



# good energy collective

March 4, 2022

Office of Spent Fuel and Waste Disposition  
Office of Nuclear Energy  
U.S. Department of Energy  
1000 Independence Ave SW  
Washington, DC 20585

**Subject:** Good Energy Collective's Response to the U.S. Department of Energy Request for Information on Using a Consent-Based Siting Process to Identify Federal Interim Storage Facilities

Dear Dr. Huff:

Good Energy Collective (GEC) is pleased to submit a response to the Request for Information on using consent-based siting to identify federal interim nuclear waste storage facilities.

GEC appreciates the work of the Office of Nuclear Energy (NE) to restart the interim waste storage activities following Congress' direction in the Consolidated Appropriations Act of 2021 (PL 116-260) and its commitment to identifying the best steps forward and integrate consent-based siting into the process.

GEC is pleased that the U.S. Department of Energy (DOE) arrives at this renewal of the consent-based siting conversation having already recognized several key elements. Firstly, DOE has previously identified that a consent-based siting process is more likely to result in the successful identification of locations for storage and disposal facilities.<sup>1</sup> This likelihood has been demonstrated through the success of other consent-based siting efforts domestically and internationally, including for nuclear waste.

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<sup>1</sup> U.S. Department of Energy, "Draft Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste," 12 January 2017, 2, <https://www.energy.gov/sites/prod/files/2017/01/f34/Draft%20Consent-Based%20Siting%20Process%20and%20Siting%20Considerations.pdf>.

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*About Good Energy Collective: GEC is a progressive policy research organization focused on building the progressive case for nuclear energy as an essential part of the broader climate change agenda. GEC works with industry, the administration, Congress, and NGOs across the political spectrum to help shape the future of advanced nuclear technologies to contribute toward an environmentally just climate response.*

Secondly, GEC recognizes and appreciates that DOE, in the 2017 draft process, correctly applies the novel conceptualization of “community” as inclusive of the local community, local/state governments, congressional delegations, and affected tribes. In our comments, however, we intentionally delineate between these bodies precisely because this encompassing understanding of “community” is yet uncommon, and because the success of this process will hinge on the participation of each discrete level of community impacted.

Thirdly, DOE has correctly noted that consent-based siting must be flexible and adaptive in order to succeed.<sup>2</sup> Expecting the unexpected and remaining nimble throughout the process will be crucial to the execution of an interim waste siting process with community consent. Remaining flexible, however, will not preclude the need for significant and proactive planning prior to the first outward-facing engagement the agency undertakes through this process. GEC hopes its comments will support NE in proceeding with consent-based siting in a successful manner.<sup>3</sup>



## ***Area 1: The Process***

### **1. How should the Department build considerations of social equity and environmental justice into a consent-based siting process?**

GEC first suggests that NE further adopt the Council on Environmental Quality (CEQ)’s longstanding definition of what constitutes a “community,” which is much less geographically bound and takes important historical and communal ties into account.<sup>4</sup> Specifically, CEQ, as early as 1997 in National Environmental Policy Act guidance, said that “agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions of environmental exposure or effect.”<sup>5</sup> CEQ essentially applied this line of guidance both to the identification of low-income populations and minority populations.

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<sup>2</sup> “Draft Siting Process,” 8.

<sup>3</sup> Throughout our comments, we refer to NE as the primary actor in the consent-based siting process, though we recognize that all or some of the process may ultimately be undertaken by an existing or new implementing organization, as DOE has previously recognized.

<sup>4</sup> U.S. Office of Management and Budget, “Memorandum for the Heads of Departments and Agencies, 20 July 2021, 2, <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

<sup>5</sup> White House Council on Environmental Quality, “Environmental Justice Guidance Under the National Environmental Policy Act,” 10 December 1997, 25-6, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

NE will be able to incorporate social equity and environmental justice into its consent-based siting efforts by making a conscious effort to integrate procedural and distributive justice tenets into its activities.

Procedural justice means ensuring the public has fair access and open opportunities to engage in the decision-making process. A well-constructed consent-based siting process embodies procedural justice. DOE has already identified ways to engage the public and involve them throughout the siting effort in the 2017 Draft Consent-Based Siting Process; our responses below provide additional recommendations on how DOE could further improve on this process.

Activities that embody distributive justice work to spread the benefits and detriments of particular actions more equitably across society—where those whom the government or private companies have shut out of past opportunities for clean energy, employment, and other assets are given the support they need to participate in new opportunities, and where those who have historically experienced disproportionate harm from federal or private action are not further burdened.

Incorporating distributive justice into the interim siting process will require the identification of communities who have been overburdened or underserved in this way. In order to identify these environmental justice communities, GEC recommends that DOE utilize the EJSCREEN tool from the U.S. Environmental Protection Agency (EPA) and the Climate and Economic Justice Screening Tool (currently in beta) developed by the CEQ. DOE should make an effort to ensure that communities it identifies as environmental justice communities are provided with the resources they need to participate in the siting process to the extent the community is interested.

We also recommend that the personnel implementing the interim waste siting process review the Jemez Principles for Democratic Organizing, a set of six tenets that the Southwest Network for Environmental and Economic Justice developed in 1996 to support effective conversations between diverse groups of people.<sup>6</sup>

## **2. What role should Tribal, State, and local governments and officials play in determining consent for a community to host a federal interim storage facility?**

Tribal, state, and local governments will be crucial interlocutors in the interim siting process, and the interest and consent of each will be crucial to the success of this effort. One of the contributing factors to the yearslong stalemate in the development of an integrated nuclear waste storage system and the execution of the Nuclear Waste Policy Act (NWPA)'s requirements has been the joint failure, by DOE and Congress, to pursue a waste storage site for which could be demonstrated the presence of wide, deep, and lasting support at every level—from the local community, the local government, and the state government.<sup>7</sup>

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<sup>6</sup> EJ Net, “Jemez Principles for Democratic Organizing,” <https://www.ejnet.org/ej/jemez.pdf>.

<sup>7</sup> “Draft Siting Process,” 2.

Consent-based waste siting practices offer an opportunity for NE to address this shortfall; GEC urges NE to confront any remaining sense within the department of the inconsequentiality of state laws and state opposition to agency actions. NE must proactively operate under the assumption that state and tribal sentiment and concern is a crucial determinant of the likelihood of a successful nuclear waste siting process.

However, GEC also cautions DOE against automatically relying on taking local government/officials' favorable positions as necessarily representative of the affected community or communities' position. Whether the county or municipal government can be said to speak for the community will vary by location. As Jemez Principle #3 states, "[i]t is important for organizations to clarify their roles, and who they represent," as part of a dialogue between different groups.<sup>8</sup> After identifying the localities that are interested in learning more about the siting process, NE should consider the feasibility of identifying local community-led organizations and develop ways to give them the ability to learn more and ask questions, too. Once again, NE may want to draw upon CEQ's working understanding of what constitutes a "community," which explains that communities are not uniformly definable by geographic proximity.

In the case of tribal governments, NE should prioritize government-to-government collaboration with tribal nations either proximate to the proposed sites or with connections to the land in and around the proposed site, and seek their technical, cultural, and environmental expertise to help shape decisions and processes.

Throughout the siting process, community groups and individuals must also have opportunities not only to ask questions but to express their concerns. DOE should allow direct community input to play a large role in the final decision-making process on whether to choose a particular site or not. Consent-based processes mean nothing if communities have no way to give a definitive "no" to a project and have that decision be respected.

While DOE will need to make an effort to identify the geographic and/or social boundaries of the community as the department selects the governmental level at which to conduct initial outreach and gauge interest in participation in the consent-based siting process, NE will need to balance depth with feasibility. NE will determine whether initial outreach occurs at the level of the county, city, census-designated place, town, or some combination of these based on the resources available and the desire to cast a broad net. This decision may determine what type of educational tools or hand-raising capabilities DOE might choose to develop to identify interested communities (see response to Question 4).

### **3. What benefits or opportunities could encourage local, State, and Tribal governments to consider engaging with the Department as it works to identify federal interim storage sites?**

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<sup>8</sup> "Jemez Principles."

NE should consider following part of Sweden’s successful playbook in siting nuclear waste by contacting each U.S. county, borough, or parish, and each tribal government and outlining DOE’s plans for siting one or more interim waste storage facilities through a consent-based procedure. Specifically, this communication should lay out how the process will proceed in phases, and that interested communities will have the ability to end participation at any time prior to the propagation of a binding agreement.<sup>9</sup>

Throughout our response, we discuss the need to prevent placing a financial burden on communities throughout this process. The Swedish case is instructive: Communities expressed a feeling of exclusion when Sweden placed the feasibility study activities in the hands of outside groups. Subsequently, Sweden addressed this issue by changing tactics; it brought local communities into the feasibility study process and reimbursed them for costs incurred.<sup>10</sup> GEC recommends that NE remain flexible in determining who is best equipped to conduct successful feasibility studies and identifying the extent of involvement that should be sought from the participating communities in the site assessment process.

#### **4. What are barriers or impediments to successful siting of federal interim storage facilities using a consent-based process and how could they be addressed?**

GEC identifies six potential impediments to siting temporary waste storage using a consent-based process. These include:

- A. **Insufficient funding.** A particular risk to the success of this endeavor is that Congress will fail to provide NE with sufficient funding to implement the project from start to finish. This failure could stem from budgetary constraints, a shift in congressional priorities, or skepticism in NE’s ability to execute the process. The risk of this failure could compound if NE fails to identify for Congress the full extent of its funding requirements to achieve successful implementation of an interim waste storage solution.

Program costs could be substantial. They may include but will not be limited to:

- a. Internal staffing for program implementation;
- b. Contracted staffing for program implementation, including external personnel with experience running a consent-based process; and
- c. Funding for community engagement. Pivotal to the success of a consent-based process will be for NE to fund all or most of the community outreach the agency performs in service of identifying a temporary waste storage solution. We alert NE to the necessity that under this process, no community should bear financial costs that could be conceived as burdensome. We agree with the suggestion from a commenter in the 2017 comment period that DOE should consider

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<sup>9</sup> See: Jessica R. Lovering, Suzanne Baker, and Todd Allen, “Social License in the Deployment of Advanced Nuclear Technology,” *Energies* 14 (2021): 4304. <https://doi.org/10.3390/en14144304>.

<sup>10</sup> *Ibid.*

providing financial and technical support to local communities, as necessary, to facilitate local inclusion and understanding in the siting process.<sup>11</sup>

To the extent possible, prior to launching the siting process, NE should develop a project budget that accounts for projected outlays for each phase inclusive of funding to help communities engage in the process. NE should communicate clearly and often with Congress on the funding it needs to be successful.

Under existing law, NE is constrained against promising interested communities that it could support them financially through the full duration of the siting process. NE should therefore also identify whether the success of the consent-based siting process will hinge on whether Congress amends the NWPA to allow the department to provide this support to participating communities. GEC notes that NE's argument in favor of legislative updates or additional funding may be strengthened once NE successfully completes the initial phases of the interim siting process up to and including site selection.

- B. **Lack of agency experience with consent-based engagement.** NE should be clear-eyed that this endeavor would be one of its first explicit applications of consent-based siting processes. DOE may ultimately determine that it would be served by bringing in external professionals with experience in consent-based siting, community engagement, and other key “soft-skill” practices to support the agency's process.
- C. **Difficulty in identifying “potentially interested communities.”** NE's search for communities interested in hosting spent fuel on an interim basis could be complicated by a lack of resources for (or infrastructure facilitating) federal-to-community communication. Ultimately, as part of the execution of a consent-based siting process, DOE should determine prior to beginning community consultation whether it would benefit from developing a tool or other “hand-raising” feature for communities to learn about the process and identify themselves as interested in learning more. Without such a feature, NE could run the risk of misapprehending the size of the prospective pool of interested communities as being smaller or larger than the real figure, which could result in the wasting of finite resources or the exclusion of a potentially suitable candidate community. To the extent possible, such a tool would need to be simple and low-effort to use; it should not resemble a formal Request for Proposal, which often represents a financial hurdle for organizations and communities without the money or experience to obtain professional help in submittal. DOE would also need to determine a rollout plan on how to make the necessary local and state officials aware of the tool.

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<sup>11</sup> U.S. Department of Energy, “Summary of 2017 Public Comments on the Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste,” 22 December 2021, 5, <https://www.energy.gov/sites/default/files/2021-12/ne-summary-public-comments-2017-draft-consent-based-siting-process.pdf>.

- D. **Insufficient trust.** As some commenters noted in response to the public comment period for the 2017 draft process, some communities found past DOE engagement to be lacking in scale or execution.<sup>12</sup> This sense of shortfall is one of the reasons why analysts of the waste stalemate, including those who supported the development of the Blue Ribbon Commission report, favor the creation of a new independent public or private agency to handle spent fuel storage, rather than retain the process within NE or another DOE body.<sup>13</sup>

DOE should make every effort to involve and inform the full set of stakeholders—local communities/community leaders, and local, county and state officials—at each step of the engagement process. To do this, NE will need to identify these individuals and groups and how they can most easily receive the information at each step.

DOE must also iterate to communities that no decisions on the location or type of waste siting have already been made, to assuage suspicions shared in the 2017 comment period that NE is conducting the consent-based siting process as political cover for a premeditated decision on where to site the waste.

- E. **Lack of concurrent progress at the NRC and EPA to propagate necessary regulatory updates.** Slow action by other federal agencies with roles in the nation's nuclear waste siting process, beyond lengthening the process toward eventual interim storage, could also raise questions on the part of communities and states about whether the federal government will be capable of following through on storing waste on an interim basis.

NE should involve NRC and EPA officials in the consent-based siting process, including by inviting them to participate in community-to-government communication, public fora, and other means of engagement with stakeholders, in order to level-set on expectations among all parties.

- F. **The dearth of action on a permanent repository.** NE's ability to implement a consent-based siting process for federal interim waste storage will be hampered by the federal government's continued failure to identify and site one or more permanent geologic repositories for nuclear waste. That the federal government has made virtually no progress toward a long-term repository will absolutely complicate NE's ability to convey to interested communities that the waste in question will in fact be stored temporarily.

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<sup>12</sup> "Summary," 1-2.

<sup>13</sup> At this time, GEC does not proffer an explicit reaction to the opinion, including by commenters in the 2017 comment period, that a new agency or organization is needed to implement the national waste siting process. GEC does, however, note that there are already more than five federal agencies and offices involved in nuclear waste storage, clean-up, and legacy management—all of which do not communicate or coordinate sufficiently, contributing to slowed remediation results and waste solutions for communities. GEC would suggest that DOE take this fact into account when deciding whether to support the addition of a new agency or office to the issue.

GEC urges DOE to communicate with Congress about what the department requires to restart a process toward identifying and siting a permanent repository. NE's ability to press for legislative changes or funding will likely be improved as NE successfully moves through the first phases of the interim siting process.

**5. How should the Department work with local communities to establish reasonable expectations and plans concerning the duration of storage at federal interim storage facilities?**

Consent-based siting is built upon honesty and trust. NE should be open, honest, and realistic with all participants about the anticipated duration of waste storage at federal interim storage facilities, which means equipping participants with an overview of the history of U.S. nuclear waste siting efforts that have led to the current impasse over a permanent geologic repository. NE should also provide information related to the optimal length of time for interim waste storage; the minimum and maximum possible durations of the interim storage; and the duration of storage that current technologies can safely achieve.

**6. What organizations or communities should the Department consider partnering with to develop a consent-based approach to siting?**

GEC recommends that NE consider partnering with the Energy Communities Alliance and the Indigenous Environmental Network as it works to develop and refine its consent-based approach to siting interim waste storage facilities.

**7. What other issues, including those raised in the Draft Consent-Based Siting Process ([www.energy.gov/sites/prod/files/2017/01/f34/Draft Consent-Based Siting Process and Siting Considerations.pdf](http://www.energy.gov/sites/prod/files/2017/01/f34/Draft%20Consent-Based%20Siting%20Process%20and%20Siting%20Considerations.pdf)), should the Department consider in implementing a consent-based siting process?**

GEC commends DOE for developing a strong set of general design principles for a consent-based process in Section 4 of the 2017 draft process document.<sup>14</sup> Below, we comment on two of these design principles:

1. **Community Well-being:** In order to consider and convey “the social, economic, environmental, and cultural effects” of interim waste storage on a community, DOE should prepare to perform an initial, and then iterative, assessment of these effects, and be open to updating this assessment based on information from communities, states, and other stakeholders on what social and economic benefits and environmental and cultural protections they require or desire.
2. **Transparency:** The implementing agency may want to consider applying an existing (or developing a new) database that enables the tracking of participant input and information about its use or application to the siting process, so that all stakeholders have access to the record of input and know how it is being incorporated.

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<sup>14</sup> “Draft Siting Process,” 6-7.

Regarding Section 6 on Siting Considerations, we note that all entities contacted at the beginning of the process should have the opportunity to indicate their interest. However, as part of that initial outreach, NE should make screening tools available (e.g., EJSCREEN, the Climate and Economic Justice Screening Tool, and the STAND tool in development between the University of Michigan Fastest Path to Zero initiative and several national laboratories) so that communities and governments can self-screen, if desired, prior to indicating their interest in learning more.



## ***Area 2: Removing Barriers to Meaningful Participation***

### **1. What barriers might prevent meaningful participation in a consent-based siting process and how could those barriers be mitigated or removed?**

Central to procedural justice is making sure that stakeholders are actually given the opportunity to participate in the process. For some communities, including some environmental justice communities, all or some of the residents may face challenges in participating, whether due to work or childcare schedules, poor health, or a lack of reliable internet access. Once an initial set of entities has indicated their interest in participating in the interim waste siting process, to the extent possible, NE should consider identifying best practices for engagement with these communities, and further identify how to involve those who face disproportionate challenges in participating, such as by changing meeting times to suit schedules, holding hyperlocal meetings at locations easy for residents to access, distributing flyers, etc.

### **2. What resources might be needed to ensure potentially interested communities have adequate opportunities for information sharing, expert assistance, and meaningful participation in the consent-based siting process?**

As noted above, many smaller communities with comparably smaller budgets have difficulty responding to formal Funding Opportunity Announcements (FOAs) for federal programs, often disadvantaging those whom the programs are intended to help the most. NE should consider providing financial support to communities or localities submitting proposals for the interim storage process. NE could also consider developing a simpler FOA for communities NE identifies as overburdened/underserved.

As DOE identified in the 2017 draft process,<sup>15</sup> community planning or visioning activities could support a successful process in support of interim waste storage. DOE should identify whether it can support these kinds of activities as part of its grantmaking for this endeavor.

### **3. How could the Department maximize opportunities for mutual learning and collaboration with potentially interested communities?**

DOE could facilitate mutual learning and collaboration by:

- Holding informational fora with interested communities to discuss the proposed project and field questions;
- Posting informational materials about the interim waste siting process in one easily identifiable and prominent place on the department's website;
- Ensuring that information is made available in multiple languages, if needed; and
- Hosting conferences that stakeholders from all interested communities could attend, talk to one another, interact with relevant experts, and receive guidance on available participatory tools.

### **4. How might the Department more effectively engage with local, State, and Tribal governments on consent-based siting of federal interim storage facilities?**

NE may need to consider contracting with external staff to help implement this program, including external personnel with experience running a consent-based process. To the extent possible, NE may also want to consider contracting with trained mediators or facilitators when the agency conducts local public meetings in service of the siting process.

### **5. What information do communities, governments, or other stakeholders need to engage with the Department on consent-based siting of federal interim storage facilities?**

See answers to Area 1 Questions 4, 5, and 7.

In addition, stakeholders at every level should be accorded as clear of an accounting as possible (and as early as possible) of the potential financial costs; changes in worker influx or exodus; and environmental impact that they could face at each prospective step of engagement, including the costs and impacts associated with ultimate site selection. To the extent feasible, NE should identify the potential costs ahead of time for each phase or for the steps in each phase.



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<sup>15</sup> "Draft Siting Process," 15.

## ***Area 3: Interim Storage as Part of a Waste Management System***

### **1. How can the Department ensure considerations of social equity and environmental justice are addressed in developing the nation's waste management system?**

Our recommendations in Area 1 specific to the process for siting interim waste also apply to the development of a national waste management system. Both efforts should work to advance procedural and distributive justice, practice honest and open communication, and entail consistent dialogue with Congress over what legislative changes or funding is necessary to succeed in realizing a socially and environmentally just waste management system.

### **2. What are possible benefits or drawbacks to co-locating multiple facilities within the waste management system or co-locating waste management facilities with manufacturing facilities, research and development infrastructure, or clean energy technologies?**

The benefits of co-locating these facilities include supporting a greater number of more diverse jobs beyond those at a waste-only facility—something which may be attractive to a potential host community. Drawbacks of co-location could include a more complex and prolonged siting and approval process.

### **3. To what extent should development of an interim storage facility relate to progress on establishing a permanent repository?**

Above, we note that the continued lack of progress in establishing a permanent waste repository will hinder NE's ability to earn community confidence and advance an interim waste storage solution. However, to the extent that restarting a consent-based siting process for interim waste storage is able to show intentional and dedicated action on the part of the government toward developing part of a domestic waste management system, that progress could ultimately give Congress the confidence to further fund the interim siting effort. It could also help break the current impasse and result in solution-finding between the administration and Congress to revisit the NWPA in support of restarting a process toward a permanent repository.

### **4. What other issues should the Department consider in developing a waste management system?**

The application of a consent-based siting process to such a comprehensive and important infrastructure project is a welcome move in the spirit of procedural and distributive justice. GEC anticipates that, because this will be NE's first use of consent-based siting on a project of this size, there will be unanticipated snags throughout the process. To the extent possible, NE must be clear-eyed about its own capability to implement consent-based siting effectively and where it might experience the hardest challenges. One of these challenges is likely to be in staffing the effort. NE should identify the scale and scope of the community engagement it will need to

conduct to succeed in upholding the consent-based process, and then budget accordingly for how much additional staffing support, either internally or contractually, it will need.

Sincerely,

A handwritten signature in grey ink that reads "Jackie Toth". The signature is written in a cursive, flowing style.

Jackie Toth  
Deputy Director  
Good Energy Collective  
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