The WIEB High-Level Radioactive Waste Committee convened in Portland on April 17-18, 2013. Meeting attendees:

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<td>Kerry Martin, ID</td>
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<td>Roger Mulder, TX</td>
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<td>Connie Nakahara, UT</td>
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<td>Ken Niles, OR</td>
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<td>Tammy Ottmer, CO</td>
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<td>Carla Schreiber, NE</td>
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<td>Jim Williams, WIEB</td>
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<td>Rich Halvey, WGA</td>
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Ken Niles chaired the meeting. After introductions and review of the agenda, the meeting began with a six-month program update, in three parts.¹

A. Six-Month Program Review

1. States’ Expectations for DOE-NE/SRG Consultation
   Lisa Janairo led the discussion, reviewing the process which began at the October 2012 Core Group meeting in D.C.:
   - An initial draft prepared by Jim Williams;
   - An alternative draft prepared by Lisa: “States’ Expectations for DOE-SRG Consultation and Coordination in SNF/HLW Transportation Systems Planning and Operation.”
   - Extensive review and discussion among the SRG program managers and the states’ representatives at the October 2012 “core Group” meeting;
   - Submission of the proposal to DOE-NE on January 4, 2013;
   - Response from DOE-NE (over Pete Lyons’ signature) on March 18, 2013.

   The topic triggered vigorous discussion:
   - DOE and states do not have a shared vision of consultation and cooperation in transportation systems planning……and may never get there.
   - DOE still questions what it gets from “consultation and cooperation”……views it as an unnecessarily time-consuming process.
   - The SRGs want adherence to a model process. If circumstances require departures from that, DOE should provide a good explanation. This is consistent with the November 1993 report of the Secretary of Energy Advisory Board: “Earning Public Trust and Confidence.”

¹ The “States’ Expectations” discussion extended into the “Core Group meeting” time slot.
• It is noteworthy that working through this issue with the SRGs is still not a DOE NFST action item.
• Maybe this “working through” should be done in face-to-face discussion, rather than trading letters.
• DOE is happy to talk about consultation and collaboration, but will not engage in “partnership.” If we want something to happen, we must elevate the issue.
• DOE-NFST and the SRGs are different kinds of organizations. The SRGs represent state governments and governors. DOE-NFST is a technical organization within the federal bureaucracy—to “collaborate” it needs authority to do so….and it may not have it.
• DOE-NFST is the agent of the shipper (DOE) and the current regulator (of itself). States are themselves regulators, but they are not shippers.
• But, a new organization, when established, is likely to be the shipper only, with NRC as regulator.
• The SRGs should focus less on process and more on two tasks: a) Implementing BRC and NRC recommendations for transport to a pilot facility (by 2021?) and a CSF (by 2025?), and b) Consideration of transportation as a siting criteria.
• Transportation is not “consent-based” in the sense that the term is used in siting.
• It is important to work this through with DOE, so that a better understanding can move to a new organization, when created.
• This (the SRGs) is a “pre-9/11” group. The real focus “post-9/11” is risk: i.e. safe and secure transport. This will be the default if there is an incident.
• We are not yet ready to say, “This won’t work.”

The general direction from the discussion was that we should try again over the next few months, beginning with the SRG coordinators, then bringing in the Core Group, then deciding how to approach DOE.

2. **Section 180(c) Working Group**
Tammy Ottmer led the discussion of the working group process and progress, and of how/when/on what the full Committee should engage.² Discussion topics included:

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² Elizabeth Helvey: Summary of the Tuesday May 7 Section 180(c) webinar

In preparation for NTSF next week, I have attached the updated Issue Status Report and the issue papers that were updated based on yesterday’s discussion. I have also written a brief summary of the webinar. If I failed to capture something please let me know.

• **Rulemaking**: The WG voted to put Rulemaking in the Partially Resolved category of the Issue Status Report.
• **Allowable Activities**: The WG had a split vote on whether to accept the 2008 FRN list of allowable activities with the redline/strikeout changes discussed. After a discussion, it was decided to have a cleaned-up version of the 2008 list with changes to discuss at the May 14, 2014 NTSF WG meeting and possible take another vote then.
• **Timing & Eligibility**: The WG decided that we would have a cleaned-up version of the recommendation with changes to discuss at the May 14, 2014 NTSF WG meeting. The WG may vote then on the recommendation.
• **Distribution of Funds**: This issue is being discussed within DOE management and no decision will be available for the NTSF meeting.

The Working Group gave the following input on the Agenda for the NTSF May 14, 2013 Working Meeting:

1) Provide an annotated agenda
• **Allowable Activities.** Do these include routing studies? Risk assessment studies/ Risk assessment of various waste forms and casks? Might such studies be done at the initiative of specific states, not only SRGs or the group of four SRGs? What capabilities are available to states or SRGs to conduct such studies?—the same capabilities used by DOE-NFST?

• **Implementation by policy or rulemaking.** Tammy understands that the western position on this was dropped from the WGA resolutions\(^3\), and that the western participants on the Section 180(c) Working Group need better guidance on this topic.

• **Funding allocation.** A DOE IG report showed that the set of formulas previously proposed did not work as anticipated. WIEB staff have prepared a draft proposal to re-examine the issue in FFY’14: “Using currently available information resources (vastly expanded over the past decade), are there alternative formulas that better reflect the widely-varying risks and local emergency management capabilities across the country?

• **Payments directly to states, or via SRGs.**

3. **The BNSF-DOE/DOT Settlement Agreement**

At the October 2012 meeting, the WIEB HLRW Committee learned that a settlement had been proposed in late September. Jim Williams reviewed the steps taken since the October meeting.

• The proposed BNSF Settlement Agreement is part of a long contention, beginning in 1975, regarding the government’s ability to get cooperation from railroads regarding dedicated train transport of SNF/HLW. The 20-year legal process was punctuated in 2005, by a settlement agreement with UP, and now with the proposed agreement with BNSF.

• But, how well does this legal process comport with the national policy interest in the use of dedicated trains, as expressed by the National Academies in 2006? Jim reviewed the concerns expressed in WIEB comments on the proposed agreement, the “Joint Reply” of BNSF-DOE/DOD, and the WIEB response to the Joint Reply. He will make a similar presentation at the NTSF in May, this time with Ray English as respondent.

• The discussion noted that WIEB might follow-up with a petition for rulemaking on the topic. Evidently, DOT-FRA has actually worked on such a rule, but may shelve the effort until large-scale transport is in more immediate prospect.

• At the same time the federal agencies (DOE and DOD) are continuing to negotiate settlement agreements with the railroads, basing these on the UP and proposed BNSF agreements.

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2) **Make available the Working Group work plan and schedule**

3) **Begin with discussion of WG priorities for the rest of the summer. Elizabeth and Cori will present brief background information for each issue. Unresolved issues are:**

   a. Funding Allocation – do the SRGs want to form a sub-group to hash out this issue and report back to the entire WG?
   b. Evaluation Project schedule and scope
   c. Technical Assistance Manual
   d. Grant Guidance document
   e. Merit Review Criteria

4) **Discuss resolved, partially resolved, and under discussion issues, vote on recommendations as appropriate**

5) **Action items and Wrap-up**

On February 17, 2011, DOE issued the Draft Environmental Impact Statement (EIS) for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste (LLRW) and GTCC-Like Waste (Draft EIS, DOE/EIS-0375D) for public review and comment. DOE is inviting public comments on this Draft EIS during a 120-day public comment period, from the date of publication of the EIS’s Notice of Availability in the Federal Register. During the comment period, DOE will hold public meetings throughout the U.S. DOE will consider public comments in preparing the Final GTCC EIS.

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\(^3\) The relevant resolutions were addressed in 2011, and will be re-visited in 2014.
B. **The SNF/HLW Program in Reformulation**

Mike McBride (Van Ness Feldman) led the discussion, incorporating his insights regarding the dynamics between the D.C. Circuit Court, Congress, and the key executive agencies (currently DOE-NE and NRC).

- The D.C. Circuit understands Congress and the interconnections between the three major cases--the waste confidence case (decided in 2012), the fee case, and the mandamus case—but it has a major workload problem.
- The Court’s actions and inactions express a common theme—frustration with both the executive branch (which is supposed to carry out laws) and the legislative branch (which is supposed to authorize and fund executive branch action). The D.C. Circuit Court believes that both branches are in violation of the Antideficiency Act⁴, which holds that the Executive branch cannot use funds for purposes other than those for which the funds were appropriated.
- The Court’s 2012 waste confidence ruling was a major federal action, reflecting the Court’s basic question: “How can we have confidence in eventual disposal if we have no repository (and no access to the Fund needed to develop a repository)? In its proposed revision of the 2010 Waste Confidence decision, the Court felt that it was being asked to defer to a federal agency’s political judgment, not just to its technical judgment, which it is required to do under Chevron v. NRDC.⁵
- Regarding the delay its decision in the mandamus case, the Court feels it should address the fee case first (and it wants a 3-0 decision, not a split decision); also it has its workload problem in getting the needed decision written.
- Regarding Senate legislation, new energy committee chairman Ron Wyden is hearing arguments that some linkage between off-site storage and disposal (NWPA Section 145b) should be retained.⁶

McBride mentioned a recent article these tangled topics. It is attached.

C. **Focus Topics**

The agenda included four “focus topics”, with discussion on each led by an expert.

1. **Shutdown Reactor Sites**

   The discussion was led by Ralph Best, a member of the PNNL team under contract to DOE-NFST to conduct the shutdown sites inquiry. Jay Fisher, PG&E’s ISFSI Director for the Trojan site, joined us for this discussion.

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⁴ The Antideficiency Act (ADA), Pub.L. 97–258, 96 Stat. 923, enacted September 13, 1982, is legislation enacted by the United States Congress to prevent the incurring of obligations or the making of expenditures (outlays) in excess of amounts available in appropriations or funds. It is now codified at 31 U.S.C. § 1341. The ADA prohibits the Federal government from entering into a contract that is not "fully funded" because doing so would obligate the government in the absence of an appropriation adequate to the needs of the contract. This Act of Congress is sometimes known as Section 3679 of the Revised Statutes, as amended.

⁵ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984),[¹] was a case in which the United States Supreme Court set forth the legal test for determining whether to grant deference to a government agency's interpretation of a statute which it administers. *Chevron* is the Court's clearest articulation of the doctrine of "administrative deference," to the point that the Court itself has used the phrase "Chevron deference" in more recent cases.[²]

⁶ Subsequently released draft legislation includes a weak linkage.
Ralph began with a PG&E video of waste handling at the Diablo Canyon site. Subsequent discussion topics included:

- Fort St. Vrain. DOE-NFST is considering whether to include FSV in the current (FY’13) inquiry.
- PNNL will coordinate future site visits with states (probably via SRGs). Members from California & Oregon are eager to participate in the site visits, and request PNNL efforts to provide sufficient lead-time to make this possible.
- There is a question whether Rancho Seco should be considered “damaged”. The SNF can be removed even so, but the process would be considerably complicated.
- The current inquiry will consider alternative near-site transportation options, but will not decide among them.
- Will the shutdown sites inquiry arrive at an agreement among key parties (e.g. DOE; SNF owner; cask vendor; heavy equipment operators; state & local governments) as to how SNF should be removed? Partial answer: not in the current PNNL program.
- Question: Will not cask and transportation equipment be a key determinant of the time period for removal from shutdown (and other) sites? Yes, but the trade-off study is not included in the current inquiry.
- Question: To what extent have barge operators been consulted? Answer: Haven’t talked to barge people.
  - Class 2 track can be considered (using 6-8 axle rail cars) for removal from shutdown sites. Use of Class 3+ track must be considered case-by-case.

2. The DOE-NFST National Transportation Plan

Alex Thrower, a member of the DOE-NFST team for this inquiry, led the discussion.

- Comment: the current initiative (a DOE-NFST “milestone” for FY’13) appears to be, not really a “plan”, but a planning process.
- Comment: The plan (or process) should focus on implementation of NAS & BRC recommendations. This should be deliberate, and transparent in the product.
- Comment: The plan should include specifics, not just generalities. What about barge transport? Will Kewanee and Crystal River have to ship bare (uncanistered) fuel in GA-4 (for PWR assemblies) truck casks?
- Comment: The plan should anticipate a new organization, for which SNF/HLW transport would be directly regulated by NRC. In their 2006 report, the National Academies assumed that DOE has title to SNF/HLW…i.e. that it is self-regulated. The NRC is now considering rulemaking on repackaging, transport of high burn-up fuel, and new forms of dry storage.
- Assuming a Yucca Mountain destination for everything, the National Academies recommended that DOE identify preferred routes as soon as possible. Now, neither off-site storage nor disposal sites are identified. Routing to nearby railheads is appropriate, but not to destinations before any such are identified.
- Comment: We might identify principles for routing or for the routing process. These could include safety, institutional processes, the 2008 principles for agreement, etc.
- Comment. The WIEB “strawman” routing process has never been tested, but it should be. It should then be developed as a WGA resolution.

3. NRC Regulatory Initiatives

Earl Easton led the discussion, beginning with the accelerated transfer of SNF from wet storage to dry. Now, reactor operators remove SNF from pools only when they have to. If regulation
continues to address additional cost versus reduced risk, this will remain the case. But if regulation focuses more on consequence (less on probability) then accelerated transfer may be required. The DOE system architecture study “gets at” some of the consequences, in terms of costs and doses.

Previously, DOE has assumed that reprocessing might apply to all SNF. However, a recent ORNL study suggests that reprocessing is unreasonable for 95% of the current inventory, even if it were a national policy. However, particularly with high burn-up fuel, there is a potential for cladding to become brittle. This may lead NRC to rely on the canister, not the cladding, for safety. Assuming that already canistered fuel is not repackaged at the reactor site, the embrittlement concern could make repackaging a necessary function of consolidated storage facilities.

4. Adaptation of the WIPP Transportation Model

Rick Moore led the discussion, recounting the process that led to the WIPP transportation program. Western governors were actively engaged, understanding that cleanup of western defense sites required safe and uneventful transport. Representatives of governors of seven western states—each of whom had dealt with DOE in other contexts—took the lead. Each brought somewhat different criteria for “safe and uneventful”—some focusing on bad weather, others on routing, still others on public information, etc. Congress appropriated funds to develop these ideas into a plan, but the expressed interest of DOE Secretary Watkins helped cut through bureaucratic processes. The need to return cesium capsules from Northglen, CO to Hanford provided an opportunity to test the proposed WIPP PIG.

When rail shipments to WIPP were proposed, the governors were less engaged. A dedicated contract carrier—a key component of the truck shipment program—is impractical for rail shipments. The FRA developed a “Safety Compliance Oversight Plan” (SCOP), which involved route inspections and special training for crews, but the SCOP envisioned single occasional shipments, not a shipment campaign. The Draft Rail PIG never got DOE concurrence, and had no involvement from carriers.

- Comment: Regarding shipments under the WIPP PIG, states were able to say “we believe in this program.” Why should it be different regarding SNF shipments by rail? SNF shipments are much more highly radioactive than TRU shipments.
- Comment: Regarding WIPP, it was extremely important that within-region shipments were the first phase. Is anything like that in prospect for SNF/HLW?
- Comment: The FRA SCOP was intended for the primary route for transport between a single origin and destination. Can this be adapted for a larger campaign? Would FRA do so?
  Response: New rail transport equipment (electronic braking, advanced tracking and monitoring) provides a basis for the adaptation.
- Comment: The WIPP-PIG discussion has a self-congratulatory tone. In current transportation campaigns, DOE shows little inclination to fully meet the WIPP standard. For large rail carriers, SNF/HLW is a trivial addition to existing business, and they will be reluctant/resistant to make adaptations to assure rail transport safety, security, uneventful-ness &/or acceptance.
- Comment: we might hope that 90% of SNF will move by rail, but its possible that 25% will move by truck. WIPP is dissimilar in that DOE owns the shipping site, the waste, and the destination.

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7 Pool capacity limits will, of course, force additional ISFSI storage.
Discussion: WIEB staff should explore the adaptation of the WOIPP model, beginning with the WIPP Rail Expectations, the Draft Rail PIG, rail car procedures, and the FRA SCOP.

Comment: The major alternative is the Office of Secure Transportation. But, they use (legal-weight?) truck exclusively. Are there lessons to be learned? This is a “post 9/11” world. NRC has a new guidance document on transportation security, now in draft. Compare this to OST procedures. Then consider radiation equivalence.

D. State Reports and Wrap-up

1. States Reports:
   - Utah: PFS wanted to keep its Goshute license alive and reduce the maintenance fees. It didn’t happen. PFS sent a letter to NRC in December, asking to terminate the license.
   - Utah: Energy Solutions is being bought by a private equity fund.
   - Texas:
   - Oregon: There are now six actively leaking single-shell tanks at Hanford. At their April 15 meeting, the NWTRB seemed fairly shocked.
   - Nevada: The NV Agency for Nuclear Projects is assessing the impacts of past and prospective nuclear activities at NTS. There have been 90,000 truck shipments. Shipment of U-233 is in prospect, as is waste-incidental-to-reprocessing (a melter and some tanks: 170 tons) from West Valley.
   - Nebraska: Two WIPP shipments were recently put in safe parking, on a military base. NE was not notified of problems (requiring a crane to move the package) with a recent LLRW shipment.
   - Idaho: The LINE (Leadership in Nuclear Energy) Commission has been renewed; this could lead to a re-negotiation of the BATT Agreement.
   - Colorado: Tammy is focused on representing western positions at the upcoming NTSF. To be effective, we need more people, more depth.
   - California: The 2003 seismic hazard report is being updated. The San Onofre

2. Wrap-up
   It was suggested that the Fall meeting be held in Albuquerque (or Santa Fe?), and that the agenda include the Office of Secure Transport people.