

# Nuclear Waste Consent and Non-Consent: A Brief Historical Perspective

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Reset of U.S. Nuclear Waste Management Strategy and Policy

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Free = Voluntary

Prior = Before decisions

Informed = Adequate, broad-based

Consent

&

Non-Consent respected

Electoral  
Legislative  
Judicial  
Federal  
State  
Local  
Processes

# Process starts at least in 1970

June 9, 1970 - AEC (Glenn Seaborg) promise to Sen. Frank Church (D-ID) to remove Rocky Flats waste out of Idaho within ten years

## 1995 Settlement Agreement

TRU Waste out of ID by 12/31/2018

SNF out of ID by 1/1/2035

(including Research SNF – 2011 MOA)

In 1971, AEC selects Lyons, KS site,  
to be operating by 1975

State & congressional opposition –

August 14, 1972 – AEC comes to  
Carlsbad, NM – WIPP

Invited by some local people

March 1979 –  
Interagency Review Group on  
Nuclear Waste Management  
– “State veto” or “consultation  
and concurrence.”

# December 1979 – WIPP

Public Law 96-164, Section 213(b):

“[DOE] shall **consult and cooperate**....  
[and] shall seek to enter into a written agreement with the appropriate officials of the State of New Mexico... not later than September 30, 1980.”

July 1, 1981 - State of New Mexico v. DOE

“**All radioactive material used in high level waste experiments shall be removed from the WIPP site.**”

1987-1992 – WIPP Land Withdrawal  
Acts debated in Congress

12/13/1991 – *New Mexico v. Watkins*  
Preliminary Injunction issued against waste  
emplacement at WIPP

# 1992 – Public Law 102-579

## WIPP Land Withdrawal Act

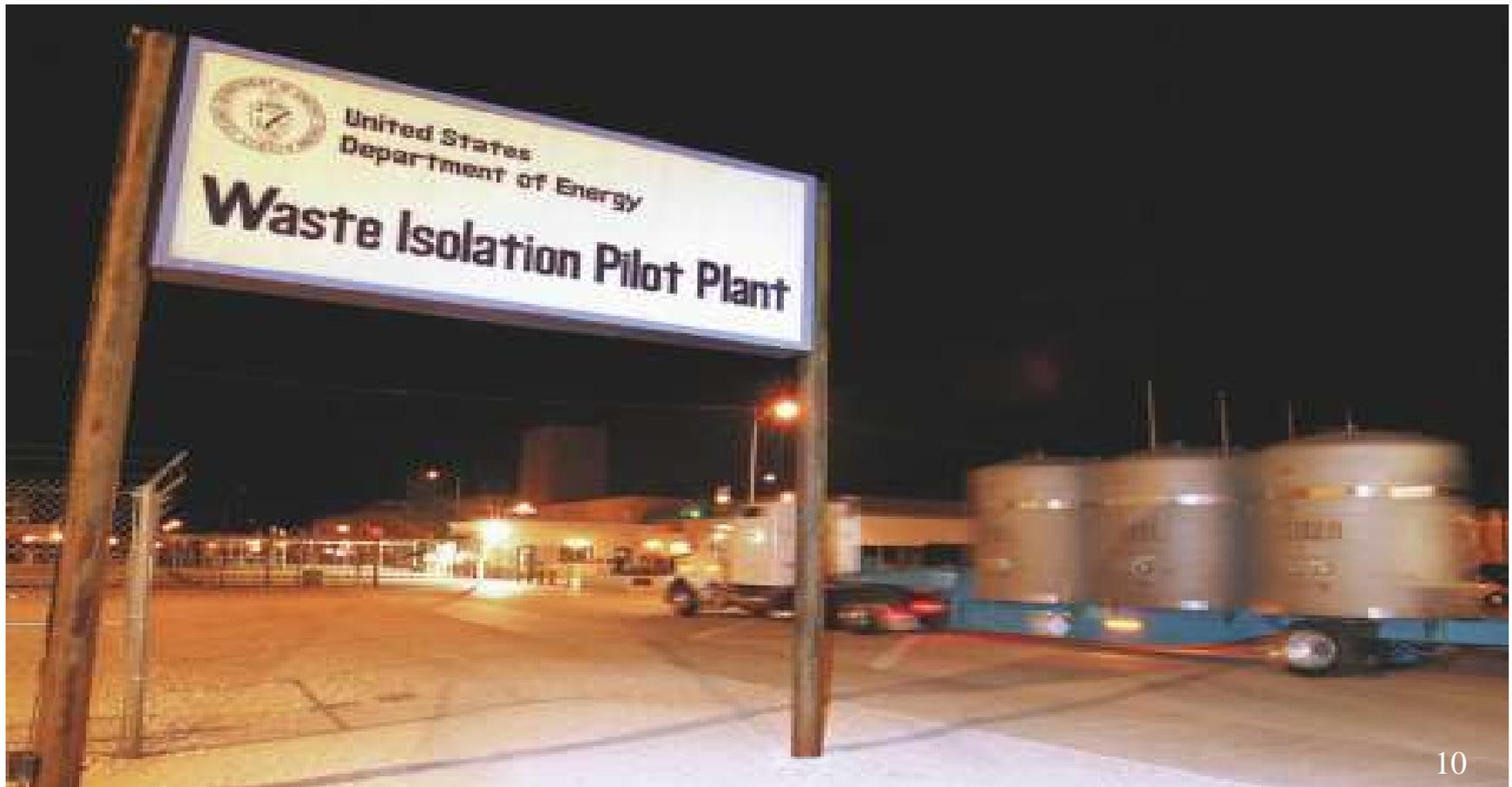
Section 9 – Compliance with Environmental Laws and regulations

Section 12 – **“BAN ON HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL.**

**The Secretary shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.”**

3/22/1999 – *New Mexico v. Richardson*  
DOE can ship wastes from LANL to WIPP

3/26/1999 – First shipment arrives



# Nuclear Waste Policy Act of 1982

- 1/1/1985 – Nominate 5 repository sites;  
recommend 3 sites for characterization
- 6/1/1985 – MRS proposal; at least 3 sites
- 3/31/1987 – President recommends 1<sup>st</sup> site
- 7/1/1989 – Nominate 5 2<sup>nd</sup> repository sites;  
3 “additional” sites not in 1<sup>st</sup> round
- 3/31/1990 – President recommends 2<sup>nd</sup> site
- 1/31/1998 – First repository operating

# Nuclear Waste Policy Act of 1982

Sections 116-118 –

- State/Tribal Notification
- State/Tribal Participation
- Financial Assistance to States/Tribes
- Notice of Disapproval from State Governor or Legislature
- Notice of Disapproval from Tribal governing body

# 1982-1986 - 1<sup>st</sup> round sites

Nominate:

- 4 bedded salt sites – TX (2), UT (2)
- 3 salt domes – MS (2); LA
- Basalt – Hanford, WA
- Tuff – Yucca Mountain, NV

State, some local, citizen opposition – participation; litigation; lobbying

Characterize (5/28/1986): Deaf Smith Cty. (TX), WA; NV

# 1983-1986 – 2<sup>nd</sup> round sites

Notify 17 crystalline rock states (2/1983)

Draft Area Recommendation (1/16/1986):

GA, ME, MN, NH, NC, VA, WI

State, some local, citizen opposition –  
participation; litigation; lobbying

Indefinite postponement (5/28/1986)

# MRS – 1985-1986

3 sites selected in Tennessee

State, some local, citizen opposition – participation; litigation; lobbying

District Court judge prohibits submitting report to Congress

DOE submits report to Congress

# 1987 – NWPA Amendments Act

- Yucca Mountain only – stop Hanford, Deaf Smith
- Prohibit site-specific second repository activities
- Annul and revoke Tennessee MRS proposal
  
- Benefits agreement with Nevada or for MRS
- Establish Office of Nuclear Waste Negotiator
  - To negotiate with Governor or Indian tribe an MRS or repository site
  - Consult with affected states, tribes, local governments
  - Agreement must be federal law

# 1990-1995 - Nuclear Waste Negotiators

- No states or tribes volunteered for consideration as a repository
- Grants were given to some tribes and counties to study MRS-type facilities

1991-1992

21 Applications

16 Tribes

4 Counties

1 Corporation

**MRS APPLICATIONS**

(as of September 8, 1992)

Mescalero Apache Tribe, NM	Awarded 10/17/91 Phase II-A award 4/21/92
Grant County, ND	Awarded 11/25/91 <b>Terminated March 1992</b>
Chickasaw Nation, OK	Awarded 2/14/92 <b>Withdrew 3/31/92</b>
Fremont County, WY	Awarded 1/23/92 <b>Governor vetoed 8/21/92</b>
Sac and Fox Nation, OK	Awarded 2/19/92 <b>Withdrew 3/4/92</b>
Prairie Island Nation, MN	Awarded 3/18/92
Yakima Indian Nation, WA	Awarded 1/23/92 <b>Grant expired 7/23/92</b>
Fifield Development Corp., WI	<b>Rejected by DOE as ineligible</b>
Apache County, AZ	<b>Governor objected 4/3/92</b>
Skull Valley Goshute Tribe, UT	Awarded 4/17/92
Alabama Quassarte Tribe, OK	Under review by DOE
Eastern Shawnee Tribe, OK	Under review by DOE
Tetlin Village, AK	<b>Rejected by DOE 6/26/92</b>
Lower Brule Sioux, SD	Under review by DOE
Akhiok-Kaguyak, AK	<b>Rejected by DOE 6/26/92</b>
Apache Development Authority, OK	Under review by DOE
Absentee Shawnee Tribe, OK	<b>Withdrew 6/9/92</b>
San Juan County, UT	Awarded 5/4/92
Ponca Tribe, OK	Awarded 9/4/92
Caddo Tribe, OK	<b>Withdrew 7/16/92</b>
Ft. McDermitt Paiute Shoshone, NV	Awarded 7/15/92

Sources: U.S. DOE; U.S. Office of Nuclear Waste Negotiator

# Private Consolidated Storage

- 12/20/1994 - Mescalero Apache Tribe and ~23 utilities sign LOI for Private SNF Storage
- 1995 – Tribal referenda votes No and Yes. NM government and public opposition
- 4/1996 – Utility/Tribe negotiations end
- Some utilities go to Skull Valley Goshutes
- Tribal, State, citizen opposition
- 1997-2006 – NRC licenses PFS
- 2006 - BLM denies Right-of-Way; BIA refuses lease

# Some conclusions about DOE

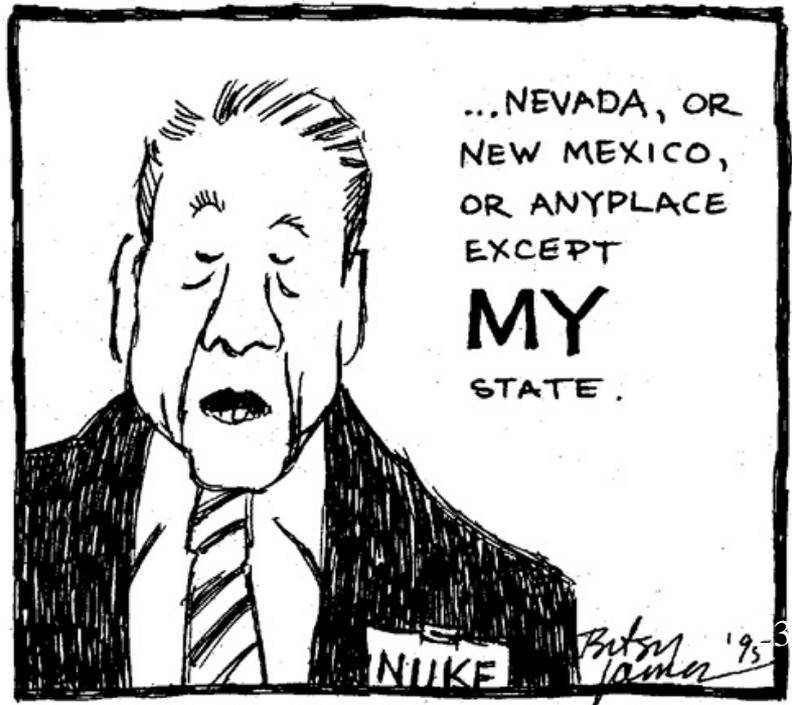
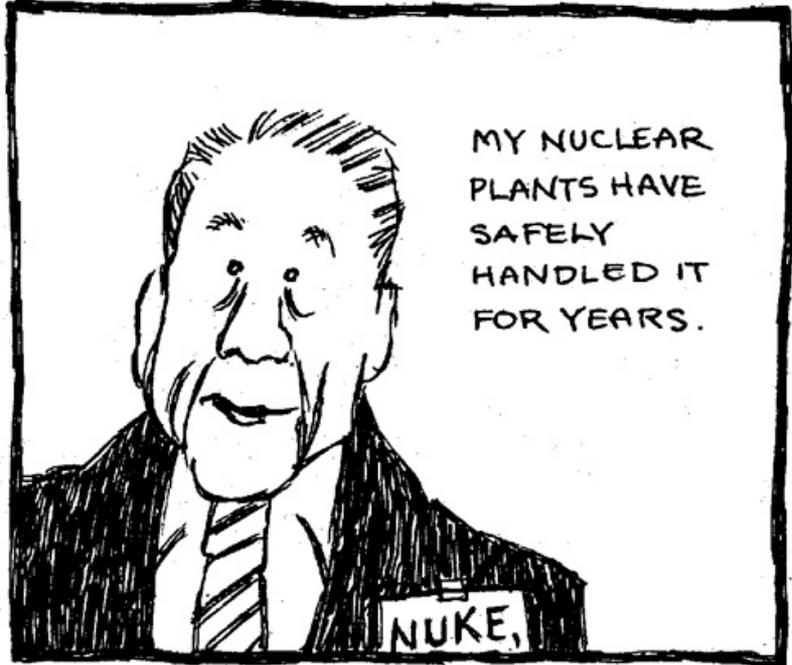
- DOE has only sited one HLW/SNF repository; it will not operate because of non-consent from Nevada state government
- DOE's "successful" consent for WIPP prohibits HLW/SNF
- DOE has proposed an MRS, but it did not operate because of non-consent from Tennesseans
- DOE does not have long-term consent for much HLW/SNF storage in ID, SC, WA, NY
- For 45 years DOE has achieved non-consent and has no operating HLW/SNF consolidated storage or repository sites

# More conclusions about DOE

- DOE has not been a reliable party regarding complying with the requirements of the NWPA.
- DOE has not been a reliable party regarding complying the agreements or statutory requirements for WIPP. It has continued to promote WIPP for missions that are prohibited by the WIPP Land Withdrawal Act.
- Given DOE's lack of reliability, it will be difficult to have confidence that "consent" agreements would be honored.

# Some more conclusions

- Utilities also have achieved non-consent for consolidated storage
- Utilities have not consented to consolidated storage at closed or open power plant sites
- If SNF storage is safe at reactor sites; consolidated storage seems unnecessary at non-reactor sites
- It is highly unlikely that consent will be given for consolidated storage site(s) away from reactors



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