Memo to: NDCAP Members

From: Lissa Weinmann, NDCAP Vice-Chair

Re: Draft for Panel Discussion at December 7 Meeting to Approve
Examining a Potential Advisory Opinion Vote for Following 2021 NDCAP Meeting

Date: 3 December 2020

I believe a revised NDCAP Advisory Opinion is necessary to clarify and legitimate NDCAP's current advocacy for a major change in federal nuclear waste policy law. Such advocacy emanates from a 2015 letter expressing NDCAP support for specific legislative remedies that were not discussed by the panel. Subsequent developments and understandings may render such legislative remedies unbeneficial to our host community and antithetical to the values of the state of Vermont.

BACKGROUND

In November 2015, the Chair of NDCAP, without approval of the Panel, signed a letter to the New England federal congressional delegation (letter attached) on the Panel's behalf "urging meaningful action in this session of Congress to overcome the national nuclear waste management policy impasse. Indefinite on-site storage of this material stranded in the communities we live and work in is unacceptable." The letter goes on to recommend implementation to consolidate interim storage (CIS) projects in New Mexico and Texas. "We strongly urge your support of legislation that directs the DOE to engage with entities and communities interested in storing the SNF/HLW from our sites on an interim basis." **NDCAP did not discuss this legislation, nor the signing of the letter, and there was no vote of the full NDCAP about it.**

The 1982 Nuclear Waste Policy Act calls for dispensation of waste in a permanent, deep geologic repository. It prohibits consolidated interim storage. Yucca Mountain had been identified and developed to serve as the nation's permanent repository, but numerous environmental, technical and other obstacles render that site impractical, not least the vehement opposition of state of Nevada and the Western Shoshone nation that owns Yucca under the 1863 Treaty of Ruby Valley. NWPA also specifically limits use of the currently $37 billion US Nuclear Waste Fund for a permanent repository.

New legislation or an amendment to NWPA is required to amend the existing law. Advocates for CIS have attempted to circumvent NWPA via bills that would fund 'pilot' or test CIS facilities managed by private companies via the Congressional appropriations process and regulatory changes. One such company is Waste Control Specialists whose CEO, Scott E. State, is also the CEO of NorthStar, VY's current owner. Nuclear host community support for CIS is of great strategic importance to these efforts to advocate for what would essentially be a major US policy shift. **The 2015 letter NDCAP signed is and has been used for such advocacy efforts.**

The general intention of the letter (to move nuclear waste as soon as possible) was later somewhat supported by a February 2016 NDCAP advisory opinion which states in part "because full site restoration cannot be completed until the removal of the used fuel from the site, NDCAP further recommends that the Vermont congressional delegation take immediate legislative actions that will facilitate DOE acceptance and removal of spent fuel from Vermont Yankee and the State of Vermont as expeditiously as possible."

This Advisory Opinion underscores that NDCAP advocacy on federal nuclear waste policy is within the scope of its mission since it found that 'full site restoration cannot be completed until the removal of spent fuel from the site.' The scope of the NDCAP mission to consider and opine on such matters having been established and approved, the question becomes whether NDCAP should specifically be advocating (as the 2015 letter did without discussion nor vote) on behalf of a controversial national policy shift CIS represents.

New developments since the 2015 letter and 2016 Advisory Opinion bear further examination of the specific CIS concept NorthStar and/or its proposed WCS facility would profit from. The NDCAP and the NDCAP Issues Committee has engaged in limited discussion on the pros and cons of this form of CIS over the past year without conclusion. The nuclear industry, public entities and environmentalists all agree the US has been producing nuclear waste with no real policy or plan for long-term nuclear waste storage and that something must be done.

In its 2014 "Continued Storage Of Spent Nuclear Fuel," report, the Nuclear Regulatory Commission (NRC) opined that waste could be left where it was generated, casked, on ISFSIs, indefinitely. (Waste 'stored' in spent fuel pools is another matter entirely not addressed here.) NRC licenses casks for 40 years with possible renewal of another 40. Conventional wisdom, as reflected in NDCAP's backing of removing waste 'as expeditiously as possible,' is being increasingly questioned nationally. Bills that would offer substantial financial compensation to nuclear host communities for storing the waste -- a different approach to CIS where waste would pose the risk and cost inherent in 'interim' travel -- are gaining notice.

The 2015 letter looks forward to 2020, when 'volunteer' communities in New Mexico and Texas would receive this waste on a so-called "interim" basis. If NDCAP wishes to support the NorthStar/WCS version of CIS, we must underscore that true consent is obtained on the local and state level for such facilities. We recall when Vermont was being considered for a high level waste repository in 1985 under then Governor Madeleine Kunin, there was widespread opposition in the State and the project was shelved. Likewise any resolution urging "interim" storage in Texas or Mexico should not occur unless it was shown to be safe and there was approval. For this reason, our previous opinion must be amended to be effective or prior approved or unapproved opinions should be rescinded.

Part of the NDCAP legislative mandate is "To advise the Governor, the General Assembly the agencies of the State and the public on issues related to the decommissioning of VYNPS…" To that end we are offering the following questions and a suggested recommendation.

QUESTIONS FOR NDCAP MEMBERS TO PONDER

1. Does the Panel wish to withdraw signature on the 2015 letter so as not to be regarded as supporting the NorthStar/WCS form of CIS in Texas?

2. Does the Panel want to state that it supports or does not support CIS?

3. Does the Panel want to state that it offers no opinion on CIS nor any other national nuclear waste policy issue and therefore amend its position that as stated in the 2016 Advisory Opinion that 'full site restoration cannot be completed until the removal of the used fuel from the site'?

4. Does the panel wish to explore the possibility of federal compensation for maintaining the ISFSI as is or potentially under improved and longer term protocols as described in various new papers emanating from groups like NDCAP including one presented by Citizens Oversight at San Onofre

entitled: *A New Strategy: Storing Nuclear Spent Fuel Waste* ?
(https://www.nrc.gov/docs/ML1803/ML18038A871.pdf

5. Does NDCAP support exploring the possibility and desirability of joining forces with other host communities to push for the best solution for our nuclear host communities and to inject some much-needed energy into what has been a moribund federal response?

6. Does the Panel want to state that locating a storage or disposal facility requires informed consent from the local community? This later point may want to consider what constitutes local consent. The Texas and New Mexico Governors are both on record opposing the Interim Facilities proposed in their states along with many citizen groups; however the county governments for the facility locations are still on the record supporting them.

RECOMMENDED ADVISORY OPINION

NDCAP withdraws support for the 2015 letter urging support for legislative changes that would allow the form of CIS being actively pursued by WCS/NorthStar

NDCAP amends the language at the end of the February 2016 ISFSI Advisory Opinion recommendation to say: "NDCAP supports the expedited removal of spent fuel and other designated waste to designated interim facilities as long as such facilities have the informed consent of local and state government and (where applicable) tribal governments, as well as local and state governments and (where applicable) tribal governments through which such waste must be transported through to arrive at such facilities.

NDCAP supports naming an NDCAP panel representative to chair and convene a subcommittee to specifically examine the issue of how dispensation of VY waste best expedites productive reuse of the site. This subcommittee would work toward community consensus, investigate independent expert opinions including alternative CIS scenarios that could stand to benefit the economic development of Vernon, the greater host commuity and the state of Vermont until a permanent national nuclear waste policy is found.

ATTACHMENTS:

PDF of 2015 Congressional Delegation Letter

2016 ISFSI Advisory Opinion:
https://publicservice.vermont.gov/sites/dps/files/NDCAP%20Second%20ISFSI%20Letter%20and%20Opinion%20for%20PSB%202015.pdf

HOSS letter from environmental groups including Sierra Club, Natural Resources Defense Council (NRDC), Greenpeace, Friends of the Earth and Union of Concerned Scientists:
http://www.beyondnuclear.org/on-site-storage/

HELMS proposal submitted to NRC by Citizens Oversight: :
https://www.nrc.gov/docs/ML1803/ML18038A871.pdf