



NUCLEAR unWASTEd NEWS

A QUARTERLY SUMMARY OF GENERATION, TRANSPORTATION, STORAGE AND DISPOSAL ISSUES

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Headline

New Yucca Mountain Legislation to Facilitate Licensing, Construction, and Operation of the Repository

4/12

U.S. Senator Pete Domenici (R-NM), chair of the Energy and Natural Resources Committee, introduced the Nuclear Fuel Management and Disposal Act on April 6 that would enact various reforms to expedite the opening of the Yucca Mountain repository for the permanent disposal of spent nuclear fuel (SNF) and high-level radioactive waste (HLW).

Constant legal and regulatory hurdles have stalled development of the site ever since Congress passed the Nuclear Waste Policy Amendments Act of 1987, which identified Yucca Mountain as the sole location for a characterization study of its viability as a permanent repository. The Department of Energy (DOE) completed a viability assessment in 1998, which found Yucca Mountain to be a suitable disposal area. This determination led in 2002 to a recommendation of the site by both Energy Secretary Spencer Abraham and President George Bush, followed by the approval of the U.S. Congress. Many factors, including litigation requiring a revised Environmental Protection Agency (EPA) radiation standard, have delayed DOE's license application to the Nuclear Regulatory Commission (NRC) for construction of the repository at Yucca Mountain.

Sen. Domenici's bill, S.2589, seeks to accelerate and ensure the opening of the Yucca Mountain repository with reforms intended to minimize roadblocks threatening progress. Key components in the legislation include:

- Permanent Land Withdrawal - Withdraws from public use approximately 147,000 acres in Nye County, Nevada [identified in the Final Environmental Impact Statement (FEIS)] for security and public health and safety during construction and operation of the repository.
- Repository Capacity - Repeals the statutory limit of 70,000 metric tons of SNF and HLW at Yucca Mountain in favor of an amount closer to its actual physical capacity. The FEIS analysis considered 120,000 metric tons.
- Licensing - Lessens the number/type of facilities required for inclusion in the construction application, and shortens and simplifies the succeeding application process required for receiving and

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- possessing radioactive waste at Yucca Mountain.
- Infrastructure - Authorizes initiating infrastructure activities (i.e. constructing a rail line, improving utility and communication capabilities, initiating safety upgrades) at any time - including before the NRC makes a final decision on whether to approve the construction application. This provision also limits the scope of environmental reviews and directs Federal, State, local, and Tribal officials to grant rights-of-way and other authorizations.
- Funding - Reclassifies nuclear waste fees paid by utilities into the Nuclear Waste Fund from “mandatory” to “discretionary” in the Federal budget, in order to adequately reflect their offset of congressionally-approved discretionary appropriations. This provision also adds infrastructure activities as an approved expenditure of Nuclear Waste Fund dollars.
- Environmental Regulations - Exempts DOE-owned materials transported or stored in NRC-licensed containers or located at Yucca Mountain from Federal, State, and local environmental requirements under the Resource Conservation and Recovery Act. This provision also designates the EPA as issuer, administrator, and enforcer of air quality permits in connection with the Nuclear Waste Policy Act of 1982 (NWPA).
- Transportation - Clarifies that the Secretary of Energy may determine the extent to which transportation under NWPA is regulated by the Atomic Energy Act of 1954. The Energy Secretary may also request that the Secretary of Transportation preempt any State or Tribal requirements that affect DOE’s ability to carry out NWPA transportation, irrespective of whether the transportation is subject to the Hazardous Materials Transportation Authorization Act of 1994.

- Water Rights - Declares sufficient water supply at Yucca Mountain to be beneficial to interstate commerce and not detrimental to the public interest (contrary to Nevada State law). Allows the Secretary of Energy to obtain water rights, by purchase or otherwise, to carry out NWPA functions.
- Waste Confidence - Requires that the NRC deem that sufficient capacity will be available for the disposal of SNF when considering whether to permit the construction or operation of a nuclear reactor.

The Domenici bill was read twice upon introduction and referred to his Energy and Natural Resources Committee. Senate Minority Leader Harry Reid (D-NV) represents the state selected to house the nuclear waste repository and has consistently fought its existence at Yucca Mountain with fellow Nevada Senator John Ensign (R-NV). When S.2589 was introduced, Senator Reid vowed that the bill is, “not even on life support. It’s dead when it gets here.” Added to the bill’s uncertain prospects for passage in 2006 is the shortened legislative session expected due to campaigning for mid-term elections this year.

[Bill Link](#)

[News Article .](#)

[DOE Press Release](#)

[Industry Perspective](#)

NCSL Online Resources

[NCSL Nuclear Waste Cleanup Webpage](#)

<http://www.ncsl.org/programs/envIRON/cleanup/cleanup.htm>

[State Legislation Database on Nuclear Waste Issues](#)

<http://www.ncsl.org/programs/envIRON/nucwaste.cfm>

[State Legislation Database on Environmental Justice Issues](#)

<http://www.ncsl.org/programs/envIRON/envjustice.cfm>

President to Nominate Yucca Mountain Supporter to Head NRC

4/28

The White House announced on Thursday, April 27, its intention to nominate Dr. Dale Klein to a five-year term as chairman of the Nuclear Regulatory Commission (NRC). Dr. Klein has served in the Pentagon as assistant defense secretary for nuclear, chemical, and biological programs since November, 2001.

Dr. Klein received his bachelor's degree, master's degree, and PhD in nuclear engineering from the University of Missouri at Columbia. Before working in the Department of Defense, Klein held a professorship and acted as associate dean and vice chancellor at the University of Texas.

Dr. Klein has been an active member of several Department of Energy (DOE) national committees, including the Nuclear Energy Research Advisory Committee. Many Nevada officials remember Klein best from his involvement in the 1990s with the Nevada Initiative. According to the publication *Nuclear Fuel*, the initiative was "an industry advertising campaign aimed at building public support for DOE's study of the proposed repository site at Yucca Mountain."

While many Nevada state leaders and critics of the Yucca Mountain repository considered the initiative propaganda, industry representatives considered it necessary to educate the public about radioactive waste and to counter anti-nuclear campaigns. The president of the Nuclear Energy Institute, an organization representing industry interests, recently expressed support for Dr. Klein's nomination.

Representative Shelley Berkley (D-NV) and other Nevada officials believe Dr. Klein should recuse himself from Yucca Mountain issues for at least one year. This is the same period of time Senator Harry Reid's (D-NV) former aide, Gregory Jaczko, was required to recuse himself from these issues after his confirmation as an NRC commissioner in 2004.

[White House Press Release](#)

[News Article ..](#)

[Klein Biography](#)

Profile of Ward Sproat - New Director of DOE's Yucca Mountain Project

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Edward F. "Ward" Sproat III takes office this week as the new head of the Energy Department's Office of Civilian Radioactive Waste Management (DOE-OCRWM).

Ward Sproat's professional background is industry-based, holding executive positions at energy companies including Excelon Generation Corporation, which operates the largest fleet of nuclear reactors in America. He most recently served as managing partner of McNeil, Sproat & Associates, a Pennsylvania consulting firm. Sproat is perhaps best known for his role as lead negotiator in a nuclear waste settlement between Excelon and DOE in 2004. In exchange for payments related to on-site storage of spent nuclear fuel, Excelon agreed to drop breach-of-contract lawsuits against the department for its failure to meet a 1998 deadline to remove such spent fuel from reactor sites for final disposal in a federal repository.

In his new role as director of OCRWM, Sproat will be tasked with rejuvenating the Yucca Mountain project. Since its identification for site characterization as the federal nuclear waste repository in the Nuclear Waste Policy Amendments Act of 1987, the project has been sidetracked by constant legal, political, and regulatory hurdles. With President Bush's energy independence strategy heavily reliant upon a renewed interest/investment in nuclear power, industry confidence in a final waste disposal solution is essential for a true renaissance to seem viable.

First nominated by President Bush in September 2005, Sproat had been blocked with procedural holds placed

by four U.S. Senators, including Nevada's Harry Reid and John Ensign. Senator Reid announced his hold withdrawal after receiving a copy of the DOE Inspector General's report investigating emails suggesting non-compliance with quality assurance at Yucca Mountain; the report found that water infiltration work had not been compromised. This and other hold removals made way for Sproat's Senate confirmation on May 26.

Several Nuclear Regulatory Commission (NRC) nominees, who will review DOE's Yucca Mountain license application upon completion and submission, were also

confirmed on May 26. Dale Klein, assistant defense secretary for nuclear, chemical, and biological programs (see news piece from 4/28), will serve a five-year term as chairman of the NRC. Former Reid aide, Gregory Jaczko, and former aide to Senate Energy Committee Chairman Pete Domenici (R-NM), Peter Lyons - both currently serving as temporary commissioners on the five-member panel - were confirmed to carry out the remainder of their five-year terms as well.

[Four Nominees Article](#)

Storage

NRC Must Consider Terrorist Threat to On-Site Storage of Nuclear Waste

6/9

The U.S. Court of Appeals for the Ninth Circuit ruled on June 2 that the likelihood of a terrorist attack must be taken into account before regulatory approval of additional on-site radioactive waste storage at commercial nuclear reactors.

The case involved the Diablo Canyon nuclear power plant in San Luis Obispo, California, which is building new storage facilities due to its current waste repository approaching maximum capacity. The Nuclear Regulatory Commission (NRC) granted a permit to construct the storage facilities without specifically factoring in the threat of terrorist strikes, which it determined in 2003 to be "speculative" and therefore not warranting additional study.

The question now is what impact this court decision will have on the NRC's renewal of older nuclear power plant licenses, many of which are set to expire in the near future. The granting of license extensions will result in increased waste and the need for expanded on-site

storage while ambiguities persist as to the opening of Yucca Mountain, a federal permanent repository for the final disposition of reactor spent nuclear fuel and other high-level radioactive wastes. Historically, NRC license renewal reviews looked into how well a plant had aged (most pushing 40 years in existence) to ensure that the facility was safe to continue operations. An Environmental Impact Statement would assess the facility's ongoing affects on its surrounding environment, but not consider storage or emergency planning factors related to terrorist strikes. The recent court decision may now require consideration of such events by the NRC when determining whether to renew nuclear plant licenses.

Two federal missions seem to be in direct conflict here. The Bush administration staunchly touts anti-terrorism preparedness, but believes the nuclear industry is already over-regulated. If a nuclear renaissance is to take hold, which the White House believes is necessary to wean U.S. dependence from foreign oil and "dirty" energy sources, roadblocks in the form of regulatory delays and higher costs in building the nuclear industry will hinder this energy transformation vision.

[News Article \(VT\)](#)

[Court Opinion](#)

Interim Storage of Spent Fuel for GNEP Recycling

6/21

In a congressionally mandated report completed in May, the Department of Energy (DOE) stated that work on the Global Nuclear Energy Partnership (GNEP) in FY 2006 will include, “Promoting the consideration of alternative sites suitable for development of integrated recycling facilities, including storage of spent nuclear fuel to be processed in the recycling facilities.” The DOE report, “Spent Nuclear Fuel Recycling Plan,” was required by a Conference Report of the FY 2006 energy and water development appropriations law, which sought information on the planning for GNEP’s reprocessing and fuel cycle activities.

A House Report on the FY 2007 energy and water development appropriations bill stated concerns that DOE had not included an interim storage requirement when seeking expressions of interest (EOI) from potential host sites of the new reprocessing program under GNEP: “In the Committee’s view, any such integrated spent fuel recycling facility must be capable of accumulating sufficient volumes of spent fuel to provide efficient operation of the facility. A first test of any site’s willingness to host such a facility is its willingness to receive into interim storage spent fuel in dry casks that provide safe storage of spent fuel for 50 to 100 years or longer.”

At a Senate hearing on June 13, DOE’s assistant secretary for nuclear power, Dennis Spurgeon, indicated that interim storage at a reprocessing facility was “implied.” Sources confirm that the original request for EOIs, issued on March 17, is now being revised to explicitly state this requirement - pushing back the schedule for actual proposals from its expected date of some time this spring. More than 40 facilities have expressed interest in the reprocessing project; several may repeal their consideration with a spent fuel storage requirement of indeterminate length tacked on.

Because spent nuclear fuel (SNF) intended for such reprocessing is not awaiting disposal in a geological repository, the May DOE report to Congress states that it would not be limited by Nuclear Waste Policy Act restrictions on interim storage. In a legal memorandum responding to written questions from Rep. Dingell’s (D-MI) office, DOE also mentioned the flexibility under the Atomic Energy Act to acquire nuclear material “to further any of its purposes including international cooperation and nuclear nonproliferation [and] support of research and development in nuclear power....”

*Sources:

- Greenwire online article (registration required). Mary O’Driscoll, “Interim storage will be part of GNEP, DOE says.” June 14, 2006; E&E Publishing, LLC.
- Platts online newsletter (subscription required). Daniel Horner, “DOE lays out near-term plans for work on fuel cycle initiative.” Volume 31/ Number 13/June 19, 2006.

[Spent Nuclear Fuel Recycling Plan](#)
[House Report on Energy Appropriations for GNEP](#)
[Dingell/DOE Q&A](#)
[Request for GNEP EOI, March 17](#)

Interim Storage included in FY 2007 Energy Appropriation

6/30

The Senate Appropriations Committee prepared for the July 4 holiday recess by completing action on four appropriations bills on June 29, just two days after these bills were reported by their respective subcommittees.

Included in this action was the FY 2007 Energy and Water Development Appropriations Act (HR 5427). The big news reported by the committee was a legisla-

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tive rider involving nuclear waste storage tendered by New Mexico Senator Pete Domenici, chairman of the Energy and Water Subcommittee. Senator Domenici's language would authorize the U.S. Department of Energy (DOE) to take title of spent nuclear fuel currently housed at commercial reactors and temporarily store it at consolidated federal sites in that state or region. The proposal would require DOE to consult with governors in states where nuclear reactors are located to identify sites where the waste could be stored for up to 25 years, without the possibility of license extensions.

HR 5427 sets first year appropriations for the consolidation and preparation program at \$10 million to be funded by the Nuclear Waste Fund. Established under the Nuclear Waste Policy Act of 1982, the Nuclear Waste Fund is an account paid into with fees assessed to consumers of nuclear power reactor energy - and is dedicated to the Yucca Mountain repository project.

The bill language also includes congressional "waste confidence," which legislates away the Nuclear Regulatory Commission's determination of sufficient waste disposal capacity before allowing for the construction or operation of nuclear power plants. Proponents argue that with President Bush's energy independence strategy heavily reliant upon a renewed interest/investment in nuclear power, mandated confidence in a final waste disposal solution is necessary to cultivate a true renaissance in the industry. Opponents argue that stating

confidence doesn't amount to an actual disposal plan and in fact hinders the progress of the Yucca Mountain repository by taking the pressure off of movement toward a final waste solution.

One of the remaining hurdles for the proposal is the possibility that a point of order against legislating on an appropriations bill may be raised during floor consideration that would require 60 votes for approval. The remaining legislative calendar for the Senate is limited. However, we may see floor consideration of this and other appropriations as early as the week of July 17.

Many congressional insiders believe, however, that HR 5427 will not see floor action in the Senate, but rather will be delayed until after the elections and settled during a conference with the House on an omnibus bill to include multiple federal program appropriations. That will make it more difficult for opponents - of which there appear to be many in the House - to balk on interim storage because it would postpone completion of several other unrelated appropriations bills that may more directly affect their constituents.

Significant written contributions to this summary provided by Tamra Spielvogel, Senior Policy Specialist with NCSL in Washington D.C.

[Bill Text](#)

[Domenici Press Release](#)

[News Article ...](#)

GNEP

Can DOE Spend Yucca Funds on GNEP?

6/5

The U.S. House of Representatives passed the 2007 Energy and Water Development appropriations bill in May, which included language prohibiting the Depart-

ment of Energy (DOE) from spending Yucca Mountain repository funds on President Bush's proposed Global Nuclear Energy Partnership (GNEP).

Established under the Nuclear Waste Policy Act of 1982 (NWPA), the Nuclear Waste Fund (NWF) is an account

paid into with fees assessed to consumers of nuclear power reactor energy - and is dedicated to the Yucca Mountain repository project. Because the recently passed appropriations bill allocates only \$120 million for GNEP in fiscal year 2007, \$130 million less than the administration's budget request, some legislators are concerned that DOE may attempt to cover this shortfall by siphoning money from the NWF - which has accrued about \$26 billion over two decades and currently holds \$18 billion. House Energy and Commerce Committee Chairman Joe Barton (R-TX), a sponsor of the amendment, is concerned about DOE interpreting NWPA language regarding approved uses of the fund (such as for waste development and demonstration) to justify spending NWF monies on GNEP activities.

Energy and Commerce Committee Ranking Member John Dingell (D-MI) asked Energy Secretary Samuel Bodman at a hearing in March whether the department planned to use Yucca funds for GNEP purposes, to which Bodman replied in the negative. DOE recently completed a legal memorandum responding to written questions from Dingell's office regarding the department's authority to use the NWF for GNEP purposes. Citing the NWPA section stating allowances for, "any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository....," DOE determined that where GNEP activities meet these requirements, they would be eligible for NWF monies.

On the Senate side - Sen. Pete Domenici (R-NM), who chairs both the Energy and Natural Resources Committee and the Energy and Water Development Appropriations Subcommittee, has stated his unequivocal support for GNEP and his intention to fully fund the administration's budgetary request. Domenici recently drew headlines when he stated that Yucca Mountain will not receive spent fuel rods - and that an ultimate repository design will depend on the outcome of GNEP. He reckons utilities will need to store spent nuclear fuel on-site for a lengthy period before interim storage and/or GNEP reprocessing will be ready to accept it. Only after these stages does the chairman see a role for final storage of nuclear waste in a permanent repository. Domenici believes that using NWF dollars on GNEP would require some changes to the law regarding interim storage, which his recently introduced Nuclear Fuel Management and Disposal Act (S.2589) fails to tackle.

Whether DOE can - or whether it will - spend Nuclear Waste Fund dollars on GNEP activities are two different questions. Although DOE believes it would have the authority under certain circumstances to acquire NWF dollars for GNEP purposes succeeding congressional approval, the DOE's legal memorandum to Dingell's office asserted the department has no plans at the moment to do so.

[Dingell/DOE Q&A.](#)

[House Report on Energy Appropriations](#)

[Domenici Intentions Article](#)

[NWPA](#)

Transportation

State Fees for the Transport of Nuclear Waste

4/21

Missouri Senate President Pro Tem Michael Gibbons introduced a bill this year to place fees on the transpor-

tation of radioactive wastes through or within his state to cover costs of shipping assistance and emergency planning and response. Fees differ based on the waste's level of radioactivity and the miles of Missouri land over which that waste travels. For higher activity wastes, the bill proposes \$1800 per cask trucked (\$25 surcharge for

Transportation cont.

each mile over 200 miles) and \$1300 per rail transport (\$125 for each additional cask in the rail transport). For low-level wastes, the bill proposes \$125 per truck or rail transport. Sen. Gibbon's bill, SB 976, passed the Senate in April and has been referred to the House Conservation and Natural Resources Committee.

Several states have enacted laws requiring permit fees for the transportation of spent nuclear fuel, high-level waste, and other radioactive materials through their borders. A listing of states with such fee requirements are detailed below:

California	\$100, \$75 for renewal (all hazmat)
Colorado	\$500, plus \$200 per trip
Connecticut	\$25 per trip
Florida	\$100 for LLW
Georgia	\$100 or \$25 per trip
Idaho	\$5 hazmat endorsement per truck
Indiana	\$1000 per vehicle or rail car
Illinois	\$2500 per truck cask, \$4500 per rail cask (not a permit fee), \$25 surcharge for each mile over 250
Iowa	\$1800 per truck, \$1300 first cask and \$125 for each additional cask by rail per shipment. Add on fees apply.
Kentucky	\$25
Minnesota	\$50 registration fee. \$1000 per vehicle (not a permit fee)
Mississippi	\$2500
Nebraska	\$2000 per cask, truck or rail
Nevada	\$500 permit fee every 3 years, plus \$150 per truck, plus actual cost for background investigation of radmat carriers
New Hampshire	\$5 per vehicle
New Jersey	Not specified
New York	For LLW: \$25 for first vehicle, \$5 for each addl., \$300 max.
Ohio	\$50 registration fee, \$600 permit fee every 3 years (all hazmat)
Oregon	\$70 per shipment (some shippers maybe instead pay \$500 annual fee)
Pennsylvania	\$1000 fee per shipment, \$10 per truck turn-pike permit fee
South Carolina	\$75 or \$750 based on volume and level of radioactivity
Tennessee	\$1000 per truck, \$2000 per rail shipment, \$400 per LLW shipment
Vermont	\$1000 per shipment
West Virginia	\$50 registration fee (all hazmat)
Wyoming	\$200 per package

*Source: Jim Reed, NCSL; April 2006

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