

107TH CONGRESS
1ST SESSION

H. R. 3289

To provide for interagency planning for preparing for, defending against, and responding to the consequences of terrorist attacks against the Yucca Mountain Project, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2001

Ms. BERKLEY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for interagency planning for preparing for, defending against, and responding to the consequences of terrorist attacks against the Yucca Mountain Project, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Waste Ter-
5 rorist Threat Assessment and Protection Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The September 11 terrorist attacks in New
2 York City, Washington, D.C., and Pennsylvania
3 were the deadliest and costliest terrorist attacks
4 against the United States in its history, resulting in
5 the deaths of over 5,000 people at the World Trade
6 Center, Pentagon, and Pennsylvania crash site.

7 (2) The economic and cleanup costs as a result
8 of the September 11 terrorist attacks are estimated
9 at \$100,000,000,000 in New York City alone.

10 (3) The attacks have resulted in massive eco-
11 nomic disruption to the United States. The New
12 York Stock Exchange's Dow Jones Industrial Aver-
13 age dropped over 12 percent and the NASDAQ mar-
14 ket dropped 11.7 percent within the first 2 weeks
15 after the attacks.

16 (4) The September 11 attacks represent a dra-
17 matic expansion in the ability of terrorists to inflict
18 massive damage, including the wide-scale loss of
19 human life and economic disruption to the United
20 States and the world.

21 (5) Terrorists are willing to use any and all
22 methods to bring about their desire to destroy
23 human life and property.

1 (6) The terrorists who attacked the United
2 States have demonstrated their willingness and de-
3 sire to target innocent civilians.

4 (7) Terrorists can be expected to continue to
5 improve their destructive capabilities. Their net-
6 works have become more sophisticated and resource-
7 ful in carrying out heinous acts of destruction.

8 (8) To counter this threat, the United States
9 should take every reasonable step, consistent with
10 the principles upon which this country was founded,
11 to restrict terrorists' ability to inflict damage against
12 the United States.

13 (9) Instead of making the United States safer,
14 the proposed Yucca Mountain Project, as currently
15 designed, would give terrorists a huge, easy-to-attack
16 target that, at any point, could cause massive eco-
17 nomic and civilian casualties within the United
18 States.

19 (10) The Yucca Mountain Project proposes to
20 ship 77,000 tons of deadly high-level radioactive nu-
21 clear waste throughout the United States over the
22 next 30 to 40 years. High-level radioactive nuclear
23 waste is one of the most toxic substances known to
24 mankind.

1 (11) The waste would be transported by rail
2 and by truck through at least 43 States, through
3 hundreds of cities and towns, and through more
4 than 360 congressional districts.

5 (12) Findings of the Nevada State Nuclear
6 Projects Agency demonstrate that a July 18 train
7 accident in a Baltimore tunnel created a situation
8 that would have been hot enough to breach a nuclear
9 waste cask and release a cloud of suspended, radio-
10 active particles. Such findings conclude that con-
11 tamination of this sort would spread over 33 square
12 miles, cost more than \$13,000,000,000 to clean up,
13 and cause up to 31,824 cancer-related deaths;

14 (13) At almost every stage of the Yucca Moun-
15 tain Project, high-level radioactive nuclear waste
16 would be very vulnerable to terrorist attacks. Terror-
17 ists could attack or steal the waste as it travels on
18 our roads, highways, railways, or waterways, as it is
19 stored or moved at intermodal storage facilities,
20 storage depots, or at the proposed repository itself.

21 (14) The United States Government, in at-
22 tempting to implement the Nuclear Waste Policy Act
23 of 1982, has not sufficiently addressed the threat of
24 terrorist attacks.

1 (15) The Department of Energy has failed to
2 address the Yucca Mountain Project’s vulnerability
3 to terrorism and sabotage, intrusions, trespassing,
4 vandalism, arson, and bomb-related incidents, as ex-
5 pressed by the State of Nevada and independent re-
6 searchers throughout the country.

7 (16) The Department of Energy’s methodology
8 for assessing risks seriously underestimates those as-
9 sociated with sabotage and terrorism against radio-
10 active shipments, waste stored at intermodal storage
11 facilities, storage depots, and at Yucca Mountain
12 itself.

13 (17) The Nuclear Regulatory Commission, the
14 agency in charge of protecting public health and
15 safety and the environment from the harmful effects
16 of nuclear waste, has not revised its rules regarding
17 the transportation of nuclear waste since the early
18 1970s. The antiquated rules do not address modern-
19 day threats and weapons, nor the increased risk
20 posed by today’s most violent and maniacal terror-
21 ists.

22 **SEC. 3. YUCCA MOUNTAIN PROJECT VULNERABILITY AND**
23 **DEFENSE PLAN.**

24 The Office of Homeland Security shall coordinate the
25 development and implementation of an interagency plan,

1 in conjunction with appropriate Federal, State, and local
2 agencies and with public input, to prepare for and defend
3 against Federal crimes of terrorism targeting any aspect
4 of the Yucca Mountain Project. The interagency plan
5 shall—

6 (1) include a comprehensive analysis of the
7 safety and vulnerability to Federal crimes of ter-
8 rorism of the Yucca Mountain Project;

9 (2) address attacks against—

10 (A) rail, truck, and barge shipments of nu-
11 clear waste;

12 (B) facilities, equipment, infrastructure,
13 and vehicles used for such shipments of nuclear
14 waste;

15 (C) personnel working for the Yucca
16 Mountain Project;

17 (D) all intermediary, staging, transfer,
18 intermodal, and temporary storage facilities
19 used for shipping nuclear waste to the Yucca
20 Mountain repository;

21 (E) Yucca Mountain repository facilities,
22 vehicles, and equipment;

23 (F) all water and power systems used by
24 the Yucca Mountain Project; and

1 (G) nuclear waste containers for transpor-
2 tation, transfer, or storage;

3 (3) give special emphasis to addressing—

4 (A) the use of nuclear waste as a radio-
5 logical weapon;

6 (B) the use of high-energy explosives, anti-
7 tank missiles, armor piercing technologies, and
8 other sophisticated technologies; and

9 (C) sabotage or theft of high-level nuclear
10 waste;

11 (4) include a comprehensive strategy for de-
12 fending the Yucca Mountain Project against all Fed-
13 eral crimes of terrorism, which shall address—

14 (A) vulnerabilities analyzed under para-
15 graph (1);

16 (B) the defense of the Yucca Mountain
17 Project against air and ground assaults, truck
18 bombs, attacks using sophisticated armor pierce-
19 ing technologies, suicide attacks, and other po-
20 tential military-style attacks;

21 (C) credible worst-case assumptions about
22 the timing and location of potential attacks;

23 (D) the effects of weather conditions dur-
24 ing and after attacks;

1 (E) the use of expanded no-fly zones, and
2 the development of policy regarding infractions
3 of a no-fly zone over key areas involved in the
4 Yucca Mountain Project, with emphasis paid to
5 whether the size of the no-fly zone is sufficient
6 to protect against an airborne attack, ways of
7 defending against this type of attack, and
8 whether there is ample time for our national de-
9 fense to defend against an infraction of the no-
10 fly zone;

11 (F) the use of background and security
12 checks of all personnel related to the transport
13 of nuclear waste to Yucca Mountain;

14 (G) developing a uniform Federal standard
15 for the use of deadly force to protect all aspects
16 of the Yucca Mountain Project; and

17 (H) specific rules of engagement for a po-
18 tential airborne attack; and

19 (5) an analysis of the economic, public health,
20 and environmental costs and impacts of imple-
21 menting the plan.

1 **SEC. 4. YUCCA MOUNTAIN PROJECT TERRORISM CON-**
2 **SEQUENCE ASSESSMENT AND RESPONSE**
3 **PLAN.**

4 The Federal Emergency Management Agency, in co-
5 ordination with appropriate Federal, State, and local
6 agencies, shall coordinate the development and implemen-
7 tation of a comprehensive interagency plan to ensure that
8 Federal, State, and local government response plans and
9 programs can respond adequately to the consequences of
10 Federal crimes of terrorism directed against any stage of
11 the Yucca Mountain Project. The plan shall include—

12 (1) necessary prerespone preparations and
13 evacuation plans for Federal, State, and local gov-
14 ernments;

15 (2) procedures for notifying State and local
16 emergency response units when nuclear waste is
17 transported through their local area;

18 (3) an analysis and a comprehensive set of pro-
19 cedures to address the impacts of Federal crimes of
20 terrorism that result in a release of radioactive ma-
21 terials including—

22 (A) immediate and long term public health
23 effects;

24 (B) environmental impacts, broadly de-
25 fined;

1 (C) direct socioeconomic impacts, including
2 cleanup and disposal costs and opportunity
3 costs, to affected individuals and businesses;
4 and

5 (D) indirect socioeconomic impacts, includ-
6 ing economic losses resulting from perceptions
7 of risk and stigma effects; and

8 (4) a comprehensive cost-benefit analysis of the
9 economic, public health, and environmental effects of
10 implementing the plan. The analysis shall include
11 the repercussions and costs from a wide range of
12 types of Federal crimes of terrorism.

13 **SEC. 5. TECHNICAL REVIEW.**

14 The Assistant to the President for Homeland Secu-
15 rity and the Federal Emergency Management Agency
16 shall enter into appropriate arrangements with the Na-
17 tional Research Council for technical review of the plans
18 developed under sections 3 and 4, respectively. Such re-
19 views shall—

20 (1) address the strengths and shortcomings of
21 the analyses and preparations set forth in the plans;
22 and

23 (2) pay special attention to—

1 (A) the need for physical testing, including
2 full-scale and scale model testing, to evaluate
3 weapons capabilities;

4 (B) container vulnerability to high-energy
5 explosive devices, and the effects on nuclear
6 waste; and

7 (C) the appropriateness of existing com-
8 puter models for evaluating near-site environ-
9 mental dispersion of released radionuclides, re-
10 sulting health effects, and cleanup and disposal
11 requirements.

12 **SEC. 6. GOVERNMENT LIABILITY OF YUCCA MOUNTAIN**
13 **PROJECT CONTRACTING.**

14 The Assistant to the President for Homeland Secu-
15 rity shall prepare and transmit to the Congress a report
16 on the potential liability costs and damages resulting from
17 a wide range of Federal crimes of terrorism against the
18 Yucca Mountain Project. Such report must be transmitted
19 before the Secretary of Energy may make a positive rec-
20 ommendation to the President under section 114(a) of the
21 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(a)).

22 **SEC. 7. DEPARTMENT OF ENERGY RECOMMENDATION.**

23 The Secretary of Energy shall not make a positive
24 recommendation to the President under section 114(a) of
25 the Nuclear Waste Policy Act of 1982 (42 U.S.C.

1 10134(a)), and the Nuclear Regulatory Commission shall
2 not issue any license for a repository at Yucca Mountain,
3 unless—

4 (1) the interagency plans required under sec-
5 tions 3 and 4 are completed and included in the
6 final environmental impact statement for Yucca
7 Mountain, and all rules and recommendations imple-
8 mented completely;

9 (2) public hearings have been held for all af-
10 fected populations; and

11 (3) the Secretary has certified that all facets of
12 the Yucca Mountain Project are not vulnerable to
13 Federal crimes of terrorism.

14 **SEC. 8. DEFINITIONS.**

15 For purposes of this Act—

16 (1) the term “Federal crime of terrorism” has
17 the meaning given that term in section 2332b(g)(5)
18 of title 18, United States Code; and

19 (2) the term “Yucca Mountain Project” means
20 all aspects of the high-level nuclear waste repository
21 currently being studied at Yucca Mountain. The
22 term includes all Department of Energy transpor-
23 tation plans, interim storage facilities, intermodal
24 transfer facilities, repositories, and any other site

- 1 where high-level waste will be handled in relation to
- 2 the Yucca Mountain Project.

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