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# Court Won't Intervene in Fate of Nuclear Dump

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WASHINGTON — A federal appeals court on Friday [declined to step into a dispute](#) over the Obama administration's cancellation of a planned nuclear waste dump in the Nevada desert, saying the matter must be left for now to federal regulators.

The United States Court of Appeals for the District of Columbia dismissed a suit filed by South Carolina and Washington State challenging the Department of Energy's authority to withdraw a 2008 application to open the waste repository. But the court hinted that it might be ready to intervene if the [Nuclear Regulatory Commission](#) did not reach a decision on whether the department could withdraw the license request.

Congress directed the department in 1987 to develop an application to create the dump at [Yucca Mountain](#), 100 miles northwest of Las Vegas, and instructed the Nuclear Regulatory Commission to determine whether the application met licensing requirements, which include isolating the radioactive waste for one million years.

But in March 2010, the Department of Energy withdrew its license request, making good on a campaign promise by President Obama.

A three-judge panel at the Nuclear Regulatory Commission ruled that the Department of Energy could not withdraw the application, but that decision was appealed to the five-member Nuclear Regulatory Commission. One commissioner then recused himself from a vote because he had taken part, before he became a commissioner, in an independent review of [Yucca Mountain's](#) suitability as a disposal site.

From there, the issue became clouded. The other four commissioners are believed to be divided, 2 to 2, but the commission's chairman, Gregory B. Jaczko, has maneuvered to delay a vote. Mr. Jaczko is a former member of the staff of Senator Harry Reid of Nevada, the leader of the Senate's Democratic majority, who is a determined foe of the waste disposal project.

Experts differ on whether a deadlock, if a vote were actually taken and a tie resulted, would allow the lower panel's ruling to stand or would overturn it.

South Carolina and Washington State both have nuclear military waste that was to be stored at Yucca Mountain.

Though Friday's ruling by a three-judge appeals court panel said the issue was not "ripe" for judicial intervention because the Nuclear Regulatory Commission had not made a decision, it said that the plaintiffs and the court would know "very soon" whether the commission was going to take a vote.

"We will not permit an agency to insulate itself from judicial review by refusing to act," the court said. But it was not clear whether it was setting a strict deadline.

The decision noted that under the Nuclear Waste Policy Act, the commission is supposed to rule on a license within three years after an application is filed — meaning by last month — but could give itself another year if it needed it.

Still, many deadlines set in the act have been missed by many years in the past.

Ellen Ginsburg, a lawyer for the Nuclear Energy Institute, the industry's trade association, said that though the decision did not set a hard deadline for the agency, it was "effectively a notice to the N.R.C. that the court is looking at this very carefully — and although they decided on a procedural matter this time, they may not next time."