
DOE Issues New “Strategy” for Nuclear Waste Management and Disposal

by Jay E. Silberg and Anne Leidich

On January 11, 2013, the Department of Energy (“DOE”) issued its response to the recommendations of the Blue Ribbon Commission on America’s Nuclear Future regarding next steps for spent nuclear fuel management and disposal in the United States. As expected, the DOE “strategy” sets out “broad steps” to be taken in the future, rather than near-term actions. Indeed, most of DOE’s recommendations will require new legislation prior to implementation.

Long-Term Plans

According to the DOE report, the Administration now plans, within the next 10 years, to build the capability to begin addressing the federal government’s commitment to dispose of waste. This reflects a fifty-year delay from the original plan: the Nuclear Waste Policy Act requires that DOE accept used nuclear fuel beginning in 1998. The new goal is to have a permanent repository operating by 2048.

The first step towards building this required capability would include creating a pilot interim storage facility by 2021 that would initially accept spent fuel from shutdown reactor sites. In addition, the strategy states that the Administration intends to implement a program resulting in construction of a larger interim storage facility by 2025. That facility would be large enough to provide “flexibility” to the waste management system and to “reduce expected government liabilities.” The facility could be co-located with the pilot facility and the repository.

Finally, over the next 10 years, the Administration intends to make “demonstrable progress” towards siting and characterizing permanent repository facilities. This “progress” includes siting a permanent repository by 2026 and licensing the repository by 2042, with the goal of making the repository available to begin receiving spent nuclear fuel by 2048.

Legislative Requirements

Congressional action will be required to support this approach. The DOE’s strategy outlines several new authorities, such as consent-based siting, funding reform, and creating a new governmental organization,

all of which will require supporting legislation. The proposed consent-based siting process would be “governed by legally-binding agreements between the federal government and host jurisdictions.” The strategy states that the involvement of multiple communities may result in the need for multiple storage facilities or repositories.

The strategy proposes several possible funding reforms that would change the funding of the nuclear waste management program. One such option would enable access to the balance in the Nuclear Waste Fund, funded by consumers’ fee payments, providing the program with a steady stream of funding. This would be designed to protect the program from politically driven funding cuts.

The new governmental organization proposed by the strategy is intended to balance the need for “greater autonomy with the need for continued Executive and Legislative branch oversight.” Based on a study performed by the RAND Corporation for DOE, the new waste organization should be either a federal government corporation or an independent government agency. However, the organization would lack authorization to take action involving spent fuel reprocessing or recycling.

Interim Plans

Pending Congressional action, DOE says that it will take some steps not requiring legislation. These include examining design concepts, such as the direct disposal of existing dry storage canisters; developing plans for consent-based siting; researching the geologies that may be suitable for a repository; and initial planning for transportation operations. As noted previously, further action will require legislation. In the end, no practical path forward exists unless the Administration and Congress can work together to meet the obligations imposed upon the federal government by the Nuclear Waste Policy Act.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Jay E. Silberg **(bio)**
Washington, DC
+1.202.663.8063
jay.silberg@pillsburylaw.com

Anne Leidich **(bio)**
Washington, DC
+1.202.663.8707
anne.leidich@pillsburylaw.com

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