ADDENDUM

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

THE SKULL VALLEY BAND OF GOSHUTE INDIANS and PRIVATE FUEL STORAGE, L.L.C., Plaintiffs, vs. MICHAEL O. LEAVITT, in his official capacity as Governor of the State of Utah; MARK L. SHURTLEFF, in his official capacity as Attofney General of the State of Utah; DIANNE R. NIELSON, in her official capacity as Executive Director of the Utah Department of Environmental Quality; THOMAS WARNE, in his official capacity as Executive Director of the Utah Department of Transportation; GLEN EDWARD BROWN, STEPHEN M. BODILY, HAL MENDENHALL CLYDE, DAN R. EASTMAN, SHERI L. GRIFFITH, JAMES GREY LARKIN, and TED D. LEWIS, in their official capacities as Commissioners of the Utah Department of Transportation Defendants.	ORDER Case No. 2:01-CV-270C

This case arises out of Plaintiffs Skull Valley Band of Goshute Indians' ("Skull Valley Band") and Private Fuel Storage, L.L.C.'s ("PFS") agreement to permit PFS to build and operate a spent nuclear fuel ("SNF") storage facility in Utah on the tribal reservation lands of the Skull Valley Band. SNF is a waste product generated by commercial nuclear reactors. Plaintiffs filed

an action seeking declaratory and injunctive relief from the operation of several Utah laws. The Defendants are various high-ranking officials in Utah State government, including Michael O. Levitt, the Governor of the State, and Mark L. Shurtless, the State Attorney General.

Plaintiffs' complaint alleges eight claims for relief: (1) Declaratory Judgment - Supremacy Clause, Preemption; (2) Declaratory Judgment - Commerce Clause; (3) Declaratory Judgment - Preeminent Federal Authority over Indian Affairs, Indian Commerce Clause, Treaty Clause, Supremacy Clause; (4) Declaratory Judgment - Federal Indian Law/ Indian Sovereignty Doctrine; (5) Declaratory Judgment - Contract Clause; (6) Declaratory Judgment - Deprivation of Property; (7) Declaratory Judgment - First, Sixth, and Fourteenth Amendments; and (8) Injunction.

Defendants filed an Amended Counterclaim on August 8, 2001, alleging that (1) the Nuclear Regulatory Commission ("NRC") has no authority to license a private, for profit, off-site spent nuclear fuel ("SNF") storage facility; (2) an NRC license will necessarily violate the National Environmental Policy Act ("NEPA") and therefore be invalid; (3) Skull Valley Band has not lawfully approved the lease; (4) the conditional approval of the lease by the Bureau of Indian Affairs ("BIA") occurred in violation of governing laws and rules; and (5) any BIA approval of the lease will be invalid as a breach of the Government's trust obligation.

This matter comes before the court on several motions. Plaintiffs filed a joint motion for summary judgment, a motion to dismiss counterclaims, and a motion to strike Defendants' motion suggesting lack of jurisdiction. Plaintiff Skull Valley Band filed a separate motion for summary judgment. Defendants filed a motion for judgment on the pleadings and a suggestion of lack of jurisdiction under Federal Rule of Civil Procedure 12(h)(3). Defendants treat their motion for judgment on the pleadings and suggestion of lack of jurisdiction as one and the same.

FACTS

The reality of an ever-increasing backlog of SNF in temporary storage has created a national problem. Currently, temporary on-site storage of SNF holds approximately 38,500 metric tons of SNF. But licensed nuclear reactors are expected to generate an additional 70,000 metric tons of SNF, at the least, over their commercial lifetimes.

In 1982, Congress passed the Nuclear Waste Policy Act ("NWPA"). The NWPA requires the Department of Energy to construct a permanent repository for the disposal of SNF. Pursuant to the terms of the NWPA, the Department of Energy entered into a contractual agreement with all utilities that control one or more nuclear reactors to accept the SNF generated by these reactors no later than January 31, 1998. However, the Department of Energy estimates that, at the earliest, it will not have a permanent repository to receive SNF until 2010.

A consortium of utility companies formed PFS as a temporary solution to the storage problem. PFS proposes to build an off-site, private SNF storage facility on a portion of the reservation of the Skull Valley Band in Utah. On May 20, 1997, PFS entered into a lease of tribal reservation lands with the Skull Valley Band to allow the construction of a SNF storage facility. The BIA has conditionally approved the lease. PFS has submitted a license application to the NRC to construct and operate the proposed SNF storage facility. The NRC has yet to rule on PFS' application.

Not surprisingly, the State of Utah objects to PFS's proposal. Governor Leavitt proposed, and the Utah Legislature passed, five pieces of legislation ("Utah laws") directed at blocking Plaintiffs' proposed facility.[1] The Utah laws fall into three categories: (1) Part 3 of

[1]Governor Leavitt and various representative's statements on the purpose and effect of the Utah laws can be found in Pls.' Mot. in Support of Joint Mot. for Summary Judgment ("Summary Judgment Mot.") at 17-24.

Utah's Radiation Control Act ("Part 3"), (2) the Additional Provisions, and (3) the Miscellaneous Provisions.[2]

ANALYSIS

I. JURISDICTION

In its motion for judgment on the pleadings and its suggestion of lack of jurisdiction under Rule 12(h)(3), Defendants argue that (1) Plaintiffs do not have standing because they do not allege a violation of a legally cognizable interest and (2) Plaintiffs' claims are not ripe because the NRC has yet to grant PFS a license for facility.

A. STANDING

Article III of the Constitution restricts the federal courts to adjudicating actual "cases" or "controversies." U.S. CONST. art. III. The case-or-controversy limitation "defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded." *Allen v. Wright*, 468 U.S. 737, 750 (1984). To ensure judicial adherence to the case-or-controversy requirement, the federal courts have adopted a variety of doctrines, of which the "doctrine that requires a litigant to have 'standing' to invoke the power of a federal court is perhaps the most important." *Id.* Accordingly, Article III standing is a jurisdictional prerequisite. *Id.* at 754.

The party invoking federal jurisdiction has the burden to establish its standing to bring suit. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). In order to invoke federal jurisdiction, a party must demonstrate three things:

> (1) injury in fact, by which [is] mean[t] an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural

[2]As discussed below, these three general categories include numerous subcategories.

> or hypothetical; (2) a causal relationship between the injury and the challenged conduct, by which [is] mean[t] that the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, by which [is] mean[t] that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative.

Northeastern Fla. Chapter of the Associated Gen. Contractors v. City of Jacksonville, 508 U.S. 656, 663-64 (1993) (internal quotations and citations omitted).

Defendants argue that Plaintiffs have not shown an invasion of a legally protected interest, "because PFS has no right to conduct the business of a nuclear waste dump prohibited by Congress, it has in this case no right capable of judicial enforcement." (Dfts.' Reply re Suggestion of Lack of Jurisdiction at 13). Defendants further contend that "the [NWPA] . . . prohibits the storage of spent nuclear fuel from commercial nuclear power plants at an away-from-reactor storage facility, except in a Monitored Retrievable Storage facility owned and operated by the federal government pursuant to the NWPA." (Dfts.' Response to Pls.' Joint Mot. for Summary Judgment, App. 1 at 3). This argument is repeated, in various contexts, throughout Defendants' pleadings. The parties and the court have referred to this argument as the "lawfulness issue."

Defendants contend that in order to resolve the question of Plaintiffs' standing to bring this suit, the merits of the lawfulness issue must be resolved. That means, according to Defendants, that this court must decide whether Plaintiffs have a legal right to own and operate an off-site, private SNF facility. However, Plaintiffs are not asserting the right to own an off-site, private SNF facility in this lawsuit. What Plaintiffs claim here is that the Utah laws harm them by (1) hindering their licensing efforts before the NRC and by (2) creating uncertainty as to the utility of proceeding with their licensing efforts before the NRC. Thus, in this lawsuit,

Plaintiffs seek to secure their right to proceed before the NRC in their licensing attempt free from state interference. The question of whether Plaintiffs have a right to own and operate a SNF facility will be resolved by the NRC (with the right of appeal to the appropriate Court of Appeals) and not by this court.

The question is then do Plaintiffs have a right recognized in law to seek a license from the NRC free from alleged state interference. The answer is clearly "yes." First, the Supremacy Clause grants a right to challenge a state law that allegedly conflicts with federal law, which is the gist of Plaintiffs' contention here: that the Utah laws are in conflict with federal laws that regulate nuclear waste. *See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983).

Second, whether the Plaintiffs will be successful in their effort to have the NRC grant them a license does not affect their legal right to make that effort. "Whether a plaintiff has a legally protected interest (and thus standing) does not depend on whether he can demonstrate that he will succeed on the merits. Otherwise, every unsuccessful plaintiff will have lacked standing in the first place." *Claybrook v. Slater*, 111 F.3d 904, 907 (D.C. Cir. 1997); *see also Lujan*, 504 U.S. at 562-63. Similarly, a person who is stopped and has his person searched by the police might ultimately lose a motion to suppress contraband that was seized during the search, but that person still has a right to challenge the search and seizure under the Fourth Amendment. *See Terry v. Ohio*, 392 U.S. 1 (1968). Likewise, a person has the right to sue for a government benefit under the Due Process Clause, such as a welfare benefit, even if that individual ultimately is found not entitled to the benefit. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

There are certain instances when a court may need to examine the merits of the underlying claim to determine whether a plaintiff asserts a legally protected interest. *See*

Hickman v. Block, 81 F.3d 98, 101 (9th Cir.), *cert. denied*, 519 U.S. 912 (1996) (holding that because the Second Amendment did not guarantee an individual right to bear arms, plaintiff claimed only a generalized grievance and did not have standing to bring suit); *Arjay Assocs., Inc. v. Bush*, 891 F.2d 894, 898 (Fed. Cir. 1989) (plaintiffs lacked standing because "the injury they assert is to a nonexistent right to continued importation of a Congressionally excluded product"). But that is not the situation here. This suit involves the Plaintiffs' constitutional right to seek a government benefit, a license from the NRC, free from allegedly preempted state laws. Their right to seek a license is not in doubt. Therefore, Plaintiffs have standing to challenge the Utah laws.

B. RIPENESS

"Whether a claim is ripe for adjudication, and therefore presents a case or controversy, bears directly on . . . jurisdiction." *United States v. Wilson*, 244 F.3d 1208, 1213 (10th Cir.), *as corrected on reh'g* (May 10, 2001), *cert. denied*, 121 S. Ct. 2619 (June 29, 2001) (citing *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1498-99 (10th Cir. 1995)). The doctrine of ripeness is "intended to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *New Mexicans*, 64 F.3d at 1499. "In determining whether a claim is ripe, a court must look at "the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration." *Id.*

1. Fitness for resolution

To determine whether an issue is fit for resolution, a court must determine whether the matter involves uncertain events which may not happen at all, and whether the issues involved are based on legal questions or factual ones. If there are factual issues that need further development, the matter might not be fit for resolution. *See id.*

Defendants argue that the case is not ripe for adjudication because "(1) Agency action [the NRC] (and inevitable judicial review thereof) has not yet given PFS a valid, lawful license; . . . [and] (2) Agency action (and inevitable judicial review thereof) has not yet given PFS a valid, lawful lease. . . ." (Dfts.' Suggestion re Lack of Jurisdiction at 8).

Again, Defendants' view of Plaintiffs' claims is incorrect. As discussed above, what Plaintiffs seek is the right to proceed before the NRC without interference from the Utah laws. They are now involved in that process. Whether the NRC ultimately grants or denies Plaintiffs a license is not material to this lawsuit. Therefore, there are no uncertain or contingent events which would render this case unfit for resolution

The issues presented in the motions are primarily legal ones, bearing on the questions of whether the Utah laws violate various Constitutional provisions and whether federal law has preempted the field. To the extent that factual issues play a role in these motions, as for example with the motion to dismiss, they are not in dispute as shown below.

2. Hardship to Parties

The question here is "whether the challenged action creates a 'direct and immediate' dilemma for the parties." *New Mexicans*, 64 F.3d at 1499 (internal citations omitted). The answer is "yes." Plaintiffs would face significant hardship if the constitutionality of the Utah laws was not resolved at this point. Plaintiffs allege three harms resulting from the Utah laws: (1) harm to their licensing efforts arising from Utah's reliance on the Utah laws in the NRC licensing procedures; (2) harm to their licensing efforts due to the uncertainty created by the Utah laws; and (3) harm to pre-construction operations. The court will discuss each in turn.

a. Harm to Plaintiffs' Licensing Efforts

The harm to Plaintiffs' licensing efforts with the NRC is concrete and immediate. In

proceedings before the NRC, Defendants have pointed to the Utah laws' impact on the provision of municipal services to oppose the proposed facility. (State of Utah's Request for Admission of Late-Filed Contention Utah Security J, attached to Pls.' Response to Dfts.' Suggestion of Lack of Jurisdiction as Ex. A at 3-8). Utah argued to the NRC that "[t]he enactment of laws prohibiting a county from providing law enforcement services to a high level nuclear waste storage facility means that PFS does not have the performance capability to provide high assurance that its activity involving spent nuclear fuel does not constitute an unreasonable risk to public health and safety." (*Id.* at 7). Clearly, these provisions of the Utah laws subject Plaintiffs to immediate harm in the NRC licensing process.

b. Uncertainty Created by the Utah Laws

The Utah laws harm Plaintiffs by creating uncertainty about whether it is futile for them to attempt to obtain a license from the NRC. PFS has invested significant assets in seeking to construct and operate a SNF facility, including seeking a federal license before the NRC, negotiating contracts, and planning a spent nuclear fuel facility. Yet, if the Utah laws are constitutional, PFS' license from the NRC could be useless in fact.

As proclaimed by Governor Leavitt and reaffirmed on the Senate floor, the purpose of both Part 3 and the Additional Provisions is to prevent the construction and operation of a spent nuclear fuel facility. (Pls.' Summary Judgment Mot. at 17-24). The effect of the Utah laws justifies such rhetoric. The Utah laws strip PFS of limited liability, UTAH CODE ANN. § 19-3-318, impose an annual transaction fee of 75% on the gross value of all contracts not voided, *Id.* § 19-3-301(1), impose a $5 million dollar state license application fee, *Id.* §19-3-308, impose a fee

covering at least 75% of unfunded potential liability,[3] *Id.* § 19-3-319(3)(a), isolate the proposed site from connecting roads and railroad lines, *Id.* § 72-3-301, § 54-4-15(4), and encourage counties to refuse to provide basic municipal services, *Id.* § 17-27-102(2), § 17-27-301(3), § 17-27-303(4), 5(b) and (7), § 17-27-308, § 17-34-1(1). Each of these provisions increase the cost of operating a SNF facility to such a degree that more likely than not PFS would not proceed with the construction of the proposed facility.

Accordingly, the mere existence of the Utah laws creates uncertainty about future costs. PFS cannot make an informed decision regarding the economic desirability of proceeding with the licensing process and its general efforts. This uncertainty is an immediate and significant hardship. *Gary D. Peake Excavating Inc. v. Town Bd. of Town of Hancock*, 93 F.3d 68, 72 (2nd Cir. 1996); *see also Pac. Gas*, 461 U.S. at 201-02 (plaintiffs' challenge was ripe because "[t]o require the industry to proceed without knowing whether the [state law] is valid would impose a palpable and considerable hardship on the utilities").

c. Current Costs of the Statutes

Finally, Plaintiffs argue that PFS faces pre-operation costs as a result of the Utah laws. The Utah laws void any contract to which PFS or the Band is a party, § 19-3-301(1), and impose civil and criminal penalties on those who facilitate violations of the regulatory scheme, *Id.* § 19-3-312. From this, Plaintiffs argue that they suffer actual harm at this moment.

The real injury of these provisions, however, is not their direct harm, that is, the cost of the contract or penalty clause today. In fact, Plaintiffs allege no specific costs already incurred

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[3]Unfunded potential liability estimates range from $14 to $313 billion dollars. (*Hearings on S B. 81 before the Energy, Natural Resources and Agriculture Standing Comm.*, Utah State Sen., Feb 15, 2001, attached to Pls.' Summary Judgment Mot., Att. 3 (Statement of Dianne Nielson, Executive Director of the Utah Department of Environmental Quality)).

during this pre-operation phase as a result of the Utah laws. Rather, the harm to PFS is the cost of not being able to anticipate future costs, as described above. The harm from uncertainty is not limited to any particular section of the Utah laws, because each provision acts to potentially increase costs.

Because the issues turn on purely legal issues and PFS faces a direct and immediate harm, the matter is ripe for judicial review.

II. JOINT MOTION FOR SUMMARY JUDGMENT

A. STANDARD OF LAW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the initial burden of demonstrating that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In applying this standard, the court must construe all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1552 (10th Cir.), *cert. denied*, 522 U.S. 807 (1997).

Once the moving party has carried its burden, Rule 56(e) "requires the nonmoving party to go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)); *see also Gonzales v. Millers Cas. Ins. Co.*, 923 F.2d 1417, 1419 (10th Cir. 1991). The non-moving party must set forth specific facts showing a genuine issue for trial; mere allegations and references to the

pleadings will not suffice. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. PREEMPTION

The Supremacy Clause, U.S. CONST. art. VI, cl. 2, elevates federal law above that of the states. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 92-93 (1824).[4] Accordingly, the Supremacy Clause mandates that federal law preempts any state regulation of any area over which Congress has exercised exclusive authority, so long as it acts within its constitutionally delimited powers. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 236 (1947); *M'Culloch v. Maryland*, 17 U.S. 316, 427 (1819). Congress may exercise its exclusive authority and thereby preempt State law in either of two general ways: (1) if Congress evidences an intent to occupy a given field, any state law falling within that field is preempted; or (2) if Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (citations omitted). Courts infer Congressional intent to occupy a given field from either explicit preemptive language or impliedly from a "scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it." *Pac. Gas*, 461 U.S. at 203-04 (citations omitted).

In areas that Congress decides require national uniformity of regulation, Congress may exercise power to exclude any state regulation, even if harmonious. *DeCanas v. Bica*, 424 U.S. 351, 356, 359, n. 7 (1976). As the Court has made clear, "[s]tate safety regulation is not preempted only when it conflicts with federal law. Rather, the federal government has occupied

[4]The Supremacy Clause provides that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

the entire field of nuclear safety concerns. . . ." *Pac. Gas*, 461 U.S. at 212.[5] Where Congress has occupied an entire field, "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Rice*, 331 U.S. at 230; *English*, 496 U.S. at 79. Therefore, as the federal government has occupied the field of nuclear safety, any state law on the same subject, even if harmonious with federal law is preempted and invalid.[6]

1. Preemption of the Regulation of Nuclear Safety

The first question is what has Congress preempted in its scheme of federal regulation. Congress enacted the Atomic Energy Act ("AEA") in 1954 to promote the development of atomic energy for peaceful purposes under a program of federal regulation and licensing. *Pac. Gas*, 461 U.S. at 206-07. Under the AEA, this policy decision is advanced by opening the door to private construction, ownership, and operation of commercial nuclear-power reactors under the strict supervision of the Atomic Energy Commission ("AEC"). *English v. General Elec. Co.*, 496 U.S. 72, 81 (1990); *Duke Power Co. v. Carolina Environmental Study Group*, Inc., 438 U.S. 59, 63 (1978). The AEC was given exclusive authority to license the transfer, delivery, receipt, acquisition, possession, and use of all nuclear materials. *English*, 496 U.S. at 81. "Upon these subjects, no role was left for the states." *Pac. Gas*, 461 U.S. at 207. In 1974, Congress abolished the AEC and transferred its regulatory and licensing authority to the NRC. 42 U.S.C. § 5841(f) (1982 ed.); *English*, 496 U.S. at 81.

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[5]The court notes that *Pacific Gas* remains good law, which this court must faithfully follow. *Pacific Gas* was decided after the NWPA became law in 1982. Therefore, the passage of NWPA does not effect the Supreme Court's holding that the AEA preempted the entire field of nuclear safety.

[6]This renders Defendants' lawfulness argument irrelevant.

The Supreme Court in *Pacific Gas* was faced with the question of whether a California law that imposed "a moratorium on the certification of new nuclear power plants until the Energy Commission finds that there has been developed and that the United States . . . has approved and there exists a demonstrated technology or means for the disposal of a high-level nuclear waste." 461 U.S. at 198. The Court examined the relevant statutory provisions and legislative history of the AEA and concluded that "Congress . . . intended that the federal government regulate the radiological safety aspects involved . . . in the construction and operation of a nuclear plant." *Id.* at 205. The Court concluded that "the federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the States." *Id.* at 212. However, in *Pacific Gas*, the Court went on to evaluate the California statute at issue and found that it did not fall within the pre-empted field, because Congress intended that "the Federal Government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant" and not the economic decision of whether to construct one. *Id.* at 205. The decision in *Pacific Gas* makes clear that while Congress has preempted the entire field of nuclear safety, it has not preempted all areas which relate to nuclear power.

2. Utah Laws

The next question is whether the Utah laws fall within the scope of the preempted field of nuclear safety regulation. The Utah Laws fall into three general categories: (1) Part 3, (2) Additional Provisions and (3) Miscellaneous Provisions.[7] To determine whether these laws fall within the pre-empted field, a court is guided, in part, by examining "the motivation behind the

[7]Plaintiffs challenge the Miscellaneous Provisions as violative of only the Commerce Clause and therefore, these provisions will be analyzed in that section of this decision.

law"[8] and in part "by the state law's actual effect on nuclear safety." *English*, 496 U.S. at 84. However, "a finding of safety motivation [is not] necessary to place a state law within the pre-empted field." *Id.* Instead, "[f]or a state law to fall within the pre-empted zone, it must have some direct and substantial effect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels." *Id.* at 85. "Regulation of matters directly affecting the radiological safety of nuclear-plant construction and operation, 'even if enacted out of nonsafety concerns, would nevertheless [infringe upon] the NRC's exclusive authority.'" *Id.* at 84 (quoting *Pac. Gas*, 461 U.S. at 212).

a. Part 3

Part 3 has two main components. First, Part 3 establishes a separate, state licensing process for SNF storage. UTAH CODE ANN. §§ 19-3-301, *et seq.* Second, Part 3 revokes statutory and common-law limited liability for any officer or director of the operator of a SNF facility and any holder of an equity interest in the operator of the SNF facility. *Id.* § 19-3-318.

i. Separate State Licensing Process

Part 3 establishes a separate, state licensing process for SNF storage as illustrated by the following provisions. The stated purpose of Part 3 is to "regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste." *Id.* § 19-3-302. To implement that stated goal, Part 3 authorizes the issuance of regulations "necessary for the protection of the public health," including "rules for safe and proper construction, . . . use, and operation of . . . storage facilities." *Id.* § 19-3-304(a). Part 3 also establishes numerous regulations. *Id.* § 19-3-301(1) (subjecting the placement and transportation of SNF to the

[8]It is not clear to what extent improper motive matters. *English*, 496 U.S. at 84, 84 n. 7; *Pacific Gas*, 461 U.S. at 216.

specific approval of the Governor and Legislature, final judicial approval, and the satisfaction of additional criteria); *id.* § 19-3-304 (prohibiting the construction and operation of a SNF storage facility without a license from the State Department of Environmental Quality ("DEQ")). For example, under the state licensing scheme, an applicant must provide analyses of groundwater conditions, *id.* § 19-3-305(1), § 19-3-307(2), a security plan, *id.* § 19-3-305(7), health risk assessments, *id.* § 19-3-305(10), a quality assurance program, *id.* § 19-3-305(12), a radiation safety program, *id.* § 19-3-305(12), and an emergency plan, *id.* § 19-3-305(13). An applicant must also demonstrate that the facility "will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment." *Id.* § 19-3-306(3). An applicant must enter into a benefits agreement with the DEQ to "offset adverse environmental public health, social and economical impacts." *Id*. § 19-3-310. Any transportation of SNF must meet with the approval from the State Department of Transportation. *Id.* § 19-3-315. To apply, an applicant must pay an initial non-refundable application fee of five million dollars, over and above the costs of reviewing the application. *Id.* § 19-3-308; 19-3-309 (establishing that fees collected under § 308 will be deposited into specific accounts to fund Utah's duties under Part 3). Moreover, a permitee (one who has received a license) must agree to pay the State an amount equal to at least 75% of the "unfunded potential liability" of the project. *Id.* § 19-3-319. A license is limited to a term of twenty years and may be extended only by approval of the Governor, Legislature and DEQ. *Id.* § 19-3-311. Any person who violates or facilitates violations of Part 3, except for Utah-based nonprofit trade associations, can face civil and criminal penalties. *Id.* § 19-3-312.

Clearly, the above described provisions of Part 3 establish a state licensing scheme for SNF storage and transportation. This state licensing scheme duplicates the NRC's licensing

procedure in significant ways. Both licensing processes require an emergency plan, an environmental report, a safety-analysis report, and financial disclosure. *Compare Id.* § 19-3-301, *et seq.* *with* 10 C.F.R. Part 72. In sum, Part 3 attempts to regulate areas which are covered by the AEA and, therefore, is preempted. *See United States v. Commonwealth of Kentucky*, 252 F.3d 816, 824 (6th Cir.), *cert. denied*, 122 S. Ct. 396 (2001) ("Because the challenged permit conditions regulate materials covered by the AEA, they are therefore preempted.").

ii. Limited-Liability

Part 3 also includes § 19-3-318 which revokes statutory and common-law limited liability for any officer or director of the operator of a SNF facility and any holder of an equity interest in the operator of the SNF facility. PFS is a limited liability corporation with directors and officers. With no limit on their potential liability, these individuals would face substantial risk if PFS actually transported and stored SNF in Utah. Utah has estimated the "unfunded potential liability" of PFS to be between $14 and $313 billion dollars. (*Hearings on S.B. 81 before the Energy, Natural Resources and Agriculture Standing Comm.*, Utah State Sen., Feb 15, 2001, attached to Pls.' Summary Judgment Mot., Att. 3 (Statement of Dianne Nielson, Executive Director of the Utah Department of Environmental Quality)). Such individual risk would more likely than not have the effect of preventing the construction and operation of a SNF storage facility. At the least, there would be an additional, substantial cost of insurance to officers, directors, and PFS, and a corresponding effect on the safety measures employed by the facility. Therefore, § 19-3-318 directly and substantially affects the decisions made by those who build or operate nuclear facilities concerning radiological safety levels. Under *English*, such a law falls within the preempted field. *English*, 496 U.S. at 85.

iii. Economic and Environmental Concerns

Defendants argue that in passing Part 3, Utah intended to address Utah's economic and environmental concerns resulting from the transportation and storage of radiological and non-radiological waste. The legislative purpose statement does include the following language: "thereby asserting and protecting the state's interests in environmental and economic resources." UTAH CODE ANN. § 19-3-302. A state, as a regulator of electric power, may consider the possibility of additional costs to nuclear energy to the state and decide not to proceed with nuclear power as an electricity option as long as those costs existed. *Pac. Gas*, 461 U.S. 213-16. However, a state may not regulate matters directly affecting the radiological safety of nuclear-facility construction "even if [the legislation was] enacted out of nonsafety concerns." *English*, 496 at 84 (internal quotation omitted). Because, as discussed above, Part 3 regulates matters directly affecting radiological safety of nuclear-facility construction, Part 3 falls within the preempted field, regardless of its claimed motivation.

In any event, the actual motivation behind Part 3 was radiological safety concerns. Defendants argue that Utah's refusal to store SNF is based upon its concern in maintaining property values around the rail corridors and preventing costly environmental damage. These concerns result directly from a fear of the radiological hazards of SNF. Property values would be affected because of the possibility of a radiological disaster. Costly environmental damage resulting from the transport of SNF would result only from a radiological disaster. Such expressions of state economic interest based on concerns of radiological safety fall within the field preempted by the AEA. *See Pac. Gas*, 461 U.S. at 213 ("A state moratorium on nuclear construction grounded in safety concerns falls squarely within the prohibited field.")

Similarly, Utah's environmental concerns arise from radiological safety issues.

Environmental concerns could stem from either radiological or non-radiological waste. "While federal law does not preempt state regulation of solid waste, states may not regulate the radioactive component of solid waste." *Commonwealth of Kentucky*, 252 F.3d at 824. Utah's regulations do not discriminate between the radiological and non-radiological waste. Moreover, there is no indication that the non-radiological waste is severable from the radiological waste. Therefore, federal law preempts Utah laws that arise from both radiological and non-radiological environmental concerns.[9] *Id.*

b. Additional Provisions

The Additional Provisions fall into two sub-categories, Road Provisions and County Planning Provisions. Sections 54-4-15(4), 72-3-301, 72-4-125(4), and 78-34-6(5) are referred to as the Road Provisions, while §§ 17-27-102(2), 17-27-301(3), 17-27-303(4), (5)(b), and (7), 17-27-308, 17-34-1(1) and (3), 17-34-6, 34-3833(2), are referred to as the County Planning Provisions. (Dfts.' Response to Joint Mot. for Summary Judgment at 24). As discussed above, the court must examine the motivation behind and effect of the Additional Provisions to determine whether they fall within the field of radiological safety.

i. Road Provisions

Defendants argue that the Road Provisions are proper exercises of state authority because "none of the statutes, on its face, is anything other than an obviously lawful exercise of Utah's power to legislate with respect to the roads in the State." (Dfts.' Response to Joint Mot. for

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[9]Part 3 contains a severability clause. UTAH CODE ANN. § 19-3-317. "A severability clause, . . . , creates a presumption that the legislature would have been satisfied with the remaining portions of the enactment." *Chandler v. City of Arvada, Colorado*, 2002 WL 1277943, * 7 (10th Cir. 2002) (unpublished) (citing *Essence, Inc. v. City of Federal Heights*, 285 F.3d 1272, 1291 (10th Cir. 2002)). The preemption discussion did not deal with UTAH CODE ANN. §§ 19-3-302, 303, or 317. These provisions, however, are general provisions detailing the purpose of the laws, definitions, and severability. Because these provisions cannot stand on their own, they are preempted as well. On the other hand, the Miscellaneous Provisions address different topics and are clearly severable.

Summary Judgment at 25). However, the relevant inquiry goes beyond the statute's language. *See English*, 496 U.S. at 84-85.

The Road Provisions give Governor Leavitt veto power over possible routes to the proposed SNF facility. Section 54-4-15 gives the Governor and the State Legislature the effective power to veto any decision of the Utah Department of Transportation that grants permission to build a railroad across a public road or highway to be used to transport SNF. Section 72-3-301 designates certain county gravel and dirt roads and trails near the Skull Valley Reservation as statewide public safety highways. Section 72-4-125(4) removes control of Skull Valley Road (the only road permitting access to the Skull Valley Reservation and PFS' proposed facility) from the county by designating it a state highway. Section 78-34-6(5) alters the procedures for the exercise of eminent domain to obtain a right of way, so that if a right of way is sought for transportation of SNF, the applicant must have the permission of the Governor and concurrence of the Legislature. Each of these provisions condition the construction or operation of a route to PFS' proposed facility on the Governor's consent. This veto right builds the equivalent of a "moat" around the proposed site.

This metaphorical "moat" more likely than not would prevent the construction of PFS' proposed SNF facility. PFS will not be able to transport SNF to the proposed site without the approval of Governor Leavitt. Yet, Governor Leavitt has made clear that he will not allow SNF into Utah if possible.[10] Without a railroad spur or road to transport waste to the proposed facility,

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[10]Governor Leavitt explained the purpose behind the Road Provisions: "Signing these bills [including S.B. 78 and 196] will add substantially to our ability as a state to protect the health and safety of our citizens against the storage of high-level nuclear waste." (*New road sign to Skull Valley a show of force*, Deseret News, Mar. 22, 1998, attached to Pls.' Summary Judgment Mot. at Att. 28). Likewise, Senator Peter Knudson explained that "[s]ome have referred to this as the 'moat' around Skull Valley and the purpose of this bill is to put under state control these public safety interest highways to preclude rail spurs traversing across them." (*Floor Debate of S.B. 164*, Utah State Sen., Feb. 22, 1999, attached to Pls.' Summary Judgment Mot. at Att. 31). Senator Peter Knudson also explained

the proposed SNF storage facility is useless and would not be built. By creating a de facto bar to the construction of PFS' proposed SNF facility, the Road Provisions directly and substantially affect the decisions made by those who build or operate nuclear facilities concerning radiological safety levels and fall within the pre-empted field.

ii. County Planning Provisions

The County Planning Provisions fall into two categories: county regulation and municipal services. Section 17-27-102(2), 301(3), 303(4), 303(5)(b), and 303(7) give a county two options: (1) it may choose to allow SNF in its borders, as long as it includes in its general plan specific provisions that address the effects of a proposed SNF site upon the health and general welfare of citizens of the State, provide information pursuant to the state licensing scheme, and hold public hearings and comment before any proposal's adoption; or (2) it may reject all SNF storage facility proposals. UTAH CODE ANN. §17-27-301(3). These provisions require a county to involve itself in the state licensing scheme by collecting information and by adopting "specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state." *Id.* §17-27-301(3)(a)(i-iii). In other words, the county must adopt provisions that regulate or facilitate the regulation of a SNF storage facility. Because a state or its political subdivisions may not regulate the licensing

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that: "[t]his [S.B. 164] would prevent bringing those rods by railroad into Skull Valley as the state would have jurisdiction over these highways." (*Floor Debate of S.B. 164 before the Utah State Senate*, Feb. 19, 1999, attached to Pls.' Summary Judgment Mot. at Att. 29). Or, as Deputy Director Clint Topham explained: "So in all reality, the physical condition, the physical makeup of the way these roads are maintained and the way the counties would get funding for these roads does not change under this bill. It only allows for us to control whether or not a railroad would cross it and keeps the county from abandoning it." (*Hearings on S.B. 164 before the Senate Transportation and Public Safety Standing Comm.*, Utah State Sen., Feb. 16, 1999, attached to Pls.' Summary Judgment Mot. at Att. 30). Clearly, Governor Leavitt will follow through with his policy statement: "Our policy is simple: we don't want it [SNF]." (Pls.' Summary Judgment Mot. at Att. 12).

of SNF, these statutes fall within the field preempted by the AEA.

Under the County Planning Provisions, a county may not "provide, contract to provide, or agree in any manner to provide municipal-type services . . . to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste." UTAH CODE ANN. § 17-34-1(3). A refusal to provide municipal services would drastically increase PFS' cost of operation, because the SNF facility would have to provide its own emergency services. Additionally, such a bar threatens PFS' application before the NRC. The NRC evaluates whether the proposed site would constitute an unreasonable risk to public health and safety, and, as discussed earlier, Utah has argued that "[t]he enactment of laws prohibiting a county from providing law enforcement services to a high level nuclear waste storage facility means that PFS does not have the performance capability to provide high assurance that its activity involving spent nuclear fuel does not constitute an unreasonable risk to public health and safety." (State of Utah's Request for Admission of Late-Filed Contention Utah Security J, attached to Pls.' Response to Dfts.' Suggestion of Lack of Jurisdiction as Ex. A at 3-7). This municipal service provision has a direct and substantial affect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels and, thus, fall within the pre-empted field.[11] *English*, 496 U.S. at 84.

c. Conclusion

Because the federal government has completely occupied the field of radiological safety, the only question is whether "'the matter on which the state asserts the right to act is in any way

[11]The state of Utah also agrees to indemnify a county for refusing to provide municipal services or refusing to site a SNF storage facility. UTAH CODE ANN. §§ 17-27-308, 17-34-6. Because these statutes encourage the counties to act in accordance with the preempted County Planning Provisions, these provisions are also struck down.

regulated by the federal government.'" *Pac. Gas*, 461 U.S. at 212-13 (quoting *Rice*, 331 U.S. at 236). As Representative Stephen H. Urquhart explained for S.B. 81, but which holds true for each provision of Part 3 and the Additional Provisions: "[t]he bill takes three actions– first, in case there is any question, it clearly states that we do not want this material within the state and we prohibit it. Second, . . . the bill challenges the authority of the [NRC] to license a private entity to move and store this waste within our state. Third, should we lose the licensing battle, the bill creates a licensing process." (*Floor Debate of Second Substitute Senate Bill 81*, the Utah State House, Feb. 28, 2001, attached to Pls.' Summary Judgment Mot. at Att. 24). Clearly, Utah may not prevent radiological waste from entering Utah because of safety concerns. Nor may Utah create a separate, state licensing process for SNF. Therefore, Part 3 and the Additional Provisions are preempted by the AEA.[12]

C. COMMERCE CLAUSE

The Miscellaneous Provisions consist of §§ 34-38-3(2) and 73-4-1(2). Plaintiffs challenge these remaining two provisions only under the Commerce Clause. (Pls.' Summary Judgment Mot. at 15 n. 6). Section 34-38-3(2) provides for mandatory drug and alcohol testing program for all employees of any entity engaged in the transportation or storage of SNF. Section 73-4-1(2) allows the initiation of litigation to determine any water rights for any area under consideration for SNF facility.

The Commerce Clause not only grants Congress an express authority to override restrictive and conflicting commercial regulations adopted by a state, it curtails state power through negative implication. *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520

[12]Because Part 3 and the Additional Provisions violate the Supremacy Clause, the court need not address their constitutionality under any other constitutional provision.

U.S. 564, 571-72 (1997). When the Commerce Clause operates through negative implication, it is generally referred to as the dormant Commerce Clause. The Tenth Circuit explained the law of the dormant Commerce Clause in *Dorrance v. McCarthy*:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. The person challenging a statute that regulates evenhandedly bears the burden of showing that the incidental burden on interstate commerce is excessive compared to the local interest. By contrast, if a statute discriminates against interstate commerce either on its face or in its practical effect, it is subject to the strictest scrutiny, and the burden shifts to the governmental body to prove both the legitimacy of the purported local interest and the lack of alternative means to further the local interest with less impact on interstate commerce. Thus, where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected.

957 F.2d 761, 763 (10th Cir. 1992) (internal citations and quotation omitted). "The crucial inquiry, therefore, must be directed to determining whether [the challenged laws are] basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." *City of Philadelphia v. New Jersey*, 437 U.S. 617 624 (1978). The purpose of the law is not important "because the evil of protectionism can reside in legislative means as well as legislative ends." *Id.* at 626. This is to say that whatever the a legislature's ultimate purpose, "it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently." *Id.* at 626-27.

Defendants argue that there cannot be discrimination against an out-of-state interest unless (1) out-of-state interests are burdened and (2) local economic actors are favored. (Dfts.'

Response to Joint Mot. for Summary Judgment at 18). However, the case law does not support Defendants' argument. In *City of Philadelphia*, the Court declared that "[w]hat is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade." *Id.* at 628. Therefore, it did not matter whether "[n]o New Jersey commercial interests st[ood] to gain advantage over competitors from outside the state as a result of the ban on dumping out-of-state waste." *Id.* at 626.

Based on these legal principles, the question is then whether the Utah laws are for protectionist reasons or legitimate concerns with a secondary effect on commerce. Section 34-38-3(2) provides for mandatory drug and alcohol testing. This provision does not bar SNF from Utah. Rather, it has an indirect effect on operating costs of a SNF facility, because to comply with the statute, PFS would have to implement a drug testing program. It may also indirectly effect employee recruitment, because certain employees may refuse to subject themselves to such testing. However, these effects are indirect and incidental and do not outweigh the important local safety concerns. Therefore, the drug testing provision does not violate the Commerce Clause.

Section 73-4-1(2) permits the executive director of the Department of Environmental Quality, with the concurrence of the governor, to request that the state engineer file an action to determine water rights in the area of a proposed SNF facility. Previously, local individuals had to request the state engineer to file suit. The provision seeks to determine water rights immediately, so that Utah and PFS know their respective rights to groundwater. Any effect on interstate commerce is incidental and indirect. Further, the local benefit of definite rights to a precious resource outweigh the slight effect on interstate commerce. Therefore, the groundwater

provision does not violate the Commerce Clause.[13]

III. MOTION TO DISMISS COUNTERCLAIMS

Plaintiffs also move to dismiss Defendants' counterclaims.[14] Defendants argue only that they raised these counterclaims to raise standing and ripeness issues. (Dfts.' Response to Mot. to Dismiss at 3). As discussed above, Plaintiffs have standing and the issues are ripe for review. To the extent that these counterclaims exist only to raise justiciability arguments, they are not counterclaims in fact and are moot. To the extent that these counterclaims do raise actual claims, they can be disposd of quickly.

Plaintiffs argue that Counterclaims 1 and 2 fail as a matter of law because the court lacks jurisdiction to hear those claims. Counterclaim 1 alleges that the NRC has no authority to license a private, for profit, off-site SNF storage facility. Counterclaim 2 alleges that an NRC license will necessarily violate the NEPA and therefore be invalid. Pursuant to the Administrative Orders Review Act ("Hobbs Act"), 28 U.S.C. §§ 2342-51, the proper forum for the review of issues concerning the NRC's authority to license the proposed PFS facility or the propriety of such a license is the federal courts of appeals. 28 U.S.C. §2342; *Environmental Defense Fund v. U.S. Nuclear Regulatory Comm'n*, 902 F.2d 785,786 (10th Cir. 1990) ("petitions to compel final agency action which would only be reviewable in the United States Courts of Appeal are also

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[13]Because the court has decided the matter on Supremacy Clause and Commerce Clause grounds alone, the court will not reach Plaintiffs' other constitutional arguments, including the Skull Valley Band's motion for summary judgment.

[14]Defendants argue that because Plaintiffs filed a response pleading to the Amended Counterclaims, the court should deny the motion to dismiss. However, to the extent that the motion is incorrectly styled, the court considers it as a motion for judgment on the pleadings under Rule 12(c). And, "[a] motion for judgment on the pleadings under Rule 12(c) is treated as a motion to dismiss under Rule 12(b)(6)." *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000). Dismissal under either rule is appropriate "only when it appears that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief." *Id.* (citations and quotations omitted).

within the exclusive jurisdiction of a United States Court of Appeals") (citations and quotations omitted); *New Jersey Dep't of Envtl. Prot. and Energy v. Long Island Power Authority*, 30 F.3d 403, 412-13 (3d Cir. 1994) (claim properly dismissed from district court where NEPA challenge concerning two agencies would effectively challenge NRC final order); *City of West Chicago v. United States Nuclear Regulatory Comm'n*, 542 F. Supp. 13, 15 (N.D. Ill. 1982) (plaintiffs' claims concerning issuance of an environmental impact statement dismissed because license amendment had not yet been issued and once issued "review is proper before the court of appeals"). Defendants may and have challenged the lawfulness of the proposed facility in the NRC licensing process, and all partes have the right to appeal the NRC's decision to the appropriate court of appeals. Because the court does not have jurisdiction to decide the lawfulness issue, Counterclaims 1 and 2 fail as a matter of law.

Counterclaim 3 claims that Skull Valley Band has not lawfully approved the lease. Plaintiffs argue that Counterclaim 3 fails as a matter of law because Defendants lack standing to bring the claim. A plaintiff must suffer an "injury in fact" to have standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Here, Plaintiffs allege no personal injury. Any potential injury from an invalid lease would be suffered by the Skull Valley Band members or PFS, the parties to the lease. Utah has no role in protecting the Skull Valley Band or PFS. Therefore, counterclaim 3 fails as a matter of law.

Counterclaim 4 alleges that the conditional approval of the lease by the BIA occurred in violation of governing laws and rules, and counterclaim 5 alleges that any BIA approval of the lease will be invalid as a breach of the Government's trust obligation. Plaintiffs argue that Counterclaims 4 and 5 are barred by the doctrines of res judicata and collateral estoppel. The Court of Appeals for the Tenth Circuit held that the State's action challenging the BIA approval

process was not ripe for adjudication, because "[w]e cannot be certain whether the [environmental impact statement] will show that the project presents unacceptable risks, whether the NRC will issue a license to PFS, or . . . the precise activities which may be permitted on the leased lands." *Utah v. United States Dep't of the Interior* ("Utah II"), 210 F.3d 1193, 1197 (10th Cir. 2000). Collateral Estoppel typically requires: (1) a valid final judgment on the issue; (2) identity of the party against whom the earlier decision is asserted and (3) and identity of issues raised in the successive proceedings. *SIL-FLO, Inc. v. SFHC*, 917 F.2d 1507, 1520 (10th Cir. 1990). Those elements are met here.

The Tenth Circuit's decision is a final judgment on ripeness for the purposes of collateral estoppel. Dismissals for want of justiciability preclude relitigation of the very issue of justiciability actually determined. CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE, § 4436 (1981). Therefore, the Tenth Circuit's ripeness decision is final, absent a change in factual circumstances relating to the ripeness issue. *Solar v. Merit Sys. Protection Bd.*, 600 F. Supp. 535, 536 (S.D. Fla. 1984). Defendants have pointed to no change of circumstance, nor can they, because the NRC still has not completed its review of the NRC application.

The identity of the party against whom the earlier decision is asserted is the same. In *Utah II*, the plaintiff was the State of Utah. Here, the Defendants are the Governor and Attorney General of Utah, who sue in their official capacities. "Litigation involving the government is generally binding with respect to governmental officials who are sued in their official capacities in later actions." *Headly v. Bacon*, 828 F.2d 1272, 1279 (8th Cir. 1987) (citation omitted).

This case involves identical issues to *Utah II*. The identity of issues is established by reviewing the record to determine if the same issues were raised in the prior proceedings.

Montana v. United States, 404 U.S. 147, 156 (1979). In *Utah II*, the State sought to intervene to contest what the State asserted to be the BIA's failure to consider certain environmental and safety factors in the ongoing lease approval process. 210 F.3d at 1196. In the this suit, Defendants want the court to reach the issue of whether the BIA conditional approval of the lease occurred in violation of governing laws and rules and whether any BIA approval of the lease will be invalid as a breach of the Government's trust obligation. Both cases involve the BIA approval process. And, as before, the court "cannot be certain whether the [environmental impact statement] will show that the project presents unacceptable risks, whether the NRC will issue a license to PFS, or . . . the precise activities which may be permitted on the leased lands." *Id.* at 1197. Therefore, counterclaims 4 and 5 are precluded under collateral estoppel.

ORDER

For the above stated reasons, Defendants' motion for judgment on the pleadings and suggestion of lack of jurisdiction are DENIED, and Plaintiffs' joint motion for summary judgment and motion to dismiss counterclaims are GRANTED.

DATED this 30 day of July, 2002.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

Chapter 4
History of Waste Management: Setting the Stage

Contents

Chapter 4

History of Waste Management: Setting the Stage

When the 97th Congress convened in 1981, almost four decades into the nuclear era, about 160 U.S. commercial nuclear plants had been built or approved for construction, and approximately 6,700 metric tons (tonnes) of commercial spent nuclear fuel containing radioactive waste had already been generated. Yet the United States still had not decided how radioactive waste should be dealt with from point of generation to point of final isolation. As a result, a host of problems had arisen that both complicated the task of developing a credible and comprehensive waste management program and cast a cloud of uncertainty over the future of nuclear power in the United States.

The passage of the Nuclear Waste Policy Act of 1982 (NWPA) in the final hours of the 97th Congress represented a major watershed in the evolution of radioactive waste management policy in the United States. The decisions made in NWPA about how radioactive waste should be managed were influenced not only by technical and institutional capabilities but also by perceptions of those capabilities—perceptions formed by the historical experience of waste management. To understand how these perceptions affected the development of waste management policy and to avoid the pitfalls of the past in implementing that policy, it is necessary to examine the history and effects of past radioactive waste management policies and practices. [1]This chapter will provide that background. The provisions of NWPA will be described and analyzed in chapter 5.

[1]This chapter draws on *Radioactive Waste Management Policy Making*, a more detailed analysis of the history of the U.S. waste management program by Daniel Metlay, included as app A of this report. For brevity, references to that appendix are omitted (except for direct quotations), and only references to other sources are cited in this chapter.

DEVELOPMENT OF FEDERAL WASTE MANAGEMENT POLICY AND PROGRAMS

Early History (1945-75)

Sources of Radioactive Waste

High-level radioactive waste was first produced on a large scale in the wartime effort of the early 1940's to produce plutonium for atomic weapons. Spent fuel from defense reactors was routinely reprocessed to recover uranium and plutonium, and liquid high-level waste from reprocessing was stored in storage tanks at Federal facilities-first at Hanford, Wash., and later at Savannah River, S. C., and Idaho Falls, Idaho. It was assumed that disposal could take place later, possibly at these same sites

In *1954* the Atomic Energy Act opened the nuclear power industry to private enterprise, and the first contract for a commercial reactor was issued 2 years later. Unlike defense reactors, commercial reactors were designed primarily to produce electricity. Spent fuel discharged from commercial reactors was stored in water-filled basins at reactor sites, pending development of a commercial reprocessing facility.

Climate of Policymaking

Overseeing the burgeoning commercial nuclear industry was the Atomic Energy Commission (AEC), established by the Atomic Energy Act of 1946 to promote as well as regulate the nuclear industry's defense and commercial functions. AEC's five members were appointed by the President for 5-year terms. They in turn were overseen

by the congressional Joint Committee on Atomic Energy (JCAE).

During the 1950's and 1960's, waste management received relatively little attention from policymakers. Issues of waste management paled beside the exciting, pressing challenges of reactor development and research. In addition, the early regulators and developers of nuclear power viewed waste disposal primarily as a technical problem that could be solved when necessary by application of existing technology. This belief was buttressed by the 1957 report of the National Academy of Sciences (NAS), which concluded that high-level radioactive waste could be disposed of in a variety of ways and sites in the United States. * Testimony of Federal and civilian experts in the 1959 oversight hearings by JCAE further endorsed this view. Daniel Metlay describes the effect of such technical optimism:

> An illusion of certainty was created where, in reality, none existed. Over the years, the sense of technological optimism embedded itself in the attitudes and thoughts of important agency policymakers. It became, in a sense, an official doctrine at AEC. There is no evidence that its validity was ever seriously questioned until the mid-1970's, This optimism facilitated fragmentation by lulling policymakers; agency personnel never fully recognized that they might create in a sequential, incremental fashion an elaborate technological structure (civilian nuclear power), only to find that the last pieces could not be made to fit. The difficulties of integrating the whole were systematically underestimated.[3]

As a result of these beliefs and attitudes, commitments of budget and personnel to the management of radioactive wastes were woefully inadequate, forcing key personnel to make stopgap decisions. Moreover, key officials tended to ignore signs that a technical approach was not working and to discount the nontechnical factors that impeded progress. Later, when it became apparent that more comprehensive action was needed to isolate waste, the organizational and technical structures were not prepared to respond rapidly enough. Although some decisions made during this time later proved to be unfortunate, at the time they were made, many appeared at least reasonable and, given the constraints at work, the most appropriate possible.

Reprocessing and Storage

The country's first large-scale efforts in waste management were defense-related and involved the reprocessing of spent fuel and the storage of liquid wastes from that reprocessing in carbon steel tanks designed to last 50 to 100 years. From 1957 to 1973, however, premature corrosion of the tanks resulted in a series of well-publicized leaks at Hanford and Savannah River. An attempt at Hanford to prevent further leaks by solidifyng the wastes created a solid that remains in the tanks today and may be very difficult, if not impossible, to remove for ultimate disposal.

In 1963, AEC authorized the construction of the first commercial reprocessing plant, the Nuclear Fuel Services (NFS) facility at West Valley, N.Y. During its 6 years of operation (1966-72), the NFS plant experienced several problems. For one, the lack of enough commercial spent fuel forced the facility to reprocess well below capacity, and to reprocess defense fuel that it was not designed to handle, causing damage to equipment and other technical problems. In addition, the plant received adverse publicity about its offsite leaks of radioactive waste and about radiation exposure to some of its workers

In 1970, AEC proposed new regulations that committed the Government to develop repositories on Federal land and required that, for safety, liquid high-level waste be solidified within 5 years of its generation and transported to the repository within 5 years after solidification. Partly to meet these new regulations, the NFS plant was closed in 1971 for modifications. For financial reasons the plant never reopened, and the 612,000 gallons of liquid wastes from its reprocessing operations remain in storage tanks at the site.

A second commercial reprocessing plant, built by General Electric at Morris, Ill., never operated because of technical and design problems. A third plant, the Allied General nuclear Services (AGNS) facility in Barnwell, S. C., was still under construction in April 1977, when commercial reprocessing was suspended indefinitely by the Carter administration Since the operations ceased at West Val-

[2]National Academy of Science/National Research Council, *The Disposal of Radioactive Waste on Land, 1957.*

[3]App A, Q 203

ley, no reprocessing of commercial spent fuel has occurred in the United States.

Disposal

AEC first addressed the problem of waste disposal in 1955 when it asked NAS how to structure research to establish a scientific base for the waste management program. Under the assumption that the waste to be disposed of would be dissolved at relatively low concentrations in liquid, NAS stated in its 1957 report that disposal was technologically feasible and that stable salt formations appeared to be the most promising repository medium. Such formations would theoretically prevent transport of liquid and would become self-sealing in the event of a fracture. The commitment to salt became a cornerstone of waste disposal policy for the next 20 years.

In the 1960's, improved reprocessing techniques reduced the volume and increased the thermal and radiation content of reprocessed wastes. To test the effect of these new characteristics on salt, 14 spent fuel assemblies and several heaters to raise the temperature of the salt were emplaced from 1965 to 1967 in the abandoned Carey Salt Mine at Lyons, Kans. The experiment, called Project Salt Vault, was conducted in an atmosphere of goodwill among Federal, State, and local officials: State and local officials were consulted about various aspects of the experiment, public tours of the mine were given during the experiment, and the wastes were removed at the end of the experiment, as promised. The results of this experiment showed no measurable evidence of excessive chemical or structural effects on the salt, a fact which became important 2 years later when the need suddenly arose to find a disposal site quickly.

In 1969, a fire at the Federal weapons components facility in Rocky Flats, Colo., left a large volume of low-level, plutonium-contaminated transuranic waste. Following standard procedures, officials sent the wastes to the National Reactor Test Station in Idaho for storage. Concerned that their State had become a dumping ground for waste from Colorado, Idaho's political leaders appealed to AEC Chairman Glenn Seaborg, who pledged to remove the waste by 1980. That promise, as well as the commitment to disposal expressed in the AEC regulations mentioned above, spurred AEC to search for a geologic repository site. The Lyons site was selected because:

- some, albeit very little, information had been gathered about the site during Project Salt Vault;
- a favorable reception by the local citizenry seemed likely; and
- investigations needed to prove the acceptability of the other sites would have delayed repository development by 2 years.

AEC announced in 1970 that, pending confirmatory tests, the Lyons site had been selected for the first full-scale repository. Although the degree to which AEC had consulted with State and local officials before this announcement is in dispute, AEC'S decision did not have full endorsement from these officials. Moreover, State and local political opposition to the Lyons site was intense, particularly when technical problems with the site became apparent. The Government abandoned plans for Lyons 2 years later because AEC was unable to convince critics that the many mining boreholes throughout the site could be plugged reliably and because no one could account for the disappearance of a large volume of water flushed into a nearby mine.

Left without a repository, AEC requested the U.S. Geological Survey (USGS) to search for additional repository sites for defense wastes. It also proposed building a series of aboveground structures, called retrievable surface storage facilities (RSSFs), to store commercial high-level wastes for a period of decades while geologic repositories were developed. The environmental impact statement issued by AEC in support of the RSSF concept drew intense criticism by the public and by the Environmental Protection Agency (EPA) because of concerns that the RSSFs would become low-budget permanent repository sites, As a result, AEC abandoned the RSSF concept in 1975,

Recent History

Climate of Policymaking

After the mid-1970's, significant changes occurred in waste management. EPA issued its first standards-those for the preparation of reactor fuel,

for reactor operations, and for reprocessing of spent fuel—and announced its intention to develop standards for the disposal of nuclear waste. The Energy Reorganization Act of 1974 abolished AEC and distributed its developmental functions to the new Energy Research and Development Agency (ERDA), later changed to the Department of Energy (DOE), and its regulatory functions to the new Nuclear Regulatory Commission (NRC). JCAE was disbanded and its role assumed by a variety of congressional committees. These events marked the change to a formal process of regulating the storage and disposal of high-level wastes. Thus, ERDA (later, DOE) would select a disposal site and design a facility to meet regulations promulgated by NRC in accordance with EPA standards.

By the late 1970's, the problem of waste isolation had captured the focus of the Federal Government, which began to allocate substantial personnel and funds to its solution. Although many decisionmakers still contended that managing high-level radioactive wastes was not technically difficult, they increasingly recognized the nontechnical aspects of the problem and worked to develop a firmer technical base from which to make decisions.

Disposal

DEFENSE WASTE

The abandonment of the Lyons site left the Government without a repository for the nuclear wastes from Rocky Flats. To fill that need, ERDA officials in 1974 selected a site near Carlsbad, N. Mex., for construction of the Waste Isolation Pilot Plant (WIPP), a pilot repository for defense transuranic waste. Initially, State and local officials supported WIPP because of its potential for boosting the economy of an area hard hit by the decline in the potash industry.

Then in 1977, the Government made the first of several dramatic changes in the scope and mission of WIPP: it considered the emplacement of defense high-level waste at the facility.[1] To ensure repository safety, ERDA also promised the licensing of the repository by NRC. Angered by the changes in scope, the New Mexico House of Representatives came with in three votes of passing a constitutional amendment banning disposal of out-of-State nuclear waste. Under fire, DOE promised New Mexico officials veto rights over WIPP.

Relations were further strained in February 1978 when DOE recommenced the emplacement of up to 1,000 commercial spent fuel assemblies at WIPP. Local opposition arose over the increased hazards promised by the inclusion of spent fuel; over the change in nature of the repository from pilot to permanent; and over the perception that New Mexico, which had no commercial reactors, would assume a disproportionate responsibility for the Nation's commercial nuclear waste. Moreover, critics accused DOE of putting aside technical considerations to use WIPP to satisfy laws, passed by California and under consideration in other States, requiring that a demonstrated high-level waste disposal technology approved by the Federal Government must exist before additional reactors could be constructed.

During 1978 and 1979, Congress rejected the proposals for NRC licensing and State veto powers for WIPP. These actions weakened the credibility of DOE, which had promised those provisions to New Mexico. In 1980 President Carter proposed that WIPP be terminated but that the site (now called the Los Medanos site) be retained as a candidate for a future repository. Congress refused to terminate WIPP, reactivating it as an unlicensed defense facility primarily for disposal of transuranic waste from Rocky Flats and for defense high-level waste research. Site characterization activities at WIPP, including the construction of a large shaft and exploratory tunnels, are now underway.

COMMERCIAL WASTE

For disposal of commercial high-level waste, ERDA developed the National Waste Terminal Storage (NWTS) program in 1975. The program involved a multiple-site survey of underground geologic formations in 36 States and was designed to lead to the development of six pilot-scale repositories by the year 2000--the first in salt, the rest in other geologic media. This change from preoccupation with salt reflected new views about what constituted an effective repository. As formally

[1] This discussion of the history of WIPP is drawn from Jackie L Braitman, *Nuclear Waste Disposal Can Government Cope?* (Santa Monica Calif: The Rand Corp., December 1983), pp 116-121

expressed in 1978 in "Circular 779"[5] by several USGS scientists and also in a study by the American Physical Society,[6] the effectiveness, or integrity, of a repository could be considered dependent on the combination of the emplacement medium ***and*** its environment, rather than on the emplacement medium alone. With that view, salt, although still a strong contender, might not be the only choice for a geologic repository. Moreover, the staff of NRC contended that "it would be highly desirable to place major, if not primary, importance on the waste form itself, its packaging, and the local waste-rock interface. [7]

The responses of State officials to DOE's plans for the NWTS program varied. Some States excluded ERDA from even exploring potential repository locations. Others were reluctant to welcome ERDA until further studies were completed. Thus, what began as a fresh start in the area of waste management soon got mired down in the reluctance of State officials even to contemplate a facility on their soil.

Because of lower-than-requested funding and political opposition from the States, schedules slipped repeatedly as the Government was forced to cut the program drastically. By 1980, active site evaluation research was being undertaken only in Louisiana, Mississippi, Nevada, Texas, Utah, and Washington.

Recent Waste Management Policy

THE CARTER ADMINISTRATION

Partly to ease the utilities' growing burden of spent fuel storage, President Carter announced in his spent fuel policy in 1977 that title to spent fuel would be transferred to the Government and that the spent fuel would be transported at utility expense to a Government-approved away-from-reactor facility for storage until a repository became available. A one-time fee for Government storage and disposal would be charged to the utility. To limit the availability of weapons-grade material, President Carter extended the moratorium on reprocessing, set in the Ford administration in 1976, by suspending indefinitely the reprocessing of commercial spent fuel in the United States. The policy also offered to provide limited storage and disposal of foreign spent fuel, if necessary to meet nonproliferation objectives, and committed substantial resources to development of mined geologic repositories.

To help develop his administration's policy on long-term nuclear waste management, President Carter established in 1977 the Interagency Review Group (IRG), composed of representatives from 14 Government agencies. IRG submitted its report in 1979, and in 1980 President Carter ratified the unanimous conclusions of IRG, recommending:

1. proceeding with the geologic disposal program;
2. increasing State and Indian tribe involvement in repository siting;
3. preparing a detailed National Plan for Nuclear Waste Management; and
4. developing better participation programs for the general public and the technical community.

In addition, he required characterization of more sites in a variety of media prior to submission of a license request to NRC, an issue on which IRG had been unable to reach a consensus.

To formalize the relationship between DOE and the States, IRG formulated the concept of 'consultation and concurrence, first proposed by the National Governors' Association. Under this concept, a State would be consulted by the Government and given the opportunity to concur with each step in developing a repository. By not concurring, a State could effectively exercise a veto. To advise the Federal Government on key radioactive waste management issues, President Carter created the State Planning Council (SPC), a 14-member council of Governors, State legislators, an Indian tribal government representative, an observer from NRC, and representatives from DOE, the Department of Transportation, and EPA. SPC recommended that a State's nonconcurrence be overridden, or preempted, by the Federal Government only through a Presidential determination backed by both Houses of Congress.

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[5] J.D Bredehoeft, A. W. England, D B Stewart, N. J. Trask, and I. J Winograd, "Geologic Disposal of High-Level Radioactive Wastes—Earth Sciences Perspectives, Geological Survey Circular #779, U.S Geological Survey, 1978

[6] "Report to the American Physical Society by the Study Group on Nuclear Fuel Cycles and Waste Management," *Reviews of Modern Physics*, vol *50, No 1*, pt. II, January 1978

[7] App A, p 219

96TH CONGRESS

Nearly 50 bills concerning waste management were introduced in the 96th Congress. The Senate passed a bill which emphasized development of long-term, monitored storage facilities that permitted the retrieval of the emplaced waste. The House passed a bill that focused on a timetable for development of mined repositories. However, no acceptable compromise could be reached between the two bills, largely because of disagreements about the power States should be given with respect to siting of defense waste repositories. [8] As a result, the effort to pass comprehensive high-level radioactive waste management legislation during the 96th Congress failed.

THE REAGAN ADMINISTRATION

In 1981 the Reagan administration declared its support for nuclear power and declared an [9] 'intent to demonstrate the permanent storage of high-level radioactive waste as soon as possible. The administration lifted the ban on commercial reprocessing, and DOE adopted the assumption that the reference waste form for disposal would be solidified high-level waste rather than spent fuel. However, DOE efforts to encourage private investment in reprocessing have been unsuccessful. The Reagan administration also withdrew the Carter administration's offer to provide Federal storage facilities for spent fuel and left utilities with the primary responsibility for storing spent fuel until reprocessing or disposal facilities are developed.

With regard to repository siting, the Reagan administration reduced to three the number of sites that were to be examined prior to selecting a first site for licensing; the Carter administration had planned to evaluate four to five sites before making the selection. The three sites were expected to be in basalt formations at Hanford, in volcanic tuff at the Nevada Test Site, and in a salt formation at a site to be determined in 1983. Construction of exploratory shafts for in situ testing was planned to begin in 1983. After completion of the shafts in 1985, one of the three sites was to be selected for the development of an unlicensed test and evaluation facility for development of waste emplacement technology. This facility was planned to be ready to accommodate up to 200 to 300 packages of solidified high-level waste by 1989.

The first license application for a full-scale facility was expected to be submitted to NRC by 1987 or 1988. Review of the license application would be conducted by NRC in parallel with further development of the unlicensed test and evaluation facility. The first repository was expected to be constructed and licensed for operation between 1998 and 2001. [10]

[8] Both Houses agreed that the host State's objection would be sustained with regard to a repository for commercial high-level waste if either the House of Representatives or the Senate affirmatively concurred, but they were unable to agree to a procedure for dealing with a State's objection to a repository for defense high-level waste.

[9] This description of the waste management policy of the Reagan administration is drawn from the statement of Kenneth Davis, Deputy Secretary of Energy, before the Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, U S. House of Representatives, July 9, 1981.

[10] A similar schedule was ultimately incorporated in NWPA and is discussed at greater length in chs. 5 and 6

PROBLEMS FOR WASTE MANAGEMENT POLICY

Key Policy Issues

Two major related waste management issues faced the 97th Congress when it began to consider radioactive waste legislation in 1981:

1. What to do about final isolation of the highly radioactive waste produced by nuclear reactors, which is contained for the present in the spent fuel discharged by those reactors.
2. What to do with the growing inventories of that spent fuel now stored at the reactors, given the uncertainties about when (or even whether) it would prove worthwhile to reprocess them, and when final isolation facilities would be available.

Final Isolation

The central issue that was to be resolved concerning final isolation was how strong a commitment to make to the development of a waste disposal technology that, unlike storage, would not require continued human control and maintenance to assure safe isolation. "Some argued that a disposal system should be developed with all deliberate speed. Others argued that a long period of interim storage (many decades) should be planned before developing a disposal system so that more options could be made available and uncertainties about the economic value of spent fuel could be resolved before selecting a disposal techology for development. Still others argued that storage itself is a satisfactory approach to final isolation, so no disposal system is needed. Although DOE made a formal decision to proceed with the development of mined geologic repositories, this decision had not yet been endorsed by Congress, and a bill passed by the Senate in the 96th Congress contemplated extended storage in monitored retrievable storage facilities as an alternative to rapid development of a disposal system. OTA's analysis indicated that until there was a clear resolution of this issue in law, continued instability in the direction of the waste management program was possible. [*2]

There was considerable disagreement over the degree to which the future use of nuclear power should depend on the development of an acceptable program for final waste isolation. Some argued that the United States should make no significant new commitments to nuclear power—and hence to the generation of more waste—until the safe and final isolation of nuclear waste could be demonstrated. Others argued that the technology for safe, final isolation was available and that there was no technical justification for restricting waste generation. Nonetheless, they argued that a demonstration of final isolation was needed to allay public concerns that threatened the continued growth of nuclear power. From either point of view, it was seen as important to resolve the existing uncertainties about final isolation of radioactive waste.

Even among those who agreed that developing the capability to dispose of—rather than store—radioactive waste was necessary to stop the issue from becoming an encumbrance on the use of nuclear power, there was substantial disagreement about how to demonstrate this capability and about the urgency of doing so. Some believed that the current basis of knowledge about mined geologic repositories was adequate to permit an acceptably safe repository to be sited and constructed quickly. They argued for rapid development of a repository (and perhaps an earlier unlicensed demonstration facility into which a small amount of waste would be emplaced) to allay what they perceived to be unfounded public concerns about waste disposal. Others believed that more time would be needed to develop sufficient confidence in a repository design and site. They contended that emplacement of waste in a demonstration facility would not by itself allay public concerns and feared that pressures for rapid action could lead to a premature commitment to an inadequate repository site or design or, at the very least, would lead to actions that would jeopardize the credibility of the Federal waste disposal program.

Some argued that resolving disagreements about the technical feasibility of waste disposal would not, in itself, be enough to remove disposal as an issue affecting the use of nuclear power. Demonstrating the Federal Government's ***institutional*** capacity to carry out the difficult effort required to build and operate a safe and reliable waste isolation system may be as important as demonstrating the ***technical*** capacity to dispose of waste.

Interim Spent Fuel Storage

The fact that neither reprocessing nor a Federal waste repository was likely to be available for a decade or longer meant that it would be necessary to provide interim storage for large quantities of spent fuel for at least the rest of the century. This posed two key problems for utilities, which led some to seek Federal assistance in providing that storage. First, reactors were running out of storage space, and it was clear that some might have to shut down by the mid-1990's unless more storage space were made available—even if existing basins were expanded as much as possible and if utilities were allowed to ship spent fuel to unfilled basins at other

[1] An extensive discussion of this subject is found in issue 1 of app B

[2] OTA testimony before the House Committee on Science and Technology, Subcommittee on Energy Research and Production, Oct. 5, 1981

reactors. [13] Some utilities would face serious problems by the late 1980's if such shipment were not allowed. Because of the relatively long leadtimes needed for the construction and licensing of new storage facilities, these utilities needed to know within a few years whether they would have to provide such facilities themselves.

Second, the fact that there was no firm schedule for either reprocessing or turning spent fuel over to the Federal Government left the utilities completely in the dark about how much additional storage capacity they would have to provide, when they would be able to end their liability for the growing inventories of spent fuel, and how much the total cost would be for storing and disposing of that fuel. There was increasing opposition to efforts to provide additional storage capacity because of fear that easy availability of interim storage would reduce the pressures for developing a Federal disposal system, thus turning interim storage facilities into permanent waste repositories. This opposition, in turn, had increased utilities' fears that they might not be able to gain approval for additional storage facilities quickly enough to prevent reactor shutdowns.

Concern about the utilities' capacity to provide additional interim storage quickly enough to prevent reactor shutdowns, especially in the face of the Government's failure to develop disposal facilities, led some to argue that the Federal Government should provide away-from-reactor storage facilities to give utilities one sure way to get rid of spent fuel once their existing basins were full. [14] Others argued that the utilities should be responsible for interim storage, while the Federal Government concentrated on the disposal program. While the Carter administration proposed that the Federal Government acquire an away-from-reactor facility, the 96th Congress did not authorize it, and the Reagan administration focused, instead, on helping the utilities provide their own additional storage.

[13] Such shipment between reactor pools is referred to as "transshipment."

[14] An extensive discussion of this issue is found in issue 4, app. B.

Complicating Factors

Linkage to Broader Issues

Resolution of disagreements about commercial waste management policy has been complicated by linkages to broader issues: the use of nuclear power, the future of reprocessing, and the disposition of high-level waste from defense activities. OTA's review of the history of waste management showed that disagreement over these broader issues was a major reason for the past inability of the Federal Government to devise a stable policy for dealing with commercial wastes, and suggested that successful adoption and implementation of such a policy would be easier if the policy were neutral regarding the resolution of these broader issues.

THE USE OF NUCLEAR POWER

In the mid-1970's, the public began to challenge the wisdom of developing a nuclear power industry unconstrained by the status of waste management. As noted in a memorandum for a JCAE policy session:

> . . . the uncertainties concerning the location of the repository are already adversely affecting public acceptance of nuclear power, and it is possible that this aspect of the overall nuclear program could become an unnecessarily important negative factor in the Nation's ability to consider its nuclear option to power generation. [15]

While there is strong disagreement about whether there should be any formal linkage in Federal law between progress in developing a final isolation program and the operation of nuclear reactors, there already is such a linkage in some State laws and in NRC policy. In 1976 California passed a law, upheld by the Supreme Court in 1983, [16] that made the siting of reactors in that State contingent upon Federal Government assurance that the demonstrated technology or means for disposal of high-level waste existed. In addition, the Natural Re-

[15] *Ep* A, p. *225*

[16] *Pacific Gas & Electric CO v State Energy Resources Conservation and Development Commission* 1 U S L W. 4449 (Apr 20, 1983).

sources Defense Council petitioned NRC to conduct a rulemaking proceeding to determine if high-level waste could be disposed of without undue risk to the public health and safety and to refrain from licensing reactors until such a determination was made. In denying the petition, a position upheld in court, NRC stated that it "would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely."[17] In 1981 NRC announced its intention to conduct a generic proceeding "to reassess its degree of confidence that radioactive waste produced by nuclear facilities will be safely disposed of, determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of. As a result of this "Waste Confidence" proceeding, NRC concluded in 1984 that there is reasonable assurance: 1) that safe disposal of high-level waste and spent fuel in a geologic repository is technically feasible, and 2) that one or more mined geologic repositories would be available in the 2007-2009 time frame.[18]

An analysis of the merits of proposals to limit the use of nuclear power pending progress on waste disposal involves questions of energy policy that are beyond the scope of this OTA study.[19] However, currently operating reactors, which have already discharged more than 10,000 tonnes of spent fuel, would generate around 55,000 tonnes by the end of their operating lives, even if no additional reactors were licensed for operation. The waste in this spent fuel must be isolated safely, regardless of the future of nuclear power. However, the nuclear waste problem is only one of a number of difficulties inhibiting the expanded use of nuclear power,[20] and resolution of that problem by itself may not be sufficient to sway decisions in favor of new reactor orders.[21] Nonetheless, if the other difficulties are resolved, it appears likely that the degree of progress in the final isolation program in the next decade could affect decisions about the future use of nuclear power, whether or not there is a formal linkage between the two subjects. If a policy can be adopted, maintained, and implemented steadily and successfully over an extended period it can be expected to have a positive effect on attitudes about nuclear power. Continued delays and shifts of direction, or discovery of major unforeseen technical problems, could have a negative effect on the willingness of utilities to invest in new reactors.

REPROCESSING AND THE POTENTIAL ECONOMIC VALUE OF SPENT FUEL

In OTA's view, the uncertainty about when, if ever, it will become economical to reprocess spent fuel has unnecessarily complicated Federal decisions about interim spent fuel storage and about final waste isolation. Some have argued, for example, that because spent fuel is a potentially valuable resource, the capacity to dispose of spent fuel need not—and should not—be developed until a clear decision on reprocessing is made. Extended or permanent storage has been proposed instead of disposal as a means of ensuring that the potential economic value of spent fuel is indefinitely preserved. However, the development of a disposal capacity will take more than a decade, and even when it is developed, spent fuel does not have to be disposed of irretrievably. Thus, the major decisions facing the 97th Congress did not concern the advisability of disposing of spent fuel, since the capacity to do so did not yet exist; rather, they concerned when and at what rate the capacity to dispose of waste would be made available, and what provisions would be made for the storage of spent fuel and any reprocessed waste in the meantime.

If the economic value of spent fuel remains uncertain once a disposal capacity has been developed, the decision can be made at that time whether to continue storing spent fuel or to dispose of it. As discussed in chapter 3, storage could be accomplished at a repository site by using the repository's packaging and handling facilities to receive and prepare waste for storage *on* the surface. Developing the capacity to dispose of both spent fuel and reprocessed waste may, in fact, be the best way to ensure that the decision to reprocess or dispose of spent fuel is based mainly on the resource value

[17] App. A, p. 227.
[18] U.S. Nuclear Regulatory Commission, 10 CFR Parts 50 and 50, "Waste Confidence Decision," *Federal Register, vol. 49, No 171,* Aug. *13, 1984,* pp. *34658-34688*
[19] This issue *was* not addressed in the NWPA.
[20] *Nuclear Power* in an Age *of Uncertainty* (Washington, D.C.: U.S. Congress, Office of Technology Assessment, OTA-E-216, February 1984) See also Graham Allison et al., "Governance of Nuclear Power" (Cambridge, Mass. Energy and Environmental Policy Center, Harvard University, December 1981)
[21] Allison et al., op. cit., p. 43.

of the spent fuel and not on the lack of a capacity to dispose of either spent fuel or high-level reprocessed waste .22

The question of when it might be desirable to dispose of spent fuel irretrievably, therefore, is quite distinct from the question of when it will be desirable to have the technical capacity to do so, although the two are frequently confused in discussions of waste management policy. The only irreversible decisions that can be made now are those related to the availability of technical capacity for disposal, since the longer the development of disposal facilities is deferred, the longer future waste managers will have no choice but to continue storage.

DEFENSE WASTE POLICY

The defense and commercial high-level radioactive waste programs, merged under the Carter administration, were separated by the Reagan administration. Disagreements about whether the same procedures for siting commercial waste repositories should also apply to repositories for defense wastes were a major reason the legislation dealing with high-level radioactive waste did not pass in the 96th Congress.

In this regard, some people argued that no matter what is done with military waste, the Federal Government had an obligation to get on with the resolution of the commercial waste management problem. They pointed out that the Government had, by law, reserved for itself the responsibility and the authority to dispose of high-level waste[23] and, thus far, had failed to fulfill its responsibilities. They argued that efforts to deal with commercial wastes should not be impeded by disagreements about policies for managing defense waste, as occurred during the 96th Congress. They also contended that separating the commercial and defense programs could allow more rapid progress in commercial waste disposal, which would, in turn, make it easier to deal with defense wastes by providing usable technology and sites. They noted that there were no compelling public administration arguments to have a single organization dealing with the two problems and cited precedents for separating military and civilian programs with similar technical requirements, such as assigning the civilian space program to the National Aeronautics and Space Administration. Moreover, some viewed a different institutional approach to siting repositories for defense waste as justified because they believed the balance of Federal authority should be greater in an activity associated with national defense.

Those who favored handling commercial and defense wastes in a unified program cited the similarities between their technical and environmental needs for long-term isolation. Such an integrated approach, they argued, would be necessary for gaining public acceptance of a national repository program and would discourage deferral of progress on disposal of defense wastes or the use of less stringent procedures in the defense program. Those who disagreed cited the fact that, since Federal law already provided that any repository for high-level waste, whether defense or commercial, would have to be licensed by NRC to meet the same environmental standards, separation of the programs would not necessarily lead to a less stringent approach with defense wastes.

Federal Credibility and Mutual Distrust

The most formidable problem that NWPA had to address was the intense level of mutual distrust among various concerned parties, a distrust that threatened to lock the waste disposal effort in a state of virtual and continual paralysis. The single most critical factor in that distrust was the severe erosion of public confidence in the ability of the Federal Government—on the basis of its past record—to create and carry out an effective waste management program.[24] The utilities and the nuclear industry doubted that the Federal Government would ever meet a schedule or stick to a policy. Environmentalists doubted that the Federal Government would deal adequately with safety concerns. States doubted that the Federal Government would deal openly and fairly with them.

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[22] This is discussed in issue 3, app. B

[23] William C. Metz, "Legal Constraints on Repository Siting," *Nuclear Waste: Socioeconomic Dimensions of Long-Term Storage*, Steve H. Murdock, F Larry Leistritz, and Rita R. Harem (eds.) (Boulder, Colo.: Westview Press, 1983)

[24] National *Research Council, Social and Economic Aspects of Radioactive Waste Disposal* Considerations for Institutional *Management* (Washington, D C.: National Academy Press, 1984), p. 38

To the degree that a Federal law alone can do so, NWPA went a long way toward meeting many of the specific concerns of the various parties and toward strengthening the credibility of the Federal effort. Below is a brief discussion of the main reasons why the credibility of the Federal program was so low before the passage of NWPA and of some of the remaining problems of mutual distrust that could complicate the effort to implement the Act.

POLICY INSTABILITY

The Federal waste management effort had been plagued by many major shifts of policy, making steady progress difficult and undermining public confidence in the effort.[25] A major cause of policy instability had been the failure of the Federal Government to consider a broad enough range of viewpoints, or to address adequately the legitimate technical and nontechnical concerns of major interest groups. This left some groups with a strong incentive to try to thwart or change the policies.

As a result, changes in administration had often meant abrupt changes in waste disposal policy. In 1976, for example, President Ford responded to concerns about the need to demonstrate progress in waste disposal by announcing a 1985 target date for the first repository, a policy that led to an almost exclusive focus on salt as a disposal medium and on sites that had already been studied or were regarded as easy to secure. The Carter administration, responding to the resulting concerns that an accelerated schedule could lead to premature commitment to a medium or site, adopted a new policy involving the review of four to five sites in two to three media and an anticipated repository target date of 1997 to 2006. The Reagan administration abandoned the Carter policy for one of examining three sites in two media, the minimum requirements of NRC, with earlier development of demonstration facilities. With respect to interim storage, the Carter administration proposed that the Government acquire an away-from-reactor facility and offered to accept spent fuel from utilities for interim storage prior to disposal. The Reagan administration rescinded the offer and announced that utilities would be responsible for interim storage. In view of such shifts, some observers questioned whether any policy could be expected to outlast a change of administration.

[25] The State Planning Council recommended that "national planning for radioactive waste management should avoid abrupt changes in direction to prevent further deterioration of program credibility and loss of time." State Planning Council on Radioactive Waste Management, *Recommendations on National Radioactive Waste Management Policies Report to the President, 1981*, p 29

FEDERAL CAPACITY TO IMPLEMENT A POLICY[26]

The history of the waste management program raised questions about the institutional ability of the Federal Government to implement any waste management policy successfully, even if the policy could be stabilized for an extended period. There were several reasons for this concern.

First, until the mid-1970's, the waste management effort was starved for the stable and sufficient resources—both people and money—needed to ensure a successful waste management effort. Not until 1972 did waste management exist as a distinct bureaucratic entity with its own independent budget, and not until 1977 did the program receive substantial funding. Increases in the number and expertise of the staff that the waste program needed to meet its responsibilities did not keep pace with increases in funds. Moreover, history suggested that the normal Federal budget process may not assure the adequate and stable long-term funding needed to enable timely development of final isolation facilities. For example, inadequate funding of the Federal Government's geologic repository development program had limited the number of alternative technologies and sites that were investigated, increasing the likelihood that an acceptable system would not be developed in a timely manner and heightening concerns about the technical adequacy of the program.

Second, past problems in the final isolation program had raised questions about the capabilities of the DOE waste management program. These questions will burden its future efforts, even though the problems reflected not the competence of the people carrying out the program, but the low priority placed on the effort, the lack of resources, and the sharp and frequent shifts of policy. Although generally regarded as technically competent, the DOE program did not appear to *have enough people* with the skills needed to handle the social, political, and institutional issues that concern States,

[26] These issues are discussed at greater length in ch 7.

local communities, and groups outside of DOE or to handle the broad policy and strategic issues. The failure to go beyond the strictly technical questions and address these kinds of issues had undermined much of the credibility of the waste management program.

Finally, the development and implementation of a comprehensive waste management policy will require an unprecedented degree of coordination within both the executive branch and Congress. At present, no single Federal agency or congressional committee has the jurisdiction to deal with the wide range of activities required to manage radioactive waste safely. Six major executive agencies and about 12 congressional committees have jurisdiction over different aspects of waste management. Experience suggests that coordinating the activities of all these Government entities will be difficult. Also, agencies have consistently failed to meet deadlines to implement policies according to schedule, perhaps, in part, because waste disposal is only one of the many activities for which they are responsible. For example, NRC's draft technical regulations for high-level waste, scheduled for issue in 1977, were actually issued in 1981; EPA's overall standards for waste disposal, due since 1977, were not even published for discussion until the end of 1982. These delays have raised questions about the ability of the Federal Government to meet a long-term schedule requiring the coordinated actions of independent agencies.

PERCEPTIONS OF TRUSTWORTHINESS

Justified or not, States and others had developed strong doubts that the Federal Government could be counted on to keep its word on waste management matters and that, in general, it could be trusted. One example of the basis for this distrust is the series of policy reversals concerning WIPP discussed above.

State Concerns[27]

To make technical progress in waste disposal, the Federal Government must have access to potential disposal sites in order to perform the detailed study and evaluation needed to determine site suitability. However, several States have sought to prevent DOE from conducting initial site investigations, and 18 States have enacted restrictive legislation that bans high-level radioactive waste management activities within their borders without State approval.[28] Other States may feel obligated to adopt similar restrictions to make certain they do not, by default, end up with waste storage or disposal facilities.

In addition to general concerns about Federal trustworthiness, State opposition to Federal siting activities has two main sources:

- ***The Inherent Costs and Risks Involved in Waste Disposal.***—The presence of any amount of radioactive waste and the various steps involved in storage and disposal pose potential radiological risks and have adverse social and economic impacts on States and localities. Although these impacts can be controlled or mitigated, there is no assurance that they can be eliminated. Even if States had no other concerns about waste disposal, they would probably be reluctant to take on such costs and impacts. In its extreme form, the desire not to bear the costs involved in waste disposal can lead to what has been called the "not in my backyard" or "anywhere but here' attitude, which may underlie at least some State opposition.
- *Fear of* ***Unfairness*** in Siting Decisions.—Many States fear that they could become a national dumping ground for waste—that they will be forced to take waste generated in other States or even from the entire Nation, thus bearing a disproportionate share of the waste disposal burden. Related to this fear is that of the "foot in the door'—the concern that if the Federal Government succeeds in siting any waste management facility, even a small research facility, it will try to save money and avoid fighting new siting battles by attempting to expand that facility, eventually creating a repository at that site. A related State fear is

[27] State issues are discussed at greater length in ch 8

[28] Sarah Daneman, "State Legislation on High-Level Nuclear Waste Disposal (as of 9/15/82)," published in The Radioactive *Exchange*, *vol* 1, Nos 14 and 15, Part II, September/October 14, 1982, pp. 15-21 Some laws have banned activities involving waste from other States, others have required State approval prior to storage or disposal of all commercial high-level waste DOE has so far not challenged the legality of these restrictions in court

that Federal siting decisions will be based too heavily on considerations other than technical safety criteria, such as a desire to site a repository quickly to remove waste disposal as an obstacle to the use of nuclear power or a desire to avoid the difficulties of dealing with restrictive State legislation.

Although restrictive State legislation may not stand up to Federal court challenges, the legal processes entailed in such challenges could delay siting efforts. DOE had been reluctant to contest State restrictions and had sought, instead, to conduct waste management activities at sites where it was likely to encounter the fewest obstacles—either in time, cost, or political opposition. That approach can be defended on the grounds that, if it speeds up the process, and if the site eventually selected is technically sound, then it matters little how the site is chosen. However, that approach may increase resistance to Federal siting activities for two reasons. First, no site selection process is likely to be perceived as equitable or technically credible if it chooses, or appears to choose, sites mainly because they are the easiest to obtain. Second, the approach feeds State fears that the Federal Government will increasingly follow a "path of least resistance in seeking repository sites and thus strongly encourages those States that have not yet adopted restrictive or prohibitive measures to do so No State wants to be last in the race to make certain that the path of least resistance does not lead straight into its borders.

Overall Impacts of History

NWPA is the first Federal law that sets out an explicit national policy and schedule for the disposal of high-level radioactive waste. It also contains a number of provisions aimed at overcoming some of the major concerns that have hampered the waste disposal effort in the past. But a law alone, no matter how well framed, cannot by itself wipe out the long legacy of problems and false starts and the deep distrust it has generated among the principal parties involved and concerned with waste disposal.

A law alone cannot demonstrate that the Federal Government has the capacity to deal fairly with the States in the selection and development of sites, to take the surest and safest route to waste disposal instead of the most expedient, or to demonstrate to the satisfaction of the regulatory authorities and the concerned and affected parties that an adequate waste disposal technology exists. Nor can a law alone dispel, however much it may allay, the distrust that decades have built up among the various parties.

That distrust may, indeed, be the single most complicating factor in the effort to develop a waste disposal system that is acceptable technically, politically, and socially. For, if Federal credibility—its capacity to show the various parties that it can and will do the job competently, fairly, and on schedule—remains the most critical factor in a successful waste disposal effort, it is not Federal credibility alone that is in question. States, environmentalists, and others may, indeed, fear that the Federal Government and industry will cut corners just to be able to say that the problem is solved. But there is the correlative concern that not all State forces or environmentalists are acting in good faith: that, whatever their express concerns with safety or other matters, some environmentalists seek to block and stall waste disposal efforts solely because they are opposed to the use of nuclear power, and some in the States seek only to prevent any and all waste disposal activities from occurring within their borders.

In short, some believe that no matter how well the Federal Government does its job in carrying out the Act—no matter what pains it takes to remove any legitimate grounds for opposition—there are those in the States and elsewhere who will do everything possible to slow or stop its efforts. Whatever the basis for this belief, it only makes it all the more necessary for the Federal Government to remove the legitimate grounds for opposition by carrying out the Act in ways that address the honest concerns of States and others and that seek to avoid past mistakes.

The waste management program has improved substantially over time in resources, breadth of organizational commitment, and technical and institutional sophistication. It has laid a solid technical groundwork for the development of mined geologic repositories. Furthermore, resolution of the key policy issues regarding interim storage and final isolation through enactment of NWPA should provide stability to waste management policy that has

been lacking in the past. Nonetheless, the burden of past problems will complicate the task of developing an effective and acceptable waste disposal system. Moreover, after more than three decades of struggling with nuclear waste, there is only a limited tolerance for failures. Any major failures—real or perceived—could have grave consequences for both the waste management program and the future use of nuclear power.

ADDENDUM 3

1. Pub. L. No. 402-486, 106 Stat. 2276, October 24, 1992; codified at 42 U.S.C. § 2021 (cooperation with states, disposal of byproduct, source, or special nuclear material.)

2. Pub. L. No. 101-189, 103 Stat. 1352, Nov. 29, 1989; codified at 42 U.S.C. § 2121 (storage and waste disposal for waste resulting from military uses of atomic energy.)

3. Pub. L. No. 100-408, 102 Stat. 1066, August 20, 1988; codified as 42 U.S.C. § 2014 (ff) (definition of "nuclear waste activities" includes activities "involving the storage, handling, transportation, treatment, or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste . . . .")

4. Pub. L. No. 96-295, 94 Stat. 780, June 30, 1980, and Public L. No. 97-415, 96 Stat. 2067, January 4, 1983; codified as 42 U.S.C. § 2284 (sabotage of nuclear waste storage facilities.)

5. Pub. L. No. 95-601, 92 Stat. 2947, November 6, 1978; codified at 42 U.S.C. § 2021a (storage or disposal facility planning for high level radioactive wastes, transuranic wastes, or irradiated nuclear reactor fuel.)

6. Pub. L. No. 95-242, 92 Stat. 120, March 10, 1978; codified at 42 U.S.C. § 2074 (foreign distribution of special nuclear material, arrangements for storage or disposition of irradiated fuel elements.)

mentality of the executive branch of the Federal Government shall comply with standards promulgated pursuant to this chapter.

(b) The Secretary of Veterans Affairs, through the Under Secretary for Health of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Under Secretary for Health under title 38, prescribe regulations making the standards promulgated pursuant to this chapter applicable to the provision of radiologic procedures in facilities over which that Secretary has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall consult with the Secretary in order to achieve the maximum possible coordination of the regulations, standards, and guidelines, and the implementation thereof, which the Secretary and the Secretary of Veterans Affairs prescribe under this chapter.

(Pub. L. 97–35, title IX, §983, Aug. 13, 1981, 95 Stat 601; Pub. L. 102–54, §13(q)(13)(C), June 13, 1991, 105 Stat. 282; Pub. L. 102–405, title III, §302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

AMENDMENTS

1992—Subsec. (b) Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in two places.

1991—Subsec. (b). Pub. L. 102-54 substituted "The Secretary of Veterans Affairs, through the Chief Medical Director of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Chief Medical Director under title 38" for "(1) The Administrator of Veterans' Affairs, through the Chief Medical Director of the Veterans' Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under subtitle 38", "over which that Secretary" for "over which the Administrator", and "Secretary of Veterans Affairs" for "Administrator" wherever else appearing, and struck out pars. (2) and (3) which read as follows

"(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this chapter, the Administrator of Veterans' Affairs shall submit to the appropriate committees of Congress a full report with respect to the regulations (including guidelines, policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include—

"(A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this chapter,

"(B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescription and implementation of regulations by the Administrator; and

"(C) such recommendations for legislation and administrative action as the Administrator determines are necessary and desirable.

"(3) The Administrator of Veterans' Affairs shall publish the report required by paragraph (2) in the Federal Register."

CHAPTER 108—NUCLEAR WASTE POLICY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2286g of this title.

§10101. Definitions

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "affected Indian tribe" means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located,

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be sub-

stantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;[1]

(3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;

(B) weapons activities including defense inertial confinement fusion;

(C) verification and control technology;

(D) defense nuclear materials production;

(E) defense nuclear waste and materials by-products management;

(F) defense nuclear materials security and safeguards and security investigations; and

(G) defense research and development.

(4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title

(5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.

(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under section 2133 or 2134(b) of this title

(7) The term "Commission" means the Nuclear Regulatory Commission.

(8) The term "Department" means the Department of Energy.

(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term "high-level radioactive waste" means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation

(13) The term "Federal agency" means any Executive agency, as defined in section 105 of title 5.

(14) The term "Governor" means the chief executive officer of a State.

(15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term "low-level radioactive waste" means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 10224[2] of this title.

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term "reservation" means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and

[1] So in original. The semicolon probably should be a period

[2] See References in Text note below

geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 10156(c)[3] of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV of this chapter, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means the storage facility described in section 10161(b)(1) of this title.

(Pub. L. 97-425, § 2, Jan. 7, 1983, 96 Stat. 2202; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat 1329-104, 1329-121; Pub. L. 100-203, title V, § 5002, Dec. 22, 1987, 101 Stat. 1330-227.)

[3] See References in Text note below.

REFERENCES IN TEXT

Section 10224 of this title, referred to in par. (17), was in the original a reference to section 305 of Pub L. 97-425, which is classified to section 10225 of this title, and was translated as section 10224 of this title as the probable intent of Congress, in view of the Office of Civilian Radioactive Waste Management being established by section 10224 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 10156(c) of this title, referred to in par. (26), was in the original a reference to section 137(c) of Pub. L. 97-425, which is classified to section 10157(c) of this title, and has been translated as section 10156(c) of this title as the probable intent of Congress, in view of the Interim Storage Fund being established by section 10156(c) of this title.

AMENDMENTS

1987—Pars. (30) to (34) Pub. L. 100-202 and Pub L. 100-203 amended section identically adding pars. (30) to (34).

SHORT TITLE OF 1987 AMENDMENT

Section 101(d) [title III] of Pub. L. 100-202 and section 5001 of title V of Pub. L. 100-203 provided that: "This subtitle [subtitle A (§§ 5001-5065) of title V, enacting sections 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10172, 10172a, 10173, 10173a, 10173b, 10173c, 10174, 10174a, 10175, 10204, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, and 10270 of this title, amending this section and sections 10132, 10133, 10134, 10136, 10137, and 10138 of this title and enacting provisions set out as a note under section 5841 of this title] may be cited as the 'Nuclear Waste Policy Amendments Act of 1987'."

SHORT TITLE

Section 1 of Pub L 97-425 provided that: "This Act [enacting this chapter] may be cited as the 'Nuclear Waste Policy Act of 1982'."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

NUCLEAR WASTE MANAGEMENT PLAN; REPORT

Pub. L. 102-486, title VIII, § 803, Oct. 24, 1992, 106 Stat. 2923, provided that.

"(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S C. 10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste,

and any need for additional repositories for deep geologic disposal.

"(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2014 of this title; title 18 sections 33, 1992, title 49 section 5105.

§ 10102. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 97–425, § 3, Jan. 7, 1983, 96 Stat. 2205.)

§ 10103. Territories and possessions

Nothing in this chapter shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.

(Pub. L. 97–425, § 4, Jan. 7, 1983, 96 Stat. 2205.)

§ 10104. Ocean disposal

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(Pub. L. 97–425, § 5, Jan. 7, 1983, 96 Stat. 2205.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in text, is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables

§ 10105. Limitation on spending authority

The authority under this chapter to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 97–425, § 6, Jan. 7, 1983, 96 Stat. 2205.)

§ 10106. Protection of classified national security information

Nothing in this chapter shall require the release or disclosure to any person or to the Commission of any classified national security information.

(Pub. L. 97–425, § 7, Jan. 7, 1983, 96 Stat. 2205.)

§ 10107. Applicability to atomic energy defense activities

(a) Atomic energy defense activities

Subject to the provisions of subsection (c) of this section, the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under part A of subchapter I of this chapter for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I of this chapter for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 10222 of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 5842 of this title; and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

(c) Applicability to certain repositories

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

(Pub. L. 97–425, § 8, Jan. 7, 1983, 96 Stat. 2205.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10155, 10192 of this title.

§ 10108. Applicability to transportation

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97–425, § 9, Jan 7, 1983, 96 Stat. 2206.)

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10222, 10225 of this title.

§ 10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a) of this section, the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97–425, title I, § 101, Jan. 7, 1983, 96 Stat. 2206.)

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10107, 10175 of this title

§ 10131. Findings and purposes

(a) The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97–425, title I, § 111, Jan. 7, 1983, 96 Stat. 2207.)

§ 10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Ref-

uge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b) of this section. The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) of this section and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a) of this section;

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i)[1] The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b) of this section. Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke

[1] So in original. There is no cl. (ii).

his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, § 112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(b)-(d), Dec. 22, 1987, 101 Stat. 1330-228; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100-202 and Pub. L. 100-203, § 5011(b), amended par. (1) identically, redesignating subpars (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting "subparagraph (B)" for "subparagraphs (B) and (C)", and striking out former subpar. (C) which read as follows: "Not later than July 1, 1989, the Secretary shall nominate 5 sites, which shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B)."

Subsec (d). Pub. L 100-202 and Pub. L. 100-203, § 5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec (d) which read as follows: "After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section."

Subsec. (e) Pub L. 100-202 and Pub. L 100-203, § 5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L 100-202 and Pub. L 100-203, § 5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec (e) read as follows: "Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983."

Pub. L 100-202 and Pub. L. 100-203, § 5011(c), amended section identically, redesignating subsec (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100-202 and Pub. L 100-203, § 5011(c), amended section identically, redesignating subsec. (f) as (e).

CHANGE OF NAME

"United States Geological Survey" substituted for "Geological Survey" in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10132(c)(1)

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10133, 10137, 10138, 10139, 10161, 10172a, 10221 of this title.

§ 10133. Site characterization

(a) In general

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1) of this section.

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit

for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F of this subchapter with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) of this section shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to[1] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, §113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(e)-(g), Dec. 22, 1987, 101 Stat. 1330-228.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables

[1] So in original. The word "to" probably should not appear.

AMENDMENTS

1987—Subsec (a). Pub. L. 100–202 and Pub. L. 100–203, §5011(e)(2), which contained identical amendments directing that "at the Yucca Mountain site" be substituted for "beginning" and all that follows through "geological media", were executed by substituting "at the Yucca Mountain site" for "beginning with the candidate sites that have been approved under section 10132 of this title and are located in various geologic media" as the probable intent of Congress

Pub. L. 100–202 and Pub. L. 100–203, §5011(e)(1), amended subsec. (a) identically, substituting "State of Nevada" for "State involved or the governing body of the affected Indian tribe involved".

Subsec. (b)(1). Pub. L. 100–202 and Pub L 100–203, §5011(f)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site" and "the Governor or legislature of the State of Nevada" for "either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe on whose reservation such candidate site is located, as the case may be".

Subsec. (b)(2). Pub L. 100–202 and Pub. L. 100–203, §5011(f)(2), amended par. (2) identically, substituting "the Yucca Mountain site" for "any candidate site".

Subsec. (b)(3). Pub. L. 100–202 and Pub. L. 100–203, §5011(f)(3), amended par. (3) identically, substituting "the Yucca Mountain site" for "a candidate site", striking "either" before "the Governor", and substituting "the State of Nevada" for "the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be".

Subsec. (c)(1). Pub. L. 100–202 and Pub. L. 100–203, §5011(g)(1), amended par. (1) identically, substituting "the Yucca Mountain site" for "any candidate site", "suitability of such site" for "suitability of such candidate site", and "repository at such site" for "repository at such candidate site".

Subsec. (c)(2) Pub L. 100–202 and Pub. L. 100–203, §5011(g)(2), amended par. (2) identically, striking out "candidate" before "site" in two places in subpar. (A) and in two places in subpar. (B)

Subsec. (c)(3), (4). Pub. L. 100–202 and Pub. L. 100–203, §5011(g)(3), amended subsec (c) identically, adding par. (3) and striking out former pars. (3) and (4) which read as follows:

"(3) If site characterization activities are terminated at a candidate site for any reason, the Secretary shall (A) notify the Congress, the Governors and legislatures of all States in which candidate sites are located, and the governing bodies of all affected Indian tribes where candidate sites are located, of such termination and the reasons for such termination; and (B) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such candidate site as promptly as practicable.

"(4) If a site is determined to be unsuitable for application for a construction authorization for a repository, the Secretary shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10132, 10134, 10136, 10244, 10245 of this title.

§10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such

site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to[1] require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) of this section and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b) of this section, and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2) of this section. The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

[1] So in original The word "to" probably should not appear

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(Pub. L. 97-425, title I, § 114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(h)-(l), Dec. 22, 1987, 101 Stat. 1330-229, 1330-230.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs (a)(1)(D) and (f), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (f)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (f)(5), is Pub L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§ 5841 et seq) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1) Pub. L 100-202 and Pub. L. 100-203, § 5011(h)(1)(A)-(E), amended par. (1) identically, in introductory provisions substituting "vicinity of the Yucca Mountain site" for "vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository", striking out "in which such site is located" after "residents of the area", substituting "activities at the Yucca Mountain site" for "activities at not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent respositories" [sic] and "of Nevada" for "in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be", and struck out before last sentence "In making site recommendations and approvals subsequent to the first site recommendation, the Secretary and the President, respectively, shall also consider the need for regional distribution of repositories and the need to minimize, to the extent practicable, the impacts and cost of transporting spent fuel and solidified high-level radioactive waste."

Subsec. (a)(1)(D). Pub. L. 100-202 and Pub L. 100-203, § 5011(h)(1)(F), generally amended subpar. (D) identically. Prior to amendment, subpar. (D) read as follows: "a final environmental impact statement prepared pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 candidate sites for the first proposed respository [sic] or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 10133 of this title, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this chapter shall not be required to consider the need for a repository or the alternatives to geologic disposal;".

Subsec. (a)(1)(H). Pub. L. 100-202 and Pub. L. 100-203, § 5011(h)(1)(G), amended subpar. (H) identically, substituting "the State of Nevada" for "the State in which such site is located, or under section 10138(b)(3)(B) of this title by the affected Indian tribe where such site is located, as the case may be".

Subsec. (a)(2). Pub. L. 100-202 and Pub. L. 100-203, § 5011(h)(2), amended subsec. (a) identically, adding par. (2) and striking out former par. (2) which required submission of recommendation of one site for repository not later than Mar. 31, 1987, and recommendation of second site not later than Mar. 31, 1990, and permitted subsequent recommendations for other sites and extension of deadlines.

Subsec (a)(3), (4). Pub. L. 100-202 and Pub. L 100-203, § 5011(h)(2), (3), amended subsec. (a) identically, redesignating par. (4) as (3), in subpar. (A), substituting "the Yucca Mountain site" for "any site under this subsection" and "statement" for "report", and striking out former par. (3) which read as follows: "If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 10136 of this title or the governing body of an affected Indian tribe under section 10138 of this title, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository."

Subsec. (b). Pub. L. 100-202 and Pub L 100-203, § 5011(i), amended subsec. (b) identically, substituting "the Yucca Mountain site" for "a site for a repository" and "State of Nevada" for "State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be,".

Subsec (d) Pub. L. 100-202 and Pub. L. 100-203, § 5011(j), amended subsec. (d) identically, substituting "than the expiration" for "than— (1) January 1, 1989, for the first such application, and January 1, 1992 for the second such application; or (2) the expiration" and "subsection (e)(2) of this section" for "subsection (e)(2) of this section, whichever occurs later".

Subsec. (e)(1). Pub. L. 100-202 and Pub. L 100-203, § 5011(k), amended par. (1) identically, substituting "operation of the repository" for "operation of the repository involved".

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, § 5011(*l*), generally amended subsec. (f) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of single unnumbered par.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (c) of this section is listed as the 17th item on page 186), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance

VIABILITY ASSESSMENT OF YUCCA MOUNTAIN SITE

Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2995, provided in part. "That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include:

"(1) the preliminary design concept for the critical elements for the repository and waste package;

"(2) a total system performance assessment, based upon the design concept and the scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards,

"(3) a plan and cost estimate for the remaining work required to complete a license application; and

"(4) an estimate of the costs to construct and operate the repository in accordance with the design concept."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10135, 10136, 10138, 10142, 10165 of this title.

§ 10135. Review of repository site selection

(a) "Resolution of repository siting approval" defined

For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c) of this section.

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) of this section and the 60-day period referred to in subsections (d) and (e) of this section.

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

(Pub. L. 97–425, title I, §115, Jan. 7, 1983, 96 Stat. 2217.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10136, 10138, 10155, 10161, 10166, 10168, 10225 of this title.

§10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site charac-

terization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV of this chapter.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

(Pub. L. 97-425, title I, §116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5032(a), Dec. 22, 1987, 101 Stat. 1330-241.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-202 and Pub. L. 100-203 generally amended subsec. (c) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of pars. (1) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10135, 10137, 10138, 10161, 10166, 10169, 10173a, 10222, 10243 of this title.

§10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading[1] any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c) of this section.

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in any affected State notified under section 10136(a) of this title to the Secretary, whichever,[2] first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b) of this section, and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

(Pub. L. 97-425, title I, §117, Jan. 7, 1983, 96 Stat 2222; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(m), Dec. 22, 1987, 101 Stat. 1330-231; Pub. L. 104-66, title I, §1051(i), Dec. 21, 1995, 109 Stat. 716)

AMENDMENTS

1995—Subsec. (c) Pub. L 104-66 struck out after third sentence "If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of

[1] So in original Probably should be "locating".

[2] So in original The comma probably should not appear

such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress."

1987—Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203 amended section identically, adding subsec. (d)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10136, 10138, 10161, 10243 of this title.

§10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5)[1] An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 10135 of this title;

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;[2]

(iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian

[1] So in original. Probably should be designated "(5)(A)".

[2] So in original. Probably should be followed by "or".

tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

(Pub. L. 97-425, title I, §118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5033, Dec. 22, 1987, 101 Stat. 1330-243.)

AMENDMENTS

1987—Subsec. (b)(5)(iv). Pub. L. 100-202 and Pub. L 100-203 amended par. (5) identically, adding cl (iv).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10135, 10137, 10161, 10166, 10169, 10173a, 10222, 10243 of this title

§10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II of this chapter.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c)[1] Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(Pub. L. 97-425, title I, §119, Jan. 7, 1983, 96 Stat. 2227.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(D), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10145, 10155, 10201, 10244 of this title.

§10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) of this section shall include

[1] So in original No subsec (b) has been enacted

such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(Pub. L. 97-425, title I, §120, Jan. 7, 1983, 96 Stat. 2227.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10145 of this title.

§10141. Certain standards and criteria

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a) of this section.

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a) of this section. If the Administrator promulgates standards under subsection (a) of this section after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, §121, Jan. 7, 1983, 96 Stat. 2228.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec (b)(1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

NUCLEAR WASTE STORAGE AND DISPOSAL AT YUCCA MOUNTAIN SITE

Pub. L. 102-486, title VIII, §801, Oct. 24, 1992, 106 Stat. 2921, provided that:

"(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

"(1) PROMULGATION.—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

"(2) STUDY BY NATIONAL ACADEMY OF SCIENCES.—Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

"(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

"(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

"(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

"(3) APPLICABILITY.—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

"(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

"(1) MODIFICATIONS.—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator's standards promulgated under subsection (a)

"(2) REQUIRED ASSUMPTIONS.—The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—

"(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

"(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

"(c) POST-CLOSURE OVERSIGHT.—Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

"(1) breaching the repository's engineered or geologic barriers; or

"(2) increasing the exposure of individual members of the public to radiation beyond allowable limits."

§ 10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

(Pub. L. 97–425, title I, § 122, Jan 7, 1983, 96 Stat. 2228.)

§ 10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(Pub. L. 97–425, title I, § 123, Jan. 7, 1983, 96 Stat. 2229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§ 10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

(Pub. L. 97–425, title I, § 124, Jan. 7, 1983, 96 Stat. 2229.)

§ 10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

(Pub. L. 97–425, title I, § 125, Jan. 7, 1983, 96 Stat. 2229.)

PART B—INTERIM STORAGE PROGRAM

§ 10151. Findings and purposes

(a) The Congress finds that—

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are—

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97–425, title I, § 131, Jan. 7, 1983, 96 Stat. 2229.)

§10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.

(Pub. L. 97–425, title I, §132, Jan. 7, 1983, 96 Stat. 2230.)

§10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a)[1] of this title for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97–425, title I, §133, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97–425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

§10154. Licensing of facility expansions and transshipments

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a) of this section, the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or li-

[1] See References in Text note below

cense amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) of this section because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97–425, title I, § 134, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) of this section require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term "facility" means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d) of this section, the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure

maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project

related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) of this section at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) of this section that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198[1] of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e) of this section.

(Pub. L. 97–425, title I, § 135, Jan. 7, 1983, 96 Stat. 2232.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(1)(A)(i), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(1)(A)(i), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables

Section 10198 of this title, referred to in subsec. (i), was in the original a reference to section 217 of Pub. L 97–425, which is classified to section 10197 of this title, and has been translated as section 10198 of this title as the probable intent of Congress in view of section 10198(c)(2) which directs the Secretary to provide spent nuclear fuel for the research and development program authorized by section 10198(c) of this title from spent nuclear fuel received by the Secretary for storage under section 10155 of this title.

[1] See References in Text note below.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (d)(5) and (f) of this section are listed as the 12th and 13th items on page 83), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10139, 10156, 10198 of this title.

§ 10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however,* That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a con-

tract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e) of this section, for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e) of this section.

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdicational[1] boundaries of such government or governments and authorized under this part: *Provided, however*, That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) $15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a) of this section.

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expendi-

[1] So in original. Probably should be "jurisdictional".

tures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act[2] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97-425, title I, § 136, Jan. 7, 1983, 96 Stat. 2237.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (f)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 140 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10155, 10157, 10198 of this title.

§ 10157. Transportation

(a)(1)[1] Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

(Pub. L. 97-425, title I, § 137, Jan. 7, 1983, 96 Stat. 2241.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10156 of this title.

PART C—MONITORED RETRIEVABLE STORAGE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10134, 10175 of this title.

[1] So in original. No subsec. (b) has been enacted.

[2] See References in Text note below.

§10161. Monitored retrievable storage

(a) Findings

The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) of this section shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b) of this section, specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of subsection (b)(1) of this section in any environmental impact statement, or in any licensing procedure of the Commission.

with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b) of this section, the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

(Pub. L. 97–425, title I, §141, Jan. 7, 1983, 96 Stat. 2241.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10168, 10200 of this title.

§10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC–1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.

(Pub L. 97–425, title I, §142, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330–232.)

CODIFICATION

Pub L 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10165, 10168 of this title.

§10163. Monitored Retrievable Storage Commission

(a)[1] Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

[1] So in original No subsec. (b) has been enacted

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

(Pub. L. 97-425, title I, §143, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-232; amended Pub. L. 100-507, §2, Oct. 18, 1988, 102 Stat. 2541.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(4)(A)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-507 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989."

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10164 of this title

§10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter,

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

(Pub. L. 97-425, title I, §144, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10165 of this title.

§10165. Site selection

(a) In general

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) of this section until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a) of this section, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a) of this section, the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a) of this section.

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

(Pub. L. 97-425, title I, §145, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10166, 10167 of this title.

§10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection, references in section 10135(c) of

this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

(Pub. L. 97–425, title I, § 146, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10168 of this title.

§ 10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97–425, title I, § 147, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d) of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

(Pub. L. 97–425, title I, § 148, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330–235.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

(Pub. L. 97–425, title I, § 149, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101

Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-236.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

PART D—LOW-LEVEL RADIOACTIVE WASTE

§10171. Financial arrangements for low-level radioactive waste site closure

(a) Financial arrangements

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021 of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) Title and custody

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a) of this section;

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

(Pub. L. 97-425, title I, §151, Jan. 7, 1983, 96 Stat. 2244.)

PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM

§10172. Selection of Yucca Mountain site

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97-425, title I, §160, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(a), Dec. 22, 1987, 101 Stat. 1330-227.)

CODIFICATION

Pub. L 100-202 and Pub. L 100-203 added identical sections.

§10172a. Siting a second repository

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in ex-

istence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

(1) seasonal increases in population;

(2) proximity to public drinking water supplies, including those of metropolitan areas; and

(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

(Pub. L. 97-425, title I, §161, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5012, Dec. 22, 1987, 101 Stat. 1330-231.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

PART F—BENEFITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 10133 of this title

§ 10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) of this section may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

(c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.

(Pub. L. 97-425, title I, §170, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-237.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10167, 10172, 10173a of this title.

§ 10173a. Content of agreements

(a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 10173 of this title in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in $ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

(2) For purposes of this section, the term—

(A) "MRS" means a monitored retrievable storage facility,

(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

(C) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such

execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 10173 of this title covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

(b) Contents

A benefits agreement under section 10173 of this title shall provide that—

(1) a Review Panel be established in accordance with section 10173b of this title;

(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.

(Pub. L. 97–425, title I, §171, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–237.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10173b, 10174a of this title.

§10173b. Review Panel

(a) In general

The Review Panel required to be established by section 10173a(b)(1) of this title shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

(4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly[1] make available promptly[1] any information in the Secretary's

[1] So in original

possession requested by the Panel or its Chairman.

(e) Federal Advisory Committee Act

The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this subchapter.

(Pub. L. 97–425, title I, § 172, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173a of this title.

§ 10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or

(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

(Pub. L. 97–425, title I, § 173, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub L. 100–202 and Pub. L 100–203 added identical sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173 of this title

PART G—OTHER BENEFITS

§ 10174. Consideration in siting facilities

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

(Pub. L. 97–425, title I, § 174, as added Pub. L. 100–202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub. L. 100–202 and Pub L. 100–203 added identical sections

§ 10174a. Report

(a) In general

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 10173a of this title, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) Impacts to be considered

Potential impacts to be addressed in the report under this[1] subsection (a) of this section shall include impacts on—

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the con-

[1] So in original. The word "this" probably should not appear

struction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

(Pub. L. 97–425, title I, §175, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330–240.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections

PART H—TRANSPORTATION

§10175. Transportation

(a) Packaging

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A of this subchapter or under part C of this subchapter except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter.

(c) Training for public safety officials

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

(Pub. L 97–425, title I, §180, as added Pub. L. 100–202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5061, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L 100–202 and Pub. L. 100–203 added identical sections

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10139, 10222 of this title.

§10191. Purpose

It is the purpose of this subchapter—

(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

(2) to authorize the Secretary, pursuant to this subchapter—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

(Pub. L. 97–425, title II, §211, Jan. 7, 1983, 96 Stat. 2245.)

§10192. Applicability

The provisions of this subchapter are subject to section 10107 of this title and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

(Pub. L. 97–425, title II, §212, Jan. 7, 1983, 96 Stat. 2245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10197 of this title.

§10193. Identification of sites

(a) Guidelines

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National

Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

(b) Site identification by Secretary

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a) of this section, the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a) of this section;

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period

(Pub. L. 97-425, title II, §213, Jan. 7, 1983, 96 Stat. 2245; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CHANGE OF NAME

"United States Geological Survey" substituted for "Geological Survey" in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10194, 10195, 10199 of this title.

§10194. Siting research and related activities

(a) In general

Not later than 30 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 10198 of this title. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in section 10198 of this title with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a) of this section—

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 10222 of this title for the disposal of such material.

(Pub. L. 97-425, title II, §214, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10197, 10198 of this title.

§ 10195. Test and evaluation facility siting review and reports

(a) Consultation and cooperation

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 10193 of this title shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term "process of consultation and cooperation" means a methodology—

(1) by which the Secretary—

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

(Pub. L. 97–425, title II, § 215, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§ 10196. Federal agency actions

(a) Cooperation and coordination

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under section 10221 of this title.

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or section 10221 of this title with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 97–425, title II, § 216, Jan. 7, 1983, 96 Stat. 2248.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10197. Research and development on disposal of high-level radioactive waste

(a) Purpose

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 10194 of this title, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

(1) to supplement and focus the repository site characterization process;

(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

(3) to provide a means of identifying, evaluating, and resolving potential repository li-

censing issues that could not be resolved during the siting research program conducted under section 10192 of this title;

(4) to validate, under actual conditions, the scientific models used in the design of a repository;

(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

(6) to supplement the siting data, the generic and specific geological characteristics developed under section 10194 of this title relating to isolating disposal materials in the physical environment of a repository;

(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

(8) to establish operating capability without exposing workers to excessive radiation.

(b) Design

The Secretary shall design each test and evaluation facility—

(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 10221 of this title, for purposes of—

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under section 10194 of this title and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,[1] for submission by the

[1] See References in Text note below

Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 10221 of this title; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 10225 of this title, the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 5842 of this title.

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a) of this section. Nothing in this subsection may be construed to limit siting research activities conducted under section 10194 of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) of this section determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

(Pub. L. 97-425, title II, §217, Jan. 7, 1983, 96 Stat. 2249.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e), is act Aug. 1, 1946, ch 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

This subchapter, referred to in subsec. (f)(1)(A), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title II of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§10198. Research and development on spent nuclear fuel

(a) Demonstration and cooperative programs

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 10194 of this title at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b) of this section, the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies. spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear. fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements

To carry out the programs described in subsection (a) of this section, the Secretary shall

enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

(c) Dry storage research and development

(1) The consultative and technical assistance referred to in subsection (b)(2) of this section may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 10155 of this title, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 10155 of this title. Such spent nuclear fuel shall not be subject to the provisions of section 10155(e) of this title.

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a) of this section, as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 10156 of this title.

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in section 10155 of this title shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

(Pub. L. 97–425, title II, §218, Jan. 7, 1983, 96 Stat. 2252; Pub. L. 103–437, §15(c)(10), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Subsec. (e)(1) Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10153, 10155, 10194 of this title.

§10199. Payments to States and Indian tribes

(a) Payments

Subject to subsection (b) of this section, the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 10195 of this title. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 10195 of this title with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed $3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 10197(h) of this title. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 10193 of this title, or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) of this section only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) of this section shall otherwise have discretion to use such pay-

ment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 10195 of this title. Annual payments shall be prorated on a 365-day basis to the specified dates.

(Pub. L. 97–425, title II, §219, Jan. 7, 1983, 96 Stat. 2253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§10200. Study of research and development needs for monitored retrievable storage proposal

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 10161(b) of this title with respect to a monitored retrievable storage facility.

(Pub. L. 97–425, title II, §220, Jan. 7, 1983, 96 Stat. 2254.)

§10201. Judicial review

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of section 10139 of this title.

(Pub. L. 97–425, title II, §221, Jan. 7, 1983, 96 Stat. 2254.)

§10202. Research on alternatives for permanent disposal of high-level radioactive waste

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

(Pub. L. 97–425, title II, §222, Jan. 7, 1983, 96 Stat. 2254.)

§10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal

(a) Statement of policy

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) "Non-nuclear weapon state" defined

For the purposes of this subsection,[1] the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C.[2] 438).

(f) Unauthorized actions

Nothing in this subsection[1] shall authorize the Department or the Commission to take any action not authorized under existing law.

(Pub. L. 97–425, title II, §223, Jan. 7, 1983, 96 Stat. 2254.)

REFERENCES IN TEXT

The Treaty on the Non-Proliferation of Nuclear Weapons, referred to in subsec. (e), is set out in 21 UST 483; TIAS 6839.

[1] So in original Probably should be "section"

[2] So in original Probably should be "UST".

§10204. Subseabed disposal

(a) Repealed. Pub. L. 104–66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716

(b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(Pub. L. 97–425, title II, §224, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5063, Dec. 22, 1987, 101 Stat. 1330–253; amended Pub. L. 104–66, title I, §1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105–245, title III, §309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853)

CODIFICATION

Pub L 100–202 and Pub. L 100–203 added identical sections.

AMENDMENTS

1998—Subsec (b)(1). Pub L 105–245 which directed the substitution of "Science" for "Energy Research", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec (b)(2). Pub. L. 105–245 substituted "Office of Science" for "Office of Energy Research".

1995—Subsec. (a). Pub. L. 104–66 struck out subsec. (a) which required Secretary of Energy to report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste

Subsec. (b)(5). Pub. L. 104–66 struck out par. (5) which read as follows: "The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office."

SUBCHAPTER III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

§10221. Mission plan

(a) Contents of mission plan

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under section 10132(a) of this title;

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent

nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price,

(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

(Pub. L. 97–425, title III, §301, Jan. 7, 1983, 96 Stat. 2255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10196, 10197 of this title.

§10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d) of this section.

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) of this section.[1] In paying such a fee, the person delivering

[1] See References in Text note below.

spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) of this section. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d) of this section, the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.[2]

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e) of this section, only for purposes of radioactive waste disposal activities under subchapters I and II of this chapter, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,[3] retrievable storage facility[4] or test and evaluation facility constructed under this chapter,

[2] See References in Text note below

[3] So in original. The comma probably should not appear

[4] So in original Probably should be followed by a comma

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,[3] retrievable storage site[4] or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,[3] retrievable storage site[4] or a test and evaluation facility site and necessary or incident to such repository, monitored,[3] retrievable storage facility[4] or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter[5] for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,[6] the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act[6] are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub L. 97-425, title III, §302, Jan. 7, 1983, 96 Stat. 2257.)

[5] See References in Text note below

[6] See References in Text note below

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a)(3), was in the original "subsection (c) 126(b)" and was translated as subsection (c) of this section as the probable intent of Congress in view of the establishment of the Nuclear Waste Fund by subsec. (c) of this section and the absence of a section 126 in Pub. L 97-425.

This subchapter, referred to in subsecs. (a)(5)(B), (d), and (e)(5), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title III of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

Such Act, referred to in subsec. (e)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 4th item on page 143 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 2214, 10101, 10107, 10138, 10161, 10193, 10194, 10251, 10269 of this title.

§ 10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97-425, title III, § 303, Jan. 7, 1983, 96 Stat. 2261.)

§ 10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Functions of Director

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

(Pub. L. 97-425, title III, § 304, Jan. 7, 1983, 96 Stat. 2261; Pub. L. 104-66, title I, § 1052(*l*), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section "

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec (c) of this section relating to annual submittal of report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 91 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7267, 10101 of this title.

§ 10225. Location of test and evaluation facility

(a) Report to Congress

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

(b) Procedures

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of respositories [1]

[1] So in original Probably should be "repositories"

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 10135 of this title.

(Pub. L. 97–425, title III, §305, Jan. 7, 1983, 96 Stat. 2262.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10197 of this title.

§10226. Nuclear Regulatory Commission training authorization

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

(Pub. L 97–425, title III, §306, Jan. 7, 1983, 96 Stat. 2262.)

SUBCHAPTER IV—NUCLEAR WASTE NEGOTIATOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10101, 10136 of this title.

§10241. "State" defined

For purposes of this subchapter, the term "State" means each of the several States and the District of Columbia.

(Pub. L. 97–425, title IV, §401, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 102–486, title VIII, §802(b), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub. L 102–486 substituted "several States and the District of Columbia " for "several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands."

§10242. Office of Nuclear Waste Negotiator

(a) Establishment

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) Nuclear Waste Negotiator

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(Pub. L. 97–425, title IV, §402, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–243; amended Pub. L. 100–507, §1, Oct. 18, 1988, 102 Stat. 2541.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–507 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator."

§10243. Duties of Negotiator

(a) Negotiations with potential hosts

(1) The Negotiator shall—

(A) seek to enter into negotiations on behalf of the United States, with—

(i) the Governor of any State in which a potential site is located; and

(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

(b) Consultation with affected States, subdivisions of States, and tribes

In addition to entering into negotiations under subsection (a) of this section, the Nego-

tiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(c) Consultation with other Federal agencies

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) of this section and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq) and any other law applicable to authorization of such construction.

(Pub. L. 97–425, title IV, §403, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (d)(4), is act Aug. 1, 1946, ch 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1982, referred to in subsec. (d)(4), probably means the Energy Reorganization Act of 1974, Pub. L 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10244, 10245, 10246 of this title.

§10244. Environmental assessment of sites

(a) In general

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) of this section shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) of this section and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) of this section shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a) of this section, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

(Pub. L. 97-425, title IV, § 404, as added Pub. L. 100-202, § 101(d) [title III], Dec 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-245.)

CODIFICATION

Pub. L. 100-202 and Pub. L 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10243 of this title

§ 10245. Site characterization; licensing

(a) Site characterization

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a) of this section, the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

(Pub. L. 97-425, title IV, § 405, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub L 100-202 and Pub. L 100-203 added identical sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10247 of this title.

§ 10246. Monitored retrievable storage

(a) Construction and operation

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

(Pub. L. 97-425, title IV, § 406, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub. L 100-202 and Pub. L. 100-203 added identical sections.

§ 10247. Environmental impact statement

(a) In general

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Preparation

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but

shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

(Pub. L. 97–425, title IV, §407, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–246.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91–190, Jan 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables

CODIFICATION

Pub. L. 100–202 and Pub. L 100–203 added identical sections

§10248. Administrative powers of Negotiator

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App).

(Pub. L. 97–425, title IV, §408, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec 22, 1987, 101 Stat. 1330–247.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (10), is Pub L. 92–463, Oct. 6, 1972, 86 Stat 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees

CODIFICATION

Pub. L 100–202 and Pub. L 100–203 added identical sections.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5

§10249. Cooperation of other departments and agencies

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.

(Pub. L. 97–425, title IV, §409, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

§10250. Termination of Office

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.

(Pub. L. 97–425, title IV, §410, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–247; amended Pub. L 102–486, title VIII, §802(a), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections.

AMENDMENTS

1992—Pub L. 102–486 substituted "7 years" for "5 years".

§10251. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title IV, §411, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330–248.)

CODIFICATION

Pub L 100–202 and Pub. L. 100–203 added identical sections.

SUBCHAPTER V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

§10261. Definitions

As used in this subchapter:

(1) The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term "Board" means the Nuclear Waste Technical Review Board established under section 10262 of this title

(Pub. L. 97-425, title V, §501, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§10262. Nuclear Waste Technical Review Board

(a) Establishment

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

(Pub. L. 97-425, title V, §502, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub L. 100-202 and Pub. L. 100-203 added identical sections.

CONTINUED BOARD SERVICE AFTER EXPIRATION OF TERM

Pub. L. 104-46, title V, §503, Nov. 13, 1995, 109 Stat. 419, provided that: "Without fiscal year limitation and notwithstanding section 502(b)(5) of the Nuclear Waste Policy Act, as amended [42 U.S C. 10262(b)(5)], or any other provision of law, a member of the Nuclear Waste Technical Review Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10261 of this title.

§10263. Functions

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(Pub. L. 97-425, title V, §503, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub. L 100-202 and Pub. L. 100-203 added identical sections

§10264. Investigatory powers

(a) Hearings

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

(Pub. L. 97-425, title V, §504, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub L 100-202 and Pub. L 100-203 added identical sections

§ 10265. Compensation of members

(a) In general

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.

(Pub. L. 97–425, title V, § 505, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections

§ 10266. Staff

(a) Clerical staff

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, § 506, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–249.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (a)(2) and (b)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100–202 and Pub L. 100–203 added identical sections

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L 101–509, set out in a note under section 5376 of Title 5.

§ 10267. Support services

(a) General services

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

(Pub. L. 97–425, title V, § 507, as added Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, § 5051, Dec. 22, 1987, 101 Stat. 1330–250.)

CODIFICATION

Pub. L 100–202 and Pub L. 100–203 added identical sections

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L 101–509, set out in a note under section 5376 of Title 5

§ 10268. Report

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The

first such report shall be submitted not later than 12 months after December 22, 1987.

(Pub. L. 97–425, title V, §508, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–250.)

CODIFICATION

Pub. L. 100–202 and Pub. L. 100–203 added identical sections

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to reporting to Congress 2 times per year, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 186 of House Document No. 103–7.

§ 10269. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97–425, title V, §509, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub. L 100–202 and Pub. L. 100–203 added identical sections

§ 10270. Termination of Board

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

(Pub. L. 97–425, title V, §510, as added Pub. L. 100–202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–121; Pub. L. 100–203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330–251.)

CODIFICATION

Pub L 100–202 and Pub L. 100–203 added identical sections

CHAPTER 109—WATER RESOURCES RESEARCH

§ 10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished; and[1]

(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources.

(Pub. L. 98–242, title I, §102, Mar. 22, 1984, 98 Stat. 97; Pub. L. 104–147, §1, May 24, 1996, 110 Stat. 1375.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–147, §1(1), inserted ", productivity of natural resources and agricultural systems," after "environmental quality".

Pars. (8), (9). Pub. L 104–147, §1(2)–(4), added pars. (8) and (9)

SHORT TITLE

Section 101 of Pub. L. 98–242 provided that "This Act [enacting this chapter, repealing sections 7801, 7802,

[1] So in original. The word "and" probably should not appear.

AKAKA, and WATKINS, Mrs. SMITH of Nebraska, and Messrs. ROBINSON, MYERS, LEWIS, and CONTE.

NUCLEAR WASTE POLICY ACT OF 1982

Mr. UDALL. Mr. Speaker, I move that the House resolve itself into the Committees of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3809) to provide for repositories for the disposal of high-level radioactive waste, transuranic waste, and spent nuclear fuel, to amend provisions of the Atomic Energy Act of 1954 relating to low-level waste, to modify the Price-Anderson provisions of the Atomic Energy Act of 1954 and certain other provisions pertaining to facility licensing and safety, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3809, with Mr. PANETTA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, November 29, 1982, the text of H.R. 7187 was considered as an original bill for the purpose of amendment.

Are there any further amendments which are made in order pursuant to the rule?

AMENDMENT OFFERED BY MR. LUNDINE

Mr. LUNDINE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Is the amendment in order under the rule?

Mr. LUNDINE. Yes, Mr. Chairman, it is.

The Clerk read as follows:

Amendment offered by Mr. LUNDINE: On page 66, strike lines 11 through 18.

On page 67, strike lines 1 through 10.

Beginning on page 72, strike sections 135, 136, and 137.

On page 94, strike lines 21 through 24.

On page 117, strike section 218(c)(2).

On page 118, strike section 218(e).

On page 138, line 6, strike the words, "under section 137(a)".

Redesignate sections accordingly.

Mr. LUNDINE. Mr. Chairman, my amendment would strike from this bill the provisions mandating 2,000 metric tons of Federal interim storage for utility spent fuel. At the outset of the debate on this amendment, I want to make clear that I am a supporter of this legislation and my efforts are not designed to endanger its passage. Neither do I put forward this amendment as someone opposed to nuclear energy. I support nuclear energy and regard it as a necessary energy source for our future economic well-being.

At the same time, after many years of study of the nuclear waste issue, I have concluded that a direct Federal role in the interim storage of utility spent fuel is both unnecessary and ill advised.

The provisions providing for Federal interim spent fuel storage are unnecessary for two basic reasons. First, the technology for storing spent fuel on an interim basis is well known and the utilities to date have had an excellent safety record in this regard. Therefore, there is no overriding health and safety reason the Federal Government must assume this responsibility.

Second, a Federal role cannot be justified on the basis of need. Estimates by the DOE of projected shortfall in utility storage have continued to be revised downward since 1977. When a Federal interim storage program was first proposed in 1977, DOE estimates of the need for surplus storage capacity were greatly overestimated. In 1977, DOE told the Congress that this program was needed to address an anticipated shortfall in utility spent fuel storage by 1983 of 1,700 metric tons, 5,700 metric tons by 1986, and 14,400 metric tons by 1990. In 1978, DOE issued an updated estimate which stated that only 560 metric tons of additional storage would be needed by 1983, and only 6,940 by 1990. In 1980, DOE revised its estimates even further downward to claim a need for only 377 metric tons of storage by 1983, 1,047 by 1986, and 3,277 by 1990. In 1981, in testimony before the Nuclear Regulatory Commission during the waste confidence rulemaking, the Department of Energy testified that a Federal interim storage program for utility spent fuel was no longer necessary. The most recent update from the DOE shows that the earliest date when utilities will need additional storage capacity is in 1986 when they estimate there will be a shortfall of 8 metric tons. Now, DOE only projects a shortfall in 1990 of 400 metric tons.

It is clear from these figures that the critical time period for spent fuel storage will be between 1986 and 1990. What is important to focus on is the fact that DOE's own recent estimates of 8 metric tons up to 400 metric tons does not take into account the potential contribution that new technologies such as rod consolidation and dry storage can make to resolving this modest shortfall. A recently completed plant-by-plant survey by the Nuclear Regulatory Commission of the near-term utility spent fuel storage problems points out that each of these utilities has available to it options to solve its problem. Transshipment, reracking, rod consolidation, utilization of dry storage technologies, and construction and development of additional pools are available.

In addition, DOE, OTA, and NRC have all recognized the potential cost advantage of rod consolidation and dry storage technologies over a centralized interim storage program. A recent report prepared for the DOE estimates that several different dry storage options could be available by 1986 and that they would cost less than centralized Federal storage.

The technology push aspect of this whole debate must not be overlooked. It is important that these new technologies be brought through the demonstration phase and to commercialization. For this reason, under my amendment the section of this bill which provides for an accelerated research and development program for these technologies is retained. It is also important to note that as part of this research and development program, the Federal Government would be permitted to take up to 300 metric tons of spent fuel from utilities for research purposes. Therefore, the research program itself provides a modest safety valve for a utility that might have a storage problem which cannot be resolved.

My amendment would also preserve provisions in the bill for expedited NRC licensing provisions for at reactor interim storage. These streamlined procedures at the NRC will insure timely action on licensing issues.

A recent memorandum from the Office of Technology Assessment which analyzed the pending legislation, I think summarizes my arguments very well:

DOE's most recent analysis of spent fuel storage needs indicates that the amount of emergency storage capacity needed could be quite small, provided that it is indeed limited to cases in which utilities are experiencing unavoidable delays in their good-faith efforts to provide their own storage, and does not serve as a relatively low cost, more convenient substitute for such storage. Specifically, DOE estimates that if applications for reracking of existing basins, and for transshipments to reactors that have additional storage capacity, are approved by the NRC in a timely manner, 400 metric tons of storage in new facilities would be needed through 1990 to ensure that every reactor maintains full core reserve. If this amount of storage in new facilities were made available, the 23 reactors expected to exhaust the maximum capacity of their existing basins by the end of 1990 would have time to construct and license a new water basin, a storage technology for which licensing should be quite easy. If the more flexible and less expensive dry storage technologies could be implemented sooner, which appears likely (particularly if DOE takes an active role in promoting their commercialization, as contemplated in these bills), this would further reduce—perhaps greatly—the need for any emergency backup storage capacity.

The OTA analysis goes on to make one other important point which I have not mentioned. They point out that the amount of spent fuel that the Department of Energy is going to need to acquire from utilities for test and

evaluation activities connected to permanent repository development under the bill could be considerably greater than 400 metric tons. After making this point, OTA states:

Thus the establishment of such a T&E program could render moot the question of whether a special federal last resort AFR storage program is needed at all—at least at this time.

For all of the above reasons, I believe a direct Federal role in interim storage of utility spent fuel is unnecessary. But, as I remarked earlier, it is also, in my opinion, ill advised for the following reasons.

First, too great a Federal involvement in interim storage of utility spent fuel is likely to detract from efforts to development of a permanent repository program. Development of permanent repositories must be our foremost goal.

Second, reliance on centralized Federal storage of utility spent fuel will lead to increased transportation of radioactive materials over our highways.

Third, I believe if a direct Federal role in storage of utility spent fuel is begun under this bill, it will really represent just the nose of the camel under the tent. In future years, once the program is established, we will undoubtedly see requests to increase the metric ton allotment of Federal storage. Once this Federal program is begun the inclination on the part of the utilities will be to avoid taking initiative to solve their own problems because they will be able to count on the feds coming to their rescue.

I urge you to support my amendment. The direct Federal role contained in the bill before us today for storage of utility spent fuel offers the utilities a convenient bailout from their problems. The problems can be solved by them with application of new technology and innovative approaches. The choice is yours and mine to make. Let us choose to establish a clear policy that identifies whose responsibility the interim storage of spent fuel is, and then get on with the business of development of a permanent solution to disposal of our radioactive wastes.

The CHAIRMAN. The time of the gentleman from New York (Mr. LUNDINE) has expired.

(On request of Mr. CORCORAN and by unanimous consent, Mr. LUNDINE was allowed to proceed for 3 additional minutes.)

□ 1245

Mr. LUNDINE. Second, you are authorizing the transportation of this spent fuel all over the United States. If you keep it at the reactor site until it has to go to the permanent repository, you cut down on the amount of transportation. Third, it will inhibit the utilities from taking the initiative on their own to solve their own problems.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield?

Mr. LUNDINE. I yield to the gentleman from Illinois.

Mr. CORCORAN. Mr. Chairman, I thank my good friend from New York for yielding, and I ask for this time in order to get some clarification with respect to his amendment. It is my understanding as I read the pending amendment that the effect of the amendment would be to delete section 135; is that correct?

Mr. LUNDINE. Yes.

Mr. CORCORAN. I wonder if the gentleman is aware of section 135, subsection (j), which applies to a concern I know that the gentleman has had with respect to his district. It is a concern that the gentleman from South Carolina (Mr. DERRICK) has had over the past several years with regard to his district, and of course, as the gentleman well knows, it is a concern that I have had for quite some time that also relates to my district.

The concern that I have with respect to section 135, subsection (j), is that—and I will quote for the benefit of my friend from New York and our colleagues the relative section here, because I think it goes to the heart of the problem that many of us have; that is, the concern about whether or not private away-from-reactor storage facilities would be vulnerable to a Federal takeover under this legislation. I quote:

(j) APPLICATION.—Notwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.

The concern I have is that the amendment would delete that particular prohibition. I just wonder if the gentleman is aware of that consequence of his amendment?

Mr. LUNDINE. I am well aware of it. Now, let me explain to the gentleman and others in the Committee that this is not a parochial amendment. The gentleman has correctly pointed out that West Valley, Morris, Ill., and Barnwell, S.C., have effectively been eliminated by the subsection the gentleman mentions, but I would point out to the gentleman that what this amendment does is, is to set aside any AFR program at a federally owned site or at a privately owned site. So, the gentleman's concern I think is obliterated by the purpose of the amendment, which is not to authorize an AFR program at either site, and I think that subsection is unnecessary.

The CHAIRMAN. The time of the gentleman from New York has again expired.

(At the request of Mr. CORCORAN and by unanimous consent, Mr. LUNDINE was allowed to proceed for 2 additional minutes.)

Mr. LUNDINE. So, I think there are two points to make. First, the situation the gentleman is concerned about has not been forgotten, and I have not forgotten West Valley in regard to this amendment, but to all the members of the Committee I want to assure them that there is nothing parochial about this. Second, I want to point out that I have an AFR in my district. I have been involved in the negotiations with utilities to take back some of their spent fuel, and if we go on and authorize an AFR, we might as well forget about the utilities taking any responsibility for it because they are going to try to get rid of as much as they can and then forget about it.

Mr. CORCORAN. I think the concern that some of us have is precisely this: If we do not have some sort of storage program for the accumulated spent fuel, then West Valley, Barnwell, and Morris, are more vulnerable than they otherwise would be not only to Federal takeover, but also to the prospect that they would be brought into the leasing arrangement, the acquisition arrangement, whereby under emergency circumstances, not in the deliberation that we have enjoyed for the past several months—in fact, all of this particular Congress—in trying to construct a reasonable compromise to deal with the problem, but under emergency circumstances to preclude the shutdown of a powerplant because of a lack of storage that those particular sites in Morris, in West Valley, and Barnwell would be in fact the subject of emergency legislation to authoring a takeover by the Federal Government.

Mr. LUNDINE. Just to answer the gentleman, earlier in this debate the gentleman from Arizona said to somebody else, "Trust me." I am sure I would be asking the gentleman in this respect. I am well aware of the gentleman's concern. I share that concern, and I know the gentleman from South Carolina does also, but what we are doing here, and I think the gentleman can trust what we are doing, is, we are eliminating congressional intent to establish an AFR program at any site, and I would point out to the gentleman that with Federal spent fuel research and development activities, and with the need for radioactive materials for the T&E facility, there will be plenty of capability to relieve an emergency.

The CHAIRMAN. The time of the gentleman from New York has again expired.

(At the request of Mr. CORCORAN and by unanimous consent, Mr. LUNDINE was allowed to proceed for 2 additional minutes.)

Mr. LUNDINE. As I pointed out in my original statement, there are 300

metric tons in here for spent fuel research and development purposes. There is a test and evaluation facility. If a utility, having exhausted every option at its disposal—transshipment, building a new dry storage capacity at its reactor, or building a new pool at the site of the reactor—if every other option is exhausted there is plenty of capacity within this bill for the Department of Energy to use its research means to meet that crisis situation.

Mr. CORCORAN. Will the gentleman yield further?

Mr. LUNDINE. Certainly.

Mr. CORCORAN. The gentleman asked the gentleman from Illinois and the gentleman from South Carolina and the Members of the Committee of the Whole to trust him. I can understand why from his position it is easier than it might be for us to ask for trust. The point is, of course, that the West Valley site in no way would really be targeted because of the research project on solidifying high-level liquid waste that is taking place there. Therefore you could not combine an AFR program at the same site as that R&D project as a practical matter.

Mr. LUNDINE. I have to ask for my time back. I disagree with the gentleman. West Valley is there; there is a pool there; it is an AFR today. If we were looking for quick storage capacity in America today, it would not go to Barnwell; it would not go to Morris; it would go to West Valley. So, I think I am taking a greater risk than anybody in this House if the gentleman's fears should be the operative concern. But, I am confident that that will not occur because I am confident that our interim storage needs will be and can be met at the sites of reactors, and with our research program.

I thank the gentleman for his interest and his concern. I urge the adoption of the amendment. I hope that all of the Members of the Committee will understand that this is not from a parochial point of view, but it is from the point of view of somebody who has lived with an AFR in his district and seen how these matters operate.

Mr. CHAIRMAN. The time of the gentleman from New York has again expired.

(At the request of Mr. WEISS and by unanimous consent, Mr. LUNDINE was allowed to proceed for 2 additional minutes.)

Mr. WEISS. Mr. Chairman, will the gentleman yield to me?

Mr. LUNDINE. I yield to the gentleman from New York.

Mr. WEISS. Mr. Chairman, I urge my colleagues to support Representative LUNDINE's amendment to eliminate provisions for away-from-reactor interim storage of spent nuclear fuel.

Many problems would be created by establishing interim storage sites, but perhaps the most dangerous is that it would encourage utilities to ship their spent fuel to temporary facilities. In fact, according to some projections, there could be more than 6,000 truckloads of spent fuel shipped annually from nuclear plants to storage facilities by the year 2000.

The potential for disaster created by this increase in handling and transporting nuclear fuel is enormous. Millions of lives could be endangered should an accident occur in a densely populated area such as New York City. If the thought of shipping nuclear fuel through the streets of New York is unthinkable to anyone who has attempted to drive those streets, consider that the State of New York has already battled with the Federal Government over regulations that would allow hazardous shipments through the city.

From our experience in New York, we have learned that Federal legislation on nuclear waste disposal must include as a fundamental principle the protection of public health. The nuclear industry has been promoting a Federal AFR program so that they will be absolved of the responsibility of storing spent nuclear fuel. But it is their responsibility, not that of the taxpayers who should not have to bear the cost and the danger of time bombs rumbling through their neighborhoods.

We must speak for the local communities which will be responsible ultimately for the health and welfare of their citizens, should a transportation accident occur.

In a draft study, the National Academy of Sciences has characterized the Federal plan for regulating radioactive transport as primitive. The Academy predicts that serious impasses will occur between State and local officials if localities are not offered a stronger say in regulating fuel shipments through their areas.

Without a dramatic shift in the Federal policy toward transportation of hazardous wastes, the probability of serious accidents is bound to increase. That shift begins with the passage of the Lundine amendment.

Mr. LUNDINE. I thank the gentleman, and I think he raises a very good point. For those Members who are not that familiar with the situation, the question is. Are you going to keep the spent fuel rods at the end of the nuclear generating process at the site of the reactor, or are you going to ship them all over the country to various away-from-reactor storage sites, thereby incurring possible danger? I thank the gentleman for his contribution, and I urge the adoption of the amendment.

Mr. LUJAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think the thing we need to remember that we are providing for in the legislation is a last resort interim storage facility. I emphasize, the last resort facility, because none of us want to get into the situation where because we do have interim storage facilities, that it would delay the construction of a repository site.

The reason that we put this in here is because we have all kinds of testimony and information about reactors that are getting full. The capacity for the spent fuel rods is being exhausted. We have information that by 1989 or 1990 that we will have some 39 reactors where they will not have the capacity at the sites.

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. Certainly.

Mr. FUQUA. Mr. Chairman, I appreciate the gentleman yielding, and I wish to amplify on the gentleman's remarks. Many of the operating reactors now are approaching capacity for storage of spent fuel rods, and there is a need which is further exacerbated by the fact that we as a Congress and the the Government have not moved forward with some type of permanent disposal for high-level waste. This is not the fault of the utilities; it is the fault of Congress and the fault of the Government. That is why this AFR is needed as an interim method.

Hopefully, we will not have to use it, but should there be some type of delay, legitimate or not, in construction of the permanent facility, at least we have some means whereby we can give relief to many of the reactors.

I know the gentleman pointed out that some 38 reactors are approaching capacity at this time, and that is why this amendment should be defeated.

Mr. LUJAN. That is exactly correct, and let me continue on.

What happens if the reactor site is full and we do not have the repository ready? The only alternative, of course, is either to ship it off to some other reactor site, which makes the problem even worse, or that we shut down the reactor completely. We have been very careful to specify that it would be only at existing Federal sites, so that any Member does not have to worry about whether or not a new interim storage facility is going to come into his district.

Mr. LUNDINE. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. I will in a minute, because I want to make a point to the author of the amendment; that in his own home State of New York, for example, there are three reactors that are presently facing that problem. The Power Authority of the State of New York has one called the J. A. Fitzpatrick, Unit Three at Indian Point; and one at Rochester Gas & Electric has one, so even in his own State we face this same problem of having to shut down a reactor because we do not have any place to take the spent fuel rods.

If the final repository is not ready, I agree with the gentleman, we would

not want to delay the repository, but we have to be careful that we do have some contingency plan in the event that the repository slows down and there is not any room for the spent fuel rods.

Now, I yield to the gentleman from New York.

Mr. LUNDINE. I thank the gentleman. Strictly on the point of how much capacity is needed, does the gentleman accept the Department of Energy, June 1982, report that indicates that with transshipment there is only a need for 8 metric tons by 1986, and for 400 metric tons by 1990, and that we do not get up to the 1,700 metric tons here authorized until after the year 1993?

Mr. LUJAN. I will tell the gentleman that, as he knows, in drafting legislation one just comes up with some figures. I am not totally certain 1,900 metric tons is the answer to all the problems. I will just tell the gentleman that there were some who wanted more and there were some who wanted less, and we just compromised at a figure of 1,900.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. I yield.

Mr. CORCORAN. Mr. Chairman, I want to thank my friend from New Mexico for yielding. Of course, we can look at what the Department of Energy has to say on this question and interpret its recommendation as we want.

Mr. CORCORAN. However, Mr. Chairman, one of the other Federal agencies that has evaluated this problem of need, which is a crucial element in this whole debate, has been the agency with responsibility for the regulation of the nuclear industry and, particularly, of course, the utilities that are using nuclear power on a commercial basis, and that is the U.S. Nuclear Regulatory Commission. Perhaps it is coincidental, but their report is dated June 1982, and this is based on the assumption, which is, I believe, the compelling assumption that all the committees of the House have used, Mr. Chairman, in trying to determine just what the magnitude of the need is, and that is that the final repository will not be coming on line until sometime between 1998 and the year 2000, probably closer to the end of that timeframe.

Now, the gentleman from New York (Mr. LUNDINE) has already said that even the DOE report indicates that the problem becomes one of constipation, shall we say, in 1983. What we are dealing with here is a timeframe around the turn of the century.

If we look at the NRC report, what that shows is that the following utilities—and I will not take the time of the House to read the names of all these utilities—will be in trouble long before 1998 and the year 2000—and I will read just a few of them—

Alabama Power & Light, 1992; Arkansas Power & Light, 1987; Boston Edison Co., 1994; Commonwealth Edison Co. of Chicago, 1989; and Florida Power & Light, 1987.

So what we are saying is that the need will arise long before the final repository becomes operational, and that is why section 135 ought to be protected as is and that is why the Lundine amendment ought to be rejected.

The CHAIRMAN. The time of the gentleman from New Mexico (Mr. LUJAN) has again expired.

(On request of Mr. CORCORAN and by unanimous consent, Mr. LUJAN was allowed to proceed for 2 additional minutes.)

Mr. LUJAN. Mr. Chairman, let me tell the gentleman that he is absolutely correct on the list of power companies that he read.

Mr. CORCORAN. Mr. Chairman, if the gentleman will yield, is this the gentleman from Illinois to whom he is making reference?

Mr. LUJAN. Yes. I am sorry.

Mr. Chairman, if we total those up, the NRC has suggested that by the year 1990—now, that is just 8 years away—by the year 1990 we will have a shortfall of roughly 2,800 metric tons storage capacity at reactor site, and we are only authorizing 1,900 metric tons as a very last resort.

Mr. LUNDINE. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. I yield to the gentleman from New York.

Mr. LUNDINE. Mr. Chairman, let me ask the gentleman, is it not true that the NRC has also said that these figures assume no transshipment between pools owned by the same utility and they assume no dry storage technology, which the NRC is pushing itself to try to implement in developing these numbers?

Mr. LUJAN. Mr. Chairman, here is what I have found: Even allowing for construction of additional reactor site cooling ponds and for reracking of the spent fuel, shortfalls in reactor storage capacity are anticipated. This analysis shows a shortfall in spent fuel capacity of roughly 2,800 metric tons by 1990.

I have always found that anytime we get into a discussion of some kind and we want to quote figures, or anybody does—DOE or NRC or EPA or any governmental agency—we can always find some figure to justify what we are trying to sell. In this particular case—and I am being honest about it—we compromised at 1,900 because some wanted more and some wanted less, and, frankly, that is the only way we could come up with an acceptable figure.

I reiterate that this is simply a last resort interim storage facility, and that we will need it. There is no question in my mind that such a facility would be needed, and we would be foolish in stripping this figure from the bill.

Mr. BROYHILL. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, as the debate on this amendment, which I oppose, moves on, I think we should not lose sight of the purposes of this bill, and I would like to make a very quick walkthrough of what we are trying to do with respect to this bill and point out why this amendment does not make sense when we take a look at it in that way.

The major purpose of this bill is to come up with the selection of a final permanent repository, a resting place for spent nuclear fuel. Under the terms of the bill the timetable calls for a selection by 1987. There is a possibility of an extension for a year, but at the latest that selection would occur in 1988.

As has already been mentioned in this debate, the Department of Energy estimates that the completion of that final repository may take as much as 10 years or more so that the repository would not be available for the introduction of spent fuel until 1998 or later, and if it is like most things around here, it could be up into the year 2000 or beyond.

Now, what do we do to take care of the spent fuel problems that will occur and are occurring in nuclear generating plants all across the country between now and the year 2000?

Well, another purpose of the bill is this: Section 131, starting on page 65, and continuing through sections 132, 133, and 134, provides for expedited consideration of applications for expansion of onsite storage of these spent fuels, and certainly there is a crying need for these expedited procedures. Generally speaking, I would say there is agreement that these expedited procedures for the licensing of these onsite facilities are needed, and if there is no final resting place by 1998, obviously there is going to have to be some consideration for the expansion of onsite storage.

Now, there are going to be certain delays. We have seen this happen in the past. There are going to be regulatory delays and other delays, and there are those of us who feel there should be a safety valve program written in here. That is why in section 135, on page 72, we provide for a very small amount of storage capability, the storage of 1,900 metric tons at present Federal facilities. We are not talking about the construction of new facilities; we are talking about the possibility of storage at present Federal facili-

ties that are handling or storing defense waste.

Now, this 1,900 metric tons amounts to about 3 percent of the spent fuel that will be generated between now and the year 2000, and this ability or this storage capacity cannot be used unless there are certain findings that are made by the NRC, the Nuclear Regulatory Commission. On page 74, we see listed those findings that must be made by the NRC before a utility has access to these Federal facilities, and that is why they have to show that the storage capacity cannot be reasonably provided at their facilities, either onsite or at another nuclear facility that they own, and that they have been pursuing and are diligently pursuing licensing alternatives. If they show to the satisfaction of the NRC that they have been diligently pursuing licensing alternatives and they show they cannot reasonably provide that storage capacity in their own system, then they would have access to these Federal facilities, and only then.

So, as we can see, this is not an automatic right to these Federal facilities; it is only a safety valve in case it is needed.

Otherwise the particular generating plant would have to close down, and, of course, it is not in the public interest to cause that kind of dislocation that could occur.

Mr. Chairman, I urge defeat of the amendment.

Mr. Chairman, I do not have time now to enumerate all the various utilities around the country that are projected to lose their full-core reserve by the late 1980's or the 1990's. However, I think the Members should have this information, so I am including for the record the following table:

NRC STUDY—JUNE 1982, UTILITIES NEEDING AN "AFR" BY 1990

TABLE 2.—UTILITIES AND REACTORS WITH PROJECTED LOSS OF FULL-CORE RESERVE PRIOR TO 1990

Utility and reactor	Loss of on-site storage capacity	
	Year projected to lose FCR	Year projected to lose discharge capability
Alabama Power Co., J. Farley 1	1990	1992
Arkansas Power & Light Co..		
Arkansas Nuclear 1	1984	1987
Arkansas Nuclear 2	1985	1989
Boston Edison Co. Pilgrim 1	1989	1994
Carolina Power & Light Co.		
Brunswick 1	1983	1987
Brunswick 2	1983	1987
Robinson 2	[1] 1986	1989
Cincinnati Gas & Electric Co., Zimmer 1	1987	1991
Commonwealth Edison Co..		
LaSalle 1	1987	1989
LaSalle 2	1987	1989
Consumers Power Co. Palisades	1986	1989
Dairyland Power Co. LaCrosse	1990	1993
Duke Power Co..		
McGuire 1	1990	1993
McGuire 2	1990	1993
Oconee 1	1986	1988
Oconee 2	1986	1988
Oconee 3	1986	1988
Florida Power & Light Co.		
St. Lucie 1	1984	1987
St. Lucie 2	1989	1992
Turkey Point 3	1987	1989
Turkey Point 4	1987	1989
General Public Utilities, Oyster Creek	1986	1990
Northeast Nuclear Energy Co..		
Millstone 1	1985	1989
Millstone 2	1984	1987
Northern States Power Co. Monticello	1989	1992
Omaha Public Power District, Fort Calhoun	1985	1988
Power Authority of State of New York.		
J. A. Fitzpatrick	1988	1992
Indian Point 3	1990	1993
Philadelphia Electric Co..		
Peach Bottom 2	1987	1990
Peach Bottom 3	1987	1990
Portland General Electric Co., Trojan	1985	1988
Rochester Gas & Electric Corp., R. E. Ginna	1988	1992
Sacramento Municipal Utility District, Rancho Seco	1986	1989
Southern California Edison Co. San Onofre 1	1982	1984
Virginia Electric & Power Co..		
North Anna 1	1988	1989
North Anna 2	1988	1989
Surry 1	1984	1986
Surry 2	1984	1986
Vermont Yankee Nuclear Power Co. Vermont Yankee	1988	1991

[1] Projection made on basis that pending application of reracking is approved.

Reference: NUREG/CR-2704, June 1982

Mr. UDALL. Mr. Chairman, we have 19 amendments pending, and I had hoped that we could move along toward the conclusion of this bill. Therefore, I ask unanimous consent that all debate on the pending amendment cease at 1:25 p.m.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. MARKEY. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mrs. SCHNEIDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York. I think most of us are united in favoring a comprehensive nuclear waste policy, and it is obvious that the leadership of the Commerce, Interior, and Science Committees have worked very hard to put together a compromise bill. The gentleman's amendment strengthens the legislation by concentrating Federal resources on our main purpose—the establishment of a deep, geological repository for the safe, permanent storage of nuclear waste. The temporary, away-from-reactor storage provided in the bill is an unnecessary distraction from the goal, and should be eliminated.

Members may want to keep three points in mind when considering this amendment. First, the Department of Energy's estimates as to the amount of away-from-reactor storage utilities will need has been continually revised downward over the past 5 years. It now appears that improved storage methods at the site of existing reactors are a cheaper and more effective alternative than setting up separate, temporary facilities to hold spent fuel rods until a permanent repository can be established.

Second, the creation of AFR sites could double the hazards associated with transporting radioactive materials, as these would have to be moved first to temporary storage and then, theoretically at least, to their final resting place in a permanent repository. I think most of our constituents would prefer that we keep the circulation of nuclear waste on our Nation's highways and railroads to a minimum.

Third, the language in the bill charges the utilities a one-time fee to finance AFR's. That leaves the taxpayers responsible for footing the bill for any cost overruns. Given the Department of Energy's rather poor track record in managing similar contractual arrangements, it seems unwise to give DOE a blank check to cover costs that private industry ought to absorb. While the safe disposal of nuclear waste is a public problem, the responsibility for financing the solution must rest with private industry.

The nuclear waste bill that we enact should preserve an important principle—it should avoid halfway measures and move us directly toward our primary goal, which is to provide for the permanent, safe storage of nuclear waste. Temporary, away-from-reactor storage sites just do not measure up to this principle. I urge my colleagues to vote for this amendment.

Mr. WIRTH. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, first let me say that I want to associate myself with the remarks of the gentlewoman from Rhode Island, Mrs. SCHNEIDER, on the costs of this provision. I think we ought to be aware that what we are assuming here involves significant further costs to the taxpayer. Through its long history, nuclear power in this country has been subsidized over and over and over again by the taxpayer, and this is another example.

Second, what we are doing with this provision is opening up the possibility for some very, very significant further involvement by the Federal Government.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield?

Mr. WIRTH. Let me complete my statement, and then I will be happy to yield if I have time.

Mr. CORCORAN. Mr. Chairman, I thank the gentleman.

Mr. WIRTH. Mr. Chairman, as I was saying, the second issue we have here is opening up a large new area for Federal involvement with nuclear power,

in that away-from-reactor storage raises the possibility of the Federal Government taking all kinds of responsibilities that should be carried by the private sector. We have heard an enormous amount of discussion over the last 2 years about the private sector's assuming its responsibilities and limiting the responsibility of the Federal Government, and here we are, in a very bizarre fashion, doing precisely the opposite, opening up a very large box—away-from-reactor storage—into which the private sector is going to run with a series of problems that are created by nuclear power.

Third, I would point out to my colleagues the language on page 72 of H.R. 7187, from line 16 on. In developing away-from-reactor storage, what are we allowing to happen?

First, the away-from-reactor storage facilities—and this is lines 16 through 19—are exempt from the Nuclear Regulatory Commission's licensing procedure. Why is that? Why is there an exemption from the licensing procedure? What are we going to say in this language they are going to get away with?

According to line 20 through line 2 on page 73, no environmental impact statement is required in the development of away-from-reactor storage capability.

□ 1315

Why is that? Why is there no Nuclear Regulatory Commission licensing as there are for other facilities, and why no environmental impact statement? It does not make any sense.

Something is wrong when, one, we are saying the Federal Government is going to get into this new operation but is getting into it without the kind of licensing procedure and environmental impact statement that is required for every other major endeavor that is embarked upon by the public sector or the private sector.

To further compound the problem, if we get into section d on page 73, the bill authorizes the Department of Energy to construct storage capacity on any other site, at any other nuclear reactor site, again without an EIS, again without licensing. It just does not make any sense.

I think the gentleman from New York has offered an amendment that is rational, that says in summary that clearly there is a problem in terms of storage. But as the gentleman has pointed out, let us push the technology, let us leave that responsibility in the private sector. Let us not have the taxpayer assume the burden, as the gentlewoman from Rhode Island was pointing out. Let us not develop a whole series of new responsibilities for the Federal Government, and let us maintain the process of licensing under the Nuclear Regulatory Commission and maintain the very, very important process of the environmental impact statement required under NEPA.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield for purposes of clarification at this point?

Mr. MARKEY. Am I going to be doing the clarification, or the gentleman?

Mr. CORCORAN. I am going to try to clarify the financing issue discussed by Mr. WIRTH of Colorado.

Mr. MARKEY. I yield to the gentleman.

Mr. CORCORAN. I thank the gentleman very much for yielding. On the question of financing the interim storage fund, our good friend from Colorado (Mr. WIRTH) indicated that the taxpayers would have to finance it. As the gentleman from Massachusetts well knows, section 137 of the bill dealing with the interim storage fund makes it clear that the generators of the waste will have to finance the program.

Mr. MARKEY. I thank the gentleman for that clarification.

Of course the generators of the wastes will then dun their ratepayers and as far as the ratepayer is concerned it is very easy for him to take off his taxpayer hat and put on his ratepaying hat and in the wash sometimes it seems very difficult for him to differentiate between one hand or the other in the pocket.

The problem here is this: The utilities want an away-from-reactor storage program. That is priority No. 1. A permanent waste bill is something which is desirable, something that might take place in 1995 or the year 2005. But that is a secondary consideration.

We have all of this waste building up at our existing reactors and it is so critical for us to say to the utilities that we get away-from-reactor storage capacity.

Why is that? The problem is this: The utilities do not want to build any more storage capacity onsite. When a nuclear powerplant is licensed you have one building that has the reactor generating all of the electricity. The fuel rods in that building, when they wear out, when they cannot produce any more electricity, are put in a building right next door in a swimming pool, where they are going to be held until a permanent waste repository can be constructed in this country.

The waste will then be put on trucks and transported to the permanent repository.

What the utilities are saying is rather than having us, as our waste builds up onsite, build an additional swimming pool next to the existing one, we want it to be put in another place maybe 500 miles away or maybe 1,000 miles away. Put the nuclear waste on the highway and drive it to an away-from-reactor storage facility. Then in 15 or 20 years when the permanent nuclear repository is constructed, then take it from the AFR and put it in the permanent repository.

Here is the problem: We will never have a permanent repository if the utilities do not have a need for one. If we take the problem the utilities now have of getting their wastes off of their own premises, then the pressure which will be applied to deal with the problem of permanent waste disposal will be alleviated. As a result, all of the political consensus which wraps around this bill today will be somewhat mitigated since the key party to having a permanent repository will now have its problems somewhat pushed back in time into the indefinite future.

What we have to do is to say to the utilities: "Why don't you make applications for additional storage capacity onsite; why don't you make application to go to dry cask technology of nuclear wastes onsite; why don't you make requests for transshipment between your own utilities in a very small local area and try to minimize the amount of travel of this nuclear waste?"

For every nuclear powerplant in this country, every 1,000 megawatts, it means about 40 to 60 truck shipments per year of nuclear waste on the highways heading toward this away-from-reactor facility.

We do not have any need for an away-from-reactor facility. We do not have any problem with telling the utilities to build additional storage capacity onsite.

Diablo Canyon, Pilgrim, Three-Mile Island, Seabrook, Florida Power & Light, North Carolina Power & Light, no matter where you come from, we will help you expedite through the Department of Energy, through the Nuclear Regulatory Commission, a process that makes it possible for you to take care of your own problems.

It is not the job of the Federal Government to bail out the private sector. It is not our job to put together a program that ought to be put together by the private sector or the self-help program for a problem which the utilities have created and for which they have the facilities and the capacity to deal with themselves.

We are talking about the Federal Government injecting itself into an area of the private sector that it has no business being in until there is a permanent repository which is a legitimate Federal responsibility. There is no role for the Federal Government in bailing out the utilities for the short term.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. MARKEY) has expired.

(At the request of Mr. MARRIOTT and by unanimous consent Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. MARRIOTT. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield.

Mr. MARRIOTT. My friend knows I share his concerns about getting a permanent repository and doing it properly.

Let me ask this question. The gentleman brings up the point that the existing reactors now have the capability of storing all of the spent fuel without going to AFR's. Does the gentleman believe that they would have little difficulty getting licensing, No. 1 from the NRC to do that and does he believe that the storing in these reactors, some of which are very close to large population areas, would be as safe in the long run as transferring them to some AFR?

Does the gentleman have reactors in his district? Would the gentleman's people sign off on increasing the storage capacity at the reactor? Do they feel no problems with that possibility?

Mr. MARKEY. This is a Republican administration. The Republican administration is in office on the pledge that it is going to try to cut redtape, reduce and minimize bureaucratic interference with private sectors activities. If between you and I, Nunzio Palladino, Don Hodel, and Ronald Reagan we cannot put together a program which expedites the construction of additional onsite capacity for our nuclear power facilities, then there is something terribly wrong.

Second, 30 percent of the electricity in New England, and in my district, is generated from nuclear power. My district would much prefer to keep the wastes onsite until there is a permanent repository and then once put it on the highways and take it through the distict.

Let me tell the gentleman something else. We are all deluding ourselves if we believe this stuff is going to be put on the highways and we are not going to see the granola crowd and some ponytail crowd out there protesting. This is going to be like the nuclear freeze movement. There are going to be middle-class mothers and fathers out in the middle of the highway saying "What are you doing putting nuclear wastes on our highways when you do not have any reason to do so?"

I do not think we have any idea of the political volatility of this issue.

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. MARKEY) has again expired.

(At the request of Mr. MARRIOTT and by unanimous consent Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. LUNDINE. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from New York briefly.

Mr. LUNDINE. I think the whole idea of the technology push that the gentleman has alluded to operates here, too.

It has been the Nuclear Regulatory Commission that has been encouraging the utilities to adopt dry storage on top.

TVA is proving this can be done. We are not talking about some technology that is in the far distant future, nor are we talking about a regulatory agency that in any way is hostile to what the gentleman has suggested should occur.

Mr. MARKEY. If I may reclaim my time, there has never been in the history of this country one utility that has asked for permission to expand its onsite capacity. Utilities have reracked. They have tried to use to the best of their ability the space available in the existing water cooling area. But they have never asked to build additional facilities.

There is something wrong with that and what is wrong with it is clearly the need for the utility industry to come to big sugar daddy, to come to the big Federal Government and say "You build them for us; you figure out how to solve the problem because we do not want to do it. We promised you, we promised the people when we built these nuclear powerplants in their area that we would take care of the problem. But now Federal Government, you do it instead."

But now when push comes to shove they want you, big daddy, to pick up the bill, and I do not think we ought to do it.

Mr. LUJAN. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from New Mexico.

Mr. LUJAN. I think the gentleman is mistaken in his statement. He continually says that the Federal Government is going to pay for all these things. The bill provides that the users, the utilities are the ones that are going to have to pay for it.

The gentleman says well, then, they will just pass it on to the ratepayers.

The alternative is that the Federal Government pick up the tab. I guess that is what the gentleman is advocating, that the Federal Government pick up the tab instead of the utilities picking up the tab. I really cannot understand what side the gentleman is on.

Mr. MARKEY. Let me reclaim my time.

The gentleman from New Mexico makes a mistake in leaving the impression on his listeners that the cost is the same whether you put it off site or you put it on site. In fact, it costs twice as much to put it offsite in an AFR as it does to put it onsite; that is, the taxpayer/ratepayer, depending on the hat, gets stuck with the bill.

Mr. MARRIOTT. Mr. Chairman, I move to strike the requisite number of words.

Could I enter into a colloquy with the author of the amendment because I think it is an important issue to discuss. Does not the present bill require the utilities to try to expand onsite storage before they apply for AFR's?

Mr. LUNDINE. Will the gentleman yield?

Mr. MARRIOTT. I yield to the gentleman.

Mr. LUNDINE. Yes.

Mr. MARRIOTT. Then I do not understand what the problem is. If we have enough capacity to store 1,900 or 2,800 metric tons at the present reactor site then what is the controversy?

We have then only to go to AFR's if in fact it was necessary and the reactors could make that point.

No. 2, the State still has a veto on that, do they not, that requires a two-House congressional override?

So I do not understand if those two things are in place why we need this amendment.

Mr. LUNDINE. If the gentleman will yield, the problem is you are creating a presumption that there is a need for a Federal facility if this amendment is rejected and all you have is a regulatory proceeding to determine whether or not the utility is making the efforts that they can.

Third, you do not have to consider any new technology. We are just at a breakthrough point that if we relieve this and we provide that the answer to this is away-from-reactor storage pools, we will see the development of dry storage and other new technologies for at-reactor-site disposition or interim storage absolutely grind to a halt.

Believe me, I have seen it. I have seen it where they have it in a pool and as soon as you say you do not have any permanent right to keep it here, they say take us to court.

The push is not toward solving the problem where it is. The push will be to get rid of it and the gentleman is entirely correct; the only protection we have is that the NRC, as the gentleman from New Mexico correctly pointed out, does have these three criteria before they can authorize an AFR.

Mr. MARRIOTT. If I could make one other point, if in fact we put it at the reactor and we do not have an AFR, it seems to me that might expedite the permanent repository process

Mr. LUNDINE. Exactly.

Mr. MARRIOTT. Which may not be good. That is, we may not be ready yet in the next year or year after to say how we are going to store this stuff on a permanent basis and you may well

be forcing us to make some decision we do not want to make.

Mr. LUNDINE. If the gentleman will yield on that point, I agree with the Reagan administration and with this Department of Energy that it is absolutely imperative that we accelerate the final repository, the final disposition. We have delayed in this country for 30 years the development of a repository. I think the gentleman's analysis is correct.

Mr. MARRIOTT. If I could reclaim my time, the point I want to make is when you go out to a western State where you have underground water table problems, salt problems, proximity to national parks, you do not make those decisions overnight. I do not want to be put in the position where they are going to ramrod something down our throat because we are forced to because we have no AFR's.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield?

Mr. MARRIOTT. I am happy to yield to my friend.

Mr. CORCORAN. I thank my friend from Utah for yielding because one of the issues here is whether or not with the adoption of the Lundine amendment the pressure and the authority would be in the legislation to require the Nuclear Regulatory Commission to make certain that the utilities have exhausted all of the other remedies before going to the last resort.

□ 1330

One of the unfortunate consequences, Mr. Chairman, of the Lundine amendment is that it strikes out section 135, subsection (i), which requires that the NRC issue the guidelines and implement requirements so that the utilities in fact exhaust all of these other technologies, exhaust all of the other steps, to make certain that they solve their problems themselves.

Mr. MARRIOTT. Mr. Chairman, I would just like to say that I applaud what is trying to be done by removing the AFR's, but I think it causes more potential damage than it does good.

Mr. LUNDINE. Mr. Chairman, will the gentleman yield?

Mr. MARRIOTT. I yield to the gentleman from New York.

Mr. LUNDINE. Mr. Chairman, the whole point I have tried to make to the gentleman from Illinois is that this amendment eliminates the entire AFR section, and if there is no authorization for an AFR, then there is no reason to limit it to Federal sites and there is no reason to have NRC criteria. The purpose of this amendment is to try to solve the problem on site, not at away-from-reactor storage sites.

Mr. MARRIOTT. I would just simply conclude, if I have any time left, to say that I think the amendment is a bad one. The present bill provides reasonable stopgaps. I would urge that we support the bill.

Ms. FERRARO. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, the amendment before us really might be referred to as a prime purpose amendment. By that I mean that the amendment will help to preserve the prime purpose of the legislation before us.

It is generally understood that this bill is designed to move the nuclear power industry toward a permanent repository for spent fuel. Yet one provision of the bill would establish what the industry has referred to as a "last resort" option—a federally supplied interim storage facility with a capacity of 1,700 metric tons of spent fuel from civilian reactors.

As the gentleman from New York (Mr. LUNDINE) has made clear, such a facility is very likely to become one of first reliance for the industry rather than last resort. Given the alternatives of expanding their own onsite storage capacity or taking advantage of a ready made Federal facility, utilities are sure to take the easiest and cheapest course.

The amendment before us would eliminate the requirement for a Federal interim storage capacity. At the same time, the amendment leaves in the bill the provisions which accelerate Federal research, development, and demonstration programs for cost-effective technologies for storing spent fuel onsite. It would also expedite NRC licensing of onsite storage capacity.

The proposed interim storage facility has been justified as necessary to avoid a crunch in existing storage space. The fact is, however, that estimates of needed storage capacity have steadily been revised downward in recent years. While the Department of Energy estimated in 1977 that 1,700 metric tons of interim storage would be required by 1983, the latest Department estimates are that utilities will not need any Federal capacity until at least 1986.

Another argument against building the interim storage facility is the increase in transportation and handling of spent nuclear fuel which would result. I have been actively involved in the Department of Transportation's efforts to draft new regulations governing the transportation of spent fuel. The DOT's first plan was widely criticized by city officials and environmental groups on grounds that it did not adequately provide for the safety of residents of metropolitan areas through which spent fuel would be shipped. Those concerns were underscored earlier this year when a Federal district court judge in New York struck down the proposed regulations.

The judge ruled that DOT had not given sufficient consideration to the possible use of alternative modes of transportation to the highways, and that more emphasis must be placed on the problems surrounding shipments through densely populated urban areas.

The Department of Transportation has announced its intention to appeal the decision, but the status of Federal regulation of spent fuel shipments is very much in doubt. Given the likelihood that establishment of an interim storage facility would result in an additional 4,750 truck shipments of spent fuel, I believe it would be ill-advised to require such a facility be created before the transportation questions are resolved.

As I said earlier, this amendment serves only to reinforce the principal purpose of the Nuclear Waste Policy Act, which is to encourage new initiatives to develop permanent repositories for spent fuel. I urge adoption of the amendment.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that all debate on the pending amendment cease in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Members standing at the time the unanimous-consent request was agreed to will be recognized for 1 minute each.

(By unanimous consent, Mr. WEISS and Mr. DOWNEY yielded their time to Mr. LUNDINE.)

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. KEMP.)

Mr. KEMP. Mr. Chairman, I rise in support of the amendment offered by my colleague, the gentleman from New York (Mr. LUNDINE), to delete the interim storage provisions of H.R. 3809, the Nuclear Waste Disposal Act, and I congratulate him for his hard work.

First, let me say how much I appreciate the very hard work—and hard bargaining by everyone that went into this nuclear waste bill. Devising a plan for permanent nuclear waste storage has, I know, often been a thankless task. Members of both sides of the aisle who have worked long and hard on this legislation deserve our thanks, and also our congratulations for coming up with a fair and workable long-term solution.

I want to emphasize as well that my concern about the interim storage provisions of this bill does not stem from purely parochial interests. It is true that I strongly oppose allowing the West Valley site, in our community of western New York, to become a storage site. Congress is spending millions of dollars cleaning up the nuclear reprocessing plant at West Valley, precisely because the nuclear waste now stored there represents a real and very

significant threat to public health. West Valley is not and would not be an appropriate storage site, because of well-established geographical and geological factors.

I oppose interim storage for these reasons: First, I do not believe it is necessary; second, it increases the danger from transporting wastes; and third, it provides an opportunity and incentive for delaying action on a permanent repository site.

When the Department of Energy first proposed a Federal interim storage program, in 1977, they estimated that by 1990 we would need storage space for 14,400 metric tons of spent fuel. In 1978 the Department revised that figure down to 6,940—a decrease of over 100 percent. And in 1980 they revised it once again, this time down to 3,277 metric tons. At the same time the estimates of waste needing storage have declined, the development of alternative storage technologies has proceeded apace. Fuel rod consolidation, and even more dry storage techniques, now offer onsite storage alternatives that are much cheaper than constructing an interim storage facility—and keep the Federal Government out of the business of providing short-term waste storage for the nuclear industry.

These alternative technologies also reduce the need to transport waste. Clearly the less we need to move this waste along the roads and railways the less we will endanger public health and safety. What is more, the transportation of nuclear waste will become one more area of conflict used to halt the development of nuclear energy, which I know is not the aim of the sponsors of this legislation.

My biggest fear, however, is that by permitting interim storage we will make it easier to put off those hard decisions about permanent storage. Interim storage facilities set up to meet the needs for just a few years might easily be strained beyond their capacities. The pressure on the Federal Government, the States, and the nuclear industry to reach a mutually acceptable solution would be eased. And we would have created one more Federal support program for industry—the kind of program that tends to acquire a long life of its own.

I support this legislation. The nuclear waste accumulating around the Nation, the nuclear waste now being prepared for solidification at the West Valley demonstration site, must find a safe and permanent home. We must reform the licensing procedures for waste management to allow promising new technologies to be used. I do not, however, believe that interim storage is necessary for resolving the nuclear waste problem. Instead, it may stand in the way of a true, long-term solution.

The CHAIRMAN. The Chair recognizes the gentlewoman from Tennessee (Mrs. BOUQUARD).

Mrs. BOUQUARD. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, I think it should be pointed out that the Government has had a rather ambivalent policy in regard to our nuclear plants. When they were originally built and for a long time afterwards, the concept of reprocessing was much agreed upon and encouraged by the Government. Then a recent administration banned reprocessing, and it left the industry without the facilities or the capacity to handle the spent fuels. I think, particularly because of that inconsistent energy policy that we have created this problem, and it is the responsibility of the Federal Government to provide for emergency storage with this so called last resort away-from-reactor spent fuel storage facility. I, therefore, urge rejection of the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. CORCORAN).

Mr. CORCORAN. Mr. Chairman, the contents of this legislation in the form of the pending amendment offered by our good friend from New York (Mr. LUNDINE) have been adequately discussed, and I think our colleagues know what is in it.

I would like to address one other facet of this matter in the time that I have remaining, and that is the impact of the Lundine amendment on the entire legislation.

Mr. Chairman, in the 96th Congress we came sputtering to the end and we came very close to passing a nuclear waste bill. It got tied up in conference over the military aspect of the program. Now we are coming again to this away-from-reactor storage question which, in my judgment, if the Lundine amendment, God forbid, is adopted, will cause the death of nuclear waste legislation in this Congress. There is no question about the fact that a lot of people, not the author of this amendment, but a lot of other people have already written to the Speaker of the House and the leadership of the various committees involved, who, by the way, are all opposed to this amendment—I do not know the position of the Speaker—and they have asked that the bill itself be pulled from the Calendar for this Congress. They do not want a good sensible nuclear waste bill. And that may be why they are supporting the Lundine amendment.

For this reason as well as many others which I have already discussed during the course of this debate, I urge the resounding rejection of this ill-advised amendment.

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina (Mr. BROYHILL).

Mr. BROYHILL. Mr. Chairman, I would point out to the Members that the last resort interim storage program is limited to existing Federal facilities, and those facilities which have undergone a public health and safety review by NRC. And I would also say that we have special statutory language in section 135, which the gentleman from New York now would have us strike, that would exclude the use of private away-from-reactor facilities for the storage of spent fuel. We specifically put this language in here to take care of the problem that he and others have talked about; that is, the concerns that they have expressed as the possible use of privately owned facilities in their particular districts. And he now wants to strike the language that we put in the bill for the express purpose of saying that there will be no funds used for the private facilities.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. LUNDINE).

Mr. LUNDINE. Mr. Chairman, to address the last point to my good friend from North Carolina, I have tried to state, and I honestly believe, this is not a parochial amendment. The gentleman is entirely correct. I believe that the districts of the gentleman from Illinois, the gentleman from South Carolina, and myself are protected by the compromise language in this amendment.

The gentleman also knows that the other body has passed a bill that has no limitations whatever. We have no assurance that these limitations would in fact be in the final legislation that may be adopted at the very latest hour.

Mr. CORCORAN. Mr. Chairman, will the gentleman yield?

Mr. LUNDINE. I will yield to the gentleman if he will be brief.

Mr. CORCORAN. The point I would like to make is that if the House adopts the Lundine amendment and the Senate has already rejected similar legislation, the Senate in the conference between the two Houses will be able to insist on its language in authorizing the Federal takeover of private facilities such as at Morris, Ill., and that is what concerns me and many of my colleagues very, very much.

Mr. LUNDINE. I would like to address that point. I honestly am in favor of this legislation. I do not believe the gentleman's analysis is correct. I think if the House adopts the Lundine amendment, and the Senate has a provision in their bill, we will compromise somewhere in between, which will probably be something like the language in this bill. But if the Lundine amendment is rejected, I think the gentleman is at risk, I think this gentleman is at risk, and I think

everybody who cares about an unlimited AFR is at risk. And that is the reason I am going to insist on this amendment.

Mr. Chairman, it is very simple: An away-from-reactor storage facility would be more expensive and it would be more dangerous than the adoption of the Lundine amendment. There are new technologies coming on line which can solve this problem. We have the capacity with the research and development capability of the Federal Government, should there be an emergency, for up to 300 metric tons of space and fuel storage, and additional storage in the T&E facility beyond that. But the fundamental question here is: Is the Federal Government going to step in and undertake a new activity? Or is the basic responsibility going to be on those utilities whose users have had the benefit of the nuclear power up to this time?

I urge the adoption of this amendment.

The CHAIRMAN. The Chair recognizes the gentleman from New Mexico (Mr. LUJAN).

Mr. LUJAN. Mr. Chairman, we all would like to see the problem solved in the way that we would prefer it would be solved. And I believe it would be wonderful if we did not need an AFR, if we did not need an interim storage facility. But we live in the world that is, not in the world that ought to be.

So it is my feeling that, at some point, these reactor facilities are going to be filled up, and we have to have an alternative to closing those utilities.

We have considered this amendment in Interior. We have had long, long hours of debate on this, and it was the wisdom of the committee to turn it down at that time. I think that the last thing we ought to remember is that this is a last resort interim storage facility. Only after the utilities have done everything they possibly can to increase the storage capacity onsite would this facility be used.

So it is just a backstop so that if we ever find ourselves in the position where we have no capacity, the utilities will not be closed.

The CHAIRMAN. The Chair recognizes the gentleman from Arizona (Mr. UDALL) to conclude debate.

Mr. UDALL. Mr. Chairman, this amendment ought to be defeated. It is well intended, and the gentleman from New York is fighting very hard. He is not parochial; he has not been parochial around here, and I accept his statement in that regard.

We have retreated and retreated and retreated on AFR. Frankly, I have no great enthusiasm for a lot of AFR facility, and I do not think we are going to have any. This is a careful, limited, last-resort, last-ditch facility that we need, for two things: First, if there is an emergency, if the reactor finds that they have rods that they simply do not have space for, they have run out of pools, we will have a Federal program which can accept those rods; and second, we have made a lot of international commitments over the years to nations urging them to use nuclear technology. We have a lot of international commitments that we will provide that space if needed.

So you have a highly limited, 2,000-metric-ton program. The utilities will have to show that they cannot provide storage space at reactor sites, utilities that will use this Federal space will pay for it, and they have to be able to get out as soon as new capacity can be reasonably constructed.

So we should not eliminate the AFR totally. This leaves a very small AFR program, and the amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. LUNDINE).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LUNDINE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 84, noes 308, not voting 41, as follows:

[Roll No. 398]

AYES—84

Addabbo	Gray	Paul
AuCoin	Gregg	Rangel
Bedell	Hartnett	Reuss
Bellenson	Heftel	Rodino
Biaggi	Howard	Roemer
Bingham	Huckaby	Rosenthal
Brodhead	Kastenmeier	Roybal
Burton, John	LaFalce	Savage
Burton, Phillip	Leland	Scheuer
Campbell	Lowry (WA)	Schneider
Clay	Lundine	Schroeder
Clinger	Markey	Schumer
Conyers	Martin (IL)	Shannon
Crockett	Martin (NY)	Simon
Deckard	Mavroules	Solarz
Dellums	McGrath	Spence
Derrick	McHugh	Stark
Downey	Minish	Stokes
Dymally	Mitchell (MD)	Studds
Eckart	Moakley	Vento
Edgar	Molinari	Waxman
Edwards (CA)	Mottl	Weaver
Ferraro	Napier	Weber (MN)
Ford (TN)	Nowak	Weiss
Garcia	Oakar	Williams (MT)
Gejdenson	Oberstar	Wirth
Gilman	Obey	Wolpe
Gore	Panetta	Wyden

NOES—308

Akaka	Bennett	Burgener
Albosta	Bereuter	Butler
Alexander	Bethune	Byron
Anderson	Bevill	Carman
Andrews	Billey	Carney
Annunzio	Boggs	Chappell
Applegate	Boland	Chapple
Archer	Boner	Cheney
Aspin	Bonior	Clausen
Atkinson	Bouquard	Coats
Badham	Bowen	Coelho
Bafalis	Brinkley	Coleman
Bailey (MO)	Brooks	Collins (IL)
Bailey (PA)	Broomfield	Collins (TX)
Barnard	Brown (CA)	Conable
Barnes	Brown (CO)	Conte
Beard	Brown (OH)	Corcoran
Benedict	Broyhill	Coughlin
Courter	Hightower	Petri
Coyne, James	Hiler	Peyser
Coyne, William	Hillis	Pickle
Craig	Holland	Porter
Crane, Daniel	Holt	Price
Crane, Philip	Hopkins	Pritchard
D'Amours	Horton	Quillen
Daniel, Dan	Hoyer	Rahall
Daniel, R. W.	Hubbard	Railsback
Dannemeyer	Hughes	Ratchford
Daschle	Hunter	Regula
Daub	Hutto	Rhodes
Davis	Hyde	Rinaldo
Derwinski	Ireland	Ritter
Dickinson	Jacobs	Roberts (KS)
Dicks	Jeffords	Roberts (SD)
Dingell	Jeffries	Robinson
Dixon	Jenkins	Roe
Donnelly	Johnston	Rogers
Dorgan	Jones (NC)	Rostenkowski
Dornan	Jones (OK)	Roth
Dougherty	Jones (TN)	Roukema
Dowdy	Kazen	Rudd
Dreier	Kennelly	Russo
Duncan	Kildee	Sabo
Dunn	Kogovsek	Santini
Dwyer	Kramer	Sawyer
Dyson	Lagomarsino	Schulze
Early	Latta	Sensenbrenner
Edwards (AL)	Leach	Shamansky
Edwards (OK)	Leath	Sharp
Emerson	Lent	Shaw
English	Lewis	Shelby
Erdahl	Livingston	Shumway
Erlenborn	Loeffler	Siljander
Ertel	Long (LA)	Skeen
Evans (DE)	Long (MD)	Skelton
Evans (IN)	Lott	Smith (AL)
Fary	Lowery (CA)	Smith (IA)
Fascell	Lujan	Smith (NE)
Fazio	Luken	Smith (NJ)
Fenwick	Lungren	Smith (OR)
Fiedler	Madigan	Smith (PA)
Fields	Marlenee	Snowe
Findley	Marriott	Snyder
Fithian	Martin (NC)	Solomon
Flippo	Martinez	St Germain
Florio	Matsui	Stangeland
Foglietta	Mattox	Stanton
Foley	Mazzoli	Staton
Ford (MI)	McClory	Stratton
Forsythe	McCloskey	Stump
Fountain	McCollum	Swift
Frank	McCurdy	Synar
Frenzel	McDade	Tauke
Frost	McDonald	Tauzin
Fuqua	McEwen	Taylor
Gaydos	Mica	Thomas
Gephardt	Michel	Trible
Gibbons	Mikulski	Udall
Ginn	Miller (OH)	Vander Jagt
Glickman	Mineta	Volkmer
Goldwater	Mitchell (NY)	Walgren
Gonzalez	Montgomery	Walker
Goodling	Moore	Wampler
Gradison	Moorhead	Watkins
Gramm	Morrison	Weber (OH)
Green	Murphy	White
Grisham	Murtha	Whitehurst
Guarini	Myers	Whitley
Gunderson	Natcher	Whittaker
Hagedorn	Neal	Whitten
Hall (IN)	Nelligan	Williams (OH)
Hall (OH)	Nelson	Wilson
Hall, Ralph	Nichols	Winn
Hall, Sam	O'Brien	Wolf
Hamilton	Ottinger	Wortley
Hammerschmidt	Oxley	Wright
Hance	Parris	Wylie
Hansen (ID)	Pashayan	Yatron
Hansen (UT)	Patman	Young (AK)
Harkin	Patterson	Young (FL)
Hatcher	Pease	Young (MO)
Hefner	Pepper	Zablocki
Hendon	Perkins	

NOT VOTING—41

Anthony	DeNardis	Heckler
Ashbrook	Emery	Hertel
Blanchard	Evans (GA)	Hollenbeck
Bolling	Evans (IA)	Kemp
Bonker	Fish	Kindness
Breaux	Fowler	Lantos
Chisholm	Gingrich	LeBoutillier
de la Garza	Hawkins	Lee

Lehman	Mollohan	Stenholm
Levitas	Pursell	Traxler
Marks	Rose	Washington
McKinney	Rousselot	Yates
Miller (CA)	Seiberling	Zeferetti
Moffett	Shuster	

□ 1400

The Clerk announced the following pair:

On this vote:

Mr. Washington for, with Mr. Mollohan against.

Mr. STANGELAND and Mr. RINALDO changed their votes from "aye" to "no."

Mr. WAXMAN and Mr. LELAND changed their votes from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SWIFT

Mr. SWIFT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SWIFT: At page 141, line 24, strike all after "repositories;" through the end of line 3 on page 142 and insert in lieu thereof the following: "and (B) the Secretary may not commence construction or excavation of any Test and Evaluation Facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.".

Mr. SWIFT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. SWIFT. Mr. Chairman, the purpose of this legislation, among other things, is to assure an objective and a technical decision as to where a repository should be located. It is, therefore, also true that one of the purposes of this legislation must be to avoid prejudicing the decision as to where the permanent repository will be located by spending huge sums of money on it prior to that decision being made, so that we have the camel's-nose-under-the-tent syndrome taking place, saying, "We must locate it here. We have already spent so much money on this location."

The amendment that I am offering takes care of a problem that I see in the bill as written. There is a major ambiguity in the bill which my amendment seeks to clarify. The bill, as I read it, says that the test and evaluation facility located at a candidate or repository site may not commence construction of a surface facility until the Nuclear Regulatory Commission gives a construction authorization. Notice that it says a surface facility.

You go back to page 9 where the definitions are and look at the definition of a test and evaluation facility, it says that that means an at-depth underground cavity with subsurface lateral excavations extending from a central shaft, and so forth.

It seems to me there is a clear ambiguity as to what section 306 means if, in fact, it refers to a test and evaluation facility and then uses only the words "surface facility".

When you consider that such a T&E facility can cost anywhere between a quarter and one billion dollars, should this be located at a candidate site for a permanent repository?

Clearly, the argument is going to arise, "We have spent this quarter of a billion dollars or this billion dollars here. Now we might as well put the site there."

In other words, the objectivity of the decision as to where the site will be, it would seem to me, could be harmed by the ambiguity in the act as it presently exists. It will certainly skew the decision as to where the ultimate site for the permanent repository will go.

Now, you can make a number of arguments about T&E facilities themselves. The Senate bill, for example, does not even allow integration of T&E facilities with a candidate site. T&E itself is a very controversial concept at best. There are activities similar to T&E going on already in a number of places, so that you have a whole question as to whether a test and evaluation facility is something that we need at all; but that is not basically my point.

My point is that the bill as currently written is very unclear as to whether or not it would permit excavation to be done on a T&E facility at a candidate site prior to that site receiving its construction authorization from the Nuclear Regulatory Commission; thereby giving that site an edge in the competition, or to put it around another way, a greater chance of being selected than another site in which there was not a T&E facility. I really believe this ambiguity in the bill must be clarified so that that kind of event could not occur.

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. SWIFT. I am happy to yield to the gentleman from Florida.

Mr. FUQUA. I appreciate the gentleman yielding.

I certainly understand the concern that the gentleman is expressing to the committee; but let me point out to the gentleman that on page 141, that the gentleman referred to, in section 306(b), this language was worked out in cooperation with Chairman UDALL, Chairman DINGELL; the minority members, the gentleman from North Carolina (Mr. BROYHILL), the gentleman from New Mexico (Mr. LUJAN), and also the gentleman from New York (Mr. OTTINGER), who chairs the subcommittee of the Energy and Commerce Committee. It was with their agreement, and this was the compromise language. It says:

(b) PROCEDURES.—(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in title I—

Now, title I is all the procedures for the permanent repository—

with respect to the site selection and development of repositories;

And it goes on to say, and this is the language that the gentleman is changing:

and (B) the Secretary may not commence construction of any surface facility. • • •

The subsurface facility, the shaft, is part of the test procedure to see if this is a site. Now, if the Secretary determines that this should be the site of a repository as well as a test facility, then he must go through and comply with the procedures as outlined in title I.

So I appreciate the concern that the gentleman is addressing himself to, but I think it has been taken care of in the bill, because we were very careful in drafting the language to take care of exactly the problem that the gentleman is expressing.

Mr. SWIFT. Well, if I could regain my time, then I have elucidated here what my concern is. The gentleman feels that my concern is unfounded because the language in this bill would preclude this.

The CHAIRMAN. The time of the gentleman from Washington has expired.

(At the request of Mr. OTTINGER, and by unanimous consent, Mr. SWIFT was allowed to proceed for 3 additional minutes.)

Mr. SWIFT. So that the gentleman feels that my concern is unfounded, that they could not go ahead and put in a T&E facility and do expensive excavation and therefore, give priority, if you will, in selecting that site for a permanent storage facility. Is that correct, that could not occur?

Mr. FUQUA. Well, let me say that the gentleman is perfectly within his rights to express his concern and those concerns were expressed by many other people. That is why we have this language; but to colocate a test and evaluation facility and then later put a repository there would not be possible under the language that is currently in the bill, because the Secretary of Energy must comply with title I if he thinks that this T&E site might be a suitable site for a repository. Then he must comply with title I.

Now, as far as the shaft is concerned, that is part of the test procedure. They may have several shafts in places to determine the geographic formations, whether they are suitable, and they must go down and do core drillings and other types of drillings in

TITLE 17

17-27-102. Purpose.

(1) To accomplish the purpose of this chapter, and in order to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

(2) A county shall comply with the mandatory provisions of this part before any agreement or contract to provide goods, services, or municipal-type services to any storage facility or transfer facility for high-level nuclear waste, or greater than class C radioactive waste, may be executed or implemented.

History: C. 1953, 17-27-102, enacted by L. 1991, ch. 235, § 57; 1992, ch. 93, § 4; 2001, ch. 107, § 1.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, designated Subsection (1) and added Subsection (2).

17-27-301. General plan.

(1) In order to accomplish the purposes set forth in this chapter, each county shall prepare and adopt a comprehensive general plan for:

(a) the present and future needs of the county; and

(b) the growth and development of the land within the county or any part of the county, including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat, and other purposes.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development;

(f) the protection and promotion of air quality; and

(g) an official map, pursuant to Title 72, Chapter 5, Part 4, Transportation Corridor Preservation.

(3) (a) The plan shall include specific provisions related to any areas within, or partially within, the exterior boundaries of the county, or contiguous to the boundaries of a county, which are proposed for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive nuclear waste, as these wastes are defined in Section 19-3-303. The provisions shall address the effects of the proposed site upon the health and general welfare of citizens of the state, and shall provide:

(i) the information identified in Section 19-3-305;

(ii) information supported by credible studies that demonstrates that the provisions of Subsection 19-3-307(2) have been satisfied; and

(iii) specific measures to mitigate the effects of high-level nuclear waste and greater than class C radioactive waste and guarantee the health and safety of the citizens of the state.

(b) A county may, in lieu of complying with Subsection (3)(a), adopt an ordinance indicating that all proposals for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the county are rejected.

(c) A county may adopt the ordinance listed in Subsection (3)(b) at any time.

(d) The county shall send a certified copy of the ordinance under Subsection (3)(b) to the executive director of the Department of Environmental Quality by certified mail within 30 days of enactment.

(e) If a county repeals an ordinance adopted pursuant to Subsection (3)(b) the county shall:

(i) comply with Subsection (3)(a) as soon as reasonably possible; and

(ii) send a certified copy of the repeal to the executive director of the Department o Environmental Quality by certified mail within 30 days after the repeal.

(4) The plan may define the county's local customs, local culture, and the component necessary for the county's economic stability.

(5) The county may determine the comprehensiveness, extent, and format of the genera plan.

History: C. 1953, 17-27-301, enacted by L. 1991, ch. 235, § 66; 1992, ch. 23, § 29; 1992, ch 93, § 5; 1994, ch. 257, § 1; 2000, ch. 34, § 5; 2001, ch. 107, § 2.

Amendment Notes. - The 2000 amendment, effective May 1, 2000, added Subsection (2)(g) an made related stylistic changes.

The 2001 amendment, effective March 15, 2001, added Subsection (3), and redesignated o Subsections (3) and (4) as (4) and (5).

Cross-References. - Department of Environmental Quality, executive director, § 19-1-104.

17-27-303. Plan adoption.

(1) (a) After completing a proposed general plan for all or part of the area within the county, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) The planning commission shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(c) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(4) (a) (i) In addition to the requirements of Subsections (1), (2), and (3), the legislative body shall hold a public hearing in Salt Lake City on provisions of the proposed county plan regarding Subsection 17-27-301(3). The hearing procedure shall comply with this Subsection (4).

(ii) The hearing format shall allow adequate time for public comment at the actual public hearing, and shall also allow for public comment in writing to be submitted to the legislative body for not fewer than 90 days after the date of the public hearing.

(b) (i) The legislative body shall give notice of the hearing in accordance with this Subsection (4) when the proposed plan provisions required by Subsection 17-27-301(3) are complete.

(ii) Direct notice of the hearing shall be given, in writing, to the governor, members of the state Legislature, executive director of the Department of Environmental Quality, the state planning coordinator under Section 63-28-1, the Resource Development Coordinating Committee pursuant to Section 63-28a-2, and any other citizens or entities who specifically request notice in writing.

(iii) Public notice shall be given by publication in at least one major Utah newspaper having broad general circulation in the state, and also in at least one Utah newspaper having a general circulation focused mainly on the county where the proposed high-level nuclear waste or greater than class C radioactive waste site is to be located.

(iv) The notice in these newspapers shall be published not fewer than 180 days prior to the date of the hearing to be held under this Subsection (4), to allow reasonable time for interested parties and the state to evaluate the information regarding the provisions of Subsection 17-27-301(3).

(5) (a) After a public hearing under this section, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(b) The legislative body shall respond in writing and in a substantive manner to all those providing comments as a result of the hearing required by Subsection (4).

(6) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

(7) (a) The general plan is an advisory guide for land use decisions, except for the provision required by Subsection 17-27-301(3), which the legislative body shall adopt.

(b) The legislative body may adopt an ordinance mandating compliance with the general plan, and shall adopt an ordinance requiring compliance with all provisions of Subsection 17-27-301(3).

History: C. 1953, 17-27-303, enacted by L. 1991, ch. 235, § 68; 1992, ch. 23, § 31; 2001, ch. 107, § 3.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, added Subsection (4); redesignated old Subsections (4) through (6) as (5) through (7); added Subsection (5)(b); inserted the proviso in Subsection (7)(a); inserted the phrase beginning "and shall adopt an ordinance" to the end of Subsection (7)(b); and made stylistic changes.

Cross-References. - Reasonable notice, § 17-27-103.

Department of Environmental Quality, executive director, § 19-1-104.

17-27-308. State to indemnify county regarding refusal to site nuclear waste - Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

History: C. 1953, 17-27-308, enacted by L. 2001, ch. 107, § 4.

Effective Dates. - Laws 2001, ch. 107, § 17 makes the act effective on March 15, 2001.

17-34-1. Counties may provide municipal services - Limitation - First class counties required to provide paramedic and detective investigative services.

(1) For purposes of this chapter, except as otherwise provided in Subsection (3):

(a) "Greater than class C radioactive waste" has the same meaning as in Section 19-3-303.

(b) "High-level nuclear waste" has the same meaning as in Section 19-3-303.

(c) "Municipal-type services" means:

(i) fire protection service;

(ii) waste and garbage collection and disposal;

(iii) planning and zoning;

(iv) street lighting;

(v) in a county of the first class:

(A) advanced life support and paramedic services; and

(B) detective investigative services; and

(vi) all other services and functions that are required by law to be budgeted, appropriated, and accounted for from a municipal services fund or a municipal capital projects fund as defined under Chapter 36, Uniform Fiscal Procedures Act for Counties.

(d) "Placement" has the same meaning as in Section 19-3-303.

(e) "Storage facility" has the same meaning as in Section 19-3-303.

(f) "Transfer facility" has the same meaning as in Section 19-3-303.

(2) A county may:

(a) provide municipal-type services to areas of the county outside the limits of cities and towns without providing the same services to cities or towns;

(b) fund those services by:

(i) levying a tax on taxable property in the county outside the limits of cities and towns; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(3) A county may not:

(a) provide, contract to provide, or agree in any manner to provide municipal-type services, as these services are defined in Section 19-3-303, to any area under consideration for a storage facility or transfer facility for the placement of high-level nuclear waste, or greater than class C radioactive waste; or

(b) seek to fund services for these facilities by:

(i) levying a tax; or

(ii) charging a service charge or fee to persons benefitting from the municipal-type services.

(4) Each county of the first class shall provide to the area of the county outside the limits of cities and towns:

(a) advanced life support and paramedic services; and

(b) detective investigative services.

History: C. 1953, 17-34-1, enacted by L. 2000, ch. 199, § 1; 2001, ch. 107, § 5; 2001, ch. 258, § 1.

Repeals and Reenactments. - Laws 2000, ch. 199, § 1 repeals former § 17-34-1, as last amended by Laws 1991, ch. 104, § 1, authorizing counties to furnish services outside incorporated municipalities and prescribing the methods for funding such services, and enacts the present section, effective May 1, 2000.

Amendment Notes. - The 2001 amendment by ch. 107, effective March 15, 2001, added definitions for all items in Subsection (1) except municipal-type services; redesignated the items under municipal-type services; inserted Subsection (3); and redesignated old Subsection (3) as (4).

The 2001 amendment by ch. 258, effective April 30, 2001, added Subsection (1)(e)(ii) (Subsection (1)(c)(v)(B) in the reconciled version); deleted the language in Subsection (3) which read "advanced life support and paramedic services" following "shall provide"; added Subsections (3)(a) and (b) (Subsections (4)(a) and (b) in the reconciled version); and made related changes.

This section has been reconciled by the Office of Legislative Research and General Counsel.

Cross-References. - County service areas, § 17A-2-401 et seq.

Fire protection districts, § 17A-2-601 et seq.

17-34-6. State to indemnify county regarding refusal to site nuclear waste - Terms and conditions.

If a county is challenged in a court of law regarding its decision to deny siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste or its refusal to provide municipal-type services regarding the operation of the storage or transfer facility, the state shall indemnify, defend, and hold the county harmless from any claims or damages, including court costs and attorney fees that are assessed as a result of the county's action, if:

(1) the county has complied with the provisions of Subsection 17-27-301(3)(b) by adopting an ordinance rejecting all proposals for the siting of a storage or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within the boundaries of the county;

(2) the county has complied with Subsection 17-34-1(3) regarding refusal to provide municipal-type services; and

(3) the court challenge against the county addresses the county's actions in compliance with Subsection 17-27-301(3)(b) or Subsection 17-34-1(3).

History: C. 1953, 17-34-6, enacted by L. 2001, ch. 107, § 7.

Effective Dates. - Laws 2001, ch. 107, § 17 makes the act effective on March 15, 2001.

TITLE 19

19-3-301. Restrictions on nuclear waste placement in state.

(1) The placement, including transfer, storage, decay in storage, treatment, or disposal, within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically approve the placement as provided in this part, but only if:

(a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5) (a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after March 15, 2001.

(b) (i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal monies.

(ii) The department may not include any calculations of federal monies that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6) (a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7) (a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a special district authorized by Title 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

(iv) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(v) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b) (i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after March 15, 2001 which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political

subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8) (a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;

(ii) any organization which is formed or registered on or after March 15, 2001, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and

(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.

(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.

(b) (i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.

(ii) Any contract or other agreement, existing or executed on or after March 15, 2001, is considered void from the time of agreement or execution.

(10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation

entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:

(i) 25% of the gross value of the contract to the department; and

(ii) 50% of the gross value of the contract to the Department of Community and Economic Development, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).

(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on March 15, 2001; or

(ii) become effective notwithstanding Subsection (9)(a).

(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).

(d) (i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a). The department may initiate rulemaking under this Subsection (d)(i) on or after March 15, 2001.

(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calender year 2001, and remit that amount to the department on or before July 31, 2001.

(11) (a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Community and Economic Development for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting siting of any nuclear waste facility on their reservation lands.

(b) The program under Subsection (11)(a) shall include:

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;

(iv) utilities;

(v) sewer;

(vi) street lighting;

(vii) roads and other infrastructure; and

(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

History: L. 1981, ch. 125, § 1; c. 1953, 26-14-17; renumbered by L. 1991, ch. 112, § 84; 1993, ch. 227, § 283; 1998, ch. 348, § 1; 2001, ch. 107, § 8.

Amendment Notes. - The 1998 amendment, effective May 4, 1998, substituted "may" for "shall" after "state"; inserted "including transfer, storage, decay in storage, treatment, or disposal" before "in Utah" and "or greater than class C radioactive waste" before "unless"; added "as provided in this part" at the end; and made a stylistic change.

The 2001 amendment, effective March 15, 2001, added the phrase "but only if" to the introductory paragraph in Subsection (2), added Subsections (2)(a)(i), (ii), and Subsections (3) through (12), and made stylistic changes.

Coordination clause. - Laws 2001, ch. 107, § 18 directed the Office of Legislative Research and General Counsel to replace the phrase "the effective date of this act," occurring several times in the amendment by ch. 107, with the actual effective date, which was March 15, 2001.

19-3-302. Legislative intent.

(1) (a) The state of Utah enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state of Utah in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or Congressional intent.

(3) The state of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state of Utah. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7) (a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and

air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

History: C. 1953, 19-3-302, enacted by L. 1998, ch. 348, § 2; 2001, ch. 107, § 9.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, inserted the (a) designation in Subsection (1); added all text in Subsection (1)(a) beginning with "prevent the placement of any high-level nuclear waste"; inserted at the start of newly designated Subsection (1)(b) "Due to this possibility, the state also enacts provisions in this part to"; and inserted the phrase "should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law" at the end of Subsection (1)(b).

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-303. Definitions.

As used in this part:

(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.

(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

(3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.

(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.

(5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

(6) "Municipal-type services" includes, but is not limited to:

(a) fire protection service;

(b) waste and garbage collection and disposal;

(c) planning and zoning;

(d) street lighting;

(e) life support and paramedic services;

(f) water;

(g) sewer;

(h) electricity;

(i) natural gas or other fuel; or

(j) law enforcement.

(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.

(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.

(10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(11) "Service" or "services" means any work or governmental program which provides a benefit.

(12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.

(13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.

(14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

History: C. 1953, 19-3-303, enacted by L. 1998, ch. 348, § 3; 2001, ch. 107, § 10.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, redesignated the existing subsections and added Subsections (1), (2), (4), (6), (7), (8), (9), and (11).

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-304. Licensing and approval by governor and Legislature - Powers and duties of the department.

(1) (a) A person may not construct or operate a waste transfer, storage, decay in storage, treatment, or disposal facility within the exterior boundaries of the state without applying for and receiving a construction and operating license from the state Department of Environmental Quality and also obtaining approval from the Legislature and the governor.

(b) The Department of Environmental Quality may issue the license, and the Legislature and the governor may approve the license, only upon finding the requirements and standards of this part have been met.

(2) The department shall by rule establish the procedures and forms required to submit an application for a construction and operating license under this part.

(3) The department may make rules implementing this part as necessary for the protection of the public health and the environment, including:

(a) rules for safe and proper construction, installation, repair, use, and operation of waste transfer, storage, decay in storage, treatment, and disposal facilities;

(b) rules governing prevention of and responsibility for costs incurred regarding accidents that may occur in conjunction with the operation of the facilities; and

(c) rules providing for disciplinary action against the license upon violation of any of the licensure requirements under this part or rules made under this part.

History: C. 1953, 19-3-304, enacted by L. 1998, ch. 348, § 4.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-305. Application for license.

The application for a construction and operating license shall contain information required by department rules, which shall include:

(1) results of studies adequate to:

(a) identify the presence of any groundwater aquifers in the area of the proposed site;

(b) assess the quality of the groundwater of all aquifers identified in the area of the proposed site;

(c) provide reports on the monitoring of vadose zone and other near surface groundwater;

(d) provide reports on hydraulic conductivity tests; and

(e) provide any other information necessary to estimate adequately the groundwater travel distance;

(2) identification of transportation routes and transportation plans within the state and demonstration of compliance with federal, state, and local transportation requirements;

(3) estimates of the composition, quantities, and concentrations of waste to be generated by the activities covered by the license;

(4) the environmental, social, and economic impact of the facility in the area of the proposed facility and on the state as a whole;

(5) detailed engineering plans and specifications for the construction and operation of the facility and for the closure of the facility;

(6) detailed cost estimates and funding sources for construction, operation, and closure of the facility;

(7) a security plan that includes a detailed description of security measures that would be installed in and around the facility;

(8) a detailed description of site suitability, including a description of the geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the site and vicinity;

(9) specific identification of:

(a) the applicant, the wastes to be accepted, the sources of waste, and the owners and operators of the facility; and

(b) the persons or entities having legal responsibility for the facility and wastes;

(10) quantitative and qualitative environmental and health risk assessments for all proposed activities, including transfer, storage, and transportation of wastes;

(11) technical qualifications, including training and experience of the applicant, staff, and personnel who are to engage in the proposed activities;

(12) a quality assurance program, radiation safety program, and environmental monitoring program;

(13) a regional emergency plan for an area surrounding the facility having at least a 75 mile radius, but which may be greater, if required by department rule; and

(14) any other information and monitoring the department determines necessary to insure the protection of the public health and the environment.

History: C. 1953, 19-3-305, enacted by L. 1998, ch. 348, § 5.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-306. Information and findings required for approval by the department.

The department may not issue a construction and operating license unless information in the application:

(1) demonstrates the availability and adequacy of emergency services, including medical, security, and fire response, and environmental cleanup capabilities both at and in the region of the proposed site and for areas involved in the transport of wastes within the state;

(2) establishes financial assurance for operation and closure of the facility and for responding to emergency conditions in transportation and at the facility as required by department rules, including proof the applicant:

(a) possesses substantial resources that are sufficient to respond to any reasonably foreseeable injury or loss resulting from operation of the facility; and

(b) will maintain these resources throughout the term of the facility;

(3) provides evidence the wastes will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment;

(4) provides evidence the personnel employed at the facility have appropriate and sufficient education and training for the safe and adequate handling of the wastes;

(5) demonstrates the public benefits of the proposed facility, including the lack of other available sites or methods for the management of the waste that would be less detrimental to the public health or safety or to the quality of the environment;

(6) demonstrates the technical feasibility of the proposed waste management technology;

(7) demonstrates conformance with federal laws, regulations, and guidelines for a waste facility;

(8) demonstrates conclusively that any facility is temporary and provides identified plans and alternatives for closure of the facility with an enforceable schedule and identified dates for closure, including evidence that:

(a) an identified party has irrevocably agreed to accept the waste at the end of the temporary storage period; and

(b) the waste will be moved to another facility;

(9) demonstrates that:

(a) the applicant is not a limited liability company, limited partnership, or other entity with limited liability; and

(b) the applicant and its officers and directors and those principals or other entities that are participating in and associated with the applicant regarding the facility are willing to accept unlimited strict liability, consistent with federal law, for any financial losses or human losses or injuries resulting from operation of any proposed facility;

(10) provides evidence the applicant has posted a cash bond in the amount of at least two

billion dollars or in a greater amount as determined by department rule to be necessary to adequately respond to any reasonably foreseeable releases or losses, or the closure of the facility;

(11) provides evidence the applicant and its officers and directors, the owners or entities responsible for the generation of the waste, principals, and any other entities participating in or associated with the applicant, including landowners, lessors, and contractors, consent in writing to the jurisdiction of the state courts of Utah for any claims, damages, private rights of action, state enforcement actions, or other proceedings relating to the construction, operation, and compliance of the proposed facility; and

(12) demonstrates that any person or entity which sends wastes to a facility shall remain the owner of and responsible for the waste and its ultimate disposal and is willing to accept unlimited, strict liability, consistent with federal law, for any financial or human losses, liabilities, or injuries resulting from the wastes for the entire time period the waste is at the facility.

History: C. 1953, 19-3-306, enacted by L. 1998, ch. 348, § 6.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-307. Siting criteria.

(1) The department may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria under Subsection (2).

(2) The facility may not be located:

(a) within or underlain by:

(i) national, state, or county parks; monuments or recreation areas; designated wilderness or wilderness study areas; or wild and scenic river areas;

(ii) ecologically or scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100-year flood plains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes, or salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas within five miles of existing permanent dwellings, residential areas, or other habitable structures, including schools, churches, or historic structures;

(x) areas within five miles of surface waters, including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas within 1,000 feet of archeological sites regarding which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing groundwater which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas;

(b) in areas:

(i) above or underlain by aquifers that:

(A) contain groundwater which has a total dissolved solids content of less than 500 mg/l; and

(B) do not exceed state groundwater standards for pollutants;

(ii) above or underlain by aquifers containing groundwater which has a total dissolved solids

content between 3,000 and 10,000 mg/l, when the distance from the surface to the groundwater is less than 100 feet;

(iii) of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains; or

(vi) where air space use and ground transportation routes present incompatible risks and uses; or

(c) within a distance to existing drinking water wells and watersheds for public water supplies of five years groundwater travel time plus 1,000 feet.

(3) An applicant for a license may request from the department an exemption from any of the siting criteria stated in this section upon demonstration that the modification would be protective of and have no adverse impacts on the public health and the environment.

History: C. 1953, 19-3-307, enacted by L. 1998, ch. 348, § 7.

Federal Law. - The Farmland Protection Policy Act cited in Subsection (2)(a)(viii) is 7 U.S.C. § 4201 et seq.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-308. Application fee and annual fees.

(1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including, but not limited to providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63-38-3.2, to be assessed:

(a) per ton of storage cask and high level nuclear waste per year for storage, decay in storage, treatment, or disposal of high level nuclear waste;

(b) per ton of transportation cask and high level nuclear waste for each transfer of high level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and Hazard Compensation Account, created in Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

History: C. 1953, 19-3-308, enacted by L. 1998, ch. 348, § 8; 2001, ch. 107, § 11.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, in Subsection (3), replaced "Nuclear Waste Facility Oversight Restricted Account" with "Nuclear Accident and Hazard Compensation Account" and added the subsection reference at the end.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-309. Restricted accounts.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account" and referred to in this section as the "oversight account".

(2) (a) The oversight account shall be funded from the fees imposed and collected under Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under Subsections 19-3-308(1)(a) and(b).

(c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The department shall account separately for monies paid into the oversight account for each separate application made pursuant to Section 19-3-304.

(3) (a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.

(b) The compensation account shall be funded from the fees assessed and collected under this part, except for Subsections 19-3-308(1)(a) and (b).

(c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).

(d) The compensation account shall earn interest, which shall be deposited in the account.

(e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.

(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

History: C. 1953, 19-3-309, enacted by L. 1998, ch. 348, § 9; 2001, ch. 107, § 12.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, inserted "and referred to in this section as the 'oversight account'" at the end of Subsection (1); inserted "oversight" into the phrase "The account" in Subsections (2)(a) and (2)(c); inserted the phrase "and collected" into the phrase "fees imposed under" in Subsection (2)(a); replaced "this part" with "Subsections 19-3-308(1)(a) and (b)" in Subsections (2)(a) and (b); rewrote Subsection (2)(d); and added Subsections (3) and (4).

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-310. Benefits agreement.

(1) The department may not issue a construction and operating license under this part unless the applicant has entered into a benefits agreement with the department which is sufficient to offset adverse environmental, public health, social, and economic impacts to the state as a whole, and also specifically to the local area in which the facility is to be located.

(2) (a) The benefits agreement shall be attached to and made part of the terms of any license for the facility.

(b) Failure to adhere to the benefits agreement is a ground for the department to take enforcement action against the license, including permanent revocation of the license.

(3) This part may not be construed or interpreted to affect the rights of any person or entity to brings claims against or reach agreements with the applicant for impacts from the facility independent of the benefits agreement.

History: C. 1953, 19-3-310, enacted by L. 1998, ch. 348, § 10.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-311. Length of license.

(1) Any construction and operating license shall be issued for a term established by department rule, but the term may not be longer than 20 years.

(2) The term of the license may be extended beyond 20 years only by approval of the department, the Legislature, and the governor.

History: C. 1953, 19-3-311, enacted by L. 1998, ch. 348, § 11.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-312. Enforcement - Penalties.

(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.

(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.

(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.

(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief.

(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.

(6) (a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

History: C. 1953, 19-3-312, enacted by L. 1998, ch. 348, § 12; 2001, ch. 107, § 13.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, added Subsections (4), (5), and (6).

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. - Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

19-3-313. Reciprocity.

Waste may not be transported into and transferred, stored, decayed in storage, treated, or disposed of in the state if the state of origin of the waste or the state in which the waste was generated prohibits or limits similar actions within its own boundaries.

History: C. 1953, 19-3-313, enacted by L. 1998, ch. 348, § 13.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-314. Local jurisdiction.

This part does not preclude any political subdivision of the state from establishing additional requirements under applicable state and federal law.

History: C. 1953, 19-3-314, enacted by L. 1998, ch. 348, § 14.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-315. Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:

(a) having received approval from the state Department of Transportation; and

(b) having demonstrated compliance with rules of the state Department of Transportation.

(2) The Department of Transportation may:

(a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and

(b) assess appropriate fees as established under Section 63-38-3.2 for each shipment of waste, consistent with the requirements and limitations of federal law.

(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.

(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:

(a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and

(b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

History: C. 1953, 19-3-315, enacted by L. 1998, ch. 348, § 15; 1999, ch. 190, § 1.

Amendment Notes. - The 1999 amendment, effective May 3, 1999, added Subsection (4).

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-316. Cost recovery.

The owner or transporter or any person in possession of waste is liable, consistent with the provisions of federal law, for any expense, damages, or injury incurred by the state, its political subdivisions, or any person as a result of a release of the waste.

History: C. 1953, 19-3-316, enacted by L. 1998, ch. 348, § 16.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-317. Severability.

If any provision of this part is held to be invalid, unconstitutional, or otherwise held to be inconsistent with law, the remainder of this part is not affected and remains in full force.

History: C. 1953, 19-3-317, enacted by L. 1998, ch. 348, § 17.

Effective Dates. - Laws 1998, ch. 348 became effective on May 4, 1998, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-318. No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:

(a) "Controlling interest" means:

(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or

(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.

(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:

(i) is in the nature of an ownership interest;

(ii) entitles the person to participate in the profits and losses of the organization; or

(iii) is otherwise of a type generally considered to be an equity interest.

(c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.

(d) "Parent organization" means an organization with a controlling interest in another organization.

(e) (i) "Subject activity" means:

(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or

(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.

(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.

(f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.

(2) (a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.

(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts

and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state.

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations.

(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.

(5) (a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.

(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.

(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

History: C. 1953, 19-3-318, enacted by L. 1999, ch. 190, § 2.

Effective Dates. - Laws 1999, ch. 190 became effective on May 3, 1999, pursuant to Utah Const., Art. VI, Sec. 25.

19-3-319. State response to nuclear release and hazards.

(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.

(2) (a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.

(3) (a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.

(b) The department shall credit the amount due under Subsection 19-3-306(10) against the amount due under this Subsection (3).

(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.

(4) (a) The department shall also require an annual fee from the holder of any license issued under this part. This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b) (i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any

parties agree to provide goods, services, transportation, or municipal-type services to the licensee, the employee is within the state at any time during the calendar year as part of his employment, or

(b) the employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

(7) (a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8) (a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9) (a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

History: C.1953, 19-3-319, enacted by L. 2001, ch. 107, § 14.

Compiler's Notes. - Another § 19-3-319 was enacted at the 2001 session; that section has been recompiled as § 19-3-320 by the Office of Legislative Research and General Counsel.

Effective Dates. - Laws 2001, ch. 107, § 17 makes the act effective on March 15, 2001.

TITLE 34

34-38-3. Testing for drugs or alcohol.

(1) It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of hiring or continued employment. However, employers and management in general shall submit to the testing themselves on a periodic basis.

(2) (a) Any organization which is operating a storage facility or transfer facility or which is engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste within the exterior boundaries of the state shall establish a mandatory drug testing program regarding drugs and alcohol for prospective and existing employees as a condition of hiring any employee or the continued employment of any employee. As a part of the program, employers and management in general shall submit to the testing themselves on a periodic basis. The program shall implement testing standards and procedures established under Subsection (2)(b).

(b) The executive director of the Department of Environmental Quality, in consultation with the Labor Commission under Section 34A-1-103, shall by rule establish standards for timing of testing and dosage for impairment for the drug and alcohol testing program under this Subsection (2). The standards shall address the protection of the safety, health, and welfare of the public.

History: C. 1953, 34-38-3, enacted by L. 1987, ch. 234, § 3; 2001, ch. 107, § 15.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, added the Subsection (1) designation, added Subsection (2), and made a stylistic change.

TITLE 54

54-4-15. Establishment and regulation of grade crossings.

(1) No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(2) The department shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad and of each crossing of a public road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, and to alter or abolish any such crossing, to restrict the use of such crossings to certain types of traffic in the interest of public safety and is vested with power and it shall be its duty to designate the railroad crossings to be traversed by school buses and motor vehicles carrying passengers for hire, and to require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established, and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

(3) Whenever the department shall find that public convenience and necessity demand the establishment, creation or construction of a crossing of a street or highway over, under or upon the tracks or lines of any public utility, the department may by order, decision, rule or decree require the establishment, construction or creation of such crossing, and such crossing shall thereupon become a public highway and crossing.

(4) (a) The commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).

(b) If a petition is filed by a person or entity engaged in a subject activity, as defined in Section 19-3-318, the commission's decision under Subsection (4)(a) regarding resolution of a dispute requires the concurrence of the governor and the Legislature in order to take effect.

History: L. 1917, ch. 47, art. 4, § 14; C.L. 1917, § 4811; R.S. 1933, 76-4-15; L. 1939, ch. 84, § 1; C. 1943, 76-4-15; L. 1975 (1st S.S.), ch. 9, § 17; 1999, ch. 190, § 3.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R930-5.

Amendment Notes. - The 1999 amendment, effective May 3, 1999, added Subsection (4)(b), redesignating Subsection (4) as (4)(a), and in Subsection (4)(a) added "except as provided under Subsection (4)(b)" and made one stylistic change.

Cross-References. - Change of grades and crossings, § 10-8-34.

Cities, power to regulate tracks, § 10-8-33.

Department of Transportation, § 72-1-201 et seq.

Fences, cattle guards and street crossings, § 10-8-35.

Flagmen, grade crossings and drains, § 10-8-36.

TITLE 72

72-3-301. Statewide public safety interest highway defined - Designations - Control - Maintenance - Improvement restrictions - Formula funding provisions.

(1) As used in this part, "statewide public safety interest highway" means a designated state highway that serves a compelling statewide public safety interest.

(2) Statewide public safety interest highways include:

(a) SR-900. From near the east bound on and off ramps of the I-80 Delle Interchange on the I-80 south frontage road, traversing northwesterly, westerly, and northeasterly, including on portions of a county road and a Bureau of Land Management road for a distance of 9.24 miles. Then beginning again at the I-80 south frontage road traversing southwesterly and northwesterly on a county road for a distance of 4.33 miles. Then beginning again at the I-80 south frontage road traversing southwesterly, northerly, northwesterly, westerly, and northeasterly on a county road and a Bureau of Land Management road to near the east bound on and off ramps of I-80 Low/Lakeside Interchange for a distance of 2.61 miles. The entire length of SR-900 is a total distance of 16.18 miles.

(b) SR-901. From SR-196 traversing westerly and northwesterly on a county road to a junction with a Bureau of Land Management road described as part of SR-901, then northwesterly to a junction with a county road for a distance of 8.70 miles. Then beginning again at a junction with SR-901 traversing northwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 6.52 miles. Then beginning again at a junction with SR-901 traversing southwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 5.44 miles. Then beginning again from a junction with SR-901 traversing southwesterly on a county road to a junction with a county road a distance of 11.52 miles. Then beginning again at a junction with SR-196 traversing westerly on a Bureau of Land Management road to a junction with a county road for a distance of 11.30 miles. The entire length of SR-901 is a total distance of 43.48 miles.

(3) The department has jurisdiction and control over all statewide public safety interest highways.

(4) (a) A county shall maintain the portions of a statewide public safety interest highway that was a class B county road under the county's jurisdiction prior to the designation under this section.

(b) Notwithstanding the provisions of Section 17-50-305, a county may not abandon any portion of a statewide public safety interest highway.

(c) Except under written authorization of the executive director of the department, a statewide public safety interest highway shall remain the same class of highway that it was prior to the designation under this section with respect to grade, drainage, surface, and improvements and it may not be upgraded or improved to a higher class of highway.

(5) A class B county road that is designated a statewide public safety interest highway under this section is considered a class B county road for the purposes of the distribution formula and distributions of funds. The amount of funds received by any jurisdiction from the class B and C roads account under Section 72-2-107 may not be affected by the provisions of this section.

(6) (a) Subject to Subsection (6)(b), the executive director may designate any highway as a

statewide public safety interest highway if:

(i) the commissioner of the Department of Public Safety appointed under Section 53-1-107 recommends the designation to the executive director; and

(ii) the commission approves the designation.

(b) A designation as a statewide public safety interest highway under Subsection (6)(a) may not take effect earlier than January 25, 2002 and may not extend beyond April 1, 2002.

(c) Notwithstanding Subsection 72-1-302(2), the governor may call an emergency meeting of the commission to consider a designation under Subsection (6)(a).

History: C. 1953, 72-3-301, enacted by L. 1999, ch. 188, § 1; 2000, ch. 133, § 167; 2001, ch. 222, § 2.

Amendment Notes. - The 2000 amendment, effective May 1, 2000, updated the section reference in Subsection (4)(b).

The 2001 amendment, effective April 30, 2001, added Subsection (6).

Sunset Act. - Section 63-55b-172 repeals Subsection (6) on April 1, 2002.

Effective Dates. - Laws 1999, ch. 188 became effective on May 3, 1999, pursuant to Utah Const., Art. VI, Sec. 25.

72-4-125. State highways - SR-191, SR-193, SR-195, SR-197 to SR-200.

State highways include:

(1) SR-191. From the Utah-Arizona state line south of Bluff northerly through Blanding, Monticello, and Moab to Route 70 at Crescent Junction; then beginning again from Route 6 north of Helper northerly through Indian Canyon to Route 40 at Duchesne; then beginning again from Route 40 at Vernal northerly through Greendale Junction and Dutch John to the Utah-Wyoming state line.

(2) SR-193. From Route 126 in Clearfield east through the south entrance to Hill Air Force Base to Route 89.

(3) SR-195. From Route 266 near Holladay north on Twenty-third East Street to Route 80.

(4) SR-196. From Route 199 near the control gate at Dugway Proving Grounds northerly via the Skull Valley Road to the west bound on and off ramps of Route 80 at the Rowley Junction Interchange.

(5) SR-197. From Route 73 northerly on Fifth West Street to Route 89 in Lehi.

(6) SR-198. From Route 15 northbound ramps of the North Santaquin Interchange northeasterly through Spring Lake, to 100 North in Payson; then easterly and northeasterly through Salem to 300 South in Spanish Fork; then easterly and southeasterly to Route 6 at Moark Junction.

(7) SR-199. From Dugway Proving Grounds main gate northeasterly through Clover to Route 36.

(8) SR-200. From Route 61 in Lewiston, approximately three miles west of Route 91, north to the Utah-Idaho state line.

History: L. 1969, ch. 69, § 20; 1979, ch. 108, § 20; 1981, ch. 133, § 1; 1983, ch. 142, § 8; 1992, ch. 26, § 16; 1996, ch. 32, § 2, 27-12-50.1; renumbered by L. 1998, ch. 270, § 113; 1998, ch. 330, § 4.

Amendment Notes. - The 1996 amendment, effective April 29, 1996, substituted "Crescent" for "Cresent" in Subsection (1), added Subsection (5), and redesignated the other subsections accordingly.

The 1998 amendment by ch. 270, effective March 21, 1998, renumbered this section, which formerly appeared as § 27-12-50.1; in the introductory paragraph substituted "State highways include" for "The following named roads are designated as state highways"; and made numerous stylistic changes.

The 1998 amendment by ch. 330, effective March 21, 1998, added Subsection (4), redesignating the other subsections accordingly.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

TITLE 73

73-4-1. By engineer on petition of users - Upon request of Department of Environmental Quality.

(1) Upon a verified petition to the state engineer, signed by five or more or a majority of water users upon any stream or water source, requesting the investigation of the relative rights of the various claimants to the waters of such stream or water source, it shall be the duty of the state engineer, if upon such investigation he finds the facts and conditions are such as to justify a determination of said rights, to file in the district court an action to determine the various rights. In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.

(2) (a) As used in this section, "executive director" means the executive director of the Department of Environmental Quality.

(b) The executive director, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.

(c) Upon receipt of a request made under Subsection (2)(b), the state engineer shall file the action in the district court.

(d) If a general adjudication has been filed in the state district court regarding the area requested pursuant to Subsection (2)(b), the state engineer and the state attorney general shall join the United States as a party to the action.

History: L. 1919, ch. 67, § 20; Code Report; R.S. 1933 & C. 1943, 100-4-1; 2001, ch. 107, § 16.

Amendment Notes. - The 2001 amendment, effective March 15, 2001, added Subsection (2) and designated the previously existing paragraph as Subsection (1).

Cross-References. - Department of Environmental Quality, executive director, § 19-1-104.

TITLE 78

78-34-6. Complaint - Contents.

The complaint must contain:

(1) the name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of the plaintiff;

(4) if a right of way is sought, the complaint must show its location, general route and termini, and must be accompanied by a map thereof, so far as the same is involved in the action or proceeding;

(5) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:

(a) the permission of the governor with the concurrence of the Legislature authorizing:

(i) use of the site for a subject activity; and

(ii) use of the proposed route for a subject activity; and

(b) the proposed route as required by Subsection (4); and

(6) a description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-34-6; 1999, ch. 190, § 4.

Amendment Notes. - The 1999 amendment, effective May 3, 1999, added Subsection (5), redesignating former Subsection (5) as (6), and made punctuation changes throughout the section.

Cross-References. - General rules of pleading, Rule 8, U.R.C.P.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2002, I served two true and correct copies of the foregoing Appellants' Opening Brief and one true and correct copy of the Appellants' Appendix via United States first-class mail, postage prepaid, to each of the following:

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