

Critique of DOE's Proposed Yucca Mountain Legislation

On April 4, the Administration sent its Yucca Mountain bill to Congress. Since Yucca fails the tests of science and can't satisfy traditional safety regulations for nuclear projects, the bill would unabashedly legislate around those obstacles, constituting DOE's last-ditch attempt to salvage a repository that has failed in every way.

- **It removes Yucca's 70,000-metric-ton capacity limit for nuclear waste, vastly compounding Yucca's dangers.**
 - **DOE could fill Yucca with waste not just from current U.S. reactors, but from all future U.S. reactors and even reactors from *foreign* nations under DOE's Global Nuclear Energy Partnership. Yucca would be the *world's* dumping ground for unlimited waste volumes.**
 - **Removing the cap would more than double the number of shipments across the nation to Yucca, and may prompt transnational shipments to Yucca from the world over.**
 - **Loading tens of thousands more tons of spent fuel and reprocessing waste into Yucca would significantly increase risks, potentially compromise waste isolation even further, and increase chances of a catastrophic criticality event.**
 - **Expansion of the repository area will require authorization for additional site characterization, which was officially ended with the Secretary's 2002 Site Recommendation**
- **It abolishes all Department of Transportation, NRC, Surface Transportation Board, and state authority over nuclear waste transport, giving DOE sole and unilateral control over the largest nuclear shipping campaign in history.**
 - **Shipments would be exempt from present and future DOT safe-routing regulations, from DOT safety regulations, and from NRC safeguards regulations.**

- States would no longer be able to restrict DOE truck shipments through highly populated areas or infrastructure hazards, such as tunnels. Neither DOT nor the states could restrict DOE rail shipments through such areas either.
- Any attempts by states or Indian tribes to regulate or even inspect the transport vehicles are preempted, irrespective of whether such regulation would have been permitted under the Hazardous Materials Transportation Act of 1994.
- The program flies in the face of a recent National Academy of Sciences study that found nuclear waste transport acceptably safe if all existing regulatory requirements were rigorously enforced.
- It eliminates any applicability of our nation's hazardous waste disposal and local air quality control laws.
 - DOE could bury over *500 million* pounds of hazardous molybdenum, chromium, vanadium, and nickel wastes in disregard of current safety standards for hazardous materials, without any regulatory review whatsoever. These numbers would vastly increase if Yucca's waste capacity limit is removed.
 - The bill is so overbroad it appears to exempt *all* of DOE's millions of tons of mixed wastes from state or RCRA regulation, including wastes from cleanup of DOE weapons sites that would otherwise require disposal in a RCRA-permitted landfill.
- It radically undercuts the traditional procedural requirements for demonstrating nuclear safety.
 - If DOE gets an initial construction permit for Yucca, the bill allows unlimited changes in the repository with no right by anyone to a formal or even informal oral hearing, and it limits all safety and environmental review for such changes to 18 months.

- **It gives DOE the ultimate “bait and switch” loophole: Can’t satisfy requirements now? Just get your initial permit on a small piece of the project, then make the big changes you want when no one can interfere.**
- **It usurps a state’s traditional authority to administer its waters, commandeering the state to grant rights DOE could not otherwise obtain.**
 - **The State Engineer’s expertise and authority over Nevada water is ignored and preempted.**
 - **By legislative fiat, whatever use DOE chooses to make of the state’s water, no matter how much it uses, is “beneficial” and “not detrimental to the public interest,” despite such determinations heretofore being reserved exclusively to states.**
- **It appears to create a loophole for DOE to build a heretofore illegal interim storage facility for nuclear waste at Yucca under the guise that such facility is an “aging” pad or is otherwise “essential infrastructure” connected with or “concerning” the repository. (This may first require NRC to issue a “receive and possess” license for the waste, however.) NRC’s safety review for this facility would be truncated and no one would have any right to a formal or even informal oral hearing.**
- **It would withdraw permanently from public use 147,000 acres of federal land at a time when the repository is years, perhaps decades, from opening, if ever.**
 - **Nevada would lose the right to build roads and bridges in the area, and surface mining would be prohibited.**
- **It puts the cart before the horse on DOE’s “infrastructure” projects, like building vast new rail lines and other facilities before a permit for the repository is ever granted.**

- **Allowing DOE to proceed with infrastructure projects before approval is obtained for the repository would be a huge waste of taxpayer and ratepayer money since such facilities may never be used.**
 - **Federal, state, local and Tribal officials are directed to expedite their approvals of anything DOE wants in this regard.**
 - **After the government spends billions on infrastructure, there will be extreme pressure on NRC to grant a license for Yucca construction, whether deserved or not.**
- **It deems Yucca to be more important than anything else occurring at the Nevada Test Site or Nellis Air Force Range, giving DOE unlimited authority over the region's airspace.**
 - **DOE tried and failed to obtain the Air Force's agreement to compromise its critical training missions by promising to observe a "no-fly zone" over and around Yucca. The bill rejects Air Force concerns in this regard, handing DOE the keys.**

IN SHORT: The bill is an unconstitutional usurpation of Nevada's sovereign prerogatives. It obscenely circumvents Yucca's scientific flaws, deprives states and localities nationwide of any role in waste transport, and exonerates DOE from traditional regulations for nuclear projects.

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