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Will a Lame Duck Congress Confront Nuclear Waste?

By **MATTHEW L. WALD** NOVEMBER 12, 2012 2:49 PM



Dominion ResourcesIn the absence of a permanent repository, orphaned nuclear waste will linger at the Kewaunee nuclear plant in Wisconsin after its owner decommissions it.



When Congress returns to Washington on Tuesday, it has a very long “to do” list. One item, probably not near the top, is figuring out what to do with nuclear waste, given that President Obama killed a proposed repository in Nevada in March 2010. This summer, a blue-ribbon commission advised that the process of seeking a storage site [be restarted](#).

There has been little action so far, but Congress may soon get a push from the courts: [a federal appeals panel indicated in August](#) that it might order the Nuclear Regulatory Commission to restart a licensing hearing to rule on whether the Nevada site, Yucca Mountain is suitable, even though President Obama has declared the site “off the table.” The court gave the executive and legislative branches a few months to provide funding for the licensing hearing as part of the budget for the fiscal year that began Oct. 1. Still, Congress has not acted yet, and it is far from clear that it will. (There is no final budget either, speaking of “to do” items.)

The judges ruled in a suit brought by Aiken County, S.C., where the government’s Savannah River Site stores bomb wastes; the state of South Carolina; and the state of Washington, home to the Hanford nuclear reservation, another bomb plant with waste that needs a

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permanent home. Also among the plaintiffs were three veteran Energy Department executives, including Robert L. Ferguson, a former deputy assistant secretary for nuclear programs.

A new book by Mr. Ferguson, [“The Cost of Deceit and Delay.”](#) takes a deep dive into some of the politics surrounding the repository, which is about 100 miles north of Las Vegas. It focuses on a problem that the court may deal with next month: If Congress instructed the Energy Department to prepare an application for a license to build and operate a repository at Yucca, and told the Nuclear Regulatory Commission to evaluate that application and decide whether to issue a license, can those two agencies simply decide not to?

The Nuclear Regulatory Commission says it does not have nearly enough money on hand to conduct the licensing hearings, although it acknowledges that it hasn't spent quite all of what was appropriated. The Energy Department clearly lacks the money to pursue the license and in fact tried to withdraw its license application.

One reason there is no money is that Harry Reid, the Nevada Democrat who is the Senate majority leader, has blocked new appropriations. And a former Reid aide, Gregory B. Jackzo, maneuvered to stop the licensing process while serving as the commission's chairman.

Complicating matters, a panel of three administrative law judges at the commission said the Energy Department could not withdraw its application, but the five-member commission itself deadlocked on the issue in the period when the commission was still led by Dr. Jaczko.

Mr. Ferguson calls the maneuvering to kill Yucca unethical, unlawful and “nonscientific.” He accuses President Obama of having made a private promise to Senator Reid during the 2008 campaign to kill the project. This latter seems an odd point, because Mr. Obama made very public promises to shut down the project on his way to carrying the state of Nevada in 2008. There was nothing secret about it.

The book captures at least some aspects of the conflict between science and policy “Many of us who work in the field of nuclear energy had great hope that President Obama was a man of his word when he issued his [“Presidential Memorandum on Scientific Integrity.”](#) he writes. That memo was in reaction to decisions made by the Bush administration, many of them related to global warming and air pollution, that Mr. Obama argued were not scientifically justifiable.

Mr. Ferguson does not give Mr. Obama credit for being a man of his word for following through on his campaign promise to kill Yucca.

The scientific merit of the decision to kill Yucca is in fact an open question. Dr. Jaczko's replacement at the Nuclear Regulatory Commission, Alison Macfarlane, a geologist, has stated flatly that the Energy Department's analysis of the site's suitability is unconvincing. But she could be outvoted by the commission.

But the flip side, never quite addressed by Mr. Ferguson, is that there may have been no scientific basis for choosing the site in the first place; it was one of several under consideration by the Energy

Department until Congress picked it as the front runner. Then President Obama unpicked it and Congress went along de facto by not funding Yucca.

Whatever the politics, the bills are mounting. The Energy Department required the utilities to sign contracts in the early 1980's committing themselves to pay one-tenth of a cent per kilowatt-hour made in reactors into a nuclear waste fund; in return, the department promised to begin accepting waste in 1998, a date that is now of course long passed.

According to Mr. Ferguson, the utilities have filed damage claims of \$6.4 billion, an amount that rises by \$500 million a year. Initially the waste sat in steel casks adjacent to operating reactors, but as those reactors are retired, [a trend that may accelerate soon](#), the spent fuel is orphaned and the companies must maintain a security force just to protect it.

Mr. Ferguson argues that the Obama administration's decision to cancel the repository means that \$15 billion has been wasted at the site. But in fact, given the technical and other challenges raised, it is not clear whether Yucca Mountain ever could have received final approval anyway.



Associated PressThe southern portal to Yucca Mountain in Nevada, which once seemed destined to become a nuclear waste repository.

