

# Blue Ridge Environmental Defense League

www.BREDL.org PO Box 88 Glendale Springs, North Carolina 28629 BREDL@skybest.com (336) 982-2691

June 14, 2016

Ernest J. Moniz, Secretary  
US Dept. of Energy  
Attn: Office of Nuclear Energy  
1000 Independence Ave., SW  
Washington, DC 20585  
[consentbasedsiting@hq.doe.gov](mailto:consentbasedsiting@hq.doe.gov)

## Re: Response to Invitation for Public Comment (IPC)

Dear Secretary Moniz:

On behalf of the Blue Ridge Environmental Defense League and our chapters in Virginia, North Carolina, South Carolina, Tennessee, Alabama and Georgia, I write to respond to the Invitation for Public Comment; specifically, to share our views on why concept of "informed consent" is so problematic with regard to radioactive waste policy.

From the beginning, the principle of informed consent has been centered in medical therapy and research. Since the early expositions on the concept in Nuremberg after World War 2, informed consent has been associated with what a physician may and may not do and in the area of research intrinsically experimental in nature. Is informed consent even applicable to the concept of radioactive waste disposal? I think this is a fundamental flaw in the Department of Energy's consent-based siting process which is the subject of this IPC.

In the United States, the ethics of informed consent were elucidated by the erstwhile U.S. Department of Health, Education and Welfare in its 1979 Belmont Report:<sup>1</sup>

The consent process can be analyzed as containing three elements: information, comprehension and voluntariness.

1) Information. Most codes of research establish specific items for disclosure intended to assure that subjects are given sufficient information. These items generally include: the research procedure, their purposes, risks and anticipated benefits, alternative procedures (where therapy is involved), and a statement offering the subject the opportunity to ask questions and to withdraw at any time from the research.

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<sup>1</sup> *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*, The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, April 18, 1979, available May 2013 at <http://www.hhs.gov/ohrp/humansubjects/guidance/belmont.html>

2) Comprehension. The manner and context in which information is conveyed is as important as the information itself. For example, presenting information in a disorganized and rapid fashion, allowing too little time for consideration or curtailing opportunities for questioning, all may adversely affect a subject's ability to make an informed choice.

3) Voluntariness. An agreement to participate in research constitutes a valid consent only if voluntarily given. This element of informed consent requires conditions free of coercion and undue influence. Coercion occurs when an overt threat of harm is intentionally presented by one person to another in order to obtain compliance. Undue influence, by contrast, occurs through an offer of an excessive, unwarranted, inappropriate or improper reward or other overture in order to obtain compliance. Also, inducements that would ordinarily be acceptable may become undue influences if the subject is especially vulnerable.

The Nuclear Waste Administration Act<sup>2</sup> and the President's Blue Ribbon Commission advocate a consent-based approach to finding nuclear waste management facilities. But how would a newly created Nuclear Waste Administration carry out its charge honorably, impartially and ethically? As outlined above, presenting information in a tendentious fashion, or allowing too little time for consideration or curtailing opportunities for questioning, adversely affects a subject's ability to make an informed choice. Plus there is always the possibility that silence may be construed as consent. The element of voluntariness is sharply questionable with regard to the communities which will likely become the subjects of this process. Even inducements that would ordinarily be acceptable may become undue and improper if the subject is especially vulnerable, such as an economically depressed or politically powerless community.

Working in communities in the Southeast, we are well aware of radioactive waste initiatives seeking potential waste dump communities. The Blue Ridge Environmental Defense League was founded in 1984 because of one such program. These initiatives invariably come with promises of jobs and economic development, promises which short-circuit debate and sway elected officials.

The goal of the Blue Ridge Environmental Defense League is to counter technical jargon that prevents directly affected residents from effective democratic participation. Public participation is essential to protect our families and communities from becoming victims of industrial contamination.

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<sup>2</sup> S.854 - Nuclear Waste Administration Act of 2015, Status: Read twice and referred to the Committee on Energy and Natural Resources March 24, 2015

Consent of the governed is enshrined in the Declaration of Independence: "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." Consent of the governed is anathema to the "divine right of kings," which it supplanted. In many ways, electric power companies are the 21<sup>st</sup> Century equivalent of the Second Estate. This modern equivalent of the nobility has enormous financial and political resources. They enjoy special privileges; for example, claiming the rights of natural persons while being virtually immortal and exceptionally free from prosecution.

For decades, the transfer of liability from private hands to public entities has been the underlying factor driving nuclear waste siting initiatives. The assumption of this liability by the people via a government agency is an unacceptable transfer of wealth from poor to rich.

Therefore, we can see no just application of consent, informed or otherwise, to the imposition of a nuclear waste legacy lasting millennia. Further, it is simply beyond the capability of a government agency to ensure safety and security to people or communities for the duration which high-level radioactive waste will remain a hazard to human health.

Thank you for this opportunity to share our views.

Respectfully,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

Louis A. Zeller, Executive Director

[Blue Ridge Environmental Defense League](#)

PO Box 88

Glendale Springs, NC 28629

[BREDL@skybest.com](mailto:BREDL@skybest.com)

(336) 982-2691 office

(336) 977-0852 cell

<http://www.BREDL.org>

Founded in 1984, BREDL has chapters in Alabama, Tennessee, Georgia, South Carolina, North Carolina, Virginia and Maryland.