

WM2015 Conference Panel Report

PANEL SESSION 112: The Future of Consent-Based Disposal Siting and Discussion of the Alternatives

Session Co-Chairs: **Eric Knox**, *AECOM*
Paul Dickman, *Argonne National Lab (Substituting for Paul Dickman who had to leave early was Dave Dobson of ISSI)*

Panel Reporter: **Robert Edmonds**, *AREVA*

Panelists:

- **Carl Reinhold Brakenhielm**, *Chairman of the Swedish National Council (Sweden)*
- **Bob Halstead**, *Executive Director, State of Nevada - Office of the Governor, Agency for Nuclear Projects*
- **Jim Hamilton**, *Founder and President, National Spent Fuel Collaborative*
- **John Heaton**, *Chairman of the Eddy-Lea Energy Alliance*
- **Monty Humble**, *Manager, AFCI Texas LLC.*
- **Darrel Lacy**, *Director, Nye County, NV*
- **Dan Metlay**, *Senior Professional Staff, Nuclear Waste Technical Review Board*

About 35 people attended this panel discussion. This is the 3rd year this has been the topic of a panel at WM. Panelists focused on the current state of Consent Based Siting in both the US and Sweden and offered their ideas and recommendations for alternatives.

Summary of Presentations and Questions:

Dan Metlay Dan gave his personal view of the historical context of Consent Based Siting (CBS). In all countries where it has been used (US, Finland, France, Sweden, e.g.) it has taken decades and most have still not concluded. There appear to be 2 decision filters: Technical and Social. Technical have been successful. Most CBS struggles have been Social (or political), with the primary issue being whether a State has veto power. The Interagency Review Group report in 1979 recommended “consultation and Concurrence” from States, which implies state veto. But in reality the “concurrence” morphed into “cooperation” and as evidenced by WIPP in the US, where through lengthy negotiations the State of NM finally agreed to WIPP, so the meaning of “concurrence” was never tested. With the Blue Ribbon Commission Report of 2012, the Administration is attempting to put power back to the States. Metlay sees 2 issues going forward: 1) Allocation of Power between State and Federal, and 2) Trust in the Implementer. He recommends 3 actions: 1) establish clear roles in advance of any CBS process, 2) determine why and how a community can withdraw, 3) give the State and local community independent review capability.

Questions:

Larry Camper, NRC, asked how we can establish trust. Metlay commented that it takes education.

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Bob Halstead Bob offered his personal views. He said CBS is not his first choice. He prefers an “Integrated Waste Management approach like what was used for the Monitored Retrievable Storage (MRS) project. He noted some of the challenges with CBS, including: 1) the Host governments must have veto and operations oversight, 2) Funding must be taken out of US Government annual budget cycle, 3) there must be a binding agreement between US and State before proceeding.

The timing of the Binding Agreement should be either: 1) before submitting an NRC application (as stated in S1240 bill), 2) before start of construction (as in Reid Heller bill), or 3) prior to use of any Nuclear Waste Fund (NWF) funds. Regarding “Who gives consent”, Halstead believes it should be the State, Tribes (if involved), and Affected Counties. Issues which will need to be resolved include: 1) liability for accidents, 2) incentives payments must not compromise safety, or be perceived to do so, 3) there must be sharing of benefits among the parties.

Halstead proposed a question which he said Paul Dickman would have asked had he been there: “So what is your recommendation for moving forward on Yucca Mountain?”. He stated that: 1) give Nevada a veto, 2) redesign waste rules to allow direct disposal of Dual Purpose Canisters, 3) reverse the “comingling” decision which recommended disposing HLW with Used Nuclear Fuel, 4) re-perform the alternatives analysis which was truncated by the 1987 Amendments to the Nuclear Waste Policy Act and then approach the Governor of the top alternative to provide permission.

Questions:

Larry Camper asked how best to educate State and locals about the risks. Another audience question was: How can States and Locals challenge the robustness of the NRC and Contractor review of the site?

Darrell Lacy Lacy stated that he agreed with Bob Halstead on about 90% of his points. He proposes that the US should let the NRC licensing process proceed while simultaneously opening negotiations with the State on what it would take to satisfy the State that safety and benefit to the State are clear. He questions whether the State can ever change its collective mind. He sees a major obstacle in proceeding is that there is no “advocate” for the project because DOE has withdrawn support and, in fact, was never allowed to advocate for the project. This point was made by several panelists. He observed that going to Consolidated Interim Storage will mean that the number of states advocating for Yucca will be reduced as the UNF is removed from their state.

Carl Reinhold Brakenhielm Brakenhielm commented on one item in US BRC report where the BRC stated that CBS is being successful in Finland, France, Spain and Sweden. Carl said the BRC failed to point out that in Sweden it is the Local Community which has the final approval and veto. He cited some pros and cons with CBS. Pros: 1) Increases the legitimacy of decision outcomes, 2) Improves decisions by enhancing knowledge, 3) secures democratic values and contributes to creation of true democratic participation (participatory democracy vs. representative democracy). Cons: 1) Nuclear Waste is first a national, and not a local, responsibility, CBS initiatives are mainly driven by a need to increase acceptance for technologically-agreed solutions, 3) science based issues are difficult for public to understand.

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Carl believes that the best path is to allow “informed consent” much like the relationship regarding decisions between a doctor and patient.

Questions:

Larry Camper asked “who is the doctor in your analogy?” Carl replied that in his case it is SKB, the entity responsible for waste control and disposal.

Another question was “How can we ever get a decision when the process may take decades, new politicians come, and the public today may not see any benefit that the previous generation saw?” Answer was that today we must create institutions (like education, training, science) at the local level that not only show the immediate benefits of the action, but that can provide those benefits into the future.

John Heaton Heaton addressed the ways consent could be formed including: 1) a state referendum, which he said would be very hard, 2) city-by-city town hall education campaign with consensus at the end, 3) the state legislature passes enabling legislation, 4) the governor negotiates and signs, and 5) the state Attorney General (where allowed) negotiates and signs a deal. He proposed that before granting consent the state would need to know: 1) what are the minimum acceptable technical and geological standards needed in order to qualify a site, 2) what are the contractual requirements, 3) what are the benefits and incentives.

Questions:

Larry Camper, NRC asked about the Notice of Intent (NOI) which ELEA sent in to NRC stating their intent to submit an NRC license application for a Central Interim Storage (CIS) facility. He wanted to know if it was still active. Heaton said it is active and that ELEA intended to give an update soon. He also said that the lack of progress was NOT the recent events at WIPP. He said ELEA is in discussions with a firm to start the application process.

Monty Humble Monty noted that West Texas and Southeast New Mexico have developed a nuclear zone that includes WIPP, URENCO, WCS, and there is local/community interest in more as evidenced by ELEA, AFCEI, and WCS, all thinking about interim storage. AFCEI intends to pursue CIS in Texas. Their approach to CBS was to start at the top with the Governor and the 6 other state-wide elected officials in Texas. If all of them agreed, then they would search for a community, but the community would have veto power. He pointed out that CIS can do several things, including: 1) mitigate the annual approximately \$500m being paid in damages to utilities for failure to pick up their fuel, 2) provide a basis to reinstate the 1 mill/KWH fee which was struck down by the courts, and 3) provide a basis for continued storage of UNF.

Jim Hamilton proposed that there is a roadmap (based on his many years decommissioning Yankee Rowe) that can lead to consensus. He proposes a collaboration between the producing sites (like Yankee Rowe) who know the issues surrounding storage of UNF, and the potential receiving sites which volunteer to enter an exploration of being a CIS. He noted that the parties must have “moral authority” to begin with. Jim calls the process “strategic reframing” and includes the following: 1) host sites want local control, incentives, and conservation, 2) have current host sites (the reactor site) communities and future host sites agree on re-proposing the narrative and then build out from these points to expand the collaborative approach until major

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sections of the country have been exposed to the narrative, and 3) regarding transportation risks and issues, start to build “zones of legitimacy” where local communities agree and start to work with receiving communities and grow the “zones” until they overlap.

General Audience Questions:

1. Must there be “competition” for consent based siting to be meaningful?
2. Will be back at WM in 5 years discussing “consent-based transportation”?
3. How engage with the anti-nuclear community?