July 26, 1985

POLICY ISSUE
(Notation Vote)

SECY-84-456A

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: FUNDING OF NRC'S COSTS OF LICENSING DEPARTMENT OF ENERGY (DOE) UNDER THE NUCLEAR WASTE POLICY ACT OF 1982 (NWPA) -- USE OF NUCLEAR WASTE FUND FOR NRC/NWPA HIGH-LEVEL WASTE (HLW) ACTIVITIES

Purpose: To supplement SECY-84-456 (December 3, 1984) and to obtain the Commission's decision with respect to use of monies from the Nuclear Waste Fund for NRC/HLW costs incurred pursuant to the NWPA.

Category: This paper covers a significant policy and budgeting matter. The elements of possible costs to implement any alternative are addressed in Enclosure 1.

Issue: This is a two-tiered issue: Should the Commission initiate action for having Waste Fund monies applied to NRC/NWPA costs? If so, what is the most appropriate approach?

Decision Criteria: There are two sets of criteria applicable to the two-tiered issue:

A. With respect to whether NRC should consider using the Waste Fund:

1. The Secretary of Energy's responsibility to oversee the Waste Fund under the NWPA should not pose a conflict of interest for NRC's licensing decisions.

2. NRC's independence in reaching reactor licensing decisions should not be affected or appear to be

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427-4452

affected by concern for consequent impact on the adequacy of the Waste Fund, which is financed by a mill-per-kilowatt-hour fee on reactor-generated power.

3. The decision should be consistent with any intent expressed by Congress.

B. If the Waste Fund is to be used, then the following criteria should be considered:

1. Costs of implementation, including those arising from conflicts of interests and risks to the national NWPA program, should not outweigh benefits.

2. Use of the Waste Fund should provide funding stability for NRC's NWPA activities.

Alternatives: Below are alternative courses of action that have been considered. Staff has not discussed these options with DOE.

1. Amend Section 302 of the NWPA to establish a specific fractional mill-per-kilowatt-hour fee to finance NRC/NWPA costs and enable NRC to keep and use revenues for NRC/NWPA salaries and expenses. This could be an add-on to, or a set-aside within, the existing Waste Fund specifically to fund NRC/NWPA activities.

2. Amend Section 161w. of the Atomic Energy Act to permit NRC to charge DOE a licensing fee and to keep fee revenues for NRC/NWPA salaries and expenses.

3. Congress annually provides in DOE's appropriation legislation explicit direction to DOE to transfer a specific amount to NRC from the Waste Fund and gives NRC authority to keep and use such monies for NRC/NWPA salaries and expenses.

4. Amend the Atomic Energy Act to require DOE to pay the U.S. Treasury annually from the Waste Fund for those amounts certified by NRC as having been expended in conducting NRC's NWPA program; NRC's NWPA program would operate on annual appropriations (SECY-84-456).

Summary: SECY-84-456 noted that the issue of using the Waste Fund for NRC/NWPA costs was raised by OMB in connection with proposed budget cuts. That paper also discussed related issues concerning current authority, the legislative record, and NRC's licensing independence. As indicated in the "Discussion" portion, certain Commissioners asked for additional information on other alternatives and consideration of an additional criterion.

A number of considerations apply to all the alternatives. The paramount concerns are to preserve NRC's licensing independence viz-a-viz DOE and to provide funding stability for NRC's activities. As indicated in SECY-84-456, the fundamental principle is that the NRC must be able to evaluate objectively the merits of any license application submitted by DOE. The capability of any license applicant to restrict or improperly influence the Commission's regulatory judgement and/or program is unacceptable.

In addition to the material presented in SECY-84-456, there are cost and other considerations:

- Significantly increased public accountability and related requirements for staff time and costs to establish administrative/managerial capability to implement any alternative, including:
  - possible requirement for very long-range forecasting of NRC's needs to enable such needs to be considered in determining Waste Fund fee adequacy,
  - possible need for additional systems for detailed fiscal management of monies obtained from the Waste Fund as well as for outside audit of NRC management of such funds;

- Determination of licensing costs to be covered and, relatedly, the timing for initiating NRC charges against the Waste Fund;

- Potential for conflict of interest arising from reactor licensing decisions, which could result in loss of Waste Fund revenues.

The alternative vary in their resource implications. Staff has not budgeted for these impacts and is not in a position to provide a specific estimate but believes they could be significant. Enclosure 1 indicates the range of cost elements that could be involved under two sets of bounding assumptions.

Under worst case assumptions, NRC would have to establish and maintain a capability to project its total life-cycle HLW program costs under the NWPA to enable DOE to make its annual assessment of the adequacy of the Waste Fund fee. NRC would also be subject to independent audits and would have to keep itself prepared for them. While these are worst case assumptions, staff believes that NRC could be subject to accountability requirements no less stringent than those for DOE use of monies from the Waste Fund.

Alternatively, if NRC could secure legislative relief from these stringent requirements and there were no need for the kind of cost estimates and accountability measures associated with full recovery of NRC costs, NRC resource requirements to implement use of the Fund should be significantly less. (This relief might take the form of legislation to provide a fixed yearly payment to NRC each year regardless of actual NRC program costs, for example another form of legislative relief might be an exemption from any requirement that all NRC costs be covered by Waste Fund monies.) The Commission would have to be confident, however, that it could easily secure such legislative relief before undertaking to obtain it. Further, if the monies could go directly into the Treasury general fund to offset that portion of NRC's normal annual appropriation so that NRC never "touches" the money, our costs for accountability may be significantly reduced.

Staff understands that, as of July 25, 1985, one measure had been introduced in this Congress involving NRC in relation to use of the Waste Fund. Specifically, Congressmen Udall and Markey introduced a DOE authorization bill (H.R.2040) for FY 1986 and 1987. As reported by the House Interior Committee on June 12, it addresses expenditures from the Fund for activities under Title I of the NWPA and provides for DOE transfer to Treasury of amounts equivalent to those appropriated to NRC and determined by rule by NRC to be expended in those two years. Enclosure 2, a letter from Mr. Rusche to Congressman Lujan,

provides DOE comments on the proposal. Enclosure 3 contains a copy of the House Report on, including text of, H.R. 2040.

Discussion: Staff's initial consideration of the Waste Fund reflected the general philosophy of the NWPA that responsibility for financing the national NWPA program should be borne by generators of high-level waste and spent fuel rather than the taxpayers. To implement that philosophy, SECY-84-456 outlined an approach to have DOE directly reimburse the U.S. Treasury. As a result of discussions between staff and certain Commissioners, as well as indications of continued OMB interest in NRC's utilization of the Waste Fund, this paper supplements the previous paper to consider additional alternatives. The Commissioners also requested that staff include options for NRC to to keep and use monies received from the Waste Fund. Alternatives 1, 2, and 3 reflect such approach.

With respect to the general considerations noted in the "Summary," the requirement for being able to make long-range forecasts of NRC's NWPA funding needs arises from the statutory requirement for DOE to review annually the adequacy of the Waste Fund. Further, we understand that DOE is establishing a capability to predict its costs on a life-cycle basis as part of its approach to assessing the adequacy of the Waste Fund fee levied on reactor operators. DOE would need a life-cycle and annual input from NRC for the DOE assessments. Providing such input, on a continuing basis at least, likely would require projecting NRC's life-cycle costs in order to be compatible with the basis upon which DOE is approaching the matter of fee adequacy.

Long-range forecasting, however, will be particularly difficult for NRC since our NWPA program, at least in part, is reactive to the DOE program. DOE has concluded that the monies currently expected to be in the Waste Fund are adequate for its needs. To expand the use of the Fund to cover NRC expenditures could raise questions about such adequacy, making the issue of long-range forecasting very timely. DOE may have to reexamine the adequacy of the Fund, possibly identifying NRC's use of the Fund as the cause for requesting Congress to increase the current one-mill-per-kilowatt-hour fee. (As a point of background information, staff notes that the FY 1986 estimated DOE/NWPA program costs are $597 million (297 FTE); NRC's corresponding estimate for its FY 1986 NWPA program is $22 million (150 FTE).

The NRC program is for one repository. (If such level is "straight lined" over the operating period through closure (50 years), the NRC total would be over $1 billion in FY 1986 constant dollars.)

In addition to the foregoing, NRC would have to assure detailed fiscal management of the monies obtained from the Waste Fund, including new NRC appropriation accounting and related separation and tracking of monies, with associated administrative costs. DOE intends to use a commercial audit firm to provide fiscal oversight, and NRC may find it prudent to do likewise. Any audit of NRC expenditures by DOE or its contractors, however, would raise questions regarding NRC's regulatory independence.

With respect to determining the licensing costs that should be supported by Waste Fund monies, several issues arise. First, Section 302(d)(1) of the NWPA does not specify in detail what "licensing" costs the Secretary is authorized to pay from the Fund. As indicated in SECY-84-456, the record is not clear as to what was intended by the term "licensing." Accordingly, it is unclear whether DOE is authorized to pay for NRC's licensing-related costs in addition to its own costs for preparing and defending a license application. Second, it is unclear what NRC licensing costs could be recovered. Under NRC's policy of full-cost recovery, fees charged are based on those costs that can be clearly attributed to an identifiable recipient of NRC's licensing review services. Typically excluded from the computation of "full cost" are costs incurred for a class of licensees, such as for rulemaking, research, standards development, and other generic efforts. In the case of licensing actions identified in Section 302(d)(1), however, DOE as the only NRC licensee is the clearly identifiable recipient. Finally, should NRC parallel DOE's costing approach? We understand that DOE uses Waste Fund monies for, among other things, costs for office space and a pro-rata share of the cost of support provided by DOE offices, e.g., Controller and Administration. (The above-mentioned NRC FY 1986-87 estimates, though fully loaded, do not cover such support costs.) Furthermore, computation of costs for fee purposes typically does not begin until after receipt of a license application. Both the NWPA and NRC's own regulation, 10 CFR Part 60, require licensing-related activities in advance of DOE's application (e.g., review of the Mission Plan, Project Decision Schedule and

Site Characterization Plans). The need for these pre-licensing activities is driven by, among other things, the three-year period stipulated in the NWPA for NRC to decide on DOE's license application for repository construction authorization. Thus, it appears appropriate to include the prelicensing activity costs. (Staff does not believe that retroactive recovery of past pre-licensing costs should be considered.)

With respect to the conflict of interest consideration (additional to that presented in SECY-84-456), any arrangement to use Fund monies for NRC costs would involve NRC reactor licensees. Reactor licensing decisions that would result in a reduction in power generation would adversely affect Fund revenues, since receipts are based on a charge per kilowatt-hour. (Staff understands that a 1000 MWE reactor represents a contribution to the Fund on the order of $1,000 per hour.) This creates a possible conflict of interest situation for the Commission. This is not dissimilar to the circumstance which has resulted in NRC's special proscriptions against employee financial holdings.

Further, it is understood that NRC would be subject to the regular authorization and appropriations process to obtain necessary annual authority to use Waste Fund monies up to the amount appropriated. DOE is subject to that process to obtain its authority to use the Fund.

In addition, all alternatives addressed in this paper would require enabling legislation. Under Alternatives 1 and 2, amendment of major legislation (NWPA and Atomic Energy Act) would be involved. Alternative 3 would obviate the need for amending the NWPA or Atomic Energy Act through use of the annual appropriations process, but legislative authority still would be necessary in order to give NRC authority to receive, keep and use Waste Fund monies. Under Alternative 4 (DOE direct transfer to Treasury) -- and the others alternatives as well -- legislation would be necessary to relieve DOE of NWPA-established financial oversight responsibilities for those Waste Fund monies applied to NRC "licensing" costs under the NWPA. Staff notes that, since legislative action would be necessary under all alternatives, actual initiation of any of them would have to follow preparation and submission of legislation and related Congressional hearings. Therefore,

there is some uncertainty as to which fiscal year any alternative could be made effective.

If Waste Fund monies are to be applied to NRC/NWPA costs, the following alternatives have been examined as a means of achieving this end:

ALT 1: AMEND SECTION 302 OF NWPA

Section 302 would be modified to establish a specific fractional mill-per-kilowatt-hour fee to be set by NRC to finance its NWPA licensing costs. The amendment would also require the Secretary of Energy to transfer directly to NRC the monies thus collected. The monies could constitute an independent NWPA fund for which NRC would assume full responsibility, comparable to that of DOE under Section 302. (This could be an add-on to, or a set-aside within, the existing Waste Fund.) This option presumes full-cost recovery, which would include NRC/DOE pre-licensing consultation costs. It presumes legislative provisions to enable NRC to borrow from the Treasury as necessary in the event of a temporary shortfall in the fund, as well as express authority to keep and use the monies for NRC's NWPA salaries and expenses.

PRO:

1. Shifts burden from taxpayer to ratepayer and enables NRC to keep and use monies received.

2. Establishes assured source of funding, with long-term stability comparable to that of DOE's source.

3. Avoids NRC and DOE competition for funds; NRC funding shielded from changes in DOE's resource requirements.

CON:

1. Involves changing major legislation, with attendant risk of uncertain outcome. To staff's knowledge, this would involve the first legislative amendment to NWPA. (Previous efforts to amend died in 98th Congress).

2. Poses possible conflict of interest in reactor licensing. Any action to delay, deny, or suspend a license could require action by NRC and/or DOE to increase fee(s) to offset loss of Fund revenues.

3. NRC would need to define total expected licensing program costs because of fee-adequacy review requirements of NWPA. DOE is developing predictive models for life-cycle costs as a tool to assess fee adequacy. NRC would need to establish capability to plan for total license review through facility closure (50 years). To estimate costs over similar period, NRC would also need life-cycle cost model sufficiently sensitive to programmatic changes to identify cost implications.

4. Future changes in NRC costs would require further adjustment of the NRC fractional mill-per-kilowatt-hour fee. Repeated re-opening of entire NWPA legislation poses risk of uncertain outcome to entire NWPA program.

5. May require significant time and effort by Commissioners and staff in light of close scrutiny expected from new oversight element, i.e., the ratepayers supporting both the NRC and DOE Waste Funds.

6. Would require new NRC appropriation account and related separation and tracking of funds, with attendant administrative costs. DOE intends to use commercial audit firm. NRC would probably need to do likewise and develop procedures for, and undergo audit of, its practices. These administrative costs in staff, dollars, and time are not in agency budget.

ALT 2: AMEND SECTION 161w. OF ATOMIC ENERGY ACT

Pursuant to Section 161w. of the Act, NRC may charge a license fee to other federal agencies in certain circumstances. The section would be amended to include the licensable activities of DOE under NWPA Section 302. The presumed source for DOE payment would be the Waste Fund. DOE would be expressly relieved of fiduciary responsibility for funds expended by NRC. The fee would be based on full-cost recovery, including pre-licensing consultation costs. NRC would be authorized to keep and use fee revenues for NWPA salaries and expenses. (This is a departure from current fee policy under which NRC fee revenues are passed through to Treasury.)

PRO:

1. Shifts burden from taxpayer to ratepayer and enables NRC to keep and use funds transmitted by DOE.

2. Establishes assured source of funding, with long-term stability comparable to that of DOE's source.

CON:

1. Requires new legislation, including special authority to keep and use revenues, with risk of uncertain outcome.

2. Congress may be especially sensitive to any approach for using the Waste Fund by any means other than through the NWPA. If NRC is successful, would not other agencies identified in the DOE Project Decision Schedule also seek to have their NWPA programs funded from the Waste Fund?

3. Poses possible conflict of interest in reactor licensing. Any action to delay, deny, or suspend a license could require action to increase fee(s) to offset loss of Fund revenues.

4. Although DOE is relieved of formal oversight responsibilities, approach requires DOE and NRC to compete for monies from same Fund.

NRC should expect DOE to exert influence to protect Waste Fund for DOE purposes, especially when DOE makes its annual determinations of fee adequacy.

5. Since DOE would pay NRC from Waste Fund, NRC would still need to provide DOE with estimate of total licensing fee to enable DOE to assess adequacy of its fee for the Waste Fund. This would require NRC to develop planning and life-cycle cost model to estimate costs through closure (50 years).

6. May require significant time and effort by the Commissioners and staff in light of close scrutiny expected from new oversight element, i.e., ratepayers supporting Waste Fund.

7. Requires tracking and accounting of program costs to distinguish between reimbursable and non-reimbursable activities. DOE intends to use commercial audit firm. NRC probably would need to do likewise and develop procedures for, and undergo audit of, its practices. These administrative costs in staff, dollars, and time are not in agency budget.

ALT 3: <u>AMEND NRC AND DOE APPROPRIATIONS ACTS</u>

Congress would legislate in DOE's annual appropriation explicit direction that DOE transfer a specified amount from the Waste Fund to NRC. DOE would be expressly relieved of oversight responsibilities for funds transferred to NRC. In its annual appropriation NRC would be authorized to receive and use monies provided by DOE for eligible NWPA-related salaries and costs pursuant to Section 302(d). NRC would certify annually to DOE that the funds were properly used for Section 302 purposes. There would be a new NRC appropriation account. NRC's NWPA program would operate on NWPA funds. NRC's NWPA program would budget annually for multi-year estimated costs. It

is assumed that the enabling authority and stipulations would be renewed annually. NRC and DOE also would enter into an agreement to document long-term funding commitments.

PRO:

1. Shifts burden from taxpayers to ratepayers and enables NRC to keep and use funds for NWPA salaries and expenses.

2. Does not require amendment of NWPA or Atomic Energy Act, with attendant risk of uncertain outcome.

CON:

1. Does not obviate need for legislation, including need for authority to keep and use funds; has attendant risk of uncertain outcome.

2. Congress may be especially sensitive to any approach for using the Waste Fund by any means other than through the NWPA. If NRC is successful, would not other agencies identified in the DOE Project Decision Schedule also seek to have their NWPA programs funded from the Waste Fund?

3. Does not provide long-term assurance of NRC program stability; could be legislated out of existence in any year. Does not secure a permanent commitment from DOE; NRC-DOE written agreement not legally enforceable (federal government cannot sue itself).

4. Requires DOE and NRC to compete for monies from the same Fund. Although DOE would be relieved of formal oversight responsibilities, NRC should expect DOE to exert influence to protect Waste Fund for DOE purposes, especially when DOE makes its annual determination of fee adequacy.

5. Does not totally eliminate possible conflict of interest with respect to NRC decisions on reactor licensees and possible resultant

loss of Waste Fund revenues and need for fee adjustment.

6. Would require new NRC appropriation account and related separation and tracking of funds, with attendant administrative costs. DOE intends to use commercial audit firm. NRC would probably need to do likewise and develop procedures for, and undergo audit of, its practices. These administrative costs in staff, dollars, and time are not in agency budget.

7. Since DOE would pay NRC from Waste Fund, NRC would still need to provide DOE with estimate of total licensing costs to enable DOE to assess adequacy of Waste Fund fee. NRC would still need to develop planning and life-cycle cost model to estimate costs through closure (50 years).

8. May require significant time and effort by Commissioners and staff in light of close scrutiny expected from new oversight element, i.e., ratepayers supporting Waste Fund.

Alt 4: DOE PAYS ANNUAL CHARGE TO TREASURY

Amend the Atomic Energy Act to require DOE Secretary to pay the U.S. Treasury from the Waste Fund for those amounts certified by NRC as having been expended in conducting its NWPA program. These payments, which are not related to fees, would be made annually and would continue until such time as NRC responsibilities are discharged. NRC's NWPA program would operate on annual appropriations.

PRO: 1. Shifts burden from taxpayers to ratepayers.

CON: 1. Does not obviate need for legislation; has attendant risk of uncertain outcome.

2. Since DOE would pay NRC from Waste Fund, NRC may still need to provide DOE with estimate

of total licensing costs to enable DOE to assess adequacy of Waste Fund fee. NRC may still need to develop planning and life-cycle cost model to estimate costs over 40-50 year licensing period.

3. Although DOE would be relieved of formal oversight responsibilities, NRC should expect DOE to exert influence to protect Waste Fund for DOE purposes, especially when DOE makes its annual determination of fee adequacy.

4. May require significant time and effort by Commissioners and staff in light of close scrutiny expected from new oversight element, i.e., ratepayers supporting Waste Fund.

5. Congress may be especially sensitive to any approach for using the Waste Fund by any means other than through the NWPA. If NRC is successful, would not other agencies identified in the DOE Project Decision Schedule also seek to have their programs funded from the Waste Fund?

Recommendation: That the Commission:

1. Provide direction to staff on further actions.

2. Provide the Commission's position to appropriate Congressional committees.

Scheduling: If scheduled on the Commission agenda, this paper should be scheduled at an open meeting. This paper is not subject to a specific timetable, but Congressional interest and current actions on this matter should also be considered.

William J. Dircks
Executive Director for Operations

Enclosures:
1. Elements of Possible Resource Impacts
2. DOE Views on H.R. 2040
3. House Report 99-170, Part I

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, August 14, 1985.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, August 7, 1985, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ENCLOSURE 1

ELEMENTS OF POSSIBLE RESOURCE IMPACTS
Implementing Costs Entailed Over Course of NRC Invovlement in NWPA Waste Fund

MOST LIKELY CASE IF NRC OPERATES ON WASTE FUND MONIES

Assumptions: DOE continues to have fiduciary responsibility under the NWPA for the Waste Fund. NRC's program planning and life-cycle cost-projection efforts must be compatible with requirements for providing information to DOE and Congress in connection with the annual assessment of Waste Fund fee adequacy. Outside audit is required.

Cost Elements:

- o Prepare, propose legislation:
  - Pursue formal clearance requirements.
  - Prepare for hearings on enabling legislation (and subsequently prepare for annual authorization/appropriation hearings).

- o Establish and maintain capability to determine total long-term life-cycle NRC NWPA/HLW costs:
  - Establish and maintain total program planning capability over life of NRC involvement in NWPA/HLW program.
  - Conduct initial NRC-wide NWPA/HLW cost projection--determining cost elements to be included and timing for initiating charges to DOE.
  - Develop and adapt computer-based mathematical models.
  - Obtain projections sufficiently sensitive to be able to cost out changes to the program.
  - Iterate computer models and program planning.

  [Note: Based on start-up cost experience alone for only DOE's contractor over first 2.5 years, costs for the total-system life-cycle activity approximates $3 million.]

- o Prepare for audit, including:
  - Prepare for and undergo internal audit.
  - Submit to Congressional/GAO audit.
  - Prepare for utility scrutiny.
  - Prepare for audit by a recognized major auditing firm

- o Establish Internal Financial and Monitoring Procedures:
  - Prepare Commission and staff procedures for financial accountability, including staff-time charges.
  - Establish financial tracking system.
  - Train staff in implementation.
  - Monitor implementation, analyzing reporting and tracking results.

- o Establish appropriate DOE-payment collection mechanism:
  - Coordinate as appropriate with financial tracking requirements.
  - Prepare and submit required reports.

POSSIBILITIES FOR LOWER COSTS

Assumptions: By legislation DOE is relieved of NWPA oversight responsibilities; DOE payments are made to Treasury (directly or by NRC fee pass-through); DOE payments are based on other than full recovery of NRC costs, e.g., fixed annual payment.

Cost Elements Possibly Avoided:

- o Outside audit by major firm.
- o Initiating full-blown total NRC NWPA/HLW program planning and related total life-cycle cost projection over course of program; however:
  - Could not avoid significant long-range planning altogether because not likely that NRC could avoid involvement in Waste Fund fee adequacy assessment.
  - Required sensitivity of NRC cost projections would be dependent on DOE and Congressional/GAO data requirements.
- o If DOE makes payment to Treasury, fee collection and internal financial tracking and audit requirements are obviated.

Cost Elements Not Likely Avoided Under Any Alternative:

- o Need for legislation.
- o Input to Waste Fund fee adequacy assessment.
- o Program planning and related cost projections over a period longer than that now used in the budget cycle.
- o Annual Congressional hearings.
- o Additional scrutiny by utilities.

ENCLOSURE 2

Department of Energy
Washington, D.C. 20585

APR 23 1985

Honorable Manuel Lujan, Jr.
Ranking Minority Member
Subcommittee on Energy & Environment
House of Representatives
Washington, D.C. 20515

Dear Mr. Lujan:

Enclosed are our detailed comments on H.R. 2040 as requested by your letter of April 18, 1985.

I would like to emphasize my strong concern over the implications of and potential problems resulting from a separate authorization of the Nuclear Waste Fund. Such action would too readily lead to a number of hastily arrived at de facto amendments to the Nuclear Waste Policy Act of 1982 (NWPA), thereby upsetting a carefully balanced landmark piece of legislation.

Providing a vehicle to open the NWPA in this way seems highly inappropriate in view of the fact that the NWPA took several years to reach the careful consensus that was finally achieved.

Further, any amendment to the NWPA at this time could seriously impede or thwart our current activities with regard to near-term programs in siting the first repository and add greater difficulties to the task of credibly completing a safe, efficient and timely nuclear waste disposal system for our Nation.

Sincerely,

Ben C. Rusche

Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management

Enclosure

Section 1 - Short Title

- Separate authorization of appropriations to the Nuclear Waste Fund will invite indirect amendments to the Nuclear Waste Policy Act of 1982 as exemplified by Sections 3,4,5 & 6 following herein.

Section 2 - Authorization of Appropriations

- Breakdown in Section 2 (3) (A) & (B) unnecessarily restrictive; $3,000,000 in total for FY 1986 and $500,000 in FY 1987 would be more in keeping with agreements reached in connection with recent MRS reprogramming of FY 1985 funds.

- Transfers to the general fund (Section 2 (5)) of the Treasury, in accordance with section 4, would be inappropriate and would serve to dilute the accountability of NRC. It is DOE's view that is should be required to pay from the Nuclear Waste fund a license fee properly and openly established by NRC on a basis comparable to other fees charged by the Commission and subject to full accountability.

Section 3 - Limitations of Authorization

- The prohibition of the use of the Nuclear Waste Fund for any activity under title II of the NWPA or any other research, development or demonstration activity is too restrictive and will unduly impair the realization of a safe, efficient and timely radioactive waste disposal system. This limitation would affect most severely any possible Test & Evaluation Facility and possible site and research activities, and could

limit future modest funding of activity in support of Section 223 assistance to non-nuclear weapons states. The annual budget proposal should make clear any request for Title II activities to be covered by Waste Fund revenues. In this matter, flexibility is retained and Congress can give the proposal full consideration.

Section 4 - Payment for Activities of Nuclear Regulatory Commission Under Nuclear Waste Policy Act of 1982

See comment under Section 2 above

Section 5 - Revised Standards for Payment of Disposal Fees

- Requiring payment of fees on a monthly basis will not generate an appreciable increase in Waste Fund revenues. A Departmental task force has estimated that the increased administrative cost of monthly collections would offset any gains in revenue over quarterly collections.

- Requiring the payment of interest (relating to electricity generated and sold before April 7, 1983) at a rate comparable to the commercial rate of interest will result in higher overall utility company payments early in the program which will be passed on to the ratepayers.

- The Department has approached the contract holders on an informal basis requesting that they consider contract amendments providing for monthly payments and commercial interest rates. The suggested modifications were considered

inappropriate by the utility executives. The Department believes that unilateral amendments to the contracts are not feasible and that the risk of litigation, and its impact on the program, should be considered before pursuing a policy of attempting unilateral contract amendment. (For additional information on this issue, see the attached letter from the Director of OCRWM to Congressman Edward Markey dated April 22, 1985.)

Section 6 - Evaluation of Nuclear Waste Acceptance Schedule

- The OCRWM Program is a complex undertaking involving the expenditures of large sums from utility ratepayers to safely dispose of spent nuclear fuel or high level wastes in geologic repositories. The Department is working to establish a comprehensive and stable program that will accomplish this objective most efficiently while achieving a balance among the competing institutional demands.

- The acceptance schedule is key to the ability of the utilities to plan for the future. The Department has expressed its view that the utilities deserve the safe disposal of their spent nuclear fuels and a firm planning basis in exchange for the sums of money put into the Waste Fund. The Department is presently working to establish firm program goals for waste acceptance and believes that the proposed provision would be destabilizing and would create unwarranted and unnecessary uncertainty for the program and the Nation.

- The provisions of this section unecessarily limit OCRWM's options for system effectiveness by dictating the bounds of waste acceptance schedule analyses. OCRWM is evaluating different acceptance schedules are part of its larger effort to "optimize" the system and as a precursor to 1987 publication of schedules.

- Further, setting the initial acceptance rate at 100 MTU is restrictive and inconsistent with the spirit of the contracts and confuses the planning process.

ENCLOSURE 3

99TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPT. 99-170 Part 1

AUTHORIZING APPROPRIATIONS TO THE DEPARTMENT OF ENERGY FOR FISCAL YEARS 1986 AND 1987 FOR EXPENDITURES FROM THE NUCLEAR WASTE FUND FOR ACTIVITIES UNDER TITLE I OF THE NUCLEAR WASTE POLICY ACT OF 1982

JUNE 12, 1985.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 2040]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 2040) to authorize appropriations to the Department of Energy for fiscal years 1986 and 1987 for expenditures from the Nuclear Waste Fund for activities under title I of the Nuclear Waste Policy Act of 1982, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Waste Fund Authorization Act, Fiscal Years 1986 and 1987".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Energy for expenditure from the Nuclear Waste Fund in accordance with section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) the following amounts for activities under title I of such Act:

(1) for development of a first repository, $436,800,000 for fiscal year 1986 and $641,700,000 for fiscal year 1987;

(2) for development of a second repository, $43,900,000 for fiscal year 1986 and $97,500,000 for fiscal year 1987;

(3) for activities relating to monitored retrievable storage, $3,000,000 for fiscal year 1986 and $500,000 for fiscal year 1987;

(4) for transportation and systems integration, $22,625,000 for fiscal year 1986 and $27,025,000 for fiscal year 1987; and

(5) for program management, $55,235,000 for fiscal year 1986 and $56,300,000 for fiscal year 1987, of which amounts there are authorized to be appropriated such sums as may be necessary for each such fiscal year to carry out the provisions of section 5.

51-006 O

Enclosure 3

SEC. 3. LIMITATIONS OF AUTHORIZATION.

No provision of this Act may be construed to authorize appropriations to the Department of Energy for expenditure from the Nuclear Waste Fund—

(1) for implementation of any monitored retrievable storage proposal developed under section 141 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10161) until the Congress by law, after submission and review of such proposal, specifically authorizes the construction of a monitored retrievable storage facility; or

(2) except as provided in section 2(3), for activities for the development of surface facilities for packaging, treatment, or storage of spent nuclear fuel other than at the site of a repository or civilian nuclear power reactor.

SEC. 4. PAYMENT FOR ACTIVITIES OF NUCLEAR REGULATORY COMMISSION UNDER NUCLEAR WASTE POLICY ACT OF 1982.

The Secretary of Energy shall, to the extent of the amounts approved in appropriation Acts for fiscal years 1986 and 1987, transfer from the Nuclear Waste Fund to the general fund of the Treasury of the United States amounts equal to the amounts appropriated to the Nuclear Regulatory Commission and determined by rule by the Commission to be expended in fiscal years 1986 and 1987 in carrying out its responsibilities under title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10121 et seq.).

SEC. 5. EVALUATION OF NUCLEAR WASTE ACCEPTANCE SCHEDULES.

(a) IN GENERAL.—The Secretary of Energy shall evaluate a range of possible schedules for the acceptance of high-level radioactive waste and spent nuclear fuel for disposal in a repository developed under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

SEC. 5. EVAULATION OF NUCLEAR WASTE ACCEPTANCE SCHEDULES.

(a) IN GENERAL.—The Secretary of Energy shall evaluate a range of possible schedules for the acceptance of high-level radioactive waste and spent nuclear fuel for disposal in a repository developed under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

(b) ASSESSMENT OF SCHEDULES.—The evaluation of the Secretary of Energy under subsection (a) shall include, with respect to each schedule, an assessment of—

(1) the impact of such schedule on the need for Federal away-from-reactor storage capacity;

(2) the cost of meeting such schedule; and

(3) the potential liabilities of the Federal Government resulting from such schedule.

(c) SCHEDULE ASSUMPTION.—The schedule evaluation of the Secretary of Energy under this section shall be based on a range of annual acceptance rates. The Secretary may evaluate acceptance schedules beginning at annual acceptance rates that are as low as the Secretary determines to be appropriate, except that the beginning annual acceptance rates evaluated shall not exceed 100 metric tons of high-level radioactive waste and spent nuclear fuel.

(d) LIMITATION.—The Secretary of Energy may not obligate or expend any amount from the Nuclear Waste Fund for purposes of renegotiating or amending contracts for disposal under section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) to incorporate a nuclear waste acceptance schedule, until—

(1) the Secretary completes the evaluation required in this section and submits to the Congress a comprehensive report setting forth the findings and conclusions of the Secretary as a result of such evaluation; and

(2) there has expired a period of 90 days of continuous session of the Congress following the date of submission of such report, as computed in accordance with paragraphs (1) and (2) of section 115(f) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10135(f)).

PURPOSE

The Nuclear Waste Fund Authorization Act authorizes appropriations of funds from the Nuclear Waste Fund for fiscal years 1986 and 1987 to support Department of Energy activities under the Nuclear Waste Policy Act for the construction of a facility for disposal of high-level radioactive waste from civilian nuclear power reactors. Consideration of this specific legislation authorizing only

these Nuclear Waste Fund-supported programs is intended to increase and improve Congressional oversight of the Fund.

SUMMARY OF H.R. 2040

The Nuclear Waste Fund Authorization Act recommends a decrease in budget authority for monitored retrievable storage activities for fiscal years 1986 and 1987, reflecting the need for express Congressional approval of any storage system before it is developed. H.R. 2040 in other respects recommends approval of the Administration's request for activities financed by collections from utilities through the Nuclear Waste Fund. A summary of the commitee's recommendation for budget authority for these programs, together with the appropriations approved for the programs for fiscal year 1985, the Administration request, and the changes made by the committee in the Administration request, follows:

SUMMARY OF H.R. 2040, THE NUCLEAR WASTE FUND AUTHORIZATION ACT

[In thousands of dollars]

Program	Fiscal year 1985 appropriation	Fiscal year 1986			Fiscal year 1987		
		DOE request	Committee recommendation	Change	DOE request	Committee recommendation	Change
Development of first repository	244,000	436,800	436,800	0	641,700	641,700	0
Development of second repository	24,700	43,900	43,900	0	97,500	97,500	0
Monitored retrievable storage	8,500	12,900	3,000	−9,900	13,600	500	−13,100
Transportation and system integration	2,400	22,625	22,625	0	27,025	27,025	0
Debt service (interest)	3,300	0	0	0	0	0	0
Program management	44,369	55,235	55,235	0	56,300	56,300	0
Total	327,669	571,560	561,560	−9,900	836,125	823,025	−13,100

H.R. 2040 also clarifies that this bill does not authorize the Department to expend funds in fiscal years 1986 and 1987 for development of monitored retrievable storage or centralized spent fuel packaging and handling facilities. Development of such facilities requires express Congressional authorization.

The Secretary is required to transfer to the U.S. Treasury from the Nuclear Waste Fund such sums as are determined by rule by the Nuclear Regulatory Commission to be expended in fiscal years 1986 and 1987 to carry out the Commission's responsibilities under Title I of the Nuclear Waste Policy Act (NWPA).

The Secretary is required to evaluate the impact of various rates of accepting spent fuel from utilities for disposal. The Secretary is prohibited from amending contracts with utilities for the disposal of spent fuel or waste to commit the Secretary to any acceptance rate during fiscal years 1986 and 1987, unless such study has been completed and reviewed by Congress.

BACKGROUND

In enacting the Nuclear Waste Policy Act (NWPA), the Congress set up the Nuclear Waste Fund to assure that the Federal costs of disposal of high-level radioactive waste would be borne by the generators of that waste. It is currently estimated that the cost of the

Federal high-level waste disposal program will be from $35 billion to $64 billion. The direct source of these funds will be primarily the consumers of nuclear-generated electricity.

With concern that the Fund be carefully managed, and that the interest of nuclear ratepayers, and states and citizens impacted by the repository construction program, be closely respected, the Congress in the NWPA created a separate office of Civilian Radioactive Waste Management in the Department of Energy to carry out activities covered by the Waste Fund. In addition, the General Accounting Office was required to carry out an annual audit of the Fund. Congressional intent was to separate the Waste Fund from other Department programs, and to oversee diligently this multi-billion-dollar activity.

In order to promote Waste Fund oversight, Mr. Udall on April 15, 1985, introduced legislation authorizing only those activities in the Department of Energy supported by the Waste Fund and directly related to the development of the management system for high-level waste. Included in this legislation are recommendations to improve management of the high-level waste repository program and to clarify a program policy consistent with the NWPA.

Hearings on the Administration's authorization request for the Nuclear Waste Fund and other Department programs under the jurisdiction of the Interior Committee were held by the subcommittee on Energy and the Environment of March 5, 1985.

H.R. 2040 was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce. As a fee-supported service for the civilian nuclear power industry, the Nuclear Waste Fund program for development of a licensed disposal facility and the attendant management system comes under the jurisdiction of these committees.

GENERAL COMMENTS

Oversight by the General Accounting Office and the committee

The General Accounting Office (GAO) is playing an increasingly important role in oversight of the Nuclear Waste Fund and repository development activities. The annual audit required from GAO under the Nuclear Waste Policy Act (NWPA) has been increased in response to a request by the Senate Committee on Energy and Natural Resources to include quarterly reports on the status of the Department's efforts to implement the Act. GAO is also being requested to help Congressional committees oversee and evaluate special specific program activities. The information being provided in these reports is a useful and timely contribution to efforts to assure that the Waste Fund programs are effectively managed.

In addition, the Committee continues to maintain careful review of these activities through its hearings. No recommendations were received by the Committee pursuant to Rule X. clause 2(b)(2).

Program status

In December of 1984, the Department issued in draft form nominations of five sites to be considered for repository development, the draft environmental assessments supporting those nominations, and a preliminary ranking of the five sites indicating the three

sites most likely to be selected for in-depth characterization. The five sites, with the three likely to be characterized indicated by an asterisk, were: (1) Yucca Mountain, Nevada;* (2) Deaf Smith, Texas;* (3) Hanford, Washington;* (4) Richton Dome, Mississippi; (5) Davis Canyon, Utah.

The Department made two decisions critical to the site nomination process which were not a required part of the process outlined by the NWPA. Draft versions of the environmental assessments were issued for public comment, and the site rankings and the methods used to determine the rankings were included in the assessments and thereby subjected to broad public and technical review. These decisions have contributed substantially to public, state and technical peers' participation in repository site selection and should prove critical to the technical quality and public acceptability of the final site selection decision.

The environmental assessments, procedures for site nomination, and methodology for ranking of sites have been challenged in court and may be subject to further challenge following finalization of the environmental assessments. Final environmental assessments and siting decisions are projected to be complete in fall of 1985.

If environmental assessments are finalized and site characterization proceeds as currently planned, the site selection process will be close to one year behind the schedule recommended in the NWPA. Under the NWPA, the Department was required to nominate five sites for characterization, issue the supporting environmental assessments, and subsequently recommend three sites to the President for in-depth characterization, no later than January 1, 1985.

The deadlines set forth in the NWPA are targets toward which the Department should aim to keep the repository program on track. Certain of the substantial delays in the site selection process can be linked to decisions balancing important program objectives, particularly the need for public and state review of Department activities. The failure to meet a program target of itself is not an indication that the requirements and objectives of the NWPA have not been met.

The reasons for slippage in the program schedule are important, however, as they may reflect administrative problems within the program. Delays in promulgation of the guidelines for selection of waste sites, and in the development of the Mission Plan and Project Decision Schedule, reflect a need for the Department to better anticipate the resources necessary for producing program criteria and planning documents that will achieve broad acceptance without prolonged negotiation and major revisions, as well as reflecting time spent in public interaction. Whether the site environmental assessments will be adequate to allow the program to move forward will now have a critical impact on the extent to which future repository targets will be met.

Monitored retrievable storage

The Committee amended the Department's budget request to reflect the Department's limited need for authorization of budget authority prior to Congressional approval of a monitored retrievable

storage (MRS) proposal. The Department estimates a proposal for an MRS facility will be provided to Congress in January 1986.

A proposal for an MRS facility is required by the Nuclear Waste Policy Act (NWPA). The NWPA contemplated an alternative to geologic disposal based on engineered surface facilities, and required that a proposal examining this option be prepared for Congressional review. Such a proposal was due June 1, 1985.

The Department indicated in information provided to the Committee in the context of budget oversight this year that the MRS concept will not be an engineered alternative to the geologic disposal system, but rather will be an incrementally available spent fuel storage option ancillary to the waste repository. The facility that will be proposed to be constructed would be fundamentally a spent fuel packaging and handling facility, at which this storage capacity could be constructed to the extent required. All spent fuel destined for a repository would be transported to this facility and then transferred to a repository in large, centralized shipments.

The Department indicated in a letter to Mr. Udall that only $3 million would be spent on the MRS proposal in fiscal year 1986, and that further development of the concept would be subject to specific Congressional approval.

The NWPA prohibits "the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation" (Section 302(d)). Only a repository and a test and evaluation facility are authorized to be constructed by the NWPA. A packaging and handling facility, an MRS, or any combination thereof, regardless of whether integrated into the repository system or considered as a substitute therefor, would be at least an expansion of the systems conceived by the Act, and requires express authorization to be constructed.

The issues most important to the committee regarding the advisability of an MRS component are the impact of MRS on: (1) the program for development of permanent disposal facilities, (2) the economics of the system and its cost to nuclear ratepayers, and (3) transportation and other public health and safety issues. The Department's MRS proposal should address these impacts in comparison with having no MRS or centralized packaging facilities, as well as as with other possible organizational concepts.

Research and development

The Committee deleted Section 3(a) which clarified that nothing in H.R. 2040 should be constructed to authorize appropriations for any activities under Title II of the NWPA, or any other research and development activities. Questions were raised regarding whether research activities may be entailed in development of a repository under Title I of the Nuclear Waste Policy Act (NWPA).

Title I of NWPA authorities and defines a program for the development of a commercially operating, licensed disposal facility for high-level radioactive waste. A research facility authorized to be constructed under Title II of the NWPA will not under current plans be constructed in the Department's NWPA program.

Basic research on high-level waste disposal technology is not authorized to be paid for out of receipts collected from nuclear utilities through the Nuclear Waste Fund, under the NWPA. These ac-

tivities were set aside from the NWPA program and are paid for from Federal funds in the Civilian Radioactive Waste Research and Development programs of the Department.

Section 3(a) was not considered necessary to clarify the intent of H.R. 2040 in authorizing only activities for development of a repository and other aspects of a commercially operating high-level waste management system. To the extent that research is necessary in support of this activity, the Department is not restricted from acquiring this support, so long as the research is directly related to the selection of sites for and licensing of a geologic disposal facility and its authorized ancillary facilities.

Payment of disposal fees by utilities

The Committee deleted Section 5, which required a change in the methods used to collect payments to the Nuclear Waste Fund from nuclear utilities. It was determined that further information on this issue was desirable.

The General Accounting Office reported that $8 million annually is lost to the Nuclear Waste Fund due to the Department's collection of fees from utilities on a quarterly rather than a monthly basis. Collection of interest on sums owed the Waste Fund based on a Treasury interest rate rather than a current commercial interest rate will cost the fund from $200 million to $700 million over a two-year period (Department of Energy's Initial Efforts to Implement the Nuclear Waste Policy Act of 1982, January 10, 1985).

The committee primarily is interested in obtaining information, prior to encouraging changes in the Department's fee collection system, regarding whether the current system is benefiting the ratepayers or the stockholders associated with the nuclear utilities, and the impacts of changing the system on those groups relative to impacts on the Nuclear Waste Fund. The GAO has been requested to investigate these issues.

Amendment of Nuclear Waste Policy Act is not germane to H.R. 2040

Concerns have been raised that a bill authorizing the Nuclear Waste Fund might attract or encourage amendments to the Nuclear Waste Policy Act (NWPA). The Nuclear Waste Fund Authorization Act plainly does not amend the NWPA, directly or indirectly, and is not intended as a vehicle for such amendments. The committee intends to resist amendments to the NWPA in this and future Waste Fund authorizing acts.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the Act the Nuclear Waste Fund Authorization Act, fiscal years 1986 and 1987.

Section 2 authorizes appropriations to be made for expenditure from the Nuclear Waste Fund for activities under Title I of the Act.

Section 2 (1) authorizes appropriations for development of a first repository; $436,800,000 for FY 1986 and $641,700,000 for FY 1987. This includes development of packaging for waste materials and

regulatory and institutional activities, as well as testing and exploration of potential repository host sites.

The Department plans to begin sinking exploratory shafts at three potential host sites in 1986. An authorization of $106,800,000 is requested for this purpose. The Department's ability to sink these shafts is contingent on publication of final environmental assessments of the sites required under the NWPA, expected at the end of fiscal year 1985.

Section 2 (2) authorizes appropriations for development of a second repository; $43,900,000 for fiscal year 1986 and $97,500,000 for fiscal year 1987. The NWPA requires the Department to nominate sites for at least two repositories, following similar procedures. Decision points for the second repository program are spaced about five years later than those for the first repository program; with sites recommended to the President for characterization in July, 1991, and one site recommended to Congress for licensing in 1997.

Activities in fiscal year 1986 and 1987 concentrate on investigation of crystalline and some sedimentary rock areas and preparation of detailed plans for advanced geologic and socioeconomic studies of areas when the geographic scope of the areas has been narrowed.

Section 2 (3) authorizes appropriations for activities related to monitored retrievable storage (MRS) of $3,000,000 for fiscal year 1986 and $500,000 for fiscal year 1987.

This is a reduction of $9,900,000 for fiscal year 1986 and $13,100,000 for fiscal year 1987 in the Department's request for MRS activities. The Department indicated in a letter to Mr. Udall dated April 2, 1985 that only $3 million would be spent on MRS activities in fiscal year 1986 without Congressional approval of a request for authorization of construction of such facilities. The DOE budget request for amounts above $3 million could not be spent without such approval. The recommendation in this proposal is that funding for MRS activities not currently authorized be addressed at such time as Congress has made a decision to include such facilities in the waste management system.

Section 2(4) authorizes appropriations for transportation and systems integration of $22,625,000 for fiscal year 1986 and $27,025,000 for fiscal year 1987. These funds are to be used to evaluate transportation impacts of movement of spent fuel or high-level waste from the source of generation to the repository, and for improvements in packaging and handling of spent fuel and waste to mitigate these impacts. Storage and packaging requirements for spent fuel and waste could be met at the location of a repository, at reactor sites or other sites where waste is generated, or at other centralized facilities.

Development of a central facility for packaging and handling and possibly storage of spent fuel and high-level waste is part of the proposal being sent to Congress for consideration in the monitored retrievable storage (MRS) program. Transportation and systems integration activities are authorized to be carried out to the extent that they are useful and appropriate in the absence of Congressional approval of an MRS waste management system. Should Congress approve an MRS system, the transportation and systems integration activities should be adjusted to reflect this decision.

Section 2(6) authorizes to be appropriated for program management $55,235,000 for fiscal year 1986 and $56,300,000 for fiscal year 1987. The activities required by Section 6 of this proposal are authorized to be paid for by funds appropriated under this section. Section 6 requires the Secretary to evaluate possible schedules for accepting spent fuel and high-level waste for disposal in a repository.

Section 3 clarifies that no funds for activities for development of monitored retrievable storage, or centralized facilities away from reactor or repository sites for spent fuel or waste packaging or handling, are authorized to be appropriated until Congress has acted to specifically authorize the construction of such facilities.

Section 4 requires the Secretary to transfer in fiscal years 1986 and 1987 to the U.S. Treasury funds appropriated to offset amounts the Nuclear Regulatory Commission is appropriated, and determines by rule it will expend, in fiscal years 1986 and 1987 for carrying out its responsibilities under Title I of the NWPA. This transfer results in payment by contributors to the Nuclear Waste Fund of the Federal Government's expenses incurred by NRC licensing and oversight activities under the NWPA.

Section 5 requires the Secretary to study the impact on the waste repository program of a range of schedules for accepting spent fuel and high-level waste for disposal in a repository.

Section 320(a)(5) of the NWPA requires the Secretary to take title to waste and spent fuel after a repository begins operation, and to begin to dispose of waste and spent fuel not later than January 31, 1998. This section requires contracts entered into between DOE and waste and spent fuel generators to reflect these obligations of the Secretary.

In light of the uncertainty regarding the amount of disposal capacity that will be available to the Secretary in 1998, contractual obligations to dispose of this material should not be entered into until it is clear how much waste or fuel can be handled by the program. The cost and liability involved in various possible rates of accepting spent fuel are required to be investigated. The Secretary is prohibited during fiscal year 1986 and fiscal year 1987 from obligating the Department to a waste acceptance schedule before these issues have been examined and a report thereon has been reviewed by Congress for 90 days of continuous session.

COMMITTEE RECOMMENDATION

On May 8, 1985, H.R. 2040 was considered by the Committee on Interior and Insular Affairs and was set aside pending further consultation on issues raised by the bill. On May 15, 1985 the committee considered the bill and, by voice vote, ordered the bill reported to the House with a single amendment in the nature of a substitute.

COMMITTEE COST ESTIMATE

In accordance with rule XIII, clause 7(a) of the Rules of the House of Representatives, the committee has made an estimate of the budget authority which would be required to carry out the pro-

visions of H.R. 2040 of $561,560,000 in fiscal 1986 and $823,025,000 in fiscal 1987.

1. Bill number: H.R. 2040.

2. Bill title: Nuclear Waste Fund Authorization Act, Fiscal Years 1986 and 1987.

3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, May 15, 1985.

4. Bill purpose: The bill authorizes the appropriation of $562 million in 1986 and $823 million in 1986 for expenditure from the nuclear waste fund, administered by the Department of Energy. The 1986 authorization is approximately $9 million less than the President's request and $234 million higher than the 1985 appropriation.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Authorization level	562	823			
Estimated outlays	281	636	385	82	

The nuclear waste fund is financed by fees collected from nuclear powered electric utilities. The receipts are deposited in the fund, and their expenditure requires appropriation action. CBO estimates receipts of $376 million in fiscal year 1986 and $440 million in fiscal year 1987 from such fees.

The costs of this bill fall within budget function 270.

Basis of estimates.—CBO assumes that all amounts authorized are appropriated and that spending will occur at historical rates. The authorization levels for 1986 and 1987 are established in the bill.

6. Estimate cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Pete Fontaine.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENTS

In making its recommendation, the Committee on Interior and Insular Affairs is cognizant of the fact that expenditures will be required which may have some nominal impact on inflation; however, the importance of addressing nuclear waste management problems is considered urgent and in the national interest. Furthermore, the expenditures involved are derived from a trust fund supported entirely by collections from industry sources so that outlays from the general fund of the U.S. Treasury are not required.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 12, 1985

MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: John E. Zerbe, Director
Office of Policy Evaluation

SUBJECT: FUNDING OF NRC'S COSTS OF LICENSING DOE UNDER THE NWPA--USE OF THE NUCLEAR WASTE FUND FOR NRC/NWPA HIGH-LEVEL WASTE ACTIVITIES

SECY-84-456A, dated July 25, 1985, offers a discussion of the pros and cons for alternative courses of action which would allow NRC to use monies from the Nuclear Waste Fund (NWF) to support its high-level radioactive waste (HLW) regulatory activities related to the Nuclear Waste Policy Act (NWPA). 1/ This paper supplements the material in SECY-84-456 with a discussion of four alternative courses of action, all of which involve some method of gaining access to the NWF to fund NRC's HLW regulatory program, and requests Commission guidance for further action.

Since it is a question of funding rather than direction of NRC's program, the use of the NWF is more appropriately a matter for Congress to pursue, and we do not believe it appropriate for the Commission to sponsor such legislation. However, it would be advisable, at least for the purposes of commenting on the current bill, for the Commission to arrive at a position on whether use of the fund is desirable and, if so, which alternative best provides NRC with a stable, long-term source of funds, minimizes administrative burdens, and preserves NRC's independence. Staff had prepared

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1/ Chairman Palladino and Commissioners Bernthal, Asselstine, and Zech approved the recommendations of SECY-84-456, dated December 3, 1984, to: (1) continue to request Congressional appropriations to finance NRC's HLW programs; and (2) propose legislation to modify the Atomic Energy Act to require payments by Treasury from the NWF of those amounts certified as having been expended by NRC in conducting its HLW program. Subsequently, in response to Commissioner Roberts' request, the Commission postponed action on this matter until additional information could be prepared by the staff; the staff provided this information in SECY-84-456A.

Contacts:
Paul Goldberg, OPE
Clyde Jupiter, OPE

informal comments on the bill but apparently these were not conveyed to Congress. (See Attachment, Comments from RM to OCA.)

The primary impetus for considering this issue arose during NRC budget negotiations in 1984, when OMB, in the course of restoring funds to NRC for the nuclear waste program, suggested that the Commission examine ways to fund its future HLW regulatory activities from the Nuclear Waste Fund. Congress has already begun to address the possibility of such an arrangement: H.R. 2040, reported by the House Interior Committee on June 12, 1985, requires the Secretary of DOE to transfer from NWF to the Treasury an amount equal to NRC's Congressional appropriations for NWPA activities for fiscal years 1986 and 1987. In commenting on this proposed bill, DOE expressed a preference for paying NRC a license fee.

The four alternatives discussed in SECY-84-456A involve amending either the Atomic Energy Act, the Nuclear Waste Policy Act, or NRC and DOE Congressional appropriations acts. The principal advantages for the various alternatives listed are that the HLW regulatory costs would be shifted from the taxpayer to the ratepayer of nuclear-generated electricity and that an assured source of stable funding would be established.

The principle of having the ratepayers, beneficiaries of the electricity generated by nuclear plants, pay for regulation of the disposal of spent fuel is philosophically appealing. Whether or not this was the intent of the NWPA is the question now being addressed by Congress in its consideration of H.R. 2040. However, SECY-84-456A also discussed practical disadvantages to all the alternatives for getting funding from the NWF, including the potential for conflict of interest because of DOE administration of the NWF; the conflict between licensing of plants and obtaining money from their operation; the appearance of being accountable to utilities which provide NWF money; the costs of long-range budget projections, independent audits, and detailed fiscal management in connection with setting the NWF fee and NRC use of NWF money; and the uncertain outcome of legislative initiatives which reopen delicately balanced legislation to further amendment.

SECY-84-456A does not recommend selection of any of the alternatives discussed. The analysis offered by the staff does not indicate that the advantages of gaining access to the NWF will outweigh the disadvantages. Because of the significant uncertainties in how such an arrangement would impact NRC, and since Congress itself is currently addressing this issue in its consideration of H.R. 2040, we recommend that the Commission not seek to sponsor such legislation but prepare to comment on any bill which addresses the issue by deciding whether NRC use of the fund is desirable and, if so, which alternative best meets NRC's needs.

Attachment:
As stated

cc: S. Chilk
H. Plaine
W. Dircks

Comments on H.R. 2040 -
A Bill Authorizing Appropriations for Expenditures from the Nuclear Waste Fund for Activities Under Title I of the Nuclear Waste Policy Act (NWPA) of 1982

Section 4 of H.R. 2040 proposes that the Department of Energy (DOE), to the extent of amounts appropriated to the Department for the purpose, transfer funds from the Nuclear Waste Fund to the Treasury General Fund amounts equal to the amounts appropriated to NRC and certified by NRC to be expended in FY 1986 and FY 1987 in carrying out its responsibilities under Title I of the NWPA.

This proposed legislation directs the Secretary of Energy to transfer from the Nuclear Waste Fund to the General Fund of the Treasury whatever amount (up to a ceiling of $22 million in FY 1986 and $25 million in FY 1987) that the NRC certifies will be expended during those two years, respectively.

In effect, this simply provides that our appropriations for fiscal years 1986 and 1987 will be offset by the amounts we would certify as justified for funding from the waste fund; thus, the rate payer pays in lieu of the taxpayer. The amounts indicated, we believe, were derived from our response to a Markey Q&A (see attached). The amounts should be somewhat lower as you can see in the attachments.

The wording in the Bill does clearly show Congressional intent. However, its direction is limited to two years and require repeated authorization to continue such direction.

The draft proposal does not expressly provide that DOE would not continue to have the oversight authority inherent in the NWPA with respect to the amounts and purposes of the funding expended or planned by NRC for its High-Level Waste (HLW) program. The provision in H.R. 2040 for NRC certification of expenditures may be legally sufficient to obviate such oversight. It would seem prudent, however, to clarify intent in this regard by inclusion of specific language.

If it is not intended that DOE be relieved of its NWPA oversight, responsibilities with respect to NRC's expenditures, this would pose serious conflict-of-interest concerns. DOE, as an NRC licensee, should not be perceived to be--in a position to restrict or influence the Commission's judgement in carrying out NRC's safety and environmental responsibilities under the NWPA. (NRC is on record in this regard per its February 23, 1984, response to Senator Simpson.)

As stated above, the Bill simply establishes an offset mechanism to put the burden of costs for HLW management on the rate payer rather than the tax payer. Another financial alternative to attain the same objective could be to transfer the waste funds directly to NRC's budget authority. It is the NRC comptroller's view that this alternative would not offer any funding advantage to the NRC.

ATTACHMENT

Attachment

QUESTION. WHAT ARE THE NRC RESOURCES REQUESTED FOR FY86 AND FY87 FOR ACTIVITIES (A) REQUIRED BY THE NUCLEAR WASTE POLICY ACT OF 1982 (NWPA) AND (B) RELATED TO THE HIGH-LEVEL WASTE REPOSITORY? THIS INFORMATION SHOULD BE EXPRESSED IN TERMS OF STAFF-YEARS (FTEs), CONTRACTUAL FUNDS, AND TOTAL FUNDS.

ANSWER.

THE APPROXIMATE NRC RESOURCES REQUESTED FOR THE NWPA AND FOR THE HIGH-LEVEL WASTE REPOSITORY ARE:

	FY86			FY87		
	FTE	CONTRACT FUNDS ($M)	TOTAL* FUNDS ($M)	FTE	CONTRACT FUNDS ($M)	TOTAL* FUNDS ($M)
NWPA	156	11.3	21.8	154	14.2	25.1
HLW REPOS.	133	9.9	18.8	133	11.7	21.1

*TOTAL FUNDS INCLUDE SALARIES AND BENEFITS, ADMINISTRATIVE SUPPORT, AND TRAVEL, AS WELL AS CONTRACT FUNDS.

LLOYD/NMSS
3/11/85

BACKUP TO LLOYD SUBCOMMITTEE
QUESTION ON 3/11/85

Total NRC Resources Requested for
Nuclear Waste Policy Act Activities
(Dollars in Millions)

	FY 1986	FY 1987
Salaries and Benefits (FTE)	$ 7.3 (156)	$ 7.5 (156)
Program Support	11.3	14.2
Administrative Support	2.7	2.8
Travel	0.5	0.6
Total Funds	$21.8	$25.1

Total NRC Resources Requested for
High-Level Waste Repository
(Dollars in Millions)

	FY 1986	FY 1987
Salaries and Benefits (FTE)	$ 6.2 (133)	$ 6.5 (133)
Program Support	9.9	11.7
Administrative Support	2.3	2.4
Travel	0.4	0.5
Total Funds	$18.8	$21.1