

Environment & Energy Report

INSIGHT: How Bedrock Environmental Law Can Break the Nuclear Waste Logjam

By Geoffrey Fettus

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The 30-year battle over nuclear waste disposal at Yucca Mountain in Nevada shows it's time for the Atomic Energy Act to be amended. Geoffrey Fettus, senior attorney for the Natural Resources Defense Council, says Congress should pass legislation to end the exemption of nuclear waste from hazardous waste and other bedrock environmental laws.

For more than 30 years, Congress and the federal government have tried again and again to shove our nation's spent nuclear fuel down a hole at Yucca Mountain, Nev. It's time to use our foundational environmental laws get out of this seemingly impenetrable maze.

Congress should amend the Atomic Energy Act to remove exemptions from environmental laws for radioactive waste, a proposal that got an important boost from the House Select Committee on Climate Crisis as it called for a task force of federal, state, local, and tribal officials to study the implications of this idea.

Earlier this year, President Trump bowed to reality and abandoned efforts to force the radioactive waste on Nevada, the Yucca mirage finally dissipated. What's clear now is that trying to force Nevada, or Utah, or New Mexico, or Tennessee (or any other state) to take the entirety of the nation's most toxic nuclear waste won't work. Continuing down that path will get us nowhere.

Instead of seeing recalcitrant states as the problem, what if we acknowledge the reality that they must be a key part of the solution for nuclear waste?

Feds Have Exclusive Jurisdiction Over Radioactive Materials

Remarkably, our bedrock environmental laws don't cover nuclear waste, and they should. The Atomic Energy Act started the nuclear industry and was enacted years before our key pollution safeguards were established.

Crucially, and mostly for nuclear weapons reasons, the AEA gave the federal government exclusive jurisdiction over all radioactive materials, including radioactive waste. When Congress enacted our foundational environmental laws decades later, each of them included an exemption that excludes radioactive waste except in limited or marginal ways.

This is the original sin that must be rectified.

To explain this pernicious problem, when Congress considered nuclear waste in its precedent setting 1982 Nuclear Waste Policy Act, it just accepted the AEA's sole federal authority and nuclear waste's exclusion from environmental law as the way of the world. Only a few years later, for the sake of political expedience, Congress cut short a well thought out siting process and required the Yucca Mountain repository as the only option.

This was supposed to expedite the process, but not surprisingly, it exploded in controversy and eventually ground to a halt. And now it has finally, truly, died. But nuclear waste remains just as toxic and problematic as ever.

If nuclear waste were covered by environmental laws, i.e., without the current exemptions that limit EPA and state authority, protective federal health and welfare standards can combine with state-level decision-making over where and how the waste could be stored within its borders.

Amending the AEA and removing the provisions that exempt nuclear waste from our hazardous waste and water laws would give us our best chance to garner public acceptance for a process to find safe, technically sound storage sites for toxic nuclear waste—waste that will remain dangerous to human health for hundreds of thousands of years.

Why This Can Work

Consider how things could change if environmental laws could operate as intended.

Under regular environmental law (that covers pollution of air, water, land), the EPA sets strong standards commensurate to the harm of the pollutant. States can then assume the management of that program (or leave it to the EPA) and set additional, stricter standards if they wish.

A state can have strong regulatory authority to set terms for how much waste it might dispose of, how the facility will operate, and the requisite power to enforce those protective standards and protect its citizens—all things it cannot do now for radioactive waste.

To be clear, the standards for high-level radioactive waste will need to be special and extraordinarily protective, and the rulemaking for those standards will be quite a technical ordeal. But, there's no getting around doing that hard work; Congress tried to take a short cut and it failed.

Once those standards are in place, the EPA and the states can, as in other instances, share the necessary roles of guarding public safety and welfare from radioactive waste. This institutional framework allows for both scientific defensibility of potential sites and, importantly, public acceptance of the process.

The Task Falls to Congress

For far too long many members of Congress and officials in Washington fought any efforts like this as they sought the quick fix of Yucca. Now there's evidence of change. The ambitious report from the House Select Committee on Climate Crisis included this key recommendation:

Congress should establish a task force comprised of federal, state, local, and tribal officials to study the implications of amending the Atomic Energy Act to remove exemptions from environmental laws for spent fuel and high-level waste, while maintaining federal minimum standards.

Lawmakers should pick up this recommendation, create just such a task force, and move forward with this plan. Will this work? Yes—but it will take both hard work and time.

One thing I can guarantee is that the current approach isn't working and won't ever work. No single state is going to willingly accept the entirety of the nation's nuclear burden without any way to protect their citizens; we have decades of evidence for this proposition. No amount of stomping of feet in the halls of Congress can change that.

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