



April 26, 2017

The Honorable John Shimkus
Chairman
Subcommittee on the Environment
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Paul D. Tonko
Ranking Member
Subcommittee on the Environment
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: H. R. ___ “The Nuclear Waste Policy Amendments Act of 2017

Dear Chairman Shimkus and Ranking Member Tonko:

NRDC writes to express our concerns regarding the discussion draft of H. R. ___ “The Nuclear Waste Policy Amendments Act of 2017” (115th Congress, 1st Session). Upon initial review, this draft legislation would put our nation’s nuclear waste storage policy on the wrong track yet again. Ignoring environmental concerns, state’s rights and consent, and public review in order to force a solution that has proven to be unworkable. Rather than blindly charge forward at the cost of public safety and public resources, we urge Congress to take the careful course in building a publicly accepted, consent based repository program.

In NRDC’s judgment the Yucca Mountain project is certain to fail out of the NRC licensing process due to the geology and hydrology of the Nevada site that make it unsuitable for isolating spent nuclear fuel for the required time. Thus, this discussion draft will commit taxpayer money to wasteful interim nuclear waste storage projects and licensing and construction activities at Yucca Mountain, as well as the risk from unneeded transportation of high level radioactive waste, rather than focusing the necessary attention on developing a durable, publicly accepted and scientifically defensible repository program.

NRDC’s objections to the discussion draft include, but are not limited to, the following specific passages:

pp. 3-4: The Secretary shall, not later than 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, publish a request for information to help the Secretary evaluate options for the Secretary to enter into cooperative agreements with respect to one or more monitored retrievable storage facilities.

Respectfully, this provision is premature. First, and most obviously from NRDC’s perspective, immediately going forward with a consolidated storage proposal before working out the details of a comprehensive legislative path to solve the nuclear waste

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problem (connecting the licensing of storage to the licensing of a permanent repository) entirely severs the link between storage and disposal, and creates an overwhelming risk that an interim storage site will determine or function as de facto final resting place for nuclear waste. Or, in the alternative and also just as damning, it sets up yet another attempt to ship the waste to Yucca Mountain irrespective of regulatory process, or revive the Private Fuel Storage site in Utah or even open up New Mexico's Waste Isolation Pilot Plant (WIPP) facility for spent nuclear fuel disposal— the latter site designed and intended for nuclear waste with trace levels of plutonium, not spent fuel (and NRDC notes, a site that has already seen an accident dispersing plutonium throughout the underground and into the environment, contaminating 22 workers, and thus the site was functionally inoperable for years). All of this runs precisely counter to the core admonition of President Obama's [Blue Ribbon Commission for America's Future](#) ("BRC") that "consent" come first.

pg. 6: the Secretary is authorized to—(1) site, construct, and operate one or more monitored retrievable storage facilities; and (2) store, pursuant to a cooperative agreement, Department-owned civilian waste at a monitored retrievable storage facility for which a non-Federal entity holds a license described in section 143(1). (c) PRIORITY.—(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall prioritize storage of Department-owned civilian waste at a monitored retrievable storage facility authorized under subsection (b)(2). (2) EXCEPTION.—(A) DETERMINATION.—Paragraph (1) shall not apply if the Secretary determines that it will be faster and less expensive to site, construct, and operate a facility authorized under subsection (b)(1), in comparison to a facility authorized under subsection (b)(2).

In this provision, regrettably there are no safety, environmental or public acceptance criteria cited, only speed of siting and expense. This is precisely the formula that produced the failure of the Yucca Mountain process and made it, as the previous administration noted, "unworkable." Indeed, after nearly 60 years of effort, the federal nuclear waste program in this country has failed to deliver a final resting place for highly toxic, radioactive waste that will be dangerous for millennia. Over the years, there have been numerous efforts to attribute the failure of the repository program in singular fashion – to the Atomic Energy Commission (AEC), to the Department of Energy (DOE), to certain Senators, to Nevada governors of both parties, to several states that refused to entertain even hosting sites, to the Nuclear Regulatory Commission (NRC) Commissioners – and even to the public for failure to accept its part in disposing of nuclear waste.

All of this is wrong. Failure cannot be laid at the feet of any one person or entity or the public. Rather, the reasons are multiple and some are detailed in the Final Report of the BRC. In brief, several agencies (including the U.S. Environmental Protection Agency (EPA), the DOE, the NRC, and the U.S. Department of Justice (DOJ)) and Congress repeatedly pushed aside thorough, careful science, abused the fundamental framework of how significant decisions with environmental impacts are made in this country, and distorted the process for developing licensing criteria for a proposed repository. In each instance such action was done so as to push forward Yucca Mountain as an expedient solution, to weaken environmental standards rather than strengthen them, and always to ensure that site would be licensed, no matter the end result.

We should not go down the road of failed expediency again. Rather, Congress should pursue a phased, adaptive, consent-based and science-based siting process as the best approach to gain the public trust and confidence needed to site nuclear waste facilities. Specifically,

Congress must finally end the Atomic Energy Act (AEA) exemptions from environmental law. Our hazardous waste and clean water laws must have full authority over radioactivity and nuclear waste facilities so that EPA and – most importantly – the states can assert direct regulatory authority.

pp. 11-22 SEC. 201. LAND WITHDRAWAL, JURISDICTION, AND RESERVATION and SEC. 202. WATER ACCESS

This provision runs counter to state authority and likely leads to the same kind of stalemate that currently exists this day. NRDC expects that Nevada will ferociously object to this usurpation of its rights, and many other states and their representatives may do so as well as a terrible precedent for nuclear waste and broader issues of federalism.

National decision making must take into account the needs and perspectives of states. Bedrock environmental laws reflect this fact. With the notable exceptions of the AEA (the organic act for nuclear power) and its progeny, the NWPA, there is federalist intention at the heart of environmental statutes and a role expressly reserved for the states. As examples, the Clean Water Act, Clean Air Act, and Resource Conservation & Recovery Act (RCRA) allow states authority to implement those air, water, and waste programs, respectively, in lieu of a federal program. States that obtain “delegated” authority from the federal government must meet minimum federal standards (and the federal government retains independent oversight and enforcement authority). And generally, depending on state law, those delegated states can impose stricter requirements or different regulatory mandates. Nuclear waste should be no different, but under the AEA and the NWPA, it is different, it is a privileged pollutant.

Rather, as stated above, it is our firm conclusion a new process must be created. It is our contention today and has been since 2009 that the NWPA’s (and AEA’s) misunderstanding of the importance of federalism is at the heart of the repository program’s failure. This provision continues a long history of trying to force the matter to an unwilling state. Respectfully, we urge another course.

pg. 24: At any time before or after the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository pursuant to paragraph (1), the Secretary may undertake infrastructure activities that the Secretary considers necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste. Infrastructure activities include safety upgrades, site preparation, the construction of a rail line to connect the Yucca Mountain site with the national rail network (including any facilities to facilitate rail operations), and construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

Consistent with our observations above, this is premature and wasteful spending of taxpayer dollars on Yucca Mountain infrastructure prior to meaningfully restarting the licensing process. Recently the NRC has put the cost of completing the Yucca Mountain license application at \$330 million. Efforts to revive this process would be at best problematic and likely waylay the process of developing a repository for years, if not forever. Briefly, there are hundreds of license contentions to be litigated at significant length and cost. One contention in particular challenges DOE’s design for titanium drip

shields that are intended to be placed on top of each of the thousands of waste canisters in Yucca Mountain's underground tunnels to deflect corroding water. Although DOE included the drip shields as part of the repository design, and NRC has accepted them for license-review purposes, there is no plan to engineer, license, pay for, and much less install the shields until at least 100 years after the waste goes in. Quite simply, it seems fair to suggest Yucca's likely repository configuration will not meet NRC requirements.

This and other issues are anticipated to be vigorously litigated by the State of Nevada, which has filed more than 200 contentions challenging DOE's license application for Yucca Mountain. To put such a hearing process in perspective, NRDC recently concluded five years of a NRC licensing proceeding where not one party – not industry seeking the license, not NRC Staff, nor the environmental intervenors – had any interest or took any steps to functionally prolong or delay the proceeding beyond the rare extension of a short period of time for filing a pleading (something all parties found appropriate and necessary at various points). And in the more than five years of this proceeding, only three contentions were fully litigated on their merits, not the more than 300 likely to be litigated for the Yucca license if the process were commenced. Any suggestion the Yucca licensing proceeding could easily restart and quickly move to a successful conclusion for permanent disposal is a fallacy. And when that inevitable litigation rightly waylays yet another effort at nuclear waste disposal the damage to the nation's prospects to ever developing a repository may be permanent. Rather than go forward with construction as this provision allows, we urge Congress to take the careful course in building a publicly accepted, consent based repository program.

pp. 24-24: If the Secretary determines that an environmental impact statement is required under the National Environmental Policy Act of 1969 with respect to an infrastructure activity undertaken under this paragraph, the Secretary need not consider the need for the action, alternative actions, or a no-action alternative. To the extent any other Federal agency must consider the potential environmental impact of such an infrastructure activity, the agency shall adopt, to the extent practicable, an environmental impact statement prepared by the Secretary under this subparagraph without further action. Such adoption satisfies the responsibilities of the adopting agency under the National Environmental Policy Act of 1969, and no further action is required by the agency.

This provision conflicts with the well-established and necessary requirements National Environmental Policy Act, 42 U.S.C. §4321, et seq. Doing so exacerbates the public interest community's (and that of Nevada) objection of the last two decades that the process of developing, licensing, and setting environmental and oversight standards for the proposed repository has been, and continues to be, rigged or weakened to ensure that the site can be licensed, rather than provide for safety over the length of time that the waste remains dangerous to public health and the environment.

pg. 26: The Secretary of Energy may not take any action relating to the planning, development, or construction of a defense waste repository until the date on which the Nuclear Regulatory Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) (as so designated by this Act).

This provision fails to place in proper order what needs to be accomplished first to get the repository program back on track. Rather than tie matters to defense waste, Congress must

structure a new consent based process that not only takes into account the needs of the industry but also takes into account the need for public and state acceptance.

pg. 27: It is the Sense of Congress that the Secretary of Energy should consider routes for the transportation of spent nuclear fuel or high-level radioactive waste transported by or for the Secretary under subtitle A of title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10131 et seq.) to the Yucca Mountain site that, to the extent practicable, avoid Las Vegas, Nevada.

This provision illustrates the difficulties faced in trying to force a project on an unwilling and non-consenting host state. Are other smaller cities along the routes in other states that will be affected by the avoidance of Las Vegas allowed to have a say in the matter? And if the NEPA process is truncated, is there any opportunity to have that say? As we noted above, lack of consent from an unwilling host state is a recipe for disaster in this country, whether the issue is nuclear waste or any other great public concern.

pp 42-43: Not later than 2 years after the Nuclear Regulatory Commission has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) (as so designated by this Act), the Administrator of the Environmental Protection Agency shall (A) determine if the standards promulgated under section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)) should be updated; and (B) submit to Congress a report on such determination.

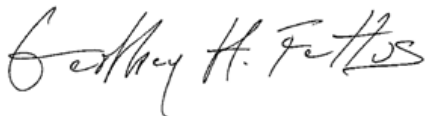
This provision has the matter precisely backwards. To avoid repeating failures of past decades and consistent with BRC recommendations, both the standards for site screening and development criteria must be in final form before any sites are considered. Generic radiation and environmental protection standards must also be established prior to consideration of sites.

There are several other provisions that merit close attention, but this is our initial review. Overall, the discussion draft would put the nation's nuclear waste storage policy on the wrong track yet again. We look forward to discussing these issues with members of the Committee and working toward a feasible path forward. Thank you for your consideration of our views.

Sincerely,



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