

SHAPING NUCLEAR WASTE POLICY AT THE JUNCTURE OF FEDERAL AND STATE LAW

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Abstract: Nuclear waste has long been the Achilles' heel of the civilian nuclear power industry. The spent nuclear fuel that reactors generate remains radioactive for hundreds of thousands of years; however, all the spent fuel that has been generated to date is stored in temporary, short-term facilities. As the federal government struggles to develop a permanent solution, many temporary storage facilities are nearing capacity. A few states in which civilian reactors are located have placed severe constraints on the construction of additional needed storage, potentially causing the shutdown of the federally-financed reactors. In part because of this pressure from the states, Congress has sought to create a federal, centralized interim storage facility while development of a permanent repository proceeds. This controversial effort has yet to succeed. This note will suggest that a new approach to the interim storage problem is necessary—one that involves granting the federal government exclusive authority over nuclear waste storage facilities.

"[W]here a specific duty is assigned by law, and individual rights depend upon the performance of that duty . . . the individual who considers himself injured, has a right to resort to the laws of his country for a remedy."

—*Marbury v. Madison*¹

INTRODUCTION

On January 31, 1997, several electric utilities operating commercial nuclear reactors petitioned the United States Court of Appeals for the D.C. Circuit for a writ of mandamus to require the federal government to begin accepting highly radioactive spent nuclear fuel from the utilities by a statutory deadline the following January.² Congress set this deadline fifteen years earlier by enacting the Nuclear

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¹ 5 U.S. (1 Cranch) 137, 166 (1803).

² *See N. States Power Co. v. United States Dep't of Energy*, 124 F.3d 754, 755 (D.C. Cir. 1997) (hereinafter *Norfolk States Power*).

Shaping Nuclear Policy For The 1990s

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Table of Contents Shaping Nuclear Policy For The 1990s

1. Understanding the eBook Shaping Nuclear Policy For The 1990s
 - The Rise of Digital Reading Shaping Nuclear Policy For The 1990s
 - Advantages of eBooks Over Traditional Books
2. Identifying Shaping Nuclear Policy For The 1990s
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Shaping Nuclear Policy For The 1990s
 - User-Friendly Interface
4. Exploring eBook Recommendations from Shaping Nuclear Policy For The 1990s
 - Personalized Recommendations
 - Shaping Nuclear Policy For The 1990s User Reviews and Ratings
 - Shaping Nuclear Policy For The 1990s and Bestseller Lists
5. Accessing Shaping Nuclear Policy For The 1990s Free and Paid eBooks
 - Shaping Nuclear Policy For The 1990s Public Domain eBooks
 - Shaping Nuclear Policy For The 1990s eBook Subscription Services
 - Shaping Nuclear Policy For The 1990s Budget-Friendly Options
6. Navigating Shaping Nuclear Policy For The 1990s eBook Formats

- ePub, PDF, MOBI, and More
- Shaping Nuclear Policy For The 1990s Compatibility with Devices
- Shaping Nuclear Policy For The 1990s Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Shaping Nuclear Policy For The 1990s
 - Highlighting and Note-Taking Shaping Nuclear Policy For The 1990s
 - Interactive Elements Shaping Nuclear Policy For The 1990s
- 8. Staying Engaged with Shaping Nuclear Policy For The 1990s
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Shaping Nuclear Policy For The 1990s
- 9. Balancing eBooks and Physical Books Shaping Nuclear Policy For The 1990s
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Shaping Nuclear Policy For The 1990s
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Shaping Nuclear Policy For The 1990s
 - Setting Reading Goals Shaping Nuclear Policy For The 1990s
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Shaping Nuclear Policy For The 1990s
 - Fact-Checking eBook Content of Shaping Nuclear Policy For The 1990s
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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