



Nuclear Energy Information Service

Illinois' Nuclear Power Watchdog since 1981

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RECOMMENDATIONS ON DOE'S "CONSENT-BASED" SITING OF RADIOACTIVE WASTE FACILITIES

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ATTRIBUTES OF CONSENT:

- an act of reason and deliberation
- a party possesses and exercises sufficient mental capacity to make an intelligent decision
- assumes a physical power to act and a reflective, determined, and **unencumbered** exertion of these powers
- it is a BINDING CONTRACT between parties once agreed upon
- In contracts, an agreement may be reached only if there has been full disclosure by both parties of everything each party knows which is significant to the agreement
- While the actual attributes of the parties may be unequal, there is parity in the final agreement
- submission due to other factors (fear, terror, lack of power, financial hardship) is not real consent; it is duress
- **INFORMED CONSENT** is: *Assent to permit an occurrence that is based on a complete disclosure of facts needed to make the decision intelligently, such as knowledge of the risks entailed or alternatives.*

IMPLICATIONS OF CONSENT:

- It is ultimately a "power" relationship
- One party has something the other party needs or wants, and the "wanting" party can't just take it away
- The agreement will be made based on FULL DISCLOSURE of the all facts and the consequences
- Just, full and equitable compensation will be paid by one party to the other in exchange for the object/agreement desired.
- BOTH parties have obligations; and recourse for breach of contract or fraud

SORRY HISTORY OF GOVERNMENT/INDUSTRY SEEKING "CONSENT":

- U.S. Government violation of the Treaty of Ruby Valley, creating the nuclear weapons test range in Nevada, and later on, Yucca Mountain HLRW repository over the objections and refusal of the Western Shoshone First Nation. (1863 to present day)
- Industry and government activity to persuade the impoverished Skull Valley Band of Goshute Indians in Utah to create "Private Fuels Storage Facility" for storing 40,000 tons of spent reactor fuel. (2004-2007)
- The existing "Credibility Gap":
 - numerous instances of breach of contract, regulation, or professionally advocated recommendations:
 - "bait and switch" of reactor operating licenses: communities signed on for a 40 year license; now have to deal with 20 and possibly 40 year extensions, and/or becoming *de facto* HLRW spent-fuel storage communities
 - U.S. government failing to open a permanent deep-geological repository in 1997, creating *de facto* HLRW dumps in reactor communities after reactors close

- BRC advised removing DOE from the process and instituting a new waste management entity; yet, DOE is convening today's meeting
- numerous instances of soliciting and ignoring public comment:
 - suggestions to implement HOSS denied by NRC and industry since 2002; yet today, we now face nuclear terrorism in Belgium and war in Ukraine
 - NRC "waste confidence" rule
 - Fukushima "lessons learned" – and ignored by NRC

CURRENT REALITY:

- This is a nuclear industry crisis and need, not the U.S. government's.
- The industry seeks a "solution" to legitimize the creation of more waste, not to solve the current waste problems.
- Both government and industry have a LONG and consistent history of seeking and then ignoring the public's input and interests when convenient for them, or when it conflicts with their interests.
- An enormous "credibility gap" exists with both government and the nuclear industry

SOME PRE-CONDITIONS:

- **FIX THE CREDIBILITY GAP:** Keep your word on all previous commitments, treaties, contracts, laws, regulations, etc. FIRST – before ANY other radioactive waste facilities are sited.
- **COMPENSATE COMMUNITIES** already affected by nuclear contamination and presence: e.g., tribes by 10,000 abandoned uranium mines, orphaned waste communities like Zion and Big Rock Point, contaminated fuel chain facility communities like Metropolis, Piketon, Barnwell etc., previous waste sites like Sheffield, West Valley, and West lake Landfill, etc.
- **"Informed consent": yes;** "Bribery, duress, bait-and-switch": no
- **NO means NO;** exemption from eminent domain proceedings.
- Begin to **"know the unknowable"** – fully disclose all technical aspects of the proposed technology to be used, geology, health physics, transportation, and all aspects of a facility that would have a health, environmental or economic impact on the community, as a basis of approaching the conditions for "informed consent"
- Financial support made available to communities to retain independent team of experts (law, technology, radiation health, etc.) to represent their interests, to approach the conditions required for "informed consent".
- Local control to set safety standards they deem necessary – requires act of Congress to pre-empt the NRC, et al
- Independent baseline health studies done by professionals of the local community's choosing prior to establishment of any facilities.
- Compensation to community commensurate for helping solve one of the nuclear industry's and U.S. government's most pressing problems; should be large, fair, and intergenerational; it should also include plans for a "just transitions" termination fund for when active site operations cease; and funds for long-term health and environmental monitoring for as long as the wastes are present.
- Severe penalties for government and industry violation or non-compliance: e.g., \$1 million per day until contract agreements are restored or terminated.
- Mechanism established to prevent "company town" mentality from compromising the safety-first attitude towards the mission of managing HLRW.