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SECY-83-107

POLICY ISSUE
(Information)

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: HIGHLIGHTS OF PUBLIC LAW 97-425, THE NUCLEAR WASTE POLICY ACT OF 1982

Purpose: To inform the Commission on the principal provisions of the newly-enacted legislation as they affect NRC.

Issue: In the areas of nuclear power reactor regulation, spent fuel and high-level waste storage and disposal, and financial arrangements for the disposal of low-level waste, P.L. 97-425 contains a number of provisions affecting NRC.

Discussion: An Executive Summary of the principal provisions of P.L. 97-425 as they affect NRC are described in Enclosure 1. Enclosure 2 is a more detailed presentation of the provisions in the Act, with a preliminary identification of those issues having legal significance. Enclosure 3 is an explanation of NRC's role under the various provisions of the Act, and all actions that have been taken by NRC thus far to fulfill it's role. Enclosure 3 is also identical to what was submitted in response to questions to the Commission from Senator Simpson and Congressman Udall. A preliminary schedule for Commission involvement for the next year in applicable areas of the legislation is Enclosure 4. Enclosure 5 is a copy of P.L. 97-425, The Nuclear Waste Policy Act of 1982.

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I have tasked the relevant Program Area managers to take the lead to ensure that all NRC actions required by the new statute will be met. NRC actions under the law fall within four Program Areas: Waste Management; Fuel Cycle and Material Safety and Transportation; Human Factors; and Reactor License Reviews. I have assigned to the Waste Management Program Area the responsibility to remain generally current on all actions required of the NRC by the Nuclear Waste Policy Act of 1982 and to inform me of any related agency actions requiring my attention.

William J. Dircks
Executive Director for Operations

Enclosures:
1. Executive Summary of P.L. 97-425
2. Detailed Summary and Identification of Issues of Legal Significance in P.L. 97-425
3. Delineation of NRC's Role Under P.L. 97-425 and All Actions That Have Been Taken
4. Time Schedule for Commission Involvement
5. Copy of P.L. 97-425

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Enclosure 1

EXECUTIVE SUMMARY OF PROVISIONS IN NUCLEAR WASTE POLICY ACT OF 1982 RELATING TO NRC

I. Provisions Related To NRC's Reactor Licensing Operations

1. Hybrid Hearing Process Provide the opportunity for a hybrid hearing process for amendments/licenses to expand spent fuel storage capacity (including transshipment). Excludes issues on facility design, siting, construction, or operation for license facilities unless a Commission finding is made. Section 134.

2. Interim Storage Contracts Interim storage contracts are contingent on Commission determination. Proposed criteria consistent with the Act to be issued as a proposed rule by NRC by April 7, 1983. The criteria - licensee's inability to store, full core reserve, alternative methods (high density racks, transshipments, etc.). Section 135.

3. Issuing Reactor License The Commission shall not issue or renew a license to use a utilization or production facility under Section 103 or 104 of the Atomic Energy Act unless the applicant has entered into a waste disposal contract with the Secretary of Energy or the Secretary affirms in writing that the NRC licensee is negotiating in good faith to enter into such a contract. The NRC in its discretion may require as a precondition to the issuance or renewal of a reactor license that the applicant shall have entered into an agreement with DOE for the disposal of high-level waste or spent fuel that may result from such a license. Existing licensees are required by Section 302(b)(2) to have a contract with DOE by June 30, 1983.

4. Reactor Training Promulgate regulations or other guidance for training of operators, supervisors, technicians and others.

Simulator training and instructional requirements for training programs, operating tests and NRC requalification examination administration. NRC required to promulgate and report on progress to Congress by January 6, 1984. Section 306.

II. Provisions Related to NRC's HLW Repository Program

1. Concur in DOE's Repository Siting Guidelines By July 5, 1983, DOE following consultation with CEQ, EPA, USGS, and interested Governors, and the concurrence of the Commission, must issue general guidelines for the recommendation of sites for repositories. These guidelines must specify detailed geological must specify detailed geological considerations that shall be the primary criteria for the selection of sites in various geologic media. Section 112.

2. Consult in DOE T&E Siting Guidelines By July 7, 1983, DOE following consultation with CEQ, EPA, USGS, interested Governors and the the Commission, is authorized to issue general guidelines for the recommendation of sites for T&E facilities. Section 213.

3. NRC's Written Agreement with DOE of T&E Facility Activities By January 6, 1984, and prior to excavating any shafts, the DOE and NRC shall reach a written understanding on procedures for review, consultation, and coordination. Section 217.

4. Promulgate NRC's Technical Criteria By January 1, 1984, NRC must promulgate the 10 CFR Part 60. NRC is not prohibited from promulgating 10CFR60 before EPA promulgates its standards and neither NRC nor EPA are required to prepare an EIS or other environmental review under NEPA for these standards/criteria. Section 121.

5. NRC's Comments on DOE's Mission Plan. By April 6, 1984, DOE must publish for agency comments including NRC its mission plan which is a comprehensive report on the repository program, and R&D programs established by the Act. The mission plan shall provide an information basis sufficient to permit informed decisions to be made in carrying out the repository program. Section 301.

6. State/Tribal Participation NRC must provide to the State/Tribe timely and complete information. Section 117.

7. NRC's Reviews of DOE's Site Characterization Information Before proceeding to sink shafts at any candidate sites, DOE must submit to NRC for review and comment: (1) a general plan for site characterization; (2) description of the waste form/packaging and (3) a conceptual repository design. Section 113.

8. NRC's Comments on Sufficiency of DOE's Site Characterization Activities In recommending a site for a repository to the President, DOE shall publish preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and waste form proposal seem sufficient for inclusion in any application for construction authorization. Section 114.

9. NRC Comments To Congress After State Disapproval In considering any notice of disapproval submitted to Congress by a State/Tribe, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. Section 115.

10. NRC's Environmental Impact Statement To the extent practicable, NRC must adopt the EIS prepared by DOE for the proposed repository. Section 114.

11. NRC's Licensing Decision NRC must issue a final decision approving or disapproving construction authorization by January 1, 1989 for the first repository and January 1, 1992 for the second repository; or within three years (extendable by an additional year) of an application for the first or second repository. Section 114.

12. NRC's Concurrence on Decontamination and Decommissing of DOE's T&E Facility If not at a repository site, DOE shall obtain NRC concurrence with respect to the decontamination and deccommission of the T&E facility. Section 217.

III Provisions Related to Storage of Spent Nuclear Fuel and High-Level Waste for Interim and Monitored Long-term Periods

1. Issuance of NRC Proposed Rule By April 4, 1983, the NRC must issue a proposed rule establishing procedures and criteria for making the determination that onsite storage cannot reasonably be provided at a reactor and that the person owning and operating the reactor is diligently pursuing licensed alternatives to the use of Federal storage capacity. Section 135.

   NRC determination required within 6 months of a utility request for a DOE contract to receive, take title to and store spent fuel from a reactor. Section 135.

2. NRC's Comments on MRS By June 1, 1985, DOE shall have consulted with NRC and EPA and shall submit their comments on the MRS proposal to Congress. Section 141.

3. Licensed MRS If an MRS is authorized by Congress, DOE shall file for a license with the NRC. Section 141.

IV. Other Provisions Containing Statutory NRC Requirements

1. Low-Level Waste Management Financial Assurances The Commission is authorized to establish by rule, regulation, or order, after public notice, such standards and instructions as the Commission deems necessary or desirable to ensure that each LLW disposal licensee will have adequate financial arrangements for decontamination, decommissioning, site closure and reclamation of sites, structures, and equipment used in conjunction with its LLW disposal. Section 151.

   If the Commission determines that any long-term maintenance or monitoring, or both will be necessary at a LLW disposal site, the Commission must ensure before termination of the license that the licensee has made available financial arrangements to ensure that any long-term maintenance or monitoring needed for the site will be carried out by the person having title and custody for such site following license termination. Section 151.

2. DOE Post-Closure Activities for LLW Disposal The Secretary shall have authority to assume title and custody of LLW and the land on which such waste is disposed of, upon request of the owner of LLW and following termination of the license issed by the Commission for such disposal, if the Commission makes a number of specific determinations Section 151.

3. NRC Requirements for Closure of Special Sites
Upon request of the owner of a LLW site licensed to recover zirconium, hafnium, and rare earths from source material, DOE must assume title and custody of such a site after the sites have been closed in accordance with Commission requirements, and when the owner has made adequate financial arrangements approved by the Commission for long term maintenance and monitoring. Section 151.

Adequate financial arrangements for long-term maintenance and monitoring, as well as decontamination and stablization of the special sites must be met in accordance with the requirements established by the Commission before DOE assumes title and custody of the waste and the land on which it is disposed. Section 151.

4. Technical Assistance to Non-Nuclear Weapon States

The Act establishes 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. Both DOE and NRC are to participate in this activity. Section 223.

a. Within 90 days the enactment of the Act, DOE and NRC must publish a joint notice in the Federal Register stating that the U.S. is prepared to cooperate and provide technical assistance to non-nuclear weapon states. This joint notice is to be updated and reissued annually for 5 succeeding years. Section 223.

b. Presidential Funding Requests The Act requires the President to include NRC and DOE funding requests for fiscal years 1984 through 1989 for an expanded program of cooperation and technical assistance for spent fuel storage and disposal for interested non-nuclear weapon

state governments and non-nuclear weapon state nuclear power reactor operators. Section 223.

Enclosure 2

NUCLEAR WASTE POLICY ACT OF 1982

PRELIMINARY ANALYSIS AND STAFF COMMENTS

I. GENERAL PROVISIONS (SECTIONS 1-9)

The general provisions of the NWPA are noteworthy in two respects.

A. Definition of High-level Waste

"High-level radioactive waste" is defined to include any "highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation." Section 2(12). The Commission may consider classifying TRU and other special kinds of wastes as high-level-waste under this provision. However, such classification for purposes of NWPA would not necessarily imply that the material in question would be high-level-waste insofar as the licensing requirements of Sections 202(3) and 202(4) of the Energy Reorganization Act are concerned.

B. Applicability to Atomic Energy Defense Activities

The provisions of NWPA do not apply to a repository used exclusively for defense wastes, except as otherwise provided. Section 8(a). Such a repository would nevertheless be subject to NRC licensing. Section 8(b)(3). Moreover, States and affected Indian tribes would have participation rights equivalent to those provided for other repositories. Section 101. If the President finds, under Section 8(b), that a separate repository for defense wastes is required, the Commission may need to modify its licensing rules to deal with this special case. "Mixed repositories," i.e. repositories used for both commercial and defense wastes, are subject to the provisions of the NWPA. Section 8(c).

II. GEOLOGIC REPOSITORIES (TITLE I, SUBTITLE A, SECTIONS 111-125)

A. Overview

The Act contains detailed procedures to ensure the selection, characterization and licensing of the first two geologic repositories by dates certain. Early DOE involvment with states and affected Indian tribes is required and the host State or tribe may veto a proposed repository

location. A state/tribal veto of a proposed repository site is sustained unless overidden by both the House and the Senate. NRC is assigned specific responsibilities for ensuring that states and affected Indian tribes receive timely and complete information regarding determinations and plans for repositories. However, reanalysis of the state/tribal participation provisions in procedural 10 CFR Part 60, particularly with regard to funding, appears warranted. Explicit provisions in the Act specify the environmental reviews necessary at each step; NRC is to adopt the DOE environmental impact statement at the licensing stage to the extent practicable. The NRC technical criteria may be promulgated in advance of EPA standards and without any environmental review. Rulemaking topics made necessary or desirable by the NWPA, and statutory schedules, are presented in Appendix A.

B. Analysis and Comments

1. Analysis: Issuance of Siting Guidelines by DOE; NRC Concurrence

By July 5, 1983, the Secretary of DOE, following consultation with CEQ, EPA, and USGS, interested Governors, and the concurrence of the Commission, must issue general guidelines for the recommendation of sites for repositories. Secton 112(a). These guidelines must specify detailed geologic considerations that shall be the primary criteria for the selection of sites in various geologic media. Certain environmental considerations (e.g., proximity to national parks) are also listed even though they may not have any safety significance. The guidelines are a required reference point for subsequent DOE documents for the recommendation of a site for repository development, including the final Environmental Impact Statement (EIS).

Comments: Two principle issues concerning the guidelines have been identified:

(i) A slate of sites among the best

The Commission's authority to concur in DOE site selection guidelines may afford an opportunity to encourage the development of a slate of sites that are among the best that reasonably can be found. This goal has been stressed by the Commission in connection with its procedural rule in Part 60 (see 46 F.R. 13972). Section 112(a) was amended by the Congressional conference to clearly indicate that the guidelines were to be used by the Secretary in making the preliminary determination that a site was suitable for development as a repository. The language states that guidelines shall be used ". . . in considering candidate sites for recommendation. . . ." It is unclear whether this language applies to all sites nominated, i.e., the five sites from which three are to be chosen for characterization, or only to the sites "recommended" for characterization. The safe but not necessarily proper reading is to apply the use of the guidelines to both the "nominated" sites and the "recommended" sites. Since NRC is supposed to adopt DOE's EIS in connection with NRC construction authorization and licensing decisions "to the extent practicable" (see discussion in Comment II.B.4),

staff is currently conducting a review of DOE's proposed guidelines to provide a comprehensive basis for Commission concurrence.

(ii) Consistency with NRC technical criteria

The guidelines proposed by DOE may differ from NRC rules. If so, the Commission will need to consider whether or not to withhold its concurrence or to condition its concurrence in such a way as to preserve fully its independent discretion to determine whether or not a particular site exhibits necessary waste isolation capabilities. Another question relates to the scope of concerns that the Commission will address in its concurrence review -- i.e., whether it will consider the adequacy of the guidelines soley on radiological health and safety grounds or on all the factors specified in section 112(a).

Upon DOE's issuance of the guidelines, the Commisison may wish to review the siting criteria in 10 CFR Part 60 to determine whether, and how, the guidelines might be incorporated or reflected therein.

2. Analysis: Selection of Sites for Characterization; Site Characterization Activities

The Secretary must use the siting guidelines to nominate 5 sites for characterization, followed by the recommendation of 3 of those sites to the President by January 1, 1985, for his approval for characterization for the first repository. By July 1, 1989, the Secretary must nominate another 5 sites at least three of which were not previously nominated, for characterization for a second repository. Section 112(b)(1). The legislative history indicates that the two sites nominated in the first round that were not selected for site characterization could not be among the five sites nominated in the second round. 128 Cong. Rec. S15660 (daily ed. Dec. 20, 1982) (statement of Sen. Simpson). However, the statute would literally permit the selection of those sites as well, particularly if the reason for not selecting them for characterization was unrelated to the merits of the selection process.

An environmental assessment (EA) must be prepared by the Secretary for each nominated site. The EA must include, among other things, the basis for site recommendation, probable impacts of site characterization, and alternatives to avoid such impacts. Section 112(b)(1)(E). Prior to sinking a shaft at a Presidentially-approved site, the Secretary must prepare, for review and comment by the Commission, State, and affected tribes, the following: 1) a general plan for site characterization, including the criteria to be used to determine the suitability of the site for a repository pursuant to Section 112(a); 2) a description of possible waste form or packaging; and 3) a conceptual repository design. Section 113(b)(1). In addition, the Secretary must conduct public hearings at sites prior to sinking a shaft. Section 113(b)(2).

Nothing in the Act prohibits the Secretary from continuing ongoing or presently planned site characterization activities at sites for which the Secretary approved the location of the principal borehole by August 1, 1982 (i.e., the Hanford site). However, before sinking the shaft, the Secretary

must fulfill all requirements for an environmental assessment pursuant to Sections 112(b)(1) and 112(a) and conduct public hearings pursuant to Section 113(b)(2). Section 112(f).

Comments: The submission of DOE's "general plan" under Section 113(b)(1) after Presidential approval may affect implementation of the requirement in Section 60.11(e) of NRC repository licensing procedures for the Director of NMSS to provide an opinion on whether he objects to DOE's proceeding with characterization of the site. Prior Presidential approval of the site for characterization, followed by subsequent NRC review of the site characterization plan under Part 60 procedures could be misinterpreted as an opportunity for NRC to review the President's determination. NRC staff is preparing policy options on this and other provisions in the 10 CFR 60 procedural rule that may need to be amended to conform to the Act.

3. Analysis: Selection and Approval of the Repository Site

After the Secretary has held public hearings in the vicinity of each site under consideration and completed site characterization activities at not less than 3 candidate sites for the first proposed repository, the Secretary must notify the State and any affected Indian tribes where such a site is located of his decision to recommend the site for a repository. Section 114(a)(1). No sooner than the expiration of the 30-day period following such notification, the Secretary must submit to the President, and make available to the public, a recommendation that the President approve such a site for development of a repository based on the record of information developed by the Secretary during site characterization. Section 114(a)(1). There must be included in the recommendation, among other things, preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and 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 a site as a repository. Section 114(a)(1)(E).

For purposes of complying with the requirements of NEPA, the Secretary must consider as alternative sites for the first repository the three candidate sites with respect to which (1) site characterization has been completed and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with siting guidelines promulgated by DOE and concurred in by the Commission. Section 114(f).

No later than March 31, 1987, the President must recommend to Congress one of the three initially characterized sites for further development. Section 114(a)(2)(A). The President may extend the deadline by a year. Section 114(a)(2)(B). The President's designation of a site becomes effective after 60 days unless the Governor and legislature of the State, or governing body of an affected Indian tribe, notify Congress of their disapproval. Section 115(b). If a State or Indian tribe disapproves the site, the Act requries that both Houses of Congress must override the objections before the site designation becomes effective. Section 115(c). In considering any notice of

disapproval submitted to Congress by a State or affected Indian tribe, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. Section 115(g). However, the Commission's views shall not be construed as binding with respect to any licensing or authorization actions concerning the respository involved. Ibid. The site designation must be effective before an application for construction authorization may be submitted to the Commission. Section 114(b).

Interwoven throughout the site selection, site characterization and construction authorization process are elaborate procedures to ensure early state/tribal involvement with DOE. The Secretary is directed to provide early and timely consultation to the States and any affected Indian tribes on such issues as site characterization, siting, development, and the design of a repository. Section 117(a). Furthermore, the Secretary must enter into a binding written agreement with such State, and where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth procedures to enhance consultation and cooperation as well as information exchange; failure to complete an agreement must be reported to Congress, with a statement of reasons for such failure. Section 117(c).

NRC also has responsibilities to the states and affected tribes. The Commission must provide to the Governor and legislature of a potential repository State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository. Section 117(a)(1).

Comments: The site characterization mandates of the NWPA raise several legal and policy issues, particularly with respect to their relationship to the Commission's procedural rule in part 60.

(i) Scope of Review

Both NWPA and 10 CFR § 60.11 provide for DOE to submit site characterization proposals to NRC for review and comment. Generally, these provisions are parallel. The Commission's role in reviewing activities having potential radiological significance is fully preserved. Section 113(b)(1)(A)(ii). However, there is no specific requirement that the information supplied by DOE address the location and identification of alternative sites and media and the decision process by which a particular site was selected for characterization. (These items are called for, expressly, by 10 CFR § 60.11(a), but are omitted from Section 113(b)(1)). They must be treated in the environmental assessment prepared pursuant to Section 112(b)(2)(E), but this document is not explicitly required to be submitted to the Commission for review and comment under the NWPA.) The effect of this statutory direction is unclear. On one hand, it may indicate a Congressional desire to deemphasize environmental issues in NRC reviews at the site characterization stage. On the other hand, NRC has explicit authority to require DOE to submit with the general plan for site characterization "any other information required by the Commission." Section 113(b)(1)(A)(v). Thus, NRC could retain its present requirement that information on alternative sites

and the site selection process be included in the general plan. The staff plans to address this question as part of an overall examination of the implications of NWPA on the licensing procedures in 10 CFR Part 60.

(ii) State and Indian participation

The Commission's licensing procedures have been designed to allow affected states to participate to the fullest extent possible; but, as the Commission has stated, the extent of such participation might be affected by legislative action. 44 FR 70412, December 6, 1979 (notice of proposed rulemaking on licensing procedures). The new law places upon DOE, prior to site characterization and thereafter throughout repository construction and operation, the primary responsibility for communicating with the States and Indian tribes and for providing financial assistance to them. Since enactment of the law, representatives of Washington State and the Yakima Indian Nation have expressed their desire to enter into separate written agreements with NRC for participation in our reviews under existing NRC rules. The staff's review of the licensing procedures will include an examination of changes in 10 CFR § 60.11 and §§ 60.61-60.55 that may be appropriate to conform to the new statutory direction. See also Comment II.B.5.iii.

(iii) Coordination with DOE

NRC's existing licensing procedures require submission of a site characterization report "as early as possible after commencement of planning" for a particular repository. 10 CFR § 60.11(a). The counterpart provision of NWPA provides for DOE to submit a site characterization plan to the Commission and to the States and Indian tribes, for their review and comment, "before proceeding to sink shafts" at a candidate site. Section 113(b)(1). The effect of this change is that NRC may receive information later in the process, with less time for evaluation and preparation of comments before DOE proceeds to sink shafts. A further question is whether DOE must wait until comments have been received (or wait at least a reasonable time after submission of the plan) or whether it may sink shafts immediately after the plan has been filed.

In order to assure that NRC will have sufficient opportunity to carry out its review, the Commission may need to develop additional working arrangements with DOE, perhaps as part of a memorandum of understanding dealing with various matters of implementation of NWPA. Such arrangements could also address the procedures that the Commission would use in providing concurrence for the use of radioactive materials for purposes of site characterization. Section 113(c)(1)(A).

(iv) Site Characterization at the Hanford Site

The Hanford site characterization program is allowed to proceed for the time being, without prior nomination and Presidential approval, pursuant to a grandfather clause. Section 113(f). However under a literal reading, DOE may only perform preliminary activities; before proceeding to sink shafts, it must prepare the environmental assessment described in Section 112(b)(1) [which in turn must be preceded by establishment of the siting guidelines in which NRC must concur]. The grandfather clause may be construed by DOE so as to permit the sinking of shafts prior to establishment of the guidelines and perhaps prior to receipt of NRC recommendations concerning the activities to be carried out. This interpretation would afford grounds for challenge of DOE's action by any party with judicial standing.

4. Analysis: Construction Authorization Determination

The Commission must complete its determination on the first repository no later than January 1, 1989, or three years after the date of application, whichever occurs later. Section 114(d). The Commission may extend such deadline by up to 12 months if, not less than 30 days before such deadline, the Commission submits a report to Congress. Section 114(d)(2). The Commission must act upon the second repository application for construction no later than January 1, 1992, or three years (plus possibly an additional year) after the date of the application, whichever occurs later. Section 114(d).

The Commission shall, "to the extent practicable," adopt the environmetnal impact statement (EIS) prepared by DOE in connection with the issuance by NRC of a construction authorization and license for a repository. Section 114(f).

The Commission must submit annual progress reports to Congress beginning one year after the date an application is submitted until a construction authorization is granted. The report is to describe major unresolved safety issues and matters in contention. Section 114(c). Further, the Commission is to cooperate with DOE in the preparation and updating of a project decision schedule which sets out deadlines for agency actions, including those of NRC; in the event of failure to reach agreement with DOE with respect to any deadline, the Commission would be required to submit a written explanation to Congress. Section 114(e).

Comments: Several legal and policy issues relating to the Commission's construction authorization determinations have been identified.

(i) Deadlines

The statutory deadlines for Commission action on repository applications are mandatory in the sense that a report to Congress would be necessary should compliance not be practicable, Sec. 114(e). However, the passage of time does not affect the Commission's jurisdiction. Usery v. Whitin Machine Works, 554 F.2d 498, 501-503 (1st Cir. 1977).

Moreover, the time limit can be extended if the Commission, acting in good faith, is unable to comply because of resource limitations or the need for further study. NRDC v. Train, 510 F.2d 692, 712-713 (D.C. Cir. 1975); Sierra Club v. Gorsuch, 551 F.Supp. 785, 787 (N.D. Cal. 1982).

(ii) Environmental review

DOE is required to prepare an environmental impact statement when it makes a recommendation to the President that a particular site be selected for a repository. Section 114(f). Insofar as DOE's obligations are concerned, compliance with NWPA shall be deemed to satisfy NEPA requirements with respect to consideration of the need for a repository, the time of its initial availability, and alternative storage and/or disposal technologies. Ibid. The alternative sites to be considered in DOE's environmental impact statement are those characterized under NWPA. Ibid. Specifically, these are to be sites with respect to which (1) site characterization has been completed and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories. The timing of this "preliminary determination" is important. If it refers to the Secretary's pre-characterization recommendation under Section 112(b), then the discovery that a site is unsuitable (as a result of data obtained during site characterization) would not prevent that site's being considered as an alternative in DOE's environmental impact statement. If the "preliminary determination" is to be made in the light of complete site characterization data, however, then the disqualification of a particular site would have to be remedied before an environmental impact statement could be prepared.

NRC's responsibilities under NEPA are not expressly modified, but, as noted above, the Commission is directed to adopt DOE's environmental impact statement "to the extent practicable." To the extent the statement is adopted, such adoption "shall be deemed to also satisfy the responsibilities of the Commission under NEPA and no further consideration shall be required." Section 114(f). This could be interpreted as limiting judicial review on matters adopted by the Commission while preserving judicial review on NEPA matters on which NRC performs additional or different analyses. It appears to be reasonably certain that Congress did not intend NRC to consider a broader range of NEPA alternatives than DOE was obligated to consider. The elaborate site selection procedures, together with the direction to DOE to consider sites selected by such procedures as alternatives and the direction to NRC to adopt the DOE environmetnal impact statement to the extent practicable, lead one to anticipate that the alternatives identified by DOE will satisfy any applicable rule of reason. Should the Commission require additional sites to be considered -- thereby determining not to adopt DOE's statement -- considerable litigative risk can be foreseen. Subject to this limitation, however, environmental concerns (e.g., nonradiological impacts on

air and water quality, and alternative means for mitigation thereof) would require evaluation by NRC staff and could be matters in contention in ajudicatory proceedings. Cf. Progress Gas Consumers Group v. U.S. Department of Agriculture, 694 F.2d 778, 789 (D.C. Cir. 1982) (undue abdication of FERC authority, to adjust gas curtailment plans, under direction to incorproate certifications of Secretary of Agriculture to the maximum extent practicable). In this regard, it can be anticipated that notwithstanding Congressional override of a State veto, efforts might still be made to have the Commission find, under NEPA, that one or more of the characterized alternative sites is preferable (e.g., under the "obviously superior" standard) and to expand the record of the licensing proceeding as necessary to compare the sites in detail. The potential delay that may result from such comparisons could interfere with the timely issuance of licensing decisions.

The concept of "adoption" of an environmental impact statement is described in CEQ regulations. 40 CFR § 1506.3. NRC would be a "cooperating agency" with respect to the proposed action, id., § 1508.5, and would appropriately participate in the scoping and other NEPA processes of DOE, id., § 1501.6(b). Details could be included in a memorandum of understanding.

NRC staff intends to work with DOE in developing the scope and outline of its EA's and EIS to assure that the final DOE statement addresses the environmental impacts likely to result from NRC licensing actions in a manner adequate to meet NRC needs. NRC staff also plans to take an active role in reviewing DOE documents on implementation of the siting guidelines in which the Commission has concurred. Careful NRC attention to DOE's environmental analyses leading up to final EIS would enable NRC to identify any material deficiencies early, affording DOE a timely opportunity to address our concerns before the final EIS is prepared. If NRC does find it necessary to conduct supplementary NEPA analyses itself, however, an adequate record documenting NRC NEPA concerns about prior DOE documents and activities would also put the Commission in a better position to justify a decision on partial adoption.

(iii) Progress reporting

The progress reporting requirements are described above. The extent to which the preparation of these reports should be delegated to the staff (or licensing boards, in the case of the annual reports) will require further analysis.

5. Analysis: Promulgation of NRC's Technical Criteria (10 CFR 60)

By January 1, 1984, the Commission must promulgate the technical requirements and criteria in approving or disapproving applications for (1) construction authorization; (2) licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and (3) authorization for closure and decommissioning of such repositories. Section 121(b)(1)(A).

Such criteria must provide for the use of a system of multiple barriers in the design of the repository and must include restrictions on the retrievability of the HLW and spent fuel emplaced in the repository as the Commission deems appropriate. While the NRC requirements and criteria must be consistent with any comparable EPA standards, the Commission is not prohibited from promulgating 10 CFR 60 before EPA promulgates its standards. Section 121(b)(2). Furthermore, the Act provides that neither the promulgation of EPA's standards nor NRC's criteria require the preparation of an environmental impact statement or other environmental review under NEPA. Section 121(c).

Comments: Further rulemaking is not expected to be required prior to the statutory deadline. As noted above, the Commission may wish to condition its concurrence with DOE's siting guidelines in such a way as to preserve fully its independent discretion to determine whether or not a particular site exhibits necessary waste isolation capabilities. In addition, the numerical limits set out in the recently-published EPA standards could be implemented by 10 CFR Part 60 as developed by the staff. Although other aspects of EPA's rules may not be binding upon NRC, the Commission may nevertheless modify its regulations, if it considers it appropriate, to follow the guidance that such EPA rules may afford. Several legal issues of a miscellaneous nature relating to geologic repositories have also been identified. They are discussed below.

(i) The Savings Clause

Section 114(f) contains a provision, added on the floor of the Senate in the final debates, that "[n]othing in this act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commisison [under the Energy Reorganization Act]." 128 Cong. Rec. S15652-53 (daily ed. December 20, 1982). The effect of this provision is not entirely clear. The legislative history suggests that the clause is limited to "the licensing requirements for the permanent repository", ibid. (remarks of Sen. Levin), and, so construed, would create no difficulty.

(ii) Retrievability of Spent Fuel

DOE is required to design a repository so that any spent fuel is recoverable for an appropriate period, taking into account the value of the burnable components of the fuel as well as health and environmental concerns; although the design period is to be specified by DOE, it is subject to approval or disapproval by NRC as part of the construction authorization process. Section 122. The Commission may find it useful to clarify how this approval would be given or denied, and whether the economic factors referred to in Section 122 would have any bearing upon the Commission's action. The staff has recommended as an approach that the Commission approve any period proposed by DOE that (1) satisfies the health and safety concerns addressed

by the technical criteria in 10 CFR Part 60 and (2) is sufficiently justified in terms of environmental protection and resource recovery to warrant adoption of DOE's environmental imapct statement.

(iii) Information to States and Indian Tribes

The Commission (along with DOE and other agencies involved) must provide to the states and Indian tribes "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 a repository. Section 117(a)(1). There may be some questions as to the identity of affected tribes, but these will normally be resolved by the Secretary of the Interior. Section 2(2). More significant, however, are the issues that may arise concerning the meaning of "timely and complete" information and "determinations or plans." These issues will be considered in connection with a review of licensing procedures in 10 CFR Part 60. The respective information responsibilities of DOE and NRC under this section might be clarified as part of a memorandum of understanding to avoid duplication of effort.

(iv) Judicial Review

NWPA allows 180 days (extendable in certain circumstances for good cause) to seek review of "any final decision or action of . . . the Commission under this subtitle." Section 119. Petitions for review of Commission actions must normally be filed within 60 days. 28 U.S.C. § 2344 (1976). Moreover persons who are not ordinarily entitled to petition for review of final NRC orders, because they were not parties to the underlying proceedings, Gage v. AEC, 479 F.2d 1214 (D.C. Cir. 1973), or because they are not "aggrieved," 28 U.S.C. § 2344, might be able to proceed under the less restrictive jurisdictional provisions of Section 119.

Since licensing actions are taken "under" the Atomic Energy Act and the Energy Reorganization Act, even where they relate to receipt and possession of nuclear materials at a geologic repository, the customary review provisions would appear to apply, even though this literal construction may be inconsistent with the intention of Congress.

III. INTERIM SPENT FUEL STORAGE PROGRAM (TITLE I, SUBTITLE B, SECTIONS 131-137)

A. Overview

Subtitle B is intended to ensure that available spent fuel storage pools at the site of civilian nuclear power reactors are utilized to the extent practical and that additional on-site storage capacity is provided where practical. Key provisions prescribe a hybrid hearing procedure for certain contested NRC spent fuel pool expansion and transhipment proceedings, direct DOE to provide interim Federal storage of commercial spent fuel when adequate storage capacity is not available, establish an interim storage fund administered by DOE, and require NRC to promulgate criteria for determining whether an operator of a power reactor is unable to provide adequate storage capacity and, therefore, eligible for Federal storage.

B. Analysis and Comments

1. Analysis: Interim Storage Policy

Utilities have the primary responsibility to provide interim storage by maximizing use of existing facilities and by adding new onsite storage capacity in a timely manner. NRC, DOE and other Federal agencies are directed to take actions considered necessary to encourage and expedite effective use of available storage and the addition of necessary capacity by utilities consistent with the protection of public health and safety and the environment, economic considerations, continued operation of the reactor, the views of the population surrounding the reactor and any other applicable provisions of law. Section 132.

Comments: Section 132 should be construed to be in the nature of a general declaration of Congressional intent that available spent fuel storage and additions to such storage should be used to the maximum extent possible before resort is made to interim Federal storage.

2. Analysis: New Spent Fuel Storage Technologies

DOE is authorized to establish a demonstration program to establish dry storage technologies that the Commission may approve generically, to the extent practicable. Section 218(a). The Commission is directed to

establish, by rule, procedures for licensing any technology so approved by the Commission. Section 133.

Comments: The statutory language is awkward since the Commission licenses kinds of activities rather than technologies. The presumed intention is to have in place necessary procedures to facilitate the licensing of dry storage activities based upon the demonstrated technologies, if practicable, without the need for site-specific approvals. The provisions of 10 CFR Part 72, relating to independent spent fuel storage installations, already cover dry storage technology and would presumably apply.

3. Analysis: Hearing Process for Facility Expansions and Transshipments

The Act prescribes special procedures for Commission hearings on applications for licenses for facility expansion of sent fuel storage capacity and transshipments of spent fuel within a utility system filed after January 7, 1983. At the request of any party, the Commission is directed to provide an opportunity for a hybrid hearing process, consisting of an oral argument followed by the possibility of an adjudicatory hearing, on genuine and substantial disputed questions of fact. This changes existing agency practice which requires a formal adjudicatory hearing upon the request of a person whose interest may be affected. The new procedures are not applicable to applications involving the use of a new technology not previously approved for use at any other reactor. Section 134.

Comments: The staff is drafting rules to implement Section 134. Among the issues that will need to be addressed is the question of how to proceed if no "party" has requested that the special procedures be followed. Procedural matters related to the designation of disputed questions of fact for resolution in an adjudicatory hearing are likely to be judically contested; unfortunately, these matters cannot be addressed in advance through rulemaking except in very general terms. Since Section 134 applies to applications filed after January 7, 1983, and since one or more applications may be filed at any time, the Commission may have good cause to issue rules, at least on an interim basis, without opportunity for prior public comment.

4. Analysis: DOE Storage Capacity

DOE is directed to provide storage capacity, as needed, for not more than 1900 metric tons of spent fuel by one or more of three specified methods: (1) use of one or more facilities now owned by the Federal government (including modification and expansion); (2) acquisition of modular equipment such as dry storage casks for use at a reactor site or at a site now owned by the government; and/or, (3) construction of storage capacity at a reactor site. The use of existing Federal facilities (method 1 above) would not subject the facility to NRC licensing, but NRC must determine that such storage would be safe. Methods 2 and 3 must comply with applicable NRC

licensing requirements. Section 135. (Use of existing facilities would require licensing, however, if licensing would be required under the Energy Reorganization Act. Section 114(f).)

DOE may not establish Federal interim spent fuel storage capacity at any candidate site for a repository, section 135(a)(2), and must prepare an EIS if 300 or more metric tons capacity is provided at any one Federal site. Section 135(c). A state or tribal council may veto plans for storage of 300 tons or more at a site and both houses of Congress must override the veto for DOE to proceed. Section 135(d)(6)(A), (D). DOE is not authorized to use any away-from-reactor storage facility not owned by the government on the effective date of the Act. Section 135(h).

DOE shall offer and may enter into contracts with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for the spent fuel if the Commission determines that the owner cannot reasonably provide adequate storage capacity to ensure continued orderly operation, the owner is diligently pursuing licensed alternatives, and the owner cannot maintain full core reserve capability (if such capability is necessary to support continued operation). The Commission must propose, by rule, criteria for making its determination by April 7, 1983. Section 135(g). NRC must make its determination within 6 months of receiving the request. Section 135(b). DOE may enter into contracts with utilities until January 1, 1990 to provide Federal storage of spent fuel not to exceed a total of 1900 metric tons. DOE takes title to the fuel at the reactor and provides transportation (by private carriers to the extent possible). Sections 136(a), 137(a)(2). Spent fuel acquired by DOE pursuant to a contract with a utility for interim storage is subject to regulation in the same manner as if it were commercially-owned. Section 137(a).

DOE is authorized to collect fees for storage of spent fuel. Section 136(a). Expenditures may be made "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 . . . including . . . the . . . licensing . . . of any interim storage facility [or] the administrative cost of the interim storage program ...." Section 136(d).

Comments: The DOE interim storage program raises several issues with legal implications for NRC.

(i) Commission Determinations of Eligibility

The Commission's procedures for making its eligibility determinations could be initiated in either of two ways -- i.e., upon request by DOE or upon request by the interested utility. The first approach may prove to be more useful to DOE in determining, in a particular case, whether to enter into a storage contract. The second approach, however, seems a more natural reading of the statutory language and may have offsetting benefits. The Commission's approach will need to be reflected in the procedures and criteria for determining the adequacey of available storage capacity which must be proposed, by rule, no later than April 7, 1983. The staff is developing a draft rule for Commission consideration which follows the second approach.

(ii) Licensability of Interim Storge Facilities

(A) At Federal Sites

Under Section 202(3) of the Energy Reorganization Act, DOE facilities "used primarily for the receipt and storage of high-level radioactive wastes resulting from [licensed] activities" are subject to licensing. The Commission has interpreted this provision to require licensing of storage facilities for spent fuel (since spent fuel has been regarded by the Commission as a type of high-level waste). NWPA sets out several methods by which DOE could provide needed storage capacity. Although NRC licensing will generally continue to be necessary, one of DOE's options could be implemented on an unlicensed basis. Specifically, if any building or structure currently owned by the Federal government is used for storage in this program, such use "shall not render such facilities subject to licensing," Section 135(a)(1)(A), 135(a)(6); further, DOE is obliged to "comply with any applicable requirements for licensing . . . except as provided" by this provision. Section 135(a)(4). Procedures will need to be developed for the Commission to make required findings that the use of existing facilities owned by the Government "will adequately protect the public health and safety." This is a subject that could be dealt with in a memorandum of understanding. The interagency agreement with respect to the West Valley Demonstration Project may provide guidance in this regard.

An alternative approach would be for DOE to provide storage capacity though acquisition of modular or mobile spent fuel storage equipment. Section 135(a)(1)(B). Licensing requirements of NRC would apply, provided the facilities where such equipment would be located are being used "primarily" for receipt and storage of the spent fuel.

(B) At private sites

DOE may provide storage capacity at a commercial reactor site, either by acquiring appropriate equipment and supplying it to the utility, Section 135(a)(1)(B), or by constructing the necessary facilities, Section 135(a)(1)(C). While an NRC license would be required, there could be a question whether DOE or the utility would be the proper licensee. It is difficult to see how this provision would be utilized since its practicability would appear to foreclose a necessary precondition -- namely, the Commission's determination that licensed storage alternatives are unavailable.

(iii) Transportation

As noted above, DOE takes title to spent fuel at the reactor and provides transportation. Although nothing in the NWPA is to be construed to affect Federal, State, or local laws pertaining to the transportation of spent fuel or HLW, Section 9, prior licensing requirements are being changed because DOE-acquired spent fuel is to be subject to regulation in the same manner as if it were commercially owned. Price-Anderson Act coverage of DOE-owned shipments needs to be considered.

(iv). Funding

As noted above, DOE is authorized to collect fees for storage of spent fuel and may expend funds for services including the licensing of interim storage facilities. The language probably cannot be interpreted to permit reimbursement of NRC expenses in connection with the interim fuel storage program, but even if such interpretation were possible it would still be necessary to determine whether DOE would have the authority to make the necessary transfer of funds for such reimbursement.

IV. MONITORED RETRIEVABLE STORAGE (TITLE I, SUBTITLE C, SECTION 141)

A. Overview

Congress expressly wished to retain the option of long-term storage of high-level waste or spent fuel in one or more monitored retrievable long term storage facilities (MRS). However, disposal in a geologic repository developed under the NWPA should proceed regardless of any construction of a MRS facility. Section 141(a).

B. Analysis and Comments

1. Analysis: MRS Construction Proposal

By June 1, 1985, DOE is to complete a detailed study of the need for and feasibility of, and provide a proposal for, construction of one or more MRS facilities. Section 141(b)(1). Specified design criteria are that the facility (1) accommodate commercial high-level waste and spent fuel; (2) permit continuous monitoring and management for the foreseeable future; (3) provide for ready retrieval; and (4) safely store material as long as necessary through appropriate maintenance, including any required replacement of the facility. Sections 141(b)(1)(A-D). MRS facilities are to be licensed by NRC. Section 141(d). DOE is to consult with and obtain comments from the NRC and EPA in developing the proposal for Congress. The proposal is to include site-specific design, specifications and cost estimates sufficient to support Congressional authorization for construction and solicit bids for the first facility. The proposal is to include for the first facility 3 alternative sites and 5 alternative combinations of site and facility designs with a recommendation for the preferred option. Section 141(b). The proposal also is to include an environmental assessment by DOE of the alternative technologies. Section 141(c)(1).

2. Analysis: Congressional Authorization of MRS Construction

Should Congress authorize construction of an MRS based on the proposal, DOE must prepare an EIS, if otherwise required by NEPA. Section 141(c)(2). Neither DOE nor the NRC shall consider need for the facility or alternatives to the 4 general design criteria described above. Section 141(d). The MRS may not be located in any state where a repository site is approved for characterization so long as the site remains under consideration. Section 141(g). Further, if the MRS should be located within 50 miles of the first repository, the Commission shall limit the total quantity of spent fuel and equivalent high-level waste to 70,000 metric tons at the MRS and repository until a second repository is in operation. Section 114(d). Any MRS facility authorized would be subject to the provisions for State and Indian Tribe participation, veto and Congressional review override that are specified for a repository. Section 141(h).

Comments: The following matters are noteworthy:

(i) Commission Comments on DOE Proposal

NRC may, and presumably would, limit its comments on DOE's MRS proposal to those matters that are pertinent to the exercise of the Commission's licensing and regulatory responsibilities. Comments will be drafted by the staff for such review by the Commission as the Commission deems necessary.

(ii) Licensability

As noted above, MRS facilities would be "subject to licensing under section 202(3) of the Energy Reorganization Act." Section 141(d). The notable implication of this provision is that it tends to ratify the Commission's long-standing view that a DOE spent fuel storage facility is subject to NRC licensing authority.

(iii) Licensing standards

Under existing regulations, DOE requires a license in order to possess spent fuel at an independent spent fuel storage installation. 10 CFR §72.6(c). An MRS facility for spent fuel would fall within the scope of this requirement. See 10 CFR §72.2. The provisions of Part 72 will need to be reviewed to determine whether they are appropriate in the light of the objectives of this subtitle of NWPA. Moreover, since an MRS may be designed for storage of high-level waste other than spent fuel, new regulations (also patterned on Part 72 to the extent appropriate) should be developed for licensing storage at such an MRS as well. Among other things, MRS regulations should reflect the provisions of Section 141(g) restricting MRS locations to states other than those being considered for a repository and Section 141(h) (establishing the same veto/override procedures for an MRS that applies to repository development). MRS facilities will not be established, however, until the need for them has been further reviewed by Congress; Commission efforts should be planned so as to permit timely issuance of regulations if MRS facilities are authorized, but at this time rulemaking would be premature.

V. LOW-LEVEL RADIOACTIVE WASTE (TITLE I, SUBTITLE D, SECTION 151)

A. Overview

This section of the NWPA is intended to assure that adequate financial arrangements are established to assure proper closure and reclamation of low-level waste sites and for long-term care. Both NRC and DOE are assigned significant responsibilities.

B. Analysis and Comments

1. Analysis: Financial Assurances for Closure and Post-Closure Care of LLW Sites

The Commission is directed to establish such standards and instructions as it deems necessary or desirable for financial arrangements to ensure the completion of decontamination, decommissioning, site closure and reclamation of sites, structures, and equipment used in conjunction with LLW disposal, including provisions for long-term maintenance or monitoring, where necessary. Section 151(a)(1). The Commission must approve the financial arrangements prior to issuance of a license for LLW disposal, or, if a license is already in effect, prior to termination of the license. Financial arrangements for sites located in agreement states are subject to approval by the State. Section 151(a)(1). If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at an LLW disposal site, the Commission must ensure before termination of the license that the licensee has made available such bonding, surety or other arrangements to ensure that any long-term maintenance or monitoring needed for the site will be carried out by the person having title and custody for such site following license termination. Section 151(a)(2).

Staff Comments: Staff considers that 10 CFR Part 61 satisfies the requirements of the Act for financial arrangements for site closure and that those requirements are a matter of compatibility for Agreement States. For the Act's requirements for NRC financial requirements for long-term care in § 151(a)(2), staff has initiated an effort expected to lead to a rulemaking proceeding in approximately 2 years.

2. Analysis: DOE Post-Closure Activities

DOE is authorized to take title and custody of LLW and the land on which such waste is disposed of, upon the request of the owner, following the termination of the license issued by the Commission for such disposal and upon Commission findings that: there is adequate financial surety; the federal government will incur no cost due to transfer; and that the transfer is necessary or desirable to protect public health and safety and the environment. Section 151(b).

Comments: Except for the special sites subject to the provisions of § 151(c) described immediately below, no transfer can take place without the

affirmative exercise of DOE's discretion; DOE is authorized rather than directed to take custody. Since relevant information and statements of policy will need to be obtained from DOE before NRC can make the required determinations, the staff is working with DOE to establish procedures for obtaining such information and policy. It remains to be determined whether the request for NRC to make the necessary determinations prior to title transfer should come from DOE or the site owner. The necessary administrative procedures could be defined in a memorandum of understanding with DOE, though minor conforming changes, for informational purposes, might be made in Part 61.

3. Analysis: Title and Custody by DOE of Special Sites

Upon request of the owner of a LLW site licensed to recover zirconium, hafnium, and rare earths from source material, DOE must assume title and custody of the site after it has been closed in accordance with Commission requirements and when the owner has made adequate financial arrangements approved by the Commission for long term maintenance and monitoring. Section 151(c).

Comments: In contrast to § 151(b) discussed above, the Commission is not expressly required to make a determination whether the decontamination activities have been carried out in accordance with its requirements. Source material processing operations that generate byproduct material (if the ore in question was "processed primarily for its source material content," Atomic Energy Act, Section 11e.(2)) are not included; they would be fully licensed under the Uranium Mill Tailings Radiation Control Act. Hence, except for the Parkersburg, West Virginia site, the facilities affected by Section 151(c) cannot be identified without further study.

VI. RESEARCH AND DEVELOPMENT ACTIVITIES (TITLE II, SECTIONS 211-223)

A. Overview

Title II authorizes DOE to provide for the construction, operation and maintenance of a deep geologic test and evaluation (T&E) facility and to establish a demonstration program in cooperation with the private sector for dry storage of spent fuel at civilian reactor sites. The T&E facility is not subject to Commission licensing unless it is located at a repository site, in which event the procedures applicable to repositories rather than the procedures below would apply. Title II also declares that it is the policy of the United States to cooperate with non-nuclear weapon states in the field of spent fuel storage and disposal and establishes a program of technical assistance, involving both NRC and DOE, to carry out this policy.

B. Analysis and Comments

1. Analysis: Test and Evaluation Facility -- Site Identification; Site Selection; State/Tribal Participation; Operation; Decommissioning.

By July 6, 1983, the Secretary must develop, in consultation with the Commission and other Federal agencies, guidelines for the selection of a site for a test and evaluation facility (T&E). Section 213(a). By January 7, 1983, the Secretary may identify three or more sites, each such identification to be accompanied by an environmental assessment. As soon as possible following the identification of a site, the Secretary shall notify the State or tribe of such identification and the basis for it. Section 213(b).

The Secretary must hold public meetings in the vicinity of each site within six months after identification and prior to beginning site research activities. Section 214(b). The Secretary shall consult and cooperate with States and tribes, and shall conclude written agreements in order to expedite the consultation and cooperation process. Section 215(b).

By January 7, 1984, the Secretary shall report to Congress with possible T&E facility locations. If any are at a potential repository site, the selection and development of the site must conform to Title I (Repositories for Disposal of HLW and Spent Nuclear Fuel) of this Act, and the Secretary cannot begin construction of any surface facility for the T&E facility until after the Commission issues a construction authorization for the repository. Section 305. Within 30 months of identification, the Secretary may select a site and conduct such preconstruction activities relative to such site selection for a T&E facility as he deems appropriate. Section 214(a). The Secretary shall prepare an environmental assessment prior to mining and construction of a T&E facility. Section 217(a). The Secretary must also prepare an environmental impact statement prior to conducting tests with radioactive material at the T&E facility. Section 217(g).

The T&E shall be designed to receive not more than 100 full-sized canisters of solidified HLW (or spent fuel); and must permit full retrieval of radioactive material. Section 217(b). The in situ testing program at the T&E shall include matters such as bore hole sealing, geologic media fracture sealing and room closure, use of radioactive sources and materials to model radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, ground water or brine flow through fractured media, effects of heat and pressure on the media, hydrology and disposal package integrity. Section 217(c)(1).

The Secretary may take title to radioactive material used in the T&E, section 214(d), and may use waste from the Three Mile Island nuclear powerplant or West Valley Demonstration Project or elsewhere if there is reasonable assurance that such use will not threaten the use of such site as a repository. Section 217(c)(1)(G). The in situ testing shall be designed to ensure that the suitability of the site for licensing shall not be adversely affected. Section 217(c)(1)(G). However, the T&E facility will not be subject to licensing unless located at a potential repository site. Section 217(f)(2).

If not at a repository site, the Secretary shall obtain Commission concurrence with respect to the decontamination and decommissioning of the T&E facility. The operation the T&E facility shall terminate not later than 5 years after the first repository begins operations or at such earlier time as the Secretary determines that continued operation of the T&E is not necessary. Radioactive materials must be removed as soon as practicable if the Secretary finds, with Commission concurrence, that the T&E facility is unsuitable for continued operation, unless the Commission agrees that short-term testing will not endanger public health and safety. Section 217(h).

2. Analysis: Test and Evaluation Facility - Role of The Commission

As noted above, the T&E facility is not subject to NRC licensing unless it is located at a candidate repository site. However, DOE must develop the siting guidelines in consultation with the NRC and other Federal agencies. In addition, within one year of enactment, and prior to excavating any shafts, the Secretary and the Commission shall reach a written understanding establishing procedures for review, consultation and coordination in the planning, construction, and operation of the T&E facility, including a schedule for submission by DOE and review by NRC of the mission plan (described in Comment VII.A) and such information as the Commission may reasonably require to evaluate its public health and safety concerns, as well as provisions for Commission access to the T&E. Section 217(f)(1).

The Commission is also directed to carry out a continuing analysis of all activities associated with the T&E facility to evaluate the adequacy of the consideration given to health and safety issues and to report to the President, the Secretary and Congress as it as it considers appropriate.

Comments: Some precursor legislation provided for the development of a T&E facility, on an unlicensed basis, that might later be converted to a repository. See, e.g., H.R. 5016, Committee Print, in H.R. 5106 - Nuclear Waste Management Comprehensive Legislation - Bouquard/Lujan Proposal: Hearings Before the Subcomm. on Energy Research and Production of the House Comm. on Science and Technology, 97th Cong., 1st Sess. 501, 511ff. In order to preserve this option, DOE would have been directed to conduct its activities at the T&E facility so as not to threaten the use of the site as a repository and so as not to compromise the ability of the site to be licensed by the Commission for the operation of a permanent repository. These directions are retained, with minor modifications, in Section 217(c) of NWPA. The procedures for developing an unlicensed T&E facility would be less formal than for a repository and would provide a lesser role for States and Indian tribes. These parties would not be funded by DOE nor would they have the authority to submit a notice of disapproval (i.e., a veto) with respect to the selection of a site in their jurisdiction.

Under the NWPA as enacted, however, a T&E facility may not be located at any repository site, or any site that has been recommended for site characterization, unless site selection conforms to the requirements for a repository and unless DOE seeks and obtains construction authorization for a repository at the site involved. Section 305(b). If DOE follows this route, the statutory provisions pertaining to the T&E facility would not apply. On the other hand, there are economic obstacles to locating a T&E facility at a site which is not under consideration as a repository. The costs of mining such a facility and carrying out R&D activities there would largely duplicate costs that would still have to be incurred in characterizing or developing a site for a repository.

DOE is required to report to Congress, by Janury 1984, whether it plans to locate the T&E facility at a repository. Section 305(a). By the same deadline, however, DOE and the Commission are directed to enter a memorandum of understanding establishing procedures pertaining to NRC's role in T&E facility planning, construction, and operation. Section 217(f)(1). It is not clear whether such an interagency agreement is needed, or whether it would serve any purpose, if the T&E facility is to be located at a repository. The staff will nevertheless engage in discussions with DOE, perhaps using the West Valley memorandum of understanding as a starting point.

Section 305(b)(2) prohibits conversion of a T&E facility into a repository unless site selection and development were carried out under the provisions pertaining to a repository. The staff will consider recommending a conforming change in the licensing procedures in 10 CFR Part 60 to reflect this limitation.

3. Analysis: DOE Dry Spent Fuel Storage Demonstration Program

DOE is directed to estabish a demonstration program in cooperation with industry for dry storage technologies which the NRC may, by rule, approve for use without, to the extent practicable, the need for additional site-specific approvals. Within one year, DOE is to select at least 1 but not more than 3 reactor sites for NRC-licensed demonstrations. Section 218(a),(b)(1). DOE is also to undertake a cooperative program with utilities for development of rod consolidation in reactor basins. Section 218(a). The Commission's responsibility with respect to this program is to establish procedures for licensing new technologies. Section 133.

Comments: NRC licensing procedures for new technologies are discussed above. See Comment III.B.2.

4. Analysis: Technical Assistance to Non-nuclear Weapon States

The Act establishes 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. Section 223(a). Both DOE and NRC are to participate in this activity. Section 223(b). By April 6, 1983, DOE and NRC must publish a joint notice in the Federal Register stating that the U.S. is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in matters relating to at-reactor spent fuel storage, away-from-reactor spent fuel storage monitored retrievable spent fuel storage, geologic disposal of spent fuel, and health, safety and environmental regulation of such activities. This joint notice is to be updated and reissued annually for 5 succeeding years. Section 223(b). The Secretary of State is responsible for transmitting expressions of interest from foreign governments to NRC and DOE. Section 223(c). The President is required to include in NRC and DOE funding requests for fiscal years 1984 through 1989 appropriate funds for the cooperation and technical assistance program. Section 223(d).

Comments: The cooperation and technical assistance program is limited specifically to storage and disposal of spent fuel as opposed to other forms of high-level waste. This distinction will need to be considered in devleoping the technical assistance program, but it is not clear that consultations can effectively be limited to spent fuel since so much of the waste management strategy is equally applicable to reprocessing wastes as well. Since both DOE and NRC are to participate, some understanding must be developed between the agencies so as to minimize duplication of effort; this might take the form of DOE's having the lead in consultation on storge and disposal technology and NRC having the lead in consultation on the regulation of such storage and disposal. A further issue that may arise is the extent to which policy guidance should be obtained from the Secretary of State and whether the Secretary's solicitation and transmission of expressions of interest should be viewed as anything other than ministerial acts.

VII. MISCELLANEOUS PROVISIONS (TITLE III, SECTIONS 301-306)

A. Analysis: Mission Plan (Section 301)

DOE is required to prepare, and submit to Congress by June, 1984, a comprehensive report (the "mission plan") sufficient to permit informed decisions to be made in implementing NWPA. Section 301(a), (b). Among other things, the mission plan is to identify unresolved technical questions, plans for site characterization including steps to be taken to control adverse safety related impacts, and waste solidification processes and spent fuel packaging techniques. Section 301(a)(2), (7), (8). DOE and the Commission are to establish, by memorandum of understanding, a schedule for Commission "review" and "necessary action on" the mission plan. Section 217(f)(1)(A)(i). The Commission may comment on the mission plan; in preparing its comments, the Commission "shall specify with precision any "objections" which it may have. Section 301(b)(2). DOE must review NRC comments, but is only required to revise the mission plan to the extent it considers appropriate; thereafter, DOE is to "use" the mission plan as so revised. Section 301(b)(3).

Comments: The mission plan will address issues, some of them mentioned above, that may be important to the exercise of the Commission's responsibilities. Accordingly, consideration shall be given to whether the Commission or the staff should comment on the mission plan and whether such comments might limit NRC's subsequent flexibility.

As noted, the memorandum of understanding is to establish a schedule for "necessary action" by the Commission on the mission plan. Since the provision appears in Title II, its application may be limited to a test and evaluation facility, or to research and development activities.

B. Analysis: Nuclear Waste Fund (Section 302)

Section 302(a) provides for DOE to enter into contracts to accept title to, to transport, and to dispose of high-level waste and spent fuel. Under Section 302(b)(1)(A), the Commission is required not to "issue or renew" a facility license unless either the licensee has entered into such a contract with DOE or DOE affirms that the licensee is actively negotiating such a contract. This is a minimum requirement. The Commission, in its discretion,

may impose still a greater burden on the licensee. It may decline to issue or renew a license where the licensee and DOE are merely negotiating; instead, it may require as a precondition to issuance or renewal of a license that there actually be in force an agreement under Section 302(a). Section 302(b)(1)(B).

As in the case of the Storage Fund established under Title I, Subtitle B, DOE is authorized to make expenditures from a Waste Fund for disposal activities, including the "licensing. . . of any repository, monitored, retrievable storage facility or test and evaluation facility" constructed under NWPA and "the administrative cost of the radioactive waste disposal program." Section 302(d).

Contracts between DOE and waste generators and owners are to provide that DOE is to take title "following commencement of operation of a repository" and that, in return for the payment of fees, "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 subtitle." Section 302(a)(5).

Comments: Several potential legal issues regarding the nuclear waste storge fund have been indentified.

(i) Advance contracting requirement

One question that arises in interpreting this provision is whether it applies to license amendments as well as original issuance of operating licenses (or renewals thereof). The Administrative Procedure Act includes the issuance of an amendment in the definition of a licensing action, 5 U.S.C. §551(9) (1976), but this does not necessarily govern the construction of "issue or renew a license" in the context of this NWPA.

Congress intended that existing licensees should enter into section 302(a) contracts. If amendments are not treated as licensing actions subject to Section 302(b)(1), there must nevertheless be some means for assuring that this objective is achieved. The structure of Section 302(b)(2) may accomplish this. This section provides that DOE may only dispose of wastes in repositories constructed under NWPA if DOE has entered into a Section 302(a) contract by June 30, 1983 (or later, if the generator or owner commences generation of, or takes title to, the waste at a later date). Should any existing licensee fail to meet the June 30, 1983 deadline, there would be a question concerning the basis for Commission confidence, with respect to such licensee, that the wastes generated pursuant to the license would be safely stored or disposed of at the end of the license term. At its own initiative, or pursuant to a request filed under 10 CFR § 2.206, steps could be initiated to determine whether further operation of the facility should be restricted.

Since the effect of Section 302(b)(2) is to provide existing licensees with an urgent incentive to enter into waste disposal contracts by June 30, 1983, it would be consistent with the statutory purpose to construe Section 302(b)(1) to apply to the issuance of new licenses only and not to amendments. However, since the June 30, 1983 date presents an absolute bar to DOE's contracting with existing licensees except as provided in paragraph (1), it may be prudent to construe 302(b)(1) as including amendments in order to afford DOE the latitude of affirming good faith negotiations on the part of licensees who are unable to finalize (for good reasons) a contract by June 30. To date, DOE and NRC have not interpreted 302(b)(1) to apply to existing licensees. Appropriate amendments to 10 CFR Part 50 may be desirable, in due course, to reflect the new statutory restriction on licensing.

(ii) Expenditures from the Waste fund

The same issues are presented with respect to funding of Commission costs as were discussed above, in connection with the Interim Storage Fund. See Comment II.B.4.

(iii) Contract Terms

The 1998 date by which the Secretary "will" dispose of HLW or spent fuel is probably firm, but an argument can be made that some other date could be substituted if a different date for disposal is "provided in this subtitle." Unfortunately, Section 302 appears in no subtitle, so the term may refer instead to the title (i.e., Title III - Other Provisions Relating to Radioactive Waste) or to NWPA as a whole. In either case, the date might be subject to adjustment to conform to the schedule defined in the mission plan, Section 301(a)(9)(D).

The 1998 date, even if adjusted to conform to the mission plan, might not be satisfied if various contingencies were to occur -- as, for example, Congressional failure to override of a State notice of disapproval, delays by DOE in completing site characterization, or denial of an application by the Commission. The date is not a deadline that would be violated in that event, but rather a contractual term that will determine respective rights and responsibilities of the Government and the waste owners and generators. The effect of delay in repository operation would be to provide a basis for the accrual of damages or other relief.

C. Analysis: NRC Training Authorization (Section 306)

The NRC 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 regarding simulator training requirements; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators; instructional requirements for civilian nuclear powerplant licensee training programs.

The regulation and/or guidance is to be promulgated by January 30, 1984. By this same date the Commission must also submit a report to Congress setting forth the actions it has taken.

Comments: Staff is considering what form(s) of guidance should be issued to implement this directive.

APPENDIX A

Principal Rulemaking Topics

SECTION	TOPIC	ACTION	STATUTORY DEADLINE
113	Site characterization (impact on licensing procedures)	Proposed rule	____
114, 122	Construction authorization (impact on licensing procedures)	Proposed rule	____
114(f)	Environmental review (impact on 10 C.F.R. Part 51)	Proposed rule	____
121(b)	Technical criteria	Rule (promulgation)	01/01/84
Interim spent fuel storage			
134	Hybrid procedures	Proposed Rule	____
135(g)	Procedures and criteria for determining adequacy of commercial storage	Proposed Rule	04/07/83
133	Procedure for licensing dry storage technologies	Rule	____
Low-level waste			
151(a)	Standards for financial arrangements for site closure	Rule (or order)	____
Nuclear waste fund			
302(b)	Advance contracting requirement (impact on 10 C.F.R. Part 50 with respect to issuance or renewal of facility licenses)	Rule	____
Reactor personnel training			
306	Training requirements	Rule or other appropriate guidelines (promulgate)	01/07/84

Enclosure 3

NRC ROLE UNDER THE NUCLEAR WASTE POLICY ACT OF 1982 AND ALL ACTIONS THAT HAVE BEEN TAKEN

(All dates specified by the act are keyed to enactment date of January 7, 1983. Dates in parenthesis represent one year extensions permitted by Act.)

1. NRC's Role In Repository Development Program

	Provision	Specific Dates	NRC Role
1.	Siting Guidelines promulgated by DOE in which NRC concurs. Section 112(a).	7/6/83	NRC must concur in the DOE siting guidelines. Actions That Have Been Taken By NRC On February 14, 1983, DOE issued draft guidelines for public review and comment, and has published the schedule for public meetings. NRC and DOE have developed a detailed schedule for completing this action. Our technical staff is now reviewing the draft guidelines and anticipates providing comments to DOE by April 7, 1983.

	Provision	Specific Dates	NRC Role
2.	NRC technical requirements and criteria promulgated. Section 121(b).	1/1/84	NRC must issue regulations which specify the technical requirements and criteria for the repository. Actions That Have Been Taken By NRC These regulations, which have been under development by the staff for several years, have recently been submitted to the Commission for final approval and promulgation as an effective rule.
3.	EPA final high-level waste standards promulgated. Section 121(a)	1/7/84	NRC intends to comment on the draft EPA standards.
4.	Conform NRC requirements and criteria to EPA final high-level waste standards. Section 121(b)(2).	After Event 3	Depending on contents of the final EPA standard, action may may be necessary by NRC to conform NRC regulations.
5.	DOE Project Decision Schedule. Section 114(e)	None specified	NRC must coordinate with DOE on the development of the Project Decision Schedule.

	Provision	Specific Dates	NRC Role
6.	Draft Mission Plan published by DOE for comments of NRC and others. Section 301(b).	4/7/84	NRC must coordinate with DOE on the development of DOE Mission Plan. And specify, with precision, any objections to the Plan.
7.	Submission by DOE of Mission Plan to Congress. Section 301(b).	6/7/84	Following approval of the Mission Plan by Congress, NRC will, wherever necessary, conform its waste management program planning guidance to the Plan.
8.	DOE recommends to the President 3 sites for characterization for first repository. Each of the initial 5 sites nominated by DOE prior to recommendation to President will be accompanied by an environmental assessment (EA). Section 112(b).	1/1/85	NRC staff intends to review and comment on EA's.
9.	President must evaluate the possibility of developing a repository to dispose of defense waste only. Section 8.	1/7/85	If decision is to not include defense waste in the civilian repository NRC licensing of a separate defense waste only repository is required.

	Provision	Specific Dates	NRC Role
10.	Submission by DOE of site characterization plan, waste form or package description, and conceptual repository design to NRC for review and comment. Section 113(b).	Before sinking a shaft	NRC will review & comment on DOE submission of each site to be characterized.
11.	DOE submits to the President and the public the Commission's preliminary comments concerning at-depth site characterization and waste form sufficiency for DOE construction authorization application. Section 114(a)(1)(E).	Before event 13 below	NRC must provide preliminary comments on the adequacy of the at-depth site characterization and waste form sufficiency for DOE construction authorization application.
12.	The DOE Final Environmental Impact Statement (EIS) on the first proposed repository must contain comments from the NRC concerning the DOE draft EIS. Section 114(a)(1)(D).	Before event 13 below	NRC will review and comment on the DOE draft EIS.
13.	President recommends one site to Congress for construction. Section 114(a)(2)	3/31/87 (3/31/88)	None; see 15 below
14.	Submission of notice of disapproval by State, Section 116(b); or Indian tribe, Section 118(a)	5/30/87 (5/30/88)	None; see 15 below
15.	Congress may obtain any comments of the Commission with respect to a State/tribal disapproval of a site. Section 115(g).	Before event 15 below	The NRC must be cognizant of State/tribal concerns to be in a position to provide knowledgeable comments to Congress.

	Provision	Specific Dates	NRC Role
16.	State disapproval will take effect unless both Houses of Congress pass resolution of approval. (90 calendar days of continuous session.) Section 115(c).	About 8/87 (About 8/88)	None; see above.
17.	Within 1 year after site disapproval, the President must recommend an alternative site for the first or a subsequent repository. Section 114(a)(3).	About 8/88 (About 8/89)	Role similar to initial site recommendation. See events 11-15, above.
18.	Secretary submits construction authorization application to NRC. Section 114(b).	About 11/87 (About 11/88)	An NRC licensing proceeding will be initiated on the construction authorization application.
19.	NRC must submit to Congress an annual status report. Section 114(c).	One year after submittal of CA and annually thereafter.	NRC will submit an annual status report on the progress of the licensing proceeding to Congress.

	Provision	Specific Dates	NRC Role
20.	Commission must issue decision on issuing construction authorization for first repository. Section 114(d)	1/1/89 or 11/90 or 11/91	3 year time period for NRC decision dictates an active program of involvement with DOE, States/tribes prior to receipt of application to identify and resolve contentious issues to the maximum extent practicable. Commission will either grant or deny authorization for DOE to begin construction of the 1st geologic repository. To meet this schedule, a relatively complete, good quality DOE application will be required.
21.	Secretary must recommend 3 sites for characterization to President for second repository site. Section 112 (b)(1)(C).	7/1/89	Same as event 8 above.
22.	President must recommend to Congress 1 site, from sites already characterized, for second repository. Section 114(a)(2)(A).	3/31/90 (3/31/91)	Same as events 10, 11 and 12, above.
23.	Submission of Construction authorization application to NRC for second repository. Section 114(a)(2).	About 11/90	NRC will initiate licensing proceeding for second repository.

	Provision	Specific Dates	NRC Role
24.	Commission must issue decisions on issuing construction authorization for second repository. Section 114(d)	1/1/92 or 11/93 or 11/94	3 year time period for NRC decision dictates an active program of involvement with DOE, States/tribes prior to receipt of application to identify and resolve contentious issues to the maximum extent practicable. To meet this schedule, a relatively complete, good quality DOE application will be required.

	Provision	Specific Dates	NRC Role
	II. NRC's Role In The Test and Evaluation Facility Program		
1.	DOE may issue T&E facility siting guidelines Section 213(a)	7/7/83	NRC will provide consultation to DOE on its T&E siting guidelines.
2.	NRC, DOE must conclude written agreement on procedures for T&E facility interaction Section 217(f)(1)	1/6/84	NRC must work with DOE in developing a written agreement for procedures for review, consultation, and coordination in the planning, construction and operation of the T&E facility. Such an understanding shall also establish the types reports and other information as the Commission may reasonably require to evaluate health and safety impacts of the T&E facility.
3.	NRC shall carry out a continuing analysis of the T&E activities to evaluate the adequacy of the consideration of public health and safety issues. Section 217(f)(3)(A).	None specified	NRC will carry out a continuing analysis of the activities associated with the DOE T&E facility.

	Provision	Specific Dates	NRC Role
4.	NRC required to report to the Secretary, the President, and the Congress Section 217(f)(3)(B).	As Required	NRC will report to the President, the Secretary, and the Congress as it deems appropriate pursuant to the Act.
5.	NRC must concur on decontamination and decommissioning of DOE's T&E facility Section 217(h)	5 Years After Initial Operation	NRC will evaluate DOE's decontamination and decommissioning activities, and concur, if deemed appropriate for a T&E facility not located at the site of a repository.

Provision	Specific Dates	NRC Role
III. NRC's Role for Interim Spent Fuel Storage		
1. The Secretary, the Commission, and other authorized federal officials shall each take such actions as such officials consider necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor. Section 132.	No specific dates	The Commission will consider which actions are necessary to implement the intent of this provision.
2. Hybrid procedures are prescribed for hearings on certain applications for licenses for facility expansions of spent fuel storage capacity and transshipments of spent fuel. Section 134.	Not specific but applicable to applications filed after 1/07/83.	Actions That Have Been Taken By NRC NRC is in the process of developing procedures for such a Hybrid hearing.

	Provision	Specific Dates	NRC Role
3.	Issuance of NRC proposed rule establishing procedures and criteria for making the determination that onsite storage cannot reasonably be provided at a reactor and that the person owning and operating the reactor is diligently pursuing licensed alternatives to the use of Federal storage capacity. Section 135(b) and Section 135(g).	4/07/83	NRC will issue a proposed rule establishing procedures and criteria for determining use of Federal storage capacity. (After public comment NRC will issue a final rule.) Actions That Have Been Taken By NRC NRC staff is preparing the proposed rule to be issued by April 7, 1983. This activity is on schedule.
4.	If the NRC determines that onsite storage cannot reasonably be provided at a reactor by the licensee DOE may, under certain conditions, provide not more than 1900 metric tons of capacity for storage of spent nuclear fuel from civilian power reactors. Section 135(a)	Not specific	NRC will make public health and safety determinations as to the use of any existing DOE facility for spent fuel storage and will license storage in new structures, including modular or mobile spent nuclear fuel storage equipment such as dry casks, as required under this provision of the Act.
5.	Transportation of spent nuclear fuel to a DOE storage facility shall be subject to licensing and regulation by NRC and by the Department of Transportation. Section 137(a).	Not specific	NRC is required to review DOE's applications for shipment and make licensing determinations for health and safety and safeguards.

	Provision	Specific Dates	NRC Role
6.	DOE, in providing for the transportation of spent nuclear fuel under this Act, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. Section 137(b)	Not specific	NRC will be required to review the private contractor's application for shipment, and make licensing decisions for health and safety and safeguards. Regulations may, at a future date be modified or revised, to conform with DOE's repository program.
7.	NRC shall, by rule, establish procedures for the licensing of any technology approved by the by NRC under Section 218(a) for use at the site of any civilian nuclear power reactor. [Section 133.] Error exists in Act where reference is made in Section 133 to Section 219(a). Under Section 218(a), NRC may, by rule, approve one or more dry storage spent fuel storage technologies for use at the sites of civilian nuclear power reactors, without to the maximum extent practicable, the need for additional site-specific approvals.	Not specific	NRC, using data and information from DOE dry storage demonstration and cooperative programs, will develop regulations to approve dry technology storage at civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site specific approvals by the NRC.

	Provision	Specific Dates	NRC Role
	IV. NRC's Role In Monitored Retrievable Storage Program		
1.	DOE shall consult with the Commission and EPA and shall submit their comments on the MRS proposal to Congress. Section 141(b)(3).	06/01/85	NRC will consult with DOE on development of the MRS proposal, and provide comments to DOE for submittal of the proposal to Congress.
2.	Submission by Secretary of an environmental assessment with respect to the MRS proposal to Congress. Section 141(c)(1).	06/01/85	NRC may, if it deems appropriate, comments to DOE on this environmental impact assessment (EA).
3.	DOE shall file for license with NRC for MRS. Section 141(d).	Subject to Congressional authorization of MRS.	NRC will develop amendments to 10 CFR Part 72 to provide the licensing framework for the MRS, if it should be authorized by Congress. If authorized NRC will review DOE's application and make the necessary licensing determinations.

Provision	Specific Dates	NRC Role
V. NRC's Role In The Low-Level Waste Management Area		
	(No deadlines were provided in the Act for the LLW management provisions under Section 151.)	
1. Commission authorized to establish by rule, regulation, or order such standards and instructions as it deems necessary or desirable to ensure that each LLW disposal licensee will have adequate financial arrangements for decontamination, decommissioning, site closure and reclamation of sites, structures, and equipment used in conjunction with its LLW disposal. Section 151(a)(1).		New sites are covered by existing regulations (10CFR61). NRC will review existing regulations and guidance for application at the existing commercial LLW disposal sites and for any need changes for new sites.
2. If Commission determines that long-term maintenance or monitoring will be necessary at a LLW disposal site, Commission must ensure before termination of the license that the licensee has made adequate financial arrangements to ensure that any needed long-term maintenance or monitoring will be carried out by the person having title and custody for such site following license termination. Section 151(a)(2).		May require rulemaking by the Commission and the development of guidance for both existing and new commercial LLW disposal sites. For existing sites, analyses will be required to assess long term performance; monitoring and long term maintenance requirements; associated costs; and the program to review monitoring data to identify the need for mitigative actions.

	Provision	Specific Dates	NRC Role
3.	DOE shall have the authority to assume title and custody of LLW and the land on which such waste is disposed of, upon the request of the owner of such waste and land following termination of the license issued by the Commision for such disposal, if (1) the Commission determines that the requirements for site closure, decommissiong and decontamination have been met with pursuant to Section 151(a); (2) that such title and custody will be transferred to the DOE without cost to the Federal government; and that Federal ownership and management is necessary, or desirable to protect the public health and safety. Section 151(b).		Likely to require rulemaking/guidance to provide basis for required Commission determinations. Such rulemaking/guidance would require close coordination of DOE who appears to have independent discretion to accept sites following Commission determination.
4.	Adequate financial arrangements for long-term maintenance and monitoring, as well as decontamination and stabilization of special sites must be met in accordance with requirements established by the Commission before DOE may assume title and custody of the waste and the land on which it is disposed. Section 151(c).		Similiar to event 3, above.

Provision	Specific Dates	NRC Role
IV. NRC's Role Relating to Other Provisions In The Act		
1. Within 90 days of the enactment of the Act, DOE and NRC must publish a joint notice in the Federal Register stating that the U.S. is prepared to cooperate and provide technical assistance to non-nuclear weapon states. This joint notice is to be updated and reissued annually for 5 succeeding years. Section 223(b).	4/7/83	NRC will prepare a joint Federal Register notice and will provide technical assistance to non-nuclear weapon states pursuant to the Act and the FR notice. Actions That Have Been Taken By NRC The staff have prepared a proposed FR notice, coordinated it with DOE, and have forwarded it to the Commission for their approval.

	Provision	Specific Dates	NRC Role
2.	The Commission shall not issue or renew a license to use a utilization or production facility under Section 103 or 104 of the Atomic Energy Act unless the applicant has entered into a waste disposal contract with the Secretary of Energy or Secretary affirms in writing that the licensee is negotiating in good faith to enter into such a contract. The NRC in its discretion may require as a precondition to the issuance or renewal of a reactor license that the applicant shall have entered into an agreement with DOE for the disposal of high-level waste or spent fuel that may result from such a license. Section 302(b)(1)(B).	6/30/83	The NRC and DOE are still examining what the provisions mean and how they will be applied.
3.	DOE shall consult with the Chairman of the NRC in conducting a study of alternative approaches to managing construction and operation of all civilian waste management facilities and then DOE is to report to Congress. Section 303.	1/6/84	At the invitation of the Secretary, the Chairman will consult on the "alternative approaches" study.

	Provision	Specific Dates	NRC Role
4.	The Act requires and authorizes NRC to promulgate regulations or other suitable Commission guidance for the training and qualifications of civilian nuclear powerplant personnel. Section 306.	1/6/84	NRC will develop and promulgate regulations or other suitable guidance for training and qualifying civilian powerplant reactor personnel required to be implemented by the Act.

Enclosure 4

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
I. NRC's Role In Repository Development Program													
1. Siting Guidelines promulgated by DOE in which NRC concurs. Section 112(a)													
Proposed NRC comments to Commission			x										
Final comments and recommendation to Commission					x								
NWPA Due Date							x (7/5/83)						
2. NRC technical requirements and criteria promulgated. Section 121(b)													
Final version of 10 CFR Part 60 for Commission review		x											
NWPA Due Date													x (1/1/84)

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
II. NRC's Role In The Test And Evaluation Facility Program													
1. DOE may issue T&E facility siting guidelines. Section 213(a)													
Commission involvement is dependent on DOE's schedule which is currently incomplete.													
NWPA Due Date							x (7/7/83)						
2. NRC and DOE must conclude written agreement on procedures for T&E facility interaction. Section 217(f)(1)													
Commission involvement is dependent on DOE's schedule which is currently incomplete.													
NWPA Due Date													x (1/6/84)

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
III. NRC's Role For Interim Spent Fuel Storage													
1. Hybrid procedures are prescribed for hearings on certain applications for licenses for facility expansions of spent fuel storage capacity and transshipments of spent fuel. Section 134													
Draft rulemaking for Commission review			x										
Final rulemaking for Commission review							x						
NWPA Effective Date	x (1/7/83)												

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
2. Issuance of NRC proposed rule establishing procedures and criteria for making the determination that on-site storage cannot reasonably be provided at a reactor and that the person owning and operating the reactor is diligently pursuing licensed alternatives to the use of Federal storage capacity. Section 135(b) and 135(g)													
Draft rulemaking for Commission review			x										
NWPA Due Date				x (4/7/83)									

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
VI. NRC's Role Relating To Other Provisions To The Act													
1. Within 90 days of enactment of the Act, DOE and NRC must publish a joint notice in the Federal Register stating that the U.S. is prepared to cooperate and provide technical assistance to non-nuclear weapon states. This joint notice is to be updated and re-issued annually for five succeeding years. Section 223(b)													
Draft joint Federal Register Notice to the Commission			x										
NWPA Due Date				x (4/7/83)									

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
3. DOE shall consult with the Chairman of the NRC in conducting a study of alternative approaches to managing construction and operation of all civilian waste management facilities and then DOE is to report to Congress. Section 303													
Commission involvement is dependent on DOE's schedule which is currently incomplete.													
NWPA Due Date													x (1/6/84)

SCHEDULE FOR COMMISSION INVOLVEMENT
IN THE NWPA ACTIONS
(JANUARY 1983 - JANUARY 1984)

Action	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan '84
4. The Act requires and authorizes NRC to promulgate regulations or other suitable guidance for the training and qualifications of civilian nuclear powerplant personnel. Section 306													
Draft rulemaking for Commission review							x						
Final rule for Commission review											x		
NWPA Due Date													x (1/6/84)

Enclosure 5

H.R. 3809

Ninety-seventh Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-fifth day of January, one thousand nine hundred and eighty-two

An Act

To provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.

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

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act of 1982".

TABLE OF CONTENTS

DEFINITIONS

SEC. 2. For purposes of this Act:

(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 substantially 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;

(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 112 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113.

(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 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

(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, United States Code.

(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 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); 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 305.

(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, United States Code; 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 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 137(c).

(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 302(c).

SEPARABILITY

SEC. 3. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, 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.

TERRITORIES AND POSSESSIONS

SEC. 4. Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980 (48 U.S.C. 1491).

OCEAN DISPOSAL

SEC. 5. Nothing in this Act shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

LIMITATION ON SPENDING AUTHORITY

SEC. 6. The authority under this Act 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.

PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION

SEC. 7. Nothing in this Act shall require the release or disclosure to any person or to the Commission of any classified national security information.

APPLICABILITY

SEC. 8. (a) ATOMIC ENERGY DEFENSE ACTIVITIES.—Subject to the provisions of subsection (c), the provisions of this Act 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 the date of the enactment of this Act, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I 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 subtitle A of title I 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 302.

(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 202 of the Energy Reorganization Act of 1973 (42 U.S.C. 5842); 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 Act 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.

APPLICABILITY

SEC. 9. TRANSPORTATION.—Nothing in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

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

STATE AND AFFECTED INDIAN TRIBE PARTICIPATION IN DEVELOPMENT OF PROPOSED REPOSITORIES FOR DEFENSE WASTE

SEC. 101. (a) NOTIFICATION TO STATES AND AFFECTED INDIAN TRIBES.—Notwithstanding the provisions of section 8, 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), 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 115 through 118, except that

any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

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

FINDINGS AND PURPOSES

SEC. 111. (a) FINDINGS.—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 Act;

(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) PURPOSES.—The purposes of this subtitle 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.

RECOMMENDATION OF CANDIDATE SITES FOR SITE CHARACTERIZATION

SEC. 112. (a) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the 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 Refuge 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). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) RECOMMENDATION BY SECRETARY TO THE PRESIDENT.—(1)(A) Following the issuance of guidelines under subsection (a) 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) 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 previ-

ously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B).

(D) Such recommendations under subparagraphs (B) and (C) shall be consistent with the provisions of section 305.

(E) 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);

(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.

(F)(i) 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, United States Code, and section 119. 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).

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

(H) 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 113(b)(1).

(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 upon the date of enactment of this Act or (ii) the Secretary certifies that such available informa-

tion from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this Act 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). 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 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) CONTINUATION OF CANDIDATE SITE SCREENING.—After the required recommendation of candidate sites under subsection (b), 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.

(e) 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.

(f) TIMELY SITE CHARACTERIZATION.—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) 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) for site characterization and approved by the President under subsection (c); and (3) the Secretary shall conduct public hearings under 113(b)(2) and comply with requirements under section 117 of this Act within one year of the date of enactment.

SITE CHARACTERIZATION

SEC. 113. (a) IN GENERAL.—The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities beginning with the candidate sites that have been approved under section 112 and are located in various geologic media. The Secretary shall consider fully the comments received under subsection (b)(2) and section 112(b)(2) and shall, to the maximum extent practicable and in consultation with the Governor of the State involved or the governing body of the affected Indian tribe involved, 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).

(b) COMMISSION AND STATES.—(1) Before proceeding to sink shafts at any candidate site, the Secretary shall submit for such candidate site to the Commission 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 on whose reservation such candidate site is located, as the case may be, 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 112(a); 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 any candidate 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 a candidate site, the Secretary shall report not less than once every 6 months to the Commission 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, on the nature and extent of such activities and the information developed from such activities.

(c) RESTRICTIONS.—(1) The Secretary may conduct at any candidate site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such candidate site for an application to be submitted to the Commission for a construction authorization for a repository at such candidate 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 candidate 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 candidate site; and

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

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such candidate 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 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.

(d) PRELIMINARY ACTIVITIES.—Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) 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 require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

SEC. 114. (a) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—(1) The Secretary shall hold public hearings in the vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository, for the purposes of informing the residents of the area in which such site is located 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 not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent respositories, under section 113, the Secretary decides to recommend approval of such site to the President, 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 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 113 and this section, including the information described in subparagraph (A) through subparagraph (G). 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. 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 pursuant to subsection (f) 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 or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 113, 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 Act shall not be required to consider the need for a repository or the alternatives to geologic disposal;

(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 116(c)(2)(B) by the State in which such site is located, or under section 118(b)(3)(B) by the affected Indian tribe where such site is located, as the case may be.

(2)(A) Not later than March 31, 1987, the President shall submit to the Congress a recommendation of one site from the three sites initially characterized that the President considers qualified for application for a construction authorization for a repository. Not later than March 31, 1990, the President shall submit to the Congress a recommendation of a second site from any sites already characterized that the President considers qualified for a construction authorization for a second repository. The President shall submit with such recommendation a copy of the report for such site prepared by the Secretary under paragraph (1). After submission of the second such recommendation, the President may submit to the Congress recommendations for other sites, in accorance with the provisions of this subtitle.

(B) The President may extend the deadlines described in subparagraph (A) by not more than 12 months if, before March 31, 1986, for the first site, and March 31, 1989, for the second site, (i) the President determines that such extension is necessary; and (ii) transmits to the Congress a report setting forth the reasons for such extension.

(3) 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 116 or the governing body of an affected Indian tribe under section 118, 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.

(4)(A) The President may not recommend the approval of any site under this subsection unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a report 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 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 a site for a repository under subsection (a) and the site designation is permitted to take effect under section 115, 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 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, 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), 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—

(1) January 1, 1989, for the first such application, and January 1, 1992, for the second such application; or

(2) 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);

whichever occurs later. 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 subtitle C of this Act, 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 involved, within the time periods specified in this subtitle. 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.—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. 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 Act 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. For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 1321 et seq.) and this section, the Secretary shall consider as alternate sites for the first repository to be developed under this subtitle 3 candidate sites with respect to which (1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination, that such sites are suitable for development as respositories consistent with the guidelines promulgated under section 112(a). The Secretary shall consider as alternative sites for subsequent repositories at least three of the remaining sites recommended by the Secretary by January 1, 1985, and by July 1, 1989, pursuant to section 112(b) and approved by the President for site characterization pursuant to section 112(c) for which (1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination that such sites are suitable for development as respositories consistent with the guidelines promulgated under section 112(a). Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle 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.). Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nucler Regulatory Commission as established in title II of the Energy Reorganization Act of 1974 (Public Law 93-438). In

any such statement prepared with respect to the first repository to be constructed under this subtitle, the need for a repository or nongeologic alternatives to the site of such repository shall not be considered.

REVIEW OF REPOSITORY SITE SELECTION

SEC. 115. (a) DEFINITION.—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 114, 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 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) CONGRESSIONAL REVIEW OF PETITIONS.—If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation for approval of such site is made by the President under section 114, 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 THE 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 116 or 118, 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 THE 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) and the 60-day period referred to in subsections (d) and (e).

(g) INFORMATION PROVIDED TO CONGRESS.—In considering any notice of disapproval submitted to the Congress under section 116 or 118, 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.

PARTICIPATION OF STATES

SEC. 116. (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 the date of enactment of this Act. 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 title, 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 subtitle 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 114. 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 state-

ment 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 each State notified under subsection (a) for the purpose of participating in activities required by sections 116 and 117 or authorized by written agreement entered into pursuant to subsection 117(c). Any salary or travel expense that would ordinarily be incurred by such State, or by any political subdivision of such State, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to each State in which a candidate site for a repository is approved under section 112(c). Such grants may be made to each such State only for purposes of enabling such State—

(i) to review activities taken under this subtitle 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 State 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 its 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 subtitle with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by such State, or by any political subdivision of such State, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall provide financial and technical assistance to any State requesting such assistance in which 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 State of the development of such repository. Such assistance to such State 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 State 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 in such State. 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 State involved setting forth the amount of assistance to be provided to such State under this paragraph and the procedures to be followed in providing such assistance.

(3) The Secretary shall also grant to each State and unit of general local government in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State and unit of general local government, respectively, would receive were they authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State and unit of general local government tax the other real property and industrial activities occurring within such State and unit of general local government. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) A State 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 involved of the termination of site characterization activities at the candidate site involved in such State;

(ii) the date on which the site in such State is disapproved under section 115; or

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

whichever occurs first, unless there is another candidate site in the State approved under section 112(c) with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) A State 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 in a State, no Federal funds shall be made available to such State under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support State 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; and

(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.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 302.

(d) ADDITIONAL NOTIFICATION AND CONSULTATION.—Whenever the Secretary is required under any provision of this Act 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.

CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

SEC. 117. (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 subtitle, 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 112(c), and in subsequently developing and loading 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 subtitle, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) WRITTEN AGREEMENT.—Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c), or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) to the Secretary, whichever, 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), 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. 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 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. 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 116(c) or section 118(b), 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.

PARTICIPATION OF INDIAN TRIBES

SEC. 118. (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 114. 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 116(a) for the purpose of participating in activities required by section 117 or authorized by written agreement entered into pursuant to section 117(c). 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 112(c). 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 subtitle 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 subtitle 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 Commis-

sion 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 112(c) 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) 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 115; or

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

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 112(c) 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 302.

JUDICIAL REVIEW OF AGENCY ACTIONS

SEC. 119. (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 subtitle;

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

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

(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 subtitle, or as required under section 135(c)(1), or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 112(b)(1) or 135(c)(2); or

(F) for review of any research and development activity under title II.

(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) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) 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.

EXPEDITED AUTHORIZATIONS

SEC. 120. (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 subtitle 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) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

CERTAIN STANDARDS AND CRITERIA

SEC. 121. (a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—Not later than 1 year after the date of the enactment of this Act, 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).

(2) For purposes of this Act, 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). If the Administrator promulgates standards under subsection (a) 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.

DISPOSAL OF SPENT NUCLEAR FUEL

SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle 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 114.

TITLE TO MATERIAL

SEC. 123. Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this subtitle shall constitute a transfer to the Secretary of title to such waste or spent fuel.

CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS

SEC. 124. 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.

TERMINATION OF CERTAIN PROVISIONS

SEC. 125. Sections 119 and 120 shall cease to have effect at such time as a repository developed under this subtitle is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

SUBTITLE B—INTERIM STORAGE PROGRAM

FINDINGS AND PURPOSES

SEC. 131. (a) FINDINGS.—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 subtitle, 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) PURPOSES.—The purposes of this subtitle 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 subtitle, 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.

AVAILABLE CAPACITY FOR INTERIM STORAGE OF SPENT NUCLEAR FUEL

SEC. 132. 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.

INTERIM AT REACTOR STORAGE

SEC. 133. The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) 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.

LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS

SEC. 134. (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 the date of the enactment of this Act, 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), 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 license 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) 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.

STORAGE OF SPENT NUCLEAR FUEL

SEC. 135. (a) STORAGE CAPACITY.—(1) Subject to section 8, 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 the date of the enactment of this Act, 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) 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 the date of enactment of this Act;

(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 136(a), 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), the Secretary shall offer to enter into, and may enter into, contracts under section 136(a) 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) 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) 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, United States Code. 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 119.

(d) REVIEW OF SITES AND STATE PARTICIPATION.—(1) In carrying out the provisions of this subtitle with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 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) 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 subtitle 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 115 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 115 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 Act 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 the date of the enactment of this Act.

(g) CRITERIA FOR DETERMINING ADEQUACY OF AVAILABLE STORAGE CAPACITY.—Not later than 90 days after the date of the enactment of this Act, the Commission pursuant to section 553 of the Administrative Procedures Act, shall propose, by rule, procedures and criteria for making the determination required by subsection (b) 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 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.

(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 217 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).

INTERIM STORAGE FUND

SEC. 136. (a) CONTRACTS.—(1) During the period following the date of the enactment of this Act, 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 subtitle: *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 135(a). 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 the date of the enactment of this Act, 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 subtitle shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this subtitle with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle.

(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 137, nothing in this 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, United States Code, may be stored by the Secretary in any storage capacity provided under this subtitle 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), 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 the date of the enactment of this Act 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), 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 subtitle, including—

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

(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 135;

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

(5) impact assistance as described in subsection (e).

(e) IMPACT ASSISTANCE.—(1) Beginning the first fiscal year which commences after the date of the enactment of this Act, 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 boundaries of such government or governments and authorized under this subtitle: *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 title, 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).

(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 subtitle 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 the date of the enactment of this subsection, 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, United States Code. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures 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, United States Code.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, 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, United States Code, and the purposes for which securities may be issued under such Act 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) 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.

SEC. 137. (a) TRANSPORTATION.—(1) Transportation of spent nuclear fuel under section 136(a) 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 Act, 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.

SUBTITLE C—MONITORED RETRIEVABLE STORAGE

MONITORED RETRIEVABLE STORAGE

SEC. 141. (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 Act 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 Act.

(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 (b)(1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) 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, 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), 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).

(d) LICENSING.—Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). 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).

(e) CLARIFICATION.—Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) 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), 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 302(c) 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 112. 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 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.

SUBTITLE D—LOW-LEVEL RADIOACTIVE WASTE

FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE

SEC. 151. (a) FINANCIAL ARRANGEMENTS.—(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), 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 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), 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 the date of the enactment of this Act, 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);

(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.

TITLE II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

PURPOSE

SEC. 211. It is the purpose of this title—

(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 title—

(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.

APPLICABILITY

SEC. 212. The provisions of this title are subject to section 8 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.

IDENTIFICATION OF SITES

SEC. 213. (a) GUIDELINES.—Not later than 6 months after the date of the enactment of this Act 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 Geological Survey, the Administrator, the Council on Environ-

mental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, United States Code, 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 title.

(b) SITE IDENTIFICATION BY THE SECRETARY.—(1) Not later than 1 year after the date of the enactment of this Act, and following promulgation of guidelines under subsection (a), 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 the date of the enactment of this Act 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 title. 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);

(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 302(d) may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

SITING RESEARCH AND RELATED ACTIVITIES

SEC. 214. (a) IN GENERAL.—Not later than 30 months after the date on which the Secretary completes the identification of sites under section 213, 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 218. 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 302(d) 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 213, 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 218 with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a)—

(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 302 for the disposal of such material.

TEST AND EVALUATION FACILITY SITING REVIEW AND REPORTS

SEC. 215. (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 213 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 title 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.

FEDERAL AGENCY ACTIONS

SEC. 216. (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 title and the mission plan under section 301.

(b) ENVIRONMENTAL REVIEW.—(1) No action of the Secretary or any other Federal agency required by this title or section 301 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 title.

(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.).

RESEARCH AND DEVELOPMENT ON DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

SEC. 217. (a) PURPOSE.—Not later than 64 months after the date of the enactment of this Act, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214, 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 licensing issues that could not be resolved during the siting research program conducted under section 212;

(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 214 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 the date of the enactment of this Act, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 301, 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 214 and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on the date of the enactment of this Act 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 Act, 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 the date of the enactment of this Act, 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 subtitle, for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 301; 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 305, the test and evaluation facility, and the facilities authorized in section 217, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842).

(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 section 217(a). Nothing in this subsection may be construed to limit siting research activities conducted under section 214. 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) determined by the Secretary to be useful in carrying out the purposes of this Act.

(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.

RESEARCH AND DEVELOPMENT ON SPENT NUCLEAR FUEL

SEC. 218. (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 the date of the enactment of this Act, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 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), 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), 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 Act 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) 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 the date of the enactment of this Act. 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 135, 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 135. Such spent nuclear fuel shall not be subject to the provisions of section 135(e).

(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), 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 136.

(e) RELATION TO SPENT NUCLEAR FUEL STORAGE PROGRAM.—The spent nuclear fuel storage program authorized in section 135 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 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.

PAYMENTS TO STATES AND INDIAN TRIBES

SEC. 219. (a) PAYMENTS.—Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 215. 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 215 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 217(h). 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 213, 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) 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) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 215. Annual payments shall be prorated on a 365-day basis to the specified dates.

STUDY OF RESEARCH AND DEVELOPMENT NEEDS FOR MONITORED RETRIEVABLE STORAGE PROPOSAL

SEC. 220. Not later than 6 months after the date of the enactment of this Act, 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 141(b) with respect to a monitored retrievable storage facility.

JUDICIAL REVIEW

SEC. 221. Judicial review of research and development activities under this title shall be in accordance with the provisions of section 119.

SEC. 222. RESEARCH ON ALTERNATIVES FOR THE 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.

TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE FIELD OF SPENT FUEL STORAGE AND DISPOSAL

SEC. 223. (a) 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)(1) Within 90 days of enactment of this Act, 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) 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) 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) For the purposes of this subsection, 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. 438).

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

MISSION PLAN

SEC. 301. (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 Act. 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 scien-

tific, 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 Act 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 Act, 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 112(a);

(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 Act; 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 the date of the enactment of this Act, 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 the date of the enactment of this Act. 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.

NUCLEAR WASTE FUND

SEC. 302. (a) CONTRACTS.—(1) In the performance of his functions under this Act, 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).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after the date of enactment of this Act, 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 the date of enactment of this Act, 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 123, 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) 126(b). In paying such a fee, the person delivering 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 the date of enactment of this Act, 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) herein. 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), 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 551 of the Energy Policy and Conservation Act.

(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 subtitle.

(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 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) 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 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) 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, United States Code) may be disposed of by the Secretary in any repository constructed under this Act 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, United States Code, may be disposed of by the Secretary in any repository constructed under this Act 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), 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 the date of the enactment of this Act 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), only for purposes of radioactive waste disposal activities under titles I and II, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored, retrievable storage facility or test and evaluation facility constructed under this Act;

(2) the conducting of nongeneric research, development, and demonstration activities under this Act;

(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, retrievable storage site 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, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 116, 118, and 219.

No amount may be expended by the Secretary under this subtitle 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, United States Code. 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, United States Code.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, 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, United States Code, and the purposes for which securities may be issued under such Act 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) 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.

ALTERNATIVE MEANS OF FINANCING

SEC. 303. 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 the date of the enactment of this Act.

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

SEC. 304. (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, United States Code.

(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, 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) ANNUAL AUDIT BY COMPTROLLER GENERAL.—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.

LOCATION OF TEST AND EVALUATION FACILITY

SEC. 305. (a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, 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 title I 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 title I with respect to the site selection and development of respositories.

(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 115.

NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION

SEC. 306. 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 re-

qualification 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 enactment of this Act, and the Commission within the 12-month period following enactment of this Act shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

12/82

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Meeting Title: Briefing on Nuclear Waste Management Act

Meeting Date: 3/18/83 Open X Closed ____

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