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Written Testimony on S. 1240 – Nuclear Waste Administration Act of 2013

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RAND Office of External Affairs

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The RAND Corporation

Written Testimony on S. 1240 – Nuclear Waste Administration Act of 2013²

**Before the Committee on Energy and Natural Resources
United States Senate**

August 14, 2013

As lead authors of the 2012 RAND report *Choosing a New Organization for Management and Disposition of Commercial and Defense High-Level Radioactive Materials*,³ we would like to comment on the way in which the Nuclear Waste Administration Act (S. 1240) appears to strike a balance between the competing values of public accountability and insulation from political influence.

We share the view of the Blue Ribbon Commission (BRC), the administration, and (now) this Committee that there is a need to move forward expeditiously with the establishment of a new organization responsible for the management and disposition of nuclear waste.

The Nuclear Waste Administration Act calls for a new, independent agency, headed by a single administrator. A conclusion of the RAND study, adopted by the administration in its *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*,⁴ is that either an independent government agency or a federal government corporation could be established with the critical attributes of accountability, transparent decisionmaking, autonomy, a public interest mission, and organizational stability.

The RAND study also concluded that the choice between an independent agency and a government corporation should hinge on how Congress and the President wish to strike the

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² This testimony is available for free download at <http://www.rand.org/pubs/testimonies/CT398/>.

³ Lynn E. Davis, Debra Knopman, Michael D. Greenberg, Laurel E. Miller, Abby Doll, Paul Steinberg, Bruce R. Nardulli, Tom LaTourrette, Noreen Clancy, and Zhimin Mao, *Choosing a New Organization for Management and Disposition of Commercial and Defense High-Level Radioactive Materials*, Santa Monica, Calif.: RAND Corporation, MG-1230-DOE, 2012, <http://www.rand.org/pubs/monographs/MG1230>. For a summary of the research, see *Options for an Organization to Manage and Dispose of Radioactive Materials*, Santa Monica, Calif.: RAND Corporation, RB-9677-DOE, 2012, http://www.rand.org/pubs/research_briefs/RB9677.html.

⁴ U.S. Department of Energy, *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste*, January 2013, <http://energy.gov/downloads/strategy-management-and-disposal-used-nuclear-fuel-and-high-level-radioactive-waste>.

balance between competing sets of values: providing sufficient mechanisms for political accountability to uphold the public interest, influencing the operations of the organization, and maintaining the political credibility to engage successfully with stakeholders, on the one hand, and providing autonomy, insulating the organization from political pressure, and ensuring its flexibility in conducting its activities, on the other.

In proposing the establishment of a government agency, S. 1240 strikes the balance in favor of more political accountability: ensuring that the public interest is taken into account in the organization's operation and making available (through the relationship to the President) the full resources of the federal government for the siting of storage and disposal facilities. At the same time, S. 1240 sets the term of the administrator to six years, with the option to serve multiple terms. This will provide greater organizational stability and political insulation than has been the case with the program being managed by the Department of Energy.

As the Committee knows, the BRC struck a different balance in recommending a federal government corporation, favoring greater independence from executive branch oversight and, thus, more political insulation and potentially even more organizational stability.

While the choice in S. 1240 of an independent government agency clearly signals the sponsors' interest in more autonomy and independence than offered by the status quo of continued program management by the Department of Energy, the inclusion of the Oversight Board in Section 205 indicates a desire to moderate that autonomy with an additional layer of oversight between the administrator and the executive branch and Congress. The President would appoint five members to the board with the advice and consent of the Senate, with not more than three members coming from the same political party. Members would have staggered six-year terms to maintain the continuity of the board's operations.

The RAND report assessed the various structural and procedural features that either are inherent in the independent government agency model or can be built into it to achieve more or less autonomy and accountability.⁵ For example, the most common governance and executive structure for an independent government agency is a multimember board or commission, although several have only a single administrator. The Federal Reserve Board has seven members; NASA and EPA have single administrators; the U.S. Postal Service has a board of governors appointed by the President, and this board appoints the Postmaster General.⁶

⁵ This discussion can be found in Chapter Four and is summarized in Table 4.3 of the RAND report.

⁶ See p. 32 of the RAND report.

S. 1240 would represent a departure from precedent by designating a single administrator and then inserting the Oversight Board above the administrator. Section 205(a)(1) and (a)(2) provide the board with considerable scope in reviewing not only financial aspects of the Nuclear Waste Administration's (NWA) operations but also the performance of the administrator in carrying out his or her responsibilities, the NWA's mission plan, and management reports. The board will independently report to the President and Congress (Section 205[n]).

On the basis of our study, we have some concern that this structure could lead to gridlock within the NWA. It is difficult to see how the Oversight Board adds value in terms of accountability beyond what is ordinarily provided by Congress and the executive branch, particularly in the absence of a requirement that stakeholders be represented on the board: states, local government, tribes, industry, and public interest groups. In effect, the Oversight Board would be a third layer of oversight scrutinizing the actions of the NWA administrator. The board would be in addition to the Inspector General, a fourth layer of accountability, established under Section 204.

We note that Section 502(c) of S. 1240 provides for the establishment of one or more advisory boards. Our view is that advisory boards will provide the administrator with a transparent, manageable mechanism for regularly garnering a range of views from stakeholders and experts, and they will provide the executive branch and Congress more generally with a sounding board regarding the policies, management, and operations of the NWA.

In Chapter Two of the RAND report, we assess the several reasons that past arrangements for the management and disposition of nuclear waste failed. One of the primary difficulties that the Office of Radioactive Waste Management in the Department of Energy faced over the past 30 years in carrying out its mission under the 1982 Nuclear Waste Policy Act was micromanagement on the part of the White House and Congress. Without the inclusion of the Oversight Board, the NWA will still have access to the normal oversight mechanisms within the executive branch and in Congress, and it will have its own Inspector General as a further backstop. The potential benefit of another layer of oversight seems small in comparison to the potential cost of organizational dysfunction.