

STEVE FRISHMAN

COMMENTS ON DRAFT DISPOSAL SUBCOMMITTEE REPORT:

General Comment:

There is an issue that needs more attention by both this Subcommittee and the Subcommittee on Transportation and Storage. It is the question of who is a volunteer, or consenting entity for participation in a siting process. The commissioned paper, *“Options for Developing Public and Stakeholder Engagement for the Storage and Management of Spent Nuclear Fuel (SNF) and High Level Waste (HLW) in the United States”* acknowledges the issue of jurisdictions within jurisdictions but offers no specific insight to resolving the question in the U.S. The commissioned paper on Intergovernmental Relations also points out that local governments and state government are sometimes at odds on the acceptance of hazardous or risky facilities.

In the U.S., states have differing jurisdictional relationships with entities within the state. States’ relationships with Native American Tribal jurisdictions also vary in practice. And, in the case controversial potential nuclear facility siting near state borders, cross-border relationships also come into play.

Representatives of the Nuclear Energy Institute have related that in talks with communities that may be willing to host a spent fuel storage facility, progress cannot be made without the potential host community gaining the support of the would-be host state. Given the U.S. history with repository siting, this would appear to be a minimum condition, and may represent a starting point for the Blue Ribbon Commission to explore the question of who is a volunteer. In the alternative, the Commission may find it sufficient to describe the aspects of the issue and suggest it be taken up by existing or newly formed regional, state, and local policy councils.

Specific Comments:

Page 22 -23: Footnote 35 is missing and Footnote 36 is repeated.

Page 27 (final bullet): “There are several sound reasons for requiring, as is the case under current U.S. law, that wastes emplaced in a mined geologic repository be retrievable for a period of time after repository closure.” The Nuclear Waste Policy Act does not contemplate retrieval “after repository closure.” It speaks to permitting retrieval “during and appropriate period of operation of the facility.” Sec.122. The NRC licensing rule provides for the duration of the retrieval period.

Page 32, Footnote 48: I do not recall an earlier discussion of the OCRWM Science and Technology program.

Page 43: “The fee is collected from utilities that own or operate nuclear power plants and generally is passed on to utility ratepayers.” The 1.0 mil/kw fee is collected from ratepayers by the utility for nuclear-generated electricity consumed, and deposited to the Nuclear Waste Fund (or in a few cases held for future payment to the NWF). The utilities themselves do not pay the fee for electricity they consume, nor do they pay it on electricity lost due to line loss. This exemption is the result of litigation brought by utilities.

Page 49, Figure 11: The labels on the yellow and blue lines appear to be reversed.

Page 71: “In the final version of its Yucca Mountain regulations (10 CFR Part 63), however, NRC dropped the "reasonable assurance" standard of proof in favor of "reasonable expectation" with respect to the post-closure period, while retaining the “reasonable assurance” standard for the operation of the facilities during the pre-closure period.” “Reasonable assurance” and “reasonable expectation” are qualitative judgments, and it can be interpreted that NRC changed its language for the post-closure determination only to be consistent with the EPA language, as instructed by the EnPA. In the oral arguments for *NEI v EPA*, an attorney representing NRC was asked by a judge whether “reasonable expectation” and “reasonable assurance” have the same meaning. The answer was yes, they have the same meaning. NRC has a long history in its application of “reasonable assurance”, and there is no indication that it has developed any guidance for itself regarding “reasonable expectation” that makes it a lesser standard.