



Western Governors' Association Policy Resolution 11-3

The Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel

A. BACKGROUND

SPENT NUCLEAR FUEL AND HIGH LEVEL WASTE

1. This nation must dispose of or otherwise address the significant amounts of spent nuclear fuel and high-level radioactive waste. The federal government is responsible for the disposition and storage of this waste under the Nuclear Waste Policy Act (NWPA) of 1982. The NWPA requires the Federal Government to provide for the permanent disposal of spent nuclear fuel. Currently more than 61,000 tons of spent fuel is stored at or near nuclear power plants sites and research reactors in 38 states.
2. The President and the Secretary of Energy have formed the Blue Ribbon Commission on America's Nuclear Future to conduct a comprehensive review of current policies for the back-end of the nuclear fuel cycle and to make recommendations for a new plan, including additional legislation or amendments to existing laws.
3. More than 88 percent of the SNF at currently operating and shutdown reactor sites has been generated east of the 100th meridian, a line that extends across the Dakotas south through Texas and roughly corresponds to the region represented by the WGA. More than 93 percent of the SNF from currently operating and prospective reactor sites will be generated east of the 100th meridian. Given this distribution, current federal law for addressing spent nuclear fuel and high-level waste places a disproportionate share of the national burden on Western states.
4. Because of DOE's 1985 decision to combine the disposal paths for DOE-owned wastes and commercial spent fuel, disposal of DOE-owned wastes is now as uncertain and unresolved as that for commercial spent nuclear fuel. It is not the intent of this resolution to interfere with DOE's compliance with agreements that have been negotiated with the Western states for the cleanup of DOE sites and facilities which are contained as part of a court decree or settlement agreement, such as those now in place between DOE and the states of Colorado, Idaho and Washington.
5. The U. S. Department of Energy (DOE) originally projected that a deep geologic repository would be available for acceptance of spent nuclear fuel in 1998. It is becoming increasingly uncertain whether current efforts will result in an operating repository within the foreseeable future. In any event, spent fuel generated at U.S. commercial reactors will soon exceed the current statutory capacity limit for the federal repository (70,000 metric tons). Litigation and proposed federal legislation have increased pressure on the federal government to accept title to private reactor spent nuclear fuel under the NWPA.

6. The NWPA currently requires the owners and operators of nuclear power reactors to assume primary responsibility for providing interim storage of spent nuclear fuel. The Act requires that federal officials expedite the effective use of existing reactor storage facilities and the addition of needed new storage capacity, consistent with:
 - a. Protection of public health and safety, and the environment;
 - b. Economic considerations;
 - c. Continued operation of such reactor;
 - d. Any applicable provisions of law; and
 - e. Views of the population surrounding such reactor.
7. Past implementation of the NWPA appeared to be more focused on the development of a program to transfer waste for storage or disposal in the West rather than a national program whose disposal, storage and transportation components are logically interrelated.
8. Both DOE and the Nuclear Regulatory Commission (NRC) have determined that the technology for the safe, cost-effective, dry cask, at-reactor storage of spent fuel exists; dry cask storage facilities are operating at 55 sites in this country, and additional dry storage installations are planned at other reactor sites. Under its current regulatory authority, NRC can license a surface storage area for 20-40 years. The license may be renewed. NRC has determined that spent fuel can be stored safely for at least 100 years.
9. With the growing uncertainties over the current federal high-level radioactive waste repository program, it is becoming increasingly likely that there could be new federal initiatives involving centralized interim storage facilities for commercial spent nuclear fuel. Without an available permanent disposal site, there is no guarantee that an interim storage site will be temporary. There is no way to ensure spent fuel rods that are shipped to and stored at an interim facility will ever be removed.
10. At a private interim storage facility each nuclear utility that stores spent nuclear fuel will retain ownership and liability for its own waste, therefore, federal resources would not be available to enhance state and local infrastructure and emergency response capabilities. There is currently no provision for federal interim storage sites for commercial spent fuel, therefore, no such transportation requirements.
11. On February 21, 2006, the NRC issued a license to Private Fuel Storage, LLC, to operate a private interim storage site for spent nuclear fuel in Skull Valley, Utah, on land leased from the Skull Valley Band of Goshute Indians. However, the project could not proceed without the consent of the Bureau of Indian Affairs' (BIA) and Bureau of Land Management (BLM). In 2006, BIA disapproved the lease for the proposed facility and BLM denied right-of-way access across federal lands, but a District Court later remanded the issue back to the Department of Interior for further consideration.

WASTE ISOLATION PILOT PLANT

12. More than 90 percent of the existing inventory of transuranic (TRU) waste is located in Western states. At DOE facilities in Western states, millions of cubic feet of TRU waste -- some mixed with hazardous chemical waste -- await permanent disposal. Some are in

temporary retrievable storage, however, prior to 1970, much of this waste was buried in shallow trenches or discharged as liquid onto the ground, resulting in considerable contamination of both soil and groundwater. More waste will be generated as a result of continuing stewardship of the U.S. nuclear weapons stockpile, environmental remediation activities, and decontamination/decommissioning of aging facilities at DOE sites.

13. The Waste Isolation Pilot Plant (WIPP), located in New Mexico, was constructed to serve as a permanent repository for defense-related TRU wastes. On March 26, 1999, WIPP received its first truck shipment of TRU waste from the Los Alamos National Laboratory. The opening of WIPP occurred only after DOE demonstrated compliance with all applicable regulatory requirements and withstood several legal challenges.
14. The cleanup, transport and permanent disposal of radioactive and hazardous chemical wastes at DOE facilities continue to be issues of vital concern to the Western states. As the only permanent repository for defense-related TRU waste, WIPP is an integral component of DOE's national cleanup program and is critical to its success.

GREATER THAN CLASS C WASTE

15. The U.S. Department of Energy's (DOE) Draft Environmental Impact Statement (EIS) for Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste has identified six of the seven potential site candidates as being in the West. Many of these sites already have complex cleanup missions to ensure federal compliance with obligations to the states or a scope otherwise limited by federal legislation.
16. None of the DOE sites under consideration in the draft EIS contains a Nuclear Regulatory Commission (NRC) certified facility for disposal of low-level or GTCC waste. Since much of the GTCC waste is commercial waste and NRC regulated, the designation of such a non-NRC certified alternative for disposal would be inappropriate.

B. GOVERNORS' POLICY STATEMENT

GENERAL PRINCIPLES

1. In the event that centralized interim storage, either private or federal, is deemed necessary, no such facility, whether publicly or privately owned, shall be located within the geographic boundaries of a Western state without the written consent of the governor. Furthermore, DOE must provide reasonable transportation, safety and emergency response assurances to the Western states.
2. Any proposal to store or otherwise dispose of radioactive waste and/or spent nuclear fuel must be viewed as being part of an integrated program that considers all aspects of necessary operation and intergovernmental considerations. Specifically, transportation and logistical considerations should not be an afterthought to the siting process. For more on the transportation of radioactive waste and/or spent nuclear fuel, see policy 11-13.

3. Public participation and information sharing must be robust in all aspects of transportation system design and detailed campaign planning.

SPENT NUCLEAR FUEL AND HIGH LEVEL WASTE

4. It is the objective of the Western Governors' Association to support the options for the disposition of spent nuclear fuel, consistent with the principles of science, fairness, safety, environmental protection and equity. Congress and the Administration should recognize that most reactor sites are believed to have the capacity for additional on-site storage.
5. The Governors strongly encourage the U.S. Department of Energy to work cooperatively with the states in implementing a policy to ensure the safe transportation, storage, disposition or disposal of spent nuclear fuel and HLW and to comply with agreements which have been negotiated and entered into by a state's Governor regarding the management, transportation and storage of spent nuclear fuel and high-level radioactive waste.
6. The Governors support efforts by the federal government to examine alternative waste acceptance options, including but not limited to, providing funds to utilities for expanded on-site storage and taking title to spent nuclear fuel at individual reactor sites. The search for alternatives must not be construed as lessening the need to develop a permanent solution to the management and disposition of spent nuclear fuel.
7. Commercial spent nuclear fuel should remain at the reactor site until:
 - A storage/disposal site is operational or reprocessing is deemed viable by an independent review. However, siting of interim storage before deciding on a permanent disposal site(s) signals that interim storage could become a de facto permanent site(s).
 - 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.
8. The creation of interim storage sites would be a direct result of the Federal government's failure to begin accepting spent fuel on schedule. Therefore, the Governors maintain that it is the federal government's responsibility to ensure adequate preparation for shipments to these facilities, coordination with states, and provision of adequate funding to reimburse the states for costs associated with shipments to any interim storage facility, whether publicly or privately owned. The Governors consider it to be entirely appropriate to use the Nuclear Waste Fund to pay for these activities.

WASTE ISOLATION PILOT PLANT

9. DOE must continue to comply with both the letter and spirit of all applicable requirements specified in the WIPP Land Withdrawal Act (Public Law 102-579, as amended by P.L. 104-201).
10. DOE must comply with the U.S. Environmental Protection Agency (EPA) disposal standards and criteria in 40 CFR Parts 191 and 194. DOE's strict compliance with those EPA standards is imperative.
11. DOE must ensure timely and adequate funding to TRU waste characterization/certification activities at DOE sites in order to facilitate the timely, efficient cleanup of the U.S. nuclear weapons complex.

GREATER THAN CLASS C WASTE

12. Efforts to dispose of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste must not delay commitments by the federal government in meeting its cleanup obligations.
13. Any decisions regarding the identification of an existing or planned site to dispose of Greater than Class C and Greater-than Class C like waste must consider any authority of the regional low-level waste compacts and all applicable NRC requirements for certification to accept commercially generated waste.

C. GOVERNORS' MANAGEMENT DIRECTIVES

1. This policy resolution shall be specifically conveyed to the President of the United States, the Secretary of Energy, the chairman of the Nuclear Regulatory Commission, the Administrator of the EPA, the appropriate members and committees of Congress, and members of the Blue Ribbon Commission on America's Nuclear Future.
2. The WGA staff, in cooperation with the Western Interstate Energy Board, shall monitor implementation of this resolution and inform the Governors of progress towards meeting the Governors' objectives.
3. The Western Governors' Association shall post this resolution to its Web site to be referred to and transmitted as necessary.

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