

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

LAWRENCE FLINT*

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

* Note Editor, *Durham College Environmental Affairs Law Review*, 2004-05. The author wishes to thank his brother, Nick, for his help in finishing the notes on this Note.

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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