H. R. 895

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

February 17, 2005

Ms. Berkley (for herself, Mr. Matheson, Ms. Carson, Mr. Markey, and Mr. Rangel) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Homeland Security, 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nuclear Waste Terrorist Threat Assessment and Protection Act”.

1

2

3

4

5
SEC. 2. FINDINGS.

The Congress finds the following:

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

(2) The economic and cleanup costs as a result of the September 11 terrorist attacks are estimated at $1,000,000,000 in New York City alone.

(3) The attacks have resulted in massive economic disruption to the United States. The New York Stock Exchange’s Dow Jones Industrial Average dropped over 12 percent and the NASDAQ market dropped 11.7 percent within the first 2 weeks after the attacks.

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

(5) Terrorists are willing to use any and all methods to bring about their desire to destroy human life and property.
(6) The terrorists who attacked the United States have demonstrated their willingness and desire to target innocent civilians.

(7) Terrorists can be expected to continue to improve their destructive capabilities. Their networks have become more sophisticated and resourceful in carrying out heinous acts of destruction.

(8) Since its inception in March 2002, the threat alert has consistently been at an “elevated” level, reaching a level of “high” 6 times.

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

(10) Instead of making the United States safer, the proposed Yucca Mountain Project, as currently designed, would give terrorists an obvious huge, easy-to-attack target that, at any point, could cause massive economic and civilian casualties within the United States.

(11) The Yucca Mountain Project proposes to ship 77,000 tons of deadly high-level radioactive nuclear waste throughout the United States over the next 30 to 40 years. High-level radioactive nuclear
waste is one of the most toxic substances known to mankind.

(12) While there is concern about the potential terrorist attacks directed against spent fuel stored at nuclear facilities, exponentially more radioactive waste would be stored, including potentially above ground, at Yucca Mountain, than at any existing nuclear facility, making Yucca Mountain an inviting target for terrorism.

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

(14) Findings of the Nevada State Nuclear Projects Agency demonstrate that a July 18, 2001, train accident in a Baltimore tunnel created a fire situation that would have been hot enough to breach a nuclear waste cask and release a cloud of suspended radioactive particles. Such findings conclude that this type of contamination would spread over 33 square miles, cost more than $13,000,000,000 to clean up, and cause up to 31,824 cancer-related deaths.

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


(17) The Department of Energy has failed to address the Yucca Mountain Project’s vulnerability to terrorism and sabotage, intrusions, trespassing, vandalism, arson, and bomb-related incidents, as expressed by the State of Nevada and independent researchers throughout the country. As a result, the Department of Energy has failed to discuss or provide any plan for prevention and response to terrorist attacks directed at Yucca Mountain.

(18) The Department of Energy’s current methodology for assessing risks seriously underestimates those associated with sabotage and terrorism against radioactive shipments, waste stored at inter-modal storage facilities or storage depots, and at Yucca Mountain itself.
(19) The Nuclear Regulatory Commission, the agency in charge of protecting public health and safety and the environment from the harmful effects of nuclear waste, has not revised its rules regarding the transportation of nuclear waste since the early 1970s. The antiquated rules do not address modern-day threats and weapons, nor the increased risk posed by today’s most violent and maniacal terrorists.

SEC. 3. YUCCA MOUNTAIN PROJECT VULNERABILITY AND DEFENSE PLAN.

The Secretary of Homeland Security shall coordinate the development and implementation of an interagency plan, in conjunction with appropriate Federal, State, and local agencies and with public input, to prepare for and defend against Federal crimes of terrorism targeting any aspect of the Yucca Mountain Project. The interagency plan shall—

(1) include a comprehensive analysis of the safety and vulnerability to Federal crimes of terrorism of the Yucca Mountain Project;

(2) address attacks against—

(A) rail, truck, and barge shipments of nuclear waste;
(B) facilities, equipment, infrastructure, and vehicles used for such shipments of nuclear waste;

(C) personnel working for the Yucca Mountain Project;

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

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

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

(G) nuclear waste containers for transportation, transfer, or storage;

(3) give special emphasis to addressing—

(A) the use of nuclear waste as a radiological weapon;

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

(C) sabotage or theft of high-level nuclear waste;
(4) include a comprehensive strategy for de-
fending the Yucca Mountain Project against all Fed-
eral crimes of terrorism, which shall address—

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

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

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

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

(E) the use of expanded no-fly zones, and
the development of policy regarding infractions
of a no-fly zone, over key areas involved in the
Yucca Mountain Project, with emphasis paid to
whether the size of the no-fly zone is sufficient
to protect against an airborne attack, ways of
defending against this type of attack, and
whether there is ample time for our national de-
fense to defend against an infraction of the no-
fly zone;
(F) the use of background and security
checks of all personnel related to the transport
of nuclear waste to Yucca Mountain;

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

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

(5) include an analysis of the economic, public
health, and environmental costs and impacts of im-
plementing the interagency plan.

SEC. 4. YUCCA MOUNTAIN PROJECT TERRORISM CON-
SEQUENCE ASSESSMENT AND RESPONSE
PLAN.

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

(1) necessary prerresponse preparations and
evacuation plans for Federal, State, and local gov-
ernments;
(2) procedures for notifying State and local emergency response units when nuclear waste is transported through their local area;

(3) an analysis and a comprehensive set of procedures to address the impacts of Federal crimes of terrorism that result in a release of radioactive materials including—

(A) immediate and long-term public health effects;

(B) environmental impacts, broadly defined;

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

(D) indirect socioeconomic impacts, including economic losses resulting from perceptions of risk and stigma effects; and

(4) a comprehensive cost-benefit analysis of the economic, public health, and environmental effects of implementing the plan, including analysis of the repercussions and costs from a wide range of types of Federal crimes of terrorism.
SEC. 5. TECHNICAL REVIEW.

The Secretary of Homeland Security and the Federal Emergency Management Agency shall enter into appropriate arrangements with the National Research Council for technical review of the plans developed under sections 3 and 4, respectively. Such reviews shall—

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

(2) pay special attention to—

(A) the need for comprehensive and reliable physical testing, including full-scale-to-destruction and scale model testing, to evaluate weapons capabilities and limitations;

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

(C) the appropriateness of existing computer models for evaluating near-site environmental dispersion of released radionuclides, resulting health effects, and cleanup and disposal requirements.

SEC. 6. DEPARTMENT OF ENERGY RECOMMENDATION.

The Secretary of Energy shall not submit a license application under section 114(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(b)), and the Nuclear
Regulatory Commission shall not issue any license for a repository at Yucca Mountain under section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)), unless—

(1) the interagency plans required under sections 3 and 4 are completed and included in the final environmental impact statement for Yucca Mountain, and all rules and recommendations implemented completely;

(2) public hearings have been held for all affected populations;

(3) the Secretary has certified that all facets of the Yucca Mountain Project are not vulnerable to Federal crimes of terrorism; and

(4) the Secretary of Homeland Security has prepared and transmitted to the Congress a report on the potential liability costs and damages resulting from a wide range of Federal crimes of terrorism against the Yucca Mountain Project.

SEC. 7. DEFINITIONS.

For purposes of this Act—

(1) the term “Federal crime of terrorism” has the meaning given that term in section 2332b(g)(5) of title 18, United States Code; and
(2) the term “Yucca Mountain Project” means all aspects of the high-level nuclear waste repository currently being studied at Yucca Mountain. The term includes all Department of Energy transportation plans, interim storage facilities, intermodal transfer facilities, repositories, and any other site where high-level waste will be handled in relation to the Yucca Mountain Project.