



VISUAL PRESENTATION

**14TH REGIONAL CONFERENCE OF THE GERMAN BRANCH OF
THE INTERNATIONAL NUCLEAR LAW ASSOCIATION**

**STATUS OF HLW DISPOSAL IN THE U.S.:
A CAUTIONARY AND COSTLY TALE**

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NURNBERG, GERMANY**

PRINCIPLE

“POLITICS IS MORE DIFFICULT THAN
PHYSICS”

Albert Einstein
Princeton, N.J.
January 1946

NUCLEAR WASTE POLICY ACT OF 1982, AS AMENDED IN 1987 AND 1992 (“NWPA”)

1. SITING – YUCCA MOUNTAIN, NEVADA – SOLE SITE FOR CHARACTERIZATION
2. FUNDING – NUCLEAR UTILITIES TO CONTRACT WITH GOVERNMENT FOR DISPOSAL AND PAY 1 MILL (\$0.001) PER KWH INTO NUCLEAR WASTE FUND
3. DEADLINE FOR OPENING OF FIRST HLW REPOSITORY – JANUARY 31, 1998

NWPA

4. AGENCY AUTHORITY

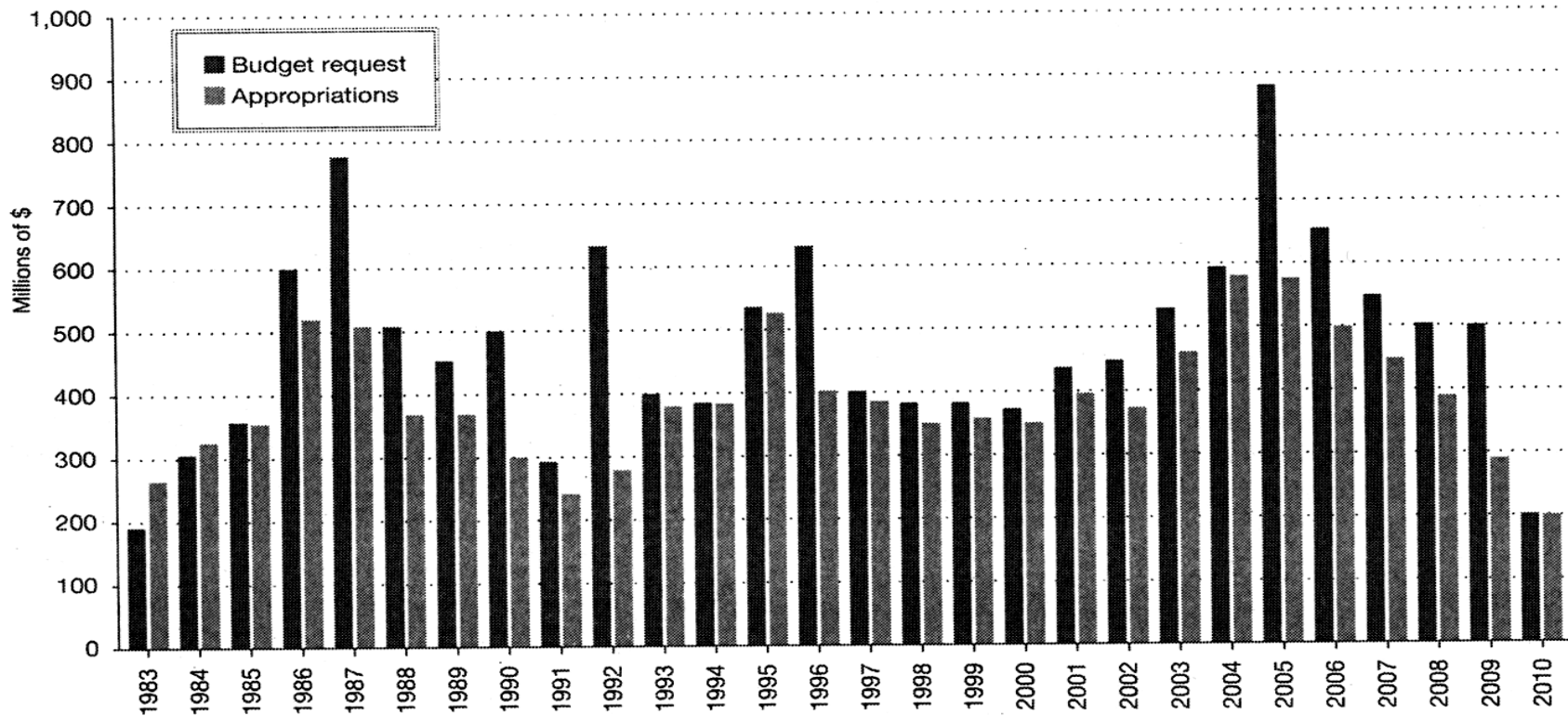
- A. DOE – CHARACTERIZE, BUILD, AND OPERATE REPOSITORY AND CONTRACT WITH NUCLEAR UTILITIES TO TAKE THEIR SPENT FUEL
- B. NRC – REGULATE DOE’S ACTIVITIES IN CONSTRUCTING AND OPERATING THE REPOSITORY
- C. EPA – PROVIDE HEALTH AND ENVIRONMENTAL STANDARDS TO THE NRC FOR ITS REGULATION OF DOE’S ACTIVITIES.

FUNDING

CONGRESSIONAL APPROPRIATIONS LAGGED
WELL BEHIND BUDGET REQUESTS AS PART OF
EFFORTS TO REDUCE THE DEFICIT

FUNDING

FIGURE 17. NUCLEAR WASTE PROGRAM:
BUDGET REQUESTS VERSUS APPROPRIATIONS¹⁸⁻⁴



BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

FUNDING

WASTE FEES –

\$750 MILLION/YEAR

NUCLEAR WASTE FUND –

\$29 BILLION BY EARLY 2012

NARUC II –

DECISION MANDATED SUSPENSION OF
WASTE FEE, AS OF MAY 6, 2014

SITING OF REPOSITORY

DOE APPLICATION TO NRC FOR CONSTRUCTION
AUTHORIZATION FOR YUCCA MOUNTAIN, NEVADA
REPOSITORY – JUNE 2008

SITING OF REPOSITORY

OPPONENTS OF YUCCA MOUNTAIN REPOSITORY

1. BARACK OBAMA – PRESIDENT
2. HARRY REID – (NEV.) – SENATE MAJORITY LEADER
3. GREGORY JACZKO – NRC CHAIRMAN

2009-2010 – FUNDING STOPS, DOE SEEKS TO WITHDRAW APPLICATION, NRC STOPS PROCESSING DOE'S APPLICATION

SITING OF REPOSITORY

2010-2012 – BLUE RIBBON COMMISSION ON AMERICA'S
NUCLEAR FUTURE

2013 – DOE'S NEW STRATEGY

1. PILOT INTERIM STORAGE – 2021
2. LARGER INTERIM STORAGE – 2025
3. PERMANENT REPOSITORY – 2048

2015 – DOE STRATEGY UPDATE

1. SNF AND DEFENSE WASTES ON PARALLEL TRACKS
2. PURSUE CONSENT-BASED SITING FOR SNF
STORAGE AND REPOSITORY

SITING OF REPOSITORY

YUCCA MOUNTAIN APPLICATION BACK ON TRACK?

AIKEN COUNTY LITIGATION – ORDER TO NRC TO
PROCEED – OCTOBER 2013

2013-2015 – NRC SPENDS REMAINING \$11 MILLION TO
COMPLETE SAFETY EVALUATION REPORT
AND SUPPLEMENT TO EIS

HEALTH & SAFETY STANDARDS FOR REPOSITORY

EPA →

NRC →

DOE →

1. 1985 - EPA: PART 191 (GENERIC)
2. 1987 - *NRDC v. EPA* – CONFLICT WITH SAFE DRINKING WATER ACT (“SDWA”)
3. 1992 - CONGRESS AMENDS NWPA
4. 1993 - EPA REISSUES PART 191 WITH 10,000-YEAR COMPLIANCE PERIOD
5. 1995 - NATIONAL ACADEMY OF SCIENCES COMMITTEE REPORT: RECOMMENDS 1 MILLION-YEAR COMPLIANCE PERIOD

HEALTH & SAFETY STANDARDS FOR REPOSITORY

6. 2001 - EPA: PART 197 (YUCCA MOUNTAIN-SPECIFIC) CONTAINS 10,000-YEAR COMPLIANCE PERIOD
7. 2004 - *NUCLEAR ENERGY INSTITUTE v. EPA* – REMANDS PART 197 TO CONFORM TO NAS COMMITTEE REPORT
8. 2008 - EPA: REVISED PART 197 WITH 1,000,000-YEAR COMPLIANCE
9. 2009 - NRC: REVISED PART 63 CONFORMING TO EPA RULE

DOE'S DELAY – BREACH OF WASTE DISPOSAL CONTRACTS WITH UTILITIES

1. 1995 - DOE: FINAL INTERPRETATION OF NUCLEAR WASTE ACCEPTANCE ISSUES – DOE HAS NO “CLEAR LEGAL OBLIGATION” UNDER THE NWPA TO TAKE SPENT FUEL ABSENT AN NWPA-FUNDED REPOSITORY OR STORAGE FACILITY.
2. 1996 - *INDIANA-MICHIGAN POWER CO. v. DOE*
YES, IT DOES
3. 1996 - DOE TELLS STATES AND UTILITIES THAT IT CANNOT TAKE THE SNF ON TIME, AND ASSERTS THAT ITS DELAY IS EXCUSED AS ‘UNAVOIDABLE” UNDER THE CONTRACTS
4. 1997 – *NORTHERN STATES POWER CO. v. DOE*
NO, IT'S NOT, AND DOE IS FORBIDDEN TO CLAIM THAT DELAY IS ‘UNAVOIDABLE”

DOE'S DELAY – BREACH OF WASTE DISPOSAL CONTRACTS WITH UTILITIES

5. 1998-2000 – DOE CLAIMS THAT DELAYS IN CONTRACT PERFORMANCE ARE MERELY “AVOIDABLE” DELAYS TO BE RESOLVED ADMINISTRATIVELY BY CONTRACT ADJUSTMENTS
6. 2000 – *MAINE YANKEE ATOMIC POWER CO. V. U.S.*
NO, THEY'RE NOT. DELAYS ARE PARTIAL BREACH OF CONTRACT COMPENSABLE BY MONEY DAMAGES
7. 2000 - DOE ENTERS MODEL SETTLEMENT AGREEMENT WITH EXELON PROVIDING FOR REDUCTIONS IN UTILITY PAYMENTS INTO NUCLEAR WASTE FUND
8. 2002 - *ALABAMA POWER CO. v. DOE*
COMPENSATION TO UTILITIES CANNOT COME FROM NUCLEAR WASTE FUND

DOE'S DELAY – BREACH OF WASTE DISPOSAL CONTRACTS WITH UTILITIES

9. 2000-2014 \$4.5 BILLION IN DELAY DAMAGES FROM U.S. JUDGMENT FUND

10. 2015-? ESTIMATES OF \$22 BILLION TO \$50 BILLION IN FUTURE DAMAGES

COLLATERAL DAMAGE

1. STATE MORATORIA ON NEW NUCLEAR PLANTS IN 10 STATES TIED TO THE LACK OF A REPOSITORY.

2. A. 2012-2014 – TEMPORARY SUSPENSION BY NRC IN FINAL DECISIONS ON NEW PLANT LICENSES AND EXISTING PLANT LICENSE RENEWALS DUE TO RULING IN *NEW YORK v. NRC* THAT “WASTE CONFIDENCE FINDINGS” AND ASSOCIATED RULE (§ 51.23) DID NOT SATISFY NEPA REQUIREMENTS

- B. SEPTEMBER 2014 – NRC PUBLISHES GEIS AND CONTINUED STORAGE RULE – RESUMES FINAL NUCLEAR PLANT LICENSING AND RENEWAL DECISIONS.

- C. OCTOBER 2014 – STATES AND ENVIRONMENTAL ORGS. SUE NRC AGAIN

CONCLUSION

“THE UNCERTAINTY LIES NOT WITH THE TECHNICAL FEASIBILITY OF LONG-TERM STORAGE AND DISPOSAL, BUT WITH THE POLITICAL AND SOCIETAL FACTORS THAT CONTINUE TO DELAY THE CONSTRUCTION OF A REPOSITORY.”

U.S. NUCLEAR REGULATORY COMMISSION
FEBRUARY 2015

New York | Washington DC | London | Paris | Frankfurt | Hong Kong | Shanghai

