

Mr. Don Hancock, Southwest Research and Information Center.

Good evening. I appreciate being here. I especially appreciate the invitation from the Department of Energy to be here, since numerous Department of Energy officials know that they won't necessarily agree with a number of things I'm going to say.

So I want to talk about my view of four basic facts that haven't been adequately presented in the Department of Energy process, and resulting questions that I think are worthy of the kind of debate, discussion and dialogue that we're trying to have here and in other places to help the thinking about what to do about this very serious problem.

So Fact #1 is that when it comes to nuclear facilities, consent is *not* the law of the land. It's also not the historic practice. John Kotek mentioned some of the facilities – Los Alamos in my state of New Mexico and Hanford in Washington – were sites that were developed on traditionally Native American land. There was no consent asked or given. When Rocky Flats – a plant that was mentioned – started in this area in 1952, there wasn't consent asked or given. In fact, when thousands of people in Colorado, a few of whom are even in this room tonight, demonstrated clearly that there was *no* consent for the continued operation of that facility, it continued to operate, until it was shut down by an FBI raid. So these problems – the lack of consent in terms of our legal system and historic practice – is a very important fact that needs to be considered; and I'll come back to that when I talk about some of the questions that I think need to be addressed.

Fact #2. The problem of commercial spent fuel hasn't really been defined adequately. There's been some discussion from DOE and from John Kotek tonight about the problem, but fundamentally you can't develop a solution for a problem when you don't what you're talking about, and the United States, unlike some of the other countries that were mentioned, doesn't have a policy about how much commercial spent fuel will be created in this country over what time frame, in what amounts, and so therefore when we talk about geologic repositories, we don't know about the size they would need to be, how many they would need to be, etc., because we haven't defined the problem.

The third Fact from my view is that federal-government consolidated commercial storage sites are not necessary. The Nuclear Regulatory Commission has said that irradiated fuel can safely stay where it is for decades or longer. If that's not true, can we really trust the Nuclear Regulatory Commission? If it is true, there is no reason to have these kinds of consolidated facilities, and the risks of extra handling, as has just been discussed, the transportation – extra transportation problems – the extra costs of doing those things. The storage of irradiated fuel is the responsibility of the utility companies and if there's a need for consolidated storage, the utility companies can and should create sites to do that.

Fact #4. A defense-only kind of waste repository is not needed. For more than 30 years, Congresses, administrations, and others have said, defense high-level waste can be disposed of in commercial spent fuel repositories. And there is no technical reason that that can't be done.

So if we think about those four basic facts, in relation to the questions that need to be asked to have an adequate consent process, there are a series of questions.

The first one goes back to that legal authority that I mentioned. Given our federal system of government, which is different than any of the other countries that John Kotek mentioned, and given our historic practice, is consent actually possible without something like enshrining it as a right, and how we enshrine rights in this country is through the Constitution. There clearly are going to have to be major changes in federal law that guarantees these rights. As Governor Sullivan said, contracts, agreements can be changed. The Department of Energy has contracts – as John mentioned – with utilities saying we'll take your waste starting in 1998. Those contracts were breached. Laws can be changed. In 1982, that Nuclear Waste Policy Act said that by 1989 the Department of Energy was supposed to have identified eight potential geologic repository sites. There was a lot of public, tribal, state opposition to how the Department of Energy was proceeding, and so before that timeframe was even carried out – before that law was carried out, Congress in 1987 changed the law.

So if you even enact consent agreements in the law, what keeps future Congresses from changing those laws? So these are very serious problems, and the fact that there *isn't* consent in Nevada. For 30 years it's been very clear that Nevada does not consent to Yucca Mountain – yet that law, the 1987 law that says it's going to be Yucca Mountain – still hasn't been changed. What kind of demonstration of the validity of consent – the respect for consent and non-consent – does that demonstrate?

So, regarding defining the spent fuel problem, how much irradiated fuel are we going to have – not the 75,000 metric tons that we have now – but how much are we going to have? And is that going to be enshrined in law in some way that it will be difficult to change those limits? Those are the kinds of things that need to be talked about.

Regarding geologic repositories, what are the technical requirements? We should be having a discussion of what those should be. What acceptable level of releases from a geologic repository would be? How do you define safety of geologic repository sites? That kind of discussion needs to be had.

Further troubling, as John said, there are no operating high-level spent-fuel waste repositories in the world, but the three large-scale repositories that *have* operated in the world, Asse and Morsleben in Germany, and the Waste Isolation Pilot Plant, WIPP, in New Mexico have all failed during their operational phase. So, what does that say about the technical and safety culture requirements that are needed for geologic repositories?

And finally, regarding consolidated storage. If it's needed, why do the nuclear utilities not do it? And [let's] hear about what it would take to have a consent-based process around commercial spent fuel sites with the states and communities affected to consent to long-term storage.

Thank you; I hope we can have some of that discussion tonight. [Applause].

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