

Policies and Processes for Implementing a National SNF/HLW Strategy in Our Federal System of Government

Western Governors' Association:

Presentation to the Blue Ribbon Commission Disposal Subcommittee (July 7, 2010)

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Introduction

The Western Governors' Association greatly appreciates the June 11 invitation from Mr. Hagel and Mr. Lash to appear at your first Disposal Subcommittee meeting. As the inquiry of this Subcommittee and the full Commission proceeds, we hope to have further opportunity to provide input in areas where Western states have significant experience.¹

I am Program Manager for the Western Interstate Energy Board's (WIEB) High-Level Waste Committee. I am here to represent the Western Governors' Association, which represents the Governors of 19 western states and 3 U.S. Pacific Flag islands. Joining me is Shanna Brown, Director of the Washington D.C. Office of the Western Governors' Association.

Through the Association, the Governors coordinate policy among western states in several areas, including policies for the back end of the nuclear fuel cycle. The Western Governors have developed bi-partisan policies on a number of topics that this subcommittee and the full Committee will be considering. Additionally, the Governors have a Memorandum of Agreement with the Secretary of Energy for the transportation of TRU Waste to WIPP, and have long-standing cooperative agreements with the Department of Energy to engage in regional transportation planning for shipments of DOE-owned radioactive materials.

May 24 Letter to Secretary Chu

On May 24, the Western Governors' Association sent a [letter](#) to Secretary Chu, with copies to Misterys Hamilton and Scrowcroft. The letter makes clear that that this Commission's consideration of the nation's strategy for the back end of the nuclear fuel cycle is of serious interest in the West. It notes that Western states are arguably the best resource of experience and insight regarding policies and processes for successfully implementing a strategy for managing spent nuclear fuel (SNF) and high-level waste (HLW) in our federal system of government, and asks the Secretary to provide full opportunity for state government participation during this process. The letter adds: "To neglect the states' role in this process could undermine the effectiveness and public acceptability of any Commission recommendations."

We suggest participation by individual western and other states (as Nevada and New Mexico will do today), and, with the cooperation of DOE, participation on a regional basis, through the long-established regional planning process that has been endorsed by both the Western Governors and the

¹ For example, in the WIPP transportation campaign, the Western States worked together to reach agreement on issues such as transportation mode, transportation containers, vehicle safety inspections, contract carrier requirements, routing, state and local funding, public outreach and communications, infrastructure, security, preparedness training, and other operational protocols.

Secretary of Energy. The regional planning participation should extend both to the activities of this Commission, and to those of DOE and other agencies (e.g., Nuclear Regulatory Commission, Nuclear Waste Technical Review Board) that are considering issues that flow from the Administration's decision regarding the Yucca Mountain Project.

We also recommend that the Commission initiate an independent inquiry to provide the basis for a political and institutional approach to rebuild public trust in this policy area. At your last full Commission meeting, Matthew Bunn stated that this may be the most important contribution the Commission could make. We agree, and we have several further thoughts:

- In the U.S., an effective political and institutional approach must (largely) be designed around our federal system of government; public trust in federal initiatives is realized or lost through policies and processes of federal-state-local interaction.
- Whether the topic is disposal, storage or transportation, an essential resource regarding what has gone right and wrong and why are the state government officials who have lived with various parts of this policy, often for 15-20 years. There is a need to systematically assemble this experience and insight (as well as insight from other quarters) as a basis for designing a better political and institutional approach.
- This systematic review and assessment, plus the development of recommendations regarding the political and institutional approach for rebuilding public trust going forward, should be independently conducted. If it lacks the time and resources to do this itself, the Commission might cause it to be done by a qualified and prestigious third party.²
- Even if the review and consideration extends beyond the Commission's two-year time frame, the Commission could set scope, direction and expectations, and it could emphasize the crucial role of the political and institutional approach for implementation of any strategy for this policy area in our federal system of government.
- Meanwhile, as the Commission considers the type of entity needed for management of spent fuel and high-level nuclear waste, it should carefully consider what would enable such an entity to effectively follow-through on a long-term approach for rebuilding and maintaining public trust.

Why do we focus on the institutional and intergovernmental processes for implementation?

Institutional and intergovernmental processes are important in any major policy area, but are crucially important, we believe, regarding policies for the back end of the nuclear fuel cycle. Not only does the public dread highly radioactive waste and mistrust its federal program managers, but in no other policy area do federal policies cut so differently among states and localities. So, "fairness" can be perceived differently by different parties at different times, and the sense of fairness is difficult to establish and maintain. A good case can be made that the failures *and successes* in this policy area over the past 25 years are largely attributable to implementation policies and procedures—not directly or primarily to the technical strategy for high-level waste management.³

² Possibilities include the National Academy of Public Administration (NAPA) and the Governmental Accountability Office (GAO).

³ While we make a distinction between the strategy for managing SNF/HLW and the policies and processes for implementing the strategy in our federal system of government, past experience shows that it helps greatly in implementation if the strategy is integrated across waste streams (spent fuel, high-level waste, other streams such as Greater-Than-Class C wastes), across functions (storage, transportation, final disposal), and across legislative authority and funding.

What is the Western States experience?

Much of the experience over the past 25 years in implementing federal policy regarding spent fuel and high-level waste has involved Western states. This experience includes:

- Characterization for SNF disposal (both at Yucca Mountain, and at previously considered sites in Washington and Texas);
- Private and federally-sponsored interim spent nuclear fuel storage (New Mexico, Oregon, Utah, Wyoming);
- Interim storage of high-level defense wastes and DOE and Navy spent fuel (Washington and Idaho), and
- Transuranic waste generation, storage, transportation and disposal (the latter at WIPP in New Mexico).
- The West also has 13 operating reactors in six states, seven shutdown reactors in three states, 18 research reactors in nine states, 10 dry storage licensees in six states, and low-level radioactive waste facilities in Nevada, Texas, Utah, and Washington

As you review the list, consider the resource of ground-level experience and expertise of the state government officials who have engaged with federal and local governments regarding various elements in various circumstances, with both success and failure, often over 15-20 years.

How does this experience, properly assembled, apply to the several topics under the purview of this Commission?

We appreciate the daunting array of questions that will arise in your comprehensive review of policies for the back end of the nuclear fuel cycle, including options for permanent disposal and decision-making processes, and the need for additional legislation.⁴

In the context of the Nuclear Waste Policy Act, the Western Governors have, over the past 20 years, developed, periodically revisited and renewed policies asserting that commercial spent fuel should remain at reactor sites until:

⁴ In the disposal area, for example, questions include:

- How should site suitability screening be conducted? (Lessons from the processes conducted in the West and in the East.)
- Must the federal government consider alternative permanent disposal sites? How many, differing in what ways? To what stage should the alternatives be taken? Who should make the selection, on what bases? Under what conditions must states cooperate in initial site screening?
- Should the host state approve a permanent repository? Is state approval necessary (or the best way) to make federal agencies adhere to commitments over a long process of siting, construction, operations? At what stage(s) should approval be sought? Should state legislatures, governors, or publics (via referendum) approve?
- Should the National Academy of Sciences' "adaptive staging" recommendations be applied in repository construction and operation? Do these address the "camel's nose" issue? Can "adaptive staging" be conducted with a credible assurance that a site will be abandoned if/when it becomes apparent that specified conditions and standards may not be met?
- Is a credible (e.g. geologic repository) program for permanent disposal a necessary precondition for siting interim storage? (To allay the concern that "interim" will become "permanent".) If so, what would make a repository siting program credible to those being considered for interim storage?

- A permanent storage/disposal site is operational.
- DOE and the nuclear utility companies have worked with the corridor states to implement an acceptable transportation plan for shipping the waste to permanent storage or disposal sites.
- DOE and the nuclear utility companies have put into place adequate infrastructure capacity to handle, store, and dispose of this waste.
- DOE, the U.S. Department of Transportation and the nuclear utility companies have ensured adequate state and local emergency and medical responder training and resources in case of an accident or terrorist attack while shipping this waste.

Western Governors have also asserted that a federal or private interim storage facility should not be sited without written agreement from the affected state's Governor, and that federal agreements and cleanup commitments with states such as Colorado, Idaho, and Washington should be honored.

Behind these positions lie a great deal of sometimes painful experience regarding federal-state-local interactions, and the broader political and institutional approach for implementation that has been used in this policy area. We think that the lessons learned should be carefully considered and used as the basis for a new approach, which may require all of us to think anew.

Summary

To summarize, I would like to reiterate three key points on behalf of the Governors:

- That state governments (especially, perhaps, Western state governments) be invited to present their individual perspectives and positions regarding the task of this subcommittee, the other BRC subcommittees, and the full Commission.
- That DOE cooperate with the Western Governors' Association to enable state participation on a regional basis, through long-established institutional arrangements, including the very successful collaboration with DOE's WIPP program.
- That the Commission initiate a serious and independent inquiry to assemble ground-level experience and other insights needed as the basis for recommendations regarding how a national strategy should be implemented in our federal system of government.

Thank you very much for the opportunity to speak with you today.