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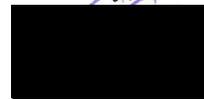
Honorable John Shimkus
Chairman, Subcommittee on Environment and the Economy
c/o Mr. Will Batson, Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Shimkus:

Enclosed are the State of Washington's responses to your additional questions pertaining to the May 15, 2015, hearing entitled "Update on the Current State of Nuclear Waste Management Policy." Because these questions primarily implicate policy, rather than legal, issues, I have worked with my state government clients to answer the questions. The enclosed answers are provided on behalf of my clients.

Thank you again for the opportunity to testify before the Subcommittee on Environment and the Economy.

Sincerely,



ANDREW A. FITZ
Senior Counsel



AAF:def
Enclosure

RESPONSES BY ANDREW A. FITZ, SENIOR COUNSEL
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
ON BEHALF OF THE STATE OF WASHINGTON
TO ADDITIONAL QUESTIONS TO THE RECORD
POSED BY THE HONORABLE JOHN SHIMKUS

For the May 15, 2015, Hearing on

“Update on the Current State of Nuclear Waste Management Policy”

Before the

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

- 1. As Congress moves forward to address the logjam associated with nuclear waste management policy, how can we protect the taxpayer to assure that total lifecycle system costs, including transportation, are not increased? What are some key principles to consider?**

Response: An overall “system plan” should be required of the implementing agency (currently the Department of Energy) that accounts for all aspects of the system and lifecycle, including siting, design, technical issue resolution, document development, construction, transportation, and public communication. These actions should be planned in detail, with cost and schedule for all parts of the system provided at the start, performance monitoring measures in place, and a requirement to develop and implement recovery plans when performance slips or unexpected technical issues arise. The plan should be subject to review and comment by impacted entities, such as generators that will ship waste to the repository, states impacted by the shipments (i.e., transportation routes), state and local communities around the repository, and technical experts. (A number of committees, national laboratories, and technical experts have been looking at many of these issues for years.) An independent agency or panel should be designated or appointed by Congress to report directly to Congress with its assessment of the plan. This “system” plan approach will provide accountability on the part of the implementing agency and provide Congress with a baseline for making appropriation decisions. It would expand on the similar, but more limited, planning and reporting requirements currently in 42 U.S.C. § 10134(e).

After the plan is in place, the implementing agency should have an ongoing reporting requirement to Congress. The independent agency or panel that reviewed the plan should also provide ongoing oversight of the project, with continued direct reporting to Congress.

To the fullest extent possible under the constraints applicable to Congressional appropriations, steady funding should be provided based on the plan, possibly on an overall “project” basis where the amount received each year is not subject to change (i.e., as a continuing appropriation from the Nuclear Waste Fund, if permissible, subject to Congressional rescission of the appropriation if circumstances warrant).

In terms of key principles to consider, we offer the following:

- Transportation decisions and public communication are of equal priority to siting and design in needing oversight, both fiscal and technical.
- There must be ongoing independent oversight of the process, preferably from a group that reports directly to Congress.
- The plan should be reviewed before authorizing final actions to design and construct.

- 2. The Nuclear Waste Policy Act codified the principle of “linkage,” in which an interim storage facility cannot be licensed prior to the licensing of a permanent repository. This concept assures that interim storage facilities will not become a “de facto” permanent repository. Do you agree with this principle?**

Response: We agree with the concern over approved interim storage facilities (ISFs) becoming potential “de facto” repositories. As things now stand, if such facilities are allowed, waste would be moved to ISFs before there is assurance that a permanent repository will be, or can be, developed. Further, as waste from multiple states is consolidated in a (presumably) smaller number of states, the political impetus to follow through on completing a permanent repository may diminish, making such completion less certain.

At the same time, the current situation has already created “de facto” interim storage facilities at every commercial reactor plant in the United States, as well as Department of Energy defense waste sites. This interim storage is not as safely planned as would be storage at a licensed ISF. Eliminating this storage is one of the primary purposes of the Nuclear Waste Policy Act (NWPA). *See* 42 U.S.C. § 10131(a)(2), (a)(7), (b)(1).

At present, it is unclear when a permanent repository will become available. The current Yucca Mountain licensing proceeding is in hiatus pending further appropriations. Even if the proceeding moves forward, there is no assurance that the Nuclear Regulatory Commission (NRC) will ultimately approve the Yucca Mountain license, or that other matters necessary to repository completion will align. If a different repository site is considered, it is not out of the realm to think that storage in the current configuration might continue for an additional 20 to 30 years—or even longer—based on experience to date with Yucca Mountain.

Given these considerations, we support the idea of potentially modifying the linkage between permanent repository licensing and creation of ISFs. While we believe there should be continued linkage to a permanent repository, we support moving forward with consolidated ISFs so long as reasonable progress is being made on a viable path forward toward one or more permanent repositories, as further outlined below.

- A. As noted, the current law prohibits the license of an interim site until a repository is licensed. Do you have additional suggestions as to how this process could be modified to provide for concurrent development as part of a nuclear waste management system?**

Response: At the outset, we note that modifying the current linkage may be unnecessary if the Yucca Mountain licensing process resumes in the near future and is not significantly further delayed. A license decision on Yucca Mountain would likely be made before the siting and licensing processes for any new ISF could be completed.

However, if this is not the case, we support modifying the linkage between permanent repository licensing and creation of ISFs. For the reasons outlined in response to the question above, we believe there should still be some linkage between ISF authorization and reasonable progress being made on a viable path forward toward one or more permanent repositories. One idea is to make this linkage through the “system plan” suggested in response to Question 1; e.g., conditioned on the plan being in place, a certain milestone in the plan being reached, or on project-basis appropriations having been provided.

Another consideration, which would apply to the development of both ISFs and permanent repositories, is to amend the NWPA to allow states to issue permits for both facilities, similar to the process that seems to have worked very well in New Mexico with respect to the Waste Isolation Pilot Plant. Outside of jurisdiction under the Resource Conservation and Recovery Act (RCRA) (which, if applicable, only relates to hazardous waste constituents), there is currently no formal mechanism for the states to have authority over high-level waste storage or disposal. A state regulatory role could be created either in tandem with NRC licensing, in concert with NRC licensing, or independent of NRC licensing. While adding another regulator might at first seem inapposite of a streamlining measure, it would ensure that the host state has a vested interest and a measure of control in the safe development and operations of the storage facility or repository. This has been a missing element in the Yucca Mountain project.

B. What sort of stipulations would be required to assure a permanent repository would be constructed? For example, do you support a maximum capacity limit on a consolidated interim storage site?

Response: In addition to the considerations outlined above, a maximum capacity could be used, or a prescribed time limit. If a time limit is used, there should be provision for the timely siting and development of replacement interim facilities before the prescribed limit is reached.

C. Do you support economic benefits and incentives for states and communities that offer to host an interim storage site?

Response: It is vital that economic benefits and incentives be part of the package. Such incentives appear to have worked well for the local communities around Yucca Mountain, which by all accounts still support the proposed repository. The difficulty seems to involve larger entities that have not seen a positive stake in the repository. Some of the concern has been over the political process, and some seems to be due to a failure to communicate how risks would be addressed. A strong communication process must be part of the repository approach. It must be undertaken from the outset of the project and must include continuous public briefings and meetings.

Economic benefits or incentives should extend beyond the local areas to include the larger state(s) around the proposed site (multiple states may be impacted), as well as travel corridors that impact potentially wide areas.

3. The Eddy Lea Energy Alliance recently proposed constructing an interim storage facility in Southeastern New Mexico. New Mexico Senator Martin Heinrich said, “I cannot support establishing an interim storage facility until we are sure that there will be a path forward to permanent disposal.”

A. Is the lack of progress on Yucca Mountain hampering our ability to move forward on interim storage?

Response: Yes. Until the process for siting, planning, and constructing a permanent repository is “fixed” (i.e., defined and underway, in contrast to the current functional stasis), no regional or state entity will likely be supportive of accepting waste on an “interim” basis.

B. Would an expeditious review of the Yucca License application provide more certainty for interim storage stakeholders?

Response: Yes. As outlined above, we expect that a decision on the Yucca Mountain application can be reached more quickly than licensing an ISF. Having the certainty of a decision on the proposed repository would greatly aid the decision making of states and other interested entities.