

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes. The flag is draped and appears to be moving, with the stripes creating a sense of depth and motion. The colors are vibrant, with the red and white stripes and the blue field with white stars.

Options for Financing and Managing the U.S. Nuclear Waste Program

Joseph S. Hezir

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Agenda - - Key Points

- DOE Management and Budget is Restricted by Structural Issues
- Enhanced Management and Budget Functional Authorities Needed to Facilitate a Restructured Program
 - History of NWF budget controls and applicability of Pay-As-You-Go (PAYGO) requirements
- Alternative Organizational Structures Merit Consideration, to Improve the Linkages Between Functional Authorities and Organizational Structure

Structural Limitations Impacting DOE Management of Large Capital Projects

- For two decades GAO has consistently designated DOE contract management as a “high-risk” area. Four main underlying factors:
 - Unclear or changing missions
 - Incremental funding of capital projects
 - Flawed system of incentives, both for DOE employees and contractors
 - Lack of sufficient DOE personnel with appropriate skills to effectively oversee contractor operations

GAO attention is focused on NNSA and Environmental Management, two programs with similar characteristics to Nuclear Waste Management

Structural Limitations Impacting DOE Budgeting for Large Capital Projects

- Operating and capital funds are co-mingled
- Capital costs are incrementally funded
- DOE, OMB and Appropriations Committees have been unable to establish and adhere to multi-year budget planning

Lack of an effective capital budget process is not conducive to managing a large scale, long term commercial-type enterprise

Key Elements of any Organizational and Management Plan for Nuclear Waste Management

1. Policy Coordination
2. Personnel Management
3. Legal Services
4. Contracting Authority
5. Finance
6. Budget

Enhanced authorities and resources in each of these functional areas is essential to an effective waste management program

Policy Coordination

Objectives

- Access to the Secretary of Energy
- Participation in White House and interagency policy councils

Policy coordination is facilitated if nuclear waste management remains within DOE. Special provisions will be needed if waste management program is housed in a separate new organization

Personnel Management

Objectives

- Compensation packages to attract and retain personnel - - especially at senior executive levels
- Flexibility in hiring/firing

Requires at a minimum, limited exceptions from federal personnel requirements

Legal Services

Objectives

- Independent legal counsel (separate from DOE GC)- - if program is retained within DOE
- Independent legal representation (separate from Justice) in dispute resolution and litigation matters

TVA is an Appropriate Model for a
Government Corporation Structure

Contracting Authority

Objectives

- Ability to execute multi-year service contracts, backed by the Nuclear Waste Fund, but not subject to appropriations.

Examples:

- Contracts for third party provision of used fuel storage, transportation and processing services
- EPC contracts for construction of used fuel storage and disposal facilities
- Facility operations and maintenance contracts for government-owned facilities
- Sales contracts for recycled used fuel

Requires exemption from Anti-Deficiency Act, Federal Acquisition Regulation (FAR) and possibly Competition in Contracting Act (CICA).
R&D and management support service contracts need not be exempted

Finance

Objectives

- Ability to both borrow and lend (loans and loan guarantees)
 - Borrowing authority in the form of revenue bonds
 - Loan and loan guarantee authority modeled on the Federal Credit Reform Act
- Ability to enter into joint venture arrangements that share costs, risks and benefits
- Ability to leverage third party financing through “bankable” contractual arrangements.

Existing NWPA borrowing authority should be exempted from appropriations caps. New loan and loan guarantees authority needed, backed by NWF but not full faith and credit of U.S. Government.

Budget

Objective

- Flexibility from annual appropriations caps, but balanced with Administration and Congressional oversight

Requires restructuring of the NWF to function as a true trust fund

NWF: Evolution of Budgetary Controls

- 1974 - - Congressional Budget Act - - Established the Congressional budget process and established controls on budget impoundments (a limited form of line item veto)
- 1979 - - Carter Administration Interagency Review Group (IRG) recommended establishment of a trust fund for Nuclear Waste Management
 - Key concept was that receipts and expenditures would be managed within a single fund
 - Federal budget footprint would be measured on the basis of net cash flows
- 1982 - - Nuclear Waste Policy Act
 - Senate Energy Committee - - Authorized the NWF as a trust fund, exempt from appropriations and exempt from Congressional Budget Act
 - House Energy Committee - - Authorized the NWF as a Special Fund, subject to annual appropriations
 - Both Houses authorized limited borrowing authority, subject to appropriations

NWF: Evolution of Budgetary Controls

- 1985 Graham-Rudman-Hollings Act: Established the Sequestration Process (across-the-board automatic spending reductions)
 - In the implementation process, OMB decided to “split” the NWF for sequestration purposes - - put NWF spending under GRH control
 - Objective was to maximize the base of federal spending subject to sequestration
- 1990 Budget Enforcement Act
 - Classified the budget between discretionary (appropriations) and direct (mandatory) spending
 - Carried over GRH classifications
 - NWF spending was “discretionary”, but fee receipts were mandatory spending (i.e. NWF fees were budgeted as negative spending)

Concept of a unified NWF was now subject to two different sets of Budget Rules

NWF: Current Budget Situation

- NWF has \$24B, increasing at a rate of \$2B per year. Funds are currently held in various types of Treasury securities.
- Any expenditure of these funds require an appropriation, which has to be counted (or scored) against current budget caps and deficit limitations.
 - Budget caps are set based on current revenue streams, and do not credit past revenues
 - Every dollar of NWF spending has to compete with every other dollar of discretionary spending within the discretionary budget cap, even though NWF spending is self-financed whereas other spending is financed from general tax revenues
- The annual 1 mill per kwh fee is required by current law to be paid by nuclear utilities, irrespective of current level of government waste management services

Options for Restructuring the NWF

- Re-establish the Unified Trust Fund Concept
 - Re-classify the NWF fees as an “offsetting collection”, which enables it to be credited against appropriations (analogies: NRC, FERC)
 - Authorize direct expenditures from the NWF without appropriations - - Revolving Fund Concept (analogies: Bonneville Power Administration and TVA Fund)
- Move the NWF “Off-Budget”. There are different degrees of off-budget.
 - Exemption from appropriations caps
 - Exemption from sequestration
 - Exclusion of NWF funded limitations from federal budget totals
 - Exclusion of NWF legislation from PAYGO rules

NWF: Changing the Budget Status Quo is Subject to PAYGO

- Pay-As-You-Go (PAYGO) is a requirement that any legislative change to current law, affecting mandatory spending or revenues, requires a budget offset.
- PAYGO requirements apply to:
 - Initial budget year
 - 5-year cumulative total
 - 10-year cumulative total
- PAYGO would apply to any legislative proposal that:
 - Authorizes direct expenditures from the current \$24B corpus
 - Authorizes any change in the 1 mill fee

PAYGO is a significant obstacle to any financial restructuring of the NWF

Organizational Considerations - - What is the Appropriate Framework for Housing Enhanced Functional Authorities?

1. Enhanced DOE Program Office
 - Retains Current NWPA Framework, but is restricted by current Department-wide structural issues
2. Semi-Autonomous Administration within DOE
 - Independent operational capability, but subject to Secretarial policy control
 - Bonneville Power Administration and the Senate-proposed Clean Energy Deployment Administration (CEDA) are possible models (National Nuclear Security Administration (NNSA) has limited applicability)
3. Independent Government Corporation or Enterprise
 - Consistent with public management concepts
 - Supported by many stakeholders and independent studies
 - TVA is a possible organizational Model
 - Proposed Legislation (Voinovich Bill)

Linkages Between Organization and Functions

- The recommended functional authorities would be facilitated by a government corporation structure - - but they could work within a semi-autonomous administration as well.
- Although there is a body of academic work on government corporations, there is relatively little government guidance.
 - Truman Administration Policy
 - Clinton Administration OMB guidance
 - Both provide justification for establishing a government corporation
- Selecting an organizational structure does not automatically convey a specific set of functional authorities - - they must be specifically articulated.
- Finally there is the issue of sequence and timing between policy changes and management changes. Should policy and facility siting be set before management changes are phased-in, or should they be pursued together?

Record of Support for Restructuring Organizational Management and Budgeting

DOE Advisory Panel on Alternative Means of Financing and Managing Nuclear Waste (AMFM) (1984)

- FedCorp
- Off-Budget NWF

DOE AMFM Update (2001)

- 3 Organizational options - - Enhance and program, autonomous administration, or independent authority
- Revolving fund, supplemented with revenue bonding authority

General Recommendations in Support of Budget and Management Restructuring

- National Association of Regulatory Utility Commissioners (NARUC)
- National Council of State Legislatures (NCSL)
- National Commission on Energy Policy
- Nuclear Energy Institute
- MIT: Future of the Nuclear Fuel Cycle