board from many different nations. The message of this rally, I think, is that we are a nation of proud immigrants. We are talking about many of our parents and many of our grandparents. In my case we are talking about my father who fled persecution from Russia. It really is shameful what we did, which I think was an overreach, which I hope we will rectify this Congress—I think we must—which is that we eliminated assistance to many people. As Mayor Giuliani said, by definition people who are receiving supplementary security income assistance or food nutrition assistance because they are so low income and poor really need this help. So what we are now faced with is a situation in our country where over 500,000 legal immigrants are going to be cut off supplementary security income and over 1 million are going to be cut off from any food stamp assistance. In the State of Minnesota about 35,000 legal immigrants are going to be cut off SSI and about 15,000 off food stamps.

This rally is the first of many gatherings. I think we are going to see it all across the country, and it is going to be a combination of people who are scared to death. They are elderly, they are disabled, they can't work, and really all of the assistance is going to be cut off. The question is, What happens to them? The religious community is involved. Our county organizations are involved. Mayors are involved. Many Governors are now getting involved.

I want to say to colleagues that as a matter of what is right, as a matter of elementary justice, as a matter of compassion, as a matter of considering our own tradition, our own roots, our own heritage, we have to restore this funding. It is simply unconscionable. It really is shameful what we did last Congress. I hope that we will make this a huge priority when we go forward with our budget. Otherwise, we are going to see a lot of vulnerable people who came to our country, who have worked, who have paid their taxes, who were legal immigrants, who maybe have an income total of $525 a month, and they are going to see almost all of that assistance eliminated. The question becomes, What happens to these people? That is the question I have for my colleagues. What happens to these people? Are we willing to be so generous with the suffering of others? I don't think we can just insulate ourselves here and act as if this isn't happening around the country.

People have now received letters that have notified them that they are going to be cut off; that this assistance which has been a lifeline of assistance is going to be eliminated.

I will tell you something. In my adult life—and this is not an exaggeration—I don't think I have ever seen people so frightened. I have never met with a group of citizens nor have I have ever met with a group of people who are more frightened. I have never seen such fear in the faces of people. I cannot believe that we don't have enough goodness inside of us, enough compassion here to really fix this problem, change the course, and make sure that we provide some assistance to many people in our country who deserve our assistance.

NUCLEAR WASTE POLICY ACT AMENDMENTS

The Senate continued with the consideration of the bill.

Mr. WELLSTONE. I am going to for a moment, until the Senator from Alaska comes, suggest the absence of a quorum because the Senator is not here. In order to have debate, it is important that he be here, and I do not want to go forward with an amendment and not give him an opportunity to respond. So for a brief period of time, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HAGEL). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the Chair. I welcome my colleague, Senator MURKOWSKI from Alaska.

AMENDMENT NO. 29 TO AMENDMENT NO. 26

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the pending amendment be set aside and that the Senate now consider amendment No. 29. My understanding is that we have an hour on this amendment to be equally divided.

The PRESIDING OFFICER. That is correct. Is there objection? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada (Mr. REID) for Mr. WELLSTONE proposes an amendment numbered 29 to amendment No. 26.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 22 of the substitute, line 5, after ''(3)(B)'' insert the Secretary has made a determination that personnel in all State, local, and tribal jurisdictions on primary and alternative shipping routes have met acceptable standards of training for emergency responses to accidents involving spent nuclear fuel and high-level nuclear waste, as established by the Secretary, and''.

Mr. WELLSTONE. Mr. President, let me start out by giving some context to this amendment. I feel strongly that the Federal Government should live up to its obligation to take possession of nuclear waste. That is my framework. I am with this amendment not operating outside of that framework.

I also add that Minnesotans and other customers of nuclear power have been paying into a nuclear waste fund over the years, and the reason was and the understanding is that the Federal Government would make this commitment and live up to this commitment. That part of this legislation, that premise, I fully support.

Mr. President, I have been concerned in the past—and still am although I don't have an amendment today that deals with this—about what happens when the Federal Government actually takes title under this bill because I do think that over the years you are going to have a huge taxpayer liability. So while I want the Federal Government to be responsible and live up to its national commitment to do something about it, I worry about the transfer of over 10,000 years all of a sudden to the taxpayers. The GAO has estimated that the taxpayers' future burden could be about $77 billion. This is assuming a 100-year program. But we are talking about a program of nuclear waste that is over thousands of years.

Mr. President, concerns about this legislation. First of all, the legislation still attempts to skirt some of the requirements of the National Environmental Policy Act. There is a reason for that piece of legislation, and I do think, when you are talking about the transport of highly radioactive nuclear waste material, this is a time, if there ever was a time, when you want to have full environmental review, when you want to be absolutely certain that you are talking about the transportation of this kind of material taking into full account the health and safety and protection of families all across the country.

My esteemed colleagues from Nevada have discussed some of the risks and problems associated with transporting highly radioactive nuclear waste in their struggle against this bill. They also feel that Nevada has been unfairly singled out, and I respect them for that. My framework is a little different. But I do want to point out there are going to be some 16,000 shipments on our highways and our railways over the coming years. We are talking about some significant distance traveled. There are legitimate concerns that people have about the transportation of this highly radioactive nuclear waste material; people are going to be concerned about it, and in addition there is some debate about whether or not the containers themselves are safe.

We already transport hazardous materials, but I want to argue there is a significant difference when we are talking about nuclear waste material, especially highly radioactive nuclear waste. Consider it this way. If you have an accident involving nuclear waste as opposed to many hazardous wastes, you can have a dramatically different outcome. Radiation, without doubt, kills people, and it is a different scale we are talking about. God forbid—worst case scenario—we have an accident. We have to do everything we can to guard against that accident. We could be talking about something catastrophic. We cannot afford to have such an accident in our country which results in

this kind of radiation leak that could have such dire consequences for people, such dire consequences for our families, and therefore I think we have to do everything possible to assure safety. That is what this amendment is about.

Now, this bill calls for a transportation planning process, and I note—and I thank the distinguished Senator from Alaska—that part of the amendment I proposed last week calling for more public participation has been incorporated. That is to say, there is some language about public comment when it comes to these plans. But in Minnesota we currently have 641 metric tons of high-level nuclear waste and spent nuclear fuel. That is a conservative estimate. And by the year 2014 we expect there will be around 987 metric tons, all of which will travel the roads and rails of Minnesota and States between us and Nevada, if this bill succeeds. So I think we have to do everything possible to ensure the safety and security of these shipments, and I would add that I think to talk about public comment really does not go far enough.

Initially, our amendment said that in the actual planning process, as you chart out the routes, those citizens who are affected by the transportation of this material ought to be able to be involved in the planning process, as should local officials. They should at least be consulted. I did not say they would have a veto because I know that would not work. But I did talk about consultation. I did talk about involving citizens who will be affected, who are going to be worried about themselves and their families, and local officials who are going to be worried, I talked about involving them in a more integral and real and substantive way in the planning process. I wish that amendment had been accepted.

My friends from Alaska, Mr. MURKOWSKI, and from Oregon, Mr. WYDEN, have made sure that this legislation really does take some steps forward from the last bill. Grants can be provided for training, and in addition there are going to be training standards which are going to be set. I still think, again, that we have to do everything possible to ensure the safety of these shipments. We have to do everything possible, leave no stone unturned, in making sure that we prevent the worst case scenario, which could be a nightmare scenario for our country. If we do not do that, we are going to be asking ourselves, when such an accident takes place, did we do everything possible when we transported this poisonous waste all across America.

The brave men and women who are likely to be first on the scene when an accident occurs, local firefighters, do not support this bill because they believe it inadequately provides for their needs such as the training, funding, and technical assistance.

I ask unanimous consent that a letter from the International Association of Firefighters be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, DC, April 14, 1997.

Hon. PAUL WELLSTONE,
U.S. Senate,
Washington, DC.

DEAR SENATOR WELLSTONE: On behalf of the nation's more than 225,000 professional fire fighters, I wish to express our enthusiastic support for your amendment to S.104 which would ensure that emergency response personnel along the proposed shipping routes are adequately trained to respond to an emergency incident.

Currently, only a fraction of all emergency responders have adequate training and equipment to respond to an incident involving radiological material. Indeed, more than 40% of the fire departments along the proposed routes do not even meet minimum training requirements for basic hazardous materials response. The training needed for radiological materials is far more complex.

Put quite simply, America's emergency responders are currently not equipped to deal with an incident along the routes to the Yucca Mountain facility. If an incident were to occur, whether it be an accident or a terrorist act, lives would be unnecessarily lost because the local emergency response personnel lack the necessary training and equipment to effectively respond.

We are indebted to you, Senator, for your leadership on this vital public safety issue. Please feel free to call on us if we can be of any assistance to you.

Sincerely,

ALFRED K. WHITEHEAD,
General President.

Mr. WELLSTONE. I thank the Chair.

Mr. President, what the firefighters are saying is, look, you are going to have $150,000 which is going to be offered by each State that is to be affected by this along this transportation route but the question we are asking, says the firefighters, is how do we know that in 2 years or 5 years we are going to be ready? We want to make sure there is enough funding for our training, and we want to make sure we are adequately prepared for this because it is our responsibility to protect the citizens in our communities.

I am told that the International Association of Firefighters, which represents 95 percent of professional firefighters in the United States, did a survey of departments along a potential test shipping route in Ohio, and they found that 40 percent of the departments along the route were not prepared, according to current standards, to deal with hazardous material accidents. Let us face it. When it comes to hazardous material and when it comes to highly radioactive nuclear waste, we are going to try, whether it be by rail or road, to go in the less populated of our rural areas. And by the way, all too often, people in rural America are familiar with the saying let's go where fewer people live, but they say there may be fewer of us but we count as much as anybody living in any metropolitan area.

We are also hearing from a lot of communities: We are worried that we are not going to be trained; we don't feel we are even ready when it comes to the transportation of hazardous materials.

So, Mr. President, let us assume the grants have been made and a State takes advantage of these funds. Two years pass and shipments of nuclear waste begin to pass through the State. What guarantee do we have that local fire departments are fully trained and equipped and that if the worst thing possible happens, they can respond in such a way as to minimize disaster.

What this amendment says is that the Department of Energy must determine—in other words, we talked about training. We have talked about some grants, but nowhere in this piece of legislation do we have the fail-safe, ironclad guarantee that as a matter of fact these local fire departments, these local emergency response personnel will have received adequate training. This amendment proposes that the Department of Energy must determine that emergency response personnel along the routes where over 16,000 shipments of highly radioactive waste will pass have met an acceptable standard of training before these shipments begin. That is all this amendment says.

Again, what we want to do is to verify that these brave men and women—they are asking this. They are going to be on the frontline, the first line of response to an accident, people who are going to be putting their lives on the line—in fact have received the training they need. This amendment says that no shipments will occur until the Department of Energy has determined that the emergency response personnel in all jurisdictions along a given shipping route will have met an acceptable level of training. It seems to me that is very reasonable. I think this is a logical extension of the Wyden amendment in committee.

Yes, we have some funding, although we do not know whether it is going to be enough. Most communities do not think it is. Yes, we have some training standards. But what we are saying is we have to make sure, above and beyond some funding and some standards for acceptable levels of training, that level of training is met before any deadly cargo under this bill hits the road. In other words, no training, no shipments. That is a pretty reasonable amendment.

This bill in its current form calls for training standards to be established by the Department of Transportation, but I am concerned that the bill is ambiguous at best about who is really responsible for making sure these standards are met. That is what this amendment speaks to. By requiring the Secretary of the Department of Energy to determine that every jurisdiction has met the standards, this amendment holds the processor of the waste responsible for making sure all safety precautions have been taken.

If requiring a determination by the DOE just simply adds one additional

signoff to this process, then I say this makes all the sense in the world.

One more time. What we have is a situation where we are going to be talking about the shipment of highly radioactive nuclear waste. This is of a different order than hazardous material. We have the firefighters and other people who are concerned about this living in the local communities saying we are worried about whether or not we are going to receive adequate funding for training and whether or not we are in fact going to be trained.

There is some funding. I do not think it is going to be enough. We do not want this to become an unfunded mandate. And there is some setting of the level of standards by the Department of Transportation but nowhere in this legislation do we have a clear line of accountability that as a matter of fact firefighters and other local safety personnel will be trained to deal with a crisis if they have to do so.

It seems to me that the very least we can do is to make sure that happens.

Let me simply conclude by quoting the last part of this letter from the International Association of Firefighters:

> Put quite simply, America's emergency responders are not equipped to deal with an incident along the routes to the Yucca Mountain facility. If an incident were to occur, whether it is an accident or terrorist act, lives would be unnecessarily lost because the local emergency response personnel lack the necessary training and equipment to effectively respond.

All this amendment does is say let us make sure, Department of Energy, you are accountable; you have to make a determination that before we ship this waste, the local fire departments, the local safety personnel have, in fact, received the training and they are equipped to deal with, if, God forbid, there is, a serious accident. I believe this amendment should be accepted. It is imminently reasonable, and it seems to me we ought to take every step necessary to make sure we guarantee the safety and security of people in our communities.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16 minutes.

Mr. WELLSTONE. Mr. President, I reserve the rest of my time to respond to my colleague.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

I very much appreciate the amendment from my friend from Minnesota, and I know of his interest in this matter because there is substantial amounts of spent nuclear fuel from reactors in Minnesota. I am sure the Senator from Minnesota is aware of the transportation route where high-level nuclear waste has been transferred across the United States, some 2,400 shipments, and I have a map here that shows the manner in which these shipments have occurred from 1979 to 1995.

I think the Senator was out in his State Friday when we were talking about this. This chart shows that shipments of nuclear waste have been made over an extended period of time, all over the Nation. And during those 2,400 shipments there have been seven accidents. Most of those accident were minor ones. In the most serious accident, the tractor trailer swerved off the road to avoid another car that was out of control, turned over and the cask rolled off. But there was no leakage of radioactivity. The cask did not break. It was not perforated in any manner or form.

As the Senator from Minnesota knows, this type of nuclear waste, while it is highly radioactive, does not go up in the air and vaporize or move with the wind currents or whatever. It has a tendency, because of its weight and denseness, to stay wherever it occurs. And these are high-level waste rods from the reactors.

I think the intent of the Senator from Minnesota is parallel with my own intent. We want to safeguard, in every possible way, the transportation of this material.

Here is an example of the type of truck and the cask. You can see the cask up on top. These have been designed to withstand any foreseeable accident of any kind that would be determined to be possible on a highway. In testing, they have been dropped. They have been hit by trains. They have been incinerated and so forth. I go into this detail, not to suggest there could not be some type of accident that would cause a penetration but, clearly, the best scientists, the best engineers we have have concluded that these casks have been designed in such a way as to survive real-world accidents and ensure the public safety.

The concern the Senator from Alaska has, relative to the amendment offered by my friend from Minnesota, is how to determine just what is adequate, relative to training? I think, if you look at the safeguards we have attempted to put in S. 104, we have put in funding for technical assistance for emergency responders along the routes to be used to transport the fuel. The Wyden language, which we adopted, provided more detail. Rigorous provisions regarding route selection and training for emergency responders were included. We had left it to the Department of Transportation to choose the preferred routes. Again, considerations in route selection would include concerns over population, hazards, shipping time, and so forth.

But I want to point out to my friend that this is nothing new. The only reason these other 2,400 shipments were not news is because nothing happened. These were in connection with moving high-level material from experimental reactors and other reactors around the country for disposition. So, to suggest that what we have had before was adequate is inconsistent, I think, with reality. The question we are looking at now is, Can we do everything possible to ensure that we have the safest possible transportation route and have made the maximum effort to protect public safety? It is also important to recognize that this plan is fully integrated with State notification, inspection, emergency response plans, as well as should it go through any tribal or native lands.

It also grants at least $150,000 in State and tribal funding. I think this was something the Senator from Minnesota brought up in his debate. If there is no training, there are no shipments. That is a provision of our bill. We make it clear the Department of Energy cannot transport fuel under this act unless the technical assistance and funding required by the bill have been provided for at least 3 years prior to the shipments. As I understand the Wellstone amendment, it would add as a requirement that the Department of Energy make a formal determination that personnel along the routes have met acceptable standards of training for emergency response to accident. It does not provide additional training. And it requires the Department of Energy to make an official determination.

My concern, and I am sure the concern of the Senator from Minnesota, is to get this stuff moved out of his State. That is a legitimate concern that he and others have, other States have, where this material is piled up. So we have to make sure we do not tie this process up in litigation so every State or every tribe or every local community could come in under a determination of adequacy. I am concerned here as to how I can meet the concerns of the Senator from Minnesota and still ensure that we have a viable and practical situation where this oversight does not throttle our objective here, and that is to move this material to an appropriate repository.

I am concerned if this amendment is adopted as it is now, we might find ourselves tied up in litigation and it would not be that the DOE had or had not followed the Department of Transportation's regulations to the letter. I do not think it matters that the Department of Energy has followed the NRC regulations with care and precision. It might not matter the Department of Energy has integrated emergency response plans with all the State tribes. And it will not matter the DOE has provided funding for emergency responders. What will matter is we might have a lawyer along the way who has decided that a new volunteer fireman has not had acceptable level of training. The next thing you know, the Department of Energy is in court trying to prove that every individual firefighter along every single route has been trained to an acceptable level. I do not know how we are going to prove that. What is an acceptable level? That would be in the eyes of a court to determine.

I just wonder if we might confer a little bit, or perhaps here on the floor, if the Senator wished, to discuss how we

would address that concern of what is acceptable, because I think we both want to get there from here. I would defer to my colleague, on my own time.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Let me thank the Senator from Alaska. I have some ideas about how we might do that. I wonder whether I might yield some of my time to the Senator from Oregon. While he is speaking, the two of us might talk this over.

Mr. MURKOWSKI. Mr. President, I reserve the remainder of my time.

Mr. WELLSTONE. If the Senator from Oregon is not ready, I wonder whether or not I could, just for a moment, call for a quorum call that would not be charged to either side so we might be able to discuss this. I ask unanimous consent.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I have conferred with the distinguished Senator from Minnesota with regard to the suggestion that has been made for a change in the wording of the amendment, by adding the word ''preliminary.'' That would be in line 2. It is my understanding the amendment would read:

On page 22 of the substitute, line 5 after ''(3) (B)'' insert, ''until the Secretary has made a'' [and the additional would be ''preliminary''] ''determination. . . .''

The rest of the amendment would be the same.

That is satisfactory to our side. I leave it up to the other side for discussion and analysis, but we are prepared on this side to accept the amendment in that form.

Mr. REID. We object to the modification. Objection.

The PRESIDING OFFICER. It would take unanimous consent to modify the amendment. Objection is heard. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I understand I had been clear with colleagues from Nevada about this amendment. I always—my own people have their own goals here. I really do believe something has to be done. The Federal Government has made a commitment and I want to see the Federal Government live up to it.

What I was trying to do in this amendment is to assure the safety and security of the shipments. I understand why my colleagues have taken the position they have taken. I say to the Senator from Alaska that I do think the change that we proposed on preliminary determination makes good sense. I am sorry we cannot do this.

Mr. President, I yield to the Senator from Alaska.

Mr. MURKOWSKI. I wonder if it would satisfy the Senator from Minnesota if I gave him a commitment that we would accept his amendment, at least I would attempt to accept his amendment, in conference, because, obviously, I will be on the conference committee.

I would accept the underlying amendment now with the provision that I would give him my commitment to do my very best in conference to adopt his amendment, but I am willing to accept the underlying amendment now.

Mr. WELLSTONE. Mr. President, I want to again suggest the absence of a quorum for a moment. My concern is—I have no reason to doubt the good work of my colleague from Alaska—but I sometimes have not fared so well in conference committee, and I am a little worried about it. I have to make a decision. I think it would take unanimous consent to do it.

Mr. MURKOWSKI. I think there is a misunderstanding. I am prepared to accept the amendment with the commitment that I will try to get the Senator's revision which we talked about—adding the word ''preliminary''—adopted in conference.

Mr. WELLSTONE. I see. Mr. President, I do not need time to confer with my colleague from Alaska on that. I am pleased that he is willing to do so. We do not need a vote on it if the Senator from Alaska will accept this amendment. I have some additional time. Maybe my colleague from Oregon, who has done so much work on this, might want to speak on this amendment for a moment. Does the Senator from Oregon want to speak for a moment on this?

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I thank the Senator from Minnesota for yielding me time.

Transportation of defense- and commercial-grade nuclear fuel and high-level radioactive waste is a great concern to the people of Oregon. Virtually every shipment to and from the Department of Energy's Hanford site requires at least 200 miles of transport on the roads in our State. As we have heard these past several days, the transportation of spent nuclear fuel and high-level radioactive waste is a major concern to many Senators on both sides of the aisle in this debate with respect to how to handle nuclear waste in the next century.

During the Energy Committee markup on S. 104, my amendment on transportation safety of spent nuclear fuel and high-level radioactive waste was adopted. A key component of that amendment is the no shipments if no training provision. It literally means what it says, that there will be no shipment of spent nuclear fuel or high-level radioactive waste through the jurisdiction of any State or reservation lands of any Indian tribe eligible unless technical assistance and funds to implement procedures for the safe routing transportation are available for at least 3 years prior to any shipments.

This provision was carefully crafted to ensure safe transportation while also preventing anyone from using this provision to obstruct shipment by refusing to accept the grants or by failing to use the grants for training.

Senator WELLSTONE's amendment further tightens this requirement, and, it seems to me, Mr. President, that our Government, built on checks and balances, ought to be ensuring this kind of mechanism, the kind of mechanism envisaged by the Senator from Minnesota, to ensure accountability and to ensure public safety.

I also point out that it is not necessary to reinvent the wheel to transport spent nuclear fuel or high-level radioactive waste. What this amendment does, as did the amendment that I offered in committee, is to essentially build on the good system already in place to provide for the safest method possible for the transportation of spent nuclear fuel and high-level radioactive waste. That is the system now being used for the transportation of plutonium from the Hanford nuclear reservation and other Department of Energy facilities to the WIPP facility in New Mexico.

For the past 5 years, the Department of Energy has worked cooperatively with States and Indian tribes to develop the WIPP Land Withdrawal Act transportation system. It has been applied with success to a variety of shipments of nuclear materials moving literally from coast to coast. The Department of Energy has been working well with Western States in preparing shipments of transuranic wastes to the WIPP facility.

I believe the WIPP Act, which the Senator from Minnesota builds on with his amendment, takes the right approach to address issues such as advance notification to the States of shipments, agreement of avoiding adverse weather conditions, qualification of carriers and emergency training and response of emergency responders. I do believe that this issue is one of bipartisan concern.

In the Senate Energy Committee, my colleague from Oregon, Senator SMITH, joined me in offering the amendment that was adopted in committee, now strengthened by the Wellstone amendment.

I thank the Senator from Minnesota for yielding me this time, and I am very hopeful that it will be possible on a bipartisan basis to accept the Wellstone amendment, which I believe builds on the progress that was made in committee with respect to tightening safety measures, to proving accountability for moving these dangerous wastes across the country.

I thank the Senator from Minnesota for yielding me time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I probably only have a couple of minutes left. Let me thank the Senator from Oregon and also, again, my colleague from Alaska. I do think this is a logical extension of what the Senator from Oregon had done in committee. I do think, again, what we want to make sure of is that there is enough funding, and, of course, we are talking about setting standards by the Department of Transportation, and the Department of Energy will be involved in it. We want to make sure, in fact, those standards have been met.

I would like to thank the National Association of Firefighters and the firefighters of Minnesota. What they have said is, ''Look, we want to make sure you have some kind of process, some kind of fail-safe mechanism to make sure we are adequately trained to deal with this disaster.'' That is what this amendment does. It holds someone accountable—the Department of Energy. It says the Department of Energy is going to make a preliminary determination, whatever the operative language is, that, in fact, before we have the actual transportation of this highly radioactive nuclear waste material, that the local personnel, firefighters, and others, are ready, trained and equipped to deal with an emergency if they have to do so.

I am very pleased that my colleagues have accepted the amendment. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. How much time does the Senator from Minnesota have?

The PRESIDING OFFICER. Seven minutes 45 seconds.

Mr. REID. Will the Senator yield me 3 or 4 minutes?

Mr. WELLSTONE. I will be pleased to yield the final 7 minutes to the Senator from Nevada.

Mr. REID. Mr. President, let me say to my friend from Minnesota and my colleagues, I think this amendment improves the bill, but it is still a lousy bill. This bill is opposed by every environmental organization in America. We know from the record that has been laid before this body that you cannot transport nuclear waste at this stage safely. The dry cask storage containers simply will not allow it. If you go 30 miles an hour, have an accident and there is a fire, you are in big trouble carrying this product.

This is a bad bill. It is a bad bill for the environment. As indicated by the experience in Germany, you cannot transport nuclear waste. I say to anyone who has any care about the environment, listen to what the environmental community is saying about this legislation. This legislation is bad. This amendment, while directed toward safety procedures for transporting nuclear waste, is a pinpoint in the universe. It does not help the legislation. This is bad legislation, as indicated by the scientific community and the environmental community.

I yield back the remainder of the time.

Mr. WELLSTONE addressed the Chair.

Mr. REID. Mr. President, I thought the Senator left the floor. Whatever time is left is under the control of the Senator from Minnesota.

Mr. WELLSTONE. Before I go forward with the second amendment that I think is next in order, previously agreed to, I would like to suggest the absence of a quorum just for a few minutes, no more than 5 minutes, and then I will be ready to offer that amendment.

Mr. President, I suggest the absence of a quorum without it being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, it is the intent of this side to not prolong this discussion. Therefore, I am willing to yield back the remainder of our time on this side. It will be my intention to have a voice vote, I believe, to dispose of the amendment.

The PRESIDING OFFICER. The Senator from Minnesota has 5 minutes remaining on his time.

Mr. MURKOWSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I have been informed that my colleague from Minnesota is willing to yield back the remainder of his time. So I yield back, on behalf of Senator WELLSTONE, the remainder of his time. It is my understanding that there is no time left on either side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 29) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE. Mr. President, I say to my colleague, if he would be gracious enough to give me 2 more minutes, I will be ready with the second amendment. I have looked at the second-degree amendment, and I think we will be able to work together. If I could have 2 more minutes. I suggest the absence of a quorum, with the time not to be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 30 TO AMENDMENT NO. 26

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the pending amendment be set aside and that the Senate now consider amendment No. 30.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 30.

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING FEDERAL ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

It is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work, will not be left without Federal assistance essential to their well-being.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me start off by reading a March 19, 1997, article in the New York Times about Luz Gross, 88 years old, a widow who resides in New York City. She is from the Dominican Republic and is suffering from severe Alzheimer's.

When asked when she was born, Mrs. Gross says, ''When I came to the United States, I wasn't born.'' Asked if she wanted to become a citizen, she began talking about her childhood when she lived close to the sea in Santo Domingo.

Mrs. Gross' only child Felix is 72 himself, retired and living on $10,320 a year from Social Security and a small union pension earned after working 18 years as a building handyman in Manhattan. He visits his mother every day repairing whatever breaks in her apartment and watching television with her. But he said he cannot afford to support her, and there is no room for her to live in his small one-bedroom apartment. ''I feel in denial,'' he said. ''I can't believe this is happening.''

Mr. President, Nouphanh is 65 years old, and she has been in the United States since 1984. Before she left Laos, she had no access to education because her parents moved from place to place to get away from the war. She does not understand English and has no family here. She is alone. She is on disability income, $484 a month, and she lives in a housing project. She is severely depressed and currently undergoing treatment. She says, ''Sometimes in this country I feel like I am deaf, I am

blind, I am mute, because I cannot learn English.'' Every day she lives in fear, and every day she asks herself what will happen to her if she does not have SSI and food stamps.

Mr. President, let me, one more time, bring to the attention of my colleagues this amendment. I am hoping for a good, strong, positive vote. It is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work will not be left without Federal assistance essential to their well-being.

Mr. President, I said it earlier before my colleague arrived. The reason that I bring this sense-of-the-Senate amendment to the floor of the U.S. Senate today is because I think we are confronted with the fierce urgency of now—Arizona being one good example of one State in the country—we have all heard from legal immigrants and we have all heard from 80-year-old women living alone, and partially disabled. They have received letters. They are now, as a result of the legislation we passed last year, going to be cut off assistance. They are terrified. They live in fear.

I said earlier, and I am not being melodramatic, I was a community organizer for 20 years before I was fortunate enough to become a U.S. Senator from Minnesota. I have worked with lots of people who have been struggling with lots of different issues, many of them very poor, and I have never in my whole life seen people with such fear in their faces. I have never seen people so terrified.

Mr. President, what in God's name does eliminating supplemental security income and food nutrition assistance for an 80-year-old Hmong woman, partially disabled, living alone in Minnesota have to do with reform? It is not reform. It is unconscionable. It is shameful.

Mr. President, I said earlier I am going to have a chance to speak at a rally this afternoon, going on right now, organized by groups and organizations that have worked with Soviet Jewry over the years. I am the son of a Jewish immigrant who fled persecution in Russia. Maybe that is why I feel so strongly about this. But, Mr. President, it is not just Jewish immigrants from Russia or Eastern Europe; it is legal immigrants, people who have come to our country, many of whom have worked and paid taxes.

There have been reports by the Urban Institute and others that show that these legal immigrants have given much more to our country in taxes than any benefit that they have ever received.

Mr. President, last Congress we passed a piece of legislation, all in the name of deficit reduction, that eliminated $22 billion worth of assistance to these vulnerable citizens. Mr. President, it was easy to do. They are among the most vulnerable citizens in this country with the least amount of political power and, therefore, we chose to make the cuts there.

But, Mr. President, I think there is goodness—I am sorry—in my colleagues. I think we did not realize what we were doing. That happens often. I have voted for legislation for which I did not fully understand all of the consequences, and later on I changed my mind. Please, let us change our minds.

We are hearing from our Governors, Mr. President. We are hearing from our mayors. We are hearing from our county officials. They are all saying, ''Wait a minute. These people, by definition, on supplemental security income are not going to make it to self-sufficiency.'' By definition we are talking about people who are either very elderly or people who are disabled and people who need the support.

Mr. President, at one of many community meetings I attended in Minnesota there was a man who came up to me who was a Hmong. He fought on our side during the Vietnam war. He has—I know this is hard to believe; but it is true—he has one bullet still in his brain and one bullet still in his knee. He is disabled. We are going to eliminate his supplemental security income assistance. What does that have to do with reform?

Mr. President, I was at a gathering on the west side of St. Paul. I will never forget it. It sent chills down my spine. A woman came up to me. I thought that she was 80. She was bent over. Certainly she looked every bit 80 years of age. She came up to me, and her hands were shaking, and she began to wail. That was the kind of crying that she was doing. She began to wail. And she had in her hands a picture of her husband, and then I realized he was my age and, therefore, she was probably about my age. Her husband fought in the Vietnam war.

Again, she was a Hmong who came over to our country. We have a large Hmong community in Minnesota. Her husband apparently had just passed away about a month earlier.

Mr. President, this woman is not going to learn our language. She is not going to become a citizen. But these people fought the war in Indochina. They came to our country. We made a commitment that there would be some assistance for them. She has nowhere to go. She has nowhere to go.

What I hated about that community meeting, and what I hate about all of these meetings, is that I keep thinking to myself, people really think that as a Senator from Minnesota I can change this. It scares me, because I am afraid we will not do anything at all.

Mr. President, this sense-of-the-Senate amendment is an amendment that I think all of my colleagues can vote for. It does not specify a course of action that we should take. But it at least gives the religious community, all of the legal immigrants, and many local officials who feel like we are dumping the cost on them some assurances. Much less it gives us some reassurance that we have rediscovered part of our soul again if we would at least go on record saying it is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work will not be left without Federal assistance essential to their well-being.

Mr. President, I think it would be a very important statement for us to make. I think this is a very important position for us to take. We are heading into the budget negotiations. We are hearing from people in our States. We are hearing from people in the country. And that is why I come to the floor of the Senate.

I told that Hmong woman, who was about 50 years of age, though she looked like she was going on 80—she has had such a difficult life, holding the picture of her husband, no longer alive, who served on our side during the war in Vietnam—I told her, through a translator, because she does not speak English, all these people who have come to these community meetings, that although I did not know whether I would win or not, I would come to the floor and fight for people.

This is just the beginning of this effort. I am lucky to have a strong colleague, LUIS GUTIERREZ, in the House who is pushing very hard. I am really hoping Senators, Democrats and Republicans alike, will accept this amendment or will vote for this amendment. It is time that we correct this.

We did the wrong thing, colleagues. You may not agree with me on all issues, and I know quite often you do not, but we did the wrong thing. These are people that we should not literally throw out in the cold. These are people who really need this assistance. These are some very good people. These are, for many of us, our parents or our grandparents.

Mr. President, we have to do something. We have to take some corrective action, and this amendment, I think, is the beginning of our doing that.

I yield the floor.

I reserve the remainder of my time.

Mr. MURKOWSKI. I yield to the Senator from Oregon.

UNANIMOUS-CONSENT REQUEST

Mr. WYDEN. Mr. President, I ask unanimous consent that Ms. Moira Shea, a congressional fellow in my office who is visually impaired, be granted floor access during the course of debate on S. 104, the Nuclear Waste Policy Act, and that Ms. Shea's guide dog also be granted floor access during the course of debate on S. 104.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I shall not personally object because I have no personal objection to the request of my friend from Oregon, but on behalf of another Member who just called the cloakroom, I do voice an objection.

The PRESIDING OFFICER. Objection is heard.

Mr. WYDEN. Mr. President, in light of the objection, I ask unanimous consent that I be permitted to proceed for 10 minutes as in morning business for the purpose of submitting a resolution.

The PRESIDING OFFICER (Mr. KYL). Is there objection? Without objection, it is so ordered.

(The remarks of Mr. WYDEN pertaining to the submission of Senate Resolution 71 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

AMENDMENT NO. 44 TO AMENDMENT NO. 30

(Purpose: To express the sense of the Senate regarding assistance for elderly and disabled legal immigrants.)

Mr. MURKOWSKI. Mr. President, I have a second-degree amendment to the Wellstone amendment, which I understand may be acceptable. Therefore, I ask unanimous consent to offer the second-degree amendment at this time on behalf of Senator LOTT. The only change it would make to the Wellstone amendment would be to add the words ''the President'' on line 2—* * * that the President, Congress, the States, and faith-based and other organizations * * *'' et cetera. I send this second-degree amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment will be in order at this time.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for Mr. LOTT, proposes an amendment numbered 44 to amendment No. 30.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In the pending amendment, strike all after ''SEC. .'' and insert the following:

''SENSE OF THE SENATE REGARDING ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

''It is the sense of the Senate that elderly and disabled legal immigrants who are unable to work should receive assistance essential to their well-being, and that the President, Congress, the States, and faith-based and other organizations should continue to work together toward that end.''

Mr. WELLSTONE. Mr. President, first of all, I ask unanimous consent that I be included as an original cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I thank my colleague. I came to the floor of the Senate today to try to make sure that we make a commitment, albeit a preliminary commitment. I will read the operative language. ''* * * take steps to ensure that elderly and disabled legal immigrants who are unable to work, will not be left without Federal assistance essential to their well-being.''

I believe that, ''It is the sense of the Senate that elderly and disabled legal immigrants who are unable to work should receive assistance essential to their well-being, and that the President, Congress, the States, and faith-based and other organizations should continue to work together toward that end,'' is in the same spirit.

We are going to have to define this with concrete language and with a decision made about investment of resources. I think it is an important step forward. I thank my colleague from Alaska. I would be pleased if we could have a voice vote if that is what my colleague wants to do.

The PRESIDING OFFICER. Is time yielded back on the amendment?

Mr. WELLSTONE. I yield back our time.

Mr. MURKOWSKI. I yield our time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 44) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 30

Mr. MURKOWSKI. Mr. President, has the first-degree amendment been adopted?

The PRESIDING OFFICER. The first-degree amendment has not been adopted. The question is whether Senators yield back their time on that amendment if they wish to vote.

Mr. WELLSTONE. I yield back my time.

Mr. MURKOWSKI. I yield back my time and urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 30) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MURKOWSKI. Mr. President, I believe we are waiting for another Member to come down to the Chamber. We have two more amendments, is my understanding.

Mr. President, I think it is fair to say that no Member of this body intended, by any means, that last year's welfare bill would place the elderly and the disabled legal immigrants out of their residence and into the streets of this country. I am sure that when our President signed the reform bill, that certainly was not his intention.

Since the bill was signed into law, many State Governors have attempted to address the concerns raised by my good friend from Minnesota. Many of the State's Governors and representatives have large budget surpluses that can be used to alleviate some of the potential problems that have surfaced. That is not in all States, by any means, but in those that have that capability, I think there is an appropriate expenditure suggested. In addition, the Immigration and Naturalization Service has recently issued new guidelines that should facilitate citizenship applications by many elderly disabled immigrants.

Mr. President, I am certain that Congress, working with the administration, State Governors, and other organizations, will surely come up with a solution that ensures the well-being and safety of all legal immigrants, especially the elderly and the disabled. This is not to suggest, however, that we are going to rewrite the historic welfare legislation we passed last year. As many colleagues stated on the floor last year, if and when unanticipated problems arise resulting from the welfare bill, we will address those problems in an appropriate fashion.

There are some in this body who want to restore, piecemeal, the old AFDC welfare entitlement. That program has been unanimously adjudged a dismal failure. Piecemeal attempts to restore that failed system are simply not going to happen. I want to assure my friend from Minnesota that I am committed to working with my colleagues on the Finance Committee, along with the help of the administration and Governors, to ensure that necessary assistance is made available to resolve this unintended problem.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 43

Mr. MURKOWSKI. Mr. President, I understand amendment No. 43 to S. 104 is pending.

Mr. President, let me go into the purpose of the amendment. It is establishing a fee cap and is a second-degree amendment to protect the ratepayers. These are the ratepayers who pay into a special fund and use and generate power from nuclear reactors. It is to protect the ratepayers who are the ones who ultimately pay the nuclear waste fee by making it clear that the nuclear waste user fee cannot exceed 1 mill per kilowatt hour without specific congressional authorization.

The spent fuel disposal program is paid for with a fee collected from the consumers of nuclear energy. This fee is currently set at 1 mill per kilowatt hour. While the nuclear waste program has had problems, collecting sufficient amount of money from the ratepayers certainly hasn't been one of them. After all, we collected over $13 billion and have expended only $6 billion on a

permanent repository at Yucca Mountain. But we have a problem created by the fact that our budgetary system forces the program to compete against other DOE programs for funding even though this fee is earmarked for nuclear waste disposal. This situation has contributed to the problem where ratepayers have spent some $13 billion in the fund but have only received excuses in return.

Our budget system also creates an incentive to use nuclear waste fund receipts to disguise the size of the budget. Senate bill S. 104 addresses these problems by providing for two fees. One is a user fee that is equal to the appropriations provided to the program. The other is mandatorily created that makes up the difference between appropriations and the current level of the fee which is 1 mill per kilowatt-hour. The user fee goes directly to fund the ongoing programs. The mandatory fee goes into the nuclear waste fund to continue to bill the balance to ensure there will still be money in the fund to deal with the waste even after the reactors stop operating.

With that background, let me briefly explain what my amendment does. My amendment simply makes it clear that the user fee cannot exceed 1 mill without congressional authorization. This is designed to protect ratepayers. Critics will say perhaps that this is designed to protect utilities. But it is really the ratepayers who pay the fee, don't they? Certainly not the utilities. Some may argue that a 1 mill fee is insufficient to pay for both interim storage and permanent repository. DOE's own budget projections show that this is not the case. The 1 mill fee generates $630 million per year.

Because defense waste will also be placed in the permanent repository, a portion of the cost, therefore, must be appropriated from the national defense budget account to the nuclear waste fee each year. In the last few years this has been some $200 million. That is a combined total of $830 million each year. Is $830 million per year combined with the roughly $6 to $7 billion in the waste fund today sufficient to fund both the permanent repository and the interim storage facility? This is a key question. According to the Department of Energy's own budget plan, the answer is yes. It is plenty. The fact is the budgetary provisions in the Department of Energy's own program plan assume an interim storage facility is named in 1998.

To quote from the DOE plan, ''Fiscal year 1999 through the year 2002 amounts for the program assume the enactment of legislation authorizing and siting an interim storage facility and providing appropriate funding arrangements.'' So there we have it. DOE's own plan reflects exactly the same schedule for siting and constructing an interim facility as that set out in Senate bill S. 104. The Department of Energy's own plan shows that the cost of both the permanent repository and interim facility will range from $535 to $698 million per year. That is well under the $830 million going in the fund from the ratepayer contributions and defense appropriations. So lack of money is not the problem. But if changed circumstances or other factors make the cost of the programming to go up, then Senate bill S. 104 provides expedited procedures to consider a change in the 1 mill cap.

Under Senate bill S. 104 the Secretary determines each year whether the DOE has collected too little or too much money. The Secretary then transmits his or her recommendations to Congress, and a joint resolution to raise or lower the fee is introduced and considered on an expedited basis. This is another way to ensure that this program will be adequately funded for its entire life. But by requiring Congress to act to raise the fee we protect the ratepayers, and that is the purpose of the language of Senate bill S. 104 and the amendment before us now. We carefully balance the needs of the program while protecting the ratepayers.

Mr. President, I urge the adoption of the amendment.

Mr. BUMPERS. Mr. President, the pending second-degree amendment caps the fee paid by the utilities for nuclear waste disposal services. That sounds simple enough, but to understand the amendment we must first understand the funding provisions in both the Murkowski substitute, which the pending amendment amends, and how both will affect the nuclear waste program's current funding mechanism.

One of the fundamental principles of the Nuclear Waste Policy Act of 1982 is that the full cost of disposing of nuclear waste should be borne by the waste's generators. In the case of the military waste, that means the Treasury and the taxpayers. In the case of commercial power plant waste, that means the utilities and their ratepayers.

The existing nuclear waste program will cost about $34 billion. Of this amount, the utilities are responsible for $27 billion and the defense program is responsible for $7 billion.

Under the Nuclear Waste Policy Act of 1982, the utilities' share is recovered through a fee on electricity generated by nuclear power. The 1982 law set the fee at 1 mill, which is one tenth of a cent, per kilowatt-hour.

Congress assumed in 1982 that the fee would need to be adjusted from time to time for inflation, to meet higher than expected costs, of if the number of plants paying the fee changed. Thus, the existing law gives the Secretary of Energy the power to adjust the fee.

The Secretary has never used his adjustment authority. The fee remains at 1 mill despite 14 years of inflation and despite GAO concerns that the fee is not recovering the program's full cost. DOE admits that the fee will only collect about $19 billion of the $27 billion the utilities will owe. DOE is counting on interest on the unspent balance in the Nuclear Waste Fund to make up the shortfall. The utilities will contribute even less than $19 billion if any nuclear power plants shut down before the end of their useful lives, as many are expected to do as the electricity industry becomes more competitive.

Because of budget scoring roles, the fees collected from the utilities do not offset spending on the program. As a result, the nuclear waste fee takes in more money than is appropriated to the program each year. In fiscal year 1997, for example, the utilities are expected to pay $649 million compared to $182 million appropriated to the waste program.

The Murkowski substitute tries to get around these budget constraints without violating the Budget Act. The approach taken in the substitute, while convoluted, works. First, the substitute preserves the existing 1 mil mandatory fee. Second, it creates a new offsetting fee, which will be set at whatever amount is needed to recover the amount appropriated to the program each year. The amount of the offsetting fee will fluctuate from year to year. To prevent double recovery from the two fees, the amount of the mandatory fee will be reduced by the amount of the offsetting fee collected. Thus, the combined fees may total more than 1 mill but will never be less than 1 mill.

The substitute eliminates the Secretary of Energy's existing authority to adjust the fee, but it makes up for it by allowing Congress to raise the fee to keep up with program spending through the annual appropriations process.

The Murkowski substitute requires the Secretary of Energy to propose an increase or decrease to the mandatory 1-mill fee if he finds that the combined fees are collecting too little or too much money. The Secretary's proposal would not take effect until approved by a joint resolution adopted under expedited procedures. The expedited procedures provided under the substitute waive Budget Act points of order.

The Domenici first-degree amendment reinstates any applicable Budget Act points of order. That's only fair.

The Murkowski second-degree amendment, however, has nothing to do with the points of order restored by the Domenici amendment. The Murkowski second-degree amendment caps the combined total of the two fees in the underlying substitute at 1 mill.

The Murkowski amendment repudiates the full-cost recovery principle of the Nuclear Waste Policy Act of 1982 and shifts part of the cost of the nuclear waste program from the utilities and their ratepayers to the Treasury and the taxpayers.

How much of the program's cost will be shifted to the taxpayers is unclear but the 1-mill fee will certainly be inadequate to pay the program's full cost. GAO already says it is inadequate. DOE says it will be inadequate if future interest rates are not high enough to offset the current shortfall

between what the utilities will pay—$19 billion—and what their share of the program will cost—$27 billion. The underlying bill, S. 104, will increase the cost of the program by $2 billion for interim storage. Competition will cause utilities to shut down some nuclear plants before the end of their useful lives, thereby decreasing the amount of the fees paid.

Under current law, the Secretary of Energy can correct any shortfall by raising the fee, but S. 104 and the Murkowski substitute strips the Secretary of that power. Even under the Murkowski substitute, though, Congress could still correct any shortfall in future appropriations acts. But the Murkowski second-degree amendment forecloses any opportunity for DOE or Congress to address a future shortfall except by joint resolution.

The pending amendment fundamentally alters the bargain the Government struck with the utilities in 1982. That bargain was that the Federal Government would take on the responsibility for disposing of the utilities' waste in a permanent repository and, in return, the utilities would pay the program's full cost or the repository program and, in the meantime, fulfill their responsibility for storing their own waste at their reactors until the repository was ready or else pay the Government extra to store it at a Federal site.

The nuclear industry and its Republican supporters have made much of the sanctity of the nuclear waste contracts. They have complained loudly about DOE's inability to meet the 1998 waste acceptance date in the contract and have alleged the Government owes the utilities billions of dollars in damages for this failure.

The Murkowski substitute already rewrites the bargain struck in 1982 by making the Government responsible for temporary storage. The Murkowski second-degree amendment further alters the bargain struck in 1982 by relieving the utilities of their obligation to pay the full cost of the now expanded program.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, what is the pending business?

The PRESIDING OFFICER. Amendment No. 43 to amendment No. 42.

AMENDMENT NO. 31 TO AMENDMENT NO. 26

(Purpose: To provide for the case in which the Yucca Mountain site proves to be unsuitable or cannot be licensed and to strike the automatic default to a site in Nevada)

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the pending amendment be set aside, and that it be in order to call up amendment No. 31.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment No. 31 to Amendment No. 26.

On page 28, line 17, strike "If the President" and all that follows through page 29, line 1 and insert the following:

"(3) If the Secretary makes a determination under section 206(c)(3) that the Yucca Mountain site is not suitable or cannot satisfy the Commission's regulations applicable to the licensing of a repository, the Secretary shall—

"(A) terminate all activities (except necessary termination activities) related to construction of an interim storage facility at any site designated under paragraph (1); and

"(B) no later than 24 months after such determination, make a preliminary designation of one or more alternative sites for construction of an interim storage facility.

"(4) If the Commission, after review of the Secretary's application for construction authorization for the repository or after review of the Secretary's application for a license to receive and possess spent nuclear fuel or high-level radioactive waste at the repository, determines that it is not possible to license a repository at Yucca Mountain under section 206—

"(A) the Commission shall promptly notify the Secretary, the Congress, and the State of Nevada of its determination and the reasons therefor; and

"(B) the Secretary shall—

"(i) promptly take the actions described in paragraphs (1) and (2) of section 204(b);

"(ii) suspend all activities (except for necessary surveillance and maintenance) related to construction or operation of an interim storage facility at any site designated under section 204(c)(1); and

"(iii) no later than 24 months after being notified by the Commission of its determination, make a preliminary designation of one or more alternative sites for construction of an interim storage facility; and

"(iv) at the time of the designation under clause (iii), transmit recommendations to Congress with respect to further construction or operation of an interim storage facility at any site designated under section 204(c)(1).".

Mr. BINGAMAN. Mr. President, the issue of disposal of spent nuclear fuels and high-level radioactive waste has been debated in this Senate in one form or another ever since I arrived here some 14½ years ago. Nuclear waste is a serious issue. It demands serious attention by all Senators. It is a problem that is national in scope.

It is also a particular responsibility of the Federal Government. After all, it was the Federal Government that proposed, beginning with the Atoms for Peace Program in the Eisenhower administration, to develop the peaceful uses of nuclear power. The problems of disposal of spent nuclear fuel that we face today are the legacy of our past laws and decisions.

I am not going to characterize the current situation as a crisis. There is too much hype already about disposal of nuclear waste, from all sides of the debate.

But there are serious problems facing the program that merit attention now, in this Congress. I have an important disagreement with the chairman of the Senate Energy Committee about the substitute amendment that is before the Senate today. I believe that it is fatally flawed on two counts, and my amendment is intended to address this fatal flaw. But I also believe that the chairman is right when he says that simply continuing with the current situation is not acceptable.

Let me point out a number of issues that call out for congressional action at this time.

First, ratepayers have paid over $8 billion in fees to the nuclear waste fund and earned about $2 billion in interest. Only about $5 billion of this money has been spent on the program.

Our current budget rules and accounting principles make it nearly impossible to give the program, each year, the appropriations that it deserves. For example, in fiscal year 1996, the President asked for $640 million for the DOE Yucca Mountain Program. Congress appropriated only $315 million—half of the request. As a result, the program had to abandon a comprehensive program plan that was less than 2 years old, and go through yet one more strategic planning exercise to figure out how to cope with an inadequate funding base.

There is no incentive for the President to even make a reasonable budget request at this point. Not surprisingly, the utilities and public utility commissions, who are paying in $600 million each year and seeing only a fraction of that getting spent, are upset with this state of affairs. They have every right to be.

A second reason why action is required in this Congress is that DOE won't meet its January 31, 1998, deadline to dispose of spent nuclear reactor fuel and is way behind schedule in building a repository. Utilities and ratepayers will have to pay for onsite storage for spent fuel after 1998 in addition to what they would otherwise have needed if DOE had met its 1998 deadline. While many thought that 1998 was unrealistic when it was first picked as a target date, no one thought that we would be missing it by so wide a margin. Some relief is now in order.

A third problem that needs to be addressed in this Congress is that there will never be a repository if EPA doesn't issue a radiation standard for it. EPA is right in the middle of the critical path for this program, and keeps missing deadline after deadline.

Part of the blame lies at EPA—it is hard to detect any sense of urgency on their part. But an important part of the blame lies in the inherent difficulty of writing this standard and having it stand up to scrutiny in the courts. Let me remind my colleagues that in 1985, EPA did promulgate a radiation standard for the repository. Two years later, it was stuck down in court. Without some statutory help to

clarify issues, I believe that EPA is destined to face the same fate again.

For example, according to the National Academy of Sciences, there is no technical basis for incorporating human intrusion into a repository standard, because any analysis of human intrusion, in their words, is ''driven by unknowable factors.'' How will EPA successfully defend a new standard in court, if it has to depend on the unknowable?

Further, the underlying law governing EPA's development of a repository standard currently places EPA in a legal catch-22. The law requires EPA both to promulgate a dose-based standard and to follow the recommendations of the National Academy of Sciences. But the National Academy of Sciences has recommended against promulgating a does-based standard. Without additional statutory guidance, how does EPA get out of that box?

If we sit by and do nothing, we are setting EPA up for certain failure in developing a repository standard over the next few years.

The final problem that I want to cite which justifies action and leads me to conclude that we need to have action in this Congress is that there is a lawsuit pending against DOE that seeks to escrow the current nuclear waste fee outside the Government. If the court decides that there is liability on DOE's part, there may be other payments for damages that no one can put a price tag on right now. No one can say what the court will do—but it has surprised the Government twice already with its rulings in favor of the utilities. One thing is clear though. There is a sizable potential for major damage, and perhaps fatal damage, to the nuclear waste program over the next 12 months.

The administration has taken the view that it is premature to consider legislation on this topic at this time, and that Congress should wait until 1999, when the viability assessment of the Yucca Mountain site is complete.

The list of problems that I have just gone through, and it is far from a complete list, won't age gracefully during the next 2 years. If we don't fix some of them fairly quickly, I believe that we will be wasting a substantial amount of taxpayers' money. I cannot support a same time, next Congress approach to clear and serious difficulties in this program.

Further, the administration's emphasis on the viability assessment as some sort of touchstone for further congressional action greatly exaggerates the value of the viability assessment. The senior Senator from Nevada has reminded us repeatedly, in this debate, that the viability assessment is not a suitability determination. He is absolutely right. All the scientists involved in the viability assessment agree with him. The viability assessment will not tell us if Yucca Mountain is a good place for a geologic repository.

The viability assessment will only be useful as a decisionmaking guide if Yucca Mountain is so terrible a site for a repository that even a small amount of scientific data is sufficient to make an overwhelming case that we should give up at that site and look elsewhere.

If the viability assessment will not tell us much, if anything, about the suitability of Yucca Mountain for a repository, then why is the viability assessment in the critical path for deciding what we should legislate here in this Congress?

I think the problems facing the Yucca Mountain Program speak for themselves. They will not wait another 2 years to be resolved and neither should we.

Having agreed with the chairman of the Senate Energy Committee on the need for legislation at this time, let me say that in one important respect I cannot support the proposal he has presented to the Senate. I opposed S. 1936 last year, and I opposed S. 104 this year in its original form when we voted on it in committee. Although the chairman's substitute amendment today is a vast improvement over last year's bill, it still contains fatal flaws that force me to continue to oppose it.

Before I talk about the fatal flaws in the bill, it is only fair to acknowledge the good-faith cooperation that we have had from the chairman of the Senate Energy Committee in addressing, since the committee's markup, many of the problems that the administration identified in last year's bill.

The chairman said at the markup that he was open to suggestions as to how to make the bill better and that he wanted to have a constructive dialog, and he meant it. I am glad that I took him at his word for he and his staff have negotiated with me and my staff in very good faith, and anyone who looks at the substitute amendment that is before us today and compares it to the original bill has to admit that, while crucial flaws remain, major progress has been made on a number of topics toward getting a good bill on this topic.

Almost all the problems that have been aired in the Chamber in this debate and in the veto threat issued by the administration have been addressed in one way or another.

Mr. President, I would like to describe eight areas in which the chairman proved to be open and flexible to my suggestions for how to improve S. 104 and address major areas of concern raised by the administration and others.

First, radiation standard. Few provisions of last years nuclear waste bill, S. 1936, and this year's bill, S. 104, have received more criticism than the statutory radiation standard of 100 millirems. Every Member of the Senate has received, over the last week, numerous letters opposing S. 104 from environmental, religious, and public advocacy groups. These letters consistently emphasize the fact that the 100 millirem standard in S.104 is 4 times higher than similar radiation standards for other nuclear facilities. The new radiation standard in the substitute amendment, which is identical to the proposal I offered in the Energy Committee, resolves this issue. It is a risk-based standard that is equivalent to about 25 millirems. It gives statutory expression to the major recommendations of the National Academy of Sciences on every issue except one. The National Academy recommended that the radiation standard be applied at the time of maximum risk, but this is 80,000 to 250,000 years from now. In a licensing proceeding, which is the venue in which any standard will be applied, proving anything with certainty about the world 80,000 years from now—160 times greater than all of recorded history—is a virtual impossibility. So the substitute amendment uses a timeframe for assessing compliance in the licensing proceeding of 10,000 years, the same timeframe that EPA has proposed to use in the past. The substitute also requires a report to Congress from the Nuclear Regulatory Commission on the predicted compliance of the repository at the time of maximum risk, and delays the effective date of the construction license until Congress has had 90 days to review the commission's report. A similar approach is taken to the question of human intrusion, which the Academy states is ''driven by unknowable factors.'' I believe that any objective observer would conclude that the radiation standard in the substitute amendment resolves all of the objections that were raised against the old 100 millirem standard.

Second, NEPA. S. 104 was criticized for running roughshod over the NEPA process. Nowhere was this more apparent than in the licensing procedure for the interim storage facility. NRC regulations require it to prepare an environmental impact statement for any interim storage facility. Yet the time lines in the S. 104, as introduced, would have precluded the commission from carrying out a meaningful EIS. NRC regulations also clearly state that beginning construction of an interim storage facility prior to completion, by the NRC, of its NEPA process is, all by itself, grounds for the commission to refuse to issue such a license. Yet S. 104, as introduced, instructed DOE to start construction as soon as it submits a license application. In committee, I offered an amendment to correct these problems. The substitute amendment adopts my approach. Under the substitute amendment, no construction of an interim storage facility occurs until the NRC has completed the NEPA process called for under its regulations.

Third, transportation planning. We have heard a lot of discussion about transportation risks in this debate so far. Senator WYDEN proposed an amendment that was accepted in the committee's markup that strengthened the provisions of the bill relating to transportation planning. I supported his amendment and he deserves great

credit for working closely with his own State of Oregon and with the Western Governors Association, which includes New Mexico as a member, in strengthening the bill in this important area. One goal that he was unable to achieve prior to committee markup was to provide for 3 years of funding and assistance to States and localities, to enable them to be up-to-speed to handle any contingencies related to transportation, no matter how remote their probability. The reason that it was rejected was because it would have conflicted with the headlines in the bill as it stood at that time. After his staff was briefed about progress in my discussions on timing issues, he requested that I explore getting them the third year of training and assistance. Senator MURKOWSKI was agreeable to Senator WYDEN's new request, and as a result, every place through which nuclear waste may be shipped will now have 50 percent more training and assistance. I think this is a real improvement.

Fourth, timing. S. 104 was criticized for its unrealistic deadlines that were virtually impossible to meet. The new deadlines in the substitute amendment are virtually the same as those in the proposal that I offered in committee. They are drawn from the current DOE program plan and from technical discussions by my staff with the actual persons at DOE and the NRC who would be responsible for meeting those deadlines. The resulting deadlines are very realistic, and in some cases have extra scheduling cushion built in.

Providing enough time for DOE and the NRC to do their work properly has the advantage of postponing construction and operation of an interim storage site in Nevada until after the scheduled record of decision on the permanent repository—September 2000. Under my proposal, which Senator MURKOWSKI agreed to, the interim storage facility license is issued 9 months after DOE has applied for construction authorization for the permanent repository. In other words, we don't put the waste on the road to Nevada until well after the time at which DOE has determined, as part of its own NEPA process, that Yucca Mountain is suitable.

A final advantage of the way my proposal sequences the interim storage facility and the permanent repository is the elimination of much of the competition between the two for financial resources.

In the period 1999–2001, DOE can concentrate on repository characterization and on putting together a high-quality repository EIS and license application, while the NRC is working on the interim storage facility license application.

In the period 2002–2005, DOE can concentrate on interim storage facility construction and initial operation while the NRC is reviewing the repository license application.

Fifth, size of the interim storage facility. In S. 104, as introduced, the capacity of the interim storage facility grows to either 40,000 metric tons of spent fuel in December of 2002, or, if the Secretary is late in submitting a license application for the permanent repository or in opening the repository for operations, 60,000 metric tons of spent fuel. This extra 20,000 metric tons of capacity is added even if the Secretary of Energy does not ask for it or think it is necessary. We accumulated 32,000 metric tons of spent fuel over the last 40 years. I was concerned that an aboveground storage facility that had a capacity of twice today's spent fuel inventory, and a licensing term of 100 years, with indefinite renewals into the 22d and 23d centuries, would be, in reality, more like a permanent aboveground repository, than an interim facility.

I proposed, and Senator MURKOWSKI accepted, a linkage between the size of the interim storage facility and the status of the permanent repository. Before the permanent repository is in operation, the interim storage facility capacity is limited to just what is needed to get to that date. It is a bridge, not a replacement. A second part of my proposal was to allow the capacity limit of the interim storage facility to grow, only after the repository is licensed to operate by the NRC, and only for the purposes of operating the interim storage facility as an integral part of a total system with the repository. This, too, was accepted.

The adoption of these changes improve the bill, but only represent a partial success in terms of establishing the correct relationship between the interim storage facility and the permanent repository. My remaining amendment to this substitute amendment is intended to finish the job on getting the right relationship between the two facilities.

Sixth, preemption. S. 104, as introduced, contained a very worrisome provision preempting all Federal, State, and local laws on the basis of a novel standard of ''inconsistent or duplicative.'' Removing this preemption provision was a key demand in the administration's veto threat. At my suggestion, we have moved to a preemption provision that restates the status quo in this area of law. The first part of the provision restates the two fundamental Supreme Court rulings on preemption of State requirements by Federal law. Its language is identical to that found in the Hazardous Materials Transportation Act. The second part of the provision is also modeled after the HAZMAT Act. It lists five areas where Congress intends this act to be the last word. Three of the five are modeled after the areas listed in the HAZMAT Act. The other two topic areas for preemption are the land transfer provisions of the Act and the siting and licensing of the repository and interim storage facility. Neither topic breaks new ground. Thus, we have taken a very objectionable provision and removed everything that was objectionable about it.

Seventh, financing. We have heard a lot, over the last few days, about the problems of S. 104 in terms of how it pays for the nuclear waste program. The junior Senator from Nevada has made some pretty good points about how the bill, as introduced, transfers the burden of paying for the repository from the beneficiaries of nuclear power to the general taxpayer. This issue has been of deep concern to me, as well. Fixing this problem is not easy, as has been evidenced by the fact that we have had additional amendments on this topic during the floor debate. The Nuclear Waste Fund is caught, along with other trust funds, in a trap of budgetary rules and accounting principles that have grown up over the years and that, in cases like this one, yield results that defy common sense. Getting completely out of the trap requires cooperation from either the administration or the Budget Committee, and neither is willing to help. There is a partial solution, though, that puts the program on a sound financial basis outside the current scoring window and that can be implemented for 4 years during the scoring window. This solution has three parts.

The first part is a fee that is tied to appropriations, to remove the disincentive that now exists to fully fund the program. In the original substitute amendment, there was no cap on this fee. Thus, if the Congress were to appropriate $800 million of civilian spending to the program, the fee would rise to about 1.3 mills per kilowatt-hour. I believe that it is appropriate to go over the 1-mill limit, if the ratepayers are getting what they are paying for.

The second part of the partial solution is a second fee that kicks in if the level appropriated is less than 1 mill per kilowatt-hour. This second fee is set at the difference between the appropriations-based fee and the 1.0 mill per kilowatt-hour level. The second fee goes into the nuclear waste fund, to build the needed surplus for the last 40 years of the program.

The third part of the partial solution is an expedited procedure to approve any recommendation by the Secretary to adjust the 1.0 mill per kilowatt-hour level used to calculate the second fee. If we need to be collecting a larger second fee to ensure the integrity of the Nuclear Waste Fund, the Secretary's proposal will make it to the floor for expeditious consideration.

This agreement, as I originally proposed it, completely answers the concerns raised by the junior Senator from Nevada. Instead of a 1.0 mill per kilowatt-hour cap, we have a floor that the Secretary can propose to raise, to ensure that the funds needed to keep the nuclear waste fund solvent are always there. Instead of transferring liability to the general taxpayer and providing corporate welfare to the nuclear industry, my original proposal ensures that the industry continues to pay its fair share of the costs of the repository.

Eighth, lawsuit. The last area of agreement that I want to discuss is a

commitment to discuss the current lawsuit by the nuclear industry in any conference on the bill. The commitment is in the form of a sense of the Senate that the DOE, the utilities, and the public utility commissions should settle the lawsuit before we enact this bill into law. The idea behind this sense of the Senate language is simple. The utilities and public utility commissions have a two-track strategy to solve their problems. One is legislative. The other is judicial. There is nothing wrong with pursuing both tracks at this time, since it is not clear that the legislative track will produce a public law anytime soon.

But if the utilities and the public utility commissions do succeed in getting relief from Congress and the President, in the form of nuclear waste legislation that delivers an interim storage facility on a reasonable timeframe and that fixes the nuclear waste fee problem, then the lawsuit against the Federal Government should go away.

The principle that I believe that the Senate should take to conference, then, is that you can't have your cake and eat it too. You can't get a complete legislative overhaul of the nuclear waste program and then go and try to improve on it, or blow it up, in the D.C. Circuit Court of Appeals. I recognize that we are dealing, in the lawsuit, with vested contractual rights, and that our options to deal with the lawsuit in legislation may ultimately be somewhat limited. But I believe that we should put all parties on notice that the Senate is serious about a cooperative solution to the problem, and that they should be, too.

Mr. President, I cannot say if the administration thinks that its concerns have been resolved. I am still waiting to hear some definitive statement from the administration on the amendments that we offered in committee a month ago and also a definitive statement on their position with regard to the amendment I am offering today.

Despite the substantial progress toward making S. 104 a better bill, a key flaw remains in the substitute. It is an issue of the highest importance. It is an issue of whether S. 104, if enacted, would lead to the abandonment of our fundamental policy of geologic storage of nuclear waste in the circumstance where Yucca Mountain would fail as a candidate for a repository.

This scenario can occur and it does occur in the substitute amendment if the proper relationship between the interim storage facility and the permanent geologic repository is not maintained.

So what is this proper relationship that I think is so important? The current Nuclear Waste Policy Act of 1982 provides for a facility similar to the interim storage facility that is provided for in this bill. In the 1982 act it was called the monitored retrievable storage facility or MRS. We never found a place to put an MRS, but the restrictions on the MRS in current law—which we passed in 1982—are instructive as a guide to how we need to think about such facilities.

In current law, construction of an MRS cannot begin until the permanent repository has a construction license. In current law, construction of the MRS or acceptance of spent nuclear fuel at the MRS is prohibited during any time in which the repository license is revoked or construction of the repository, that is, the permanent repository, ceases. In current law, the MRS has a capacity limit tied to the opening of the repository.

These restrictions are all safeguards to prevent the MRS from turning into a de facto permanent above-ground repository.

In the case of the current bill, we are allowing the interim storage facility to proceed in advance of the licensing of the Yucca Mountain facility, and I agree with that. This is a defensible step in light of the delays in the repository program and the need for such a facility to be in full operation 10 years from now.

But the decision to allow the interim storage facility to get ahead of the permanent repository makes the issue of safeguards to prevent the interim storage facility from turning into a de facto permanent repository all the more important.

On the issue of tying the capacity limit of the interim storage facility to the opening of the permanent repository, there is a provision in the substitute amendment that works providing that the substitute also addresses the issue of what happens to the interim storage facility if Yucca Mountain fails to pass muster at some point in the process. And here is where the rub is. The substitute does not address the issue in a complete fashion.

As I see it, there are four points in the process where Yucca Mountain can fail. There must be clarity on what happens to any interim storage facility in each of those cases.

The first point in the process is already covered in the bill. It is the viability assessment. As I mentioned earlier, if Yucca Mountain is an absolutely terrible place technically to put a repository, we will probably find out at this stage. The substitute amendment provides that if the President finds, based on the viability assessment, that the Yucca Mountain site is unsuitable for a repository, then he and the Congress have 24 months to find another interim storage facility site or the site in Nevada right next to Yucca Mountain is chosen by operation of law. I will come back to the automatic default to Nevada in just a moment.

The second point in the process where Yucca Mountain can possibly fail as a candidate repository occurs before the Secretary submits the license application to the NRC, the Nuclear Regulatory Commission. During the NEPA process for the repository, the Secretary will have to make and defend a suitability determination. If the Secretary determines that Yucca Mountain is unsuitable or cannot meet NRC licensing standards, then, according to the substitute amendment, the Secretary must notify Congress and the State of Nevada to cease all activities at the repository site and report to the Congress within 6 months on the need for additional legislation dealing with nuclear waste.

What the substitute amendment remains silent on is this question: What happens to the interim storage facility in this case? The Secretary has already submitted a license application to the Nuclear Regulatory Commission, but no construction has started as yet. In that case, the silence in the substitute amendment means that the Secretary is authorized and in fact is required to go forward in Nevada. In fact, the provisions of the substitute amendment, perhaps unintentionally, turn the interim storage facility into a runaway train. Recall that the statutory limit for the interim storage facility in the substitute is tied to what is needed to get you to the date when the permanent repository opens. If the permanent repository suddenly moves 30 years into the future because of a decision that Yucca Mountain is unsuitable, these provisions could be construed as sanctioning moving an extra 90,000 metric tons of spent fuel to Nevada. This is unacceptable.

The first provision added to the substitute by my amendment would fix this problem. It terminates the Secretary's authority to move forward on an interim storage facility at the site in Nevada if Yucca Mountain fails as a candidate for a permanent repository during the process of making the suitability determination. The Secretary must then make a preliminary designation of one or more alternative sites within the next 24 months.

The third and fourth points for potential failure of Yucca Mountain as a repository candidate is during the two-step Nuclear Regulatory Commission licensing process. Suppose that during this process the NRC concludes it is not possible to issue a license for a repository at Yucca Mountain. Under the substitute amendment, the construction and operation of the interim storage facility continue unabated.

So the second provision added to the substitute by the amendment that I am offering today would try to fix this problem. If Yucca Mountain fails to pass muster at the NRC, then all construction and operation of the interim storage facility is stopped except for safety-related surveillance and maintenance.

As with the previous case, the Secretary must then make a preliminary designation of one or more sites within the next 24 months and must, in addition, make recommendations to Congress about what to do with the interim storage facility. But in this case, it takes the enactment of another law by Congress to restore any authority to

resume construction or resume shipments to the interim storage facility.

Could there be nuclear waste stored at the interim storage facility at this point? Yes, there could. If the NRC concludes that Yucca Mountain cannot be licensed after the first 20 months of its deliberations on DOE's license application for the repository, then the interim storage facility will contain some amount of spent nuclear fuel. The same situation can also occur under current law. It is possible for the MRS to have its operation suspended because of failure to license a permanent repository after the MRS has received spent nuclear fuel.

But if you are troubled by the fact that there is a possibility that waste could be shipped to Nevada before the geologic repository is open for shipments, then you are against one of the fundamental premises of this bill; that is, that it is acceptable to provide for an interim storage solution linked to the repository prior to the opening of the repository. Whether or not you think this is acceptable is, of course, for each Senator to decide. If the program were close to a successful opening of the repository today, I would personally be in favor of waiting a few more years. But since the date is now 2010 or potentially beyond that date if we do not fix some of the other problems with the program in this bill, I believe that an interim storage solution is acceptable with the right safeguards.

In the case of the amendment that I am offering here, one of the safeguards is to face this issue squarely and to make Congress decide what to do and then to enact another law before the Secretary can act. In this way at every stage in the process where Yucca Mountain can fail, my amendment would stop the interim storage facility in its tracks or cancel it outright.

The probability of Yucca Mountain failing is probably not great, particularly after the suitability determination by the Department of Energy in the year 2000. But that probability is also not zero. The 5-mile tunnel has been dug through the mountain. There is more water inside the mountain than was previously thought to be the case. Maybe this is significant; maybe it is not. There is a second east-west tunnel that will go through the exact area under the western side of the mountain where most of the waste will be placed. The east-west crossing will not occur until after the viability assessment but is critical to the suitability determination. The western slope of the mountain receives more rainfall than the eastern side. Does this mean that there will be even more water under the mountain where the waste will be placed? Enough pause to make the mountain fail as a repository site? No one knows at this point. That is why we are characterizing the mountain in the first place. The ultimate answer will not be known until after the window, in the current substitute amendment, for making a final and irrevocable decision on proceeding with the interim storage facility in Nevada.

Mr. President, in addition to the problem in the substitute of not permitting us to deal with the failure of Yucca Mountain as a candidate site at any point at which it can occur, there is the problem of the automatic default to Nevada if another site for an interim storage facility is not picked within 24 months. Under the substitute amendment, an interim storage site in Nevada is established regardless of whether the Yucca Mountain site is suitable or not, and the site is changed only if Congress and the President can produce another law providing for an alternative site within 24 months.

Realistically, Mr. President, passing another nuclear waste law from scratch in 24 months is not going to happen. Consider that we have been working on this bill and its predecessors for substantially longer than that. The nuclear industry spent a great deal lobbying this effort in the last Congress and came up with no solution. Does anybody believe that they would make any kind of effort like that if there was an easy answer to their problem, which this bill now provides no matter what happens? So, the provision contained in subsection 204(C)(2) of the bill is fatally flawed on two counts. If Yucca Mountain fails, the practical result is that the waste goes to Nevada, no matter what.

I do not think that any reasonable person should vote for the substitute amendment with this provision in it. It is not sound policy and it is certainly not fair to the people of Nevada.

There are lots of ways to ensure that the President acts expeditiously in finding an alternative site and proposing legislation to Congress. The chairman of the Senate Energy Committee has alluded, in previous remarks, to discussions that we have had as to whether a mechanism such as a base closure or realignment commission could develop a set of recommendations that would be forwarded to Congress for action. There are, no doubt, other mechanisms that could work equally well. But I think the principle has to be that any default mechanism we propose has to be workable and has to be fair, if it is actually invoked. I think the scheme in S. 104, the substitute for S. 104, fails on that point.

I will conclude these remarks by reiterating the basic principles behind the amendment with respect to how interim storage should relate to the permanent repository. First, siting an interim storage facility next to the Yucca Mountain site is acceptable, but—and this is crucial—only as long as that is where the permanent repository is going to be built.

Second, we should not start construction on an interim storage site in Nevada until Yucca Mountain has passed the suitability determination phase of site characterization. That phase ends with the completion of the environmental impact statement for the repository and issuance of the record of decision.

Third, if Yucca Mountain is disqualified as a repository site at any point during the process, we should stop any interim storage facility at the site in its tracks. The search for a new interim storage site should then be part of an overall process of looking for a new repository site as well.

I do not expect my colleagues from Nevada to agree with all these principles. I realize they are implacable in their opposition to the idea of interim storage in Nevada. I oppose the proposition as set forth in the substitute amendment, unless my amendment being offered today is agreed to. But I urge Senators who, like me, would like to have the chance to vote for a good nuclear waste bill, one that has what I think is the right relationship between the two facilities, to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent we set aside the Bingaman amendment and go back to the pending Domenici amendment, which has been brought before the Senate previously.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

AMENDMENT NO. 42

Mr. DOMENICI. Mr. President, I understand that the parliamentary situation is that the Domenici amendment has been offered in my behalf by the chairman, and that it has had an amendment added to it, so that pending before the Senate is the Domenici amendment with an amendment thereto, and also the Bingaman amendment, and others? And that at some point we will vote on the amendment to the Domenici amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I believe whatever needs to be said about my amendment, which is clearly a budget issue, has been said. From what I understand, my amendment is not controversial. If there is controversy, it has to do with the amendment to my amendment; not with it. So I would like to take no longer than 10 minutes, and if the Chair will tell me when I have used the time, I would not want to take any more time than that, of the Senate, to speak on the bill.

When Congress passed the Nuclear Waste Policy Act of 1982, we created a contract with the country's taxpayers that the Government of the United States would accept responsibility for waste from the reactors providing them with power across these United States. We have now watched for 15 years while the date for this permanent geological repository has moved from an original target of 1998 to the current earliest possible date of 2010. Even though progress at Yucca Mountain in

the last few years has finally been significant, the taxpayers impacted by their regional utilities are faced with continued storage of high-level waste at 80 sites in 41 States. Many of those storage sites are near population centers and significant funds are now being expended to keep those multiple sites safe and secure. Many of those sites are nearly full; 23 will be full in 1998, 1 year from now.

Incidentally, nuclear energy is still important in the United States. While we are not adding any nuclear capacity to our electric generating system, about 20 percent of the Nation's electrical power is nuclear energy and a failure to promptly act in that regard could, indeed, affect the viability of one-fifth of our Nation's electrical supply. That is not a small amount.

Senate bill S. 104, the bill before us, provides a comprehensive plan for the Federal Government to meet its obligation to provide a safe place for the Nation's spent fuel and high-level nuclear waste. It continues the path toward a permanent geological repository that is being explored at Yucca Mountain, and provides a critical intermediate step to relieve the pressure at those 80 sites by building an interim storage facility near Yucca Mountain. I voted last year for S. 1936, and S. 104 traces its parentage to S. 1936. But, when S. 104 was introduced in the Energy Committee this year, it contained improvements over S. 1936. I commend Chairman MURKOWSKI, and those who have worked with him, for their diligent, bipartisan efforts over the last few weeks to work with many of our colleagues to further improve S. 104.

S. 104 was a good bill in February and it is a better bill in April. S. 104 now includes realistic dates for action on the interim storage site. This bill now provides even more time, after the department has finalized its viability decision on Yucca Mountain, before the start of construction of the interim site. S. 104 now includes improved risk-based radiation standards that involve the Environmental Protection Agency in the process.

S. 104 applies a HAZMAT-type approach to transportation. The hazardous material processes of our law and procedures are going to hold true in the transportation arena. And a careful balancing of State and Federal laws allowing preemption by State and local laws only where State intransigence prevents the Federal purpose from being accomplished.

The new transportation provision in this bill, coupled with years of impressive demonstrations on the safety of nuclear waste shipments, should completely address the concerns that some continue to express on transportation issues. These and other changes make the current version of S. 104 significantly better than our previous approaches. S. 104 is now truly a bipartisan approach to solving this problem of immense national impact. At a time in our history when fiscal responsibility is under intense scrutiny, passage of S. 104 is critical, from a financial perspective as well as the contractual responsibilities and safety issues that it addresses. The current suit against the Department of Energy by States and utilities may require the payment of significant penalties. Taxpayers will bear the burden for all these penalties. If the court rules that the Department of Energy, thus the U.S. Government, has breached its contractual obligation and penalties are assessed, they will come from the taxpayers of this country. And the ratepayers, who happen to also be taxpayers, are already bearing the burden for storage of waste at the present 80 sites in this country. The financial impact of not moving ahead with S. 104 is very, very significant.

I have been very critical, not alone, with many others, of the administration and the Department of Energy in recent years, for their inaction and lack of leadership on the critical issues surrounding nuclear waste policy. The Department has taken the view that they are free of any obligation until a repository is ready. At the same time, utility companies are collecting fees from ratepayers to ensure the readiness of the storage capability. This is simply bad faith on the part of the Department. S. 104 resolves the gridlock which has paralyzed the Department and the nuclear industry in this country for many years.

S. 104 continues the evaluation of the repository as an ultimate and final solution. But the creation of a monitored retrievable storage capability and capacity might also allow the Department to consider some of the suggestions developed in 1993 by the Department's task force on an alternative program strategy for Yucca Mountain. I hope the Department will review that study and even view the monitored retrievable storage as providing some time to enable consideration of some of the research proposals for approaches like transmutation, the changing of the high-level waste to something less energy-possessed, and thus, perhaps, provide for some utility rather than storage forever. That could reduce the toxicity of the material, which is finally emplaced in the repository.

I hope the administration will reevaluate their stated resistance to earlier versions of S. 104. This bill represents a bipartisan approach to a national problem. It now addresses the concerns stated by the administration with previous versions. S. 104 would give the country what it has sought for 15 years, a well-defined path on the nuclear waste issue, one that we can truly do, do safely, and do within a reasonable period of time. Furthermore, we honor the commitments made in 1982 to the citizens who depend upon nuclear power, who have been paying for this solution ever since then.

Incidentally, just as an aside, it is not as if we have not been trying for the permanent repository. We have spent in excess of $6 billion and we have not yet finished the characterization of the site. Although some real headway was made in the last 18 months, for which we can be grateful to the man who led that, Mr. Dan Dreyfus, who is no longer with the Department of Energy—but, essentially, after about $6 billion and continued spending at a very elaborate amount each year, we are still a few years away from that permanent, long-lasting repository. In the meantime, problems with the short-term storage continue to mount.

I compliment the chairman of the Energy Committee. This is a good solution. I hope it passes with sufficient votes for the President's threatened veto not to be sustained. But, in any event, it is worth his effort to see that we have found a good, bipartisan, American solution to a truly big American problem.

I yield the floor.

The PRESIDING OFFICER. Who yields time? the Senator from Nevada.

Mr. BRYAN. Mr. President, may I inquire as to the status? How much time is remaining on the amendment we are debating?

The PRESIDING OFFICER. The Senator from Alaska controls 25 minutes on this amendment.

Mr. BRYAN. On the other side of the proposition, if I might inquire of the distinguished Senator who is presiding?

The PRESIDING OFFICER. The Senator from New Mexico has 19 minutes and 46 seconds.

Mr. BRYAN. I am wondering, since I speak in opposition, if I might get time either yielded from the time of the Senator from Alaska or the Senator from New Mexico? I was not aware that there was not time allocated to those who oppose the amendment. If that is the state of the parliamentary situation, I ask for 10 minutes, if there is that much time available. I do not think I will need that much time.

Mr. MURKOWSKI. I have no objection.

The PRESIDING OFFICER. The Senator from Nevada has 10 minutes.

Mr. BRYAN. I thank the Chair. I perhaps will not require all the time.

I do not, Mr. President, want to take much time to talk about the merits of S. 104 because, as we will point out later, S. 104 is a very bad piece of legislation and, in my view, is a policy disaster. It is unnecessary. There are provisions that would preempt Federal and State law, standards, viability, transportation—there are many, many things that could be said about the legislation, and I will address each of those arguments with some particularity.

I must say that I am constrained to address the issue of the lawsuit, because we hear a lot about the lawsuit. The lawsuit was decided before our votes were cast last year on S. 1936, but I think it is curious and revealing, revealing as to the true motives of this bill. Nothing in S. 104 deals with the lawsuits.

This Senator believes that ratepayers who are in a position where they may

incur additional expense for storage because of the unavailability of a permanent repository in 1998 are entitled to relief. I do not think ratepayers ought to pay twice. I have introduced legislation each year that I have been a Member of Congress to express that view. It is curious, Mr. President, the utilities who drive the policy in this—this is the nuclear utilities bill—do not want to talk about that. As recently as a couple of weeks ago, the Secretary of the Department of Energy acknowledged that the Department wanted to talk about compensation to utilities who will incur additional expense because they will be storing beyond what was contemplated in 1982 as a 1998 acceptance date. So this legislation does nothing with respect to compensation or to provide relief for ratepayers, and the fact that it does not makes the motive so abundantly clear. This is all about getting the waste out to Nevada, irrespective of environmental or other policy considerations.

Let me talk, if I may, very briefly, about the substitute as it deals with the mill tax levy. Current law provides that the utilities must pay into the nuclear waste trust fund on the basis of 1 mill per kilowatt hour of nuclear power generated. It goes into a trust fund. That is paid only so long as that utility generates nuclear power.

If you look at this line, Mr. President, the mill fee payment line, you will notice it rapidly declines between now and the year 2033, and the reason for that is because every currently licensed nuclear reactor in America will be closed by 2033. Their license period will expire. So with each closure of a reactor, less is being paid into the fund.

The obligation, however, in terms of dealing with the issue of nuclear waste goes out to the year 2071, so that you can see that there is another 38 years beyond 2033 that there is a responsibility to make payments dealing with the waste, and there will be no money coming in.

Currently, the Department estimates that the nuclear waste trust fund is underfunded between $4 billion and $8 billion currently. If it is underfunded, I respectfully submit that you do not need a degree from the Wharton School of Finance to know who is going to make up the shortfall. It is the American taxpayers who are going to make it up. So the current law says with respect to the mill levy and how much it will be, is that the Secretary will make a recommendation when it needs to be adjusted, and unless the Congress or one House rejects that recommendation, that will go into effect. It was a law not written by the Nevada delegation. It dates back to the 1982 Nuclear Waste Policy Act.

Here is what is done to change all of that. In the original substitute, we changed the burden so that now any change to increase the rate of mill-tax collection, rather than being enacted unless there is a rejection by one House, it requires an affirmative burden to pass both Houses of Congress.

As the distinguished occupant of the Chair knows, based upon his considerable legislative experience, it is far more difficult to pass a piece of legislation than to object to it.

So that is the nub of this. It will be virtually impossible if the utilities object to an increase in the mill levy to get that on because it will require both Houses of Congress to affirmatively act on a resolution.

In the substitute that was offered by the able chairman of the Energy Committee, all budget points of order were waived. So the Senator from New Mexico, and appropriately so, sought an amendment in the first degree to restore a budget point of order, and I have no quarrel with that.

The second degree, in effect, provides that still both Houses must approve any increase, and so, in my judgment, this is a provision that is designed to provide relief for the utilities to leave the nuclear waste fund underfunded by billions and billions of dollars, and long after any Member who currently serves in this body or the other body leaves, the American taxpayer is going to get the short end of the stick.

Let me say, Mr. President, that no one would disagree if they are honest with their original position that it was understood that the nuclear utilities would undertake an expense of all of the cost of nuclear waste disposal. That was an obligation they agreed to do and that is why the mill tax on each kilowatt hour was imposed, that is why the nuclear waste trust fund. But through this substitute, we have a situation that will exacerbate the shortfall. It is said there is $8 billion in the trust fund, but, Mr. President, from 2033 until 2071, nothing comes into the trust fund because all of the reactors that are currently licensed are shut down. That is the buildup, and that is what this yellow line indicates, because it begins to build up and it, too, declines as the expenses are incurred and the revenues into the fund decrease.

So this is a bad, bad amendment, and I urge that it be rejected. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. How much time is remaining on our side?

The PRESIDING OFFICER. Sixteen minutes 30 seconds.

Mr. MURKOWSKI. And the other side has?

The PRESIDING OFFICER. The other side has 19 minutes and 45 seconds.

Mr. MURKOWSKI. I do not have need for further discussion. I wonder if the other side would consider yielding back their time since we are going to have a rollcall vote on this tomorrow.

Mr. BRYAN. Let me ask my colleague if he cares to speak.

Mr. REID. Mr. President, I will be happy to yield back time.

Mr. BRYAN. I am wondering, I might say to the chairman, at one point we had been told that one of our other colleagues may want to speak, and I refer to the ranking member on the committee. I do not know if that is still the case. May we suggest the absence of a quorum and check with him?

Mr. REID. I am wondering if we can withhold that. Maybe we can set this aside and go ahead and work on the Bingaman amendment. Would that save time?

Mr. MURKOWSKI. Anything that moves us saves time.

Mr. REID. Mr. President, I ask unanimous consent that the pending amendment be set aside and we return to the Bingaman amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MURKOWSKI. If I may, I would appreciate it if we could find out if there is going to be any further Members wishing to speak on the Domenici amendment.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 31

Mr. MURKOWSKI. Mr. President, first of all, let me spend a little time thanking the efforts of Senator BINGAMAN from New Mexico for his efforts on this bill. He and his staff have worked very, very hard. I think what we have up to this point is a much better piece of legislation as a consequence of the efforts of Senator BINGAMAN and his staff. In the committee markup, as I recall, Senator BINGAMAN had amendments touching about eight different issues, and we were able to eventually accommodate the Senator from New Mexico on seven of those. We unfortunately could not accept all the amendments, but we certainly resolved to work with him and his staff and continue to do so as we debate the substitution, and the Bingaman amendment that is before us.

I think we have made progress. Progress was made on licensing requirements for the temporary storage facility. Progress was made in the application of NEPA. Progress was made on leasing standards for a permanent repository. Progress was made on preemption of other laws, and certainly progress was made on nuclear waste fee requirements.

I think it is fair that we agree that Nevada should be chosen as the permanent repository. I was a little confused in his statement where he implied that it was unfair that Nevada would necessarily be chosen as the last, I guess the last possible choice or the choice of last resort, or words to that effect.

We have 50 States out there and nobody wants it. I have said time and time again, you can't throw it up in the air, it is going to come down somewhere. So I think it is imperative that

we recognize that we have to choose a site, and that site is going to be objected to by the delegation from that State.

We have chosen a permanent repository in Nevada, assuming that it meets the requirements. Yucca Mountain was chosen after looking at other sites, other sites in other States.

Nevada is the preferred site for a repository. Nevada has been selected and, as a consequence, we have 5 miles of tunnel that have been completed there. We have expended $6 billion. We are committed, probably, by the time we are complete to spend up to $30 billion. So that is a given. I would say we agree Nevada should be chosen for an interim facility if the viability assessment for the permanent repository at Yucca Mountain is positive, and I think that is, more or less, the opinion of my friend from New Mexico.

I think it is further apparent we agree that the President should have time to pick an alternative site, even in the event that Yucca Mountain is determined not to be viable as a permanent repository.

We have come a remarkable distance toward total agreement. Unfortunately, we have this one area where we have not been able to agree and I think that is, of course,the substance of the Bingaman amendment.

I think what we have here, in our opinion, and I tried to cite this early in our debate, is an effort to try and get this resolved informed by past debates on this subject and the history of the issue. If there is any way out of a conclusion to address the disposition of this waste, somebody is going to find it, Mr. President.

We clearly see a lack of direction from the administration on this. I personally communicated in three specific letters to the President asking what the administration's position is. The administration, in all fairness, simply does not have a position.

You can look at some of the rhetoric that has come out of some of the newspapers relative to the administration's position. It is kind of surprising to comment on whether they are a little bit naive or not well informed, but from the Thursday, April 10, Congress Daily, White House Council on Environmental Quality Chairwoman Kathleen McGinty said yesterday that the administration would be ''loathe to consider'' legislation that would force the Energy Department's hand in building the temporary storage facility before it knows the waste would be able to stay at Yucca Mountain. ''Loathe to consider'' legislation that would force the Energy Department's hand in building the temporary storage facility before it knows the waste would be able to stay at Yucca Mountain.

That is totally inaccurate because if one looks at the schedule in the bill, in my substitute, if Yucca is viable by December 1998, a viability assessment will go to the President. March 1999 would be the deadline for a Presidential determination on viability.

If there is no negative determination, the Nevada test site is determined to be the site. The reason for that is obvious. If we do not name a site, we are going to be drifting around here where we are today.

April 30, 1999, the Secretary files licensing application with NRC.

Approximately August of the year 2000, construction begins when the EIS is complete.

No later than June 30 in the year 2003, fuel acceptance begins.

Now, how can the administration interpret that this legislation would force the Energy Department's hand in building a temporary storage before it knows the waste would be able to stay at Yucca Mountain?

Construction cannot begin until August in the year 2000. Somebody might say, ''Well, Senator, what's the big deal here? Why not wait for Yucca Mountain to be done?'' Well, we are told by the Secretary of Energy, Hazel O'Leary, that it will be the year 2015 before Yucca is completed, certified, licensed, and ready to take fuel.

That is why, Mr. President. The ''why'' is that the time is now. We have a contractual commitment to take this waste beginning next year, 1998. We made a contract with the nuclear power industry. We have collected $13 billion from the ratepayers of this country. They are expecting performance, and the Government has not any capability. The Government is not going to be able to accept that waste. And the Government is going to be liable for damages.

Every Member of this body has an obligation to minimize the Government's liability associated with those damages. That is what a temporary repository at Yucca Mountain is all about: expediting the process. So if there is anybody in anybody's office who is misconstruing the timing of this—Katie McGinty, of the White House Council on Environmental Quality, has somehow gotten an interpretation that we would force the Energy Department's hand in building a temporary storage facility before it knows the waste would be able to stay at Yucca Mountain. It is totally inaccurate; and that is an understatement, Mr. President.

Let us talk about Yucca not being viable.

If Yucca is not viable, September of the year 2000 would be the deadline for the President to designate a site.

February of the year 2001 would be the deadline for Congress to approve a site.

And if no site is designated and approved, the Nevada test site is the site.

March 2001 the Secretary files a license. July 2002, construction begins.

September 2005, fuel acceptance begins.

So this is where Senator BINGAMAN and I have our departure. We feel we have to have a bottom line on this debate. We feel that we must firmly chart a predictable and sure course to a safe, interim storage facility and get it done now, not next year, not in 2 years or 5 years or 2001 or 2010 or 2011. I do not want to be standing here in another 4 our 5 years and have to find that we are still hung up on a decision.

Congress dealt with this issue in 1982. We thought it had resolved the problem forever. In 1987, we had to deal with it again. At that time we were told we had resolved nuclear waste once and for all.

This is the problem, Mr. President. This is the legacy of the program. If it is possible to delay a decision, a decision gets delayed. It has been in progress so far. If it is possible to push the decision off to somebody else's watch, that is what is going to happen. And that has been suggested time and time again. If the process is vulnerable to political pressure, then political pressure will be used.

We have learned the hard way that any trap door left anywhere in the process inevitably, Mr. President, gets used. And it will happen in this case. Any weakness in the approach gets exploited. That is why we have spent $6 billion over 15 years and the Federal Government is still unable to meet its promise to take the waste in 1998. I implore my colleagues, let us not be fooled again. Let us face up to our obligation.

Our bill, Senate bill 104, is destined to make sure there are no trap doors here, no copouts, no more delays. This chart shows our selection process. No matter what happens, the loop is closed. It is a box. Every decision leads to a safe, central storage facility.

Let me explain to you this effort. Here we sit in 1997, as you see over in the left-hand corner of the chart, with the status quo. We have waste in 81 sites in 40 States. That is just the harsh reality. If we do not do anything, that is where it will remain. Your reactors may go down for lack of storage. Your waste is going to remain.

If you want the waste to move, it has to be transported. That is a given. We can do that safely. We have transported 2,400 individual shipments.

So let me follow the red line from next year when we are under contract, the Federal Government, to accept the waste. If Yucca Mountain is viable for a permanent repository, then we have one safe central storage site, it is over. That is one end of the square.

Let us go up. If Yucca Mountain is not viable for a permanent repository, what happens then? Well, then the President can pick an alternative site. OK. And Congress will ratify it, and we come right back with a square box, one safe, central storage site.

If the President does not select an alternative site; in other words, if the President says—''Well, I just won't act''—our bill deals with that possibility. If the President does not act, then where does it go? It defaults. It defaults to the Nevada test site. That is

evidently a problem for my friend from New Mexico.

But on the other hand, history of this matter suggests that if we leave it to the Bingaman amendment—and let me refer to the next chart—this is the exposure. And this is where Senator BINGAMAN and I part company, because, if Yucca Mountain is viable, we are fine. If Yucca Mountain is not viable, then the Secretary picks an alternative site. But if he does not, if he does not do that, no site is chosen and we are right back to where we are. We are leaving it where it is. Let me run through that again to make sure everybody understands it.

This is the difference between the Bingaman and our particular approach with S. 104. If Yucca Mountain is viable, we have a central storage site, no problem. But if Yucca Mountain is not, the Secretary picks an alternative storage site. That is fine if he does—if he does—Mr. President. But if he does not, we are right back where we were.

Look at the other chart.

That is the difference between the two particular versions of this amendment. We give the President the authority to pick an alternative site. Congress ratifies the site, and we are all right. But if the President does not select an alternative site, it goes back to the Nevada test site.

That is where we are, Mr. President. I think it is fair to say that our concern with the Bingaman amendment is that in our opinion it creates the trap door, it opens the process to political pressure. It invites indecision, and it invites pressures that will be apparent to do nothing so we will all be back where we are now, 40 States, 81 sites, reactors potentially shutting down because storage sites are filled up, and the stuff sits. It still is not moving.

The Department of Energy tells us that the odds of Yucca Mountain being suitable as a permanent repository are good. I think that they used the odds currently of 90 percent. Well, that is pretty good around here. So the President's finding of suitability looks pretty good. But it is still at his own discretion. I ask all of my colleagues and those in their offices who listen, do you think the Senators, our good friends from Nevada, will try to influence the President's decision? Sure they will. They should. We acknowledge that. Wouldn't you if you were placed in that situation?

If the President decides Yucca Mountain is not viable, not a viable site for a permanent repository, the need for an interim repository becomes even more desperate. The waste simply cannot stay where it is, Mr. President, in 80 sites in 41 States. We cannot afford to start closing nuclear plants that have run out of room for spent fuel because, remember, Yucca, if it is viable, if it is licensable, is not going to be ready until the year 2015.

Under the Bingaman amendment, if the President were to determine that Yucca Mountain is not viable, then all the Secretary needs to do to prevent the designation of a central storage site is to simply fall back to another site; that is my point, leave the waste where it is.

There is another area that I am concerned about in the Bingaman amendment, and that is even if the Secretary does pick a site, the tools provided to make that site a reality are somewhat limited.

Of course, we know that the Secretary does not have the authority to withdraw land for an interim repository. The Secretary does not have the authority to condemn land for an interim repository. I am fearful, under Senator BINGAMAN's amendment, under this goal, we would not be able to reach our mutual goal, which is something where we are both on the same track. We want this waste to move. But we both want it to move now.

With the loopholes in here, I am just convinced they would be used. With the U.S. court of appeals ruling that DOE has a binding legal obligation to take the spent fuel, Mr. President, I just cannot believe that we can accept more failures, more runaround, more delays. We cannot expose the taxpayer to the liability of more damages resulting from the court cases that are going to come up when we are not able to take this spent fuel next year.

Mr. President, I do not want to settle for a failure.

The U.S. Senate should not settle for a failure. I think we can do better, and I hope that we can work out, if you will, some way to address the concerns of my friend from New Mexico. As we look at this chart and recognize—here they are, Mr. President. These are the 80 sites throughout the Nation, in 41 States. They are the sites that have a problem. If we don't relieve this problem with meaningful legislation and if we do it with legislation that provides a trapdoor or a copout or an exit that is convenient, politically or otherwise, it is going to be used. So our liability and our damages are going to be higher, and the fuel is going to stay right where it is now, at 80 sites in 41 States, instead of getting on with the process that we have outlined in S. 104, which is to close the loop.

Let me show you one more time, Mr. President, what we have attempted to do here. We have attempted to force this body to make a decision once and for all. All the safeguards are in here, Mr. President. I want to refer to them again. Under the substitute, if Yucca Mountain is viable, OK, starting in 1998, in December, the viability assessment goes to the President. March 1999 is the deadline for the viability determination by the President. If there is no negative determination, the Nevada test site is the site. That is, if Yucca is viable. On March 30, 1999, the Secretary files license application with NRC. In approximately August 2000 construction begins when the EIS is completed.

The importance of that, Mr. President, is to begin to allay the concerns of the White House and Katie McGinty. They have been loath to consider building a temporary storage site before it knows that the waste would be able to stay at Yucca Mountain. I think that takes care of that.

If Yucca Mountain is not viable, September 2000 is the deadline the President has to designate a site. So he has time. Then another deadline for Congress, February 2001, is the deadline for Congress to approve the site. If no site is designated or approved, OK, it goes back to the Nevada test site. But, even then, there are more delays. In March 2001, the Secretary files a license. In July 2002, construction begins. In September 2005, fuel acceptance begins.

But, Mr. President, I swear that if we do not close in this loop, we won't get the job done. We know that's what the administration prefers—not to address it at this time. We have already seen the smoke and mirrors relative to their side of the story.

I will run through the difference I have with Senator BINGAMAN's amendment. If Yucca is viable, OK, the same, except that Senator BINGAMAN would add a new provision, which is that after the Department of Energy files a licensing application in the year 2001 and NRC finds that Yucca cannot be licensed for some reason, they suspend operations at the interim facility and the NRC has 24 months to recommend another interim site or restart operations at the NTS.

But if Yucca Mountain is not viable, Mr. President—here is where the bear goes through the buckwheat—the deadline for the Secretary to designate an alternate site up here is February 2001. But what happens if he doesn't do it, Mr. President? I will tell you what happens. Nothing. If he doesn't do his job in February of the year 2001, and no site is designated, the stuff stays where it is, at 81 sites in 41 States.

I think that should identify sufficiently for the Members the differences relative to Senator BINGAMAN's view of how to resolve this problem and the view of the Senator from Alaska. I have the deepest respect for my friend, but I am firmly convinced that we have to get it resolved, and if we don't do it now, it isn't going to be done. That loophole out there will be utilized and we will be back here another day, another month, another year on this same process.

Mr. President, I will be happy to try to work out some way to accommodate my friend from New Mexico. I reserve the remainder of my time. I yield the floor.

Mr. BINGAMAN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from New Mexico has 3 minutes remaining, and the Senator from Alaska has 3 minutes remaining.

Mr. BINGAMAN. Mr. President, I will need a few more minutes. I ask unanimous consent that I be allowed to speak for up to 6 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. I ask unanimous consent that the Senator from Alaska, of course, be given equal time, if he would like that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I didn't hear that unanimous consent request.

The PRESIDING OFFICER. The unanimous consent request was that the Senator from New Mexico be allowed to have an additional 3 minutes, totaling 6 minutes, and also that the Senator from Alaska also have up to 6 minutes.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me clarify my understanding of the situation. First of all, I agree with much of what was said by the Senator from Alaska. The amendment that I am offering here today does not, in any way, interfere with the end result, as long as the determination is made at every step of the process that the Yucca Mountain site is the appropriate site for a permanent repository of nuclear waste. If that decision is made, then we are in agreement. Then the problem does not exist. It is only if a contrary decision is made that we get into disagreement.

Let me clarify here that there is a difference in my understanding between the viability assessment, which is due to be completed on December 1, 1998, and the suitability determination, which is due to be completed on October 31 of the year 2000. I agree that as long as Yucca Mountain is a suitable site and that suitability determination is made in the year 2000, then that is the site we ought to go forward with. So we are in agreement there.

I think the question is, if we want to look at a permanent repository, I think we choose Yucca Mountain, if it is suitable. If it is determined not to be suitable, then the question is, what do we do about an interim facility?

Now, the only reason for putting an interim facility in Nevada is that that is where the permanent repository is going to be. The Nuclear Waste Technical Review Board said in its report, ''If Yucca Mountain proves suitable for permanent repository development, then the centralized storage facility should be located there as well.'' That makes eminent sense to me. Let's have an interim storage facility there, as long as it is decided that we are going to have a permanent repository there. If we decide not to have a permanent repository there, then, in my view, we ought to have the issue come back to Congress, come back to the President to make a decision on what we are going to do.

The reason I think it is so important that we do that is that I think the end result is a different end result than the Senator from Alaska has in mind. The Senator from Alaska is saying the end result is we have to get this waste out of the present locations at these nuclear powerplants and move it to a central site. That is the end result he is looking for. The end result I am looking for is that we need to have geologic storage, permanent storage, of this waste. In my view, my amendment has a much greater chance of getting us to geologic permanent storage of this waste than his solution does.

His solution says that, regardless of what we decide about Yucca Mountain as a permanent repository, we are going to put the waste in Nevada in this interim site, and that's going to happen. There is no way to wiggle out of that. Once the suitability of the Yucca Mountain site is determined, we are going to put the waste in Nevada. It is going to be on an interim site there, and there is no way to wiggle out. So we have accomplished our end result.

My view is that, fine, we moved the waste to Nevada, but it is on a slab of cement out in the middle of the desert. It is not in geologic storage, not in safe storage, not in permanent storage. Therefore, we have not solved the problem that we set out to solve for all these many decades with regard to nuclear waste. The only way to get us to a geologic repository for that waste, a permanent repository for that waste, if the Yucca Mountain proves unsuitable, is to bring it back to Congress and the President and say, ''Choose another permanent repository for this waste.'' That is what is going to have to happen. That is what ought to have to happen. At that time, we also can decide what to do about an interim site.

But it makes no sense to me to be saying, look, if we decide Yucca Mountain is not suitable, we decide we can't put the waste there in a permanent repository, we are still going to put all the waste there; we are going to put it in a central repository, and it is going to be in Nevada because we earlier said it was going to be in Nevada. Granted, the only reason we said that is because we are going to have a permanent repository there. Now we have decided if we can't have a permanent repository there, we can still put the waste there and get it out of these other States. I don't think that is fair to Nevada. I don't think it is good public policy. So I say let's keep the two issues tied together. Let's say, if the permanent repository at Yucca Mountain in Nevada is determined not to be a suitable facility, if we decide that that site, Yucca Mountain, is not a suitable site for a permanent repository, then we need to put the brakes on with regard to using this interim facility in Nevada and say, wait a minute, we have to pick another permanent repository. Let's also make a decision about an appropriate interim storage site.

So that's the difference that we have. I think it is a good-faith difference. The great failing that I see with the substitute the way it now stands is that if Yucca Mountain is determined not to be an appropriate permanent repository, then all of the pressures, the course of least resistance will be to move the waste to an interim site in Nevada, put it on a cement slab out in the middle of the desert. That will be the end of it. The pressure will be off. Congress will be under no obligation to do anything else. The President will be under no obligation to do anything else. The only people who will suffer, or potentially suffer, from this are the people of Nevada. I think that is not a responsible public policy position for us to take. We need to find another permanent repository if Yucca Mountain proves not to be the right permanent repository.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Alaska has up to 6 minutes.

Mr. MURKOWSKI. Mr. President, we are so close, yet so far away in our differences here. I think it is fair to say that when the viability assessment is completely at the discretion of the President, we would all agree that it is subject to political pressures. I think we all agree that we have an obligation to make a decision. We have agreed to withhold on a decision until the viability assessment is available. My friend from New Mexico has indicated a concern about the viability and the suitability. I am told that the suitability is 80 percent likely. Viability is 90 percent. Those are very high odds.

The problem of how we resolve this and whether or not we are going to be delaying this action again, I think, has to be related to the fact that when we get the viability assessment, we either choose Nevada if it is positive, or give the President time to choose another site if it is negative.

Only if we are unable to choose another site—only then—would it go to Nevada. That would imply that the President wasn't doing his job, and that Congress wasn't capable of doing their job. And I think we both agree that there would be a significant shirking of an obligation or duty. I am just fearful with the history of this that without some kind of closure that might happen. I believe my friend from New Mexico has stated that the only reason for putting interim in Nevada is if Yucca is permanent. But if Yucca doesn't pan out then we desperately need an interim site, and I think we need it quickly because Yucca is the year 2015 from being ready to accept waste. We have 80 sites in 41 States, and we have lawsuits coming on, and damages coming on. From the looks of this place, Congress doesn't make decisions very quickly.

Let me just say one more thing with regard to delay. Although we may not know the ultimate site of an interim facility, there is one indisputable fact. We need a central temporary storage facility for our Nation's nuclear waste. If Yucca Mountain is viable then it makes sense to put the material at the Nevada test site. If Yucca Mountain is not viable, it will take 50 or 60 years of process at a minimum to find and license another permanent repository site under our present permitting process. We cannot leave nuclear waste at

80 sites around the country over this period of time. That is why the crisis is here. The spent fuel pools at nuclear reactors were not designed for long-term storage.

Mr. President, in all due respect, Senate bill 104 was designed to make sure there were no trapdoors, and that no matter what happens this loop is closed. And this decision has to lead to a safe central storage facility ultimately at a permanent repository in Yucca Mountain.

So, Mr. President, the decision is ours. The time is now. Let's not shirk this duty and this responsibility by leaving an open-end alternative that I guarantee will be used.

Mr. President, I believe my time is up. I yield the remainder of my time.

The PRESIDING OFFICER. All time is yielded.

SECTION 101(F)

Mr. CRAIG. Mr. President, I rise to address a specific provision of the Murkowski substitute amendment to Senate bill 104, the Nuclear Waste Policy Act of 1997. This provision is also in the bill as introduced, and was in similar legislation passed by this body in the last session of Congress. This provision is of special importance to my State and I wish, therefore, to clarify its appearance in this important legislation. I refer specifically to section 101, entitled ''Obligations of the Secretary of Energy,'' paragraph (f), which states, ''Nothing in this act is intended to or shall be construed to modify . . . obligations imposed upon the Federal Government by the U.S. District Court of Idaho in an order entered on October 17, 1995, in *United States* v. *Batt* (No. 91–0054–S–EJL).''

Mr. President, the consent order referred to in section 101 of S. 104 binds the State of Idaho, through the Attorney General, and Gov. Philip E. Batt in his official capacity; the Department of Energy, through the general counsel and assistant secretary for environmental management; and the Department of the Navy, through the general counsel and director, Naval Nuclear Propulsion Program to certain terms and conditions to fully resolve all issues in the actions Public Service Co. of Colorado versus Batt and United States versus Batt.

Mr. KEMPTHORNE. Will the senior Senator from Idaho, my colleague, yield for a question?

Mr. CRAIG. I yield to my colleague.

Mr. KEMPTHORNE. I thank my colleague for bringing the attention of this body to an important provision of Senate bill 104; a provision of significance to the State of Idaho. Could you elaborate on the particular relevance of this consent order settlement agreement to this legislation?

Mr. CRAIG. The consent order has a number of compliance points requiring action by the U.S. Department of Energy at the Idaho National Engineering and Environmental Laboratory, which have bearing on the overall spent nuclear fuel and high-level radioactive waste management storage and disposal program as structured in Senate bill 104. In general terms, the consent order requires specific actions for treatment, storage, disposal, or shipment offsite for disposal of spent fuel and waste at the Idaho National Engineering and Environmental Laboratory, and requires these actions to be performed according to a timetable set down in the consent order.

Mr. MURKOWSKI. Will the Senator yield for a question?

Mr. CRAIG. I yield to my colleague from Alaska for a question.

Mr. MURKOWSKI. I understand that this consent order contains provisions relating to transuranic waste, spent nuclear fuel, and high-level waste. Could you please describe the requirements that specifically relate to commercial spent nuclear fuel?

Mr. CRAIG. As I know my colleague from Alaska is aware, the Idaho National Engineering and Environmental Laboratory has, over the course of its history, received commercial spent nuclear fuel for research and development purposes. One of the largest receipts was the receipt of the discharged core from the Three Mile Island nuclear powerplant in the 1980's. Idaho has also received, and continues to store, expended fuel from naval nuclear reactors. One of the key provisions of the consent order is that the DOE is ordered to remove all spent fuel, including naval spent fuel and Three Mile Island spent fuel from Idaho by January 1, 2035.

Mr. KEMPTHORNE. Will my colleague, the senior Senator from Idaho, yield for a question?

Mr. CRAIG. I yield to my colleague for a question.

Mr. KEMPTHORNE. As a member of the Senate Armed Services Committee, I am familiar with the important national security contribution made by the Navy's Nuclear Propulsion Program. The Idaho National Engineering and Environmental Laboratory contains a Navy facility called the expended core facility. This facility receives the expended, or spent, nuclear cores from Navy vessels for examination and storage. I wonder if my colleague from Idaho will explain, for the benefit of our fellow Senators, how the consent order affects this important national security mission.

Mr. CRAIG. The consent order limits shipments of naval spent nuclear fuel into Idaho. Specifically, the total number of shipments of naval spent fuel to Idaho through 2035 shall not exceed 575 shipments and shall not exceed 55 metric tons. Most relevant to our discussion of Senate bill 104, however, is the Department of Energy's commitment, through this settlement agreement, that naval spent fuel stored at the Idaho National Engineering and Environmental Laboratory on the date of the opening of a permanent repository or interim storage facility shall be among the early shipments of spent fuel to the first permanent repository or interim storage facility.

Mr. MURKOWSKI. Will the Senator yield for a further question?

Mr. CRAIG. I yield to my colleague for a question.

Mr. MURKOWSKI. In the course of deliberations on Senate bill 104, we have debated the merits of exclusions for a number of Department of Energy sites. Specifically, I am referring to exclusion from consideration for selection as the interim storage site for commercial spent nuclear fuel under the provisions of this legislation. Does the consent order we are discussing have any bearing on this question for Idaho?

Mr. CRAIG. The Senator from Alaska is correct. The consent order settlement agreement contains a provision that, except for a narrow exception for the treatment of graphite fuel from the Fort St. Vrain reactor in Colorado, the Department of Energy will make no shipments of spent fuel from commercial nuclear powerplants to the Idaho National Engineering and Environmental Laboratory. Therefore, selection of Idaho for further commercial fuel storage would be inconsistent with and in violation of the consent order.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. CRAIG. I yield to my colleague from Idaho.

Mr. KEMPTHORNE. I thank my colleague, the senior Senator from Idaho, for bringing to the attention of this body the significance of the section 101 reference to the Idaho settlement agreement consent order and its relevance to the legislation before us, Senate bill 104. I also wish to thank my colleague for his continued leadership, along with the Senator from Alaska, on this Nation's nuclear waste problem and for proposing the common sense solution embodied in this legislation.

Mr. CRAIG. I thank my colleague from Idaho for his contribution. Idaho and its citizens have been addressing the legacy of this Nation's nuclear defense missions and the products of its ongoing operations in the Naval Nuclear Propulsion Program for many decades at the Idaho National Engineering and Environmental Laboratory. I believe it is important to explain to my colleagues the relationship of this history, and its pending commitments, to the legislation before us.

SECTION 101(G)

Mr. LEVIN. Mr. President, at page 11, lines 2–5 of the manager's substitute amendment, section 101(g) provides that ''subject to subsection (f), nothing in this act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste.'' Is it the manager's intention that this language prevent contract holders from recovering damages or other financial relief from the Government on account of DOE's failure to comply with the 1998 deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit in any way the rights of contract holders, their ratepayers, or those agencies of the State governments that represent ratepayers, from enforcing any right they might have, including the right to hold the Federal Government liable financially, under the 1982 act and the contracts executed pursuant thereto. Section 101(g) is expressly subject to section 101(f), which makes clear that rights conferred by section 302(a) of the Nuclear Waste Policy Act of 1982 or by the contracts executed thereunder are not affected by this bill, including section 101(g). To the extent that act or the contracts established a 1998 deadline and the DOE fails to meet that deadline, it is not the manager's intent that the substitute amendment in any way restrict the relief available to those damaged by the failure to meet the deadline.

Mr. LEVIN. Is it correct then that the manager does not intend that the amendment would restrict the scope of remedies available to the plaintiffs in the litigation in which the Court of Appeals of the District of Columbia has held that the 1998 deadline is a binding obligations of the Federal Government?

Mr. MURKOWSKI. That is correct. It is not the manager's intent that the language of section 101(g) proscribe the court of appeals or any other court from awarding monetary relief or other financial remedies to those who have paid fees to the Government under the 1982 act and the contracts, or those who will incur additional expense on account of the DOE's failure to comply with any right conferred by 1982 act or the contracts.

Mr. LEVIN. If a deadline were imposed by the Nuclear Waste Policy Act of 1997, as reflected by the substitute amendment, as well as by the Nuclear Waste Policy of 1982 or the contracts executed thereunder, is it the manager's intention that section 101(g) would proscribe financial liability for failure to meet the deadline to the extent it is imposed by the 1982 act? For instance, if DOE were to fail to commence the acceptance and emplacement of spent nuclear fuel and high level radioactive waste by November 30, 1999 or thereafter, would the amendment proscribe a court from imposing financial liability on DOE if a court ruled that DOE's inaction constituted a failure to comply with the deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982 and the contracts?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the rights or remedies available under the Nuclear Waste Policy Act of 1982 or the contracts executed thereunder. If a failure by DOE to comply with any deadline established in the amendment also constituted a failure to comply with a deadline established by the 1982 act or a contract under that act, it is not the manager's intent that section 101(g) modify the right of any contract holder to see any and all remedies otherwise available for the violation of the 1982 act or for breach of the contract. It is the manager's intention that section 101(f) preserve all of those rights, regardless of whether the same or a similar obligation is expressed in the Nuclear Waste Policy Act of 1997.

Mr. LEVIN. With respect to a deadline imposed for the first time in the Nuclear Waste Policy Act of 1997, is it the manager's intention that section 101(g) proscribe a court order that the Secretary of Energy comply with such deadline, or granting relief other than money damages to contract holders?

Mr. MURKOWSKI. It is not the manager's intent that section 101(g) proscribe anything other than financial liability for failure to meet a deadline imposed by the Nuclear Waste Policy Act of 1997. To the extent other forms of relief are available for the Government's failure to comply with a deadline imposed by the amendment, the manager does not intend that such a remedy be prohibited.

Mr. LEVIN. Is it the manager's intention that section 101(g) limit the liability of the United States for anything other than a failure to meet a deadline? For instance, if the Nuclear Waste Policy Act of 1997 imposes an obligation which is not a deadline, such as the requirement to reimburse contract holders for transportable storage systems if DOE uses such systems as part of the integrated management system, is it the manager's intention that that obligation not constitute a financial liability of the United States?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the liability of the Federal Government for anything other than a deadline. The manager does not intend that any other obligation imposed by the Nuclear Waste Policy Act of 1997 be affected by section 101(g).

Mr. MURKOWSKI. Mr. President, my understanding is that the disposition of the S. 104 will take place tomorrow. We will have a vote on Domenici, we will have a vote on Bingaman, and a vote on final passage. The Parliamentarian has set down I believe on Friday the voting procedure. I might ask for the benefit of Members when we could anticipate votes to occur and the time between the votes.

The PRESIDING OFFICER. Under the orders the votes are to occur beginning at 9 a.m. and there will be 3 minutes between each vote. The votes subsequent to the first vote will be 10 minutes in length.

Mr. MURKOWSKI. Mr. President, I yield the floor.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that I might be recognized in morning business for no more than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. SMITH of New Hampshire pertaining to the introduction of S. 567 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BRYAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. Mr. President, I am sure that most of my colleagues who have watched this debate for the last week are of the opinion that after some 5 days of debate that everything that can ultimately be said about this legislation has been said, and I hate to disabuse them of the notion but my colleague from Nevada and I are going to beg their indulgence and talk a little bit more about the substitute that has been offered by the Senator from Alaska.

It is my firm conviction that the belief of the scientific community is that this legislation for interim storage is unnecessary. That is the conclusion advanced by the Nuclear Waste Technical Review Board. We have talked about that a great deal. But the reason this is important is that this is the scientific community. This is not the Senator from Nevada debating with our friends from Alaska, Idaho, or any other State delegation. Not a single member of this Nuclear Waste Technical Review Board is a Nevadan. That is their position; that it is a fundamental flaw in this legislation. It is not necessary. It is not being requested by the scientific community. It is not being supported by the scientific community, and quite to the contrary. The 1996 report says that the Nuclear Waste Technical Review Board was reconstituted with new members in 1997, a new chairman, and a number of new members. And they reaffirmed the position of the technical review board a year ago in concluding that it is not necessary. It is not necessary. So it is premature. It is unwise. It is the worst of policy.

I only wish I were capable, Mr. President, of articulating with more insight, more capacity, and with more persuasive force because it has been said here on the floor of the Senate over and over again that the Nevada test site is the preferred alternative. Mr. President, there is not one scintilla of evidence to suggest that.

Yucca Mountain is being characterized or studied for the permanent repository. But there has been no scientific evaluation or judgment made that the Nevada test site is a preferred alternative—none—because under the current law an interim storage facility cannot be established in Nevada, nor the State of the distinguished occupant

of the chair, nor any other State until application is made for licensure under the permanent site.

So there has been no search in a scientific sense to have a determination made as to an interim site. So anyone who thinks that this is the product of analytical scientific reasoning needs to be aware of the fact that there has been no study, no evaluation, no scientific analysis, nothing—absolutely nothing—that suggests that the Nevada test site is a preferred alternative or a desired alternative; absolutely not because the focus in terms of the Nuclear Waste Policy Act of 1982 is the permanent geological storage. And Yucca Mountain, much to my dismay—I don't like this fact—but Yucca Mountain is being studied or characterized. And that is where the focus has been in terms of scientific study and analysis.

So I think it is important to make that clear distinction. It has been said that the Nevada test site has been used for previous testing programs. That is true. But that is not to suggest that makes it a preferred or a better site than any one of a number of other possibilities around the country. I think we need to try to drive that point home to my colleagues who are studying this issue and who are trying to make some rational judgments based upon the debate we have had over the last 5 days.

The substitute: It has been said that it is a better piece of legislation than the one last year.

I suppose if a terminally ill man is told that he has 6 months to live rather than 3 months to live, that is better news, but it is still not a desirable result and certainly something that would cause little rejoicing.

This is a bad piece of legislation because it destroys a carefully crafted, carefully constructed environmental protection legislative framework that has served America under both Republican and Democratic Presidents exceedingly well for the last 28 years or so.

It has been said by our friends who are arguing for this that we have taken care of the problem of preemption. Those who followed the debate in the last Congress will recall that preemption was at the heart of the issue, and it continues to remain so.

Here is what the law says. Let me just say that the nuclear utility lawyers ought to get an A-plus for being clever and disingenuous, because this is an exceedingly skillful bit of legalistic drafting that produces a consequence that I think no fair-minded person could conclude. The substitute says that except as provided in a couple sections a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe is preempted.

So the argument that is made in the Chamber is that we are only preempting State law. Not true, not true, not true, because under the legislative system we have established for the environmental acts that have been passed over the last nearly three decades, Federal legislation is enacted whether we are talking about safe drinking water, clean air, clean water, RCRA, in which the States are delegated the ability to enforce if they enact legislation that is equal to or greater than the Federal legislation.

It has been suggested the language that is used now in the new section 501, found on page 59, of S. 104, the substitute, is just what we have in HAZMAT. Not true, Mr. President, not true, not true. HAZMAT has a provision that says except as provided in the appropriate subsections unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or an Indian tribe is preempted. The operative language ''unless authorized by another law of the U.S.'' It is not by omission, inadvertence or happenstance that operative language ''unless authorized by the U.S.'' has been dropped, because it is that provision of law in the HAZMAT code that says ''unless authorized by another law of the U.S.'' that enables a State statute responding to the delegation of authority given to it under Federal environmental law, that those State laws are protected because they are authorized by Federal law.

So here is what we have. Let us forget for a moment what kind of passion one might have for nuclear waste and a sense, yes, gosh, it ought to be sent somewhere. But let us just talk about policy. If this legislation passes, Nevada will be the only State in the Union that will be unable to enforce a State law enacted pursuant to an environmental delegation of authority.

Now, what conceivable rationale could possibly lead to that conclusion? It is very clear that this is nothing less than a preemption, and so we are talking about safe drinking water, clean air, clean water, RCRA, much as we did in the last session of the Congress when this was debated.

Another provision is kind of interesting as well if HAZMAT be the standard. Under HAZMAT, a State has the ability to make application for a waiver to that preemption of a State law—a law that would not be enacted pursuant to the delegation of Federal authority under our environmental law—but let's just say another provision of State law. A State would have the ability to seek a waiver and a judgment would be made as to whether or not a waiver should be granted.

That provision is not included, not included, not included in S. 104. Furthermore, under the waiver provision, if a State is denied a waiver provision under the HAZMAT legislation, which is again asserted by the supporters of S. 104, S. 104 is virtually—and we will come back to the word ''virtually'' in a moment—identical to HAZMAT. We already have it. No reason to be concerned. This is something that we have established, a precedent. The policy is there. We are just simply asking you to do no more in S. 104 than we have all agreed to be done in HAZMAT.

Not true, Mr. President, not true, not true, because in HAZMAT a State that makes an application for a waiver, that provision that is not available under S. 104, also has the ability for judicial review, to have the denial reviewed in a court of law consistent with the Administrative Procedures Act that exists at the Federal level and State level. But under S. 104 there is no mechanism provided for judicial review.

Another provision ever so subtle is a provision that goes on to say that any law that is not the same as or substantially the same as—this would also be on page 9. I read as follows:

> Except as otherwise provided in this act, a law, regulation, order or other requirement of a State, political subdivision of a State or Indian tribe about any of the following subjects that is not substantially the same as—

''Not substantially the same as.'' That, too, differs from what we have previously had in HAZMAT where we are talking about as long as it is not inconsistent with. A totally different standard. Under S. 104, your State law is preempted if it is not substantially the same. Under HAZMAT, it would be preempted if it was inconsistent with. A big, big difference.

Now, here is what that means. The Senator that presides is from a Western State, and he knows the importance of water law to those of us in the West. He also knows, because his State, like my own, is relatively arid and ground water resources are of critical concern to the viability and the integrity of the economy of his State as well as my own. Under this provision in S. 104, the ground water quality control provisions of State law are preempted, even though those ground water provisions have long predated the debate about nuclear waste, because they are not substantially the same as the provisions of this act. So, in effect, the State of Nevada would be unable to exercise control of its own ground water based upon the standards established by law or regulation because those statements, standards or regulations are not substantially the same as a provision of this act.

So, in effect, we do have a preemption, a preemption in the first instance that gives us the inability to enforce State statutes enacted pursuant to an environmental delegation—the whole raft of Federal environmental legislation which has as its premise to allow States to enforce those standards so long as they enact statutes or regulations that would be equal to or greater than the Federal standard. We have no provision to apply for a waiver, and we have no ability for judicial review. Add to that not only do we preempt those provisions in State law that would be inconsistent with the enactment of S. 104, but those provisions that are not substantially the same. So a whole host of legislative enactments that

have had nothing to do with the debate and Yucca Mountain or nuclear waste could be preempted.

Now, I have to tell you, what possible policy would justify that conclusion? Well, it is our friends to the nuclear utilities who, indeed, want to tie our hands, who, indeed, want to trample upon the environmental protection provisions that all Americans enjoy irrespective of State and to say to one State those provisions shall not be available to your citizens.

I want to talk about the viability assessment because that has been discussed at some length during the course of this debate. I think in order to do so we need to recount a little history.

Currently, a standard is being developed by the Environmental Protection Agency. That direction was part of the Energy Policy Act of 1992. The 1992 Energy Policy Act directs the Administrator of the Environmental Protection Agency to develop and promulgate a standard that is consistent with, and I shall read it:

> The administrator shall, based upon and consistent with the findings and recommendation of the National Academy of Sciences promulgate by rule public health and safety standards for protection of the public from releases from radioactive materials stored or to be disposed of in the repository at Yucca Mountain.

This was not a provision insisted upon by the Nevada delegation. This happens to be a decent policy that directs the EPA to develop a standard consistent with the National Academy of Sciences.

The National Academy of Sciences has come up with its recommendation, and the EPA is about ready to promulgate that standard. So what do we have now? We have legislation now in S. 104 that says the following. It is kind of now we give it to you and now we take it back. Now it says in S. 104 that the Administrator shall achieve consistency with the findings and recommendations of the National Academies of Science and the Commission shall amend its regulations accordingly.

All right, that sounds like basically we are talking about the standards that the Congress directed NAS to come up with the recommendations and the Environmental Protection Agency to adopt.

Not so, Mr. President, not so. Because the following text goes on to change those standards considerably. The risk standard, in terms of the group that is to be examined, in terms of the possibility of risk due to death from cancer, is changed; assumptions are made that are not part of the National Academy of Sciences, particularly the length of period for which the standard shall apply. It is assumed, for purposes of S. 104, that the standard has a premise that there is no population migration into or near or adjacent to the area, that we establish the standard based upon those people who currently live in the vicinity. That is certainly an unrealistic premise, and one that the academy of sciences would certainly reject, particularly in an area, as southern Nevada is, the fastest-growing place in America with a population that now exceeds 1 million people and in which the relentless movement of people in the southern Nevada area each month, and each year, moves to the north and toward Yucca Mountain. So, why would you freeze or limit the ability of those who are to promulgate the standards to only those people who are living where they are living today as opposed to those who would reflect reasonable migration changes?

Another provision is the assumption that there will be no human intrusion. Again, that is something specifically rejected by the National Academy of Sciences. So, we have a standard that is now being changed. It is now being changed. This standard was about ready to be promulgated based upon the 1992 Energy Act directives with respect to the National Academy of Sciences, and requiring the Environmental Protection Agency to adopt a standard that is consistent with those findings. Now we are given a whole additional subset of limitations and restrictions. It is as if one said: I want you to follow with great meticulous care and detail the Constitution of the United States, but you shall not consider the first amendment, you shall not consider the fifth amendment, or the sixth amendment. That is about what we have here. Follow the standards, but you cannot do this, you must not consider this, and you must put a limitation on the period of time for which that evaluation is being given in terms of prospective safety.

So we have a mockery of the standards. The standards are important for a number of reasons, but a lot of debate occurred here earlier this afternoon about the assessment—the viability assessment, as it is called—and the timeline. That is very, very important because the President of the United States is directed to make a viability assessment by no later than March 1, 1999. What is the problem? First of all, we expected that there would, in fact, be a standard promulgated, as I have indicated, because the Environmental Protection Agency, after some 5 years working with the National Academy of Sciences, is about ready to come forth with one. But as I have also indicated in my previous comment, no such standard is going to be approved because, if S. 104 becomes the law, a very different standard will emerge; a very different standard will emerge. So the President of the United States is going to have to make the viability determination. He is told, in the first instance, that he should rely upon the standard promulgated by the Environmental Protection Agency but I must say, in view of the fact that the standard is being changed totally, nobody believes that new standard will be ready by March 1, 1999, when the President has to make his viability assessment.

So, what does this legislation say? I have never seen anything like this. Once upon a time I practiced a little law, I read some statutes, examined some regulations. This provision goes on to say if the standard under section 206(F), that is what we have been talking about, has not been promulgated, and I reiterate I don't believe anybody believes that it will be, because they are being asked now to draft a new standard with all the limitations that we have previously recommended, then, in effect the President shall make this determination relative to an estimate—rather, the Secretary, excuse me—''relative to an estimate by the Secretary of an overall performance standard that is consistent with section 206 (F).''—an estimate, a guess; March 1, 1999, because S. 104 directs that a new standard be prepared, and it has taken essentially the better part of 5 years to develop the standard that was about to be promulgated. So, not only must the President make a viability assessment on a standard that is not in existence, he is directed to make a viability assessment based upon an estimate of what that standard might be—an estimate. That is just a very nice legalism for a guess. How in the world would he be able to make that determination when the technical people, the environmental agency, working with the National Academy of Sciences, would not have such a standard available to him for a determination? So, any suggestion of a standard, any suggestion of a viability assessment that is based upon a standard, is simply not going to occur.

I want to comment on this lawsuit, if I may, before yielding the floor to my senior colleague. We have heard it argued 500 different ways, in every conceivable mood, tense, that this lawsuit, with the decision that the Department of Energy has liability, that this is such a dreadful thing, that this will cause the ratepayers to endure all kinds of hardship, that they will be denied the benefit of that bargain, that it is a terrible, terrible thing and in fairness to the ratepayers we need to get S. 104 enacted.

There is not one word in this legislation that provides any relief to the ratepayers. I happen to think that the ratepayers are entitled to some protection because, in 1998, under no conceivable scenario will any kind of facility be open to which high-level nuclear waste can be transported. But I have to tell you, all of this wringing of hands, all of this gnashing of teeth, all of this great empathy for the ratepayer—and I happen to believe the ratepayer ought to be protected—not a single word in S. 104 provides benefits to the ratepayer because of additional costs which they might incur if, come 1998, they need to provide for additional storage on-site.

Indeed, as has been pointed out time and time again, the Secretary of the

Department of Energy has made it very clear that compensation needs to be made. We have heard all kinds of things: It is going to cost $80 billion, $59 billion, $30 billion—the numbers are as elusive as a shooting star. But the measure of damages that the utilities, on behalf of their ratepayers, are entitled to is spelled out in the contract. It is spelled out in the contract that each utility was required to enter into in 1982 or shortly thereafter, when the Nuclear Waste Policy Act was entered into. It is clearly laid out in article 9, ''delays.'' It is apparently a well-drafted contract.

If the delays are unavoidable, then in such instances the schedule for delivery of nuclear waste is simply modified in accordance with the exigencies as they are in light of the delay.

No monetary damages are assessed. If, however, a determination is made that the delays were avoidable and that, indeed, the Department of Energy bears a responsibility for that delay, then specifically the contract provides:

The charges and schedules specified by this contract will be equitably adjusted to reflect any estimated additional costs incurred by the party not responsible for or contributing to the delay.

Mr. President, that is fair and that is reasonable. If, indeed, a determination is made that this is a delay that is at the fault of the Department of Energy, the ratepayer and the utility is entitled to have the sums paid into the Nuclear Waste Trust Fund equitably adjusted to reflect any estimated additional cost incurred by the party not responsible for or contributing to the delay. Mr. President, I agree with that. That is fair to the ratepayer. Indeed, in legislation that I have introduced in each Congress since 1989, I have essentially proposed that kind of remedy.

So, if my colleagues are concerned about the additional cost that the ratepayer may incur because of the unavailability of a repository in 1998, S. 104 provides no comfort for them or their constituents. There is no relief with respect to any additional cost that may be incurred.

Mr. President, I am going to stop here and yield the floor and give my colleague an opportunity to make some comments and then I will conclude my remarks thereafter.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Nevada.

Mr. REID. Mr. President, S. 104 is a bad bill in the form it was originally introduced. The bill in its substitute form is bad—for a lot of different reasons. No one in this body that I know of is more in tune with the substance of legislation than is the junior Senator from New Mexico. This man, who graduated from Stanford University among other schools such as Harvard, is a person who understands the merits of legislation. He has worked for years to try to improve this piece of legislation. He has worked on it because he believes in good public policy. He has failed. He has tried, he has tried, but when it comes right down to it, the proponents of this legislation will not give the junior Senator from New Mexico anything that will really substantively improve the bill. They have tried at the edges to play with it a little bit, but they have not been willing to change the substance of this poor legislation.

The Senator from New Mexico summed up this legislation best in his closing few minutes of remarks today when he said, and I am paraphrasing: It is very obvious what is happening. Once the system is short-circuited and they go around the law that now exists and establish a temporary repository, that will end good science and good law.

In effect, what he was saying is once interim storage is established, the billions, the billions of dollars spent trying to determine if Yucca Mountain is suitable would be wasted. That is what it amounts to. S. 104 is bad. It does not deal with transportation. We do not have the means of safely transporting nuclear waste today anywhere in the world, as evidenced by what happened recently in Germany. We will talk about that later.

Why do all environmental groups—I repeat, all environmental groups, not 65 percent of them, not a majority, not a vast majority, not 85 percent—100 percent of environmental groups oppose this legislation? Not a single group favors this legislation. Why? Because it would be difficult to dream up a scenario that would be worse than this for the environment.

One of the things we have not talked about is terrorism.

We will talk about terrorism in a few minutes, but this legislation does not do anything to address the terrorism that is sweeping this world and is sweeping this country, and this bill leaves the terrorists a sitting duck.

To show how insincere proponents of this legislation are, let's take one amendment that was offered and defeated. We have heard on this Senate floor for the past week how safe it is to transport nuclear waste, how safe it is generally. In fact, we were told by one of the proponents of this legislation that it was safer to transport nuclear waste than it was to pick up a carton of milk at a grocery store and take it to your home. That is not a paraphrase, that is a statement that was made.

If, in fact, that is true—and, of course, it is not—but if it is true and the proponents of this legislation really believe that, why wouldn't they accept an amendment we offered that simply said, if you want to transport nuclear waste through a State, the Governor of that State should agree to let it pass through the State? If this material can be transported safely and the material is as benign as they say, if it is like picking up a carton of milk at 7–Eleven and taking it home, then they should have supported our amendment, but they did not do that.

Mr. President, what is happening can best be illustrated by virtue of an editorial that appeared last week in the Washington Post newspaper. This editorial said, among other things, that this was not the appropriate thing to do, this is not the time to bring up this legislation.

I ask unanimous consent that the full text of the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 8, 1997]

WASTE VOTE IN THE SENATE

The Senate is scheduled to take a cloture vote today on a bill to create an ''interim'' national nuclear waste repository in Nevada. The outcome is likely to be the same as last year: votes enough to limit debate and pass the bill, but not to overcome the president's promised veto. Our own sense is that the bill is the wrong solution to a genuine problem. The president is right to keep it from passing, but then the administration owes a real alternative, not just lip service to a process that is a pretext for deferral.

Waste disposal always has been the great unsolved problem of nuclear power. Proponents like to say the nuclear alternative is clean when compared with such other sources of power as coal. It is until you get to the disposal issue: what to do with the spent fuel rods. Then it's the dirtiest of all.

The expectation always has been that government would play a major part in the disposal issue. In 1982 Congress spelled out the process. A fee would be imposed on consumers of electricity to create a fund; the fund would be used to plan, build and fill a permanent national nuclear waste repository. By a process of elimination having at least as much to do with congressional politics as with science, Yucca Mountain in Nevada was subsequently chosen, over the protests of Nevadans, as the likeliest site. Safety, environmental and all manner of other studies have been underway ever since.

The government was supposed to start accepting the spent fuel in 1998. There isn't a prayer it will be ready, and meanwhile the material is building up in the storage facilities at the power plants. The bill to create the interim facility is an effort by the industry to force the government's hand on the theory that, absent a forcing move, nothing will ever be done. The utilities are entitled to feel that way. But the interim facility would be adjacent to Yucca Mountain, and the fear on the other side is that that would be it: Yucca Mountain would become the permanent site whether the studies showed it to be best suited or not.

The permanent storage decision is too important to be made under that kind of pressure. At the same time, the administration needs to give the industry some assurance that the process won't drag on forever. There are critics of the industry who would like to see it choke on its own waste, but that's not a solution. Whatever the future of the industry, the waste is here. There needs to be a policy of something other than deferral to deal with it.

Mr. REID. Mr. President, ''Waste Vote in the Senate'' is the headline. The Washington Post said:

Our own sense is that the bill is the wrong solution to a genuine problem . . . Proponents like to say the nuclear alternative is

clean when compared with such other sources of power as coal. It is until you get to the disposal issue: what to do with the spent fuel rods. Then it's the dirtiest of all . . . .

The permanent storage decision is too important to be made under that kind of pressure.

The Washington Post, Mr. President, said that we are being stampeded into a decision that will have long-term detrimental effects on this country. I believe the Washington Post.

We also know that the President of the United States is going to veto this bill. He is going to veto this bill if it gets 100 votes, which it will not. He is going to veto this legislation no matter how many votes it gets, because Bill Clinton believes this is bad policy.

The President has said in a statement of policy earlier this month, about a week ago, that this was bad policy for our country. This statement has been coordinated with all the Federal agencies. We should remember that the President is going to veto this for good reasons: It is bad policy.

The easiest thing for the President of the United States to do would be to join with a vast majority who support this legislation, not the majority of people, because the President is helping to set public policy to oppose this legislation, but it would be easy for him, less controversial for him, if he would go along with the madding crowd here that says, ''Let's support this legislation.'' He won't do that for a number of reasons, not the least of which, as I indicated, it is bad public policy.

We also know that the Secretary of Energy, Federico Peña, opposes this legislation, with a letter directed to us on April 8, 1997.

I ask unanimous consent that a statement of administration policy be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, April 7, 1997.

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

S. 104—NUCLEAR WASTE POLICY ACT OF 1997—MURKOWSKI (R–AK) AND 27 COSPONSORS)

If S. 104 were presented to the President in its current form, the President would veto the bill. S. 104 would undermine the credibility of the Nation's nuclear waste disposal program by, in effect, designating a specified site for an interim storage facility before the viability of that site as a permanent geological repository has been assessed. The bill would also undermine the ongoing work on the permanent disposal site by siphoning away resources for an interim site.

The Administration is committed to resolving the complex and important issue of nuclear waste storage in a timely and sensible manner. The Federal government's long-standing commitment to permanent, geological disposal should remain the basic goal of high-level radioactive waste management policy. This Administration has instituted planning and management initiatives to accelerate progress on assessing Yucca Mountain, Nevada, as a permanent geologic disposal site, and urges the Congress to provide sufficient resources to allow the Administration to complete the Yucca Mountain viability assessment in 1998.

S. 104, however, would effectively establish Nevada as the site of an interim nuclear waste storage facility before the viability assessment of Yucca Mountain as a permanent geologic repository is completed. Moreover, even if Yucca Mountain is determined not to be viable for a permanent repository, the bill would provide no plausible opportunity to designate a viable alternative as an interim storage site. Any potential siting decision concerning such a facility ultimately should be based on objective, science-based criteria and informed by the likelihood of the success of the Yucca Mountain site.

In addition, the Administration strongly objects to the bill's weakening of existing environmental standards by preempting all Federal, State, and local laws inconsistent with the environmental requirements of this bill and the Atomic Energy Act. This preemption would effectively replace EPA's authority to set acceptable radiation release standards with a statutory standard and would create loopholes in the National Environmental Policy Act.

Mr. REID. Mr. President, I ask unanimous consent that the letter from the Secretary of Energy to the Honorable TOM DASCHLE setting forth the Department of Energy's policy be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF ENERGY,
Washington, DC, April 8, 1997

Hon. TOM DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR DASCHLE: I am writing to inform you of the Department of Energy's views on S. 104, the Nuclear Waste Policy Act of 1997, as reported by the Committee on Energy and Natural Resources.

The Administration's position on nuclear waste is clear: we are committed to resolving the complex and important issue of nuclear waste disposal in a timely and sensible manner, consistent with sound science and protection of public health, safety, and the environment. The Administration believes that the federal government's longstanding commitment to permanent, geologic disposal should remain the basic goal of high-level radioactive waste management policy.

The Administration's position on S. 104 is also very straightforward. The Administration believes that a decision on the siting of an interim storage facility should be based on objective, science-based criteria and should be informed by the viability assessment of Yucca Mountain. Therefore, as the President has stated, he would veto any legislation that would designate an interim storage facility at a specific site before the viability assessment at Yucca Mountain has been completed.

I believe that one of the premier challenges the Department of Energy faces is that of nuclear waste disposal. This challenge requires that we develop the scientific data for the viability assessment of Yucca Mountain as the repository of the Nation's radioactive waste. The repository effort is essential not only for commercial spent fuel disposal but also for the cleanup of the nuclear weapons complex and disposal of weapons-grade materials in furtherance of our nuclear non-proliferation goals.

I am sensitive to the frustrations expressed over the Department's inability to accept spent nuclear fuel by January 31, 1998. As I committed during the confirmation process, I have met with representatives of both the utility industry and environmental organizations to discuss ways of mitigating the impacts of this delay. I will also be meeting in the near future with representatives of the state public utility commissions.

Last week, I began a cooperative process with representatives of the utility industry to address the difficult and controversial issues of how the Department will meet its 1998 contractual commitment. I believe we had a constructive discussion of these issues, and we agreed to set up working groups to continue the discussion in the next several weeks. We discussed a number of options for meeting the 1998 commitment, ranging from compensation, to taking title to utilities' spent fuel, to moving the fuel. I also expressed my personal commitment to fill the position of Director of the Office of Civilian Radioactive Waste Management as soon as possible and committed to provide more frequent technical updates on the progress of work at Yucca Mountain to stakeholders.

Unfortunately, the legislation now pending before the Senate, S. 104, contains elements that undermine the Federal government's longstanding commitment to seeking a permanent solution to the nuclear waste problem. The bill would effectively establish the Nevada Test Site as the site for an interim storage facility before the Yucca Mountain viability assessment is completed. If the Yucca Mountain site is found not to be viable, the provisions of the bill do not provide sufficient time to designate, license, and construct a facility at any alternative to the Nevada Test Site, thereby forcing the siting of an interim facility in Nevada regardless of the outcome of the viability assessment. This would be an unwise rush to judgment. Furthermore, designating an interim storage site, before the government can be informed by the repository viability assessment, would jeopardize the long-term strategy for the ultimate disposal of nuclear waste and undermine public confidence in the near-term transportation and storage activities.

S. 104 also contains unrealistic schedules for beginning interim storage facility operations, which, could not be met even if a site were available today. It would repeat the mistakes of the past with regard to unrealistic schedules for completing actions without regard to generating public support. Such schedules would result in excessively curtailed regulatory processes and potential competition for funding between the repository program and interim storage project.

Finally, I want to emphasize that the Department of Energy has, in fact, made significant progress in this program over the last four years and will be in a position by late 1998 to assess the viability of the Yucca Mountain site for a geologic repository. The Department has underway an aggressive site characterization program at Yucca Mountain focusing on the most critical technical questions (e.g., hydrology, waste package lifetime, and the effects of heat on the repository block). The Department has reduced the cost of the technical and scientific work associated with preparing a license application by approximately 40 percent. The Department also has excavated over four miles of the five-mile underground loop of the Exploratory Studies Facility and expects to complete the tunnel this spring and complete seven test alcoves by the end of this year. Following completion of the tunnel, the Department will collect additional scientific and engineering data in order to prepare the materials necessary to complete the viability assessment. Designation of an interim storage site prior to completion of this

work is likely to undermine public confidence that a repository evaluation will be objective and technically sound.

For all of these reasons, I urge you and your colleagues to join the President and the Administration in opposing this legislation.

Sincerely,

FEDERICO PEÑA.

Mr. REID. Also, Mr. President, I have from the Council on Environmental Quality—and let me explain to the viewers what this is. The President has, and it has been in the last 20 years, an agency within the Executive Office of the President that gives the President advice on environmental issues. The chairperson of that very important office is Katie McGinty. Her office has advised the President this legislation is bad legislation. She has advised the minority leader and the majority leader of the U.S. Senate that it is bad policy.

I ask unanimous consent that a letter dated April 7, 1997, indicating Katie McGinty's absolute opposition to this legislation be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY,

Washington, DC, April 7, 1997.

Hon. TOM DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR DASCHLE: The purpose of this letter is to express my opposition to S. 104, which effectively mandates construction of an interim storage facility for nuclear wastes at the Nevada Test Site, near the location under consideration as a permanent geologic repository at Yucca Mountain. This Administration supports a long-term solution for the disposal of nuclear wastes, but not, as would be the case with S. 104, at the expense of sound science and public health, safety and environmental protection. While I am troubled by a number of provisions in the bill that would undermine such safeguards, I am particularly concerned over the dismantling of the environmental impact assessment process under the National Environmental Policy Act (NEPA).

Congress passed NEPA in 1969 to ensure that federal agencies integrate environmental values, as well as social, economic and technical factors, into the decision making process. To that end, section 102 of NEPA establishes an ''action forcing device,'' known as an environmental impact statement (EIS), for proposed major federal actions significantly affecting the quality of the human environment. At the heart of the EIS process is the alternatives analysis, in which reasonable alternatives to the proposed action are addressed in an effort to provide a clear basis of choice by decision makers and the public, and to ensure that the most environmentally sound course of action is taken.

S. 104 renders the NEPA process meaningless by precluding the incorporation of NEPA's core values which are necessary for making informed and timely decisions essential for protecting public health, safety and environmental quality. Consequently, the bill all but locks into place both interim and permanent storage sites by giving decision makers no reasonable options in the event that Yucca Mountain is found unsuitable.

If Yucca Mountain is found unsuitable for permanent geologic disposal, the time lines in the bill virtually ensure there will not be enough time for the President to designate, and the Secretary of Energy to construct, an interim site. Further, since the EIS for both the interim and permanent facilities are not required until well after the critical decisions have been made—including site selection, design, and some construction—either or both facilities may well be so far into development that if health, safety or environmental problems are identified, there would be no time, nor would it be economically feasible, to look to other sites. This is even more compelling since the bill prevents actions taken by the Secretary and the Nuclear Regulatory Commission from being challenged in court until after these critical decisions have been made.

Finally, S. 104 precludes the EIS from addressing potential long-term environmental impacts of interim storage; only the initial term of the license or subsequent renewal periods may be considered. In addition, the bill tends to downplay health and safety concerns of state and local communities by stating that the EIS may address the environmental impacts of the transportation of the nuclear wastes to the interim storage facility, only ''in a generic manner.''

The permanent disposal of nuclear waste is critical to all Americans, and to future generations. When Congress passed NEPA in 1969, it envisioned a decision making process that would ensure that federal agencies ''look before they leap.'' This can occur only if reasonable alternatives to a proposed action are explored earlier in the planning stages, with meaningful public involvement. Only then can an agency make a fully informed decision, one which provides assurances for the maximum possible protection of human health and the environment.

Thank you for your consideration of this matter. Please do not hesitate to contact me or members of my staff if we can be of further assistance.

Sincerely,

KATHLEEN A. MCGINTY,
Chair.

Mr. REID. Mr. President, not only do we have Government agencies opposing this legislation, we have already established that the scientific community opposes this legislation. When this legislation was established, it was determined that there should be some nonpartisan, scientific group that could give the Congress and the President a scientific view as to what was happening on nuclear waste.

The Nuclear Waste Technical Review Board was established, and a group of scientists were selected. The chairman of this group is from prestigious Yale University. He is a dean at one of the schools there. They have said, do not support this legislation, interim storage of nuclear waste should not be.

Mr. President, in addition to scientists, we also have environmental groups all over the country who oppose this legislation.

So I guess I would say to the Chair and those within the sound of my voice, which position would you support? The position of the monopolistic nuclear utilities, the nuclear power lobby? Or the scientific community unions, like the United Transportation Union, environmentalists, and churches? I would say, first glance and second glance and third glance, you would go along with the churches, scientists and the environmentalists.

I am not going to read and have printed in the RECORD the statements from almost 200 environmental groups, but let me just give a brief statement from an environmental group in Atlanta, GA. This group is called WAND from Atlanta, GA, W-A-N-D. I have a letter written to every Senator:

[We strongly urge] you to oppose S. 104, the Nuclear Waste Policy Act . . . vote against final passage [of this bill].

S. 104 paves the way for a new era of disregard for public health and safety. The bill carves loopholes in the National Environmental Policy Act, preempts other environmental laws, and eliminates licensing standards for permanent repository. The radiation release standard set by the bill for the permanent repository of 100 millirems would allow individuals to receive four times as much radiation as permitted by current regulations for nuclear waste storage. . . .

S. 104 mandates interim storage. . .despite the lack of justifiable rationale for interim storage and safety concerns with that site. In the process this bill weakens environmental standards that protect the public, preempts states' rights, and limits public participation in the decisionmaking process.

I ask unanimous consent that the full text of the Women's Action for New Directions in Atlanta, GA, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WOMEN'S ACTION FOR NEW DIRECTIONS,

Atlanta, GA, March 28, 1997.

U.S. Senate,
Washington, DC.

DEAR SENATOR: Women's Action for New Directions (WAND) strongly urges you to oppose S. 104, the Nuclear Waste Policy Act of 1997, support a likely filibuster by Senators Bryan and Reid, and vote against final passage should this bill come to the floor.

S. 104 paves the way for a new era of disregard for public health and safety. The bill carves loopholes in the National Environmental Policy Act, preempts other environmental laws, and eliminates licensing standards for the permanent repository. The radiation release standards set by the bill for the permanent repository on 100 millirems would allow individuals to receive four times as much radiation as permitted by current regulations for nuclear waste storage. By setting aside important regulations and standards for short-term expediency, the bill sets the stage for future exemptions when other radioactive waste problems, such as cleanup of the nation's nuclear weapons complex, become too perplexing or expensive.

S. 104 mandates interim storage for high-level waste at the Yucca Mountain Nevada site, the proposed permanent repository, despite the lack of justifiable rationale for interim storage and safety concerns with that site. In the process this bill weakens environmental standards that protect the public, preempts states' rights, and limits public participation in the decision-making process. It would set into motion the largest nuclear waste transportation project in human history, sending thousands of tons of radioactive waste onto the roads and railways in 43 states, without safety standards. It imposes an unrealistic November 1999 date for the beginning of high-level waste transportation, despite Nuclear Regulatory Commission conclusions that the waste can stay where it is for 100 years.

Even amendments added to change some items in the bill, such as Senator Wyden's amendments protecting Hanford from becoming an interim dump site, and some

transportation provisions, do not address the overall failures of the bill and its mockery of environmental protection.

We believe the nation's current nuclear waste policy is fundamentally flawed. It places an unfair burden on politically isolated, often indigenous people, endangers public health and safety, . . .

* * * * *

Mr. REID. Mr. President, native Americans have joined together almost in unison against this legislation. Native Americans also have an organization called National Environmental Coalition of Native Americans, NECONA. They have said this legislation is extremely bad. They have done this in the form of a letter written on March 31 of this year:

[D]eveloping a storage facility now would jeopardize the repository program and has the added risk of prejudicing any future decision about the suitability of that site. . .

The DOE lists 109 cities of over 100,000 people which would be impacted. Dozens of our tribes would also be impacted, and the most recent DOE survey of tribal and state capabilities to deal with nuclear transportation accidents revealed many serious gaps in preparedness.

I ask unanimous consent that the full text of the NECONA statement be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ENVIRONMENTAL COALITION OF NATIVE AMERICANS,
Prague, OK, March 31, 1997.

DEAR SENATOR: We are writing to you as a non-profit, educational coalition of Indian people who have been long concerned about national and international nuclear waste policy. Some of us live near current nuclear waste sites, and others are threatened with massive transportation impacts if plans for future nuclear waste sites are implemented. Seventy-one tribes in North America have declared their lands to be Nuclear Free Zones.

We urge you to oppose the current Senate bill S. 104 which calls for centralized interim storage of high level nuclear waste and nuclear irradiated fuel at the Nevada site at Yucca Mountain. NECONA, with other environmental groups, views this bill as an unwise re-direction of U.S. nuclear waste policy.

Congress's own Nuclear Waste Technical Review Board in March 1996 released a report which stated forcefully that ''there are no compelling technical or safety reasons to begin moving spent fuel from reactor sites for the next several years, so the development of a centralized storage facility should be linked to the decision about the suitability of Yucca Mountain,'' in about five years. ''[D]eveloping a storage facility now would jeopardize the repository program'' and ''has the added risk of prejudicing any future decision about the suitability of that site . . .''

The industry's bills, for example S. 104, to the contrary would direct DOE to place its ''highest priority'' effort on a temporary ''interim storage facility'' in Nevada. While we have serious concerns about the DOE program at the Yucca Mountain site, we do not wish to see a reversal of the current policy, since the 1982 Nuclear Waste Policy Act, of placing highest priority on a continued search for long-term disposition of nuclear waste.

The nuclear utility industry is pushing in these bills an irresponsible and phony ''solution'' to the problem of nuclear waste. The U.S. Department of Energy in 1996 produced new national maps depicting the national and state routes, by highway and rail, over which massive numbers of irradiated fuel shipments will move beginning around 1999 if the legislation is enacted. The DOE lists 109 cities over 100,000 which would be impacted. Dozens of our tribes would also be impacted, and the most recent DOE survey of tribal and state capabilities to deal with nuclear transportation accidents revealed many serious gaps in preparedness.

The nuclear industry should not be allowed to wash their hands of their ever-mounting nuclear wastes by merely putting the wastes on the rails and highways for thirty years on the way to an interim storage facility—which will most nearly resemble a parking lot—in Nevada.

* * * * *

Mr. REID. Mr. President, I will also state that the Physicians for Social Responsibility, a group consisting of 16,000 American physicians, oppose this legislation. We have a letter from their executive director, Dr. Musil, who says to every Senator:

We . . . oppose Senate bill 104 . . . because it mandates a badly flawed nuclear waste management strategy which potentially endangers public health.

I ask unanimous consent that the full text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PHYSICIANS FOR SOCIAL RESPONSIBILITY,
Washington, DC, March 25, 1997.

DEAR SENATOR: Physicians for Social Responsibility is one of the nation's largest organized medical societies, with more than 16,000 members and supporters nationwide, representing all major fields of medicine. We write to urge you to oppose Senate bill 104, the Nuclear Waste Policy Act of 1997, because it mandates a badly flawed nuclear waste management strategy which potentially endangers public health.

S. 104 would allow construction of an ''interim'' nuclear waste dump near Yucca Mountain in Nevada. Storing highly radioactive waste at the site presents a potentially serious public health danger. The Geological Society of America has reported at least 15 small earthquakes since May 1995 at Yucca Mountain, which sits atop two earthquake faults. Moreover, transporting waste where long-term isolation cannot be assured is irresponsible and creates new and possibly greater dangers.

S. 104 would require the greatest nuclear waste transportation project in history. It would put 95% of the radioactivity of U.S. nuclear waste on our nation's roads and railways in casks of questionable safety. The bill would send highly radioactive nuclear waste through 43 states within one-half mile of 52 million people, providing minimal protection to local communities.

S. 104 would exempt nuclear waste from most environmental laws. The bill would exempt site selection, license application, and construction from the Environmental Impact Statement (public participation) process normally required by the National Environmental Policy Act. It would also set radiation release standards far higher than any other standard, presenting greater risks to public health and safety.

Alternatives should be explored. Our organization seeks a thorough examination and review of all national nuclear waste policies and programs. Such a process should include meaningful and effective public participation to ensure a program that is safe and acceptable to the American public.

We, as health professionals, are deeply concerned about the grave dangers S. 104 would pose to public health and safety. Please do not trade protection of human health and the environment for a short-term non-solution to the nuclear waste problem. Please vote no on S. 104.

Sincerely,

ROBERT K. MUSIL, PH.D.,
Executive Director.

Mr. REID. Mr. President, in short, this legislation is bad. The technical experts say it is bad. There is no technical or safety reason to move spent nuclear fuel. It is before us for one simple reason, and that is the power of the nuclear utilities. The motive of the nuclear utilities is more money. We have already established the huge profits they make. I compared their 17 percent average profit to what I learned in a case that I handled against Safeway Stores. They make a little over 1 percent on their volume. The nuclear utilities make 17 percent. This legislation is here, it is motivated by money, and they want more money. Their greed is endangering the American public, our fragile environment and the Nation's policy to develop a permanent repository for spent nuclear fuel and high-level radioactive waste.

This bill, S. 104, is antienvironmental. The bill is opposed by every environmental group in America, as I have stated several times. This bill is a disaster for the environment. The public opposes this legislation because they see the facade of S. 104's hysterical claims of crisis for onsite storage. This is not true.

The real motivation, we have established, is money. The best option is to leave it on site, right where it is today, Mr. President. We would save billions of dollars, and it would be safe. Everyone should be outraged by this legislation. No better evidence of bad legislation exists than that the provisions of the legislation prohibit discussion and full and open disclosure of the bill's consequences and its alternatives.

S. 104 is proposing to violate the intent of the National Environmental Policy Act of 1969, because the nuclear power industry would fail in its efforts if the law were obeyed. The nuclear power industry is indifferent to environmental quality, especially when it comes to money.

This legislation would try—and I underline ''try''—to prematurely ship tens of thousands of tons of spent nuclear fuel needlessly before the country is ready to do that. Past shipments of nuclear waste showed there would be about one accident on the road or rail for every 300 shipments. That suggests, under S. 104, we would have at least 50 accidents involving high-level nuclear waste.

That is only part of the story, because in the examples that they used, we are talking about very short hauls of nuclear waste. Here we are talking about hauling nuclear waste thousands of miles.

Most of the shipments under this legislation would be transcontinental. Truck transport statistics predict about six accidents every million miles, while rail statistics predict about 12 accidents per million miles.

Using these statistics, the Nation should expect more than 160 accidents involving spent nuclear fuel or high-level radioactive waste. Each of these accidents would risk radioactive dispersal from canisters, each of which contain the radiological equivalent of 200 Nagasaki bombs. They are talking about hauling this poison, and the canisters have not even been designed. The only thing they designed are requirements that canisters survive only if you are going less than 30 miles an hour and have fire temperatures of only 1,475 degrees.

We all know that most accidents occur going more than 30 miles per hour. The technical community knows that diesel burns on the average at 1,800 degrees. The canisters survive only 1,400-plus degrees, 1,475 at the most. Under some conditions, Mr. President, diesel fuel burns at temperatures exceeding 3,000 degrees, more than twice what the canisters would withstand.

So if this is not enough, the chairman of the Nuclear Waste Technical Review Board also opposed this plan, as I have already mentioned, because the country is not ready yet to ship nuclear waste.

Truck crews have not been trained. There is no integrated emergency response plan for these accidents. Police, fire, emergency, medical, hazardous material management, radioactive material management—all these teams must be developed, and once they are developed become an integrated capable force.

The response force needs an accepted and capable command and control structure to organize their action. They do not have one.

The response force needs to be equipped with technical gear peculiar to radioactive material management. They do not have it.

The response force needs to train together so they can work together when it becomes necessary. Integrated training has not been done or even contemplated.

It could not be more obvious that we are not ready to move spent nuclear fuel or high-level radioactive waste across this country.

S. 104 is an open invitation to terrorists. We know that terrorists will do anything to grab a headline. Terrorists exist both at home and abroad. Terrorists can move freely through this country. Everybody knows the routes and schedules of waste shipments. Weaponry exists that can breach waste containers. Everybody knows that terrorists with a little bit of money and determination can get these weapons.

Places exist along those routes where shipments could be stopped where we know there would be time enough to breach the canisters and disperse the waste, to say the least.

We must do something to prevent terrorists from attacking these irresistible targets. We have done nothing. We continue to not do anything to prevent this kind of threat.

We need to be prepared to respond with effective and overwhelming capability in a very short time if our prevention tactics fail.

We are not planning for prevention. We are not planning for response. We are sitting around with our heads in the sand hoping that this will not happen. That is just what terrorists count on.

S. 104 spends not one bit of its energy or money on this critical issue because the nuclear power industry does not care that much. They only care about money. That is the only thing they care about.

They would risk the lives and health of tens of millions of citizens living and working within 10 miles of the routes of this transportation system.

The nuclear power industry and the sponsors of S. 104 have not convinced the American people that spent nuclear fuel is safe.

I have said previously on this floor—and I think it speaks volumes—they tried this recently in Germany. They could not do it, Mr. President. We are talking about moving this waste thousands and thousands of miles. They tried in Germany to move it less than 300 miles.

What did it take to move six canisters 300 miles? It took 30,000 police, 170 injuries, 500 arrests, $150 million. Germany has said, ''We're backing off. This is a program that won't work.''

So now, Mr. President, that orderly and conservative region of Germany has become a hotbed of protest and hatred for the government. The transportation program has been stopped. The police have refused to continue with arrests and suppression. The German parliament, as I mentioned, is reconsidering its decision to move the waste. All that for six casks moving just a short distance.

We have talked, Mr. President, about terrorism. I want everyone to understand that this is not something that is just being made up.

In fact, one organization from North Carolina, just last year, decided how hard it would be to commit an act of terrorism with a nuclear waste shipment. They determined it would be as easy as falling off a log.

Referring to a letter to the U.S. Senate about a year ago, the Blue Ridge Environmental Defense League, which is an old organization, in existence for 15 years thereabouts, decided to see if they could find a load of nuclear waste and follow it. They could follow it. It was real easy.

They said:

In the wake of Oklahoma City and Atlanta the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

My friend, the manager of this bill, the senior Senator from Alaska, said: ''What are we going to do? Just throw it in the air? If we do, it is going to come down some place.''

That's the whole point of the terrorists. It won't just come down some place; it will come down all over the place—with no control over where it will come down, according to the Blue Ridge Environmental Defense League.

They have said that ''Our work''—and they only looked in three States, North Carolina, Tennessee, and Virginia—''takes us to many rural communities. Emergency management personal in these areas are dedicated volunteers, but they are unprepared for nuclear waste. Volunteer fire departments in rural counties are very good at putting out house fires and brush fires,'' but that is about all.

''The remote river valleys and steep grades of Appalachia are legendary. At Saluda, NC the steepest standard gauge mainline railroad grade in the United States drops 253 feet/mile,'' or a 4.8-percent grade. ''The CSX and Norfolk Southern lines trace the French Broad River Valley and the Nolichucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern [Railroad] crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high level nuclear waste'' if this legislation passes.

Mr. President, I ask unanimous consent that their letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,
Marshall, NC, July 29, 1996.

Hon. TOM DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR: The Nuclear Waste Policy Act of 1996 (S 1936) would place in jeopardy the lives of millions of American citizens by transporting 15,638 casks of highly radioactive material over railways and highways of this nation. This attempt at a quick-fix for the nuclear waste dilemma would cause more problems than it attempts to solve. The people who would bear the greatest burden would be the 172 million Americans who live nearest the transportation corridors. S 1936 is a legislative short-circuit that will make us less secure as a nation and which will dump the costs of emergency response on the states and local governments.

The Blue Ridge Environmental Defense League began in 1984: our work takes us throughout the southeast. Since 1994 we have observed the international shipments of spent nuclear fuel (SNF) from foreign research reactors (FRR) to a disposal site at the Savannah River Site (SRS) in South Carolina. Two shipments arrived at the Military Ocean Terminal at Sunny Point (MOTSU) in North Carolina, were loaded

onto rail cars, and then transported overland to SRS. We were able to track both of these shipments from their ports of origin in Denmark, Greece, France, and Sweden across the Atlantic to North Carolina to SRS. We observed the fuel shipments when they arrived at MOTSU. We watched the SNF transfer from ship to train and followed it through the countryside of coastal North and South Carolina. Our reason for doing this was to alert people along the transport route about the shipments through their communities. We rented a light plane and flew out over the SNF ships when they reached the three-mile limit. Television news cameras accompanied us and transmitted pictures for broadcast on the evening news. If we can track such shipments, anyone can. These shipments cannot be kept secret so long as we live in a free society. Our actions were peaceful, but we proved that determined individuals on a shoestring budget can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

Our work in North Carolina, Tennessee, and Virginia takes us to many rural communities. Emergency management personnel in these areas are dedicated volunteers, but they are unprepared for nuclear waste. Volunteer fire departments in rural counties are very good at putting out house fires and brush fires. While serving as a volunteer fire fighter in Madison County, NC, I had the privilege of working with these men and women. We took special training to handle propane tank emergencies utilizing locally-built water pumper trucks. More sophisticated training or equipment was prohibitively expensive and beyond our financial means. Traffic control is a consideration at an emergency scene. Any fire or accident tends to draw a crowd. Onlookers arrive as soon as the fire department—sometimes sooner in remote areas. There are always traffic jams reducing traffic flow to a one-lane crawl day or night, fair weather or foul. The remote river valleys and steep grades of Appalachia are legendary. At Saluda, NC the steepest standard gauge mainline railroad grade in the United States drops 253 feet/mile (4.8% grade). The CSX and Norfolk Southern lines trace the French Broad River Valley and the Nolichucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern RR crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high level nuclear waste transport as soon as 1998 according to S. 1936.

County emergency management personnel are entrusted with early response to hazards to the public in western North Carolina communities. When we asked about their readiness to respond to a nuclear transport accident, they answered professionally saying, ''We'll just go out there and keep people away until state or federal officials arrive.'' This may be the best that can be done while a fire burns or radiation leaks from a damaged cask. In a recent interview, one western NC emergency coordinator said. ''There is no response team anywhere in this part of the state and, for the foreseeable future, there is no money in local budgets to equip us with any first response to radioactive spills.''

The concerns of local officials reflect their on-the-scene responsibility while state officials, faced with limited budgets and staff, make plans based on current bureaucratic realities. The Nuclear Waste Policy Act and Amendments of 1982 and 1987 place large-scale nuclear transportation scenarios decades in the future. This fact and the limited resources of existing emergency planning departments make the timeline for preparation for nuclear accident response completely inadequate for shipments beginning as soon as 1998. In North Carolina's Division of Emergency Management, the lead REP planner has four staffers and a whole state to cover. It is not possible, under these circumstances, to be ready with credible emergency response plans, training, and equipment in two years.

I am asking you to oppose this expensive and dangerous legislation which would place an unfair and unnecessary financial burden on communities and which would place at risk the health and safety of millions of American citizens.

Respectfully,

LOUIS ZELLER.

Mr. REID. I would just say that terrorists' modus operandi is to find areas of weakness so that they can spread terror. This, believe me, Mr. President, would spread terror. And that is an understatement.

As my colleague from Nevada pointed out, S. 104 is not improved with the substitute.

This substitute amendment is no better than S. 104 as originally submitted.

The bottom line of this substitute is that the nuclear power industry and its allies insist that spent nuclear fuel be stored in Nevada no matter what.

They did not address their real concern, they say, and that is transportation. They did not address environmental concerns.

The bill now says that if Yucca Mountain is found unsuitable by the President, then a different interim storage site must be designated within 24 months. If that is not bad public policy, I cannot believe what would be.

If a different interim site is not designated within that period, then Nevada would become the default storage site, even though it has already been determined scientifically to be inadequate for that purpose.

Everybody knows that no alternative site can be designated in 24 months. Everybody knows we spent well over 15 years trying to decide whether Yucca Mountain is suitable. At least that much time would be required before another interim site could be designated.

Yucca Mountain must be designated as interim storage site under S. 104 regardless of the suitability assessment. That is wrong. That makes a mockery of the scientific and objective process of site characterization at Yucca Mountain.

S. 104 makes worthless the more than $2.5 billion spent on developing the Exploratory Studies Facility at Yucca Mountain.

S. 104 makes worthless all the preceding legislation and all the scientific investments for developing a permanent repository in accord with national policy for dealing with spent nuclear fuel and high-level radioactive waste.

Everybody knows that once the waste is moved from its generator sites to a centralized site, it will never be moved again.

And, just as surely, once a centralized site is designated, the nuclear power lobby and its allies will insist that repository resources be diverted to the development and construction of the interim facility and away from development of a permanent site.

So designation of an interim site will terminate the permanent repository.

What does that mean?

That means that waste that was once meant to be stored in emplacement canisters, yet to be proven, in an underground repository, yet to be designed, would be instead stored in transportation containers on a cement pad, exposed to the weather and damage from human activity or natural events.

That means that any difficult issues that arise with regard to the interpretation of data from the Yucca Mountain characterization will not be pursued and will not be resolved.

That means that Yucca Mountain will never be designated as a permanent repository under the law, and so spent nuclear fuel will be stored indefinitely in a temporary configuration. There will be no emplacement casks to provide engineered barriers for waste isolation.

There will be no natural barriers to inhibit migration of waste that escapes the containers.

There will be no possible promise of public health and safety.

These are the reasons, Mr. President, I say that S. 104 is a ploy by the nuclear power industry to terminate the permanent repository program. Because S. 104 will do that, the nuclear power industry is behind S. 104.

A number of years ago, we laid out a logical path that would guarantee a permanent disposal facility for spent nuclear fuel. We in Nevada, Mr. President, fought that. We thought it was unfair to characterize one site. But that has been ongoing. And what the nuclear industry now realizes is that it is taking a little longer than they thought. Therefore, they want to chuck the experience, money, and efforts out and go and pour it on top of the ground, dump nuclear waste on top of the ground.

The architects of that process to develop a permanent repository recognized that interim storage at a candidate site for the permanent repository would hopelessly compromise the quality, the completeness, and the funding of site suitability studies.

These architects also recognized that such a compromise would ultimately negate the whole notion of a permanent repository at that site.

So they prohibited the designation of an interim storage site in any State in which a candidate repository site was being evaluated.

That prohibition extended until the candidate site was deemed suitable for permanent disposition of spent nuclear fuel.

The strategy developed by the architects of the current law would guarantee that a suitable permanent disposal site existed before the waste was moved, thereby preventing what S. 104 would guarantee—permanent storage of nuclear waste in a temporary configuration.

It is this absolute determination by S. 104 to establish an interim storage facility at the Nevada Test Site before determining the suitability of Yucca Mountain that compels us to state that S. 104 is really all about sabotaging this country's avowed policy to permanently dispose of spent nuclear fuel in a geologic repository.

Think about it. S. 104 would move nuclear waste and store it permanently at a site that has been found scientifically to be unsuitable for that purpose.

If Yucca Mountain is found unsuitable, this legislation directs the temporary repository to go there. What could be more outrageous? Such a folly goes beyond being deceptive or stupid. It is just outrageous.

S. 104 would knowingly risk public health and safety by storing nuclear waste at a location that is determined to be an unsafe storage site.

S. 104 would knowingly risk public health and safety by storing nuclear waste on an open concrete pad, exposed to weather and to all manner of damage from human activity or natural events, like earthquakes, rain, lightning.

S. 104 would knowingly risk public health and safety by abandoning the requirement for the engineered barriers of emplacement casks to ensure waste isolation from the environment.

S. 104 would knowingly risk public health and safety by abandoning the requirement for natural barriers of geologic disposal that would prohibit migration of waste that escaped from the emplacement casks.

Supporting S. 104 in its determination to permanently store nuclear waste in a temporary site would be about the worst decision this Senate could make.

Mr. President, this is bad public policy. I repeat, to my colleagues, who should you support, those that take the position saying this legislation is good, supported by the nuclear utilities, or those who take the position supported by churches, scientists, doctors, Indian tribes, and everyone in the environmental community? I think the choice is pretty easy. But sometimes easy choices are not determined about the substance of legislation, but by the politics of legislation. We submit, Mr. President, that good public policy supports a ''no'' vote on this legislation.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Nevada [Mr. BRYAN] is recognized.

Mr. BRYAN. I thank the Chair and I thank my colleague for his extraordinary review of this piece of legislation, in pointing out its pitfalls. We are concluding a week's debate on this, Mr. President. I want to make just a couple of more points, and then tomorrow we will have a vote and we will either do the right thing, or we will impose upon the American public a terrible public policy consequence.

Mr. President, I have reviewed in an earlier part of my statement the various provisions in this bill, which, in my view, represent the most atrocious policy options that one could conjure up. As my senior colleague mentioned, who would you trust and rely upon to give you advice on an issue that, obviously, is very technical, very complicated? For those of us who do not deal with these kinds of issues every day, this is not something that is intuitive judgment.

I want to return to the starting point for just a moment to talk about this being unnecessary legislation—unnecessary in that the policy and the scientific community disagree with its very premise. Now, when you look at the various groups that are playing a role in this debate, one thing stands out: The only people that are advocating this legislation are the nuclear utilities and their supporters. It is not the environmental community.

My colleague recited that every major organization in America that has an environmental constituency has opposed this legislation, and for good reason. It is not the scientific community. We frequently hear science invoked as the governing beacon that ought to guide us in this policy debate. If that were true, there would not be a single vote for S. 104, because the scientific community is not urging us to enact this legislation. This is legislation that has been generated, fomented by the nuclear utility industry and is part of the history that we have faced in America in dealing with this very complicated, troublesome, and very, very dangerous electrical generation source.

More than 15 years ago, we were confronted with policy debates that sound very much like those on the floor today, in which the utilities said that we are going to be without energy, we will have brownouts, and the utilities will be forced to close because they will run out of reactor space. This was all generating hysteria. It was not true then and it is not true now. But that has been the legacy that we have in this debate, in trying to make our way through the very sound judgments that ought to control our decisionmaking process in reaching the proper conclusion.

So, essentially, you have the policymakers, the scientific community, the President of the United States all saying, look, this is unnecessary. They are allied against the utilities who have made this argument, as I say, for several decades. It has been said that this is a better piece of legislation. I think that is very questionable, Mr. President. When one looks at what is done, we wreak havoc upon the environmental legislation in America. Only by the most tortured and twisted and convoluted logic could S. 104 be considered sound environmental policy.

The preemption provisions, which I have discussed at some length, deprive a State of its ability to enforce environmental laws by the Federal Government. It eliminates waiver provisions that are part and parcel of our environmental legislation that provides judicial review. We talked about what is done to standards. Those have greatly been diminished. We are talking about something, Mr. President, that isn't just temporarily inconvenient or needs to be cleaned up because it would be a nuisance in the community. We are talking about something that is lethal, deadly, for 10,000 years and beyond. That is beyond the period of recorded history. We have never dealt with that kind of a policy issue. I can understand the frustration that some of my colleagues experience, that it may be another 4, 5, 6 years before this determination or that. But when you are talking about 10,000 years, and beyond, 4 or 5 years more to get it right, to do the right thing, to protect the health and safety of the American public seems rather little to ask when you are dealing with something as dangerous as this.

We have talked about the flaw in the viability assessment of the President of the United States. He has to make his assessment based on a standard that is not going to exist. Charitably, it would have to be a guess. How can one make a sound policy judgment based upon a standard that is yet to be developed and is nonexistent? Whatever one thinks about the politics of this administration, one would have to conclude that it is the ultimate irresponsibility to ask any Chief Executive to make a judgment based upon his or her assessment, when the standard upon which the benchmarks are to be measured don't exist.

My colleague talked at great length about the transportation dangers. I understand that we all in this Chamber are candidates who have faced the people in our States respectively. I understand that the utilities in a number of States have leaned very heavily and have been to the offices and advocated and raised all kinds of specters. Let me just suggest for a moment that what is happening in California as we speak, I think, is very instructive. There, as many of you may be aware, nuclear waste is going to be shipped from the Pacific in the Concorde and then transported over the Sierra Nevada from California into Nevada and, ultimately, to be stored in Idaho. If you think that the pressures that the utilities have brought to bear are heavy, when the first series of 17,000 shipments of high-level waste traversing the highways and rail systems of 43 States, in which 51 million people live within 1 mile or less—when that begins to occur, much as my senior colleague has pointed out with graphic detail about what has occurred fairly recently in Germany, that

is going to be a real constituent concern, and rightly so, because an accident can have a devastating impact upon the health of that community.

So this is not just a Nevada issue. This is an issue which will affect many millions of people in this country. We have talked about the lawsuit, how there is this great empathy and understanding about the ratepayers and the consequences for them, how they paid $8 billion over the years into the nuclear waste trust fund. Nothing in this legislation provides 1 cent of relief for the ratepayers. That, to me, is the true indicator of what this is all about. This isn't trying to provide equity for the ratepayers. This is not trying to provide or prevent ratepayers from paying twice for something that they have already paid once for. It has nothing to do with that, or you would see relief in S. 104. There is nothing. Nothing provides any relief for a lawsuit. The lawsuit remedy, as I have indicated, under section 9 of the contract, provides for an equitable adjustment of payments made into the nuclear waste fund. I think that is fine. But nothing in this legislation deals with the ratepayers, because nothing is contained that provides any kind of equitable relief for the ratepayers.

Finally, let me talk about one other section of this legislation, which I think, again, would indicate how corrupting it is in terms of doing great violence to the environmental laws of America, laws that have, by and large, survived the test of time for nearly three decades and have enjoyed bipartisan support. It was during the Nixon administration that most of these pieces of legislation first saw the light of day.

I want to talk about the National Environmental Policy Act, as it is referred to as NEPA. We are told in one instance that NEPA must be followed. It sounds good, doesn't it? But then we are told that the following activities will be deemed preliminary activities. That just might seem like words—''preliminary.'' That is a very precise term because preliminary activities are not subject to judicial review. And in most instances, the courts themselves make a judgment as to whether something is deemed preliminary or final for the purposes of review. But just as a further indication of how this stacks the deck against anything that provides environmental protection, you have a whole series of actions at page 90 under this act—transportation requirements; viability assessment, and that is section 204; 205(a) is generic design, submitted for interim storage; 205 is site-specific design standards; 205 is license application for interim storage; 206 is repository characterizations. Each of those sections are deemed to be preliminary, so as to preclude the opportunity for independent judgment as to whether or not they do, in fact, comply with the law and make good sense. So, in effect, what we do in those sections, if 104 passes, we gut NEPA, eviscerate it. We proclaim our great devotion to it in the first section, but then say that it shall not include the following.

Let me further go on to indicate that the essence of NEPA is to consider the various options or choices that are available. That is the underlying premise, the theory being that if you look at all of the options on the table, we will rule out, through some rational, thoughtful process, those that are the least compelling from a policy point of view and reach a conclusion as to the best of the options available. But we are told here, with respect to the environmental impact statement, that is part of the NEPA requirement, that this commission shall not be required to consider the need for an interim storage facility, the time of initial availability of a repository or interim storage facility, the alternatives to geological disposal or centralized interim storage or alternatives to the interim storage facility site. So to profess that we do give any kind of meaningful adherence to the National Environmental Policy Act—NEPA—is itself a travesty.

Finally, let me say that when the vote comes tomorrow, I hope that my colleagues, putting aside all of the technical arguments for a moment, might consider policy. What is the right policy for America? What protects public health and safety? What is the most thoughtful way to proceed? Mr. President, the most thoughtful way to proceed is to reject S. 104. It has been asserted that we have no policy with respect to the disposal of nuclear waste. That is simply not true. The policy that we have was essentially designed in 1982 with the enactment of the Nuclear Waste Policy Act, and that policy first is to site permanent repository. I am not ecstatic about, I do not like it, and I wish it were not the case that Yucca Mountain in my own State was chosen. But that is a policy that came down as a result of the things that were done and I believe were highly politicized in terms of the way it was done. But nevertheless that is where we are. Yucca Mountain is being characterized as an interim storage. This legislation would change the existing law, which says that we ought to seek first if a permanent repository can pass muster, is it suitable, before making a determination as to interim storage. This legislation reverses that process and says, in effect, that we will make decisions with respect to interim storage irrespective of what happens with respect to the permanent repository. That makes no sense at all.

Finally, I think, just as an admonition, that this has been a very difficult time for Nevada. I believe that it is without precedent in the years that I have been a Member of this body that a State has been so imposed upon, so unconsidered, so rejected of a rational policy argument to acquiesce to the requests of a special interest group—the nuclear utilities in America.

But let me say that if we pass S. 104, what a dreadful precedent that may be. No other State can be heard to say thereafter, ''Gee, this is terrible policy for us as it affects my State.'' In effect, we establish a precedent in which a State's rights are imposed upon in which the State's ability to protect its own citizens' health and safety by way of Federal environmental standards being limited, and in which those very basic provisions of the ability to review and get judicial determination before something as horrendous as this is imposed upon a State, are for all intents and purposes emasculated. That is the dreadful policy, and we will rue the day that occurs.

So I urge my colleagues to reject S. 104. Let's stay the course. It may not be perfect in every respect, but at least we are moving on a basis of permanent repository in a rational context without getting involved in the emotionalism that has been present with respect to this frantic effort to have interim storage placed at the Nevada test site, a site, as we pointed out, which has not been recommended as a site to be preferred. Never, to the best of my knowledge, has it ever been studied for interim storage, and it was kind of picked out of the air. ''You have Yucca Mountain over there, and Yucca Mountain may take it. So let's put it here.'' That is not a very rational basis to make a policy judgment.

I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I rise today to urge my colleagues to support S. 104, the Nuclear Waste Policy Act of 1997. This much needed legislation will help protect the American taxpayers and ratepayers and resolve our Nation's growing nuclear waste storage problem.

As many of my colleagues know, the Department of Energy will not live up to its 15-year promise to collect commercial nuclear waste into a centralized repository. Unfortunately, with over $6 billion of ratepayer's money already spent by the Federal Government, a permanent repository will still not be completed until well into the next century.

The map behind me illustrates the result of this failed policy: The creation of over 80 nuclear waste storage sites across our Nation. From coast to coast and from one international border to another, over 41 States have been affected by the lack of action. As my colleagues can see, this is not a regional problem; it's a national problem demanding a Federal solution.

Mr. President, the Federal Government should no longer be allowed to forget its commitment to the American public. Last year, the Federal court of appeals agreed that this was a Federal problem when it ruled that the Department of Energy will be liable for damages if it does not accept commercial nuclear waste by January 31, 1998.

Under current law, no one at the DOE will be held personally liable for any

assessed damages; the bill will go to the American taxpayers at an estimated cost between $40 and $80 billion. Such a tremendous liability burden on taxpayers would make the public bailout of the savings and loan collapse seem small in comparison.

Many others agree that a Federal solution is needed immediately. Frustrated with the DOE's inability to resolve our nuclear storage problem, the National Association of Regulatory Utility Commissioners, 48 State agencies, and 38 utilities have joined forces to ask the Federal courts to suspend ratepayer's payments into the nuclear waste fund, which finances the Federal Government's commercial nuclear waste program.

They are concerned that their constituents and customers are being asked to pay too many times for a failed policy.

Take, for instance, the situation facing ratepayers in my home State of Minnesota. Since 1982, Minnesota's nuclear energy consumers have paid over $250 million into the nuclear waste fund believing that the Federal Government would fulfill its obligation to transport nuclear waste out of Minnesota.

But as time went on and the DOE continued to ignore its responsibilities, utilities in Minnesota and around the country were forced to temporarily store their waste within the confines of their own facilities.

When it became clear to many utilities that storage space was running out and the Department of Energy would not accept waste by the established deadline, utilities then had to go to their States to ask for additional onsite storage or else be forced to shut down their operations.

For example, ratepayers in Minnesota, North Dakota, South Dakota, and Wisconsin were forced to pay for onsite storage in cooling pools at Prairie Island in southeastern Minnesota. In 1994, with storage space running out, the Minnesota Legislature—after a bruising battle—voted to allow for limited onsite dry cask storage until the year 2004.

Mr. President, the cost associated with this onsite storage is staggering. Ratepayers in the midwestern service area alone have paid over $25 million in storage costs and will pay an estimated $100 million more by the year 2015, in addition to the required payments to the Federal Government.

To make matters worse, storage space will run out at Prairie Island just after the turn of the century, forcing the plant to close unless the State legislature once again makes up for the DOE's inaction. This will threaten over 30 percent of Minnesota's overall energy resources and will likely lead to even higher costs for Minnesota's ratepayers.

In fact, the Minnesota Department of Public Service estimates that the increase in costs could reach as high as 17 percent, forcing ratepayers to eventually pay three times: once to the nuclear waste fund, again for onsite storage, and yet again for increased energy costs.

And Minnesota is not alone in facing this unacceptable situation; 36 other States across the Nation are facing similar circumstances of either shutting down and losing their energy-generating capacity or continuing to bail out the Federal Government for its failure to act.

So, Mr. President, when some of my colleagues speak about how well the status quo is working, I would simply point them to my home State of Minnesota where the status quo has failed dismally—to the detriment of the ratepayers and soon to the taxpayers.

Mr. President, I ask unanimous consent to submit for the RECORD recent letters from Minnesota Governor Arne Carlson and Minnesota Department of Public Service Commissioner Kris Sanda on the need to pass legislation correcting our Nation's nuclear waste program.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MINNESOTA DEPARTMENT
OF PUBLIC SERVICE,
St. Paul, MN, April 14, 1997.

Hon. ROD GRAMS,
Dirksen Building, Washington, DC.

DEAR SENATOR GRAMS: Your leadership on the need to address high-level nuclear waste at the nation's nuclear power plants is greatly appreciated. I will continue to do everything in my power to ensure a successful outcome to the vote tomorrow morning and assist you in your efforts on behalf of all Americans who face the costly burden of continuing to delay reform of the U.S. civilian nuclear waste program.

Attached is a letter from Governor Carlson sent this morning to individual Senators urging their vote for S. 104, the Nuclear Waste Policy Act of 1997. I hope it helps them to understand the urgency for action.

Once again, thank you for your powerful advocacy on this issue.

Sincerely,

KRIS SANDA,
Commissioner.

STATE OF MINNESOTA,
St. Paul, MN, April 14, 1997.

Hon. WAYNE ALLARD,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR ALLARD: I am writing to strongly urge your support for S. 104, the Nuclear Waste Policy Act of 1997. This Act addresses the glaring deficiencies and failures of this country's civilian nuclear waste program and is of the utmost importance to all American electric consumers and taxpayers.

In brief summary, S. 104:

ensures adequate funding for the permanent disposal program.

eliminates the need for individual high-level waste storage sites at 73 nuclear power plants in 34 states.

provides centralized waste storage for which DOE is legally responsible under contracts signed with individual utilities.

ensures the scientific integrity of the disposal program. It authorizes the President to locate the centralized storage site away from Yucca Mountain if, at the President's discretion, it is found to be an unsuitable site.

subjects waste transportation to Federal hazardous materials regulations and NRC oversight.

ensures National Environmental Policy Act (NEPA) reviews are prepared for licensing. Only those issues already addressed by Congress (i.e., facility need and program alternatives) are not revisited under NEPA.

averts tens of billions of dollars of U.S. Judgments Fund payments as well as related budget and appropriations problems that will result from program failure.

American consumers have paid $13 billion to meet their obligation for funding waste disposal under contracts with the federal government. Over half that money has been spent for something else. Now is the time to end this consumer fraud.

Please support S. 104.

Warmest regards,

GOVERNOR ARNE H. CARLSON.

Mr. GRAMS. Mr. President, if there's one part of the status quo that is working within our Nation's overall nuclear waste disposal program, it is the way in which the Federal Government is actively meeting the needs of foreign countries. It is not working for domestic spent fuel, but our program seems to be working very well in meeting the needs of spent nuclear fuel from foreign countries.

As this map shows, the DOE has resumed collecting spent nuclear fuel from a total of 41 countries under the Atoms for Peace Program.

Similar to the large number of our States which are facing nuclear waste storage problems, countries from around the world are experiencing the same problems. The only difference is that their needs—not our own ratepayers' needs—are being met by our Federal Government.

In fact, the DOE has completed urgent relief shipments of 252 spent nuclear fuel assemblies from European nations to the agency's facility at Savannah River. It has also accepted nuclear spent fuel from Latin American countries. Ultimately, as I learned during a recent trip to the Savannah River site, up to 890 foreign research reactor cores will be accepted by the DOE over a 13-year period.

So they can take it from foreign countries and handle it safely, but somehow they cannot handle domestic spent nuclear fuels.

Mr. President, an important point to discuss when it comes to these foreign nuclear waste shipments is how they are transported once they reach the continental United States. Nuclear assemblies from these 41 countries have been and will continue to be transported by rail and truck to the Savannah River facility. These photographs illustrate just one of the means by which shipments of foreign-generated fuel are being transported to the DOE's facility. Here, my colleagues can clearly see how foreign nuclear waste is being loaded on to railcars at Charleston Harbor and then shipped to the Savannah River facility. The safety record of these shipments speaks for itself.

The Federal Government is also actively accepting nuclear waste from many of our universities nationwide. As this map indicates, nuclear waste from research reactors at our finest

educational institutions is being accepted at the DOE's Savannah River facility. Again, this nuclear waste is being safely transported by rail and truck across the Nation. Chairman MURKOWSKI also spoke extensively on this safety record earlier today.

There has not been one accident nor any release of nuclear fuel. These shipments serve as a very small portion of the 2,400 shipments of high-level nuclear waste that has already been shipped across the United States, including naval spent fuel. So, Mr. President, as the distinguished chairman of the Senate Energy and Natural Resources Committee has indicated, transportation is no longer a question of technology but becomes one of politics.

I understand the rationale behind reducing our international nuclear dangers by collecting and transporting spent fuel within our borders. But what I and many others cannot comprehend is how our Government has made it a priority to help foreign countries with their nuclear waste problems while simultaneously ignoring the concerns right here in our own country.

Under this scheme, our Nation will have a disjointed nuclear waste storage policy: one that works for our universities and foreign nations and another that has failed and will soon be partially administered by the actions of the Federal Court of Appeals. It seems clear to me that while States, utilities, and ratepayers have kept their end of the bargain, the DOE has not. That sends the wrong message to the American people about trusting the promises of the Federal Government.

The Federal Government is living up to its promises in the Atoms for Peace Program. It is accepting spent nuclear fuel from 41 countries. They have lived up to that policy, that agreement, and that contract, but somehow they can't live up to contracts with the American ratepayers.

Despite widespread support for action to create an interim storage site—including support from former DOE Secretary Hazel O'Leary and Dan Dreyfus, the former administrator of the civilian nuclear waste program under the Clinton administration—the DOE has failed to offer a substantive alternative to our legislation. Although the Department's new Secretary, Federico Peña, now admits that a Federal solution is needed to resolve our interim storage problems, he recently indicated in a meeting with nuclear utility executives that the DOE is still unwilling to move commercial spent fuel. Instead, the DOE offered a proposal to compensate utilities for on-site storage.

In other words, they will not accept it. But the DOE says it is willing and offered a proposal to compensate utilities for on-site storage.

Unfortunately, this proposed compensation scheme does little but needlessly spend the taxpayers' money while continuing the failed status quo. In other words, it just wants to collect more money from the taxpayers and then pay it out as compensation. So you are going to take it from one pocket and put it into another. It is still the taxpayers who are going to be left holding the bag, not the Department of Energy, not their budget, not the Secretary of Energy Mr. Peña, but the taxpayers. In other words, they don't want to solve the problem. They just want taxpayers to continue to pay for their mistakes. It signals to the ratepayers that the Federal Government has no intention of moving commercial nuclear waste in the near future, despite a Federal court mandate.

Moreover, continuing the policy of noncentralized storage facilities may lead to the premature shutdown of one nuclear plant in Minnesota—compromising 30 percent of the State's energy needs and significantly increasing ratepayer costs.

Again, this is not only typical to Minnesota. Many other States face the same problem. Many utilities are facing the same problem. Ratepayers could be paying the same increase in power because, again, of the lack of action by the DOE.

In recent communications to the Senate, DOE Secretary Peña and the President's Office of Management and Budget yet again indicated the Clinton administration's opposition to our legislation to move nuclear waste from the over 80 sites around the Nation.

Speaking of the need for a long-term, permanent repository, the letters failed to address any specific alternatives to our legislation or how the Federal Government will address future taxpayer liability in light of the DOE's failure to live up to its 1998 contractual deadline. They offer no alternative except to sit back and say, yes, they will adhere to any court-ordered compensation because it is no money out of their pocket. They can just delay or defer any kind of an agreement or answer and will not live up to their contractual deadline.

In the last week of debate on this legislation, we have negotiated with Senator BINGAMAN and others who want to resolve our interim nuclear waste storage needs. Some important and constructive changes to our bill have resulted from that. Although I oppose one change that moves the construction of the interim storage facility back 1 or 2 years, a number of reforms have been made to address the concerns of the administration. Among them are helpful provisions strengthening radiation protection standards, preemption of State and Federal laws, environmental concerns, and funding for the civilian nuclear waste program.

These important changes should help persuade some of my colleagues to support this commonsense environmental protection bill, and it should also help pave the way for the President to sign this legislation based on sound policy and not to veto it due to political concerns. Again, this is not oversight. It is not over technology. It is not over the safety record of transportation of spent fuel. It is basic, raw politics. And above all, Congress has an obligation to protect the American public from the estimated $40 to $80 billion they face in liability expenses. Our bill will reform our current civilian nuclear waste program to help avoid the squandering of billions of dollars of ratepayers' and taxpayers' money—not that the Federal Government hasn't wasted enough recently, but with tax day tomorrow, this should also come as more important to taxpayers to say they don't want billions more dollars squandered.

It will eliminate the current need for onsite storage at our Nation's nuclear plants, keep plants from shutting down prematurely due to the lack of storage space, and maintain stable energy prices.

Mr. President, for too long our States, our ratepayers and taxpayers have been threatened by a policy of inaction. As reported out of the Energy and Natural Resources Committee and amended in the Chamber, this legislation sets up a time line for the DOE to finally live up to its promises again while helping to protect our environment. As a result, this bill has broad bipartisan support across the Nation. It deserves to be passed overwhelmingly on behalf of the American public. In closing, I urge my colleagues to cast politics aside and to take a giant step forward by voting for this very much-needed legislation.

I thank the Chair. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Nevada.

Mr. REID. I say to my friend from Minnesota, as we have laid across the RECORD here in these proceedings this past week, this legislation is bad legislation. If they, the proponents of this legislation, were truly concerned about the ratepayers and the fact that there is a court decision that says that the Federal Government is responsible under the contractual provisions that they entered into with the utilities, it would seem there should be something in the legislation agreeing to compensate utilities. Nothing. That shows how disingenuous the proponents of this legislation are. They talk about problems, but the legislation does not meet that.

Some have complained, Mr. President, as has my friend from Minnesota, about the rate of progress toward determining Yucca Mountain's suitability for permanent disposition of this waste material. Others have complained about the returns from the investments in the Yucca Mountain characterization. Those who complain about the Yucca Mountain schedule should remember that the Congress has consistently underfunded the project budget. Requested levels for funding have never been met. In fact, allocations have been less than 75 percent of requested levels.

Perhaps more importantly, this job of developing a permanent repository

of nuclear waste is far more difficult than critics are willing to admit. It is far more difficult than even the technical community thought it would be when they started. That difficulty should not be a mystery. We are undertaking a mission that has never been done before. We are starting down a path to completely isolate from the environment the most dangerous material in human history for a period longer than recorded human history.

We have no experience with such an assignment, so a lot of options must be explored to provide a foundation for the assumptions we must make to evaluate effectiveness of final design. Utilities have pushed these time lines. The reality of a permanent repository demands a research program in which many unforeseen obstacles must be understood and resolved.

These things take time and money. The Congress has seen fit to deny the money, so more time has been required than was initially estimated.

Complaints about returns on the investment in Yucca Mountain have no basis in fact either. Those who benefit from nuclear power have been paying into the nuclear waste repository at the rate of 1 mill per kilowatt hour. Those collections today amount to nearly $12 billion, much of which has yet to be spent.

So there is a lot of talk about abuse of this fund by inappropriate application of its resources. It is true that more has been collected from the ratepayers than has been appropriated for waste disposal to date, but the final bill for a permanent repository is estimated to be between $34 billion and $50 billion. That is more than the current plan proposes to collect, so it is likely the ratepayers will come out ahead.

That means the general public will contribute to the waste repository so that ratepayers will get a break before all is said and done.

I agree that the waste fund should not be applied to inappropriate activities, and I do not think it has. I agree that we should be vigilant to see that all the ratepayers' contributions are used for the permanent disposition of spent nuclear fuel. But I also believe that the general taxpayers should not have to pick up the tab for a repository except for that fraction dedicated to disposition of defense nuclear waste from whose generation we all benefited through assurance of our national security.

S. 104 provides no improving legislation with regard to funding the repository, and none is needed now. The returns on Yucca Mountain investments will be realized when the characterization is complete and not before. Site characterization must be completed before we see clearly the path of future actions.

In short, my friend from Minnesota has not addressed the problems that we face. Those problems are the environmental laws are not being met. The transportation problems are certainly not being met. And the fact is that there are many, many problems still in existence.

The parties to the current litigation regarding DOE's contracts with waste holders are using on-site storage costs to justify their threats to seek damages from the Government. We have gone into this on many occasions.

Sponsors of S. 104 stood and argued on this floor that only passage of this bill will relieve every American of this huge obligation. The actual incremental costs of on-site storage at the generator sites is minimal. That cost is negligible when compared to the costs of transportation and the costs that the permanent or temporary repository would cost.

I believe that we should understand that we are here as a result of the nuclear power industry, and that reason only. There are certainly, Mr. President, many reasons why the statement of the Senator from Minnesota was without fact. Those are spread across this record. We have answered such statements on many occasions these past 7 days.

HANFORD NUCLEAR RESERVATION

Mr. GORTON. Mr. President, I would like a clarification of the scope and intent of the committee's third amendment to S. 104. That amendment, which is incorporated into section 204(b)(1)(D) of the act, states that the President shall not designate the Hanford Nuclear Reservation in the State of Washington as the site for construction of an interim storage facility.

Am I correct in my belief that this amendment defines interim storage facility in a way that would not preclude steps that the Washington Public Power Supply System might need to take with regard to the storage of the spent nuclear fuel generated at the WNP–2 facility?

Mr. MURKOWSKI. The Senator is correct. The intent of the committee in adopting the third committee amendment was to prevent the President from designating the Hanford Nuclear Reservation as the site of the nationwide interim storage facility for all civilian and spent nuclear fuel and high-level radioactive waste from U.S. commercial reactors. This amendment is not intended to preclude steps that an individual utility, such as the supply system, might need to take to manage the storage of its own spent nuclear fuel.

Mr. NICKLES. Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 570 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Wyoming.

Mr. THOMAS. Mr. President, I ask unanimous consent to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

BISON IN YELLOWSTONE PARK

Mr. THOMAS. Mr. President, I rise to talk about a difficulty that we have had this winter in Wyoming and Montana in the Yellowstone Park area with respect to buffalo. Many of you, of course, have read about the problem as a result of an extremely difficult winter, freezing rain and snow, lack of feed, and I think also an excessive number of buffalo. As chairman of the Senate Energy Committee Subcommittee on National Parks, I come to the floor today to announce that we plan to hold hearings on the prospective plan for bison in Yellowstone Park next year. It is not our purpose to particularly pick apart what happened last year, but what we want to do is avoid the same thing happening in the year that is to come.

Many of you have probably read in this weekend's New York Times some details about the conflicting and contentious perspectives regarding bison and the issue of brucellosis. The hearing I plan to have will be to spur the Interior Department to set a plan for the upcoming year. If we do not, then we might very well end up with another year of the same kinds of difficulties.

Many buffalo in Yellowstone Park are afflicted with brucellosis, which is a major threat to the surrounding livestock States that border on Yellowstone Park, particularly, in this case, Montana. Unfortunately, the only solution that has been developed so far for the Park Service in the State of Montana is to shoot the buffalo as they come out of Yellowstone. Clearly, that solution is not acceptable. We have to find one that is a long-term solution to the problem.

Management of the bison herd in Yellowstone is not a brand new idea. Clearly, there has to be some kind of management to a herd of this kind. There has been a great deal of interest in having a natural, free-roaming herd, which would be a nice thing. Up until about 1967, however, it was managed very closely. Then the decision was made to let the herd simply act as it would in a natural situation and be controlled by the lack of feed and predators and all those kinds of things. Unfortunately, that is not very workable in a park that is visited by 3 million people a year, in a park where other kinds of controls are not in place. So the result is the herd had grown from somewhere in the neighborhood of 1,500 bison to nearly 4,000. There are over 3,500. As long as the weather circumstances and the grazing circumstances were excellent, they were able to get by, even though most observers did note that the grazing there was damaged considerably by that number of bison.