

November 1, 2011

The Honorable Lee Hamilton
Lieutenant General Brent Scowcroft
Co-Chairmen, Blue Ribbon Commission on America's Nuclear Future
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Dear Commissioners Hamilton and Scowcroft:

On behalf of the Council of State Governments' Midwestern Radioactive Materials Transportation Committee, we are writing to submit comments on the BRC's "Draft Report to the Secretary of Energy," published July 29, 2011. Our committee has previously provided testimony to the BRC's Subcommittee on Transportation and Storage (November 2, 2010) and commented on the Subcommittee's draft report (letter dated June 30, 2011). The Midwestern Radioactive Materials Transportation Committee includes gubernatorial and legislative appointees from the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. Our comments reflect the input of the committee members; individual Midwestern states may provide additional comments separately.

General Comments

A successful new program must recognize the interdependences of the transportation, storage, and disposal functions and allocate attention and resources accordingly. Too often with the past program, transportation suffered as a result of management decisions that did not reflect the integrated nature of the three program components. We are pleased that the BRC's report and recommendations acknowledge these interdependences by calling for "a new, integrated strategy for managing the back end of the nuclear fuel cycle" (p. xv).

The draft report refers generally to the timeframes contemplated for onsite storage (e.g., "expected to continue for some time" (p. xvi), "multiple decades up to 100 years or possibly more" (p. 38), "lengthy interim storage timescales" (p. 39)). These general references fail to alert stakeholders to the very real

possibility that, absent a major change in the current approach, spent fuel may remain in storage at existing or decommissioned plants for 120 or even 300 years. While storage for 120 years is mentioned a few times in the main body of the report, the only reference to a 300-year timeframe is buried in a footnote (#65, p. 140). The information in the footnote should be mentioned up front in the Executive Summary of the final report so that readers will fully understand that the NRC is contemplating on-site storage lasting for 120-300 years.

In addition to providing a section on "Near-Term Actions," it would be helpful if the report included a timeline indicating the estimated time frames for implementing the full set of recommendations. Such a visual depiction of all the recommendations and their interdependencies would help stakeholders understand the scale of the undertaking necessary to develop and implement the type of waste-management program the BRC envisions.

Comments on Transportation

State involvement: In our June 30 letter, the committee expressed appreciation for the Transportation and Storage Subcommittee's acknowledgement that state agencies and elected officials have played a vital role in ensuring the health and safety of the public and the environment. Indeed, experience has shown that a successful transportation program will require early and extensive involvement of state officials. We agreed with the Subcommittee's finding that state and other government officials "should be fully involved in the development of storage and transportation solutions and should be the primary interface with their communities" (Transportation and Storage Subcommittee draft report, p. 67). The BRC's draft report does not adequately capture the full extent of the states' role, which goes far beyond the statement in the Executive Summary that "[s]tate, local, and tribal officials must be extensively involved in efforts to communicate with the public and address these concerns [about transportation of nuclear wastes]" (p. xi). We request that the BRC's final report adopt the language of the Transportation and Storage Subcommittee draft report: "State, tribal, and local officials need to be extensively involved in transportation planning and be provided the resources necessary to conduct their vital functions in this arena" (Transportation and Storage Subcommittee draft report, p. 58).

In addition, it is important to make sure that a new organization does not attempt to reinvent the wheel when it comes to working with states on planning, preparing for, and overseeing shipments. As noted in the draft report, a new program should build on "proven approaches" like the regional groups funded by the U.S. Department of Energy (DOE) and the new National Transportation Stakeholders Forum (NTSF) organized by DOE.

Transportation Planning: We strongly endorse the BRC's recommendation that "planning and coordination for the transport of spent fuel and high-level waste...should commence at the very start of a project to develop consolidated storage capacity" (p. xvi).

Section 180(c): We agree with the observation by Elizabeth Helvey in her commissioned paper¹ that the near-term implementation of Section 180(c) is likely to be a “low-risk, high-reward course of action” (Helvey, p. 28). We believe there may be some benefit to finalizing the Section 180(c) policy and procedures, including conducting a pilot of the program with shutdown reactors as the points of origin. In addition to testing the application procedures, approach to planning and training, and reporting requirements, such a pilot program could have the added benefit of enhancing emergency preparedness along transportation routes currently being used for shipments of radioactive waste.

To shorten the timeframe for implementation, the work should begin as soon as possible before too much institutional knowledge is lost. In the Midwest, for example, all four of the state representatives serving on the Section 180(c) Topic Group have retired. The situation is similar in the other regions. If the Section 180(c) policy and procedures need to be revised extensively due to high turnover among state agency personnel, then the timeframe for advancing the program would likely extend beyond Helvey’s estimate of two years to reach the pilot stage.

In the committee’s June 30 letter, we called attention to a notable limitation with Section 180(c), namely that DOE interpreted the statute as allowing funding and technical assistance to be provided only “for training.” In the draft report, the BRC appears to accept DOE’s position: “DOE should complete the development of procedures and regulations for providing technical assistance and funds (pursuant to section 180(c) of the NWPA) *for training* local and tribal officials in areas traversed by spent fuel shipments...” (p. 134, emphasis added). If Section 180(c) is implemented according to this narrow interpretation, states and tribes will bear the burden of paying for activities like inspections and escorts.

If the goal is to model the transportation program for spent fuel and high-level waste on the successful program for shipping transuranic waste to the Waste Isolation Pilot Plant (WIPP), legislative changes will be necessary. We therefore request that the BRC consider recommending a legislative remedy to this limitation of Section 180(c), specifically to revise the language of Section 180(c) to make it similar to the wording of Section 16(d) of the WIPP Land Withdrawal Act:

“TRANSPORTATION SAFETY PROGRAMS.— The Secretary shall, to the extent provided in appropriation Acts, provide in-kind, financial, technical, and other appropriate assistance to any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from WIPP, for the purpose of WIPP-specific transportation safety programs not otherwise addressed in this section. These programs shall be developed with, and monitored by, the Secretary.”

¹ Helvey, Elizabeth, “Overview of the Section 180(c) Program: History, Lessons Learned, and Potential Next Steps,” April 18, 2011.

Modeling the statutory language after the WIPP Land Withdrawal Act would increase the likelihood of states being able to use Section 180(c) assistance to cover essential activities like exercises, inspections, escorts, equipment purchases, and shipment monitoring in addition to planning and training.

In our letter, we called attention to a second limitation of Section 180(c): it applies only to shipments to and from NWPA-authorized facilities. The states feel strongly that Section 180(c) assistance or a similar funding mechanism should be available to help states prepare for any large-scale movements of spent fuel. We would like to see the BRC address this matter in the final report.

New organization: We believe there is merit to the idea of establishing a new organization to lead the waste-management program. For the new organization to succeed, however, long-standing commitments must be met – such as the commitment to work in cooperation and consultation with the states in their capacity as co-regulators of transportation. In addition, it is important that the new organization have the same level of accountability to Congress, states and other stakeholders, and the general public as the former Office of Civilian Radioactive Waste Management.

It is good to see that the new organization would have “responsibility for the transportation of commercial spent fuel once it has been accepted from utilities for disposition” (p. 76). This arrangement will reduce the burden on states by making it possible to work cooperatively with a single shipper instead of multiple ones. Also, any new organization charged with managing and operating the waste management program should be an NRC licensee. If that will not be the case, it would be advisable to expand the NRC’s role in the NWPA so that shipments of spent fuel must follow the same requirements as shipments conducted by NRC licensees.

Rail inspections: As we noted in comments on the draft report of the Transportation and Storage Subcommittee, there is no reciprocal rail inspection program analogous to the highly successful CVSA Level VI inspection program for shipments by truck. This is a serious deficiency, given the large percentage of spent fuel that will ultimately travel by rail – including spent fuel stored at shutdown plants, which would be “first in line for transfer” to consolidated storage. The BRC should address this situation in the final report, specifically by recommending that the U.S. Department of Transportation partner with the NRC to establish a reciprocal inspection program that enhances shipment safety and promotes information sharing among state and federal agencies without compromising security.

Comments on Storage

The BRC makes a compelling case for acting “as quickly as possible to develop consolidated interim storage capacity on a regional or national basis” (p. 40). Moving spent fuel into one or

more consolidated storage facilities would reduce the burden placed on future generations as well as increase protections for sensitive areas like the shores of the Great Lakes.

It will be especially important to expedite the removal of “stranded” spent fuel from shutdown reactor sites to reduce costs and so that decommissioning can be completed and the land made available for other beneficial uses. The report observes that the “cost advantages [of consolidated storage] will only grow as increasing numbers of reactors reach the end of their operating lives” (p. 41). It is not clear whether the BRC’s recommendation regarding stranded spent fuel being “‘first in line’ for transfer” is meant to apply just to the current nine sites or to future plants at the time they shut down. That is, would spent fuel from shutdown plants always have priority over spent fuel from operating reactors? It would be useful to clarify the intention.

Comments on Siting

We appreciate and agree with the BRC’s statement that “tribes, states, and affected communities ... must be empowered to meaningfully participate in the decision-making process” for siting facilities (p. 66).

It is important that the process for siting one or more facilities for storage and/or disposal be informed by regional attempts to site low-level radioactive waste disposal facilities, as well as by the national repository site-selection process involving Yucca Mountain and other sites in the 1980s. We therefore endorse the BRC’s recommendation that “DOE should build a data base of the experience that has been gained and relevant documentation produced in efforts to site nuclear waste facilities” (p. 134). Case studies from Illinois, Nebraska, Michigan, and Ohio should be included in the body of knowledge.

We also endorse the recommendation that a new process be “adaptive, staged, and consent-based” (p. vi), and give affected governments “a meaningful consultative role in important decisions” (p. xvi). As representatives of state governments, we feel it is particularly important for states to “retain – or where appropriate, be delegated – direct authority over aspects of regulation, permitting, and operations” (p. 68) so that we can better protect the interests of our citizens.

With regard to site evaluation, some attributes of a location are naturally well suited to be “basic initial siting criteria” that “will ensure that time is not wasted investigating sites that are clearly unsuitable or inappropriate” (p. 63). Examples would include areas of high population, land that is vital for agriculture, and locations near significant freshwater resources like the Great Lakes, which provide drinking water to over 40 million people.

Other Comments

In Section 8.3, the report states that, without success in “fixing the funding problem,” “...commitments to provide benefits to host communities over the life of the program will lack credibility” (p. 88). This statement should also reference funding for states and tribes under Section 180(c). In negotiations to develop the implementation plan for Section 180(c), the states frequently expressed concern that, despite efforts to craft a workable program, the funding ultimately appropriated could fall far short of the reasonable needs of states and tribes affected by shipments.

In Section 8.4, there is a note regarding your charge to the Disposal Subcommittee to “investigate whether the United States should consider reversing the decision made in the 1980s to co-mingle defense and civilian waste for disposal” (p. 93). Has the subcommittee made a recommendation yet? If so, when will the states and other stakeholders have an opportunity to review the draft recommendation?

We appreciate the opportunity to provide comments on the draft report and recommendations. If you have any questions about our comments, please contact Lisa Janairo at 920.458.5910.

Sincerely,



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