Summary of Nuclear Waste Storage Provision in the FY2007 Senate Energy and Water Appropriations bill (Sec. 313 of H.R. 5427)

The Senate version of the FY2007 Energy and Water Appropriations bill (H.R. 5427), which was passed by the Senate Energy and Water Appropriations Committee on June 29, 2006, contains an authorizing provision that requires states with nuclear reactors to designate at least one site in that state for “interim” waste storage, called a Consolidation and Preparation (CAP) facility. Tucked into a large appropriations bill, this provision would result in a sweeping change to the country’s nuclear waste policy without hearings or public debate.

Despite the U.S. Department of Energy’s (DOE) recent claim that Yucca Mountain will begin receiving waste in 2017, the site is unsafe for geologic storage of nuclear waste and the program remains mired in scientific fraud and yet another design overhaul. The safest option over the next century is to safeguard the waste at the reactor sites. While the appropriations bill leaves open the possibility for existing reactor sites to be named CAP facilities, it could actually result in an increase in the number of sites where high-level nuclear waste is stored, as well as needlessly increase transport risks to public health and safety. Moving waste to yet another site in every state or to regional sites would not eliminate waste storage at operating reactor sites, nor improve security. This proposal would also give the DOE authority to site waste dumps over the objections of state and local governments.

Timeline in the Bill

The bill provides only 9 months to choose sites “interim” storage sites, potentially in all 31 states with nuclear power reactors, and a total of only 3.5 years for siting and licensing of those sites.

**Within 60 days of enactment**: DOE must designate a Director of Consolidation and Preparation (CAP)

**Within 180 days of enactment**: The CAP Director, in consultation with the Governor of each state with nuclear power reactors, must evaluate the “feasibility and desirability” of locating a CAP facility within the state. The CAP Director must issue a report making recommendations to the DOE Secretary regarding siting a CAP storage facility in each state with nuclear power. The report must be published in the Federal Register for public comment.

**Within 90 days of the report**: DOE, in consultation with the Governor of each state with nuclear power reactors, must designate “an eligible site” for a CAP facility within that state for spent fuel stored within that state, unless the DOE determines that “the designation of such a site is not feasible or desirable.” Thus, DOE could override a state’s choice for a storage site or sites.
Eligible sites include federal land or private land purchased from a willing seller. Ineligible sites for a CAP facility include a state designated for a geologic repository or with an approved commercial dry cask interim storage site, as well as locations of National Parks, Forests, Wildlife Refuges, and BLM lands. Therefore, the most likely federal land would be at DOE sites, which is contrary to legal agreements made with States and tribes. DOE has committed to cleaning up these sites, not adding more pollution to them.

**Within 90 days of the report:** DOE may also determine that it is in the national interest to locate a regional CAP facility and designate an eligible site. A regional CAP facility cannot be in a state that has a designated state-wide CAP facility.

**Within 30 days of designation of a CAP facility:** DOE must submit a license application to the Nuclear Regulatory Commission (NRC), along with an environmental report (as required by 10 CFR 72, subpart B and 10 CFR 51, subpart A). The license is for 25 years and is nonrenewable. This artificial limit, however, is unenforceable – by 2010, the amount of radioactive waste produced in the U.S. would fill up the Yucca Mountain site, if it is ever opened, and reprocessing is highly unlikely to be commercialized in the next several decades, if ever.

**Within 32 months after receiving an application:** NRC must issue an environmental impact statement (EIS) and grant or deny a license.

**Other provisions of the bill**

**DOE to take title to waste at shutdown reactors**
DOE is required, upon request of the owner, to take title to the waste at the site and take responsibility for the storage of the waste at the site “until such time as the waste can be moved to another site for storage or disposal.”

**NAS conditions for safe transport not yet met**
After getting a license to construct a CAP facility, DOE must take title to the waste to be moved to that facility based upon the Acceptance Priority Ranking (10 CFR 961). DOE must transport the waste from the sites to the CAP facilities, subject to licensing and regulation by the NRC and Department of Transportation under existing law. In a February 2006 report on the transport of spent nuclear fuel, the National Academy of Sciences (NAS) identified several vital issues that must be studied before any large-scale shipments of irradiated nuclear fuel commence.

♦ The NAS recommended that “an independent examination of the security of spent fuel and high-level waste be carried out prior to the commencement of large-quantity shipments” [emphasis added].

♦ The NAS “strongly” endorsed full-scale testing of waste packages that test the performance of the casks required under current regulations, as well as under conditions that exceed these regulations. The NRC does not currently require full-scale testing to license a cask design.

♦ The report concluded that “extreme accident conditions involving very-long-duration fires could compromise” waste containers. The committee recommended that the NRC do additional analyses of these scenarios and “implement operational controls and restrictions” on shipments to reduce the likelihood of conditions that would lead to such fires.
The NAS expressed concerns about the DOE’s ability to plan and manage a safe program, finding that “the challenges of sustained implementation should not be underestimated.”

**Design of CAP facilities**

Design for the CAP facilities must use storage technologies that are licensed, approved or certified by the NRC. DOE must amend the contracts with utilities to reimburse utilities for transport storage systems purchased by utilities if DOE determines that it is “cost effective” to use these systems, as long as DOE does not have to spend any money modifying those systems or to get additional regulatory approvals to use them.

**NEPA requirements**

The provision defines issuance of a license as a major federal action under NEPA. Prior to issuing a license, NRC must prepare a Final EIS, which must analyze the impacts of transportation of waste to the CAP facility, but can not consider the impacts of storage beyond the 25-year license period. Given that the waste is likely to remain at these sites for more than 25 years, this prohibition is merely an artificial cutoff to facilitate licensing.

DOE’s activities (including site selection, assessments, license applications, and construction and use of a licensed CAP facility) must be considered “preliminary decisionmaking activities” for the purposes of judicial review. DOE is not allowed to prepare an EIS or any environmental review before conducting these activities. It also requires that judicial review of the NRC’s EIS be consolidated with the judicial review of the NRC’s licensing decision.

**Funding**

The bill authorizes $10 million each year from FY2007 to 2011 (a total of $50 million). Title III (page 93) appropriates $10 million in FY2007 to DOE to “promote the development of one or more” CAP facilities that are “away from civilian nuclear reactors.”

DOE is authorized to use the Nuclear Waste Fund to identify, develop, license, construct, operate, and decommission CAP facilities, as well as for transport, treating, packaging or waste to be stored at a CAP facility.

**Legislates the Waste Confidence Rule**

The bill legislates that this provision and the DOE’s obligation to develop a repository “provide sufficient and independent grounds for any further findings” by the NRC of “reasonable assurance” that spent fuel and high level waste will be “disposed of safely and on a timely basis for the purposes of the [NRC’s] decision to grant or amend any license to operate any civilian nuclear power reactor.” This provision is politicizing what should be a scientific and technical determination. While it could help enable the licensing of new nuclear power plants by preventing members of the public from raising concerns about the waste in the licensing process, it does not change the reality that we do not have a viable, permanent solution for nuclear waste.

Centralized “interim” storage is merely an illusion of a waste solution. We urge Congress to reject this provision in the FY2007 Energy and Water Appropriations bill and support onsite storage with stringent security measures.