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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, D.C. 20510

July 9, 1980

Honorable John F. Ahearne
Acting Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Ahearne:

The Committee on Environment and Public Works plans to consider the nuclear waste bill reported by the Nuclear Regulation Subcommittee shortly after the Senate reconvenes on July 21. During development of the legislation by the Subcommittee, several issues were raised which will require further examination. Our work would be facilitated if the Nuclear Regulatory Commission could provide the Committee with information on these issues. For this reason, I submit for your response by July 21, the following questions.

1. Please quote the substantive health and safety standard under which the proposed technical criteria for the disposal of high level radioactive waste were issued. Is this the same standard under which the Commission contemplates acting upon applications to construct a geologic repository, to emplace radioactive waste therein and to decommission the facility? If not, please clarify.
2. Given the content of the proposed technical criteria mentioned above, would enactment of the following statutory standard for high level waste repository construction, waste emplacement, and repository decommissioning delay final promulgation beyond January 1, 1982?

"(1) such issuance would present no unreasonable risk to public health and safety or the common defense and security,

(2) facility operation would conform to all applicable general environmental standards promulgated by the Administrator of the Environmental Protection Agency pursuant to authority under existing law, and

(3) the facility would incorporate multiple independent barrier design that provides reasonable assurance each such barrier will contain the waste for the period determined by the Commission to be necessary to comply with paragraph (1) of this subsection."

3. Please discuss the potential usefulness of an express statutory design requirement such as the one delineated in item (3) of the standard set out above in support of the Commission's defense-in-depth regulatory philosophy and the similar formulation in section 60.111(c) of the proposed technical criteria.

Enclosure 2

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4. Does the Commission view an express statutory empowerment as desirable to clarify the Commission's authority to require the submission of a site characterization report, as contemplated by section 60.11 of the proposed licensing procedures, in advance of acting upon the in-depth characterization of a potential repository site? Please elaborate.
5. Please comment on the effectiveness of the mechanisms provided by section 5 of the Subcommittee bill to assure that the pilot program established by that provision does not jeopardize national security interests. Specifically address the restrictions on implementing regulations imposed by subsection (e) and the Presidential suspension mechanism established by subsection (i).
6. Does the Commission believe the nuclear waste management schedule established by section 7 of the Subcommittee bill is realistic? Please elaborate.
7. How many of the sites at which commercial nuclear powerplants are currently licensed to operate can accommodate an additional independent spent fuel storage installation?
8. Would unrestricted eligibility for a Federal away-from-reactor storage program inhibit utilization of evolving techniques, such as pin compaction, for more efficient storage in on-site spent fuel storage installations?
9. In order to minimize the number of spent fuel shipments and their attendant risk to public health and safety, is it advisable to restrict eligibility for Federal away-from-reactor storage capacity to those licensees who are unable through a good faith effort to provide in a timely manner for their own spent fuel storage requirements at the reactor site?
10. In the judgment of the Commission, has the principal impediment to the expansion of the capacity of existing spent fuel storage pools at reactor sites been the length of time required for Commission review and approval, including the opportunity for a public hearing, the uncertainty concerning the availability of Federal away-from-reactor storage, or some other factor? Which of the foregoing factors has been the principal impediment to the on-site construction of new independent spent fuel storage installations?
11. Please indicate the number of licensee applications submitted to date to expand the capacity of existing spent fuel storage pools, the number of such applications upon which the Commission has acted, the average period from the submission of an application to the commencement of use of the additional capacity, the average period for Commission review of such applications, the number of such applications on which a public hearing was conducted, and the average length of such a hearing.

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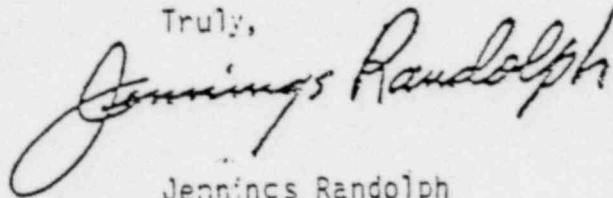
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- WMS 7
12. What is the Commission's projection of the average period from submission of an application to construct an onsite independent spent fuel storage installation to the commencement of facility operation? Please provide a breakdown of this projection, including the period for a public hearing if requested and conducted.
13. In light of the discussion in item 10 of Issues Addressed in Public Comments, Enclosure "A", SECY 80-236, and the provisions to streamline Commission review and approval contained in the pending license requirements for independent spent fuel storage installations (10 CFR part 72), is there a need to further streamline this procedure through legislative enactment? Would such an enactment create further delay and uncertainty given the imminence of final Commission action on 10 CFR part 72?
14. Would the approach embodied in pending rules 10 CFR 72.31(b) and 72.34 better serve the health and safety of the public than allowing construction to commence on onsite independent spent fuel storage installations in advance of the opportunity for a public hearing?
- LLD
- WMS 7

Your consideration of these matters and prompt response will be greatly appreciated.

Truly,



Jennings Randolph
Chairman

[SUBCOMMITTEE PRINT NO 1.]

96th CONGRESS
2d Session

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. _____

introduced the following bill; which was read twice and referred
to the Committee on _____

(As ordered reported by the Subcommittee, June 24, 1980)

[Omit the part struck through and insert the part printed in
italic]

A BILL

To establish a program for nuclear waste regulation and control.

1 Be it enacted by the Senate and House of Representatives
2 of the United States of America in Congress assembled, That
3 this Act may be cited as the "National Nuclear Waste
4 Regulation and Control Act of 1980".

FINDINGS

5 Sec. 2. The Congress finds that--

6 (1) the accumulation of radioactive wastes from
7 military activities, commercial reactors, and activities
8 related to medical research, diagnosis and treatment, as
9 well as from other sources, has engendered significant
10 concern;

11 (2) ~~past governmental efforts to manage radioactive~~
12 ~~wastes have not been technically adequate and have failed~~
13 ~~effectively to involve the States, local governments,~~
14 ~~Indian tribes, and the public in policy or program~~
15 ~~decisions;~~
16

1 (3) the management of high level and transuranic
2 waste presents a national problem that only the Federal
3 Government, in close cooperation with affected State and
4 local governments and Indian tribes, can resolve;

5 (4) the Federal Government has the responsibility to
6 provide for the permanent disposal of high level and
7 transuranic wastes;

8 (5) the primary objective of a waste management
9 program is to isolate from the biosphere existing and
10 future radioactive waste generated by military and
11 civilian activities;

12 (6) the development of permanent disposal facilities
13 for the isolation of radioactive waste is an objective of
14 the highest priority, and the Federal Government should
15 not defer resolution of that problem to future
16 generations;

17 (7) stringent precautions must be taken to ensure
18 that radioactive wastes do not endanger the public health
19 and safety of this or future generations;

20 (8) a successful waste management strategy requires
21 the full participation of State and local officials,
22 Indian representatives and the public in a step-by-step,
23 conservative, technologically sound program, to promote
24 public confidence in the safe disposal of nuclear waste;
25 and

26 (9) the development of a safe and timely solution to
27 the problem of nuclear waste disposal is essential if
28 nuclear power is to contribute significantly to meeting
29 the future energy requirements of the United States.

30 DEFINITIONS

31 Sec. 3. For purposes of this Act, the term--

32 (1) "spent fuel" means fuel that has been withdrawn
33 from a nuclear reactor following irradiation, whose
34 constituent elements have not been separated by

1 reprocessing;

2 (2) "radioactive waste" means high level waste,
3 transuranic waste, and low level waste;

4 (3) "high level waste" means (A) irradiated reactor
5 fuel, (B) liquid wastes resulting from the operation of
6 the first cycle solvent extraction system, or equivalent,
7 and the concentrated wastes from subsequent extraction
8 cycles, or equivalent, in a facility for reprocessing
9 irradiated reactor fuel, and (C) solids into which such
10 liquid wastes have been converted;

11 (4) "transuranic waste" means material contaminated
12 with elements having an atomic number greater than 92,
13 including neptunium, plutonium, americium, and curium, in
14 concentrations greater than 10 nanocuries per gram, or in
15 such other concentrations as the Commission determines to
16 be necessary to protect the public health and safety;

17 (5) "low level waste" means radioactive waste not
18 classified as either high level radioactive waste,
19 transuranic waste, or mill tailings, as defined by
20 section 11e. (2) of the Atomic Energy Act of 1954;

21 (6) "long term storage" means storage of
22 radioactive waste for a period of at least 20 years;

23 (7) "away-from-reactor storage" means storage of
24 spent fuel away from the site of a nuclear powerplant;

25 (8) "disposal" means the emplacement of radioactive
26 waste with no foreseeable intent of recovery, whether or
27 not such emplacement permits the recovery of such
28 materials;

29 (9) "nuclear powerplant" means a utilization
30 facility required to be licensed under section 103 or 104

31 (b) of the Atomic Energy Act of 1954;

32 (10) "Commission" means the Nuclear Regulatory
33 Commission;

34 (11) "Secretary" means the Secretary of Energy;

1 (12) "Department" means the Department of Energy;

2 (13) "Indian tribe" means any Indian tribe, band,
3 nation, or other organized group or community of Indians
4 recognized as eligible for the services provided to
5 Indians by the Secretary of the Interior because of their
6 status as Indians, including any Alaska Native village,
7 as defined in section of the Alaska Native Claims
8 Settlement Act (85 Stat. 688);

9 (14) "Indian reservation" means Indian country as
10 defined in section 151 of title 18, United States Code,
11 and any lands, not covered under such section, title to
12 which is held by the United States in trust for the
13 benefit of any Indian tribe or is held by an Indian tribe
14 subject to restriction by the United States against
15 alienation, and shall include lands selected by Alaska
16 Native villages or regional corporations under the
17 provisions of the Alaska Native Claims Settlement Act;

18 (15) "affected Indian tribe" means (to be defined);
19 and

20 (16) "affected State" means (to be defined); and

21 (17) "site characterization" means the program of
22 exploration and research, both in the laboratory and in
23 the field, undertaken to establish the geologic
24 conditions and the ranges of those parameters of a
25 particular site relevant to the procedures required under
26 this Act. Site characterization includes borings, surface
27 excavations, excavations of exploratory shafts, limited
28 subsurface lateral excavations and borings, and in situ
29 testing needed to determine the suitability of the site
30 for a geologic repository, but does not include
31 preliminary borings and geophysical testing needed to
32 decide whether site characterization should be
33 undertaken.

34

1 Sec. 4. (a) Section 222 of the Energy Reorganization Act
2 of 1974 is amended--

3 (1) by inserting "any other provision of law,
4 including" after "notwithstanding";

5 (2) by inserting "enacted after June 1, 1982" after
6 "or other law"; and

7 (3) by amending paragraphs (3) and (4) to read as
8 follows:

9 "(3) Facilities used primarily for the receipt and
10 storage or disposal of--

11 "(A) high level radioactive wastes,

12 "(B) transuranic waste, or

13 "(C) low level radioactive waste,

14 resulting from activities licensed under such Act.

15 "(4) Retrievable surface facilities and other
16 facilities authorized for the purpose of long term
17 storage or disposal of--

18 "(A) high level radioactive waste, or

19 "(B) transuranic waste,

20 generated by the Administration, which are not used for,
21 or are part of, research and development activities. For
22 purposes of this section--

23 "(1) 'high level radioactive waste' means
24 irradiated reactor fuel; liquid wastes resulting
25 from the operation of the first cycle solvent
26 extraction system, or equivalent, and the
27 concentrated wastes from subsequent extraction
28 cycles, or equivalent, in a facility for
29 reprocessing irradiated reactor fuel, and solids
30 into which such liquid wastes have been
31 converted;

32 "(11) 'transuranic waste' means material
33 contaminated with elements having an atomic
34 number greater than 92, including neptunium,

1 plutonium, americium, and curium, in
2 concentrations greater than 12 nanocuries per
3 gram, or in such other concentrations as the
4 Commission determines to be necessary to protect
5 the public health and safety;

6 "(iii) 'low level radioactive waste' means
7 radioactive waste that is not classified as high
8 level radioactive waste, transuranic waste, or
9 byproduct material as defined in section 11e. (2)
10 of the Atomic Energy Act of 1954;

11 "(iv) 'facilities authorized for the purpose
12 of long term storage or disposal' means
13 facilities that are designed and intended to
14 store nuclear wastes for a period of at least 20
15 years; and

16 "(v) facilities designed, constructed, or
17 operated for the purpose of long term geologic
18 storage or disposal of high level radioactive
19 waste or transuranic waste in quantities that
20 contain at least 1 kilogram of transuranic waste
21 or the curie equivalent of 10 metric tons of
22 spent fuel shall not be considered as used for,
23 or part of, research and development
24 activities."

25 (b) Section 202 of the Energy Reorganization Act of 1974,
26 is further amended by redesignating the existing section as
27 subsection (a) and adding the following new subsections:

28 "(b) Prior to license issuance under paragraph (3) or
29 (4) of the preceding subsection, the Commission shall
30 determine that facility operation is consistent with--

31 "(1) the common defense and security, and

32 "(2) any applicable general standards for offsite
33 releases of radioactivity promulgated by the
34 Administrator of the Environmental Protection Agency

1 pursuant to authority under existing law, and
2 shall determine that such license will protect health and
3 minimize danger to life and property.

4 “(c) In addition to the determination required by the
5 preceding subsection, prior to license issuance for a
6 geologic storage or disposal facility under paragraph (2) (A)
7 or (B) of subsection (a) of this section, the Commission
8 shall determine that such facility incorporates ~~multiple~~
9 ~~independent multiple~~ barrier design.”.

10 AUDIT OF SELECTED DOE NUCLEAR WASTE STORAGE FACILITIES

11 Sec. 5. (a) The Secretary and the Commission are
12 authorized and directed to establish a pilot program for
13 auditing selected nuclear waste storage facilities of the
14 Department that are not subject to the Commission's licensing
15 and related regulatory authority under section 282 of the
16 Energy Reorganization Act of 1974. Such audits shall be
17 carried out in a manner consistent with the common defense
18 and security and shall determine the extent to which the
19 construction, operation, and decommissioning of such
20 facilities complies with the Department's requirements for
21 protection of the public health and safety and the
22 environment, whether such requirements provide adequate
23 protection to the public health and safety and the
24 environment, whether remedial actions for the facility are
25 needed to provide such protection, and if so, the need for,
26 and feasibility and cost of, such actions.

27 (b) The purposes of the pilot program established by
28 subsection (a) shall be to determine--

29 (1) whether Commission regulation of the facilities
30 described in subsection (a) is necessary to provide
31 reasonable assurance that the construction, operation,
32 and decommissioning of such facilities provides adequate
33 protection to the public health and safety and the
34 environment;

1 (2) whether a workable and effective program for
2 Commission regulation of the facilities described in
3 subsection (a) can be developed;

4 (3) whether such a program can be conducted in a
5 manner to assure adequate protection of national security
6 interests, including preventing the unauthorized
7 disclosure of restricted data or other national security
8 information, preventing the interruption of the
9 production process for atomic weapons or weapons parts,
10 preventing the interruption of the production of special
11 nuclear material for atomic weapons, and preventing the
12 serious disruption of research and development work in
13 the military application of atomic energy; and

14 (4) if such a program satisfying the requirements of
15 paragraphs (2) and (3) can be developed, what alternative
16 regulatory approaches are available, and what are the
17 costs and benefits of each approach.

18 (c) Not later than 90 days after the date of enactment of
19 this Act, the Secretary and the Commission shall submit to
20 the Congress a Memorandum of Understanding delineating their
21 respective responsibilities for conducting the pilot program
22 described in subsection (a). Such Memorandum of Understanding
23 shall include--

24 (1) assignment of responsibility to the Secretary to
25 review each facility included in the pilot program to
26 determine whether the construction, operation, and
27 decommissioning of the facility complies with the
28 Department's requirements for protection of the public
29 health and safety and the environment, and whether
30 remedial actions for the facility are needed to provide
31 adequate protection to the public health and safety and
32 the environment;

33 (2) assignment of responsibility to the Secretary to
34 prepare a report to the Congress on each such facility,

1 describing in detail the extent to which the
2 construction, operation, and decommissioning of such
3 facility complies or fails to comply with the
4 Department's procedures and requirements for protection
5 of the public health and safety and the environment, and
6 the need for remedial actions, if any, to provide
7 adequate protection to the public health and safety and
8 the environment;

9 (3) assignment of responsibility to the Commission to
10 review such report, and to independently verify the
11 extent to which the construction, operation, and
12 decommissioning of the facility complies with the
13 Department's procedures and requirements, whether such
14 procedures and requirements, as they apply to each such
15 facility, provide adequate protection to the public
16 health and safety and the environment, and the need for
17 remedial actions for the facility, to provide such
18 protection;

19 (4) provisions assuring the Commission such access to
20 inspect the facilities included in such program and to
21 examine related documents as the Commission determines
22 necessary to carry out the responsibilities described in
23 paragraph (3); and

24 (5) assignment of responsibility to the Commission to
25 provide to the Congress a written assessment of the
26 Secretary's report for each facility.

27 (d) Not later than 180 days after the date of enactment
28 of this Act, the Commission and the Secretary shall select by
29 mutual agreement the facilities to be included in the pilot
30 program described in subsection (a). Such facilities shall
31 consist of not less than 5 nor more than 10 nuclear waste
32 storage facilities of the Department that are not subject to
33 the Commission's licensing and related regulatory authority
34 under section 202 of the Energy Reorganization Act of 1974:

1 provided, however, That the facilities selected by the
 2 Secretary and the Commission shall include representative
 3 examples from three different categories of radioactive waste
 4 storage or disposal facilities, and one such category shall
 5 be facilities for the storage of high level waste.

6 (e) Not later than 1 year after the date of enactment of
 7 this Act, the Commission shall by rule promulgate regulations
 8 to carry out the responsibilities assigned to the Commission
 9 in the Memorandum of Understanding. Such regulations shall
 10 include--

11 (1) procedures to prevent unauthorized disclosure of
 12 restricted data or other national security information;
 13 and

14 (2) opportunity for public participation in the
 15 Commission's review of the Secretary's report, consistent
 16 with the need to prevent unauthorized disclosure of
 17 restricted data or other national security information,
 18 the interruption of the production process for atomic
 19 weapons and weapons parts, and the serious disruption of
 20 research and development in the military application of
 21 atomic energy.

22 (f) Not later than 1 year after the date of enactment of
 23 this Act, and annually thereafter, the Secretary and the
 24 Commission shall report to the Congress on the progress of
 25 the pilot program.

26 (g) Not later than 2 years after the date of enactment of
 27 this Act, the Secretary shall submit to the Commission and
 28 the Congress the reports described in subsection (c) for the
 29 facilities included in the pilot program. Not later than 2
 30 years after the date the reports described in subsection (c)
 31 are submitted to the Commission, the Commission shall submit
 32 to the Congress the written assessments described in
 33 subsection (c) for the facilities included in the pilot
 34 program.

1 (h) Not later than 4 years after the date of enactment of
2 this section, the Secretary and the Commission shall each
3 submit to the Congress a report containing their respective
4 determinations on the issues defined in paragraphs (1)
5 through (4) of subsection (b) of this section and their
6 reasons therefor.

7 (i) The President may order the immediate suspension of
8 any activity of the Department or the Commission under the
9 pilot program described in subsection (a) if he determines in
10 writing that such activity will jeopardize the common defense
11 and security by--

12 (1) interrupting the production process for atomic
13 weapons or atomic weapon parts;

14 (2) interrupting the production of special nuclear
15 material needed for the production of atomic weapons; or

16 (3) seriously disrupting research and development
17 work in the military application of atomic energy.

18 Not later than 15 days following the issuance of such an
19 order, the President shall transmit such order, a detailed
20 statement of the reasons therefor, and a recommendation on
21 legislative or other actions necessary to preclude the
22 recurrence of such an interruption or serious disruption to
23 the Committees on Interstate and Foreign Commerce, Interior
24 and Insular Affairs, and Armed Services of the House of
25 Representatives and the Committees on Environment and Public
26 Works and Armed Services of the Senate. The Congress shall
27 have a period of 60 days of continuous session to disapprove
28 such order by joint resolution. In the absence of timely
29 adoption of such a resolution, the subject order shall remain
30 in effect.

31 CONSIDERATION OF ALTERNATIVE SITES

32 Sec. 6. In order to discharge its responsibilities for
33 the consideration of alternative sites under section 102 (2)
34 (c) (iii) of the National Environmental Policy Act of 1969,

1 the Commission shall require the submission by the Secretary
2 of at least four site characterization reports prior to
3 considering an application for authorization to construct a
4 geologic storage or disposal facility under paragraph (3) or
5 (4) of section 202 (a) of the Energy Reorganization Act of
6 1974, as amended. Such site characterization reports shall be
7 for sites at different locations and in at least three
8 different geologic media. In selecting such sites, the
9 Secretary of Energy shall consult with the United States
10 Geological Survey. ~~The preparation and submission of site~~
11 ~~characterization reports under this section do not constitute~~
12 ~~major Federal actions for the purposes of the National~~
13 ~~Environmental Policy Act of 1969.~~

14 SCHEDULE FOR NATIONAL HIGH LEVEL WASTE MANAGEMENT

15 Sec. 7. (a) Not later than January 1, 1981, the
16 Administrator of the Environmental Protection Agency,
17 pursuant to authority under existing law, shall, by rule,
18 promulgate generally applicable standards for offsite
19 releases of radioactivity from facilities for the long term
20 geologic storage of high level radioactive waste and
21 transuranic waste.

22 (b) Not later than January 1, 1982, the Commission,
23 pursuant to authority under existing law, shall, by rule,
24 promulgate technical criteria which it will apply in
25 reviewing, under the Atomic Energy Act of 1954 and the
26 National Environmental Policy Act of 1969, an application for
27 authorization to construct geologic storage facilities under
28 paragraph (3) or (4) of section 202 of the Energy
29 Reorganization Act of 1974.

30 (c) Not later than January 1, 1985, the Secretary of
31 Energy shall have submitted to the Commission not less than
32 four site characterization plans for a geologic disposal
33 facility under section 202 (a) (3) (A) or (B) of the Energy
34 Reorganization Act of 1974.

1 (d) Not later than January 1, 1989, the Secretary of
2 Energy shall submit to the Commission an application for
3 authorization to construct a geologic disposal facility under
4 section 202 (3) (A) or (B) of the Energy Reorganization Act
5 of 1974.

6 (e) Not later than January 1, 1993, the Commission shall
7 act on the application described in subsection (d) of this
8 section.

9 (f) Not later than January 1, 1998, the Secretary of
10 Energy shall submit to the Commission an application for
11 authorization to emplace radioactive wastes in the facility
12 described in subsection (d) of this section.

13 (g) Not later than January 1, 2002, the Commission shall
14 act on the application described in subsection (f) of this
15 section.

16 COMPLIANCE WITH NATIONAL SCHEDULE

17 Sec. 8. (a) One year after the date of enactment of this
18 Act, and annually thereafter, the President shall submit a
19 report to the Congress on the status of the National Nuclear
20 Waste Management Program and on the measures being taken to
21 meet the requirements in section 6 of this Act. The report
22 shall include an estimate of the degree of probability that
23 each requirement will be met on the specified date.

24 (b) In the event any agency or official with
25 responsibility to meet a requirement in section 6 of this Act
26 determines that such requirement will not be met by the date
27 specified, such agency or official shall immediately so
28 notify the President.

29 (c) In the event of a notification under subsection (b)
30 of this section, the President shall promptly submit a report
31 to the Congress. Such report shall include: (1) a detailed
32 explanation of the reasons why the requirements will not be
33 met; (2) an estimate of when the requirement will be met and
34 a description of the measures that the President is taking or

1 proposes to take to meet the requirement; (3) a description
2 of the measures, if any, that the President is taking or
3 proposes to take to assure that subsequent requirements under
4 section 5 are met by the dates specified and an estimate of
5 the degree of probability that each requirement will be met
6 by the specified date, and (4) the President's
7 recommendations, in light of the failure to satisfy the
8 subject requirement in section 5, and of any impact that such
9 failure will have on meeting subsequent requirements of
10 section 5, as to whether the Congress should prohibit the
11 issuance of additional construction permits under section 185
12 and for utilization facilities under section 185 and
13 operating licenses for such facilities under section 183 or
14 184 (b) of the Atomic Energy Act of 1954, or should otherwise
15 restrict the continued generation of high level wastes by
16 activities licensed under the Atomic Energy Act of 1954.

17 (d) Not later than 60 days after the submission to the
18 Congress of a report under subsection (c) of this section,
19 the Committees of the Senate and the House of Representatives
20 to which such report is referred shall submit reports to
21 their respective houses containing their recommendations,
22 including any proposed legislation, respecting the
23 recommendations of the President described in subsection (c)
24 (4) of this section.

25 (e) Upon January 1, 2002, if the Commission has not
26 issued a license for emplacement of radioactive wastes in a
27 geologic disposal facility pursuant to section 202 (a) (3) or
28 (4) of the Energy Reorganization Act, as amended, the
29 Commission shall not issue a construction permit or an
30 operating license for an nuclear powerplant until after it
31 issues such an emplacement license.

32 STATE CONCURRENCE FOR RADIOACTIVE WASTE REPOSITORIES

33 Sec. 9. (a) As soon as practicable, but not later than 90
34 days after the date of enactment of this section, the

1 Secretary shall identify the States in which are located one
2 or more potentially acceptable sites for a facility for the
3 geologic storage or disposal, including test disposal, of
4 high level or transuranic wastes. The Secretary shall
5 promptly notify the Governor, the State legislature, and the
6 Tribal Council of any affected Indian tribe in each such
7 State identified of the potentially acceptable sites within
8 such State.

9 (b) The Secretary is authorized and directed to promptly
10 enter into negotiations with each State and affected Indian
11 tribe identified in accordance with subsection (a) for the
12 purpose of establishing formal arrangements under which the
13 State and the Indian tribe will have the right to concur or
14 not concur based on legitimate public health and safety
15 concerns in all stages of the planning, siting, development,
16 construction, and operation in such State of a facility of a
17 type referred to in subsection (a). Such arrangements shall
18 include procedures for negotiating and resolving State or
19 Indian tribe nonconcurrence in any stage of the planning,
20 siting, development, construction or operation of such a
21 facility within the State. Such arrangements shall further
22 include an arbitration mechanism for determining whether the
23 State's or the Indian tribe's reasons for nonconcurrence
24 constitute legitimate public health and safety concerns. In
25 the event of a nonconcurrence determined to be legitimate
26 through such a mechanism, any aspect of facility development
27 which is the subject of the nonconcurrence shall not proceed
28 until such nonconcurrence is resolved.

29 (c) As soon as possible, the Secretary shall submit such
30 arrangements to the President for his review and approval. If
31 the President approves such arrangements, the arrangements,
32 together with an explanation thereof, shall be submitted to
33 the Congress and referred to the appropriate committees for a
34 period of 60 days of continuous session. The Secretary is

1 authorized and directed to enter into an agreement with the
 2 State and any affected Indian tribe to implement such
 3 arrangements if during such 60-day period the Congress fails
 4 to adopt a concurrent resolution of disapproval. In the
 5 absence of the timely adoption of such a resolution, any such
 6 agreement shall be immediately effective and shall be binding
 7 on all Federal agencies: Provided, however, That any such
 8 agreement shall not alter or affect the Commission's
 9 authority under existing law to take actions necessary to
 10 protect the public health and safety.

11 (d) The Secretary shall not proceed beyond site
 12 exploration with any siting, development, or construction of
 13 a facility of a type referred to in subsection (a) until the
 14 Secretary and the State and any affected Indian tribe, have
 15 entered into a formal agreement in accordance with subsection
 16 (c).

17 (e) Not later than 1 year after the date of enactment of
 18 this section, the Secretary and the State and any affected
 19 Indian tribe shall conclude the agreement required by
 20 subsection (b).

21 INTERIM AWAY-FROM-REACTOR STORAGE OF SPENT FUEL

22 ~~Sec. 49. (a) Notwithstanding any other provision of law,~~
 23 ~~any program establishing a federally owned and operated~~
 24 ~~system for the interim storage of spent fuel at any non-~~
 25 ~~reactor facilities shall be consistent with the policy of --~~

26 ~~(1) establishing the need for away-from-reactor storage~~
 27 ~~facilities by encouraging and assisting the storage of~~
 28 ~~spent fuel at the site of each nuclear power plant to the~~
 29 ~~maximum extent practicable; and~~

30 ~~(2) assuring full cost recovery by the Federal~~
 31 ~~Government for the construction and operation of Federal~~
 32 ~~away-from-reactor storage facilities.~~

33 ~~(b) Notwithstanding any other provision of law, the~~
 34 ~~Secretary of Energy shall not enter into a contract with any~~

1 of the proposed facility and other information concerning
 2 (d) The Commission shall require the applicant to file
 3 a statement of its intentions for any future work to be done on
 4 any site for a period of 30 days after the date of the
 5 proposed construction of the facility and to file a
 6 statement of its intentions for any future work to be done on
 7 any site for a period of 30 days after the date of the

8 (e) The Commission shall require the applicant to file a
 9 statement of its intentions for any future work to be done on
 10 any site for a period of 30 days after the date of the
 11 proposed construction of the facility and to file a
 12 statement of its intentions for any future work to be done on
 13 any site for a period of 30 days after the date of the
 14 proposed construction of the facility and to file a
 15 statement of its intentions for any future work to be done on
 16 any site for a period of 30 days after the date of the

17 (f) The Commission shall require the applicant to file a
 18 statement of its intentions for any future work to be done on
 19 any site for a period of 30 days after the date of the
 20 proposed construction of the facility and to file a
 21 statement of its intentions for any future work to be done on
 22 any site for a period of 30 days after the date of the
 23 proposed construction of the facility and to file a
 24 statement of its intentions for any future work to be done on
 25 any site for a period of 30 days after the date of the
 26 proposed construction of the facility and to file a

27 Sec. 10. (a) Notwithstanding any other provision of law,
 28 any program establishing a federally owned and operated
 29 system for the interim storage of spent fuel at away-from-
 30 reactor facilities shall be consistent with the policy of--

31 (1) minimizing the need for away-from-reactor storage
 32 facilities by encouraging and assisting the storage of
 33 spent fuel at the site of each nuclear powerplant to the
 34 maximum extent practicable; and

1 (2) assuring full cost recovery by the Federal
2 Government for the construction and operation of Federal
3 away-from-reactor storage facilities.

4 (b) Notwithstanding any other provision of law, the
5 Secretary of Energy shall not enter into a contract with any
6 person owning and operating, or planning to own and operate,
7 nuclear powerplants providing for the storage of spent fuel
8 generated by such powerplants in a Federal away-from-reactor
9 storage facility, unless the contract expressly provides that
10 such person will retain title to the spent fuel and will bear
11 full financial responsibility for such person's share of the
12 full cost of any Federal storage of spent fuel.

13 (c) Notwithstanding any other provision of law, the
14 Secretary of Energy shall not enter into any obligation to
15 construct or acquire, whether by purchase, lease or
16 condemnation, an away-from-reactor storage facility for spent
17 fuel until the President has submitted a proposal to
18 construct or acquire the facility to the Congress and a
19 period of 60 days of continuous session has elapsed without
20 the passage of a concurrent resolution disapproving the
21 President's proposal: Provided, however, that the Secretary
22 shall in no event enter into any obligation to acquire an
23 existing facility for the purpose of providing away-from-
24 reactor spent fuel storage if such acquisition is not limited
25 to actual spent fuel storage facilities needed for an away-
26 from-reactor facility unless the Secretary specifically
27 determines that the acquisition of actual spent fuel storage
28 facilities only is not practicable. In no event shall such an
29 acquired facility be used for any purpose other than away-
30 from-reactor storage of spent fuel unless such use is
31 expressly authorized by law. Any proposal by the President to
32 construct or acquire an away-from-reactor spent fuel storage
33 facility shall be accompanied by a detailed statement
34 describing--

1 (1) the spent fuel storage capacity to be provided by
2 the subject facility and why there is no reasonable
3 expectation that adequate capacity for onsite storage of
4 spent fuel can be provided in a timely manner at specific
5 nuclear powerplants identified by the Secretary as
6 potential users of the facility in light of the expedited
7 review procedure established by subsections (e) and (f)
8 of this section;

9 (2) the estimated cost of constructing and operating
10 the proposed facility and the means by which full
11 recovery by the Federal Government of spent fuel storage
12 costs will be assured;

13 (3) the alternatives to the proposed facility
14 considered by the President, and the costs and benefits
15 of the proposed facility and each alternative considered;
16 and

17 (4) in the event the President proposes the
18 acquisition of an existing facility and such acquisition
19 is not limited to actual spent fuel storage facilities
20 needed for an away-from-reactor facility, a detailed
21 justification of the need to acquire such entire facility
22 and a cost comparison of the respective unit costs of
23 providing spent fuel storage at such facility and at
24 other alternative storage facilities, including storage
25 at the reactor site and at a federally constructed away-
26 from-reactor facility.

27 (d) The Commission shall require as a condition to the
28 issuance of a license for any nuclear powerplant for which an
29 application for a construction permit has not been filed by
30 June 1, 1980, that such powerplant provide adequate onsite
31 storage capacity for the spent fuel to be generated by such
32 powerplant over its useful life or until such time as the
33 Commission in its discretion determines, as the repository
34 described in section 7 of this Act will be in operation.

1 (e) Any person filing an application for a license to
2 construct and operate an Independent Spent Fuel Storage
3 Installation at the site of a nuclear powerplant may submit a
4 petition to the Commission for authorization to begin
5 construction of such installation prior to the conduct or
6 completion of any required hearing upon such application.
7 Such petition shall be accompanied by an affidavit or
8 affidavits setting forth such facts as establish that (1)
9 refusal to grant such petition could likely prevent the
10 petitioner from providing in a timely manner adequate
11 capacity for spent fuel storage at the site of such plant,
12 and (2) the petitioner has expanded to the maximum extent
13 practicable, the capacity of existing facilities to store
14 spent fuel at the site of such nuclear powerplant.

15 (f) The Commission shall grant the petition submitted
16 under subsection (e) if it or its designee determines that:

17 (1) in all respects other than the conduct of
18 completion of any required hearing, there is a reasonable
19 expectation that the requirements of the Atomic Energy
20 Act of 1954, of the rules and regulations of the
21 Commission, and of the National Environmental Policy Act
22 of 1969 have been met;

23 (2) operation of such Independent Spent Fuel Storage
24 Installation would likely present no significant
25 additional risk to the public health and safety and the
26 environment; and

27 (3) the petitioner has set forth facts in the
28 affidavit or affidavits submitted under subsection (e) to
29 reasonably establish the determination described in that
30 subsection.

31 In no event shall the Commission grant a petition under
32 authority of this section after January 1, 1991.