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April 10, 2017

The Honorable Rick Perry  
Secretary  
U.S. Department of Energy  
1000 Independence Ave, S.W.  
Washington, D.C. 20585

RE: U.S. Department of Energy's (DOE) Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste

Dear Secretary Perry,

The National Conference of State Legislatures (NCSL), the bi-partisan organization representing the legislatures of our nation's states, territories, and commonwealths, appreciates the opportunity to comment on the U.S. Department of Energy's (DOE) Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste. We commend the agency for continuing the process of implementing a consent based siting process for the disposal of spent nuclear fuel and high-level radioactive waste, as based on the recommendations from the Blue Ribbon Commission (BRC) on America's Nuclear Future.

NCSL has long supported efforts by both the previous administration and Congress to address issues that accompany spent nuclear fuel storage and high level radioactive waste management. We recognize that while nuclear power is an integral part of a national energy plan, issues including storage and disposal of spent nuclear fuel must be confronted. It has been a pillar of NCSL's Radioactive Waste Management policy that the siting of facilities for both interim storage and long-term disposal, be the result of a consent-based approach, and that it involve all affected levels of government, including state legislatures.

NCSL recognizes that the consent and siting process in the United States is inherently unique, and DOE's aim with its draft guidance is to offer general direction and guidance, rather than act as a rigid blueprint. However, as DOE proceeds with finalizing the Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste, NCSL strongly encourages the following:

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### **The Role of State Legislatures**

A state's consent is best determined through its policy making process that is conducted by the legislative branch and then implemented by the executive branch. This allows for states to fully assess, from numerous viewpoints, various potential impacts of the creation of a nuclear waste repository, and would ensure that the many interests and the voices of a state have a role in the process.

Within DOE's draft, the role of community consent in the siting process is included throughout. However, DOE's definition of "community" in Section 5.1 is loosely defined as "the broad and inclusive participation," of, "local and state government, Congressional delegations," and, "Tribal governing bod[ies]." While NCSL recognizes the agency's efforts to not limit consent solely to the locality in which a storage facility resides, NCSL believes 'community' must be defined with more depth and should identify which aspects of local and state government should be involved in the siting process, while also defining the roles varying levels of government play in the process.

For example, Phase IV which outlines the agreement portion of the siting process, names the "community" as negotiating and executing an agreement to host a facility. DOE must take the steps to further define which aspect of the 'community' has the jurisdiction to enter into such an agreement. NCSL urges you to redefine "community" to ensure the state's consent.

NCSL appreciates the draft stating in Section 5.4, that "states are the fundamental building blocks of the U.S. federal system [and]...have jurisdiction over local authorities," as well as noting legislation which recognizes the fundamental and distinct roles of "states in the U.S. federal system," and specific "mechanisms for involving," state governments "in the process of siting, constructing, and operating repositories and storage facilities." However, we must reiterate that it is vital that state legislatures be explicitly named so the department remains consistent with the Nuclear Waste Policy Act of 1982 section 117, which states that DOE "shall consult and cooperate with the Governor and legislature of each State." NCSL strongly encourages DOE to include this language to ensure adherence to this requirement as it moves forward in finalizing its consent-based siting process.

### **Transportation of Hazardous Waste**

NCSL is pleased to see DOE's "commitment [towards] working with tribal, state and local authorities...to address transportation issues," that accompany the "shipment of materials to a storage or disposal facility" in Section 3. As DOE proceeds with developing the associated infrastructure, NCSL strongly urges the assurance of safe and reliable modes of transportation of radioactive wastes. DOE should seek to enter into a memorandum of understanding with each corridor state to spell out responsibilities, liability, compensation, response time, cleanup, shipping, planning and other duties connected with emergency situations. State, local, and tribal governments should also be given both the funding and technical assistance for ongoing emergency preparedness, and should be involved in a meaningful manner with regard to all elements of the transportation system including radiation emissions standards, cask designs, and transportation equipment.

### **Financing During the Siting Process**

The draft indicates in Phase I, Step 3, that "additional funding opportunities may be issued in later steps of the process based on Tribal, state, community and program needs." However, funding

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availability should be explicitly outlined in each step of the process in which it is offered to ensure the federal government provides fair and equitable compensation to state, local and tribal governments of host states. NCSL supports federal funds for independent oversight activities by state executive and legislative branches so that the host state may participate in and conduct its own assessments of a proposed waste repository site and disposal technology. Additionally, The Nuclear Waste Fund should serve as the source for such nuclear waste management, with funds being isolated for developing permanent disposal and consolidated interim storage facilities. The Fund should not be subject to non-related federal discretionary spending.

For example in Phase I, Step 6, DOE does not indicate if funding is available for a community to hire “their own experts to help them” in order to decide if “the community” should proceed “to a preliminary assessment and continue their involvement with the siting process.” A lack of funding availability notification could significantly hamper a state’s willingness, and ability to continue the consent siting process.

#### **Additional Comments**

Finally, the draft begins in Section 2, by stating the consent process could be applied by “any federal implementing organization, including a nuclear waste management entity.” Rather than establish a new federal entity, NCSL urges the creation of a public-private partnership to manage this back end of the nuclear cycle.

NCSL has an extensive history of working on issues related to nuclear waste management and would welcome the opportunity to work with DOE as you finalize the Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste. Further details on NCSL’s positions on consent based siting can be found in [NCSL’s Radioactive Waste Management policy directive](#).

Please contact NCSL staff, Ben Husch ([ben.husch@ncsl.org](mailto:ben.husch@ncsl.org)) and Kristen Hildreth ([kristen.hildreth@ncsl.org](mailto:kristen.hildreth@ncsl.org)) with any additional questions.

Sincerely,



Speaker Robin Vos  
Wisconsin State Assembly  
Co-Chair, NCSL Standing Committees



Delegate Sally Jameson  
Maryland House of Delegates  
Co-Chair, NCSL Standing Committees