much as \$30 billion.

A consolidated storage facility could be built at a fraction of the cost of a repository. The Electric Power Research Institute (EPRI) estimates a 40,000 MTU storage facility could be built for approximately \$525 million in 2012 dollars. As Attachment 1 illustrates, the industry estimates that a consolidated storage facility could be opened by 2024 in a willing host community and state if work begins in 2014. The main assumption in this estimate is the 3-year time to execute a consent-based siting process. The industry feels this is a reasonable assumption for a consolidated storage facility but that a consent-based siting process for a second repository could take substantially longer. The estimated times for design, licensing, and construction are based on a review of licensed and constructed dry cask storage facilities at reactor sites and the Idaho National Laboratory. To ensure that the licensing process is efficient, the industry requests that the legislation instruct the NRC to issue a final decision approving or disapproving a license for a consolidated storage facility no later than two years after the date of submission.

A consolidated storage facility would be used to meet DOE's statutory and contractual obligations by removing used fuel from commercial nuclear power sites, taking title to the used fuel, and shipping it to the storage facility, which could be collocated with the repository, where it would be stored until a final disposal or alternate disposition pathway is available. In addition to storing used nuclear fuel from commercial facilities, a consolidated storage facility could also store DOE and U.S. naval reactor fuel. This could provide a pathway for the federal government to meet its obligations to remove this material from the various states where it is stored and eventually prepare it for final disposal.

Although the industry supports the completion of the Yucca Mountain licensing effort, we recognize that it may be appropriate for the new management entity to begin efforts to site a second repository. Since we expect nuclear power to continue to be a significant contributor of electricity in the United States, used fuel will continue to be produced. It is generally agreed that Yucca Mountain can accommodate significantly more used fuel than the 70,000 MTU limit imposed in the NWPA. Even though the limit is appropriately removed in this legislation, it may still be necessary to site a second repository. Since the NRC and the Environmental Protection Agency have Yucca Mountain repository-specific regulations and the generic repository regulations are generally considered to be out of date, the industry recommends that the NRC and the Environmental Protection Agency be instructed, in this legislation, to develop new generic repository regulations. The search for a new repository will not be successful unless the regulatory structure is properly defined prior to the search.

### **Priority to Shutdown Sites**

The Department of Energy and eventually the new federal management entity should collaborate with industry to ensure that transportation issues, including efficient ordering of used fuel acceptance from commercial sites, are addressed appropriately. Prior to removing used fuel from operating plant sites, the industry agrees that priority should be given to the shutdown commercial sites that no longer have an operating reactor. This approach, supported by the BRC and the Nuclear Waste Administration Act of 2013, has numerous advantages. It would permit shutdown sites, which in many cases have only used fuel storage remaining at the site, to be fully decommissioned and the land used for other purposes. In addition, the taxpayer, through the taxpayer-funded Judgment Fund, would no longer be liable for the continued cost of storing used fuel at these shutdown sites at a cost of millions of dollars per year per site.

## **Consent-Based Facility Siting**

Strength of leadership and financial resources alone will not guarantee success in siting new facilities. As the BRC recommends and the Nuclear Waste Administration Act of 2013 proposes, a consent-based siting process is essential to developing enduring local and state support for new facilities. Since the release of the BRC report, the consent-based siting recommendation has received significant support and prompted questions about how such a process would be implemented.

A consent-based siting process should not be defined prescriptively, but permitted to develop organically among the interested parties. Regardless of the specific process for developing consent, success will be measured by an agreement among the interested parties that is legally enforceable as described in the Nuclear Waste Administration Act of 2013. During the process, the parties involved must negotiate in good faith and be open to creative solutions to address issues that arise, including oversight, incentives and benefits. The industry does not believe that it is necessary to establish multiple additional criteria – or linkage between development of consolidated storage and permanent disposal – that, in essence, are intended to “protect” the state, affected local community and/or tribe from being forced to host an unwanted facility. In this regard, we appreciate the changes made from the discussion draft that provide more responsibility to the communities and states to establish the framework and conditions under which they wish to operate a consolidated storage facility. There are communities that would see hosting such facilities as a benefit. The siting and operation of the Waste Isolation Pilot Plant in New Mexico is proof that such a process can be successful.

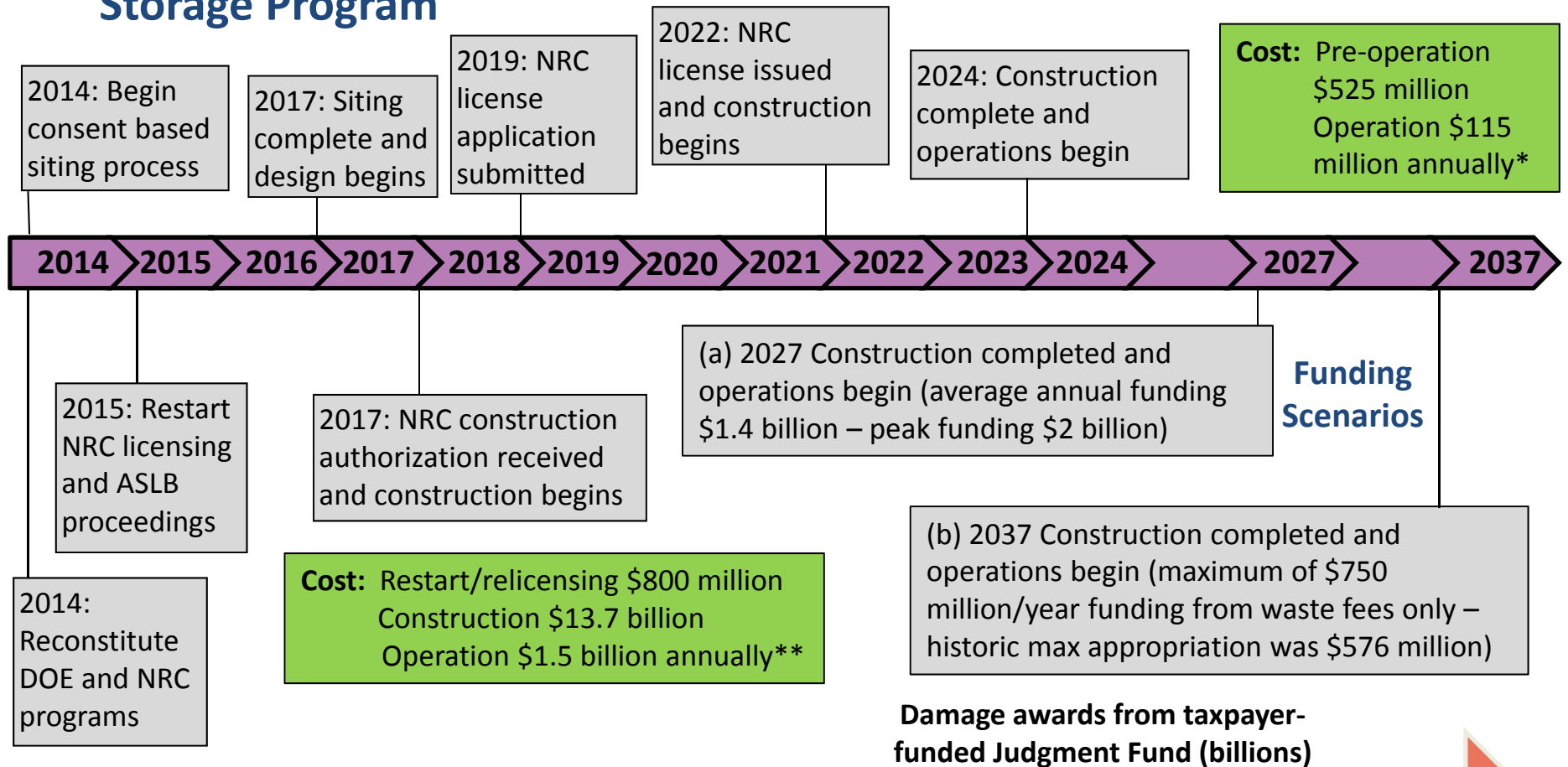
## **Conclusion**

Energy companies, their local communities and states, and American taxpayers deserve to have confidence in a federal program that will meet its statutory and contractual obligations to safely and securely accept, transport, store, and ultimately dispose of used nuclear fuel and high-level radioactive waste. The Nuclear Waste Administration Act of 2013 is a significant step forward and, with the enhancements proposed here, it could create a sustainable program that would garner wide stakeholder support. In addition to the enhancements mentioned above, the industry has developed legislative principles for nuclear waste reform, included as Attachment 2, which should also be considered when revising the Nuclear Waste Administration Act of 2013. While the industry has and always will manage its used nuclear fuel safely and securely, we believe that action by Congress is necessary now to establish a sustainable program and reduce the liabilities for the taxpayer as quickly as possible.

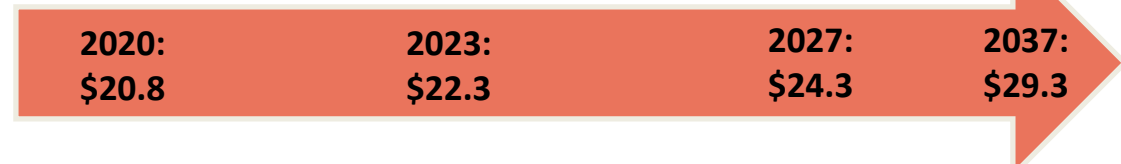


# Consolidated Storage Program

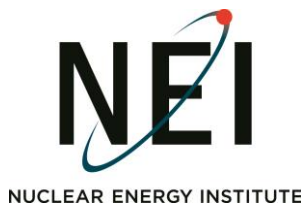
The potential for delays due to additional NRC or Court proceedings was not considered



# Yucca Mountain Project







## **Legislative Principles for Nuclear Waste Management Reform**

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The Nuclear Energy Institute is advocating for legislative reform to create a sustainable, integrated program for federal government management of the Department of Energy's (DOE) high-level radioactive waste and commercial used nuclear fuel. NEI is committed to working with both houses of Congress and the Administration on proposed legislation that addresses the federal government's high-level radioactive waste management responsibilities.

The industry supports an integrated used nuclear fuel management strategy, which consists of six basic elements.

- A new management and disposal organization dedicated solely to executing a high-level radioactive waste program and empowered with the authority and resources to succeed.
- Access to the annual collections and corpus of the Nuclear Waste Fund for their intended purpose, without reliance on the annual appropriations process but with appropriate Congressional oversight.
- Completion of the Yucca Mountain repository license review. Nuclear electric consumers deserve to know whether Yucca Mountain is a safe site for the permanent disposal of high-level waste, as billions of dollars and years of independent scientific research suggest.
- A consolidated storage facility for used nuclear fuel and DOE high-level radioactive waste in a willing host community and state while making substantial progress toward developing the Yucca Mountain site and/or a second geologic repository. A consolidated storage facility would enable the DOE or a new management entity to move used nuclear fuel from decommissioned plants and operating plants long before a repository or recycling facilities begin operating. Used fuel from decommissioned commercial reactor sites without an operating reactor should have priority when shipping commercial used fuel to the storage facility.
- Research, development and demonstration on improved or advanced fuel cycle technologies to close the nuclear fuel cycle, thereby potentially reducing the volume, heat and toxicity of byproducts placed in a repository, recognizing that a geologic repository will be required for all fuel cycles. All funds for this RD&D must come from DOE's budget and not the Nuclear Waste Fund. In addition to RD&D, the Nuclear Regulatory Commission (NRC) should develop a regulatory framework for the licensing of recycling facilities.
- Supporting NRC's promulgation of a temporary storage rule and an eventual legislative determination of waste confidence supported by a sustainable federal program founded on the elements above.

## **Legislative Principles for Nuclear Waste Management Reform**

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The following legislative principles address these program elements and will guide the industry's ongoing engagement in the legislative process.

### **New Management Entity**

#### *Structure*

A new self-sustaining federal management organization, hereafter referred to as the Management and Disposal Organization (MDO), should be established to discharge the responsibilities of the federal government to manage and dispose of used nuclear fuel and DOE high-level waste.

The MDO should be configured to ensure programmatic effectiveness and its financial and political independence.

- The MDO should be independent of all government agencies and departments.
- The MDO should be advised by a bipartisan Board of Directors composed of no more than 9 members.
  - Board members should be appointed by the President with the advice and consent of the Senate.
  - Board members should be appointed for a minimum of 7-year staggered terms.
  - At least three members of the Board should be appointed from entities that contribute or have contributed to the Nuclear Waste Fund.
  - At least two members of the Board should be appointed from state public utility commissions or representatives thereof.
  - To be eligible to be appointed to the Board, an individual must be a citizen of the United States and have management, financial, technical or other appropriate expertise.
  - A quorum for the Board should be defined as simply more than one-half of the standing directors.
  - The Board should approve the annual budget for the MDO.
- The MDO should have a CEO, who is hired by the Board.
  - The CEO must have, at a minimum, senior executive management experience in large complex organizations with expertise in the nuclear industry and strong financial management skills.
- The CEO, in consultation with the Board, should have the authority to appoint and terminate officers, lawyers, and other employees as necessary to carry out the duties of the MDO without regard to civil service laws applicable to employees of the U.S. government.

## **Legislative Principles for Nuclear Waste Management Reform**

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- The MDO’s authority to hire and set compensation for officers and employees should be exempt from the provisions of Title 5 of the U.S. Code.
- The CEO, in consultation with the Board, should be responsible for establishing the duties and compensation for officers and employees of the MDO.
- Compensation for leadership and employees of the MDO should be comparable with industry peers to enable the MDO to recruit and retain officers and employees with demonstrated leadership, management and technical abilities.
- The Board should be established and operating within 180 days of enactment.
  - The specific DOE responsibilities that will be transferred to the MDO should be defined, and DOE should be instructed to transfer all appropriate materials and infrastructure to the MDO efficiently.

### *Authority*

The MDO should be given authority to implement the elements of an integrated used nuclear fuel management program – transportation, consolidated storage, recycling if warranted, and disposal – efficiently and cost-effectively.

The MDO should have additional authority to:

- acquire private land and facilities, to enter into leases, and to administer contracts necessary for the efficient execution of its used nuclear fuel management responsibilities;
- negotiate legally binding agreements with states, affected local communities and/or tribes interested in hosting consolidated storage and/or disposal facilities;
- issue bonds;
- enter into new spent fuel disposal contracts consistent with the provisions in section 302(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)) and 10 CFR Part 961 for a commercial nuclear power reactor to be licensed by the NRC and to amend (with the agreement of the contract holder) existing contracts;
- propose an adjustment to the Nuclear Waste Fee to ensure full cost recovery. The proposal should be presented to Congress and deemed effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period a law is enacted disapproving the proposed adjustment. No adjustment of the fee should become effective until 24 months after the 90-day period.

The MDO should not be subject to the following antitrust legislation: (1) the Sherman Act (15 U.S.C. 1 et seq.); (2) the Clayton Act (15 U.S.C. 12 et seq.); or (3) section 73 or 74 of the Wilson Tariff Act (15 U.S.C. 8, 9).

## **Legislative Principles for Nuclear Waste Management Reform**

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The MDO should be exempt from taxation in any manner or form by any state, county or other entity of local government, including state, county, or local sales tax. The MDO should be authorized to make payments in lieu of taxes.

### *Operations*

- The MDO should maintain an office in the District of Columbia; and for purposes of venue in civil actions, should be considered a resident of the District of Columbia. The MDO may establish other offices in other locations as deemed appropriate by the Board.
- The MDO should be required to obtain Board approval if it seeks to engage in recycling. The Board decision should be based on the availability of readily deployable technologies and financial benefits to the disposal program.
- The NRC should have regulatory oversight authority over all MDO nuclear storage, disposal and recycling facilities.
- The MDO should be instructed explicitly to make all reasonable efforts to accept commercial used nuclear fuel that is loaded in dry storage containers that can be transported without repackaging.
- The new management entity should be authorized explicitly to accept Greater-Than-Class C waste.
- The MDO should conduct transportation activities in accordance with then-existing laws and regulations.
- The MDO should conduct non-generic research, development, and demonstration in direct support of the licensing and operation of consolidated storage and disposal facilities with the approval of the Board.
- The MDO should have full access to the Nuclear Waste Fee payments and the Nuclear Waste Fund without being subject to annual appropriations for activities related to the management of commercial used nuclear fuel.
- The MDO should review annually the amount of the Nuclear Waste Fee payments to evaluate whether collection of the Fee, together with the corpus of the Nuclear Waste Fund and interest, will provide sufficient revenues to offset the costs of the waste management program. Results of this evaluation should be presented to Congress and entities that pay into the Nuclear Waste Fund. The results should also be made available to the public.

### *Accountability*

- Performance milestones should be established by the Board, in consultation with the CEO, and reports on the progress on those milestones should be presented to Congress annually.

## **Legislative Principles for Nuclear Waste Management Reform**

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- The MDO should be required to maintain transparent controls on administrative spending to promote accountability and ensure public confidence.
- The MDO should be required to have an independent audit conducted biennially with results presented to Congress and entities that pay into the Nuclear Waste Fund. The results should also be made available to the public.

### **Nuclear Waste Fund Reform**

The MDO must have access to long-term and stable funding and be held accountable to the ratepayers and Congress for using these monies for actions that directly support the ability of the government to meet its statutory and contractual obligations.

Access to the corpus of the Nuclear Waste Fund and future fee payments will be essential to funding an integrated storage and disposal program.

- The MDO should be given access to the full balance of the Nuclear Waste Fund, including interest. Transfer of such funds to the MDO should be on a reasonable schedule defined in the enacting legislation and not subject to annual appropriations.
- Fees paid into the Nuclear Waste Fund, including future one-time fee payments under the NWPA, after the date of enactment should be made available to the MDO within 30 days of payment to the Treasury. Such fees should not be subject to annual appropriations.
- Interest earned on the balance of the Nuclear Waste Fund should be made available to the MDO without being subject to appropriations.
- Funds collected or escrowed for the purpose of used nuclear fuel management should receive the same tax treatment as payments to the Nuclear Waste Fund.

### **Government Liabilities**

The full cost of the estimated liability payments to be made by the federal government from the U.S. taxpayer-funded Judgment Fund should be included in all future U.S. government budget estimates.

Payments for damages arising from DOE's failures to begin to take title of used nuclear fuel by 1998 should only be paid from the Judgment Fund; no payments for DOE's partial breach of contract should be made from the Nuclear Waste Fund.

Utilities should not be required to waive their right to recover damages or required to reach a settlement with the federal government as a condition of future action on the part of the MDO.

## **Legislative Principles for Nuclear Waste Management Reform**

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### **Yucca Mountain**

The Yucca Mountain licensing process should be completed.

- The DOE or MDO should attempt to negotiate an agreement with the state of Nevada and the host counties to address state and local issues and provide benefits to the state and host counties.
- Permanent land withdrawal, necessary before construction can begin, should be legislated.

The Nuclear Waste Policy Act should be amended to remove the 70,000 metric ton limit on heavy metal in spent nuclear fuel to be emplaced at Yucca Mountain. Any limit on the amount of used nuclear fuel emplaced in a repository should be based on public health and safety considerations.

The Nuclear Regulatory Commission should be instructed to consider the application to receive and possess, or any other application after the construction authorization is approved, using expedited procedures and to issue a final decision on whether to grant permission to receive and possess, or on any other application, within one year of submission of the application. The NRC should be permitted to extend that deadline by no more than six months.

### **Geologic Disposal**

- Geologic disposal is an essential element of a sustainable, integrated used nuclear fuel management program.
- Development of consolidated storage and disposal facilities should be pursued in parallel without limitation. Achievement of milestones associated with one facility should not be a pre-requisite for continued development of other facilities.
- The target date for the opening of Yucca Mountain or an alternative geologic repository should be no later than 20 years after a consolidated storage site is opened.
- The NRC and EPA should be instructed to develop new regulations for a generic repository within 36 months of enactment.
- Notwithstanding any further advancement of the Yucca Mountain repository project, the MDO should be authorized to site a second repository in a willing host community and state using a consent-based siting process.

### **Consolidated Storage**

- The Nuclear Waste Fees and the Nuclear Waste Fund should be used for the development and operation of a consolidated storage facility.
- The DOE or MDO should be authorized to design, construct and operate a consolidated storage facility for commercial used nuclear fuel and DOE high-level radioactive waste.

## **Legislative Principles for Nuclear Waste Management Reform**

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- For commercial used nuclear fuel shipments to the consolidated storage facility, priority should be given to the decommissioned commercial reactor sites that no longer have an operating reactor.
- The MDO should be authorized to site consolidated storage facilities in a willing host community and state using a consent-based siting process. The MDO, the state, and relevant localities or tribes should enter into a binding agreement to host the consolidated facility. The agreement should be presented to Congress and deemed effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period a law is enacted disapproving the proposed agreement.
- Any agreement with a state, affected community and/or tribe may include restrictions on the capacity of the subject consolidated storage facility, the duration of operation of that facility, and the relationship of operation of that facility to the operation of a repository.
- The limitations imposed on a monitored retrievable storage facility under section 141(g) of that Nuclear Waste Policy Act (42 U.S.C. 10161(g)) should not apply to a consolidated storage facility developed by the MDO or DOE.
- The NRC should be instructed to issue a final decision approving or disapproving a license for a consolidated storage facility no later than two years after the date of the submission of such application. The NRC should be permitted to extend that deadline by no more than one year.

### **Commingling of DOE High-level Radioactive Waste (HLW) and Commercial Used Nuclear Fuel**

The MDO should be required to provide for the permanent disposal of both commercial used nuclear fuel and DOE high-level radioactive waste (HLW).

- The MDO should address disposal pathways for both DOE HLW and commercial used nuclear fuel simultaneously, not sequentially.
- The MDO should have the authority to determine whether DOE HLW should be stored and disposed of in common or separate facilities.
- The MDO must receive payment for the storage and disposal of DOE HLW from appropriated or other funds, but in no case should such payment for storage and disposal of HLW be taken from the Nuclear Waste Fund or Nuclear Waste Fees paid by contract holders.

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### **DOE responsibilities that should remain with DOE after the MDO becomes operational**

DOE should be instructed to maintain a comprehensive research and development program to evaluate the aging characteristics of existing used nuclear fuel storage systems over extended time periods.

- DOE may choose to contract with the MDO to manage and carry out this program, however, because the need for extended storage is a direct result of the Department's failure to meet its obligation to begin removing used nuclear fuel from reactor sites beginning in 1998. All funding for this program must come from the Department's budget and not the Nuclear Waste Fund.

DOE should be instructed to maintain a comprehensive research, development and demonstration program for improved or advanced fuel cycles in close coordination with industry.

- All funds for this program must come from the Department's budget and not the Nuclear Waste Fund.
- The NRC should be instructed to develop a regulatory framework for the licensing of recycling facilities.

### **Waste Confidence**

The environmental impacts of used nuclear fuel storage for the period between NRC license termination and removal for disposal should be exempted from NRC consideration (under NEPA) in connection with the development, construction, and operation of, or any permit, license, license amendment, or siting approval for, a civilian nuclear power reactor or any facility for the treatment or storage of spent nuclear fuel or high-level radioactive waste based on a legislative determination of reasonable assurance that:

- safe disposal of high-level radioactive waste and spent nuclear fuel in a mined geologic repository is technically feasible and one or more mined geologic repositories for commercial high-level radioactive waste and spent nuclear fuel will be available when needed; and
- high-level radioactive waste and spent nuclear fuel generated in reactors licensed by the NRC is and will continue to be managed and stored in a safe manner without significant environmental impact until sufficient repository capacity is available to assure the safe disposal of such high-level radioactive waste and spent nuclear fuel.

*May 2013*

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