COMMENTS
ON BEHALF OF ENERGY COMMUNITIES ALLIANCE

SUBMITTED TO THE
U.S. DEPARTMENT OF ENERGY
ON
INVITATION FOR PUBLIC COMMENT TO INFORM THE DESIGN OF A
CONSENT-BASED SITING PROCESS

JULY 29, 2016
GENERAL COMMENTS ON THE CONSENT-BASED SITING EFFORT
AND ECA RECOMMENDATIONS

The Energy Communities Alliance (ECA) supports efforts by the federal government to actively address – and prioritize – the management and disposal of legacy high-level waste (HLW) and spent nuclear fuel (SNF). The local governments and communities of ECA, those that are adjacent to or impacted by DOE activities, have long played a key role supporting the country’s national security efforts with the understanding that the legacy waste from the Cold War would ultimately be disposed of in a safe and timely manner in a geologic repository. Our local communities are currently the de facto storage sites for defense waste as the political stalemate in Congress and the Administration continues.

ECA supports moving ahead with the Yucca Mountain licensing review – not only because it is the law – but the site has been analyzed and studied, billions of taxpayer and ratepayer dollars have been spent, and science should be the basis of decision-making. A parallel consent-based siting approach authorized by Congress may help resolve the current political impasse, avoid incurring billions of taxpayer dollars in projected future liabilities, and allow nuclear waste to be moved out of our communities as safely and expeditiously as possible.

DOE’s proposal for a phased, adaptive consent-based siting process that “endorses that prospective host jurisdictions must be recognized as partners” is to be commended for engaging local governments, communities and other impacted stakeholders in waste decisions. ECA supports a consent-based approach that ensures:

- Decisions are based on sound science and meaningful collaboration;
- Interested communities, states and/or tribes volunteer and can work to establish mutually agreeable and binding terms under which they will host a nuclear waste facility;
- There is flexibility, transparency and opportunities throughout the process for public input.
However, the proposal in its current form fails to convey a sense of urgency and specific information that can help potential host communities understand how and when the process will move forward or what resources will be available. More guidance from DOE – such as identifying suitable geologies and geographies – could be provided now without compromising the fairness or inclusiveness of the process.

ECA offers the following overarching recommendations:

1. Finish the Yucca Mountain licensing review and pass legislation to modify the Nuclear Waste Policy Act (NWPA) and allow alternative sites – including Yucca Mountain – for interim storage or permanent disposal to also be considered.

2. Continue working with local governments to identify components for consent.

3. Identify the necessary process – including the order that each step should be accomplished – to move a consent-based siting process forward.

4. 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 involved 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.

6. A new entity focused solely on HLW/SNF nuclear waste management should be established and empowered to consent on behalf of the federal government.

7. DOE should develop an initial list of the type of incentives/compensation for host communities for taking on this mission.

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.
In addition, ECA recommends that if tangible progress cannot be made in a timely manner, the federal government should provide funding to the communities that have become de facto interim storage sites for both defense high-level nuclear waste as well as commercial spent nuclear fuel to offset the impacts of storing waste beyond the timeframe originally expected.

ECA greatly appreciates the efforts made by Acting Assistant Secretary John Kotek and his colleagues in DOE’s Office of Nuclear Energy to make nuclear waste management a priority and identify a publicly supported path forward. Our members support the federal government’s goal to develop a consent-based path forward for the management and disposal of legacy high-level waste and commercial spent nuclear fuel. Local governments, communities and the public must have an opportunity to help shape policy and be formally engaged on any preferred alternative DOE proposes in pursuit of a consent-based siting process.

DOE’s current effort has succeeded in creating momentum again around nuclear waste management and disposal. DOE should work with Congress to build support and ensure resources go out to the local governments of potential host communities as soon as possible in order to maintain that momentum. This will allow those that will be most directly impacted to provide education and outreach, determine whether there is support for hosting an interim storage or disposal site and identify the terms under which they will provide consent.

ECA input on the specific questions posed in the Federal Notice follow in Appendix A.
APPENDIX A: ECA RESPONSES TO QUESTIONS IN THE FEDERAL REGISTER

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 following input on the five questions outlined in the Federal Register Notice inviting public comment (set forth in bold) on designing a fair and effective consent-based siting process. ECA looks forward to providing any assistance we can as your work continues.

1. **How can the Department ensure that the process for selecting a site is fair?**

To ensure that a consent-based siting process if viewed as “fair,” state, local and tribal government engagement is critical at all steps in the process — beginning with the development of the vision, refining the goals and priorities, and anytime conflicts arise. All parties must take the necessary steps to develop and maintain trust, accountability and transparency.

Trust is paramount and an integral part of fairness. The degradation of trust in DOE has been highlighted since the Blue Ribbon Commission on America’s Nuclear Future was announced and throughout DOE’s current effort to develop a consent-based siting process. DOE’s decision in 2010 to withdraw the Yucca Mountain license application, failure to meet cleanup milestones across the nuclear weapons complex, the effort to terminate the MOX project in South Carolina, each is an example of a decision that negatively impacted public trust that DOE can manage and dispose of nuclear waste or enter into a legally enforceable consent-based siting agreement. Without trust, public acceptance and political support will be difficult to develop and maintain over time.
In 2009, President Obama issued the Memorandum for the Heads of Executive Departments and Agencies 3-9-09\(^1\) stating:

“Science and the scientific process must inform and guide decisions of my Administration… The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. The selection of scientists and technology professionals for positions in the executive branch should be based on their scientific and technological knowledge, credentials, experience, and integrity.”

DOE should ensure moving forward that this is the basis that will be used in developing a fair consent-based siting process for nuclear waste facilities and policy development.

In addition, any “fair” consent-based siting decisions must be made through a process that allows affected local and state governments to decide whether, and on what mutually agreeable terms, the affected communities will host a nuclear waste facility. Local and state governments are critical in decision-making as they, along with the federal government, are responsible for protecting the health, safety, economic-viability and quality of life of the public and the environment. Ultimately, however, the process can be deemed “fair” if a fully informed community volunteers to host a nuclear waste facility and chooses to enter into a legally enforceable consent-based agreement.

To ensure that affected local governments and their communities make informed decisions, they must be educated on all aspects of a potential project. A local government needs to have a full

understanding of the benefits and risks that are associated with siting, constructing, operating and hosting a nuclear waste storage facility.

To that end, financial resources must be provided as early as possible to local governments in potential host communities to provide outreach and education. With information, local governments can educate their citizens and citizens in adjacent communities and help to identify for federal policy-makers and regulators key community issues. More specifically, these resources are necessary for local governments to hire their own third party experts that work for the local government to undertake independent analyses, develop educational materials for distribution, and to create their own opportunities for public comment. Local values, concerns and priorities must be taken into account when decisions are made. This will also help local advocates have the resources and experts to address the inevitable political and public concerns related to the siting of a nuclear facility.

2. **What models and experience should the Department use in designing the process?**

At the federal level, the NWPA provides a good starting point for consideration of how local governments have been engaged in nuclear facility development. The aspects of the law related to siting and developing nuclear waste facilities can help potential host communities better understand what resources they may need, what resources or incentives they may want, and how those resources can be used.

Specifically, the NWPA allocated dedicated funding for “affected units of local governments,” to help:

- Provide resources to permit the local community to hire third-party scientists to review data and increase public confidence in the scientific integrity of a project;
- Provide impacted citizens with the information and means to interact with the federal government and any operator; and
- Demonstrate a commitment to external oversight over nuclear projects.
In addition, the amendments made in 1987 to the NWPA that created the Office of the Nuclear Waste Negotiator could be used as a model for phased resource allocation. The Nuclear Waste Negotiator was empowered to find a state or Indian tribe willing to host a repository or monitored retrievable storage (MRS) facility, and to negotiate the terms and conditions with a governor of a state or governing body of an Indian tribe under which a prospective host would accept a facility. ECA recommends that any law include local governments as eligible entities. In conjunction with the creation of the negotiator’s office, the Secretary of Energy was authorized to make grants of financial assistance to states and tribes to assess site feasibility in their jurisdictions. The grants were divided into two categories: Phase I (preliminary) and Phase II (advanced). Under Phase I, grantees could receive up to $100,000 for use over a six-month period “to develop an understanding of the nuclear waste management system and to determine if they have a real interest in pursuing feasibility of hosting an MRS facility.” Under the two stages of Phase II, grantees could receive up to $3 million more to support a more detailed examination of site feasibility. By the end of the first stage, a governor or chief executive of an Indian tribe had to inform the negotiator that one or more areas had been identified as potential MRS sites. By the end of the second stage, feasibility studies would continue as formal discussions and negotiations for a proposed host agreement got underway.

ECA also recommends looking at how the federal government reached out to interested states and local governments under the Global Nuclear Energy Partnership Initiative (GNEP). In 2006 and 2007, DOE sought out local governments interested in hosting new nuclear energy reprocessing facilities, awarding a total of close to $16 million in grants to conduct siting studies. Many communities expressed interest and some of the data collected through their siting studies could still be used. The GNEP initiative also provides an example of communication failure that needs to be avoided – various ECA communities only learned through their local media outlets that the initiative was no longer being pursued rather than hearing that message from DOE officials directly.

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As many have noted, the Waste Isolation Pilot Plant (WIPP) provides useful lessons learned – from who was involved in the negotiating, designing transportation routes to avoid specific communities and ensuring an oversight role for the state and impacted local governments hosting the facility. It is worth noting a 2008 presentation by a DOE Carlsbad Field Office official outlining the keys to the successful siting and licensing of WIPP:

- Recognition of a national need to clean up the nuclear weapons complex.
- Existence of a “clear” benefit for citizens of the state and community in which the repository is sited.
- Solid local support (with “clout”).
- Competent technical oversight by the state of New Mexico.
- Intense and early outreach.
- Rigorous quality assurance from the earliest stages of the project such as traceability, transparency and independent review to facilitate the open discussion of technical and scientific if they arise.
- Reliable and powerful local political support prior to the licensing and construction is worth any cost.

ECA encourages DOE to look at international efforts for lessons learned. In Finland, for example, the local government at the potential site host held a vote to determine whether there was a majority in favor of siting the repository there, and a negotiated compensation package for the hosting local government provided local infrastructure funding, the creation of a business investment fund, a direct loan to the local government to address budget issues and the purchase of local resources by the federal government.

The process used in Sweden similarly provides good models. That country’s initial “top-down” approach wherein sites were identified rather than volunteers sought failed. Once a voluntary
siting process was implemented, municipalities involved in the feasibility study phase were able to set up organizations to follow the work being done by the Swedish Nuclear Fuel and Waste Management Company (SKB). Municipalities were allowed access to monies in the Swedish Nuclear Waste Fund\(^3\) to facilitate participation in the process by conducting their own studies and, in at least one case, by hiring consultants to assist in the technical review of the project.\(^4\) Municipalities also were given the veto power to end their involvement in the process. Municipalities held referendums to determine whether to continue in the siting process.\(^5\)

According to information provided to the BRC by the former site manager for SKB site investigation at Forsmark:

> [SKB] set a goal to get in touch with every resident within ten kilometers. They met people in their own homes. Public meetings have been held once or twice every year, with greater than 100 residents attending. Several free two-day facility tours have been arranged and about 20 percent of residents have participated... An annual poll is conducted on public opinion on the Forsmark site with acceptance increasing over time. Opposition has also decreased from 27 percent down to 10 percent. The process continues and will never be complete.\(^6\)

ECA recommends also looking at the process in Australia. One aspect to consider is the government’s commitment to comprehensive community engagement “about all aspects of the project including technical and heritage assessments, site design and an assessment of how the community can benefit from the project going forward. The Government will also work with the

\(^3\) Swedish Nuclear Waste Funds were distributed through the municipality.

\(^4\) Minutes of the Meeting of the Disposal Subcommittee of the Blue Ribbon Commission on America’s Nuclear Future in Forsmark, Sweden. 23 October 2010. [http://www.brc.gov/sites/default/files/meetings/minutes/forsmark_meeting_minutes102311.pdf](http://www.brc.gov/sites/default/files/meetings/minutes/forsmark_meeting_minutes102311.pdf)


\(^6\) Mr. Kaj Ahlborn at the Meeting of the Disposal Subcommittee of the Blue Ribbon Commission on America’s Nuclear Future in Forsmark, Sweden. 23 October 2010. [http://www.brc.gov/sites/default/files/meetings/minutes/forsmark_meeting_minutes102311.pdf](http://www.brc.gov/sites/default/files/meetings/minutes/forsmark_meeting_minutes102311.pdf)
community to understand and address any other concerns they may have.” In addition, the Government has stated it will establish a Regional Consultative Committee at the chosen site with ongoing direct engagement with the Department and its project consultants, and the establishment of a local office in the host community. The Government also committed to creating a Community Benefit Package in response to concerns raised during the initial consultation phase and “to support local communities in the period before the final site is confirmed.” The package is designed in recognition of the community’s contribution to hosting the site and any short term disruption that the detailed assessment may involve. Up to $2 million will be provided to the community for projects that encourage local economic and social activity. Projects will be selected through a competitive process, and funding will be given to those that will lead to a strengthening of social and economic outcomes in the community.

This Community Benefit Package will be delivered regardless of whether the facility is ultimately sited in the community. The Australian government specifically notes that the Community Benefit Package is separate and in addition to the $10 million National Repository Capital Contribution Fund which would come into effect once the facility is operational. Finally, the government has made the guidelines for receiving grants under the program very clear and assessable.8

The role for potential host communities in Canada’s process can also help inform DOE’s consent-based siting process. The Nuclear Waste Management Organization in Canada notes that “Potentially interested communities may explore their interest in the project in the way they see fit, with the support of the NWMO, and with funding available to seek independent advice and peer review, and to involve residents in the community, at each stage.” ECA also notes that the Canadian government has done a good job of outlining the different phases of their program and what each phase will entail. That level of information is very helpful for potential host communities to have at the outset so stakeholders know what to expect and understand that the government has a comprehensive approach over time.

3. **Who should be involved in the process for selecting a site, and what is their role?**

Local governments are responsible for education and outreach to the community; education and outreach to state, regional, federal decision-makers and industry; negotiation on behalf of the potential host community; protection of public and environmental health and safety; and securing a viable economic future. The meaningful involvement of the local government in a potential host community will ensure that local values, concerns and priorities are meaningfully considered as a site is selected and a consent-based agreement is negotiated.

State governments are responsible for ensuring the safety of operations and protection of the environment and public health; serving as ‘co-regulators’ in various aspects of regulation, permitting and operations; and being national partners with the federal government in a federal system.9

Local governments are uniquely positioned to negotiate conditions for hosting a site on behalf of the impacted community; as is a Governor for the impacted State. Experience has shown that support by one without the other will prevent successful siting so they must work together. Both will also need to work with the federal government, regulators, and private companies and both will need to be given resources to participate fully throughout the consent-based siting process. 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.

ECA encourages DOE to look at what was proposed in the Nuclear Waste Administration Act of 2013:

> “…A potential storage site will be eligible for evaluation if recommended by a Governor or duly authorized official of the State in which the site is proposed to be located; each affected unit of general local government; and any affected Indian tribe. The head of a new waste management organization (the Administrator) must then submit a program plan that includes, among other

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9 Environmental Council of the States (ECOS) Resolution Number 12-6
things, a schedule for removing the spent fuel from and decommissioning of the storage facility and an estimate of the cost of any financial assistance, compensation, or incentives proposed to be paid to the host State, Indian tribe, or unit of local government.

For repositories, the Administrator would consider for review sites recommended by ‘the Governor or duly authorized official of the State in which the site is located; the governing body of the affected unit of general local government; the governing body of an Indian tribe within the reservation boundaries of which the site is located.’ The Administrator may also seek out sites to review, but must still consult with and get consent from the parties named above.

Before selecting a site for characterization, the Administrator will hold public hearings in the vicinity of the site and at least one other location within the State where the site is located. The purpose of the hearings is to inform the public and the proposed characterization activities and to solicit public comment and recommendations. The Administrator must also enter into a consultation and cooperation agreement to provide ‘compensation … for any potential economic, social, public health and safety, and environmental impacts associated with site characterization.’ Under the consultation and cooperation agreement, financial and technical assistance must be given to enable the State, any affected units of local government, and any affected Indian tribes to ‘monitor, review, evaluate, comment on, obtain information on, and make recommendations on site characterization activities.’

Before making a final determination, additional public hearings must be held. Prior to submitting a license application, the Administrator will enter into a consent agreement ratified by law that expresses the consent of and contains the terms and conditions on which each State, local government, and Indian tribe consents to host the repository or storage facility. Once ratified, the consent
agreement can only be amended or revoked through mutual agreement of the
parties.”

Furthermore if the government decides to formally create any advisory boards around a potential
site, ECA urges that it include a representative from the local government of the potential host
community and a representative of the potential host State. 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. Specifics as to who
is eligible for these boards and their responsibilities should be defined in legislation to promote
accountability.

As the BRC advised, “a good gauge of consent would be the willingness of the host local
government and state government to enter into legally binding agreements with the facility
operator, where these agreements enable states, tribes, or communities to have confidence that
they can protect the interests of their citizens.”10

4. **What information and resources do you think would facilitate your participation?**

While the public meetings DOE is hosting across the country are an important part of defining a
consent-based siting process, DOE itself needs to provide more specific information so that
potential hosts can understand what they should really consider and to reduce the number of
unknowns. For example:

- How will “consent” be defined?
- What are the steps necessary and the order in which those steps need to be taken in order
  for sites to be chosen a consent-based agreement to be reached?
- Who will receive resources for public outreach and education programs and feasibility
  studies and how will that be determined? Will a specific level of support (state and/or

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local) be necessary to be eligible for the funds? What is that level, how will it be measured and who decides if it exists?

- What kind of outreach and education will be acceptable – how will that be determined and by whom?
- How much financial assistance will be available – equal amounts to all volunteers or differing amounts depending on the program proposed (borehole vs. interim storage site vs. permanent geological repository) or the proximity of the community to the proposed facility?
- What will be required in a funding proposal?
- Can a community apply to do R&D related to waste storage and disposal even if they are not interested in potentially hosting a facility?
- What terms or incentives is the federal government willing to negotiate as part of a consent-based siting agreement? Is anything off the table?
- Are there specific geologies and geographies that are preferred or will not work?
- Will there be preference given to a site that is interested in hosting both an interim storage facility and a permanent geologic repository?
- When can a community/state withdraw from the process?
- Who in the state will need to sign a consent-based siting agreement with the federal government?
- Who in the federal level will have ultimate authority for signing a consent-based siting agreement?

The universe of possibilities needs to be whittled down to make the process more efficient and take into account political, technical and economic limitations.

In addition, financial resources are necessary so that interested local governments and trusted individuals within a community can engage with the community at large now. Education and outreach efforts may include:
- Hosting meetings for the community with site managers, contractors, utilities and economic development entities;
- Creating public information centers and campaigns online and in community centers;
- Coordinating programs with local universities and community colleges;
- Building websites and producing written materials for distribution – such as fact sheets or issue briefs – that explain the pros and cons of nuclear initiatives.

Without resources, a potential host cannot specifically identify where there is support, the issues creating opposition or what it needs and wants from the federal government, regulators and private contractors that will construct and operate a facility. Support can only be built if a potential host community understands the process, can choose independent experts to supply scientific data and, most importantly, if the community trusts that its interests, concerns and priorities are being recognized and meaningfully considered.

5. **What else should be considered?**

One very clear challenge that must be addressed in terms of who should be involved is defining “stakeholder” versus “interested party.” The difficulty is evident when we look at Yucca Mountain – the local communities around Yucca Mountain say they have consent for the repository, yet parties not immediately impacted by the facility say they do not. One proposal to consider: “stakeholders” are impacted parties located within a specific geographical radius of a proposed facility; “interested parties” are those outside of that radius. The weight each of these groups will have in determining whether there is consent at each phase of the process needs to be clarified before a consent-based siting process is implemented.

**Conclusion**

ECA urges DOE to consider the public comments that are submitted along with all available lessons learned – from Yucca Mountain to WIPP to international efforts – and develop a feasible plan that can be carried over from this administration to the next. The mission is clear; the
vision for getting there needs to be as well. Policymakers need to find the balance between science and politics, to gain access to assured funding and ensure that the process is transparent, flexible and fair – these are the necessary components for rebuilding trust.