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(Return to WM, 623-SS)

JAN 21 1986

MEMORANDUM FOR: Donald Grimsley, Director
Division of Rules and Records

FROM: Joseph O. Bunting, Chief
Policy and Program Control Branch
Division of Waste Management

SUBJECT: UMTRCA - ESTABLISHMENT OF DOCKET FILES

We request your recommendation on whether docket numbers should be established at this time on the existing site files being maintained by the Division of Waste Management in the Uranium Mill Tailings Remedial Action Program (UMTRAP) as mandated by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Public Law 95-604, copy enclosed). The Act requires a program of assessment and remedial action at abandoned uranium mill tailings sites. The Department of Energy has the lead for the activities outlined in this program; however, most of DOE's actions must be performed with concurrence by the NRC.

The Division of Waste Management has, to date, received voluminous amounts of material for review from the Department of Energy on these inactive mill tailings sites and has placed them in assigned "WM project files." According to the Act, upon completion of the remedial action program, "such property and minerals shall be maintained pursuant to a license issued by the Commission."

This is a unique licensing situation--that is, NRC efforts will be expended prior to receipt of the license application. WM believes that the existing project files with associated "WM Project" numbers should be maintained until such time as a license application is received. At that time, a docket number will be issued. Nevertheless, we request your recommendation on this matter.

Thank you.

Joseph O. Bunting, Chief
Policy and Program Control Branch
Division of Waste Management

Enclosure: UMTRCA of 1978

8603310358 860121
PDR WASTE PDR
WM-39

This memorandum was coordinated with G. Gnugnoli.

*SEE PREVIOUS CONCURRENCES.

OFC :	WMPC	WMPC*	WMLU*	WMPC
NAME :	NStill:nls	DMattson	LHigginbotham	JOBunting
DATE :	86/01/15	1/13/86	1/14/86	1/17/86

(original
version of Act)

Public Law 95-604
95th Congress

An Act

To authorize the Secretary of Energy to enter into cooperative agreements with certain States respecting residual radioactive material at existing sites, to provide for the regulation of uranium mill tailings under the Atomic Energy Act of 1954, and for other purposes.

Nov. 8, 1978

[H.R. 13650]

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 "Uranium Mill Tailings Radiation Control Act of 1978".

Uranium Mill
Tailings
Radiation Control
Act of 1978.
42 USC 7901
note.

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FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of

42 USC 7901.

the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this Act are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public; and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

TITLE I—REMEDIAL ACTION PROGRAM

DEFINITIONS

42 USC 7911.

SEC. 101. For purposes of this title—

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

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

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

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

42 USC 2011

note.

42 USC 2021.

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this title shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b).

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5 of the United States Code.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

DESIGNATION OF PROCESSING SITES

SEC. 102. (a) (1) As soon as practicable, but no later than one year after enactment of this Act, the Secretary shall designate processing sites at or near the following locations: 421

- ✓ Salt Lake City, Utah
- ✓ Green River, Utah
- ✓ Mexican Hat, Utah
- ✓ Durango, Colorado
- ✓ Grand Junction, Colorado
- ✓ Rifle, Colorado (two sites)
- ✓ Gunnison, Colorado
- ✓ Naturita, Colorado
- ✓ Maybell, Colorado
- ✓ Slick Rock, Colorado (two sites)
- ✓ Shiprock, New Mexico
- ✓ Ambrosia Lake, New Mexico
- ✓ Riverton, Wyoming
- ✓ Converse County, Wyoming
- ✓ Lakeview, Oregon
- ✓ Falls City, Texas
- ✓ Tuba City, Arizona
- ✓ Monument Valley, Arizona
- ✓ Lowman, Idaho
- ✓ Cannonsburg, Pennsylvania

Remedial action. Subject to the provisions of this title, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this title. The Secretary shall within one year of the date of enactment of this Act also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this title. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

86 Stat. 222. (3) No site or structure with respect to which remedial action is authorized under Public Law 92-314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

Health hazard assessment. (b) Within one year from the date of the enactment of this Act, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

Notification. (c) Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e)(1) The designation of processing sites within one year after enactment under this section shall include, to the maximum extent practicable, the areas referred to in section 101(6)(B).

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 101(6)(B) as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this title.

STATE COOPERATIVE AGREEMENTS

42 USC 7913. **Sec. 103.** (a) After notifying a State of the designation referred to in section 102 of this title, the Secretary subject to section 113, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 105). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited

to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 108.

(c)(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 104, each cooperative agreement with a State under section 103 shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 104(b)(1) in furtherance of the provisions of this title and to carry out such agreement and enforce this Act and any rules prescribed under this Act. Such right of entry under this section or section 106 into an area described in section 101(6)(B) shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) The Secretary may, in any cooperative agreement entered into under this section or section 105, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 101(6)(B). Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to enactment of this Act, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 105 is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this Act with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 275(a) of the Atomic Energy Act of 1954.

ACQUISITION AND DISPOSITION OF LANDS AND MATERIALS

Sec. 104. (a) Each cooperative agreement under section 103 shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated process-

ing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

Residual
radioactive
material, removal.

(b)(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 106 (a)(2) is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) No State shall be required under subsection (a) or (b) to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 101(6)(A), and

(2) the site used for disposition of the residual radioactive materials.

(d) In the case of each processing site designated under this title other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place.

Notification.

Rules and
regulations.

(e)(1) The terms and conditions of any cooperative agreement with a State under section 103 shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a), the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f).

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f)(1) Each agreement under section 103 shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b), for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this title. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this Act other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this title, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after the date of enactment of this Act. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h).

Post.

(g) Each agreement under section 103 which permits any sale described in subsection (c)(1)(A) shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this title shall be deposited in the Treasury of the United States as miscellaneous receipts.

Fair
value

(h) No provision of any agreement under section 103 shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

INDIAN TRIBE COOPERATIVE AGREEMENTS

42 USC 7915.

SEC. 105. (a) After notifying the Indian tribe of the designation pursuant to section 102 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 113, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act. Such terms and conditions shall require the following:

Terms and
conditions.

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 108 by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this title, to carry out such agreement, and to enforce any rules prescribed under this Act.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a process-

ing site on lands described in subsection (a) to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 104(f)(2) and (h).

Trans-
Secr-
Inter

ACQUISITION OF LAND BY SECRETARY

SEC. 106. Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this title, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

42 U

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.

Cons:

FINANCIAL ASSISTANCE

SEC. 107. (a) In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 103 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this title, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this title.

42 U

(b) In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

REMEDIAL ACTION

SEC. 108. (a) (1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed

42 U

by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior.

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law. No such remedial action may be undertaken under this section before the promulgation by the Administrator of such standards.

(b) Prior to undertaking any remedial action at a designated site pursuant to this title, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials at the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this title. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 or under State law as permitted under section 274 of such Act.

RULES

Sec. 109. The Secretary may prescribe such rules consistent with the purposes of this Act as he deems appropriate pursuant to title V of the Department of Energy Organization Act.

ENFORCEMENT

Sec. 110. (a) (1) Any person who violates any provision of this title or any cooperative agreement entered into pursuant to this title or any rule prescribed under this Act concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than \$1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5, United States Code.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of

the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(b) Nothing in this section shall prevent the Secretary from enforcing any provision of this title or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Subsection (a) shall not apply to any licensing requirements under the Atomic Energy Act of 1954. Such licensing requirements shall be enforced by the Commission as provided in such Act.

PUBLIC PARTICIPATION

Sec. 111. In carrying out the provisions of this title, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

TERMINATION; AUTHORIZATION

Sec. 112. (a) The authority of the Secretary to perform remedial action under this title shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after the date of enactment of this Act.

(b) The amounts authorized to be appropriated to carry out the purposes of this title by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this title shall be available until expended.

LIMITATION

Sec. 113. The authority under this title to enter into contracts or other obligations requiring the United States to make outlays may

be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

REPORTS TO CONGRESS

42 USC 7924.

SEC. 114. (a) Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this Act and any amendments to other laws made by this Act. Each report shall —

- (1) include data on the actual and estimated costs of the program authorized by this title;
- (2) describe the extent of participation by the States and Indian tribes in this program;
- (3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and
- (4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other radioactive waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

Cooperation.

(c) Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Interstate and Foreign Commerce

of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this title and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

ACTIVE OPERATIONS; LIABILITY FOR REMEDIAL ACTION

SEC. 115. (a) No amount may be expended under this title with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act at which production of any uranium product from ores (other than from residual radioactive materials) takes place.

(b) In the case of each processing site designated under this title, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before the date of the enactment of this Act may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following the date of the enactment of this Act. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

TITLE II—URANIUM MILL TAILINGS LICENSING AND REGULATION DEFINITION

SEC. 201. Section 11e. of the Atomic Energy Act of 1954, is amended to read as follows:

"e. The term 'byproduct material' means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content."

CUSTODY OF DISPOSAL SITE

SEC. 202. (a) Chapter 8 of the Atomic Energy Act of 1954, is amended by adding the following new section at the end thereof:

"SEC. 83. OWNERSHIP AND CUSTODY OF CERTAIN BYPRODUCT MATERIAL AND DISPOSAL SITES.—

"a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11e.

(2), shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

"(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

"(2) ownership of any byproduct material, as defined in section 11 e. (2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

Any license in effect on the date of the enactment of this section shall either contain such terms and conditions on renewal thereof after the effective date of this section, or comply with paragraphs (1) and (2) upon the termination of such license, whichever first occurs.

"(b)(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2), pursuant to such license shall be transferred to—

"(A) the United States, or

"(B) the State in which such land is located, at the option of such State.

"(2) Unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 84(b) in such manner as will protect the public health, safety, and the environment.

"(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under sub paragraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

"(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such

42 USC 2014.

Rule, regulation
or order

custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

"(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

"(4) In the case of any such license under section 62, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

"(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.

"(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

"(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1) (B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104 (h) of the Uranium Mill Tailings Radiation Control Act of 1978.

"(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11 e. (2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long term maintenance and monitoring of such lands by the United States.

"Upon termination on any license to which this section applies, the Commission shall determine whether or not the licensee has com-

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42

plied with all applicable standards and requirements under such license."

Effective date
42 USC 2113
note

(b) This section shall be effective three years after the enactment of this Act.

(c) The table of contents for chapter 8 of the Atomic Energy Act of 1954, is amended by inserting the following new item after the item relating to section 82:

"Sec. 83. Ownership and custody of certain byproduct material and disposal sites."

AUTHORITY TO ESTABLISH CERTAIN REQUIREMENTS

Sec. 203. Section 161 of the Atomic Energy Act of 1954, is amended by adding the following new subsection at the end thereof:

"x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

"(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined; and

"(2) that—

"(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized; and, to the maximum extent practicable, eliminated; and

"(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection."

COOPERATION WITH STATES

Sec. 204. (a) Section 274 b. of the Atomic Energy Act of 1954, is amended by adding "as defined in section 11 e. (1)" after the words

"byproduct materials" in paragraph (1) by renumbering paragraphs (2) and (3) as paragraphs (3) and (4); and by inserting the following new paragraph immediately after paragraph (1):

"(2) byproduct materials as defined in section 11 e. (2);"

(b) Section 274 d. (2) of such Act is amended by inserting the following before the word "compatible": "in accordance with the requirements of subsection o. and in all other respects"

(c) Section 274 n. of such Act is amended by adding the following new sentence at the end thereof: "As used in this section, the term 'agreement' includes any amendment to any agreement."

(d) Section 274 j. of such Act is amended—

(1) by inserting "all or part of" after "suspend";

(2) by inserting "(1)" after "finds that"; and

(3) by adding at the end before the period the following: "or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section."

(e) (1) Section 274 of such Act is amended by adding the following new subsection at the end thereof:

"o. In the licensing and regulation of byproduct material, as defined in section 11 e. (2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

"(1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land), and

"(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 83, 84, and 275, and

"(3) procedures which—

"(A) in the case of licenses, provide procedures under State law which include—

"(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

"(ii) an opportunity for cross examination, and

"(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

"(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule; and

"(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

"(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

"(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

"(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

"(iv) consideration of the long term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11 e. (2); and

"(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 83 b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161 x. of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission."

(f) Section 274 c. of such Act is amended by inserting the following new sentence after paragraph (4) thereof: "The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 11 e. (2)."

(g) Nothing in any amendment made by this section shall preclude any State from exercising any other authority as permitted under the Atomic Energy Act of 1954 respecting any byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(h) (1) On or before the date three years after the date of the enactment of this Act, notwithstanding any amendment made by this title, any State may exercise any authority under State law respecting byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, in the same manner, and to the same extent, as permitted before the enactment of this Act.

(2) An agreement entered into with any State as permitted under section 274 of the Atomic Energy Act of 1954 with respect to byproduct material as defined in section 11 e. (2) of such Act, may be entered into at any time after the date of the enactment of this Act but no such agreement may take effect before the date three years after the date of the enactment of this Act.

Ante, p. 3033

42 USC 2201

42 USC 2021

42 USC 2014

42 USC 2021

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42 USC 2021

note.

AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL

SEC. 205. (a) Chapter 8 of the Atomic Energy Act of 1954, is amended by adding the following new section at the end thereof:

"SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.—

"a. The Commission shall insure that the management of any byproduct material, as defined in section 11 e. (2), is carried out in such manner as—

"(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material,

"(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

"(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

"b. In carrying out its authority under this section, the Commission is authorized to—

"(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

"(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act."

(b) The first sentence of section 81 of the Atomic Energy Act of 1954, is amended to read as follows: "No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84."

(c) The table of contents for such chapter 8 is amended by inserting the following new item after the item relating to section 83:

"Sec. 84. Authorities of Commission respecting certain byproduct material."

AUTHORITY OF ENVIRONMENTAL PROTECTION AGENCY RESPECTING CERTAIN BYPRODUCT MATERIAL

SEC. 206. (a) Chapter 19 of the Atomic Energy Act of 1954, is amended by inserting after section 274 the following new section:

"SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

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sec.

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Infra

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Rule

or or

42 1

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Ante

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Rule.

"a. As soon as practicable, but not later than one year after the date of enactment of this section, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the 'Administrator') shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. The Administrator may periodically revise any standard promulgated pursuant to this subsection.

42 USC 6901

note

Rule.

"b. (1) As soon as practicable, but not later than eighteen months after the enactment of this section, the Administrator shall, by rule, promulgate standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11 e. (2) of this Act, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material.

42 USC 2014

"(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards: *Provided, however*, That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11 e. (2) of this Act. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 274 b. (2) shall apply such revised standard in the case of any license for byproduct material as defined in section 11 e. (2) or any revision thereof.

42 USC 2021

Publication in
Federal Register.
Notice, hearing
opportunity.

Consultation.

Judicial review.

"c. (1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

"(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing

a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112 of title 28, United States Code. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. The judgment of the court affirming, modifying or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

5 USC

"(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

"d. Implementation and enforcement of the standards promulgated pursuant to subsection b. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274 b. (2) of this Act shall implement and enforce such standards in accordance with subsection c. of such section.

42 US

"e. Nothing in this Act applicable to byproduct material, as defined in section 11 e. (2) of this Act, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended."

42 US

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33 US

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SEC. 207. There is hereby authorized to be appropriated for fiscal year 1980 to the Nuclear Regulatory Commission not to exceed \$500,000 to be used for making grants to States which have entered into agreements with the Commission under section 274 of the Atomic Energy Act of 1954, to aid in the development of State regulatory programs under such section which implement the provisions of this Act.

EFFECTIVE DATE

SEC. 208. Except as otherwise provided in this title the amendments made by this title shall take effect on the date of the enactment of this Act.

CONSOLIDATION OF LICENSES AND PROCEDURES

SEC. 209. The Nuclear Regulatory Commission shall consolidate, to the maximum extent practicable, licenses and licensing procedures under amendments made by this title with licenses and licensing procedures under other authorities contained in the Atomic Energy Act of 1954.

TITLE III—STUDY AND DESIGNATION OF TWO MILL TAILINGS SITES IN NEW MEXICO

STUDY

42 USC 7941.

SEC. 301. The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) or under State authority as permitted under section 274 of such Act or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after enactment of this Act, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this Act shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

Report to
Congress.

42 USC 2021.

42 USC 7942.

SEC. 302. (a) Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 301, notwithstanding the limitations contained in section 101(6)(A) and in section 115(a), if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 301, the Secretary may designate either or both of the sites referred to in section 301 as a processing site for purposes of title I. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such title concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) (1) No designation under subsection (a) shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session

Submittal to
congressional
committees.

DESIGNATION BY SECRETARY

because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Except as otherwise specifically provided in subsection (a), any remedial action under title I with respect to any sites designated under this title shall be subject to the provisions of title I (including the authorization of appropriations referred to in section 112(b)).

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1460, Pt. I (Comm. on Interior and Insular Affairs) and Pt. II (Comm. on Interstate and Foreign Commerce).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Oct. 3, considered and passed House.

Oct. 13, considered and passed Senate, amended.

Oct. 14, House concurred in Senate amendment with amendments.

Oct. 15, Senate concurred in House amendment.

(Amended thru
3/83)

URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978¹

AN ACT To authorize the Secretary of Energy to enter into cooperative agreements with certain States respecting residual radioactive material at existing sites, to provide for the regulation of uranium mill tailings under the Atomic Energy Act of 1954, 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 "Uranium Mill Tailings Radiation Control Act of 1978".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.

TITLE I—REMEDIAL ACTION PROGRAM

- Sec. 101. Definitions.
- Sec. 102. Designation of processing sites.
- Sec. 103. State cooperative agreements.
- Sec. 104. Acquisition and disposition of land and materials.
- Sec. 105. Indian tribe cooperative agreements.
- Sec. 106. Acquisition of lands by Secretary.
- Sec. 107. Financial assistance.
- Sec. 108. Remedial action.
- Sec. 109. Rules.
- Sec. 110. Enforcement.
- Sec. 111. Public participation.
- Sec. 112. Termination; authorization.
- Sec. 113. Limitation.
- Sec. 114. Reports to Congress.
- Sec. 115. Active operations; liability for remedial action.

TITLE II—URANIUM MILL TAILINGS LICENSING AND REGULATIONS

- Sec. 201. Definition.
- Sec. 202. Custody of disposal site.
- Sec. 203. Authority to establish certain requirements.
- Sec. 204. Cooperation with States.
- Sec. 205. Authorities of Commission respecting certain byproduct material.
- Sec. 206. Authority of Environmental Protection Agency respecting certain byproduct material.
- Sec. 207. Authorization of appropriations for grants.
- Sec. 208. Effective date.
- Sec. 209. Consolidation of licenses and procedures.

TITLE III—STUDY AND DESIGNATION OF TWO MILL TAILINGS SITES IN NEW MEXICO

- Sec. 301. Study.
- Sec. 302. Designation by Secretary.

¹ This Act consists of Public Law 95-604 (92 Stat. 3021) enacted on Nov. 8, 1978 and the amendments made by Public Law 95-106 (93 Stat. 796) enacted on Nov. 9, 1979 and Public Law 97-415 (96 Stat. 2067) enacted on Jan. 4, 1983. The Act, except for amendments made to other law, is generally classified to 42 U.S.C. 7901-7942.

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this Act are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public; and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

TITLE I—REMEDIAL ACTION PROGRAM

DEFINITIONS

SEC. 101. For purposes of this title—

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

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

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

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this title shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b).

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5 of the United States Code.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

DESIGNATION OF PROCESSING SITES

SEC. 102. (a) (1) As soon as practicable, but no later than one year after enactment of this Act, the Secretary shall designate processing sites at or near the following locations:

Salt Lake, Utah
Green River, Utah
Mexican Hat, Utah
Durango, Colorado
Grand Junction, Colorado
Rifle, Colorado (two sites)
Gunnison, Colorado
Naturita, Colorado

Maybell, Colorado
 Slick Rock, Colorado (two sites)
 Shiprock, New Mexico
 Ambrosia Lake, New Mexico
 Riverton, Wyoming
 Converse County, Wyoming
 Lakeview, Oregon
 Falls City, Texas
 Tuba City, Arizona
 Monument Valley, Arizona
 Lowman, Idaho
 Canonsburg, Pennsylvania

Subject to the provisions of this title, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this title. The Secretary shall within one year of the date of enactment of this Act also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this title. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92-314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

(b) Within one year from the date of the enactment of this Act, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) (1) The designation of processing sites within one year after enactment under this section shall include, to the maximum extent practicable, the areas referred to in section 101(6)(B).

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 101(6)(B) as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this title.

(3) The Secretary shall designate as a processing site within the meaning of section 101(6) any real property, or improvements thereon, in Edgemont, South Dakota that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this title shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this paragraph and in determining the State share under section 107 of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to the date of the enactment of this paragraph which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this title.

STATE COOPERATIVE AGREEMENTS

SEC. 103. (a) After notifying a State of the designation referred to in section 102 of this title, the Secretary subject to section 113, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 105). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 108.

(c)(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 104, each cooperative agreement with a State under section 103 shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or as-

signs arising out of the performance of any such remedial action.

(d) Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 104(b)(1) in furtherance of the provisions of this title and to carry out such agreement and enforce this Act and any rules prescribed under this Act. Such right of entry under this section or section 106 into an area described in section 101(6)(B) shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) The Secretary may, in any cooperative agreement entered into under this section or section 105, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 101(6)(B). Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to enactment of this Act, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 105 is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this Act with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 275(a) of the Atomic Energy Act of 1954.

ACQUISITION AND DISPOSITION OF LANDS AND MATERIALS

SEC. 104. (a) Each cooperative agreement under section 103 shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

(b)(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 106

(a)(2) is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) No State shall be required under subsection (a) or (b) to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 101(6)(A), and

(2) the site used for disposition of the residual radioactive materials.

(d) In the case of each processing site designated under this title other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place.

(e)(1) The terms and conditions of any cooperative agreement with a State under section 103 shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a), the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such lands and interests in lands (or donate such lands and interest therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f).

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f)(1) Each agreement under section 103 shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b), for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this title. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this Act other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this title, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after the date of enactment of this Act. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h).

(g) Each agreement under section 103 which permits any sale described in subsection (e)(1)(A) shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interests therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this title shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) No provision of any agreement under section 103 shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the

Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

INDIAN TRIBE COOPERATIVE AGREEMENTS

SEC. 105. (a) After notifying the Indian tribe of the designation pursuant to section 102 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 113, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 108 by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this title, to carry out such agreement, and to enforce any rules described under this Act. Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) When the Secretary with the concurrences of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently re-

tained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 104 (f)(2) and (h).

ACQUISITION OF LAND BY SECRETARY

SEC. 106. Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this title, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.

FINANCIAL ASSISTANCE

SEC. 107. (a) In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 103 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this title, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this title.

(b) In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

REMEDIAL ACTION

SEC. 108. (a)(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954. The State shall participate fully in the selection and performance of a remedial action for which it pays

part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior.

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 in final form by such date, remedial action taken by the Secretary under this title shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

(b) Prior to undertaking any remedial action at a designated site pursuant to this title, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials at the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this title. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 or under State law as permitted under section 274 of such Act.

RULES

SEC. 109. The Secretary may prescribe such rules consistent with the purposes of this Act as he deems appropriate pursuant to title V of the Department of Energy Organization Act.

ENFORCEMENT

SEC. 110. (a)(1) Any person who violates any provision of this title or any cooperative agreement entered into pursuant to this title or any rule prescribed under this Act concerning any designated proc-

essing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than \$1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5, United States Code.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this title or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Subsection (a) shall not apply to any licensing requirement under the Atomic Energy Act of 1954. Such licensing requirements shall be enforced by the Commission as provided in such Act.

PUBLIC PARTICIPATION

SEC. 111. In carrying out the provisions of this title, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

TERMINATION; AUTHORIZATION

SEC. 112. (a) The authority of the Secretary to perform remedial action under this title shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after the date of enactment of this Act.

(b) The amounts authorized to be appropriated to carry out the purposes of this title by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal

year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this title shall be available until expended.

LIMITATION

SEC. 113. The authority under this title to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

REPORTS TO CONGRESS

SEC. 114. (a) Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this Act and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this title;

(2) describe the extent of participation by the States and Indian tribes in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other radioactive waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

(c) Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this title and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

ACTIVE OPERATIONS; LIABILITY FOR REMEDIAL ACTION

SEC. 115. (a) No amount may be expended under this title with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act at which production of any uranium product from ores (other than from residual radioactive materials) takes place.

(b) In the case of each processing site designated under this title, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before the date of the enactment of this Act may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following the date of the enactment of this Act. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

TITLE II—URANIUM MILL TAILINGS LICENSING AND REGULATION DEFINITION

SEC. 201. [Amends section 11 e. of the Atomic Energy Act of 1954.]

CUSTODY OF DISPOSAL SITE

SEC. 202. (a) [Amends chapter 8 of the Atomic Energy Act of 1954 by adding a new section 83.]

(b) This section shall be effective three years after the enactment of this Act.

(c) [Amends table of contents for chapter 8 of the Atomic Energy Act of 1954 by inserting a new item after the item relating to section 82.]

AUTHORITY TO ESTABLISH CERTAIN REQUIREMENTS

SEC. 203. [Amends section 161 of the Atomic Energy Act of 1954, which appears in this compilation, by adding a new subsection x.]

COOPERATION WITH STATES

SEC. 204. (a) [Amends section 274 b. of the Atomic Energy Act of 1954.]

(b) [Amends section 274 d. (2) of the Atomic Energy Act of 1954.]

(c) [Amends section 274 n. of the Atomic Energy Act of 1954.]

(d) [Amends section 274 j. of the Atomic Energy Act of 1954.]

(e)(1) [Amends section 274 of the Atomic Energy Act of 1954, by adding a new subsection o.]

(2) The provisions of the amendment made by paragraph (1) of this subsection (which adds a new subsection o. to section 274 of the Atomic Energy Act of 1954) shall apply only to the maximum extent practicable during the three-year period beginning on the date of the enactment of this Act.

(f) [Amends section 274 c. of the Atomic Energy Act of 1954.]

(g) Nothing in any amendment made by this section shall preclude any State from exercising any other authority as permitted under the Atomic Energy Act of 1954 respecting any byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(h)(1) During the three-year period beginning on the date of the enactment of this Act, notwithstanding any other provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to section 274 of the Atomic Energy Act of 1954) respecting (A) byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, or (B) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the date of the enactment of this Act, except that such State authority shall be exercised in a manner which, to the extent practicable, is consistent with the requirements of section 274 o. of the Atomic Energy Act of 1954 (as added by section 204(e) of this Act). The Commission shall have the authority to ensure that such section 274 o. is implemented by any such State to the extent practicable during the three-year period beginning on the date of the enactment of this Act. Nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act.

(2) An agreement entered into with any State as permitted under section 274 of the Atomic Energy Act of 1954 with respect to byproduct material as defined in section 11 e. (2) of such Act, may be entered into at any time after the date of the enactment of this Act.

but no such agreement may take effect before the date three years after the date of the enactment of this Act.

(3) Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274 b. of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material, as defined in section 11 e. (2) of such Act, the Commission shall not, until the end of the three-year period beginning on the date of the enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated, suspended, or amended to provide for such Federal licensing. If, at the end of such three-year period, a State has not entered into such an agreement with respect to byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material: *Provided, however*, That, in the case of a State which has exercised any authority under State law pursuant to an agreement entered into under section 274 of the Atomic Energy Act of 1954, the State authority over such byproduct material may be terminated, and the Commission authority over such material may be exercised, only after compliance by the Commission with the same procedures as are applicable in the case of termination of agreements under section 274 j. of the Atomic Energy Act of 1954.

AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL

SEC. 205. (a) [Amends chapter 8 of the Atomic Energy Act of 1954, by adding a new section 84.]

(b) [Amends the first sentence of section 81 of the Atomic Energy Act of 1954.]

(c) [Amends the table of contents for such chapter 8 by inserting a new item after the item relating to section 83.]

AUTHORITY OF ENVIRONMENTAL PROTECTION AGENCY RESPECTING CERTAIN BYPRODUCT MATERIAL

SEC. 206. [Amends chapter 19 of the Atomic Energy Act of 1954, by adding a new section 275.]

AUTHORIZATION OF APPROPRIATION FOR GRANTS

SEC. 207. There is hereby authorized to be appropriated for fiscal year 1980 to the Nuclear Regulatory Commission not to exceed \$500,000 to be used for making grants to States which have entered into agreements with the Commission under section 274 of the Atomic Energy Act of 1954, to aid in the development of State regulatory programs under such section which implement the provisions of this Act.

EFFECTIVE DATE

SEC. 208. Except as otherwise provided in this title the amendments made by this title shall take effect on the date of the enactment of this Act.

CONSOLIDATION OF LICENSES AND PROCEDURES

SEC. 209. The Nuclear Regulatory Commission shall consolidate, to the maximum extent practicable, licenses and licensing procedures under amendments made by this title with licenses and licensing procedures under other authorities contained in the Atomic Energy Act of 1954.

TITLE III—STUDY AND DESIGNATION OF TWO MILL TAILINGS SITES IN NEW MEXICO

STUDY

SEC. 301. The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) or under State authority as permitted under section 274 of such Act or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after enactment of this Act, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this Act shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

DESIGNATION BY SECRETARY

SEC. 302. (a) Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 301, notwithstanding the limitations contained in section 101(6)(A) and in section 115(a), if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 301, the Secretary may designate either or both of the sites referred to in section 301 as a processing site for purposes of title I. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such title concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary,

together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b)(1) No designation under subsection (a) shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Except as otherwise specifically provided in subsection (a), any remedial action under title I with respect to any sites designated under this title shall be subject to the provisions of title I (including the authorization of appropriations referred to in section 112(b)).