



ISSUE UPDATE: NUCLEAR WASTE MANAGEMENT & RELATED ISSUES

Updated August 2, 2012

In recent months the national conversation regarding nuclear energy and in particular nuclear waste management has advanced on multiple fronts. The following provides a brief overview of some of the key judicial, legislative and congressional activities at the federal level.

[Blue Ribbon Commission Report \(BRC\)](#)

On Jan. 29, 2012, the Blue Ribbon Commission on America's Nuclear Future (BRC) sent its [final report](#) to Energy Secretary Steven Chu detailing recommendations for revamping the nation's management of nuclear waste. The report proposes a new strategy for managing the back end of the nuclear fuel cycle that incorporates many of NCSL's recommendations to the Committee. The new strategy outlined in the BRC report includes eight key elements:

1. A new, consent-based approach to siting future nuclear waste management facilities.
2. A new organization dedicated solely to implementing the waste management program and empowered with the authority and resources to succeed.
3. Access to the funds nuclear utility ratepayers are providing for the purpose of nuclear waste management.
4. Prompt efforts to develop one or more geologic disposal facilities.
5. Prompt efforts to develop one or more consolidated storage facilities.
6. Prompt efforts to prepare for the eventual large-scale transport of spent nuclear fuel and high-level waste to consolidated storage and disposal facilities when such facilities become available.
7. Support for continued U.S. innovation in nuclear energy technology and for workforce development.
8. Active U.S. leadership in international efforts to address safety, waste management, non-proliferation, and security.

The report incorporates many recommendations made by NCSL before the Committee, including that: state local, and tribal governments play an integral role in the transportation, storage and disposal of radioactive waste; an interim storage facility be developed to consolidate the radioactive waste currently stored at operating and shuttered nuclear power plants; and Congress use the Nuclear Waste Fund for its purpose and not to offset general revenue shortfalls in the federal budget.

The Department of Energy (DOE) is currently reviewing the report to determine which recommendations can be implemented administratively and which require congressional action. NCSL will continue to work with Congress and the administration to ensure that the interests of state legislatures are adequately addressed in any changes to the nation's nuclear waste management strategy.

[Court Rulings Issued](#)

In May 2012, the D.C. Circuit court heard arguments in a case brought by Washington, South Carolina, local governments and other stakeholders asking the court to force the Nuclear Regulatory Commission (NRC) to determine whether DOE had properly withdrawn its application to operate the Yucca Mountain nuclear waste repository. The case was in response to the 2010 decision by the administration to halt development and licensing of the Nevada facility. In a previous challenge to the administration's license application withdrawal brought by the same petitioners, the [D.C. Circuit Court of Appeals ruled in July 2011](#) that their suit was premature. A decision on the current case is expected in the next few months.

In a separate case brought by the National Association of Regulatory Utility Commissioners (NARUC) challenging whether DOE can continue to collect fees from nuclear utilities to fund radioactive waste disposal efforts, the [U. S. Court of Appeals for the District of Columbia declined, in June 2012](#), to suspend the fee, but gave DOE six months to evaluate whether enough fees had already been raised to finance long-term storage costs. The Court [ruled](#) that DOE was required under the Nuclear Waste Policy Act (NWPA) to make such a determination when it abandoned the Yucca Mountain project but failed to do so. To date, nuclear utilities have paid over \$27 billion into the Nuclear Waste Fund.

Additionally, the [U.S. Court of Appeals for the District of Columbia ruled in June 2012](#) that the NRC did not fully evaluate environmental risks and potential future uncertainties when it ruled in 2010 that nuclear waste and spent fuel could be safely stored at a nuclear reactor site for at least 60 years after the reactor had been shut down. The NRC's 2010 update to its Waste Confidence Decision was challenged by Connecticut, New Jersey, New York, Vermont and several other stakeholders. The court suspended the 2010 update and remanded the case for further review.

[Changes at the Nuclear Regulatory Commission \(NRC\)](#)

On May 21, Gregory B. Jaczko announced that he would step down as soon as a successor was confirmed three-years into his tenure as chairman of the Nuclear Regulatory Commission. Dr. Jaczko's term as Chairman saw a number of controversial situations develop including most notably the decision to end the review of the Department of Energy's license application for a permanent geologic repository at Yucca Mountain.

The President announced the nomination of Allison M. Macfarlane as a Commissioner at the NRC and the new Chair on Mar 24. Dr. Macfarlane was an associate professor of Environmental Science and Policy at George Mason University (GMU) since 2006 and served as a member of the Blue Ribbon Commission on America's Nuclear Future from March 2010 to January 2012. Dr. Macfarlane's nomination was jointly moved through the Senate confirmation process with the nomination of Kristine L. Svinicki to serve a second term as an NRC Commissioner. Both Dr. Macfarlane and Commissioner Svinicki were confirmed by the Senate on June 29. Commissioner Svinicki was sworn in for her new term on June 29 prior to the end of her first term as a Commissioner while Dr. Macfarlane was sworn in as the new chair of the NRC on July 9.

[Congressional Action Begins to Shift the Conversation](#)

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (New Mexico) and ranking member Lisa Murkowski (Alaska) along with Senate Energy and Water Appropriations Subcommittee Chairwoman Dianne Feinstein (California) and ranking member Lamar Alexander (Tennessee) have been working to draft comprehensive legislation to implement provisions of the BRC final report. Chairman Bingaman released the draft legislation on August 1 despite being unable to reach an agreement on language with his colleagues. The draft legislation proposes a new, consent-based approach to siting nuclear-waste management facilities and advocates establishment of a new independent organization to manage the task. One of the primary areas of disagreement between the members has been a provision included in the proposal that would impose limits on allowing nuclear waste to be moved to temporary storage sites until a permanent repository is established which is one of the primary area. It is expected that Chairman Bingaman will hold a hearing on the legislation in September in order to move the conversation forward despite the limited opportunity to act on the legislation before the end of the 112th Congress in December.

On June 21, NCSL urged congressional support for a pilot program that would lead to building, licensing and operating "consolidated interim storage facilities as needed for spent nuclear fuel and high level radioactive waste." A provision that would authorize this pilot program is included in Section 312 of S. 2465, which makes FY 2013 appropriations for energy and water programs. A similar House appropriations measure does not include language for the pilot program. It focuses instead, as in years past, on funding disposal activities at Yucca Mountain. The letter, signed by Kansas Senator Stephen Morris, NCSL's president and Maryland Delegate Sally Young Jameson, chair of NCSL's Nuclear Legislative Workgroup, also calls for "all affected levels of government, including state

legislatures” to be involved in the siting of such facilities. This issue is unlikely to be resolved until after the November elections when Congress must deal with its “fiscal cliff” of unfinished business.

Material of Interest

- *March 9, 2012* – [NCSL Letter](#) to Congressional leadership urging Congress to move expeditiously to review and act on recommendations made by the Blue Ribbon Commission on America’s Nuclear Future (BRC) in its final report issued on January 26, 2012.
- *June 21, 2012* - [NCSL letter](#) in support of the interim a pilot program that would lead to building, licensing and operating “consolidated interim storage facilities as needed for spent nuclear fuel and high level radioactive waste.”
- *July 19, 2012* - The Bipartisan Policy Center’s [Nuclear Initiative](#) released a consensus report, [Maintaining U.S. Leadership in Global Nuclear Energy Markets](#), authored by former U.S. Senator Pete V. Domenici and former Department of Energy Assistant Secretary for Nuclear Energy Dr. Warren F. “Pete” Miller.

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