

Nye County Staff Comments on the Disposal Subcommittee Report to the Full Commission, June 2011

General Comments: This Blue Ribbon Commission on America's Nuclear Future (BRC) is one of at least four commissions established by this administration; Washington-speak for we'll get back to you later. These commissions do not have the authority to establish policy or make law. A commission such as the Blue Ribbon Commission, operating outside of Congressional direction and to a significant extent, assigned a mission that is contrary to existing law, has little chance of impacting U.S. energy policy. Contrary to the Federal Advisory Committee Act, the BRC was directed by the Secretary of Energy to not consider any role for Yucca Mountain in its deliberations and recommendations for management of the back end of the fuel cycle. In avoiding any consideration of a possible role for Yucca Mountain in its recommendations for future actions, the BRC has ignored the intent of Congress documented in the Nuclear Waste Policy Act, as amended, (NWPA) and the 2002 law designating Yucca Mountain as the site for a repository for disposal of spent nuclear fuel (SNF) and high-level waste (HLW). This subcommittee has expended considerable effort to come up with recommendations that are very similar to the provisions incorporated into the NWPA. There is very little here that was not considered in the deliberations that went into drafting the NWPA. If you go back and review the historical perspectives presented to the whole committee at its first meeting it is fairly obvious that this BRC process has added little, if anything, new to consideration of the options for managing disposal of SNF and HLW. That is true for both this subcommittee report and the report of the Transportation and Storage Subcommittee.

Recommendation #1: *The United States should proceed expeditiously to develop one or more permanent deep geological facilities for the safe disposal of high-level nuclear waste.*

Comment: Concur. The existing NWPA establishes the framework for doing just that. This framework and the resulting decisions survived four administrations and fourteen Congresses, but are now being reconsidered for policy reasons. There can be no assurance that any new framework will not suffer the same fate.

Recommendation #2: *A new, single-purpose organization is needed to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste in the United States.*

Comment: Maybe. Any new attempt to establish disposal or interim storage facilities, will be met by many new and likely more vexing challenges, regardless of the organization or entity that is established to administer the effort. Any new attempt would require significant legislative action to amend or replace the framework defined in the NWPA. This process would likely require years to complete and delay implementation of any new program for transportation, storage, and disposal. Continuity of leadership is of paramount importance, independent of the organizational construct that may be adopted.

Recommendation #3: *Assured access to the balance in the Nuclear Waste Fund (NWF) and to the revenues generated by annual Nuclear Waste Fee payments from ratepayers and utilities is absolutely essential and must be provided to the new nuclear waste management organization.*

Comment: Concur. This also applies to the NWPA as it currently exists. Assured access to funding is an issue that needs to be fixed regardless of how the nation proceeds. All previous attempts at legislation to accomplish this have failed. However, many of the potential recommendations such as long term storage onsite and central storage facilities will ultimately add additional costs such as repackaging every 60 to 100 years. Who will pay these additional costs?

Recommendation #4: *A new approach is needed to site and develop nuclear waste management and disposal facilities in the United States in the future. We believe siting processes for all such facilities are most likely to succeed if they are:*

- (1) Consent-based—in the sense that affected communities have an opportunity to decide whether to accept facility siting decisions and retain significant local control.*
- (2) Transparent—in the sense that all stakeholders have an opportunity to understand key decisions and engage the process in a meaningful way.*
- (3) Phased—in the sense that key decisions are revisited and modified as necessary along the way rather than being pre-determined in advance.*
- (4) Adaptive—in the sense that process itself is flexible and produces decisions that are responsive to new information and new technical, social, or political developments.*
- (5) Standards- and science-based—in the sense that the public can have confidence that all facilities meet rigorous, objective, and consistently-applied standards of safety and environmental protection.*

Comment: There is no need for a new approach; these principles are almost identical to those directed in the NWPA, or to those that evolved over time as the repository program proceeded under the NWPA. It is also important to note that constructive engagement with the local government is more likely than with the host state. Recent “failures” in the U.S. – the Private Fuel Storage facility on Goshute land in Utah and the Ward Valley low-level waste facility in California, for example – resulted from state opposition. In Sweden and Finland, two of the “success” stories held up as examples, there is no equivalent to a state involved in the process.

Recommendation #5: *The current division of regulatory responsibilities between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Environmental Protection Agency (EPA) is appropriate and should continue. In addition, we urge that new, site-independent safety standards be developed by the two agencies in a formally coordinated joint process that actively engages and solicits input from all the relevant constituencies.*

Comment: Concur. Note that under the Energy Policy Act of 1992, this is essentially what happened, with the exception of Congressional direction to the EPA to make the standards specific to Yucca Mountain. The standards developed by the EPA were based on recommendations by an “expert panel” assembled by the National Academy of Sciences. This panel engaged in extensive and open public involvement in developing the basis for its report. The promulgation of the Environmental Protection Agency standard, the Nuclear Regulatory Commission regulation, and the Department of Energy siting guidelines all followed federal law for rulemakings, and withstood challenges heard in the Washington DC Circuit Court of appeals as to their legality. There simply is no approach to developing rules, other than to let the project opponents write them, that will satisfy the vocal critics. In no case is it reasonable to expect that “all the relevant constituencies” will be satisfied with the result.

Recommendation #6: *The roles, responsibilities, and authorities of local, state, and tribal governments (with respect to facility siting and other aspects of nuclear waste disposal) must be an element of the negotiation between the federal government and the other affected units of government in establishing a disposal facility. All affected levels of government (local, state, tribal, etc.) must have, at a minimum, a meaningful consultative role in important decisions; additionally, states and tribes should retain—or where appropriate, be delegated—direct authority over aspects of regulation, permitting, and operations where oversight below the federal level can be exercised effectively and in a way that is helpful in protecting the interests and gaining the confidence of affected communities and citizens.*

Comment: These provisions are embodied in the provisions of the Nuclear Waste Policy Act. The fact that the State of Nevada refused to enter into negotiations and take advantage of the possibilities under the Nuclear Waste Policy Act resulted in a failure of the affected governments to adopt a constructive approach in dealing with the DOE during the process. There is little doubt that more specific direction to the DOE and greater flexibility for the affected governments would have been useful.

Recommendation #7: *The Nuclear Waste Technical Review Board should be retained as a valuable source of independent technical advice and review.*

Comment: The NWTRB has made valuable contributions to repository science. The Board was created in the NWPA amendment of 1987 to evaluate the technical and scientific validity of Yucca Mountain and provide reports to Congress and the Secretary of Energy. It was never intended to be a policy body on the repository program, nor should it become one.