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HOUSE OF REPRESENTATIVES
REPT. 105–290
Part 1

NUCLEAR WASTE POLICY ACT OF 1997

OCTOBER 1, 1997.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1270]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1270) to amend the Nuclear Waste Policy Act of 1982, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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59–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AMENDMENT OF NUCLEAR WASTE POLICY ACT OF 1982.

The Nuclear Waste Policy Act of 1982 is amended to read as follows:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Nuclear Waste Policy Act of 1997'.

"(b) TABLE OF CONTENTS.—

"SEC. 2. DEFINITIONS.

"For purposes of this Act:

"(1) ACCEPT, ACCEPTANCE.—The terms 'accept' and 'acceptance' mean the Secretary's act of taking possession of spent nuclear fuel or high-level radioactive waste.

"(2) ACCEPTANCE SCHEDULE.—The term 'acceptance schedule' means the schedule established in section 508 for acceptance of spent nuclear fuel and high-level radioactive waste.

"(3) AFFECTED INDIAN TRIBE.—The term 'affected Indian tribe' means any Indian tribe—

"(A) within whose reservation boundaries the interim storage facility or a repository for spent nuclear fuel or high-level radioactive waste, or both, is proposed to be located; or

"(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"(4) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

"(5) ATOMIC ENERGY DEFENSE ACTIVITY.—The term 'atomic energy defense activity' means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

"(A) Naval reactors development.

"(B) Weapons activities including defense inertial confinement fusion.

"(C) Verification and control technology.

"(D) Defense nuclear materials production.

"(E) Defense nuclear waste and materials byproducts management.

"(F) Defense nuclear materials security and safeguards and security investigations.

"(G) Defense research and development.

"(6) CIVILIAN NUCLEAR POWER REACTOR.—The term 'civilian nuclear power reactor' means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

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

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

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

"(10) DISPOSAL SYSTEM.—The term 'disposal system' means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

"(11) ENGINEERED BARRIERS.—The terms 'engineered barriers' and 'engineered systems and components,' mean man made components of a disposal system. Such terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

"(12) HIGH-LEVEL RADIOACTIVE WASTE.—The term 'high-level radioactive waste' means—

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

"(B) the highly radioactive material resulting from atomic energy defense activities; and

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

"(13) FEDERAL AGENCY.—The term 'Federal agency' means any Executive agency, as defined in section 105 of title 5, United States Code.

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

"(15) INTEGRATED MANAGEMENT SYSTEM.—The term 'integrated management system' means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste.

"(16) INTERIM STORAGE FACILITY.—The term 'interim storage facility' means a facility designed and constructed for the receipt, handling, possession, safe-

guarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

"(17) INTERIM STORAGE FACILITY SITE.—The term 'interim storage facility site' means the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

"(18) LOW-LEVEL RADIOACTIVE WASTE.—The term 'low-level radioactive waste' means radioactive material that—

"(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

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

"(19) METRIC TONS URANIUM.—The terms 'metric tons uranium' and 'MTU' mean the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

"(20) NUCLEAR WASTE FUND.—The term 'Nuclear Waste Fund' means the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

"(21) OFFICE.—The term 'Office' means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

"(22) PACKAGE.—The term 'package' means the primary container that holds, and is in direct contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials and any overpack that are emplaced at a repository.

"(23) PROGRAM APPROACH.—The term 'program approach' means the Civilian Radioactive Waste Management Program Plan, dated May 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

"(24) REPOSITORY.—The term 'repository' means a system designed and constructed under title II of this Act for the permanent geologic disposal of spent nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

"(25) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

"(26) SITE CHARACTERIZATION.—The term 'site characterization' means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

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

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

"(29) WITHDRAWAL.—The term 'withdrawal' has the same definition as that set forth in the Federal Land Policy and Management Act (43 U.S.C. 1702 et seq.).

"(30) YUCCA MOUNTAIN SITE.—The term 'Yucca Mountain site' means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

"SEC. 3. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) while spent nuclear fuel can be safely stored at reactor sites, the expeditious movement to and storage of such spent nuclear fuel at a centralized Federal facility will enhance the nation's environmental protection;

"(2) while the Federal Government has the responsibility to provide for the centralized interim storage and permanent disposal of spent nuclear fuel and high-level radioactive waste to protect the public health and safety and the environment, the costs of such storage and disposal should be the responsibility

of the generators and owners of such waste and fuel, including the Federal Government;

"(3) in the interests of protecting the public health and safety, enhancing the nation's environmental protection, promoting the nation's energy security, and ensuring the Secretary's ability to commence acceptance of spent nuclear fuel and high-level radioactive waste no later than January 31, 2002, it is necessary for Congress to authorize the interim storage facility;

"(4) deficit-control measures designed to limit appropriation of general revenues have limited the availability of the Nuclear Waste Fund for its intended purposes; and

"(5) the Federal Government has the responsibility to provide for the permanent disposal of waste generated from United States atomic energy defense activities.

"(b) PURPOSES.—The purposes of this Act are—

"(1) to direct the Secretary to develop an integrated management system in accordance with this Act so that the Department can accept spent nuclear fuel or high-level radioactive waste for interim storage commencing no later than January 31, 2002, and for permanent disposal at a repository commencing no later than January 17, 2010;

"(2) to provide for the siting, construction, and operation of a repository for permanent geologic disposal of spent nuclear fuel and high-level radioactive waste in order to adequately protect the public and the environment;

"(3) to take those actions necessary to ensure that the consumers of nuclear energy, who are funding the Secretary's activities under this Act, receive the services to which they are entitled and realize the benefits of enhanced protection of public health and safety, and the environment, that will ensue from the Secretary's compliance with the obligations imposed by this Act; and

"(4) to provide a schedule and process for the expeditious and safe development and commencement of operation of an integrated management system and any necessary modifications to the transportation infrastructure to ensure that the Secretary can commence acceptance of spent nuclear fuel and high-level radioactive waste no later than January 31, 2002.

"TITLE I—OBLIGATIONS

"SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

"(a) DISPOSAL.—The Secretary shall develop and operate a repository for the permanent geologic disposal of spent nuclear fuel and high-level radioactive waste.

"(b) ACCEPTANCE.—The Secretary shall accept spent nuclear fuel and high-level radioactive waste for storage at the interim storage facility pursuant to section 204 in accordance with the acceptance schedule, beginning not later than January 31, 2002.

"(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary.

"(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

"SEC. 201. INTERMODAL TRANSFER.

"(a) TRANSPORTATION.—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site. If direct rail access becomes available to the interim storage facility site, the Secretary may use rail transportation to meet the requirements of this title.

"(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than January 31, 2002.

"(c) ACQUISITIONS.—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

"(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and rights-of-way as required to facilitate replacement of land and city wastewater disposal activities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than January 31, 2002.

"(e) NOTICE AND MAP.—Within 6 months of the date of enactment of this Act, the Secretary shall—

"(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this section; and

"(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in legal descriptions and make minor adjustments in the boundaries.

"(f) IMPROVEMENTS.—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

"(g) HEAVY-HAUL TRANSPORTATION ROUTE.—

"(1) DESIGNATION OF ROUTE.—The route for the heavy-haul truck transport of spent nuclear fuel and high-level radioactive waste shall be as designated in the map dated July 21, 1997 (referred to as 'Heavy-Haul Route') and on file with the Secretary.

"(2) TRUCK TRANSPORTATION.—The Secretary, in consultation with the State of Nevada and appropriate counties and local jurisdictions, shall establish reasonable terms and conditions pursuant to which the Secretary may utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from Caliente, Nevada, to the interim storage facility site.

"(3) IMPROVEMENTS AND MAINTENANCE.—Notwithstanding any other law—

"(A) the Secretary shall be responsible for any incremental costs related to improving or upgrading Federal, State, and local roads within the heavy-haul transportation route utilized, and performing any maintenance activities on such roads, as necessary, to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste; and

"(B) any such improvement, upgrading, or maintenance activity shall be funded solely by appropriations made pursuant to sections 401 and 403 of this Act.

"(h) LOCAL GOVERNMENT INVOLVEMENT.—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

"SEC. 202. TRANSPORTATION PLANNING.

"(a) TRANSPORTATION READINESS.—The Secretary shall take those actions that are necessary and appropriate to ensure that the Secretary is able to accept and transport spent nuclear fuel and high-level radioactive waste beginning not later than January 31, 2002. As soon as is practicable following the enactment of this Act, the Secretary shall analyze each specific reactor facility in the order of priority established in the acceptance schedule, and develop a logistical plan to assure the Secretary's ability to transport spent nuclear fuel and high-level radioactive waste.

"(b) TRANSPORTATION PLANNING.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility no later than January 31, 2002. Among other things, such planning shall provide a schedule and process for addressing and implementing, as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, and transportation tracking programs.

"SEC. 203. TRANSPORTATION REQUIREMENTS.

"(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

"(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

"(c) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Secretary shall provide technical assistance and funds to States, affected units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste for training for public safety officials of appropriate units of local government. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Secretary's duty to provide technical and financial assistance under this subsection shall be limited to amounts specified in annual appropriations.

"(2) EMPLOYEE ORGANIZATIONS.—

"(A) IN GENERAL.—The Secretary shall provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste or emergency response or post-emergency response with respect to such transportation.

"(B) TRAINING.—Training under this paragraph—

"(i) shall cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations;

"(ii) shall be consistent with any training standards established by the Secretary of Transportation; and

"(iii) shall include—

"(I) a training program applicable to persons responsible for responding to emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste;

"(II) instruction of public safety officers in procedures for the command and control of the response to any incident involving the waste; and

"(III) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving spent nuclear fuel or high-level radioactive waste being transported.

"(3) GRANTS.—To implement this subsection, grants shall be made under section 401(c).

"(4) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

"(d) USE OF PRIVATE CARRIERS.—The Secretary, in providing for the transportation of spent nuclear fuel and high-level radioactive waste under this Act, shall by contract use private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination by the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at a reasonable cost.

"(e) TRANSFER OF TITLE.—Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.

"(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of section 20109 of title 49, United States Code (in the case of employees of railroad carriers), and section 31105 of title 49, United States Code (in

the case of employees operating commercial motor vehicles), or the Commission (in the case of all other employees).

"(g) TRAINING STANDARD.—

"(1) REGULATION.—No later than 12 months after the date of enactment of this Act, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(2) SECRETARY OF TRANSPORTATION.—If the Secretary of Transportation determines, in promulgating the regulation required by paragraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation and the Commission shall use their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

"(3) TRAINING STANDARDS CONTENT.—The training standards required to be promulgated under paragraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

"(A) a specified minimum number of hours of initial off site instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

"(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

"(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(4) AUTHORIZATION.—There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

"SEC. 204. INTERIM STORAGE.

"(a) AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations and shall commence operation in phases by January 31, 2002. The interim storage facility shall store spent nuclear fuel and high-level radioactive waste until the Secretary is able to transfer such fuel and waste to the repository.

"(b) DESIGN.—The design of the interim storage facility shall provide for the use of storage technologies licensed or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

"(c) LICENSING.—

"(1) PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than January 31, 2002.

"(2) FIRST PHASE.—No later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more than 10,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 36 months from the date of the submittal of the application for such license.

"(3) SECOND PHASE.—The Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. The

license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.

"(d) ADDITIONAL AUTHORITY.—

"(1) CONSTRUCTION.—For the purpose of complying with subsection (a), the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of this Act and shall commence construction of the first phase of the interim storage facility subsequent to submittal of the license application except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

"(2) FACILITY USE.—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of this Act and within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

"(e) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

"(1) PRELIMINARY DECISIONMAKING ACTIVITIES.—The Secretary's activities under this section, including the selection of a site for the interim storage facility, the preparation and submittal of any license application, and the construction and operation of any facility shall be considered preliminary decisionmaking activities for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or require any environmental review under subparagraph (E) or (F) of such Act.

"(2) ENVIRONMENTAL IMPACT STATEMENT.—

"(A) FINAL DECISION.—A final decision of the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—

"(i) shall assume that 40,000 MTU will be stored at the facility; and

"(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

"(B) CONSIDERATIONS.—Such Environmental Impact Statement shall not consider—

"(i) the need for the interim storage facility, including any individual component thereof;

"(ii) the time of the initial availability of the interim storage facility;

"(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

"(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

"(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

"(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

"(f) JUDICIAL REVIEW.—Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.

"(g) WASTE CONFIDENCE.—The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Commission of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of

the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(h) SAVINGS CLAUSE.—Nothing in this Act shall affect the Commission's procedures for the licensing of any technology for the dry storage of spent nuclear fuel at the site of any civilian nuclear power reactor as adopted by the Commission under section 218 of the Nuclear Waste Policy Act of 1982, as in effect prior to the date of the enactment of this Act. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

"SEC. 205. PERMANENT DISPOSAL.

"(a) SITE CHARACTERIZATION.—

"(1) GUIDELINES.—The guidelines promulgated by the Secretary and published at 10 CFR part 960 are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.

"(2) SITE CHARACTERIZATION ACTIVITIES.—The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization if the Secretary modifies or eliminates those site characterization activities designed to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).

"(3) DATE.—No later than December 31, 2002, the Secretary shall apply to the Commission for authorization to construct a repository that will commence operations no later than January 17, 2010. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.

"(4) MAXIMIZING CAPACITY.—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository.

"(b) LICENSING.—Within one year of the date of enactment of this Act, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

"(1) CONSTRUCTION AUTHORIZATION.—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) with adequate protection of the health and safety of the public; and

"(C) consistent with the common defense and security.

"(2) LICENSE.—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) with adequate protection of the health and safety of the public; and

"(C) consistent with the common defense and security.

"(3) CLOSURE.—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission's regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment upon finding that there is reasonable assurance that the repository can be permanently closed—

"(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

"(B) with adequate protection of the health and safety of the public; and

"(C) consistent with the common defense and security.

"(4) POST-CLOSURE.—The Secretary shall take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

"(A) breaching the repository's engineered or geologic barriers: or

"(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

"(c) MODIFICATION OF REPOSITORY LICENSING PROCEDURE.—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of only that quantity of spent nuclear fuel or high-level radioactive waste that is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

"(d) LICENSING STANDARDS.—Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall not promulgate, by rule or otherwise, standards for protection of the public from releases of radioactive materials or radioactivity from the repository and any such standards existing on the date of enactment of this Act shall not be incorporated in the Commission's licensing regulations. The Commission's repository licensing determinations for the protection of the public shall be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1)(A) and applied in accordance with the provisions of paragraph (1)(B). The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards:

"(1) RELEASE STANDARD.—

"(A) ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the Commission, in consultation with the Administrator of the Environmental Protection Agency, determines by rule that such standard would not provide for adequate protection of the health and safety of the public and establishes by rule another standard which will provide for adequate protection of the health and safety of the public. Such standard shall constitute an overall system performance standard.

"(B) APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.—The Commission shall issue the license if it finds reasonable assurance that—

"(i) for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on a deterministic or probabilistic evaluation of the overall performance of the disposal system; and

"(ii) for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository, there is likely to be compliance with the overall system performance standard based on regulatory insight gained through the use of a probabilistic integrated performance model that uses best estimate assumptions, data, and methods.

"(2) HUMAN INTRUSION.—The Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(3), shall be sufficient to—

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

"(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits as specified in paragraph (1).

"(e) NATIONAL ENVIRONMENTAL POLICY ACT.—

"(1) SUBMISSION OF STATEMENT.—Construction and operation of the repository shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall submit an environmental impact statement on the construction and operation of the repository to the Commission with the application for construction authorization.

"(2) CONSIDERATIONS.—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, alternative sites for the repository, the time of the initial availability of the repository, or any alternatives to the isolation of spent nuclear fuel and high-level radioactive waste in a repository.

"(3) ADOPTION BY COMMISSION.—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). In any such statement prepared with respect to the repository, the Commission shall not consider the need for a repository, the time of initial availability of the repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

"(f) JUDICIAL REVIEW.—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

"SEC. 206. LAND WITHDRAWAL.

"(a) WITHDRAWAL AND RESERVATION.—

"(1) WITHDRAWAL.—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

"(2) JURISDICTION.—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

"(3) RESERVATION.—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

"(b) LAND DESCRIPTION.—

"(1) BOUNDARIES.—The boundaries depicted on the map entitled 'Interim Storage Facility Site Withdrawal Map,' dated July 28, 1995, and on file with the Secretary, are established as the boundaries of the interim storage facility site.

"(2) BOUNDARIES.—The boundaries depicted on the map entitled 'Yucca Mountain Site Withdrawal Map,' dated July 28, 1995, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

"(3) NOTICE AND MAPS.—Within 6 months of the date of enactment of this Act, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

"(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(4) NOTICE AND MAPS.—Concurrent with the Secretary's application to the Commission for authority to construct the repository, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the Yucca Mountain site; and

"(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(5) CONSTRUCTION.—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

"SEC. 207. PRIVATE STORAGE FACILITIES.

"(a) COMMISSION ACTION.—Upon application by one or more private entities for a license for an independent spent fuel storage installation not located at the site of a civilian nuclear power reactor, the Commission shall review such license application and issue a license for one or more such facilities at the earliest practicable date, to the extent permitted by the applicable provisions of law and regulation.

"(b) SECRETARY'S ACTIONS.—The Secretary shall encourage efforts to develop private facilities for the storage of spent nuclear fuel by providing any requested information and assistance, as appropriate, to the developers of such facilities and to State and local governments and Indian tribes within whose jurisdictions such facilities may be located, and shall cooperate with the developers of such facilities to facilitate compatibility between such facilities and the integrated management system.

"(c) OBLIGATION.—The Secretary shall satisfy the Secretary's obligations under this Act notwithstanding the development of private facilities for the storage of spent nuclear fuel or high-level radioactive waste.

"TITLE III—LOCAL RELATIONS

"SEC. 301. ON-SITE REPRESENTATIVE.

"The Secretary shall offer to Nye County, Nevada, an opportunity to designate a representative to conduct on-site oversight activities at the Yucca Mountain site. Reasonable expenses of such representatives shall be paid by the Secretary.

"SEC. 302. BENEFITS AGREEMENTS.

"(a) IN GENERAL.—

"(1) SEPARATE AGREEMENTS.—The Secretary shall offer to enter into separate agreements with Nye County, Nevada, and Lincoln County, Nevada, concerning the integrated management system.

"(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of Nye County, Nevada, and Lincoln County, Nevada.

"(b) AMENDMENT.—An agreement entered into under subsection (a) may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with subsection (c).

"(c) TERMINATION.—The Secretary shall terminate an agreement under subsection (a) if any element of the integrated management system may not be completed.

"(d) LIMITATION.—Only 1 agreement each for Nye County, Nevada, and Lincoln County, Nevada, may be in effect at any one time.

"(e) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

"SEC. 303. CONTENT OF AGREEMENTS.

"(a) IN GENERAL.—

"(1) SCHEDULE.—The Secretary, subject to appropriations, shall make payments to the party of a benefits agreement under section 302(a) in accordance with the following schedule:

"BENEFITS SCHEDULE

[Amounts in millions]

Event	County
(A) Annual payments prior to first receipt of fuel	$2.5
(B) Upon first spent fuel receipt	$5
(C) Annual payments after first spent fuel receipt until closure of facility	$5

"(2) DEFINITIONS.—For purposes of this section, the term—

"(A) 'spent fuel' means high-level radioactive waste or spent nuclear fuel; and

"(B) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) ANNUAL PAYMENTS.—Annual payments prior to first spent fuel receipt under line (A) of the benefit schedule shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facil-

ity under line (C) of the benefit schedule shall be made on the anniversary date of such first spent fuel receipt.

"(4) REDUCTION.—If the first spent fuel payment under line (B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under line (A) of the benefit schedule, such first spent fuel payment under line (B) of the benefit schedule shall be reduced by an amount equal to 1/12 of such annual payment under line (A) of the benefit schedule for each full month less than 6 that has not elapsed since the last annual payment under line (A) of the benefit schedule.

"(b) CONTENTS.—A benefits agreement under section 302 shall provide that—

"(1) the parties to the agreement shall share with one another information relevant to the licensing process for the interim storage facility or repository, as it becomes available; and

"(2) the affected unit of local government that is party to such agreement may comment on the development of the integrated management system and on documents required under law or regulations governing the effects of the system on the public health and safety.

"(c) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under section 302 shall constitute a commitment by the United States to make payments in accordance with such agreement.

"SEC. 304. ACCEPTANCE OF BENEFITS.

"(a) CONSENT.—The acceptance or use of any of the benefits provided under this title by any affected unit of local government shall not be deemed to be an expression of consent, express, or denied, either under the Constitution of the State of Nevada or any law thereof, to the siting of the interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

"(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State of Nevada, to oppose the siting in Nevada of the interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

"(c) LIABILITY.—No liability of any nature shall accrue to be asserted against the State of Nevada, its Governor, any official thereof, or any official of any governmental unit thereof, premised solely upon the acceptance or use of benefits under this title.

"SEC. 305. RESTRICTION ON USE OF FUNDS.

"None of the funding provided under section 303 may be used—

"(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

"(2) for litigation purposes; and

"(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

"SEC. 306. INITIAL LAND CONVEYANCES.

"(a) CONVEYANCE OF PUBLIC LANDS.—Within 120 days after October 1, 1998, the Secretary of the Interior, or other agency with jurisdiction over the public lands described in subsection (b), shall convey the public lands described in subsection (b) to the appropriate county, unless the county notifies the Secretary of the Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye, County of Lincoln, or the City of Caliente under this subsection that are subject to a Federal grazing permit or a similar federally granted privilege shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the privilege would be able to legally terminate such privilege under the statutes and regulations existing on October 1, 1998, unless the Federal agency, county or city, and the affected holder of the privilege negotiate an agreement that allows for an earlier conveyance, but in no case to occur earlier than October 1, 1998.

"(b) SPECIAL CONVEYANCES.—Subject to valid existing rights and notwithstanding any other law, the Secretary of the Interior or the head of the other appropriate agency shall convey:

"(1) To the County of Nye, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:

"Map 1: Proposed Pahrump Industrial Park Site

"Map 2: Proposed Lathrop Wells (Gate 510) Industrial Park Site

"Map 3: Pahrump Landfill Sites
"Map 4: Amargosa Valley Regional Landfill Site
"Map 5: Amargosa Valley Municipal Landfill Site
"Map 6: Beatty Landfill/Transfer station Site
"Map 7: Round Mountain Landfill Site
"Map 8: Tonopah Landfill Site
"Map 9: Gabbs Landfill Site.

"(2) To the County of Lincoln, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:
"Map 2: Lincoln County, Parcel M, Industrial Park Site, Jointly with the City of Caliente
"Map 3: Lincoln County, Parcels F and G, Mixed Use, Industrial Sites
"Map 4: Lincoln County, Parcels H and I, Mixed Use and Airport Expansion Sites
"Map 5: Lincoln County, Parcels J and K, Mixed Use, Airport and Landfill Expansion Sites
"Map 6: Lincoln County, Parcels E and L, Mixed Use, Airport and Industrial Expansion Sites.

"(3) To the City of Caliente, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:
"Map 1: City of Caliente, Parcels A, B, C and D, Community Growth, Landfill Expansion and Community Recreation Sites
"Map 2: City of Caliente, Parcel M, Industrial Park Site, jointly with Lincoln County.

"(c) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The activities of the Secretary and the head of any other Federal agency in connection with subsections (a) and (b) shall be considered preliminary decision making activities. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

"SEC. 307. PAYMENTS EQUAL TO TAXES.

"(a) TAXABLE AMOUNTS.—In addition to financial assistance provided under this title, the Secretary is authorized to grant to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amount such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.

"(b) TERMINATION.—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

"(c) ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.—
"(1) PERIOD.—Any affected Indian tribe or affected unit of local government may not receive any grant under subsection (a) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.
"(2) ACTIVITIES.—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

"TITLE IV—FUNDING AND ORGANIZATION

"SEC. 401. PROGRAM FUNDING.

"(a) CONTRACTS.—
"(1) AUTHORITY OF SECRETARY.—In the performance of the Secretary's functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such spent fuel or waste upon the payment of fees in accordance with paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended.
"(2) ANNUAL FEES.—

"(A) ELECTRICITY.—

"(i) IN GENERAL.—Under a contract entered into under paragraph (1) there shall be a fee for electricity generated by civilian nuclear power reactors and sold on or after the date of enactment of this Act. The aggregate amount of such fees collected during each fiscal year shall be no greater than the annual level of appropriations for expenditures on the integrated management system for that fiscal year, minus—

"(I) any unobligated balance of fees collected during the previous fiscal year; and

"(II) such appropriations required to be funded by the Federal Government pursuant to section 403.

"(ii) FEE LEVEL.—The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that for the period commencing with fiscal year 1999 and continuing through the fiscal year in which disposal at the repository commences—

"(I) the average annual fee collected under this subparagraph shall not exceed 1.0 mill per-kilowatt hour generated and sold; and

"(II) the fee in any fiscal year in such period shall not exceed 1.5 mill per kilowatt hour generated and sold.

Thereafter, the annual fee collected under this subparagraph shall not exceed 1.0 mill per-kilowatt hour generated and sold. Fees assessed pursuant to this subparagraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended.

"(B) EXPENDITURES IF SHORTFALL.—If, during any fiscal year, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

"(i) any unobligated balance collected pursuant to this section during the previous fiscal year, and

"(ii) such appropriations required to be funded by the Federal Government pursuant to section 403,

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of appropriations.

"(C) RULES.—The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(3) ONE-TIME FEES.—The one-time fees collected under contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 before the date of enactment of this Act on spent nuclear fuel, or high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor before April 7, 1983, shall be paid to the Nuclear Waste Fund. The Secretary shall collect all such fees before the expiration of fiscal year 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. In paying such a fee, the person delivering such spent nuclear fuel or high-level radioactive wastes, to the Secretary shall have no further financial obligation under this paragraph to the Federal Government for the long-term storage and permanent disposal of such spent nuclear fuel or high-level radioactive waste.

"(b) ADVANCE CONTRACTING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) LICENSE ISSUANCE AND RENEWAL.—The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

"(i) such person has entered into a contract under subsection (a) with the Secretary; or

"(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under subsection (a).

"(B) PRECONDITION.—The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of spent nuclear fuel and high-level radioactive waste that may result from the use of such license.

"(2) DISPOSAL IN REPOSITORY.—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

"(3) ASSIGNMENT.—The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

"(4) DISPOSAL CONDITION.—No spent nuclear fuel or high-level radioactive waste generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be stored or disposed of by the Secretary at the interim storage facility or repository in the integrated management system developed under this Act unless, in each fiscal year, such department funds its appropriate portion of the costs of such storage and disposal as specified in section 403.

"(c) NUCLEAR WASTE FUND.—

"(1) IN GENERAL.—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

"(A) all receipts, proceeds, and recoveries realized by the Secretary before the date of enactment of this Act;

"(B) any appropriations made by the Congress before the date of enactment of this Act to the Nuclear Waste Fund;

"(C) all interest paid on amounts invested by the Secretary of the Treasury under paragraph (3)(B); and

"(D) the one-time fees collected pursuant to subsection (a)(3).

"(2) USE.—The Nuclear Waste Fund shall be used only for purposes of the integrated management system.

"(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

"(A) IN GENERAL.—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

"(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

"(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund; and

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

"(C) EXEMPTION.—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

"(d) USE OF APPROPRIATED FUNDS.—During each fiscal year, the Secretary may make expenditures of funds collected after the date of enactment of this Act under this section and section 403, up to the level of appropriations for that fiscal year pursuant to subsection (f) only for purposes of the integrated management system.

"(e) PROHIBITION ON USE OF APPROPRIATIONS AND NUCLEAR WASTE FUND.—The Secretary shall not make expenditures of funds collected pursuant to this section or section 403 to design or construct packages for the transportation, storage, or disposal of spent nuclear fuel from civilian nuclear power reactors.

"(f) APPROPRIATIONS.—

"(1) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall consist of the estimates made by the Secretary of expenditures

under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

"(2) APPROPRIATIONS.—Appropriations shall be subject to triennial authorization. During each fiscal year, the Secretary may make expenditures, up to the level of appropriations, out of the funds collected pursuant to this section and section 403, if the Secretary transmits the amounts appropriated for implementation of this Act to the Commission and the Nuclear Waste Technical Review Board in appropriate proportion to the collection of such funds.

"(g) EFFECTIVE DATE.—This section shall take effect October 1, 1998, and section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall continue in effect until October 1, 1998.

"SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

"(a) CONTINUATION OF OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.—The Office of Civilian Radioactive Waste Management established under section 304(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of this Act, shall continue in effect subsequent to the date of enactment of this Act.

"(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

"(c) AUDITS.—

"(1) STANDARD.—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

"(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the date of enactment of this Act.

"(3) COMPTROLLER GENERAL.—The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

"(4) TIME.—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

"(5) PUBLIC DOCUMENTS.—All audit reports shall be public documents and available to any individual upon request.

"SEC. 403. DEFENSE CONTRIBUTION.

"(a) ALLOCATION.—No later than one year from the date of enactment of this Act, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel, high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel, high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors shall include—

"(1) an appropriate portion of the costs associated with research and development activities with respect to development of the interim storage facility and repository; and

"(2) interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

"(b) APPROPRIATION REQUEST.—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of materials described in subsection (a).

"(c) REPORT.—In conjunction with the annual report submitted to Congress under section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors requiring management in the integrated management system.

"(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities as established under subsection (a).

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

"SEC. 501. COMPLIANCE WITH OTHER LAWS.

"If the requirements of any law are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and this Act in implementing the integrated management system. Any requirement of a State or political subdivision of a State is preempted if—

"(1) complying with such requirement and a requirement of this Act is impossible; or

"(2) such requirement, as applied or enforced, is an obstacle to accomplishing or carrying out this Act or a regulation under this Act.

"SEC. 502. WATER RIGHTS.

"(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

"(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights.

"(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

"SEC. 503. JUDICIAL REVIEW OF AGENCY ACTIONS.

"(a) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—

"(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

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

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

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

"(D) for review of any environmental impact statement prepared or environmental assessment made pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

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

"(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that the party did not know of the decision or action complained of or of the failure to act, and that a reasonable person acting under the circumstances would not have known of such decision, action, or failure to act, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

"(c) APPLICATION OF OTHER LAW.—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

"SEC. 504. LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS.

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

"(b) ADJUDICATORY HEARING.—

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

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

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

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

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

"(B) shall not consider—

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

"(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless—

"(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

"(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

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

"(4) CONSTRUCTION.—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

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

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

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

"SEC. 505. SITING A SECOND REPOSITORY.

"(a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

"(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

"SEC. 506. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.

"(a) FINANCIAL ARRANGEMENTS.—

"(1) STANDARDS AND INSTRUCTIONS.—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

"(2) BONDING, SURETY, OR OTHER FINANCIAL ARRANGEMENTS.—If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

"(b) TITLE AND CUSTODY.—

"(1) AUTHORITY OF SECRETARY.—The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

"(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

"(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

"(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

"(2) PROTECTION.—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

"(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

"SEC. 507. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

"The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs.

"SEC. 508. ACCEPTANCE SCHEDULE.

"The acceptance schedule shall be implemented in accordance with the following:

"(1) PRIORITY RANKING.—Acceptance priority ranking shall be determined by the Department's 'Acceptance Priority Ranking' report.

"(2) ACCEPTANCE RATE.—Except as provided in paragraph (5), the Secretary's acceptance rate for spent nuclear fuel shall be no less than the following: 1,200 MTU in 2002 and 1,200 MTU in 2003, 2,000 MTU in 2004 and 2,000 MTU in 2005, 2,700 MTU in 2006, and 3,000 MTU thereafter.

"(3) OTHER ACCEPTANCES.—In each year, once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed under the Nuclear Waste Policy Act of 1982 (as set forth in the Secretary's annual capacity report dated March 1995 (DOE/RW–0457)), the Secretary—

"(A) shall accept from spent nuclear fuel from foreign research reactors and spent nuclear fuel from naval reactors and high-level radioactive waste from atomic energy defense activities, an amount of spent nuclear fuel and high-level radioactive waste which is—

"(i) at least 25 percent of the difference between such annual acceptance rate and the annual rate specified in paragraph (2), or

"(ii) 5 percent of the total amount of spent nuclear fuel and high-level radioactive waste actually accepted,

whichever is higher. If such amount is less than the rate prescribed in the preceding sentence, the Secretary shall accept spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors which have permanently ceased operation; and

"(B) may, additionally, accept any other spent nuclear fuel or high-level radioactive waste.

"(4) EXCEPTION.—If the annual rate under the acceptance schedule is not achieved, the acceptance rate of the Secretary of the materials described in paragraph (3)(A) shall be the greater of the acceptance rate prescribed by paragraph (3) and calculated on the basis of the amount of spent nuclear fuel and high-level radioactive waste actually received or 5 percent of the total amount of spent nuclear fuel and high-level radioactive waste actually accepted.

"(5) ADJUSTMENT.—If the Secretary is unable to begin acceptance by January 31, 2002 at the rate specified in paragraph (2) or if the cumulative amount accepted in any year thereafter is less than that which would have been accepted under the rate specified in paragraph (2), the acceptance schedule shall, to the extent practicable, be adjusted upward such that within 5 years of the start of acceptance by the Secretary—

"(A) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had begun acceptance in 2002; and

"(B) thereafter the acceptance rate is equivalent to the rate that would be in place pursuant to paragraph (2) if the Secretary had commenced acceptance in 2002.

"(6) EFFECT ON SCHEDULE.—The acceptance schedule shall not be affected or modified in any way as a result of the Secretary's acceptance of any material other than contract holders' spent nuclear fuel and high-level radioactive waste.

"SEC. 509. SUBSEABED OR OCEAN WATER DISPOSAL.

"Notwithstanding any other provision of law—

"(1) the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste is prohibited; and

"(2) no funds shall be obligated for any activity relating to the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste.

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"SEC. 601. DEFINITIONS.

"For purposes of this title—

"(1) CHAIRMAN.—The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.

"(2) BOARD.—The term 'Board' means the Nuclear Waste Technical Review Board continued under section 602.

"SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

"(a) CONTINUATION OF NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of this Act, shall continue in effect subsequent to the date of enactment of this Act.

"(b) MEMBERS.—

"(1) NUMBER.—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

"(2) CHAIR.—The President shall designate a member of the Board to serve as Chairman.

"(3) NATIONAL ACADEMY OF SCIENCES.—

"(A) NOMINATIONS.—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) VACANCIES.—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

"(C) NOMINEES.—

"(i) Each person nominated for appointment to the Board shall be—

"(I) eminent in a field of science or engineering, including environmental sciences; and

"(II) selected solely on the basis of established records of distinguished service.

"(ii) The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.

"(4) VACANCIES.—Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) TERMS.—Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.

"SEC. 603. FUNCTIONS.

"The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

"(1) site characterization activities; and

"(2) activities relating to the packaging or transportation of spent nuclear fuel or high-level radioactive waste.

"SEC. 604. INVESTIGATORY POWERS.

"(a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places,

take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

"(b) PRODUCTION OF DOCUMENTS.—

"(1) RESPONSE TO INQUIRIES.—Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

"(2) EXTENT.—Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

"SEC. 605. COMPENSATION OF MEMBERS.

"(a) IN GENERAL.—Each member of the Board shall, subject to appropriations, be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"SEC. 606. STAFF.

"(a) CLERICAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraph (2), the Chairman may, subject to appropriations, appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

"(2) PROVISIONS OF TITLE 5.—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraphs (2) and (3), the Chairman may, subject to appropriations, appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) NUMBER.—Not more than 10 professional staff members may be appointed under this subsection.

"(3) TITLE 5.—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

"SEC. 607. SUPPORT SERVICES.

"(a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may, subject to appropriations, procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

"SEC. 608. REPORT.

"The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations.

"SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for expenditures such sums as may be necessary to carry out the provisions of this title.

"SEC. 610. TERMINATION OF THE BOARD.

"The Board shall cease to exist not later than one year after the date on which the Secretary begins disposal of spent nuclear fuel or high-level radioactive waste in the repository.

"TITLE VII—MANAGEMENT REFORM

"SEC. 701. MANAGEMENT REFORM INITIATIVES.

"(a) IN GENERAL.—The Secretary is directed to take actions as necessary to improve the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

"(b) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

"SEC. 702. REPORTING.

"(a) INITIAL REPORT.—Within 180 days of the date of enactment of this Act, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

"(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than January 31, 2002, and in accordance with the acceptance schedule;

"(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary's obligations under this Act and the contracts;

"(3) a detailed description of the Secretary's contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and

"(4) an analysis by the Secretary of its funding needs for fiscal years 1996 through 2001.

"(b) ANNUAL REPORTS.—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of—

"(1) any modifications to the Secretary's schedule and timeline for meeting its obligations under this Act;

"(2) the reasons for such modifications, and the status of the implementation of any of the Secretary's contingency plans; and

"(3) the Secretary's analysis of its funding needs for the ensuing 5 fiscal years.".

SEC. 2. CONTINUATION OF CONTRACTS.

Subsequent to the date of enactment of this Act, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act in accordance with their terms except to the extent that the contracts have been modified by the parties to the contract.

PURPOSE AND SUMMARY

The purpose of H.R. 1270, the Nuclear Waste Policy Act of 1997, is to revitalize the Nation's program for permanent disposal of spent nuclear fuel and high-level radioactive waste. This is accomplished through the creation of an integrated management system for the transportation, storage, and disposal of spent nuclear fuel and waste generated by the U.S. Department of Energy (DOE) and

the U.S. Department of Defense (DOD). The legislation also replaces the current fixed funding mechanism of the Nuclear Waste Fund with an annual fee paid by utility ratepayers based on the actual expenditures of the integrated management system.

BACKGROUND AND NEED FOR LEGISLATION

The need to revise the current Nuclear Waste Policy Act, as reflected in the changes proposed by H.R. 1270, is based on three fundamental realities. First, the development of the permanent repository, originally scheduled to begin operations in 1998, has been hopelessly derailed by past mismanagement and political paralysis. Legislation is necessary to streamline the current statute and bolster the repository program to allow for a more expedited consideration of the Yucca Mountain site and development of a permanent repository. Second, the current Nuclear Waste Fund financing mechanism creates an incentive to underfund the repository program. Revision of the funding mechanism is a desperately needed reform to protect utility customers from the diversion of their ratepayer dollars and to encourage a more robust repository program. Third, it is clear that the Department of Energy will default on its statutory responsibility to begin acceptance of spent nuclear fuel from commercial utilities beginning in 1998. Statutory changes are required to authorize DOE to construct a Federal interim storage facility which will allow DOE to discharge this responsibility in a safe, responsible and organized manner.

I. THE NUCLEAR WASTE POLICY ACT

The Nuclear Waste Policy Act of 1982 (P.L. 97–425, as amended) was originally enacted in 1982, and is based on the premise that the Federal government holds responsibility for the permanent disposal of the Nation's spent nuclear fuel and high-level radioactive waste. This statute, along with the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96–573, as amended), creates a clear division of responsibility between the States and the Federal government for the management and final disposal of low-level and high-level radioactive waste, respectively. High-level radioactive waste includes spent fuel and other highly-radioactive waste generated by civilian nuclear power reactors and waste from nuclear weapons operations and nuclear propulsion units for naval vessels by the Departments of Energy and Defense.

The 1982 Act attempted to establish two permanent repositories in the United States and required DOE to conduct a survey of possible repository locations. The search for suitable sites was based on the belief that the most effective method of permanent disposal for high-level radioactive waste is deep geologic storage, which would isolate radioactive materials underground.

In order to ensure adequate financing for the program, Congress established the Nuclear Waste Fund (the Fund), which is financed by a tax of one mill per kilowatt-hour of electricity generated by civilian nuclear power reactors and sold to utility customers. The Fund was designed not only to pay for the program, including site selection and construction of repositories, but also for the long-term operation and maintenance and decommissioning of these facilities.

By August 1997, ratepayers had paid over $8.5 billion into the Fund. Including interest earned and payments owed, the Fund had raised nearly $12 billion as of August 1997. Of this total, just over $4.8 billion has been expended from the Fund on program activities. The balance has been diverted to other Federal spending as a result of the budget process.

By 1987, DOE had narrowed its consideration of the first repository to sites in three States: Washington, Texas, and Nevada. Efforts toward establishing a second repository had largely been unsuccessful. Although several sites had received initial scrutiny for possible study, DOE suspended the search for a second repository. Congress was prompted to approve amendments to the Nuclear Waste Policy Act in 1987 (P.L. 100–202 and P.L. 100–203) which: dropped plans for the second repository and concentrated resources into characterizing one repository site; designated Yucca Mountain, Nevada, as the sole location for study as a repository; and authorized a Monitored Retrievable Storage (MRS) facility for interim storage. However, no MRS facility has been developed to date.

II. PROGRESS AT THE YUCCA MOUNTAIN SITE

The site characterization program at Yucca Mountain has long been plagued by a host of management and funding difficulties. Under the 1982 Act, operation of a permanent repository was to begin in 1998. Now, just a few months before that date, DOE estimates that a repository at the Yucca Mountain site, pending a favorable site suitability determination, would not become operational until 2010 at the earliest—12 years behind schedule. Improvements have been made to the program which have increased the pace of activity in recent years. Under the direction of former Director Daniel Dreyfus, the Office of Civilian Radioactive Waste Management (OCRWM) underwent a significant reevaluation of the program, and a number of changes were made which have vastly improved the site characterization program. DOE established a Program Approach to re-order schedules and deadlines to conform with Congressional funding, allowing the program to set more realistic dates for the completion of site activities. Today, site characterization activities are generally on or ahead of this revised schedule. For example, the tunnel boring machine, which has been excavating the area for the exploratory study facility, completed its five mile loop of tunnel in April 1997, several months ahead of schedule. A host of repository characterization studies, including thermal loading of repository level rock formations, is currently underway.

DOE has also begun a more cooperative process toward licensing of the Yucca Mountain facility by the Nuclear Regulatory Commission (NRC). Under its present schedule, DOE is expected to conclude its viability assessment of the Yucca Mountain site in 1998. Following a final site suitability determination in 2001, a construction license application would be submitted to the NRC by the year 2002. License applications for other components of facility operation would be submitted in later years. This phased method should allow a more flexible approach to opening the permanent repository, and allow for greater bureaucratic and management accountability through the licensing process.

III. CURRENT COMMERCIAL INTERIM STORAGE PRACTICES

It is clear that the time schedules and requirements of the original Nuclear Waste Policy Act have been hopelessly retarded by past mismanagement of the program. This is particularly relevant with respect to the responsibility of DOE to begin acceptance of commercial spent nuclear fuel in 1998, as specified in its contracts with individual utilities. In July 1996, the U.S. Court of Appeals for the District of Columbia Circuit, in *Indiana Michigan Power Company* v. *U.S. Department of Energy,* determined that the Nuclear Waste Policy Act "creates an obligation in DOE, reciprocal to the utilities" obligation to pay, to start disposing of the [spent nuclear fuel] no later than January 31, 1998." Litigation to establish a remedy for the anticipated failure of DOE to fulfill that obligation is currently pending in Federal court.

Currently, spent nuclear fuel is stored on-site at the Nation's 73 nuclear reactor sites. There are 109 operating reactors and nine shut-down reactors in the U.S., located in 34 States. Pool storage is the primary method of storing spent fuel, and involves placing spent fuel rods into pools of water. The water acts as both a cooling agent and a radiation shield. This method was originally designed for short-term storage of fuel until it could be transferred to a permanent facility. With the lack of progress on a repository, however, many reactors now face a shortage of at-site pool storage capacity. By 1998, 26 reactors will have run out of pool storage space; by 2010, 80 reactors will have reached pool storage capacity.

As a way of increasing at-reactor storage capacity, some utilities have switched to dry cask storage technology as their pool storage has been exhausted. This involves storing spent fuel rods in a container of steel or steel-reinforced concrete. Currently, the NRC has approved seven dry cask storage designs, and has issued licenses for 10 reactor sites to utilize dry spent fuel storage.

The NRC, in its testimony before the Subcommittee on Energy and Power, stated that at-reactor storage is very safe in the near term. Accidents involving at-reactor storage are quite rare, and in no case has such an incident resulted in a release of radiation to the public. The NRC testified that storage of spent nuclear fuel at shut-down reactors was the only situation involving potential safety problems. According to the NRC, this is a result not of the storage technology, but of the prospect of reduced oversight and direct management at shut-down facilities. The NRC further testified that centralized interim storage would be a valuable component of DOE's program pending completion of the permanent repository. According to the NRC, a centralized facility would allow for a more focused inspection and surveillance program of spent nuclear fuel, and would decrease the already small likelihood of accidents at shut-down nuclear facilities with pool storage.

IV. HIGH-LEVEL RADIOACTIVE WASTE FROM FEDERAL RESEARCH AND ATOMIC ENERGY DEFENSE ACTIVITIES

An important element in the permanent repository program is the future disposition of waste from Federal nuclear activities. The sources of these wastes are varied. Research reactors owned by DOE and universities utilize nuclear fuel, which is transferred to

the Department upon removal. The Federal government is also responsible for the disposition of U.S.-produced nuclear fuel used in dozens of foreign research reactors across the globe. The U.S. Navy utilizes nuclear reactors for power and propulsion in submarines and large surface vessels, and the spent nuclear fuel from these reactors is transferred to DOE. The bulk of DOE's high-level wastes, however, are a result of the Department's efforts to provide research and materials for the Nation's nuclear weapons program. DOE currently estimates it has about 25,000 metric tons of high-level radioactive waste and 2,600 metric tons heavy metal (MTHM) of spent naval nuclear reactor fuel which will be eligible for disposal in a repository.

The presence of these wastes, located at 17 sites in 13 States, is an important environmental protection issue. Many of the high-level wastes are stored in less-than-ideal conditions. While not a necessity for accomplishing cleanup at DOE sites, the absence of a permanent repository is a significant factor in the lack of progress on environmental remediation within the DOE weapons complex and will continue to complicate future cleanup efforts.

V. RATEPAYER CONSIDERATIONS

Under the Nuclear Waste Policy Act of 1982, the high-level radioactive waste disposal program was to have been funded solely by the beneficiaries of the facility—those utility customers receiving electricity from nuclear power plants. However, statutory changes in the Nation's budget laws since passage of the Nuclear Waste Policy Act in 1982 resulted in the diversion of dedicated consumer contributions to fund unrelated Federal programs. The importance of this issue has not been lost on ratepayer groups. In its testimony before the Subcommittee on Energy and Power, the National Association of Regulatory Utility Commissioners (NARUC) stated that the current situation represents a "rip-off of the highest magnitude," and that "[p]ayments into the Nuclear Waste Fund must be used for their intended purpose."

Under current budget rules, the fee collection system lends itself to such diversion. Currently, utility customers are assessed a flat fee of one mill (one-tenth of a cent) per kilowatt-hour generated and sold. The fee generates an average of $630 million per year. Of this total, only a fraction is actually spent on the nuclear waste disposal program. In Fiscal Year 1998, for example, only $160 million of the ratepayer contribution will be spent on the waste program. The remainder, $470 million, will be spent on other Federal activities.

Under H.R. 1270, the current mandatory fee would be replaced with a discretionary user fee. This annual fee would be no greater than the annual level of appropriations for expenditures on program activities, minus any unobligated balance collected during the previous fiscal year and payments for the disposal of defense-related wastes. DOE would assess an annual fee on each civilian nuclear power reactor based on the amount of electricity generated and sold, and ratepayers would pay an adjustable amount based on actual spending on the high-level radioactive waste disposal program. Most importantly, user fees cannot be diverted to unrelated programs.

With this reform, consumers served by nuclear utilities would no longer pay more than they receive in program funding. These consumers will receive a dollar of funding for every dollar they contribute. Further, the potential for shortchanging the repository program in order to fund other Federal activities would be eliminated, since these funds could no longer be diverted from the waste program.

With strong oversight by the Congressional authorizing committees and the scrutiny of ratepayer protection groups and utilities, the high-level radioactive waste disposal program should operate in a more responsible, more responsive, and leaner fashion. Funding for the waste program under H.R. 1270 will still be subject to the appropriations process, allowing Congress to maintain oversight of program expenditures and priorities. The combination of statutory reform, strong oversight, and continued improvement at DOE will allow the waste disposal program to operate more effectively toward the goal of repository development.

VI. TRANSPORTATION OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

The Nation's experience provides a high degree of confidence that spent nuclear fuel and high-level radioactive waste can be transported safely and without a negative impact on human health and the environment. The regulatory regime for radioactive materials transport has worked very well. Over the past 30 years, there have been over 2,500 shipments of spent nuclear fuel in the United States. Since 1957, there have been 667 shipments of Navy spent fuel over 1 million miles. In the last 22 years, DOE has transported nuclear weapons and special nuclear materials nearly 100 million miles. In all of these instances, there has never been an accident involving these materials which resulted in a release of radioactivity.

Once acceptance of spent nuclear fuel and interim storage facility operations commence, DOE anticipates that there will be about 300 shipments per year, about a half million miles per year. As the proven track record of safe shipments of radioactive materials demonstrates, the current regulatory regime governing nuclear materials transport works well. Given the impressive record of the current nuclear materials regulatory regime, it would be a mistake to abandon that regime and invent a new ad hoc regulatory structure.

Under current law, the U.S. Department of Transportation (DOT) has primary responsibility for regulating the safe transportation of hazardous materials, including nuclear waste. Nuclear waste transportation is governed by the Hazardous Materials Transportation Act of 1975 (P.L. 93–633, as amended) (HMTA) which authorizes DOT to promulgate regulations for the safe transport of hazardous materials, including radioactive materials. DOT hazardous materials regulations address packaging, marking, labeling, placarding, and highway routing. The NRC regulates and licenses the receipt, possession, use, and transfer (including transportation) of source, by-product, and special nuclear material under the Atomic Energy Act of 1954. The NRC has issued radioactive materials transportation regulations that include requirements for

packaging and physical security, and certifies casks used for spent nuclear fuel shipments.

H.R. 1270, like the current Nuclear Waste Policy Act, relies on the preexisting nuclear transportation statutory and regulatory scheme of the HMTA. This reflects a recognition that the existing statutory and regulatory regime has been in place for decades, and has produced an admirable record of safe transportation of nuclear materials. Congress has decided to rely on a proven regulatory system, rather than invent a duplicative regime that may not produce the same safety record. Section 105(b) of the HMTA allows States and Indian tribes to establish specific highway routes over which hazardous materials may and may not be transported by motor vehicles in the area which is subject to the jurisdiction of such State and Indian tribe.

VII. THE INTEGRATED MANAGEMENT SYSTEM

The need for a permanent disposal solution for high-level radioactive waste and spent nuclear fuel is the linchpin of the Nuclear Waste Policy Act. The important fission products strontium and cesium have half-lives of 30 years, and require special isolation for at least 300–500 years before the material has decayed to the point where it no longer poses a serious health risk. Other radioactive wastes with longer half-lives will remain a health and safety risk for thousands of years, albeit of lower overall danger than less stable radioisotopes.

A permanent repository will provide a safe and stable environment for the final disposal of these wastes, along with spent nuclear fuel and wastes generated as a result of civilian nuclear power plant operations. Without a permanent repository, waste from U.S. nuclear defense activities and spent nuclear fuel will continue to be stored at dozens of temporary facilities located throughout the Nation. At hearings before the Subcommittee on Energy and Power, the NRC testified that while such storage does not pose immediate health risks to affected populations, there are clear overall health and safety benefits to centralized management of radioactive wastes. A permanent repository offers the best method of managing these wastes for maximum public benefit.

The disposal of nuclear waste in a permanent repository is essential. Witnesses from the nuclear industry, the NRC, and DOE all agreed that ensuring the soundness of a repository program is Congress' core responsibility in reviewing the current Act. However, these witnesses acknowledged the frustration on the part of the utilities, public utility commissions, and ratepayers at the lack of progress toward opening the permanent repository, particularly in view of the $12 billion in ratepayer funds already collected, and the $5.7 billion spent on the program.

Providing for the interim storage of waste, on a limited basis subject to strict caps on volumes, will improve DOE's existing program as part of an integrated management system. The Committee intends that interim storage complement the objective of developing an integrated system culminating in the opening of a permanent repository as soon as possible. Interim storage is a temporary measure and cannot serve as a substitute for the repository.

HEARINGS

The Subcommittee on Energy and Power held a hearing on the status of the nuclear waste disposal program, the current Nuclear Waste Policy Act, and the changes proposed in H.R. 1270, the Nuclear Waste Policy Act of 1997, on April 29, 1997. The Subcommittee received testimony from the following witnesses: The Honorable John Ensign, U.S. Representative, First District, State of Nevada; The Honorable James A. Gibbons, U.S. Representative, Second District, State of Nevada; The Honorable Gil Gutknecht, U.S. Representative, First District, State of Minnesota; The Honorable Richard H. Bryan, U.S. Senator, State of Nevada; The Honorable Harry Reid, U.S. Senator, State of Nevada; The Honorable Rod Grams, U.S. Senator, State of Minnesota; The Honorable Shirley Jackson, Chairman, U.S. Nuclear Regulatory Commission; The Honorable Ed McGaffigan, Commissioner, U.S. Nuclear Regulatory Commission; Mr. Lake Barrett, Acting Director, Office of Civilian Radioactive Waste Disposal, U.S. Department of Energy; Dr. Jared Cohon, Chairman, Nuclear Waste Technical Review Board; The Honorable Warren D. Arthur IV, Commissioner, South Carolina Public Service Commission; Mr. Don Keskey, Assistant Attorney General in Charge, Public Service Division, State of Michigan, Mr. Bill Magavern, Director, Critical Mass Energy Project, Public Citizen; and Mr. Michael Morris, President and Chief Executive Officer, Consumers Energy Company.

COMMITTEE CONSIDERATION

On July 31, 1997, the Subcommittee on Energy and Power met in open markup session and approved H.R. 1270, the Nuclear Waste Policy Act of 1997, for Full Committee consideration, amended, by a roll call vote of 21 yeas to 3 nays. On September 18, 1997, the Full Committee met in open markup session and ordered the bill H.R. 1270, amended, reported to the House by a roll call vote of 43 yeas to 3 nays.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following are the recorded votes on the motion to report H.R. 1270 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #35

BILL: H.R. 1270, Nuclear Waste Policy Act of 1997

AMENDMENT: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Markey re: create an exemption to Price Anderson Act indemnification of DOE transportation contractors.

DISPOSITION: NOT AGREED TO, by a roll call vote of 13 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin				Mr. Waxman	X		
Mr. Oxley				Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Schaefer		X		Mr. Boucher			
Mr. Barton				Mr. Manton		X	
Mr. Hastert		X		Mr. Towns		X	
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns		X		Mr. Brown	X		
Mr. Paxon				Mr. Gordon	X		
Mr. Gillmor		X		Ms. Furse			
Mr. Klug				Mr. Deutsch	X		
Mr. Greenwood		X		Mr. Rush		X	
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox				Mr. Klink			
Mr. Deal		X		Mr. Stupak		X	
Mr. Largent				Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer	X		
Mr. Bilbray		X		Mr. Wynn	X		
Mr. Whitfield				Mr. Green			
Mr. Ganske		X		Ms. McCarthy			
Mr. Norwood		X		Mr. Strickland	X		
Mr. White				Ms. DeGette	X		
Mr. Coburn		X					
Mr. Lazio		X					
Mrs. Cubin		X					
Mr. Rogan							
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #36

BILL: H.R. 1270, Nuclear Waste Policy Act of 1997

AMENDMENT: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Markey re: eliminate radiological protection standard established for repository licensing.

DISPOSITION: NOT AGREED TO, by a roll call vote of 11 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley				Mr. Dingell		X	
Mr. Tauzin				Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Schaefer		X		Mr. Boucher			
Mr. Barton		X		Mr. Manton			
Mr. Hastert		X		Mr. Towns	X		
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns		X		Mr. Brown			
Mr. Paxon		X		Mr. Gordon		X	
Mr. Gillmor		X		Ms. Furse			
Mr. Klug		X		Mr. Deutsch		X	
Mr. Greenwood				Mr. Rush		X	
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox				Mr. Klink		X	
Mr. Deal		X		Mr. Stupak		X	
Mr. Largent				Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer	X		
Mr. Bilbray				Mr. Wynn	X		
Mr. Whitfield		X		Mr. Green			
Mr. Ganske		X		Ms. McCarthy	X		
Mr. Norwood		X		Mr. Strickland	X		
Mr. White				Ms. DeGette	X		
Mr. Coburn		X					
Mr. Lazio							
Mrs. Cubin							
Mr. Rogan							
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #37

BILL: H.R. 1270, Nuclear Waste Policy Act of 1997

AMENDMENT: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Markey re: eliminate policy assumptions regarding repository post-closure human intrusion.

DISPOSITION: NOT AGREED TO, by a roll call vote of 8 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin				Mr. Waxman	X		
Mr. Oxley				Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall			
Mr. Schaefer		X		Mr. Boucher			
Mr. Barton		X		Mr. Manton			
Mr. Hastert		X		Mr. Towns		X	
Mr. Upton		X		Mr. Pallone	X		
Mr. Stearns				Mr. Brown	X		
Mr. Paxon		X		Mr. Gordon		X	
Mr. Gillmor		X		Ms. Furse			
Mr. Klug		X		Mr. Deutsch		X	
Mr. Greenwood		X		Mr. Rush			
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox				Mr. Klink		X	
Mr. Deal		X		Mr. Stupak		X	
Mr. Largent				Mr. Engel	X		
Mr. Burr		X		Mr. Sawyer		X	
Mr. Bilbray		X		Mr. Wynn		X	
Mr. Whitfield				Mr. Green		X	
Mr. Ganske		X		Ms. McCarthy	X		
Mr. Norwood		X		Mr. Strickland		X	
Mr. White				Ms. DeGette	X		
Mr. Coburn							
Mr. Lazio							
Mrs. Cubin							
Mr. Rogan							
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #38

BILL: H.R. 1270, Nuclear Waste Policy Act of 1997

AMENDMENT: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Markey re: prohibit construction of interim storage facility until permanent repository is licensed and limit size of interim storage facility.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 4 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell		X	
Mr. Tauzin				Mr. Waxman			
Mr. Oxley				Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Schaefer		X		Mr. Boucher			
Mr. Barton		X		Mr. Manton		X	
Mr. Hastert		X		Mr. Towns			
Mr. Upton		X		Mr. Pallone		X	
Mr. Stearns				Mr. Brown		X	
Mr. Paxon		X		Mr. Gordon		X	
Mr. Gillmor		X		Ms. Furse			
Mr. Klug				Mr. Deutsch		X	
Mr. Greenwood		X		Mr. Rush		X	
Mr. Crapo		X		Ms. Eshoo	X		
Mr. Cox				Mr. Klink		X	
Mr. Deal		X		Mr. Stupak		X	
Mr. Largent				Mr. Engel		X	
Mr. Burr		X		Mr. Sawyer		X	
Mr. Bilbray		X		Mr. Wynn		X	
Mr. Whitfield		X		Mr. Green		X	
Mr. Ganske		X		Ms. McCarthy	X		
Mr. Norwood		X		Mr. Strickland		X	
Mr. White		X		Ms. DeGette	X		
Mr. Coburn							
Mr. Lazio		X					
Mrs. Cubin							
Mr. Rogan							
Mr. Shimkus		X					

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COMMITTEE ON COMMERCE -- 105TH CONGRESS
ROLL CALL VOTE #39

BILL: H.R. 1270, Nuclear Waste Policy Act of 1997

MOTION: Motion by Mr. Bliley to order H.R. 1270, reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 43 yeas to 3 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell	X		
Mr. Tauzin	X			Mr. Waxman			
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall	X		
Mr. Schaefer	X			Mr. Boucher	X		
Mr. Barton	X			Mr. Manton	X		
Mr. Hastert	X			Mr. Towns	X		
Mr. Upton	X			Mr. Pallone	X		
Mr. Stearns	X			Mr. Brown	X		
Mr. Paxon	X			Mr. Gordon	X		
Mr. Gillmor	X			Ms. Furse			
Mr. Klug	X			Mr. Deutsch	X		
Mr. Greenwood	X			Mr. Rush	X		
Mr. Crapo	X			Ms. Eshoo		X	
Mr. Cox	X			Mr. Klink	X		
Mr. Deal	X			Mr. Stupak	X		
Mr. Largent				Mr. Engel	X		
Mr. Burr	X			Mr. Sawyer	X		
Mr. Bilbray	X			Mr. Wynn	X		
Mr. Whitfield	X			Mr. Green	X		
Mr. Ganske	X			Ms. McCarthy	X		
Mr. Norwood	X			Mr. Strickland	X		
Mr. White	X			Ms. DeGette		X	
Mr. Coburn	X						
Mr. Lazio	X						
Mrs. Cubin							
Mr. Rogan							
Mr. Shimkus	X						

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COMMITTEE ON COMMERCE—105TH CONGRESS, VOICE VOTES

Bill: H.R. 1270, Nuclear Waste Policy Act of 1997.

Amendment: Amendment in the Nature of a Substitute by Mr. Schaefer.

Dispostion: Agreed to, by a voice vote.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Sawyer re: impose new transportation routing requirements.

Disposition: Not Agreed to, by a voice vote.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Ms. DeGette re: strike environmental impact statement provisions.

Disposition: Not agreed to, by a voice vote.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Ms. McCarthy re: impose consultation requirements along spent nuclear fuel and high-level radioactive waste transportation routes.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Ms. McCarthy re: condition spent nuclear fuel and high-level radioactive waste shipments on availability of technical assistance and funds for training.

Disposition: Not agreed to, by a voice vote.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Engel re: direct DOE to pay utilities the cost of on-site storage of spent nuclear fuel.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment to the Schaefer Amendment in the Nature of a Substitute by Mr. Markey re: strike provisions capping fees paid by utility consumers for waste disposal purposes.

Disposition: Not agreed to, by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee adopts as its own the statement with respect to new or increased budget authority or tax expenditures or revenues prepared by the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, with the following explanation.

As originally envisioned in the Nuclear Waste Policy Act of 1982, the Nuclear Waste Fund was to collect payments from utility customers to pay for their portion of the costs of the nuclear waste disposal program—from site characterization to operation to closure. Changes in the Federal budget process since 1982 have altered the nature of this fee collection so that a significant portion of the fees collected by ratepayers are utilized for general governmental spending—and in complete opposition to the original intent of the Nuclear Waste Policy Act of 1982, which envisioned that utility customers' dollars would be used solely for the purpose of developing, constructing, and operating a nuclear waste repository.

This year provides an excellent case in point. Revenues produced by the mandatory fee will total $630 million. Of that total, only $160 million is expected to be spent on the nuclear waste program, leaving $470 million—almost 75 percent—to be credited to the Nuclear Waste Fund and then spent on other Federal activities. The source of this problem lies with the treatment of revenues as mandatory and spending as discretionary, which creates an incentive to limit nuclear waste disposal program funding in order to make these revenues available for other spending.

To address this situation, it is necessary either to make spending mandatory, which reduces control over program spending, or make revenues discretionary, which entails the application of pay-as-you-go procedures. Neither of these choices are enviable; however, the Committee opted for a solution which ensures that consumer contributions would be applied to the nuclear waste disposal program while assuring that the discipline of the appropriations process would control program spending.

To accomplish this, the Committee adopted a user fee approach to waste program funding. Under the Committee-approved bill, utility ratepayers would only be charged for actual program expenditures. This new approach takes the funding of the nuclear waste disposal program back to the manner in which it was originally intended to operate. DOE estimates that assessments from the new user fee, in combination with the remaining balance of the Nuclear Waste Fund, should be sufficient to ensure that utility customers pay their fair share of the total nuclear waste disposal program costs through repository closure in 2071.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 1997.

Hon. TOM BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1270, the Nuclear Waste Policy Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for federal costs), Marjorie Miller (for the state and local impact), and Lesley Frymier (for the private-sector impact).

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 1270—Nuclear Waste Policy Act of 1997

Summary: H.R. 1270 would amend the Nuclear Waste Policy Act by directing the Department of Energy (DOE) to begin storing spent nuclear fuel and high-level nuclear waste at an interim facility in Nevada no later than January 31, 2002. The bill would direct DOE to continue site characterization activities at the proposed permanent repository site at Yucca Mountain, also in Nevada. Title IV would modify how the nuclear waste program is funded after 1998.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1270 would cost about $3.1 billion over the 1998–2002 period. We also estimate that about $1.2 billion of this cost would be offset by collections from nuclear electric utilities, so that the net authorization of appropriations under H.R. 1270 would be about $1.9 billion over the five-year period. In addition, enacting the bill would affect direct spending; therefore, pay-as-you-go procedures would apply. Specifically, the bill would increase offsetting receipts in 2002 and reduce them in all other years beginning in 1999. CBO estimates that the net change in direct spending over the 1998–2002 period would be a reduction in outlays (that is, a net increase in offsetting receipts) of about $0.2 billion.

H.R. 1270 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). CBO estimates that these mandates would impose costs on state governments exceeding the threshold established in the law. (UMRA set a threshold of $50 million for 1996, adjusted annually for inflation).

CBO has identified private-sector mandates in the bill that would accelerate the payment of certain fees by private nuclear utilities and impose new training standards and requirements on workers. CBO estimates that the direct costs of these private-sector mandates would exceed the statutory threshold ($100 million in 1996, adjusted annually for inflation) established in UMRA in 2002. Because the bill would direct the federal government to being storing nuclear waste at an earlier date than is now anticipated,

the direct costs of these new mandates could be at least partially offset by savings to private nuclear utilities that would no longer have to pay for such storage.

Estimated cost to the Federal Government: H.R. 1270 would affect direct spending in each year, beginning in 1999, by ending the existing mandatory nuclear waste fee, which is currently set at a rate of 1 mill (one-tenth of one cent) per kilowatt-hour (kwh) of electricity sold by operators of nuclear powerplants. Forgone receipts from ending the mandatory fee would total about $630 million annually beginning in 1999. Income from this fee would be replaced, at least in part, by receipts from fees linked to the amount of spending from the nuclear waste fund, as discussed below. In addition, section 401 would result in an increase in offsetting receipts in 2002 because it would require certain utilities to make a one-time payment of nuclear waste fees to the government—totaling about $2.7 billion—before the end of fiscal year 2002. Under current law, this payment is not expected to be made until 2010 or later.

CBO estimates that building and operating an interim storage facility and continuing the study of the Yucca Mountain site as authorized by the bill would require gross appropriations of about $3.1 billion over the 1998–2002 period. Based on the requirement in section 401(b)(4) of the bill, and on information from the Department of Energy, CBO estimates that the bill would authorize appropriations of about $1.9 billion from the general fund of the Treasury to pay for the program costs that are attributable to the disposal of nuclear waste resulting from U.S. defense operations. The remaining $1.2 billion in estimated funding for the nuclear waste program over the 1998–2002 period would be covered by fee charged to the nuclear utility industry as provided in section 401(a)(2) of the bill. Thus, the estimated net authorization under H.R. 1270 would be about $1.9 billion over the next five years.

The estimated budgetary impact of H.R. 1270 over the 1998–2002 period is shown in the following table.

[By fiscal year, in million of dollars]

	1996	1997	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING							
Change in offsetting receipts from the nuclear waste fees:							
Estimated budget authority	0	0	0	630	630	630	−2,070
Estimated outlays	0	0	0	630	630	630	−2,070
SPENDING SUBJECT TO APPROPRIATION							
Spending on the nuclear waste program under current law:							
Budget authority[1]	399	382	0	0	0	0	
Estimated outlays	346	375	38	0	0	0	0
Proposed changes:							
Estimated authorization level	0	0	385	635	675	610	765
Less: offsetting collections	0	0	0	−260	−300	−235	−390
Net authorization level	0	0	385	375	375	375	375
Estimated outlays	0	0	329	338	375	375	375
Net spending for the nuclear waste program under H.R. 1270:							
Estimated authorization level[1]	399	382	385	375	375	375	375

[By fiscal year, in million of dollars]

	1996	1997	1998	1999	2000	2001	2002
Estimated outlays	346	375	367	338	375	375	375

[1] The 1996 and 1997 levels are the amounts appropriated for those years.

The costs of this legislation fall within budget functions 050 (defense) and 270 (energy).

Basis of estimate

This estimate is based on DOE's program plan issued on May 6, 1996, and on information from the department concerning the costs of an interim storage facility. For purposes of the estimate, CBO assumes that H.R. 1270 will be enacted early in fiscal year 1998, and that the department will proceed to develop an interim storage facility in Nevada to accept waste beginning in fiscal year 2002, as authorized by the bill. We assume that following the assessment of the viability of the Yucca Mountain site as a permanent waste repository, DOE would apply for a license from the Nuclear Regulatory Commission (NRC) to construct a permanent nuclear waste repository there in 2002, as detailed in the May 6, 1996, nuclear waste program plan.

Direct spending

Starting in fiscal year 1999, section 401(a)(2) would limit the aggregate fees the government charges each year to electric utilities for disposal of nuclear waste to no more than the amount appropriated from the nuclear waste fund that year. CBO estimates that, under current law, income from these fees would total $630 million annually over the 1998–2007 period and would decline in subsequent years as nuclear power plants are decommissioned. Because H.R. 1270 would make annual fees dependent on future appropriations action after 1999, CBO cannot assume their collection for the purpose of estimating the budgetary impact of the bill. Therefore, we estimate that the bill would cause a loss of offsetting receipts (that is, an increase in direct spending) of $630 million a year from 1999 through 2007, and of smaller amounts in subsequent years.

Section 401(a)(3) would result in an earlier payment by utilities to the government of about $2.7 billion in one-time nuclear waste disposal fees. The bill would require these fees to be paid no later than the end of fiscal year 2002. Utilities that fail to make these payments in 2002 would have their nuclear operating permits suspended by the Nuclear Regulatory Commission. Under current law, these one-time fee payments, along with accrued interest, are due prior to the delivery of nuclear waste to a government storage or disposal facility. Currently, DOE does not expect such a facility to be available until 2010 or later. Thus, the bill would accelerate the payment of these one-time fees by at least eight years. While this change would result in budgetary savings in 2002, the government would derive no significant benefit over the long run because it would otherwise receive the same amount later, with interest.

In sum, CBO estimates that enacting the bill would decrease direct spending by $2.7 billion in 2002, but would increase direct spending by $5.7 billion over the 1999–2007 period.

Spending subject to appropriation

Yucca Mountain—H.R. 1270 would direct DOE to proceed with its Civilian Radioactive Waste Management Program Plan of May 1996. This plan calls for continuing to evaluate the Yucca Mountain site as a permanent repository for nuclear waste, and applying for a license from the NRC to construct a repository in 2002, if the site appears to be viable for this use. Based on information from DOE, we estimate this effort would cost an average of about $335 million annually over the 1998–2002 period. Additional costs would be incurred after 2002 to construct and operate a nuclear waste depository at Yucca Mountain if the NRC issues a license to the department.

Interim Storage Facility—The bill would require DOE to design and develop an interim nuclear waste storage facility at the Nevada test site. Based on information from DOE, we estimate the gross costs of building, operating, and transporting nuclear waste to the Nevada facility would be about $1.5 billion over the 1998–2002 period, including $85 million appropriated in 1996. (Spending from the existing $85 million appropriation is contingent upon enactment of an authorization of an interim nuclear waste repository, such as H.R. 1270.)

A large portion of the costs would be for shipping the nuclear waste to the interim facility because the federal government would be responsible for all costs for transporting the waste from nuclear reactors to the facility by rail and heavy-haul trucks. Procurement of special shipping casts and waste storage canisters would account for most of the initial transportation costs. Based on information from DOE, CBO estimates that gross costs for waste transportation would total $1.1 billion over the 1998–2002 period. This amount includes $10 million annually over the 1998–2001 period for grants to state, local, and tribal governments for emergency transportation planning and training of public safety personnel along routes used to ship waste to the Nevada facility.

The facility would be built in two phases and designed to accept up to 50,000 metric tons of uranium. Initially, the facility would be designed to accept nuclear waste in special storage canisters; later it would accept fuel without canisters. Estimated costs include annual payments to both Lincoln and Nye counties in Nevada, of $2.5 million each before the first shipment of waste, and $5 million each after waste shipments begin, as authorized by section 201.

Additional costs would be incurred after 2002 to complete and operate the interim waste facility as authorized by the bill. These costs, including the cost of transporting the waste, would exceed $1.5 billion from 2003 through 2007.

Other Authorizations—Section 507 would direct the NRC to establish regulatory guidance for the training and qualifications of nuclear power plant personnel. This authorization could result in an increase in the NRC's workload, but would not result in a net cost to the government because the NRC recovers all costs of regulating the nuclear industry through user fees.

Section 602 would authorize continuation of the oversight of the Nuclear Waste Technical Review Board. Based on the board's ongoing work, CBO estimates this agency would spend about $3 million

annually over the 1998–2002 period, assuming appropriation of the necessary amounts.

General Fund Appropriations and Nuclear Waste Fees—Under the nuclear waste program, DOE is charged with disposing of both spent fuel from commercial nuclear reactors in the United States and certain high-level nuclear waste generated by its own atomic defense program. H.R. 1270 would authorize the appropriation of such sums as are necessary to pay for the expenses of the nuclear waste program that are attributable to the disposal of DOE's defense-related wastes. In addition, the bill would not allow DOE to store or dispose of such waste at an interim storage facility or nuclear waste repository that would be developed under this bill unless DOE receives appropriations from the general fund of the Treasury to pay the costs attributable to its defense-related waste. (Fees paid by the utilities would cover the remaining costs.)

Based on information from the DOE, it appears that, to date, the department has not received general fund appropriations to pay all of its share of the program costs. At the end of 1996, DOE estimates that the unpaid outstanding balance of program costs was about $1.3 billion, including interest on amounts not appropriated. Over the 1998–2002 period, CBO estimates DOE's share of program costs will continue to grow at about $100 million annually. An annual appropriation of about $375 million over the 1998–2002 period would eliminate DOE's outstanding balance and keep its share of program costs current through 2002.

Hence, for the purposes of this estimate, CBO assumes that part of the five-year cost of the nuclear waste program—$375 million annually—would be paid for through appropriations from the general fund of the Treasury. The remaining costs under the bill would be paid through appropriations from the nuclear waste trust fund, and offset by collections from nuclear electric utilities, which we estimate would total $1.2 billion over the 1999–2002 period.

Fees paid by the utilities could cover more of the costs if a greater share of the funding were derived from the nuclear waste trust fund. H.R. 1270 would authorize collections from nuclear electric utilities that would depend on the amount appropriated from the trust fund. These charges could not exceed 1.5 mills per kwh of electricity sold in any year, and such charges could average no more than 1 mill per kwh from 1999 until the waste repository begins operations. CBO estimates that a fee of 1 mill per kwh—the current rate—would yield about $630 million annually. Thus, it would be possible to fund more of the nuclear waste program authorized by this bill through annual fees—without reducing the current rate charged to utilities—than we have assumed for purposes of this estimate.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. The projected changes in direct spending are shown in the table below for fiscal years 1998 through 2007. For purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the succeeding four years are counted.

SUMMARY OF EFFECTS ON DIRECT SPENDING AND RECEIPTS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Changes in outlays:										
Annual nuclear waste fee	0	630	630	630	630	630	630	630	630	630
One-time nuclear waste fee	0	0	0	0	−2,700	0	0	0	0	0
Total	0	630	630	630	−2,070	630	630	630	630	630
Changes in receipts	Not applicable									

CBO estimates that enacting H.R. 1270 would increase direct spending by about $630 million annually over the 1999–2007 period, and that these increases in annual spending would be partly offset by payments of about $2.7 billion in 2002.

Estimated impact on State, local, and tribal governments

Mandates

H.R. 1270 contains intergovernmental mandates as defined in UMRA. CBO estimates that these mandates would impose costs on state governments exceeding the threshold established in the law. (UMRA set a threshold of $50 million for 1996, adjusted annually for inflation.)

Enactment of this bill would accelerate the payment of certain fees by nuclear utilities, including one publicly-owned utility. The bill also would impose new training standards and requirements for workers at all nuclear utilities, a few of which are publicly-owned. Because the bill would direct the federal government to begin storing nuclear waste earlier than is now anticipated, nuclear utilities would realize a savings because they would no longer have to store the waste themselves.

Utilities—The New York Power Authority (NYPA)—a publicly owned utility—has chosen the option, available under current law, to delay payment of a one-time disposal fee and to pay the federal government the required additional interest. (Under current law, this payment would be made in 2010 or later, when DOE opens a permanent storage facility to accept nuclear waste.) H.R. 1270 would require NYPA to pay this fee to the government before the end of fiscal year 2002. CBO estimates that the direct cost of the mandate would be the amount NYPA would be required to pay in 2002, or about $180 million.

The net, long-term cost to NYPA would be much less because it would no longer have to make a payment of $180 million plus interest in 2010 or later. Its cost would also be partially offset by any savings in storage costs that would accrue to NYPA when the interim storage facility begins accepting nuclear waste.

CBO estimates that the added costs of complying with the mandate for training workers would be minimal.

State of Nevada—By directing DOE to construct and operate an interim storage facility, H.R. 1270 would probably increase the cost to the state of Nevada of complying with existing federal requirements. CBO cannot determine whether these costs would be considered the direct costs of a mandate as defined by UMRA.

Based on information provided by state officials, CBO expects that state spending would increase by as much as $10 million per

year until shipments to the facility begin (assuming that they begin in fiscal year 2002) and $5 million per year between that time and the time that the permanent facility at Yucca Mountain begins operations. This additional spending would support a number of activities, including emergency response planning and training, escort of waste shipments, and environmental monitoring. In addition, spending by Nevada counties for similar activities would probably increase, but by much smaller amounts. Not all of this spending would be for the purpose of complying with federal requirements.

These costs are similar to those that the state would eventually incur under current law as a result of the permanent repository planned for Yucca Mountain. DOE currently does not expect to begin receiving material at a permanent repository until at least 2010, while H.R. 1270 would require that it begin to receive material at an interim facility in fiscal year 2002. As a result, the state would have to respond to the shipment and storage of waste at least eight years sooner than under current law. Further, the state's costs would increase because it would have to plan for two facilities.

Other impacts

Federal Payments to State and Local Governments—H.R. 1270 would direct DOE to make cash payments and convey parcels of land to Nye County, Nevada, and Lincoln County, Nevada. Each would receive payments of $2.5 million in each year before waste is shipped to the interim facility and $5 million each year after shipments begin. In addition, the bill identifies several parcels of land that DOE would convey to those counties and to the city of Caliente, Nevada.

The state of Nevada and local governments within the state might lose payments from the federal government if H.R. 1270 is enacted. The bill would delete much of section 116 of the Nuclear Waste Policy Act, which authorizes payments to the state of Nevada and to local governments within the state. Section 116 currently authorizes DOE to make grants to these governments to enable them to participate in evaluating and developing a site for a permanent repository and to offset any negative impacts of such a site. H.R. 1270 would authorize payments only to Nye County to pay for an on-site representative of the county.

In recent years, the Congress has appropriated amounts ranging from $12 million to $15 million per year under this section for Nevada and for local governments in the state. For the current fiscal year, however, the Energy and Water Development Appropriations Act, 1997 (Public Law 104–206) prohibits DOE from making any such payments to the state or to local governments.

Estimated impact on the private sector: CBO has identified private-sector mandates in the bill that would accelerate the payment of certain fees by private nuclear utilities and impose new training standards and requirements on workers. CBO estimates that the direct costs of these private-sector mandates in 2002 would exceed the statutory threshold ($100 million in 1996, adjusted annually for inflation) established in UMRA. Because the bill would direct the federal government to begin storing nuclear waste at an earlier

date than is now anticipated, the direct costs of these new mandates could be at least partially offset by savings to private nuclear utilities that would no longer store the waste themselves.

Thirteen privately owned nuclear utilities have chosen the option, available to them under current law, to delay payment of certain one-time disposal fees and to pay the federal government the required additional interest. Under current law, such payments would be made when DOE opens a permanent storage facility to accept nuclear waste, expected to be some time after 2010. H.R. 1270 would require nuclear utilities to accelerate payment of those fees to the government before the end of fiscal year 2002. CBO estimates that the direct cost of the mandate would be the amount utilities would be required to pay in 2002, or $2.5 billion.

The net, long-term cost to utilities would be much less because they would no longer have to make a payment of $2.5 billion plus interest in 2010 or later. Their costs would also be partially offset by any savings in storage costs that would accrue to the utilities when the interim storage facility begins accepting nuclear waste.

H.R. 1270 also would impose a mandate by requiring that the Secretary of Transportation establish training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. These workers, under current law, are already required to undertake extensive training. Based on information provided by industry experts, CBO estimates that the added costs of this mandate would be minimal. In addition, these costs could be partially offset by appropriated funds designated to cover training costs. Section 203(c) would direct the Secretary of Energy to provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that implement safety and training requirements under this bill.

Previous CBO estimate: On March 21, 1997, CBO prepared a cost estimate for S. 104, the Nuclear Waste Policy Act of 1997, as ordered reported by the Senate Committee on Energy and Natural Resources on March 14, 1997. The cost estimates for S. 104 and H.R. 1270 reflect the different time schedules in these bills, and the different treatment of the annual nuclear waste fee by each bill.

Estimate prepared by: Federal costs—Kim Cawley, Impact on State, local, and tribal governments:—Marjorie Miller, Impact on the private sector:—Lesley Frymier.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

Pursuant to section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA), the Committee is required to submit an estimate of Federal mandates that would be incurred in carrying out H.R. 1270. The Committee has serious concerns with the Federal mandates estimate prepared by the Director of the Congressional Budget Office (CBO).

CBO concludes H.R. 1270 contains intergovernmental mandates and private sector mandates as defined in UMRA in excess of the statutory thresholds. The provision in question provides for pay-

ment of one-time fees owed by 13 utilities: 12 investor-owned utilities, and one State agency.

The duty of these utilities to pay one-time fees was established 15 years ago by the Nuclear Waste Policy Act of 1982, not by H.R. 1270. Under the current program, these fees would not be paid until the beginning of acceptance of spent nuclear fuel and high-level radioactive waste at the repository, which is anticipated in 2010. Under section 401(a)(3) of H.R. 1270, these utilities would be required to pay their outstanding fees by the end of Fiscal Year 2002.

The Committee disputes that requiring payment of outstanding one-time fees before the end of Fiscal Year 2002 is a "Federal intergovernmental mandate" or "Federal private sector mandate" that imposes "direct costs." Under UMRA, "direct costs" are defined to exclude "estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate * * *." 2 U.S.C. 658(3)(D) (Supp. 1997). The duty to pay one-time fees was established by the Nuclear Waste Policy Act of 1982—not H.R. 1270. Since the obligation to pay outstanding one-time fees existed "under applicable Federal * * * law[] * * * in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate," the exclusion applies.

The only change made by section 401(a)(3) of H.R. 1270 relates to the timing of the payment of outstanding one-time fees. Section 302(a) of the Nuclear Waste Policy Act of 1982 imposed fees on electricity generated by civilian nuclear power reactors and sold before April 7, 1983, at the rate of one mill per kilowatt-hour. In its implementation of section 302(a), the Department of Energy (DOE) required that licensees agree to Standard Contracts, which DOE promulgated by rule (10 CFR Part 960.11). Under the Standard Contract issued by DOE, licensees were given three options regarding payment of one-time fees: (1) payment of one-time fees plus interest over 10 years; (2) a single payment of one-time fees plus interest anytime prior acceptance to the first delivery of spent nuclear fuel and high-level radioactive waste; or (3) payment of all one-time fees without interest over two years. Thirteen utilities chose the second option, a single payment of one-time fees plus interest anytime prior to first delivery of spent nuclear fuel and high-level radioactive waste. It is these 13 utilities that are affected by section 401(a)(3) of H.R. 1270, which requires payment of outstanding fees by the end of Fiscal Year 2002, instead of upon acceptance of spent fuel and waste by DOE.

In most instances, section 401(a)(3) would not accelerate payment of outstanding one-time fees. The current DOE acceptance schedule is based on the age of spent nuclear fuel, and the utilities in question are in the front of the acceptance queue. Based on the current acceptance priority ranking and the acceptance rate established by the bill, nine of the 13 utilities that owe one-time fees are projected to pay in the first year of acceptance. Since H.R. 1270

provides for the beginning of acceptance of spent nuclear fuel and high-level radioactive waste in January 2002, the payments owed by these utilities would not be accelerated by the bill.

In the case of the four utilities with outstanding fees whose spent fuel and waste is not projected to be accepted in 2002, H.R. 1270 actually produces direct savings, rather than imposes direct costs. Under the agreements entered into with DOE, the utilities are required to pay interest of about four percent each year until acceptance of spent fuel and waste by DOE. To the extent some utilities are required by H.R. 1270 to pay their outstanding one-time fees before acceptance, that relieves them of interest payments that they would otherwise have to make. Under UMRA, "direct savings" are defined as "(A) in the case of a Federal intergovernmental mandate, * * * aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and (B) in the case of a Federal private sector mandate, * * * the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate." These interest payments are projected by DOE to total $500 million between 1997 and 2002.

The New York Power Authority (the Power Authority), an agency of the State of New York, is one of the thirteen utilities that has not yet paid its outstanding one-time fees. Under section 401(a)(3), the Power Authority would pay about $180 million in outstanding one-time fees in Fiscal Year 2002. Based on the current acceptance priority ranking and the acceptance rate established by H.R. 1270, the first acceptance of spent fuel and waste from the Power Authority is projected to occur in 2005. As indicated earlier, payment of outstanding one-time fees will actually produce direct savings for the Power Authority. Currently, the Power Authority pays about $6 million per year in interest on one-time fees. By requiring payment of outstanding one-time fees in Fiscal Year 2002, H.R. 1270 produces direct savings of $18 million for the Power Authority.

Significantly, the State of New York is one of the parties that sued DOE to obtain a writ of mandamus requiring that acceptance begin in January 1998. If that effort is successful, it would require that the Power Authority pay its outstanding one-time fees 10 years earlier than now projected, and perhaps even earlier than proposed by H.R. 1270. For that reason, it is reasonable to conclude the State of New York is prepared to accelerate payment of one-time fees if acceptance is also accelerated. Under H.R. 1270, acceptance is accelerated from 2010 to 2002.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, September 16, 1997.

Hon. JOHN KASICH,
Chairman, Committee on Budget, House of Representatives, Cannon House Office Building, Washington, DC.

Hon. JOHN SPRATT,
Ranking Democratic Member, Committee on Budget, House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CHAIRMAN KASICH AND RANKING MEMBER SPRATT: The Committee on Commerce has had under its consideration H.R. 1270, the Nuclear Waste Policy Act of 1997. An important component of this legislation is its transition of the mandatory Nuclear Waste Fund fee to a discretionary user fee assessed against utility ratepayers. In the Committee's view, this change is necessary to prevent diversion of these fees from their intended purposes and to ensure adequate funding for the construction of a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

The provisions of H.R. 1270, as reported by the Subcommittee on Energy and Power, take pay-as-you-go procedures into account through the mandatory collection of one-time fees from utilities for waste generated prior to the establishment of the Nuclear Waste Fund, and a delay in the implementation of the new user fee mechanism. It is our understanding that the Subcommittee-approved bill does not violate the House's budget rules.

There is concern, however, that the recently-enacted balanced budget agreement could have changed the rules affecting the treatment of pay-as-you-go procedures. We are writing to inquire whether this is the case, and to obtain your assurance that H.R. 1270, as currently written, does not violate pay-as-you-go or any other budget-related restrictions and would not be subject to any budget-related points of order during consideration by the full House.

Sincerely,

TOM BLILEY,
Chairman.
JOHN D. DINGELL,
Ranking Democratic Member.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, September 18, 1997.

Hon. TOM BLILEY,
Chairman, Committee on Commerce, Rayburn HOB, House of Representatives Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter on H.R. 1270, the Nuclear Waste Storage Act of 1997. Although an estimate has not been prepared on the bill, I hope this letter will provide a tentative answer to several of the questions you posed about the version of the bill reported by the Subcommittee on Energy and Power.

As you know, the reported bill would replace a mandatory fee with a discretionary fee controlled through annual appropriations action. In addition, the bill changes the conditions and timing of a one time payment of a fee by the utilities for waste disposal.

As reported by the subcommittee, the bill appears to be generally within the appropriate spending levels set forth in the Concurrent Resolution on the Budget for Fiscal Year 1998 and its accompanying report (H. Con. Res. 84/H. Rept. 105–116) as required under the Congressional Budget Act of 1974 (Budget Act). Specifically, it would neither exceed the Commerce Committee's allocation of new budget authority nor the aggregate level of budget authority and outlays for fiscal year 1998 or for the total of fiscal years 1998 through 2002.

Section 303 of the bill entitles two counties in Nevada to payments from the United States that are not subject to the availability of appropriations. Additionally, section 605 of the bill creates an entitlement to a specified level of compensation for the Nuclear Waste Technical Review Board. I understand that both these provisions will be subject to appropriations when the bill is marked up in full committee.

The bill will apparently reduce the deficit under PAYGO in fiscal year 2002, but increase it by a similar amount spread over the course of fiscal years 1999, 2000, and 2001. Significantly, the bill would not increase the net deficit over the five year period in which PAYGO is in effect. Under PAYGO requirements, the sum of all direct spending and tax legislation must be deficit neutral.

In conclusion, the committee has gone to commendable lengths to solve several serious budgetary problems in the bill from when it was originally reported in the 104th Congress. Most importantly, the one time fee was restructured to provide an offset for the loss in mandatory receipts. I also appreciate the willingness of the full committee to eliminate the potential entitlements relating to the payment to Nevada and the Nuclear Waste Technical Review Board.

Accordingly I do not expect to object to floor consideration of this bill where it can be considered on its merits if the estimates hold up as expected, the finding mechanism is not materially modified, and the two potential entitlements are explicitly subject to appropriations action.

Of course I will reserve judgment on the budgetary implications of the version of the bill that will be ultimately be made in order as base text on the floor until CBO has prepared a cost estimate

and my staff has had the opportunity to review the final bill and report language. Moreover, this letter should not be construed as taking a position on the substantive merits of the bill.

If you have any questions, please contact Jim Bates or Wayne Struble at ext. 6–7270.

Sincerely,

JOHN R. KASICH, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, September 18, 1997.

Hon. TOM BLILEY,
Chairman, Commerce Committee, House of Representatives, Rayburn House Office Building, Washington, DC.

Hon. JOHN D. DINGELL,
Ranking Democratic Member, Commerce Committee, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BLILEY AND RANKING MEMBER DINGELL: Thank you for your September 16 letter regarding H.R. 1270, the Nuclear Waste Policy Act of 1997. In your letter, you expressed concerns that H.R. 1270 as adopted by the Subcommittee on Energy and Power may be in violation of the Congressional Budget Act or PAYGO restrictions. As one who has worked to enact a balanced budget and as a cosponsor of H.R. 1270, I appreciate the opportunity to provide comments on the budget implications of the measure.

As you point out, H.R. 1270 provides that the current fee assessed on electric utilities for the purpose of constructing a repository for their radioactive waste be changed from a mandatory receipt deposited in the Treasury to an offset to appropriations for construction of both interim and permanent storage facilities. CBO will score this change as a reduction in mandatory offsetting receipts, and therefore an increase in net mandatory spending. In order to remain within the constraints of the Congressional Budget Act, the bill does not adjust the fee until 1999 and also provides for a one-time payment of $2.7 billion in 2002. In this way, the legislation does not exceed the Commerce Committee's allocation for mandatory spending for the budget year (1998 in this case) or for the five-year period covered by the budget resolution.

Title III of the bill, which provides for benefit agreements to be entered into between the federal government and the counties of Nye and Lincoln, Nevada, could, depending on the date of execution, cause the Commerce Committee to exceed its allocation of mandatory spending by a very small amount in 1998 and therefore violate the Congressional Budget Act. If the payment were to occur after 1998 or if the payment were made subject to appropriation, this provision would not violate the Congressional Budget Act.

I appreciate that the sponsors of the bill have worked to free the bill of any Budget Act violations it might have. I would point out, however, that the bill has PAYGO implications that will have to be monitored. Although the bill provides for a savings of $0.2 billion over five years, the offset occurs in the last year of the five-year period. The recent reconciliation legislation cleared the PAYGO

scorecard of any credits heretofore accumulated. Based on CBO scoring, this bill would result in costs being entered on the PAYGO scorecard for fiscal years 1999–2001, and potentially therefore an entitlement sequestration in those years. If recent experience is any guide, the PAYGO scorecard will once again accumulate some credits. Nonetheless, as long as the offset included in the bill does not occur until 2002, Congress and the administration will have to enact subsequent savings or revenue legislation to make sure that this legislation does not cause an entitlement sequester.

I would note that OMB's scoring, not CBO's is critical for the purposes of the PAYGO rule. OMB could reduce the discretionary caps rather than reflect a PAYGO cost, on the grounds that some fee income is not disappearing but rather being transferred to the discretionary ledger. But since fee income would also be reduced, such a choice by OMB would only reduce the PAYGO scoring, not eliminate it.

You asked whether the PAYGO issues result from recently enacted amendments to the PAYGO law. This is so, in that PAYGO would have expired after 1998 if not for the recent amendments. But no major changes were made to the way PAYGO operations—it has always been a year-by-year test, not a five-year test.

I hope these comments prove helpful as the Commerce Committee moves forward with H.R. 1270. I commend the Committee for its work with this bill and its efforts to ensure that this bill does not stray from our path to a balanced budget.

Sincerely,

JOHN M. SPRATT, Jr.,
Ranking Democratic Member.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, October 1, 1997.

The Hon. THOMAS J. BLILEY Jr.,
Chairman, Committee on Commerce,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I understand that the Committee on Commerce will file its report today on H.R. 1270, the Nuclear Waste Policy Act of 1997. As you know, H.R. 1270 was referred to the Committee on Transportation and Infrastructure. Because of the need to move this bill to the floor expeditiously, our Committee will agree to be discharged on this legislation based on our understanding that you will continue to work to address our concerns regarding the bill as discussed below.

Title II of the bill vests the Secretary of Energy with the authority to fund road improvements along the route leading to the nuclear storage facility in Nevada and to provide technical assistance and fund training on the safe transportation of nuclear waste. The Committee on Transportation and Infrasture has exclusive legislative and oversight jurisdiction over highway construction as well as jurisdiction over the regulations governing the interstate transportation of hazardous materials on highways and by railroad. It is our understanding that H.R. 1270 was not intended to supplant provisions governing construction of federal-aid highways under

Title 23 of the U.S. Code or motor carrier safety and rail safety provisions under Title 49 of the U.S. Code administered by the Department of Transportation, or the Hazardous Materials Transportation Act under 49 U.S.C. 5101 et. seq.

We request that you include the following provisions in a Floor amendment: First, clarification that H.R. 1270 does not waive or otherwise affect any requirements governing construction of federal-aid highways under title 23, motor carrier and rail safety provisions under Title 49, or the Hazardous Materials Transportation Act.

Second, we would like to include language that ensures that the training provisions in the bill do not result in unnecessary duplication of effort among federal agencies. We also want to ensure that the bill does not impose undue burdens on persons involved in the transportation of hazardous materials since those persons are already subject to rigorous training requirements in the Hazardous Materials Transportation Act and implementing regulations that our Committee has imposed in previous reauthorizations of the Hazardous Materials Transportation Act.

Based on consultation between our respective Committee staffs, I understand that you are willing to work to address our concerns in a Floor amendment. On the basis of that understanding, the Committee on Transportation and Infrastructure will not proceed with any formal consideration of H.R. 1270. This is being done with the understanding that the Committee on Transportation and Infrastructure will be treated without prejudice as to its jurisdictional prerogatives on such or similar provisions in the future and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee in the future. Should this legislation go to a House-Senate conference, the Committee on Transportation and Infrastructure will request to be included as conferees on any provisions within the Committee's jurisdiction.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1270, and would ask that a copy of our exchange of letters on this matter be placed in the Congressional Record during consideration of the bill on the Floor.

With kindest personal regards, I remain

Sincerely,

BUD SHUSTER, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, October 1, 1997.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of October 1, 1997, concerning your interest in H.R. 1270, the Nuclear Waste Policy Act of 1997. I appreciate your assistance in expediting House consideration of this legislation and your comments on those provisions of H.R. 1270 which are within the jurisdiction of the Committee on Transportation and Infrastructure.

The Committee on Commerce recognizes the jurisdiction of the Committee on Transportation and Infrastructure over Federal-aid highways and the interstate transportation of hazardous materials on highways and by railroad. The Committee on Commerce understands the importance of ensuring the safe transport of radioactive materials and agrees that the provisions of H.R. 1270 are not intended to waive or affect current statutory provisions governing the construction of highways, motor carrier and rail safety, or the Hazardous Materials Transportation Act. The Committee on Commerce is committed to working with the Committee on Transportation and Infrastructure prior to the consideration of H.R. 1270 by the full House to address your concerns about those provisions within you Committee's jurisdiction.

Additionally, I would be pleased to support the representation of your Committee in any conference on H.R. 1270 on those provisions of Title II within the jurisdiction of the Committee on Transportation and Infrastructure.

Thank you for your helpfulness and cooperation in this matter.

Sincerely,

TOM BLILEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. AMENDMENT OF NUCLEAR WASTE POLICY ACT OF 1982

This section amends the Nuclear Waste Policy Act of 1982 to read as follows:

Sec. 1. Short title and table of contents

This section designates the Act's short title as the "Nuclear Waste Policy Act of 1997."

Sec. 2. Definitions

This section retains many of the definitions in the Nuclear Waste Policy Act of 1982, with modifications to reflect provisions of this Act, and eliminates those definitions that are no longer necessary. The bill adds definitions for "accept," "acceptance," "disposal system," "engineered systems and components," "integrated management system," "interim storage facility," "interim storage facility site," "metric tons uranium," "Nuclear Waste Fund," "program approach," and "site characterization." In addition, the bill modifies the definitions for "affected Indian tribe," "affected unit of local government," "disposal," "engineered barriers," "high-level radioactive waste," "low level radioactive waste," "Office" (relating to the Office of Civilian Radioactive Waste Management), "repository," "storage," and "Yucca Mountain site." The bill eliminates the definitions for "Administrator," "candidate site," "civilian nuclear activity," "disposal package," "Governor," "monitored retrievable storage facility," "Negotiator," "Office" (relating to the Office of Nuclear Waste Negotiator), "reservation," "siting research," "state," "Storage Fund," "test and evaluation facility," "unit of general local government," and "Waste Fund."

Sec. 3. Findings and purposes

This section provides findings and purposes.

TITLE I—OBLIGATIONS

Sec. 101. Obligations of the Secretary of Energy

This section states the obligations of DOE under the bill. First, the Department is charged with developing and operating a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste. Second, DOE is directed to begin acceptance of spent nuclear fuel and high-level radioactive waste for storage at an interim storage facility no later than January 31, 2002. Third, DOE is obligated to provide for the transportation of such spent fuel and waste to the interim storage facility and repository. Fourth, DOE is required to expeditiously pursue development of each component of the integrated management system and to seek to utilize effective private sector management and contracting practices. This legislation is not intended to affect the course of pending litigation over the Nuclear Waste Policy Act of 1982, including efforts to seek a writ of mandamus compelling DOE to commence disposal of spent nuclear fuel by January 31, 1998, any order suspending the obligation of utilities to pay fees to fund the nuclear waste program, or other relief.

TITLE II—INTEGRATED MANAGEMENT SYSTEM

Sec. 201. Intermodal transfer

Under the Atomic Energy Act of 1954, commencement of intermodal transfer does not require licensing by the NRC. Currently, the NRC does not have authority over intermodal transfer activities, consistent with section 202 of the Energy Reorganization Act of 1974. Intermodal transfer by private parties is currently permitted by a general license under 10 CFR Part 70.20a(a) authorizing any person to possess spent fuel "in the regular course of carriage for another or storage incident thereto." A general license is "effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons" under 10 CFR Part 70.18. As long as the shipper meets the standards specified in the general license, no specific NRC licensing authority is required. DOE and its contractors will conduct transportation activities in like manner as private parties, in accordance with the requirements of the general license.

Because intermodal transfer will take place consistent with the requirements of the general license, the NRC has no further responsibilities under the National Environmental Policy Act of 1969 (P.L. 91–190, as amended) (NEPA) with respect to such activities. The NRC satisfied its NEPA obligations in conjunction with the rulemaking that issued the general license. As long as the terms of the general license are satisfied, no additional environmental review need be performed by the NRC.

Subsection (a) directs DOE to utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site. If direct rail access to the site becomes available, DOE

is authorized to use rail transportation to meet the requirements of Title II. Subsection (b) requires DOE to commence rail-to-truck intermodal transfer at Caliente, Nevada, no later than January 31, 2002. Subsection (c) charges DOE with acquiring lands and rights-of-way necessary to begin intermodal transfer at Caliente, Nevada. Subsection (d) obligates DOE to acquire, develop, and dedicate to the City of Caliente, Nevada, parcels of land and rights-of-way as required to facilitate replacement of land and city wastewater disposal activities necessary to commence intermodal transfer. Replacement of land and city wastewater disposal activities are directed to occur no later than January 31, 2002.

Subsection (e) directs DOE to publish in the Federal Register a legal description of the sites and rights-of-way to be acquired under this section and to file copies of a map of such sites and rights-of-way. This map will have the same force and effect as if included in the bill. DOE is authorized to correct clerical and typographical errors in legal descriptions and make minor adjustments in boundaries.

Subsection (f) requires that DOE make improvements to existing roadways selected for heavy-haul transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

Subsection (g) designates a route for heavy-haul transport of spent nuclear fuel and high-level radioactive waste. In addition, the subsection directs DOE, in consultation with the State of Nevada and appropriate counties and local jurisdictions, to establish reasonable terms and conditions under which it may utilize heavy-haul truck transport to move spent fuel and waste from Caliente, Nevada, to the interim storage facility site. The subsection also provides that, notwithstanding any other law, DOE will be responsible for any incremental costs related to improving or upgrading Federal, State, and local roads in the heavy-haul transportation route utilized, and performing any maintenance activities on such roads, as necessary, to facilitate year-round safe transport of spent fuel and waste. Any such improvement, upgrading, or maintenance activity will be funded solely by appropriations pursuant to sections 401 and 403 of the bill.

Subsection (h) requires the NRC to enter into a Memorandum of Understanding with the City of Caliente, Nevada, and Lincoln County, Nevada, to provide advice to the NRC regarding intermodal transfer and to facilitate on-site representation. In addition, the subsection provides that DOE will pay reasonable expenses of such representation.

Sec. 202. Transportation planning

Subsection (a) charges DOE with taking necessary and appropriate actions to ensure that it is able to accept and transport spent nuclear fuel and high-level radioactive waste beginning not later than January 31, 2002. DOE is directed to analyze each reactor facility in the order of priority established in the acceptance schedule and develop a logistical plan to assure DOE's ability to transport spent fuel and waste. Subsection (b) requires that, in conjunction with the development of the logistical plan required by

subsection (a), DOE update and modify existing transportation institutional plans to ensure that institutional issues are addressed and resolved in order to support the commencement of transportation no later than January 31, 2002. The subsection requires that such planning provide a schedule and process for addressing and implementing, as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, and transportation tracking programs.

Sec. 203. Transportation requirements

Subsection (a) provides that no spent nuclear fuel or high-level radioactive waste may be transported except in packages certified for such purpose by the NRC. The availability of NRC-certified packages will have a significant effect on the acceptance of spent fuel and waste by DOE. For example, if no package is certified by the NRC to transport a particular shipment of spent fuel or waste, that shipment will not be transported. Subsection (b) directs DOE to abide by the NRC's regulations regarding advance notification of State and local governments prior to transport of spent nuclear fuel and high-level radioactive waste. Currently, the NRC requires advance notification of States under 10 CFR Part 71.97.

Subsection (c) requires that DOE provide technical assistance and funds to States, affected units of local governments, and Indian tribes through those jurisdictions. DOE plans to transport substantial amounts of spent fuel or waste for training for public safety officials of appropriate units of local governments. The subsection provides that such training will cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The provision of technical assistance and funds by DOE will be subject to appropriations. DOE is directed to provide technical assistance and funds for training to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrating the ability to reach and involve in training programs workers directly engaged in transportation of spent fuel and waste or emergency response or post-emergency response with respect to transportation. Training by nonprofit employee organizations and joint labor-management organizations will cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations; will be consistent with any training standards established by the Department of Transportation; and will include a training program for emergency response workers, instruction of public safety officers, and instruction of radiological protection and emergency medical personnel. The subsection provides that grants will be made to implement this subsection.

A number of Federal agencies have programs relating to emergency response, and the Committee is concerned about possible duplication among these programs. To that end, the subsection directs the Departments of Transportation, Labor, and Energy, the Federal Emergency Management Agency, the National Institute of Environmental Health Sciences, the NRC, and the Environmental Protection Agency (EPA) to periodically review the emergency response

and preparedness training programs of each Federal department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs, and to take necessary action to minimize any such duplication.

Subsection (d) obligates DOE to utilize private carriers to the fullest extent possible to provide for transportation of spent fuel and waste, and provides that DOE will use direct Federal services for such transportation only upon a determination by the Secretary of Transportation, in consultation with the Secretary of Energy, that private industry is unable or unwilling to provide such transportation services at a reasonable cost. The use of private carriers should be the norm, and direct Federal service the rare exception.

Subsection (e) provides that title to spent nuclear fuel or high-level radioactive waste transfers with acceptance, which is defined as the act of taking possession of such materials. In this manner, title for spent fuel and waste will transfer at the contract holders' designated sites, where DOE accepts possession and commences transport under the contracts entered into between DOE and contractor holders under the Nuclear Waste Policy Act of 1982.

Subsection (f) provides that any person engaged in interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to DOE pursuant to the bill will be subject to the employee protection provisions of 49 U.S.C. 20109, 49 U.S.C. 31105, or the NRC. The employee protection provisions of the NRC are established by section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851) and apply to employees of NRC licensees, applicants for NRC licenses, contractors or subcontractors of such licensees and applicants, and DOE contractors or subcontractors indemnified by section 170(d) of the Atomic Energy Act of 1954.

Paragraph (1) of subsection (g) directs the Secretary of Transportation, pursuant to authority under other provisions of law and in consultation with the Secretary of Labor and the NRC, to promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation will specify minimum training standards applicable to workers, including managerial personnel, and require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation or spent fuel and waste. Under paragraph (2), DOT is authorized to refrain from promulgating additional regulations with respect to worker training if the Secretary determines that regulations promulgated by the NRC establish adequate worker training standards. DOT and the NRC are directed to ensure coordination of worker training standards and avoid duplicate regulation through a Memorandum of Understanding. Paragraph (3) of the subsection provides that the training standards required to be promulgated by paragraph (1) include a specified minimum of hours of initial off-site instruction and actual field experience; a requirement that on-site managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and a training program applicable to persons responsible for responding

to and cleaning up emergency situations occurring during the removal and transportation of spent fuel and waste. DOT is authorized to be appropriated such sums as may be necessary to perform its duties under this subsection.

In all other respects, transport of spent fuel and waste will be governed by the applicable provisions of the Hazardous Materials Transportation Act of 1975 and other relevant statutes.

Sec. 204. Interim storage

This section provides the means for DOE to begin acceptance of spent nuclear fuel and high-level radioactive waste at an interim storage facility beginning in 2002. In July 1996, the U.S. Court of Appeals for the District of Columbia Circuit held in *Indiana Michigan Power Company* v. *U.S. Department of Energy* that DOE has a legal obligation to begin acceptance of spent fuel and waste under the Nuclear Waste Policy Act of 1982, and that DOE's legal obligation to begin acceptance was not conditional on the availability of a repository. Section 204 directs DOE to develop a phased interim storage facility, provides for construction of the facility during the NRC licensing proceeding, focuses NEPA review, and bars preliminary injunctions on construction or operation of the interim storage facility. The facility will be located at the interim storage facility site, which is defined in section 2(17) of H.R. 1270 as the specific site within Area 25 of the Nevada Test Site (NTS) designated by DOE and withdrawn and reserved in accordance with the bill.

The decision to locate the interim storage facility within Area 25 of the NTS is based on several factors. If a repository is developed at Yucca Mountain, location of the interim storage facility at the NTS will minimize the impacts of the transportation of spent nuclear fuel and high-level radioactive waste from reactor sites to the facilities comprising the integrated management system. There is extensive data available concerning the geologic characteristics of the NTS, which indicates the NTS is an appropriate location for an interim storage facility. Additionally, there is a significant environmental baseline at the NTS that will facilitate preparation of the environmental review to support the license application.

The interim storage facility is not exclusively dedicated to acceptance of spent fuel and waste from civilian nuclear power reactors, and DOE is directed to accept spent fuel and waste from atomic energy defense activities and foreign research reactors. This section addresses the only potential safety issue identified by the NRC relating to at-reactor interim storage by providing for early acceptance of spent fuel and waste from permanently closed civilian nuclear power reactors. The section incorporates safeguards to prevent the interim storage facility from becoming a permanent facility through capacity limits on storage and limits on the term of the license for both phases of the facility.

Subsection (a) directs DOE to design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The facility will be subject to licensing under the Atomic Energy Act of 1954 in accordance with the NRC's regulations governing the licensing of independent spent fuel storage installations and will commence operation in phases by January 31, 2002. Current provisions of 10

CFR Part 72 provide the health and safety standards for the licensing of independent spent fuel storage installations. The interim storage facility will be designed to store spent fuel and high-level radioactive waste until DOE is able to transfer such spent fuel and waste to the repository.

The bill requires the NRC to license the interim storage facility under its regulations governing the licensing of independent spent fuel storage installations, but does not prevent the NRC from modifying its existing licensing regulations as it deems necessary and appropriate to provide for licensing of the interim storage facility in accordance with the provisions of the bill. This would not prevent the NRC from amending the general licensing provisions of Part 72, Subpart K to authorize the use at the interim storage facility of storage systems approved for use under the general license if the NRC deems it appropriate to do so.

Subsection (b) provides that the interim storage facility be designed to provide for the use of storage technologies licensed or certified by the NRC to ensure compatibility between the interim storage facility and contract holders spent nuclear fuel and facilities and to facilitate the ability of DOE to fulfill its obligations under the bill. The design of the first phase should permit DOE to ensure commencement of operations by January 31, 2002. The bill directs DOE to discuss compatibility issues with contract holders prior to designing the interim storage facility and to continue such discussions as necessary to assure compatibility between the interim storage facility and contract holders spent fuel and waste.

The Committee adopted a phased approach to the interim storage facility in order to achieve acceptance of spent nuclear fuel and high-level radioactive waste by January 31, 2002. Subsection (c) directs DOE to submit two license applications for an interim storage facility, for the first and second phases of the facility. For purposes of NEPA review, the first and second phases of the facility are to be considered separate facilities.

The first phase of the facility should be modeled on existing independent spent fuel storage installations (ISFSIs) licensed by the NRC under existing regulations. DOE has testified that the first phase facility would be a simple storage facility, consisting primarily of a concrete pad and storage systems similar to those used at licensed ISFSIs at reactor sites. Due to the limited design of the first phase of the interim storage facility, it may be necessary for DOE to restrict the acceptance of spent nuclear fuel and high-level radioactive waste to spent fuel and waste that can be transported to the facility in certified transportable storage systems. DOE is required to submit the first phase license application within 12 months of the date of enactment, and the NRC is directed to grant or deny the license application no later than 36 months from its submittal. Based on testimony at the hearing held by the Subcommittee on Energy and Power, these milestones are achievable. The NRC has licensed eleven independent spent fuel storage installations since 1986, and no change in NRC regulations is needed to license the first phase. The term of the license issued for the first phase will be 20 years. The capacity of the first phase will not exceed 10,000 metric tons uranium (MTU).

Since the second phase may involve a facility that is different from the independent spent fuel storage installations constructed and licensed in the past, the bill does not establish milestones for the submission of the license application or for NRC action on the application. However, DOE must submit a license application for the second phase and the NRC must act expeditiously on this license application in order to assure the second phase is operational before the capacity limit of the first phase is reached. The second phase capacity of 40,000 MTU is not in addition to the 10,000 MTU capacity for the first phase, and the total capacity of both phases of the interim storage facility is 40,000 MTU. The initial term of the second phase license will be 100 years, and be renewable for additional terms. The Committee adopted capacity limits on both phases of the interim storage facility, and imposed limited terms, in order to assure that the interim storage facility does not become a de facto permanent disposal facility. By limiting the capacity and license term for the interim storage facility, the Committee preserves the central importance of a repository.

Subsection (d) authorizes DOE to commence site preparation for the interim storage facility as soon as practicable after the date of enactment of this bill and directs DOE to commence construction of the first phase subsequent to submittal of the license application for the first phase. However, the NRC is directed to issue an order suspending such construction if it determines construction poses an unreasonable risk to public health and safety or the environment. The NRC is directed to terminate all or part of any such order upon a determination that DOE has taken appropriate action to eliminate such risk. This provision balances the need to facilitate DOE's ability to begin acceptance in 2002 with the need to assure protection of public health and safety and the environment. It is important to authorize construction of the first phase during NRC licensing proceedings in order to achieve acceptance of spent nuclear fuel and high-level radioactive waste by January 31, 2002.

DOE is authorized by this subsection to utilize any facility owned by the Federal government at the interim storage facility site on the date of enactment of this legislation in connection with an imminent and substantial endangerment to public health and safety. For example, this provision authorizes DOE to use an existing Engine-Maintenance and Disassembly (E–MAD) facility to handle individual spent nuclear fuel assemblies as needed. DOE's determination that use of such a facility is necessary and consistent with the stated standard is committed to DOE's sole discretion and is not subject to judicial review. Further, the NRC has no licensing or oversight authority with respect to the use of such facilities in connection with an imminent and substantial endangerment to public health and safety, and DOE need not prepare any documentation under NEPA prior to using such a facility. To address concerns about the ability of the interim storage facility to adequately manage the site's spent nuclear fuel and high-level radioactive waste, DOE testified that the second phase of the interim storage facility will require a full-scale hot-cell capability.

Subsection (e) provides that DOE's actions under this section, including selection of a site for the interim storage facility, preparation and submission of license applications, and construction and

operation of any facility, are preliminary decisionmaking activities and do not require the preparation of an environmental impact statement (EIS) or environmental review under NEPA. A final decision by the NRC to grant or deny a license application for the first or second phase of the interim storage facility will be accompanied by an EIS. This treats DOE in the same manner as a private party for purposes of the license application, while assuring that an EIS is prepared by the NRC.

The subsection directs the NRC, in its preparation of the EIS on the interim storage facility, to assume the capacity of the facility will be 40,000 MTU, analyze transportation impacts in a generic manner, and not consider: the need for the interim storage facility; the time of its initial availability; alternatives to storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility; alternatives to the facility site; alternatives to the design criteria for the facility or any individual components thereof; or environmental impacts of the storage of spent fuel and waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

The approach taken by the Committee with respect to the preparation of EIS's is consistent with the approach taken in the current Nuclear Waste Policy Act, and is similar to that taken by many other Federal laws, including environmental laws. For example, both the Endangered Species Act of 1973, (P.L. 93–205, as amended) and the Clean Water Act of 1977 (P.L. 95–217, as amended) specify that certain actions are not to be considered major Federal actions. A number of energy statutes, including the Energy Security Act of 1980 (P.L. 96–294, as amended), the Energy Policy and Conservation Act of 1975 (P.L. 94–163, as amended), and the Department of Energy Organization Act of 1980 (P.L. 95–91, as amended), for example, specify that certain agency actions are not to be considered major Federal actions.

Subsection (f) provides that judicial review of the NRC's EIS shall be consolidated with judicial review of its licensing decision. Further, the subsection provides that no court can enjoin construction or operation of the interim storage facility prior to its final decision on review of the NRC's licensing action.

Subsection (g) states that DOE's obligation to construct and operate the interim storage facility and develop an integrated management system provides sufficient and independent grounds for any further findings by the NRC of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the NRC's decision to grant or amend any license to operate any civilian nuclear power reactor. Subsection (g) applies to any decision by the NRC to issue any license renewal.

Subsection (h) is a savings clause that preserves regulations adopted by the NRC under section 218 of the Nuclear Waste Policy Act of 1982 relating to dry storage of spent nuclear fuel at the sites of civilian nuclear power reactors. The NRC promulgated a general license authorizing the storage of spent nuclear fuel and high-level radioactive waste at reactor sites in storage technology approved for use under the general license. This savings clause is intended

to clarify that the general license will remain in effect subsequent to the date of enactment, notwithstanding the fact that the authorizing provisions of the Nuclear Waste Policy Act of 1982 are no longer effective.

Sec. 205. Permanent disposal

This section provides for the development and operation of a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste by 2010. As such, it recognizes that repository operation in 1998, as provided by the Nuclear Waste Policy Act of 1982, cannot be accomplished. The section relies to a large extent on the program approach announced by DOE in 1996, which envisions the completion of a viability assessment in 1998, a determination of site suitability in 2001, a license application to dispose of spent fuel and waste at the repository in 2002, and repository operation in 2010. The section establishes a presumptive radiation release standard that can be revoked and replaced by the NRC, in consultation with the EPA, if it does not provide for adequate protection of the health and safety of the public. The section also provides for focused NEPA review of the repository in preparation of an EIS.

Subsection (a) revokes guidelines promulgated by DOE and published at 10 CFR Part 960. These regulations were promulgated to govern comparison of the suitability of multiple potential repository sites, as provided by section 112(a) of the Nuclear Waste Policy Act of 1982. Since this provision does not continue in effect under this bill and characterization of multiple repository sites was terminated by section 160 of the Nuclear Waste Policy Amendments Act of 1987, reliance on the guidelines is no longer appropriate. Section 112(a) of the Nuclear Waste Policy Act of 1982 is repealed by this legislation, so revocation of the guidelines is appropriate. The subsection directs DOE to carry out site characterization activities in accord with the program approach, as modified to reflect the revocation of the guidelines.

The subsection requires DOE to apply to the NRC no later than December 31, 2002, for authorization to construct a repository that will commence operation no later than January 17, 2010. The subsection directs DOE to terminate site characterization if it determines the Yucca Mountain site cannot satisfy NRC regulations applicable to licensing of a geologic repository. In the event site characterization is terminated after such a determination, DOE is charged with notifying Congress, and the State of Nevada, and recommending to Congress not later than six months after such determination further actions, including the enactment of legislation, that may be needed to manage spent nuclear fuel and high-level radioactive waste. The subsection also directs DOE to seek to maximize the repository capacity.

Subsection (b) directs the NRC to amend its regulations governing disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories within one year of the date of enactment of this legislation to comply with this bill. This subsection provides that repository licensing will be based on a three-step process. First, DOE will apply for authorization to construct a repository. The bill directs the NRC to grant a construction authorization for

the repository if there is reasonable assurance that spent fuel and waste can be disposed of in the repository: (1) in conformity with DOE's application, provisions of this bill, and NRC regulations; (2) with adequate protection of the health and safety of the public; and (3) consistent with the common defense and security.

Second, the bill directs DOE to apply for a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository after substantial completion of construction and the filing of any additional information needed to complete the license application. The NRC is directed to issue a license to dispose of spent fuel and waste in the repository if it determines the repository has been constructed and will operate: (1) in conformity with DOE's application, provisions of this bill, and NRC regulations; (2) with adequate protection of the health and safety of the public; and (3) consistent with the common defense and security.

Third, DOE is directed to apply to the NRC for a license amendment authorizing permanent closure of the repository after emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance. The NRC is charged to grant such license amendment if there is reasonable assurance that the repository can be permanently closed: (1) in conformity with DOE's application, provisions of this bill, and NRC regulations; (2) with adequate protection of the health and safety of the public; and (3) consistent with the common defense and security. Under paragraph (4), DOE is directed to take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of breaching the repository's barriers or increasing radiation exposure beyond the standard established in subsection (d)(1).

The Nuclear Waste Technical Review Board agreed, during the hearing before the Subcommittee on Energy and Power, that the human intrusion question is "intractable." In later correspondence, the Board stated that "[b]ecause science, even in principle, cannot provide answers to key questions related to human intrusion, the Board believes that any attempt to incorporate that phenomenon into a formal assessment of a repository's performance *requires* (emphasis in original) that policy judgments and assumptions be made," and that "the Board does not have a view as to which set of policy judgments and assumptions is most appropriate. That choice, properly, ought to be in the hands of the legislature and the relevant regulatory agencies." Further, the Energy Policy Act of 1992 (P.L. 102–486) required that the National Academy of Sciences (NAS) make findings and recommendations on reasonable standards for the protection of human health and safety from releases from radioactive materials. In its August 1995 report, NAS agreed that the risk of human intrusion thousands of years in the future is so speculative "it is hardly surprising that Congress would seek a resolution of these issues."

Subsection (c) provides that the NRC's regulations permit modification of the repository licensing procedure in the event DOE seeks a license to permit emplacement in a repository, on a retrievable basis, of only that quantity of spent nuclear fuel or high-level radioactive waste necessary to provide DOE with sufficient con-

firmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

Subsection (d) addresses an issue that has been pending since enactment of the Nuclear Waste Policy Act of 1982—the standard to be applied by the NRC in determining whether the public is adequately protected from releases of radioactive materials or radioactivity from the repository. Section 121(a) of the Nuclear Waste Policy Act of 1982 directed the EPA to issue a radiation release standard within one year of the date of enactment. The EPA issued a standard in 1985, but it was overturned in July 1987 by the U.S. Court of Appeals for the First Circuit in *Natural Resources Defense Council* v. *U.S. Environmental Protection Agency,* and the EPA did not subsequently issue an operative standard. Congress directed the EPA a second time to issue a radiation release standard when it enacted the Energy Policy Act of 1992 (EPAct). Section 801 of EPAct directed EPA to issue a radiation release standard based upon and consistent with the findings and recommendations of the National Academy of Sciences. The National Academy of Sciences issued its recommendations more than two years ago, but EPA has still not issued a radiation release standard. Establishment of a radiation release standard is essential to completion of the repository design and authorization of repository construction in a timely manner, since the design will be based on the standard. Continued failure by EPA to issue a radiation release standard for the repository by itself would effectively prevent repository construction and licensing.

For these reasons, the bill establishes a statutory radiation release standard. This subsection bars EPA from promulgating standards for protection of the public from releases of radioactive materials or radioactivity from the repository, and any standards existing on the date of enactment of this legislation will not be incorporated in NRC licensing regulations. The NRC's repository licensing determinations will be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1)(A) and applied in accordance with paragraph (1)(B). The bill directs the NRC to amend its regulations to incorporate the standards in those paragraphs.

Paragraph (1)(A) establishes an overall system performance standard for protection of the public from release of radioactive material or radioactivity from the repository. Under this subparagraph, a licensing decision by the NRC will be based on compliance with the overall system performance standard, not the performance of individual subsystems. The standard will prohibit radiation releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the NRC determines by rule, in consultation with EPA, that such standard would not provide for adequate protection of the health and safety of the public and establishes by rule another standard which will provide for adequate protection of the health and safety of the public. The legislation gives the NRC the lead role in the development of an alternative radiation release standard out of recognition that the NRC is the Federal agency with expertise on radiation, as well as the failure

of EPA to issue a repository standard for the past fifteen years. The 100 millirem dose standard has been endorsed by the International Commission on Radiation Protection, and is the standard currently used by the NRC for general public protection. In a September 11, 1997, letter to the Committee, the NRC stated the licensing and release standards and assumptions of the bill "will fully protect public health and safety and the environment in the disposal of the nation's high-level waste." Significantly, the bill permits the NRC to strike the standard in lieu of a new standard, but only if the NRC determines by rule, in consultation with the EPA, that the 100 millirem standard would not provide for adequate protection of the health and safety of the public and establishes a new standard by rule.

Paragraph (1)(B) provides for application of the overall system performance standard. The subparagraph directs the NRC to issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if it finds reasonable assurance that (1) for the first 1,000 years following commencement of repository operations, a determination whether the standard will be met will be based on a deterministic or probabilistic evaluation of the overall system performance standard; and (2) for the period commencing after the first 1,000 years of repository operations and terminating 10,000 years after the commencement of repository operations, there is likely to be compliance with the overall system performance standard based on regulatory insight gained through use of a probabilistic integrated performance model that uses the best estimate assumptions, data, and methods. A deterministic evaluation makes assumptions designed to define the maximally exposed individual or group under credible worst case circumstances. By contrast, a probabilistic evaluation uses statistical techniques to compute a large number of possible exposure scenarios and then predicts the average expected exposure to an individual or group; it does not assume that any specific scenario will actually occur. While a probabilistic analysis is more realistic, a deterministic analysis is more conservative. The bill provides the NRC discretion to choose either method of determining compliance with the overall system performance standard during the first 1,000 years following commencement of repository operations. However, the bill specifies use of probabilistic evaluation during the second period, from 1,000 to 10,000 years following commencement of repository operations, out of recognition of the greater uncertainties involved in predicting geological and climatic events, as well as human behavior, all of which affect repository performance, over the much longer time period.

Paragraph (2) instructs the NRC to assume that, after repository closure, the inclusion of engineered barriers and DOE's post-closure actions at the Yucca Mountain site will be sufficient to prevent both any human activity that poses an unreasonable risk of breaching the repository's barriers and any increase in radiation exposure beyond allowable limits specified in paragraph (1). This paragraph is closely related to subsection (b) of this section, which directs DOE to take those actions necessary and appropriate to prevent post-closure actions that pose an unreasonable risk of breaching the repository's barriers or increasing radiation exposure.

Subsection (e) provides that construction and operation of the repository will be considered a major Federal action significantly affecting the quality of the human environment for purposes of NEPA review. DOE is charged with submitting an EIS with the application for construction authorization. For purposes of complying with NEPA and this section, DOE is directed to not consider the need for the repository, alternative sites for the repository, the time of initial availability of the repository, or any alternatives to isolation of spent nuclear fuel and high-level radioactive waste in a repository. This approach to NEPA review reflects the fact that these are requirements of the Nuclear Waste Policy Act of 1982 and this bill. The NRC is directed to adopt the EIS submitted by DOE to the extent practicable in its consideration of a construction authorization, license application, and license amendment. Nothing in this subsection will affect any independent responsibilities of the NRC to protect the public health and safety under the Atomic Energy Act of 1954. In its EIS, the NRC is directed to not consider the need for a repository, the time of initial availability of the repository, alternative sites to the Yucca Mountain site, or nongeologic alternatives to such site.

Subsection (f) provides that no court has jurisdiction to enjoin issuance of the NRC repository licensing regulations prior to its final decision on review of such regulations.

Sec. 206. Land withdrawal

Subsection (a) provides that public lands at the interim storage facility site and Yucca Mountain site are withdrawn from all forms of entry, appropriation, and disposal under the public lands laws, including the mineral leasing laws, the geothermal laws, the material sale laws, and the mining laws. Jurisdiction of any land within the interim storage facility site and Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to DOE. The interim storage facility and Yucca Mountain site are reserved for the use of DOE for the construction and operation of the interim storage facility, the repository, and activities associated with the purposes of Title II. Subsection (b) establishes the boundaries of the interim storage facility site and Yucca Mountain site, by reference to maps on file with DOE. The subsection directs DOE to publish legal descriptions and file maps of the interim storage facility and repository. In addition, the subsection provides that these maps and legal descriptions will have the same force and effect as if they were included in this bill. DOE is authorized to correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

Sec. 207. Private storage facilities

Subsection (a) directs the NRC to review any license application for an independent spent fuel storage installation not located at the site of a civilian nuclear power reactor and issue a license at the earliest practicable date, to the extent permitted by applicable provisions of law and regulation. Subsection (b) directs DOE to encourage efforts to develop private facilities for the storage of spent nuclear fuel, by providing information and assistance, as appropriate,

to the developers of such facilities and to State and local governments and Indian tribes within those jurisdictions such facilities may be located, and to cooperate with developers of such facilities to assure compatibility between such facilities and the integrated management system. Subsection (c) states that development of private facilities for the storage of spent nuclear fuel or high-level radioactive waste would not relieve DOE of its obligations under this bill.

TITLE III—LOCAL RELATIONS

Sec. 301. On-site representative

The section represents a continuation of the current Act, which directs the Secretary of Energy to allow Nye County, Nevada, to designate a representative to conduct oversight activities on behalf of the County at the Yucca Mountain site. Nothing in this Act affects or diminishes the scope of activities within the purview of the on-site representative. Reasonable expenses of such representation will be paid by DOE.

Sec. 302. Benefits agreements

Subsection (a) directs DOE to offer to enter into separate agreements with Nye County and Lincoln County, Nevada, concerning the integrated management system. Subsection (b) provides that the agreements may be amended only with the mutual consent of the parties to the amendments, and terminated only in accordance with subsection (c). Under subsection (c), such agreements will terminate if any element of the integrated management system cannot be completed. Subsection (d) provides that there may only be one agreement each for Nye County and Lincoln County, Nevada. Under subsection (e), decisions by DOE under this section are not subject to judicial review.

Sec. 303. Content of agreements

Subsection (a) establishes a schedule for the payment of benefits to Nye County and Lincoln County, Nevada, under benefits agreements authorized by section 302. Under this schedule, annual payments to each County prior to first receipt of spent fuel will be $2.5 million. Upon first spent fuel receipt, annual payments to each County will be $5 million. Thereafter, until closure of the interim storage facility and repository, annual payments to each County will be $5 million. The subsection clarifies that payments under benefits agreements are in addition to other payments to the affected units of local government provided by this bill.

Under subsection (b), the benefits agreements will provide for the sharing of information, and permit the affected unit of local government to comment on development of the integrated management system and on documents required under law and regulation governing the effects of the system on the public health and safety. According to subsection (c), the signature of the Secretary of Energy on a valid benefits agreement under section 302 will constitute a commitment by the United States to make payments consistent with the agreement.

DOE should structure benefits agreements to address those concerns raised by the Department's report to Congress pursuant to section 175 of the Nuclear Waste Policy Act of 1982. In that report, DOE was required to examine potential impacts of locating a repository at the Yucca Mountain site and associated activities, including impacts on education, public health, law enforcement, fire protection, medical care, cultural needs, transfer of public lands, vocational training, social services, transportation, accident management training, availability of energy, and tourism and economic development. The Department is expected to take these considerations into account in establishing benefits agreements with the various parties.

Sec. 304. Acceptance of benefits

Subsection (a) provides that acceptance or use of benefits under this title will not be deemed to be an expression of consent to the siting of an interim storage facility or repository in the State of Nevada, notwithstanding any provision of the Constitution of the State or any law thereof. Subsection (b) bars the United States and other entities from asserting any argument based on legal or equitable estoppel premised upon or related to acceptance or use of benefits under this title. Under subsection (c), no liability may accrue to the State of Nevada, its Governor, any official thereof, or any official of any governmental unit thereof, premised solely upon acceptance or use of benefits under this title.

Sec. 305. Restriction on use of funds

This section prohibits the use of funds under this title to influence legislative action, for any lobbying activity, for litigation, or to support multistate efforts or coalition-building activities inconsistent with the purposes of this bill.

Sec. 306. Initial land conveyances

The section provides for the conveyance of certain Federal lands within the State of Nevada to Nye County, Lincoln County, and the City of Caliente, Nevada. Such transfers are not to occur earlier than October 1, 1998.

Sec. 307. Payments equal to taxes

This section authorizes the Secretary to make payments to any affected Indian tribe or affected unit of local government an amount equal to that which the affected government would have received had it been allowed to tax the activities of the integrated management system. Subsection (b) authorizes the Secretary to halt such payments at such time as integrated management system activities or development are terminated.

TITLE IV—FUNDING AND ORGANIZATION

Title IV makes a number of significant changes to program funding in order to assure funding is adequate to support continued development of the repository and development of an interim storage facility. These changes also redress a problem that has plagued the program since its inception—the diversion of dedicated consumer contributions to fund unrelated Federal programs. The bill makes

a number of significant changes to nuclear waste program funding. First, by replacing the current mill fee with an annual fee that is adjusted to match appropriations, electric consumers will no longer pay far more than they receive in program funding. Electric consumers will receive a dollar of funding for every dollar of contribution. The incentive to divert consumer contributions to other Federal programs will be eliminated, since under the annual fee a reduction in program funding will result in reduced consumer contributions. Under the current fee structure, reducing nuclear waste program funding increases funds available for other programs.

Second, by authorizing averaging of the annual fee, the title provides necessary flexibility to achieve the new responsibilities imposed by this bill. Averaging the annual fee is needed to maintain a vigorous repository characterization program. One of the obligations of DOE under this bill is to develop and operate a repository for the permanent disposal of spent fuel and waste. The DOE program approach, which is endorsed by this bill, is focused on developing a repository by 2010. By providing for acceptance at an interim storage facility in 2002, the bill is moving substantial costs forward by nearly ten years. According to information provided to the Committee by DOE, the cost of continuing development of the repository along the current schedule and beginning acceptance of spent fuel and waste at an interim storage facility in 2002 would average about $800 million during the period Fiscal Year 1999 through Fiscal Year 2010. However, funding requirements would range between $644 million and $1.1 billion during this period. If funding does not provide the flexibility to match these cost ranges, then some activities currently incorporated in the DOE program approach would have to be abandoned or deferred. This prospect is unacceptable, and the bill adopted averaging in order to provide the funding flexibility necessary to develop an interim storage facility without affecting repository characterization. Averaging will not increase overall program costs, but instead merely provides greater flexibility so that acceptance at an interim storage facility can begin by 2002 without sacrificing continued progress toward repository development.

Third, this title also improves the prospect that the defense contribution to the program will no longer be deficient. Section 403 directs DOE to determine the appropriate portion of costs of managing spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and request annual appropriations sufficient to pay the defense contribution. According to the "Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program" (September 1995) prepared by DOE, underpayment of the defense contribution to the nuclear waste program totaled approximately $959 million through September 30, 1994. Although this legislation does not guarantee adequate appropriations will be made, prospects may be improved by a determination of the proper size of the defense contribution.

Fourth, the bill provides for payment of one-time fees owed by utilities under section 302(a) of the Nuclear Waste Policy Act of 1982 before the end of Fiscal Year 2002. Under the budget laws, the shift from the mill fee to an annual fee adjusted to match appropriations levels reduces receipts. This shift was necessary in

order to assure funding would be adequate to support development of both an interim storage facility and a repository, and to prevent continued diversion of consumer contributions to fund other Federal programs. It was necessary to provide for payment of outstanding one-time fees by a date certain in order to offset the loss of receipts attributable to the shift from the current mandatory mill fee to a discretionary annual fee.

Fifth, this title preserves the existing balance in the Nuclear Waste Fund for future use.

Sec. 401. Program funding

Subsection (a)(1) retains the provisions of section 302(a)(1) of the Nuclear Waste Policy Act of 1982, authorizing DOE to enter into contracts with any persons who generate or hold title to spent nuclear fuel and high-level radioactive waste for the acceptance of title and possession, transportation, interim storage, and disposal of such spent fuel or waste upon payment of fees in accordance with paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph will be paid to the Treasury and be available for use by DOE pursuant to this section until expended. The contracts previously executed under section 302(a) of the Nuclear Waste Policy Act of 1982 will continue in force subsequent to enactment of the bill. Subsection (a) does not require DOE to execute new contracts with current contract holders.

Subsection (a)(1) differs from section 302(a)(1) of the Nuclear Waste Policy Act of 1982 in that it makes clear that DOE's obligations include the acceptance of possession and interim storage of spent fuel and waste, in addition to the acceptance of title, transportation, and disposal of such spent fuel and waste. The subsection also differs from existing law by specifying that fees assessed under the contracts will be paid to the Treasury and available for use by DOE until expended. This reflects the fact that subsequent to enactment of this bill, implementation of the integrated management system will be funded primarily by a fee paid into the Treasury and not into the Nuclear Waste Fund, although DOE is authorized to make expenditures from the Nuclear Waste Fund under specific circumstances.

Subsection (a)(2) alters the calculation of the annual fee established by the Nuclear Waste Policy Act of 1982. Under current law, the annual fee is a flat fee of one mill (one-tenth of a cent) per kilowatt-hour generated and sold. Under subparagraph (A), the annual fee will be adjusted to be no greater than the annual level of appropriations for expenditures on program activities, minus any unobligated balance collected during the previous fiscal year and the defense contribution. DOE is directed to assess an annual fee on each civilian nuclear power reactor based on the amount of electricity generated and sold.

Averaging would occur during the period commencing with Fiscal Year 1999 and continue through the fiscal year in which disposal at the repository commences. During this period, the average annual fee cannot exceed one mill per kilowatt-hour generated and sold, and the fee in any single fiscal year in such period cannot exceed 1.5 mill. Any fee increase above one mill per kilowatt-hour during the averaging period would have to be offset by a decrease

below one mill during the period to assure the average annual fee collected is no more than one mill per kilowatt-hour. After the fiscal year in which disposal at the repository commences, the annual fee is capped at one mill per kilowatt-hour generated and sold. Annual fees will be paid to the Treasury, not the Nuclear Waste Fund. The bill allows DOE to increase the fee to exceed the one mill per kilowatt-hour for a limited period in order to ensure that expenditures on transportation of waste and construction of the interim storage facility do not undermine progress on the commencement of disposal at the permanent repository in 2010.

It appears that annual fees that average one-mill per kilowatt-hour will be sufficient to fund continued development of the repository and acceptance of spent nuclear fuel and high-level radioactive waste at an interim storage facility. Information supplied to the Committee by DOE indicates that in order to achieve these goals, a fee that averages one-mill per kilowatt-hour will be sufficient to maintain progress on the repository program and develop an interim storage facility by 2002. DOE concluded in "Nuclear Waste Fund Fee Adequacy: An Assessment" (October 1996) that a fee of one mill per kilowatt-hour, along with the current balance of the Nuclear Waste Fund, is adequate to fund the nuclear waste program through 2071.

Section 136 of the Nuclear Waste Policy Act of 1982 authorized a separate fund to be established for construction and maintenance of an interim storage facility. This was intended to ensure that if interim storage were pursued by DOE, it would be done in a manner which did not place an interim storage program in competition for funding with permanent repository. The bill maintains this principle by enabling DOE to collect more than the historic one-mill fee from utilities in certain years if it is necessary to provide adequate funding for both the ongoing permanent facility and for activities at the new interim storage facility.

Under subparagraph (B), if there is a shortfall between the aggregate amount of fees collected and the annual level of appropriations, DOE is authorized to make expenditures from the Nuclear Waste Fund. Fees collected may be less than fees authorized to be assessed for a number of reasons. First, as a result of the provisions capping the annual fee, DOE may be prevented from collecting the full amount of authorized assessments. Second, actual collections may be less than authorized fee assessments due to the unexpected shutdown of one or more reactors. Third, as more reactors cease operations over time due to expiration of their operating licenses, aggregate fee collection will decline, and there will be a need to increase annual expenditures from the Nuclear Waste Fund. In these instances, subparagraph (B) authorizes DOE to make expenditures from the Nuclear Waste Fund, without further appropriations, up to the level of the shortfall. This factor was anticipated in the 1982 Act, and DOE has estimated that the current balance of the Nuclear Waste Fund, in combination with the new fee structure proposed in H.R. 1270, will be adequate to fully fund construction, operation and closure of the permanent repository, currently planned for 2071. Subparagraph (C) directs DOE to establish procedures by rule to implement this paragraph.

Subsection (a)(3) provides for payment of one-time fees established under contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982. These fees are assessed on electricity generated by civilian nuclear power reactors and sold before April 7, 1983, at the rate of one mill per kilowatt-hour. In its implementation of section 302(a), DOE required that licensees agree to Standard Contracts, which DOE promulgated by rule (10 CFR Part 960.11). Under the Standard Contract issued by DOE in 1983, DOE granted licensees three options regarding payment of one-time fees: (1) Payment of one-time fees plus interest over ten years; (2) a single payment of one-time fees plus interest anytime prior to the first delivery of spent nuclear fuel and high-level radioactive waste; or (3) payment of all one-time fees without interest over two years. All but 13 utilities chose the first and third options offered by DOE.

One significant change made by the bill relates to the payment of one-time fees owed by utilities that opted to pay their fees in lump sum prior to acceptance of spent fuel and waste by DOE. Under the bill, these funds are required to be paid before the expiration of Fiscal Year 2002. This will result in an estimated payment of $2.7 billion in that fiscal year by utilities that have not yet paid their one-time fees. This change is necessary in order to assure that the legislation does not violate budgetary pay-as-you-go limitations. The bill directs the NRC to suspend the license of any licensee who fails or refuses to pay the full amount of its one-time fee, and that license will remain suspended until the full amount of the fee is paid. This sanction ensures that utilities owing one-time fees will pay them before the end of Fiscal Year 2002. Payment of one-time fees relieves utilities of any further obligation to the Federal government under paragraph (3) for DOE's storage and disposal of their spent nuclear fuel and high-level radioactive waste.

With one major exception, subsection (b) largely retains the provisions of section 302(b) of the Nuclear Waste Policy Act of 1982. The exception is paragraph (4), which provides that no spent nuclear fuel or high-level radioactive waste generated or owned by any department of the United States may be stored or disposed of by DOE in the integrated management system unless, each fiscal year, such department funds its appropriate portion of the costs of such storage and disposal as determined by DOE in the final rule issued in accordance with section 403. The Nuclear Waste Policy Act of 1982 did not explicitly provide for disposal of spent fuel and waste from defense activities in the permanent repository. Section 8 left the decision on whether to dispose of defense waste in the repository to the President. On April 30, 1985, President Reagan determined there was no basis to conclude a repository dedicated to defense waste was required, and authorized disposal of defense waste in the repository. It is appropriate that Federal departments pay their appropriate share of the cost of the repository.

Paragraph (1) prohibits the NRC from issuing or renewing a license to a person for a utilization or production facility unless such person has entered into a contract under subsection (a) or DOE affirms in writing that such person is actively and in good faith negotiating with DOE for a contract under this section. The NRC is au-

thorized to require that an applicant enter into an agreement with DOE as a precondition to the issuance or renewal of a license. Paragraph (2) prohibits the disposal of spent nuclear fuel and high-level radioactive waste generated or owned by a person other than a department of the Federal government in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) of the bill by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste. Paragraphs (1) and (2) are intended to assure that generators and owners of spent fuel and waste enter into contracts with DOE before they commence generation or take title to spent fuel or waste. Paragraph (2) is intended to apply prospectively, since generators and owners of spent fuel and waste generated prior to the date of enactment have all entered into contracts. Paragraph (3) permits assignment of rights and duties of a party to a contract entered into under this section with transfer of the spent fuel or waste involved.

Under subsection (c), the Nuclear Waste Fund continues in effect and may be used only for purposes of the integrated management system. Paragraph (1) provides that the Nuclear Waste Fund will consist of the balance in the Fund prior to the date of enactment of this bill, any appropriations made by Congress before the date of enactment of the Nuclear Waste Policy Act of 1997 to the Nuclear Waste Fund, all interest paid on amounts invested by the Treasury under paragraph (3)(B), and one-time fees collected pursuant to subsection (a)(3). Paragraph (2) provides that the Fund will be used only for purposes of the integrated management system. These provisions make clear that the Fund is reserved for the exclusive use of DOE in implementing the integrated management system. Paragraph (3) retains provisions of section 302(e)(1) of the Nuclear Waste Policy Act of 1982 requiring DOE to report to the Congress on the financial condition and operations of the Nuclear Waste Fund and permitting DOE to invest the balance of the Fund.

Subsection (d) limits the expenditure of funds collected under this section and section 403 after the date of enactment of this bill for purposes of the integrated management system.

Subsection (e) prohibits the use of funds collected under this section or section 403 to design or construct packages for the transportation, storage, or disposal of spent nuclear fuel and high-level radioactive waste. The intent is to terminate the DOE Multi-Purpose Canister (MPC) program and to prohibit DOE from undertaking any new effort to design and develop any other packages for the transportation, storage, or disposal of spent fuel and waste. The provision is not intended to prevent DOE from procuring such packages from private suppliers. DOE should meet its transportation responsibilities under the bill by procuring from private suppliers packages for transportation, storage, or disposal of spent fuel and waste. Private firms have developed and are continuing to develop such packages and are obtaining certification from the NRC.

The Committee took this action for a number of reasons. First, the MPC program has had a history of management problems, highlighted in a report by the DOE Inspector General in March 1994, titled "Followup Audit of the Cask Development Program." Second, the MPC program would not have produced packages li-

censed for storage, transportation, and disposal by 1998, but packages licensed only for storage and transportation. Third, the MPC program, even if it produced packages later licensed for disposal, would not have produced a universal solution. The MPC would not have accommodated all spent fuel and waste, and other packages would be needed. Fourth, the bill moves forward hundreds of millions of dollars that otherwise would have been spent years later. This led the Committee to scrutinize the program approach in order to determine possible savings. Fifth, packages have been developed and licensed by private sector firms. The requirement that spent fuel and waste be transported in packages certified by the NRC gives utilities a powerful incentive to assure packages are certified to accommodate their spent fuel and waste.

The bill maintains the burden of procuring and deploying packages with DOE. The current obligation of DOE to procure these packages is continued in effect by this bill. This obligation was established by section 302(a) of the Nuclear Waste Policy Act of 1982 and incorporated in Article IV.B.2. of the "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste," incorporated in 10 CFR Part 961.11. By preserving the contracts entered into under section 302(a) of the 1982 Act, this bill preserves the obligation of DOE to procure and deploy these packages. If an MPC is developed and certified by a private firm, DOE can procure and deploy MPCs in lieu of other packages such as dual-purpose canisters.

Subsection (f) provides that DOE will submit a budget triennially to the Office of Management and Budget and that the budget will consist of estimates made by the Secretary of Energy of expenditures under this bill and other financial matters. Appropriations will also be subject to triennial authorization.

Subsection (g) provides that section 401 takes effect on October 1, 1998, and section 302 of the Nuclear Waste Policy Act of 1982 continues in effect until that date. This ensures that DOE has authority to collect the mill fee until it is replaced by the annual fee in Fiscal Year 1999.

Sec. 402. Office of Civilian Radioactive Waste Management

This section continues in effect the Office of Civilian Radioactive Waste Management (OCRWM), established by section 304 of the 1982 Act to manage the DOE nuclear waste disposal program.

Sec. 403. Defense contribution

From the inception of the DOE program to manage the disposal of spent nuclear fuel and high-level radioactive waste, it was envisioned that spent fuel and waste from atomic energy defense activities would be emplaced in the repository. However, for the first years of the program, there was no defense contribution. In April 1985, President Reagan issued a finding under section 8 of the Nuclear Waste Policy Act of 1982 that development of a repository for the disposal of high-level radioactive waste from atomic energy defense activities was not required, and such waste would be disposed of in a commercial repository. Significantly, there was no defense contribution until Fiscal Year 1991, and defense contributions since that time have not equaled the appropriate portion of the cost of

managing the DOE program. In its "Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program" (September 1995), DOE indicated the defense underpayment through September 30, 1994, totaled approximately $959 million. This section is intended to maintain a defense contribution in future years, while assuring that the contribution reflects the appropriate portion of costs attributable to atomic energy defense activities.

Subsection (a) directs DOE to issue a final rule within a year of the date of enactment establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this bill allocable to the interim storage or permanent disposal of spent fuel or waste from atomic energy defense activities and spent fuel from foreign research reactors. The defense contribution will include an appropriate portion of costs associated with research and development with respect to development of an interim storage facility and repository, and interest on the principal amounts due. Subsection (b) instructs DOE to request annual appropriations from general revenues in amounts sufficient to pay the costs of managing spent fuel and waste from atomic energy defense activities. Subsection (c) provides that DOE will report to the Congress annually of the amount of spent fuel and waste from atomic energy defense activities and spent fuel from foreign research rectors requiring management in the integrated management system. Subsection (d) authorizes the appropriation of the defense contribution to pay the costs of managing spent fuel and waste from atomic energy defense activities.

TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

Sec. 501. Compliance with other laws

The first sentence of this section directs DOE, in the event any law is inconsistent with or duplicates the requirements of the Atomic Energy Act of 1954 and this bill, to comply only with "the requirements of the Atomic Energy Act and this Act" in implementing the integrated management system. The broad reference to a "law" is intended to incorporate any Federal, State, or local law, regulation, order, or other requirement issued by a competent government entity. In addition, the broad reference to the "requirements of the Atomic Energy Act and this Act" is intended to include a statutory provision or a regulation issued thereunder.

The second sentence addresses the relationship between non-Federal requirements and the requirements of this bill and expressly adopts traditional conflict preemption standards. Use of the term "requirements" is intended to include any law, order, regulation, or other requirement duly issued by a competent entity of a State or political subdivision of a State. The term "a requirement of this Act" is intended to include regulations issued by the NRC as directed by this bill.

This section largely relies on the preemption standard in section 112(a) of the Hazardous Materials Transportation Act of 1975 to govern DOE compliance with State and local requirements. Under this section, if the requirements of any law are inconsistent with or duplicative of this bill or the Atomic Energy Act of 1954, DOE

is directed to comply only with this bill and the Atomic Energy Act. Further, any State or local requirement is preempted if (1) complying with such requirement and a requirement of this bill is impossible; and (2) such requirement, as applied or enforced, is an obstacle to accomplishing or carrying out this bill or a regulation under this bill.

Sec. 502. Water rights

Subsection (a) provides that nothing in this Act or any other Act of Congress will constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this bill. Subsection (b) authorizes the Federal government to acquire and exercise such water rights as it deems necessary to carry out its responsibilities under the Act pursuant to the substantive and procedural requirements of the State of Nevada. The subsection clarifies that nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands. Subsection (c) clarifies that nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

Sec. 503. Judicial review of agency actions

This section preserves section 119 of the Nuclear Waste Policy Act of 1982, with minor changes, which provides for original and exclusive jurisdiction of civil actions arising under this bill in the U.S. courts of appeals, states the venue for any proceeding will be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the U.S. Court of Appeals for the District of Columbia, and establishes a deadline of 180 days after the date of the decision or action or failure to act for commencing a civil action for judicial review.

Sec. 504. Licensing of facility expansions and transshipments

This section preserves section 134 of the Nuclear Waste Policy Act of 1982, which governs NRC proceedings for licensing facility expansions and transshipments.

Sec. 505. Siting a second repository

This section preserves section 161 of the Nuclear Waste Policy Act of 1982, with some minor changes. Under this section, DOE is barred from conducting site-specific activities with respect to a second repository unless the Congress has specifically authorized and appropriated funds for such activities. The section directs DOE to report to the President and the Congress between 2007 and 2010 on the need for a second repository.

The bill eliminates the statutory limit in current law on the capacity of the first repository. Under section 114(d) of the 1982 Act, the capacity of the first repository was limited to 70,000 MTU. This section is not continued in effect in this bill, so there is no statutory limit on the capacity of the repository. It remains to be seen whether the Yucca Mountain site will prove suitable for a repository, and, if so, whether it will be able to accommodate all of the spent nuclear fuel and high-level radioactive waste generated by civilian nuclear power reactors and atomic energy defense activities.

The elimination of the 70,000 MTU cap will provide DOE the flexibility it needs to maximize the size of the repository consistent with licensing requirements.

Sec. 506. Financial arrangements for low-level radioactive waste site closure

This section continues in effect section 151 of the Nuclear Waste Policy Act of 1982, which ensures that financial arrangements have been made to provide for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with the disposal of low-level radioactive waste.

Sec. 507. Nuclear Regulatory Commission training authorization

This section preserves section 306 of the Nuclear Waste Policy Act of 1982, with minor changes, which authorizes and directs the NRC to issue regulations and other regulatory guidance for the training and qualification of certain civilian nuclear power reactor personnel.

Sec. 508. Acceptance schedule

This section provides for a significant acceleration in the current spent nuclear fuel and high-level radioactive acceptance rate. Under the DOE "Annual Capacity Report" issued in March 1995, DOE will accept 400 metric tons uranium (MTU) in the first year of acceptance, 600 MTU the second year, and 900 MTU beginning in the third year. Paragraph (2) establishes a higher acceptance rate—1,200 MTU in the first and second years, and rising to 2,000 MTU in the third and fourth years, 2,700 MTU in the fifth year, and 3,000 beginning in the sixth year. DOE has indicated that these acceptance rates are achievable.

The acceptance priority established by DOE in its "Acceptance Priority Report" (March 1995) is not affected by this bill. The Standard Contract does not provide an actual schedule for acceptance of spent nuclear fuel and high-level radioactive waste. However, Article IV.B.5.(a) of the Standard Contract directs DOE to issue an acceptance priority report and annual capacity report for planning purposes that sets forth the priority ranking and projected annual receiving capacity for DOE facilities. The acceptance priority report and annual capacity report are for planning purposes only and are not contractually binding on either DOE or the contract holders; however, the bill does not alter the priority ranking established by DOE.

In addition, this section directs DOE to accept specified quantities of spent fuel and waste from atomic energy defense activities, foreign research reactors, and civilian nuclear power reactors which have permanently ceased operation. Paragraph (3) directs DOE to reserve at least 25 percent of the difference between the acceptance rate established in paragraph (2) and the rate provided by the schedule for contracts executed prior to the date of enactment of the bill, or 5 percent of the total amount of spent fuel and waste actually accepted, whichever is higher, for acceptance of spent nuclear fuel from foreign research reactors, spent fuel from naval reactors, and high-level radioactive waste from atomic energy defense activities. If the amount of such spent fuel and waste is less than

the minimum amount prescribed in paragraph (2), DOE is directed to accept spent fuel and waste from civilian nuclear power reactors which have permanently ceased operation. Under paragraph (4), if the acceptance rate in paragraph (2) is not achieved, DOE is directed to accept the spent fuel and waste described in paragraph (3)(A) in an amount that is the greater of the acceptance rate prescribed by paragraph (3) and calculated on the amount of spent fuel and waste actually received or 5 percent of the total amount of spent fuel and waste received.

In the early years of acceptance, DOE may not be prepared to accept significant volumes of spent fuel and waste from naval reactors, foreign research reactors, and atomic energy defense activities. In that event, DOE should accept spent fuel and waste from civilian nuclear power reactors which have permanently ceased operation. In addition, DOE is authorized to accept other spent fuel and waste if acceptance of spent fuel from foreign research reactors, spent fuel from naval reactors, high-level radioactive waste from atomic energy defense activities, and spent fuel and waste from civilian nuclear power reactors which have permanently ceased operation does not meet the minimum amount prescribed in paragraph (2). DOE should consider a variety of factors, including safety and costs, in the exercise of this discretion. The requirements of paragraph (3) will not prevent acceleration of the contract acceptance rate, because the acceptance rate in this bill is substantially higher than the rate in the contracts.

Paragraph (5) requires that, if DOE is unable to begin acceptance by January 31, 2002, at the rate specified in paragraph (2), or if the cumulative amount accepted in any year thereafter is less than that provided in paragraph (2), DOE will adjust the acceptance rate upward such that within five years of the beginning of acceptance the total quantity accepted by DOE is consistent with the total quantity that would have been accepted if DOE had begun acceptance in 2002 and continued to accept spent fuel and waste at the rate specified in paragraph (2).

Paragraph (6) states that the acceptance schedule will not be affected or modified in any way as a result of DOE's acceptance of any material other than contract holders' spent nuclear fuel and high-level radioactive waste. This is intended to preserve the acceptance rate and acceptance priority established in DOE's "Acceptance Priority Report" (March 1995).

Sec. 509. Subseabed or ocean water disposal

This section prohibits the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste and bars the expenditure of any funds on any activity related to such disposal.

TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

This title preserves title V of the Nuclear Waste Policy Act of 1982, with minor changes, which established the Nuclear Waste Technical Review Board, and provides that the Board continues in effect.

TITLE VII—MANAGEMENT REFORM

The Federal effort to dispose of spent nuclear fuel and high-level radioactive waste has suffered from a history of serious management problems. These problems have largely been alleviated, which is reflected by the reliance of the Committee on the program approach announced by DOE in 1994, and modified in 1996. Progress has been made, but there is still room for improvement.

Sec. 701. Management reform initiatives

Subsection (a) directs DOE to take actions as necessary to improve the management of the nuclear waste program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business. Subsection (b) provides that DOE employ integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

Sec. 702. Reporting

Subsection (a) requires DOE to report to the Congress within 180 days of the date of enactment of this bill on its planned actions for implementing the provisions of this bill. Subsection (b) instructs DOE to submit annual reports to the Congress to update the information in this initial report, indicating modifications to the DOE schedule and timeline for meeting its obligations under this bill, the reasons for such modifications, and DOE's analysis for its funding needs.

SEC. 2. CONTINUATION OF CONTRACTS

This section continues in effect the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982, except to the extent the contracts are modified by the parties to the contract.

AGENCY VIEWS

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC., September 18, 1997.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, Committee on Commerce,
House of Representatives, Washington DC.

DEAR MR. CHAIRMAN: I am writing to advise you of the Administration's views on H.R. 1270, the proposed Nuclear Waste Policy Act of 1997. The Administration shares your commitment to resolving the complex and important issue of nuclear waste management in a timely and sensible manner, consistent with sound science and the protection of public health, safety, and the environment. The Federal government's long-standing commitment to permanent, geologic disposal should remain the basic goal of high-level radioactive waste management policy.

Congress established a process to ensure that sound technical judgment plays the primary role in determining whether a particular site can host a permanent nuclear waste repository. Designat-

ing the Nevada Test Site as the interim waste storage site at this point undermines the ongoing evaluation of Yucca Mountain as a permanent disposal site as required by the Nuclear Waste Policy Act Amendments of 1987. In addition, the bill runs the risk of reducing resources needed for this effort. More importantly, it could undermine the credibility of the Nation's nuclear waste disposal program by prejudicing the Yucca Mountain permanent repository decision.

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, the President has stated that he would veto any legislation that would designate an interim storage facility at a specific site before the viability of a permanent geologic repository at Yucca Mountain has been determined.

In addition, the bill presents a number of environmental problems, including the removal of the Environmental Protection Agency from its responsibility for developing a radiation exposure standard and preempting the National Environmental Policy Act and other applicable Federal, State and local laws.

The Administration understands the concerns of the utility industry, public utility commissions, and others about the inability of the Department of Energy to accept spent nuclear fuel by January 31, 1998. Secretary Peña has made very effort since his confirmation to work cooperatively with the affected parties to find satisfactory ways of mitigating the impacts of this delay and will continue to do so.

Thank you for your consideration of these views.

Sincerely,

FRANKLIN D. RAINES, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NUCLEAR WASTE POLICY ACT OF 1982

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

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

[SHORT TITLE AND TABLE OF CONTENTS

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

[TABLE OF CONTENTS

[DEFINITIONS

[SEC. 2. For purposes of this Act:

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

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

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

[(B) whose federally-defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided,* That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;

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

[(A) naval reactors development;

[(B) weapons activities including defense inertial confinement fusion;

[(C) verification and control technology;

[(D) defense nuclear materials production;

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

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

[(G) defense research and development.

[(4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 112 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113.

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

[(6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

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

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

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

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

[(11) The terms "engineered barriers" and "engineered systems and components" mean man made components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such terms include the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

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

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

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

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

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

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

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

[(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

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

[(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 305.

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

[(19) The term "reservation" means—

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

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

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

[(21) The term "site characterization" means—

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

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

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

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

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

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

[(26) The term "Storage Fund" means the Interim Storage Fund established in section 137(c).

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

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

[(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 302(c).

[(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.

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

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

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

[(34) The term "monitored retrievable storage facility" means the storage facility described in section 141(b)(1).

[SEPARABILITY

[SEC. 3. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[TERRITORIES AND POSSESSIONS

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

[OCEAN DISPOSAL

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

[LIMITATION ON SPENDING AUTHORITY

[SEC. 6. The authority under this Act to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

[PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION

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

[APPLICABILITY

[SEC. 8. (a) ATOMIC ENERGY DEFENSE ACTIVITIES.—Subject to the provisions of subsection (c), the provisions of this Act shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

[(b) EVALUATION BY PRESIDENT.—(1) Not later than 2 years after the date of the enactment of this Act, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

[(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of

the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 302.

[(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 202 of the Energy Reorganization Act of 1973 (42 U.S.C. 5842); and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

[(c) APPLICABILITY TO CERTAIN REPOSITORIES.—The provisions of this Act shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

[APPLICABILITY

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

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

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

[SEC. 101. (a) NOTIFICATION TO STATES AND AFFECTED INDIAN TRIBES.—Notwithstanding the provisions of section 8, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

[(b) PARTICIPATION OF STATES AND AFFECTED INDIAN TRIBES.—Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 115 through 118, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

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

[FINDINGS AND PURPOSES

[SEC. 111. (a) FINDINGS.—The Congress finds that—

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

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

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

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

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

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

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

[(b) PURPOSES.—The purposes of this subtitle are—

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

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

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

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

[RECOMMENDATION OF CANDIDATE SITES FOR SITE CHARACTERIZATION

[SEC. 112. (a) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

[(b) RECOMMENDATION BY SECRETARY TO THE PRESIDENT.—(1)(A) Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

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

[(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 305.

[(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for

such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

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

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

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

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

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

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

[(E)(i) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

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

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

[(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 113(b)(1).

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

[(c) PRESIDENTIAL REVIEW OF RECOMMENDED CANDIDATE SITES.—(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

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

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

[SITE CHARACTERIZATION

[SEC. 113. (a) IN GENERAL.—The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 112(b)(2) and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1).

[(b) COMMISSION AND STATES.—(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

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

[(i) a description of such candidate site;

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

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

[(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a); and

[(v) any other information required by the Commission;

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

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

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

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

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

[(2) In conducting site characterization activities—

[(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required envi-

ronmental reports and an application for a construction authorization for a repository at such site; and

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

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

[(ii) such radioactive material shall be fully retrievable.

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

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

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

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

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

[(E) suspend all future benefits payments under subtitle F with respect to such site; and

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

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

[SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

[SEC. 114. (a) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 113, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 113 and this section, including the information described in subparagraph (A)

through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

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

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

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

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

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

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

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

[(H) any impact report submitted under section 116(c)(2)(B) by the State of Nevada.

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

[(B) The President shall submit with such recommendation a copy of the statement of such site prepared by the Secretary under paragraph (1).

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

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

[(b) SUBMISSION OF APPLICATION.—If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 115, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

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

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

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

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

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

[(e) PROJECT DECISION SCHEDULE.—(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal

agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

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

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

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

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

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

[(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory

Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

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

[REVIEW OF REPOSITORY SITE SELECTION

[SEC. 115. (a) DEFINITION.—For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at ..... for a repository, with respect to which a notice of disapproval was submitted by ..... on .....". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

[(b) STATE OR INDIAN TRIBE PETITIONS.—The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 114, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

[(c) CONGRESSIONAL REVIEW OF PETITIONS.—If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation for approval of such site is made by the President under section 114, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

[(d) PROCEDURES APPLICABLE TO THE SENATE.—(1) The provisions of this subsection are enacted by the Congress—

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

[(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure

of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

[(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 116 or 118, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

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

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

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

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

[(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclu-

sion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

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

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

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

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

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

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

[(e) PROCEDURES APPLICABLE TO THE HOUSE OF REPRESENTATIVES.—(1) The provisions of this section are enacted by the Congress—

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

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

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

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

[(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally

divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

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

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

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

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

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

[(f) COMPUTATION OF DAYS.—For purposes of this section—

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

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

[(g) INFORMATION PROVIDED TO CONGRESS.—In considering any notice of disapproval submitted to the Congress under section 116 or 118, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

[PARTICIPATION OF STATES

[SEC. 116. (a) NOTIFICATION OF STATES AND AFFECTED TRIBES.—The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after the date of enactment of this Act. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this title, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

[(b) STATE PARTICIPATION IN REPOSITORY SITING DECISIONS.—(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which

State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

[(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

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

[(c) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

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

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

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

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

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

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

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

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

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

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

[(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b).

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

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

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

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

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

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

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

[(ii) the date on which the Yucca Mountain site is disapproved under section 115; or

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

whichever occurs first.

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

[(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or

affected unit of local government under paragraph (1) or (2), except for—

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

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

[(iii) such funds as may be provided under an agreement entered into under title IV.

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

[(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(d) ADDITIONAL NOTIFICATION AND CONSULTATION.—Whenever the Secretary is required under any provision of this Act to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

[CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

[SEC. 117. (a) PROVISION OF INFORMATION.—(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

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

[(b) CONSULTATION AND COOPERATION.—In performing any study of an area within a State for the purpose of determining the suit-

ability of such area for a repository pursuant to section 112(c), and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

[(c) WRITTEN AGREEMENT.—Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c), or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) to the Secretary, whichever, first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

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

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

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

[(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 116(c) or section 118(b), as the case may be;

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

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

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

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

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

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

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

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

[PARTICIPATION OF INDIAN TRIBES

[SEC. 118. (a) PARTICIPATION OF INDIAN TRIBES IN REPOSITORY SITING DECISIONS.—Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

[(b) FINANCIAL ASSISTANCE.—(1) The Secretary shall make grants to each affected tribe notified under section 116(a) for the purpose of participating in activities required by section 117 or authorized by written agreement entered into pursuant to section

117(c). Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

[(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 112(c). Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

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

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

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

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

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

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

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

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

[(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

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

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

[(ii) the date on which such site is disapproved under section 115;

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

[(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987;

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

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

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

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

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

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

[JUDICIAL REVIEW OF AGENCY ACTIONS

[SEC. 119. (a) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

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

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

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

[(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this subtitle, or as required under section 135(c)(1), or alleging a failure to prepare such statement with respect to any such action;

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

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

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

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

[EXPEDITED AUTHORIZATIONS

[SEC. 120. (a) ISSUANCE OF AUTHORIZATIONS.—(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this subtitle requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

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

[(b) TERMS OF AUTHORIZATIONS.—Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

[CERTAIN STANDARDS AND CRITERIA

[SEC. 121. (a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—Not later than 1 year after the date of the enactment of this Act, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

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

[(i) applications for authorization to construct repositories;

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

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

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

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

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

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

[DISPOSAL OF SPENT NUCLEAR FUEL

[SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period

of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 114.

[TITLE TO MATERIAL

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

[CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS

[SEC. 124. The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

[TERMINATION OF CERTAIN PROVISIONS

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

[SUBTITLE B—INTERIM STORAGE PROGRAM

[FINDINGS AND PURPOSES

[SEC. 131. (a) FINDINGS.—The Congress finds that—

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

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

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

[(b) PURPOSES.—The purposes of this subtitle are—

[(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to

the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

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

[AVAILABLE CAPACITY FOR INTERIM STORAGE OF SPENT NUCLEAR FUEL

[SEC. 132. The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

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

[(2) economic considerations;

[(3) continued operation of such reactor;

[(4) any applicable provisions of law; and

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

[INTERIM AT REACTOR STORAGE

[SEC. 133. The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

[LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS

[SEC. 134. (a) ORAL ARGUMENT.—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after the date of the enactment of this Act, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts,

data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

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

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

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

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

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

[(B) shall not consider—

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

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

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

[(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

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

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

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

[STORAGE OF SPENT NUCLEAR FUEL

[SEC. 135. (a) STORAGE CAPACITY.—(1) Subject to section 8, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

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

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

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

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

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

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

[(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the

transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

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

[(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 136(a), and shall accept upon request any spent nuclear fuel as covered under such contracts.

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

[(b) CONTRACTS.—(1) Subject to the capacity limitation established in subsections (a) (1) and (d) the Secretary shall offer to enter into, and may enter into, contracts under section 136(a) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

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

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

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

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

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

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

[(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

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

[(c) ENVIRONMENTAL REVIEW.—(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under sub-

section (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

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

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

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

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

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

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

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

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

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

[(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 119.

[(d) REVIEW OF SITES AND STATE PARTICIPATION.—(1) In carrying out the provisions of this subtitle with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

[(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify

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

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

[(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

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

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

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

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

[(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at ————————, with respect to which a notice of disapproval was submitted by ———————— on ————————.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

[(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

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

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

[(f) REPORT.—The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after the date of the enactment of this Act.

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

[(h) APPLICATION.—Notwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acqui-

sition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.

[(i) COORDINATION WITH RESEARCH AND DEVELOPMENT PROGRAM.—To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 217 from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

[INTERIM STORAGE FUND

[SEC. 136. (a) CONTRACTS.—(1) During the period following the date of the enactment of this Act, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this subtitle: *Provided, however,* That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 135(a). Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

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

[(3) Fees for storage under this subtitle shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this subtitle with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle.

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

[(5) Except as provided in section 137, nothing in this or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

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

[(c) ESTABLISHMENT OF INTERIM STORAGE FUND.—There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

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

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

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

[(d) USE OF STORAGE FUND.—The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this subtitle, including—

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

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

[(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 135;

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

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

[(e) IMPACT ASSISTANCE.—(1) Beginning the first fiscal year which commences after the date of the enactment of this Act, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdicational boundaries of such government or governments and authorized under this subtitle: *Provided, however,* That such impact assistance payments shall not exceed (A) ten per

centum of the costs incurred in paragraphs (1) and (2), or (B) $15 per kilogram of spent fuel, whichever is less;

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

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

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

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

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

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

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

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

[(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

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

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

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

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

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

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

[SEC. 137. (a) TRANSPORTATION.—(1) Transportation of spent nuclear fuel under section 136(a) shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

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

[SUBTITLE C—MONITORED RETRIEVABLE STORAGE

[MONITORED RETRIEVABLE STORAGE

[SEC. 141. (a) FINDINGS.—The Congress finds that—

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

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

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

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

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

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

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

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

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

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

[(2) Such proposal shall include—

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

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

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

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

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

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

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

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

[(d) LICENSING.—Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Re-

organization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

[(e) CLARIFICATION.—Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

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

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

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

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

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

[(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302(c) and shall be available only to the extent provided in advance in appropriation Acts.

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

[(g) LIMITATION.—No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 112. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

[(h) PARTICIPATION OF STATES AND INDIAN TRIBES.—Any facility authorized pursuant to this section shall be subject to the provisions of sections 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.

[AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

[SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.—The proposal of the Secretary (EC–1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

[(b) AUTHORIZATION.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.

[MONITORED RETRIEVABLE STORAGE COMMISSION

[SEC. 143. (a) ESTABLISHMENT.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

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

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

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

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

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

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

[(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel

prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

[(A) repository design and construction;

[(B) waste package design, fabrication and standardization;

[(C) waste preparation;

[(D) waste transportation systems;

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

[(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and

[(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

[(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

[(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

[(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS–18 of the General Schedule, for such staff as may be necessary to carry out its functions.

[(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

[(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

[(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

[(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.

[(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

[SURVEY

[SEC. 144. After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

[(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

[(2) minimize the impacts of transportation and handling of such fuel and waste;

[(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

[(4) impose minimal adverse effects on the local community and the local environment;

[(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

[(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

[(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

[SITE SELECTION

[SEC. 145. (a) IN GENERAL.—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

[(b) LIMITATION.—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

[(c) SITE SPECIFIC ACTIVITIES.—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

[(d) ENVIRONMENTAL ASSESSMENT.—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit

such environmental assessment to the Congress at the time such site is selected.

[(e) NOTIFICATION BEFORE SELECTION.—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

[(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

[(f) NOTIFICATION OF SELECTION.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

[(g) LIMITATION.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.

[NOTICE OF DISAPPROVAL

[SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

[(b) REFERENCES.—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

[BENEFITS AGREEMENT

[SEC. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribes on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

[CONSTRUCTION AUTHORIZATION

[SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not

be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

[(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

[(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

[(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

[(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

[(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

[(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

[(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

[(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

[FINANCIAL ASSISTANCE

[SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

[SUBTITLE D—LOW-LEVEL RADIOACTIVE WASTE

[FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE

[SEC. 151. (a) FINANCIAL ARRANGEMENTS.—(1) The Commission shall establish by rule, regulation, or order, after public notice, and

in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on the date of the enactment of this Act, prior to termination of such licenses.

[(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

[(b) TITLE AND CUSTODY.—(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

[(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

[(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

[(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

[(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

[(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

[SUBTITLE E—REDIRECTION OF THE NUCLEAR WASTE PROGRAM

[SELECTION OF YUCCA MOUNTAIN SITE

[SEC. 160. (a) IN GENERAL.—(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

[(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(b) Effective on the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170.

[SITING A SECOND REPOSITORY

[SEC. 161. (a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

[(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

[(c) TERMINATION OF GRANITE RESEARCH.—Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment designated to evaluate the suitability of crystalline rock as a potential repository host medium.

[(d) ADDITIONAL SITING CRITERIA.—In the event that the Secretary at any time after such date of enactment considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as—

[(1) seasonally increases in population;

[(2) proximity to public drinking water supplies, including those of metropolitan areas; and

[(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

[SUBTITLE F—BENEFITS

[BENEFITS AGREEMENTS

[SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

[(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, cer-

tifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

[(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

[(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

[(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

[(c) AGREEMENT WITH NEVADA.—The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

[(d) MONITORED RETRIEVABLE STORAGE.—The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

[(e) LIMITATION.—Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

[(f) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

[CONTENT OF AGREEMENTS

[SEC. 171. (a) IN GENERAL.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule:

[BENEFITS SCHEDULE

[Amounts in millions]

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	$5	$10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20

[(2) For purposes of this section, the term—

[(A) "MRS" means a monitored retrievable storage facility,

[(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

[(C) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

[(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

[(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

[(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

[(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

[(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

[(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

[(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

[(b) CONTENTS.—A benefits agreement under section 170 shall provide that—

[(1) a Review Panel be established in accordance with section 172;

[(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

[(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

[(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulations governing the effects of the facility on the public health and safety; and

[(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

[(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

[REVIEW PANEL

[SEC. 172. (a) IN GENERAL.—The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

[(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

[(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

[(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

[(4) 1 member to represent other public interests, to be selected by the Secretary.

[(b) TERMS.—(1) The members of the Review Panel shall serve for terms of 4 years each.

[(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

[(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

[(c) DUTIES.—The Review Panel shall—

[(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

[(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

[(3) recommend corrective actions to the Secretary;

[(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

[(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

[(d) INFORMATION.—The Secretary shall promptly make available any information in the Secretary's possession requested by the Panel or its Chairman.

[(e) FEDERAL ADVISORY COMMITTEE ACT.—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

[TERMINATION

[SEC. 173. (a) IN GENERAL.—The Secretary may terminate a benefits agreement under this title if—

[(1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or

[(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

[(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.

[(c) DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

[SUBTITLE G—OTHER BENEFITS

[CONSIDERATION IN SITING FACILITIES

[SEC. 174. The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

[REPORT

[SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

[(b) IMPACTS TO BE CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—

[(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

[(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

[(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

[(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

[(5) medical care, including emergency services and hospitals;

[(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

[(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

[(8) vocational training and employment services;

[(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

[(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

[(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

[(12) availability of energy;

[(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

[(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the constructions operation, and eventual closure of the repository facility.

[SUBTITLE H—TRANSPORTATION

[TRANSPORTATION

[SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purposes by the Commission.

[(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

[(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

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

[PURPOSE

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

[(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

[(2) to authorize the Secretary, pursuant to this title—

[(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

[(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and de-

velopment program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

[(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

[APPLICABILITY

[SEC. 212. The provisions of this title are subject to section 8 and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

[IDENTIFICATION OF SITES

[SEC. 213. (a) GUIDELINES.—Not later than 6 months after the date of the enactment of this Act and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, United States Code, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this title.

[(b) SITE IDENTIFICATION BY THE SECRETARY.—(1) Not later than 1 year after the date of the enactment of this Act, and following promulgation of guidelines under subsection (a), the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and

safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on the date of the enactment of this Act for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this title. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

[(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a);

[(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

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

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

[(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

[(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 302(d) may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

[SITING RESEARCH AND RELATED ACTIVITIES

[SEC. 214. (a) IN GENERAL.—Not later than 30 months after the date on which the Secretary completes the identification of sites under section 213, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 218. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 302(d) may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

[(b) PUBLIC MEETINGS AND ENVIRONMENTAL ASSESSMENT.—Not later than 6 months after the date on which the Secretary completes the identification of sites under section 213, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents

of the area of the activities to be conducted at such site and to receive their views.

[(c) RESTRICTIONS.—Except as provided in section 218 with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a)—

[(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

[(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

[(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

[(d) TITLE TO MATERIAL.—The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 302 for the disposal of such material.

[TEST AND EVALUATION FACILITY SITING REVIEW AND REPORTS

[SEC. 215. (a) CONSULTATION AND COOPERATION.—The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 213 shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term "process of consultation and cooperation" means a methodology—

[(1) by which the Secretary—

[(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

[(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

[(C) works diligently and cooperatively to resolve such concerns and objections; and

[(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

[(b) WRITTEN AGREEMENTS.—The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

[(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

[(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

[(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

[(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

[(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

[(c) LIMITATION.—Except as specifically provided in this section, nothing in this title is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

[FEDERAL AGENCY ACTIONS

[SEC. 216. (a) COOPERATION AND COORDINATION.—Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this title and the mission plan under section 301.

[(b) ENVIRONMENTAL REVIEW.—(1) No action of the Secretary or any other Federal agency required by this title or section 301 with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this title.

[(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[RESEARCH AND DEVELOPMENT ON DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

[SEC. 217. (a) PURPOSE.—Not later than 64 months after the date of the enactment of this Act, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

[(1) to supplement and focus the repository site characterization process;

[(2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;

[(3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 212;

[(4) to validate, under actual conditions, the scientific models used in the design of a repository;

[(5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;

[(6) to supplement the siting data, the generic and specific geological characteristics developed under section 214 relating to isolating disposal materials in the physical environment of a repository;

[(7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and

[(8) to establish operating capability without exposing workers to excessive radiation.

[(b) DESIGN.—The Secretary shall design each test and evaluation facility—

[(1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

[(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

[(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

[(c) OPERATION.—(1) Not later than 88 months after the date of the enactment of this Act, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 301, for purposes of—

[(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

[(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

[(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

[(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

[(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

[(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

[(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

[(ii) thermal pulses significantly greater than the maximum calculated; and

[(iii) human intrusion creating a direct pathway to the biosphere; and

[(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

[(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

[(d) USE OF EXISTING DEPARTMENT FACILITIES.—During the conducting of siting research activities under section 214 and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on the date of the enactment of this Act for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

[(e) ENGINEERED BARRIERS.—The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this Act, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

[(f) ROLE OF COMMISSION.—(1)(A) Not later than 1 year after the date of the enactment of this Act, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under

this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subtitle, for submission by the Secretary of, and review by the Commission of and necessary action on—

[(i) the mission plan prepared under section 301; and

[(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

[(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

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

[(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

[(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

[(g) ENVIRONMENTAL REVIEW.—The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under section 217(a). Nothing in this subsection may be construed to limit siting research activities conducted under section 214. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

[(h) LIMITATIONS.—(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

[(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) determined by the Secretary to be useful in carrying out the purposes of this Act.

[(3) The operation of the test and evaluation facility shall terminate not later than—

[(A) 5 years after the date on which the initial repository begins operation; or

[(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes; whichever occurs sooner.

[(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary,

with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

[RESEARCH AND DEVELOPMENT ON SPENT NUCLEAR FUEL

[SEC. 218. (a) DEMONSTRATION AND COOPERATIVE PROGRAMS.—The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after the date of the enactment of this Act, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

[(b) COOPERATIVE AGREEMENTS.—To carry out the programs described in subsection (a), the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

[(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

[(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

[(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if au-

thorized in any other provision of this Act or in any other provision of law.

[(c) DRY STORAGE RESEARCH AND DEVELOPMENT.—(1) The consultative and technical assistance referred to in subsection (b)(2) may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on the date of the enactment of this Act. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

[(2) To the extent available, and consistent with the provisions of section 135, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 135. Such spent nuclear fuel shall not be subject to the provisions of section 135(e).

[(d) FUNDING.—The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a), as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 136.

[(e) RELATION TO SPENT NUCLEAR FUEL STORAGE PROGRAM.—The spent nuclear fuel storage program authorized in section 135 shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

[(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

[(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

[PAYMENTS TO STATES AND INDIAN TRIBES

[SEC. 219. (a) PAYMENTS.—Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 215. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 215 with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed $3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 217(h). Any such payment may

only be made to a State in which a potential site for a test and evaluation facility has been identified under section 213, or to an affected Indian tribe where the potential site has been identified under such section.

[(b) LIMITATION.—The Secretary shall make any payment to a State under subsection (a) only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 215. Annual payments shall be prorated on a 365-day basis to the specified dates.

[STUDY OF RESEARCH AND DEVELOPMENT NEEDS FOR MONITORED RETRIEVABLE STORAGE PROPOSAL

[SEC. 220. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 141(b) with respect to a monitored retrievable storage facility.

[JUDICIAL REVIEW

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

[SEC. 222. RESEARCH ON ALTERNATIVES FOR THE PERMANENT DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE.—The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

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

[SEC. 223. (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

[(b)(1) Within 90 days of enactment of this Act, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assist-

ance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

[(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

[(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

[(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

[(e) For the purposes of this subsection, the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C. 438).

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

[SUBSEABED DISPOSAL

[SEC. 224. (b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law.

[(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

[(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

[(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

[(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

[(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

[(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

[(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

[TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

[MISSION PLAN

[SEC. 301. (a) CONTENTS OF MISSION PLAN.—The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act. The mission plan shall include—

[(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

[(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this Act and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

[(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this Act, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

[(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

[(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

[(6) the guidelines issued under section 112(a);

[(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

[(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

[(9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

[(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this Act; and

[(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

[(b) SUBMISSION OF MISSION PLAN.—(1) Not later than 15 months after the date of the enactment of this Act, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

[(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

[(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after the date of the enactment of this Act. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

[NUCLEAR WASTE FUND

[SEC. 302. (a) CONTRACTS.—(1) In the performance of his functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

[(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after the date of enactment of this Act, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

[(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after the date of enactment of this Act, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent

nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 123, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) 126(b). In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

[(4) Not later than 180 days after the date of enactment of this Act, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act.

[(5) Contracts entered into under this section shall provide that—

[(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

[(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subtitle.

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

[(b) ADVANCE CONTRACTING REQUIREMENT.—(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

[(i) such person has entered into a contract with the Secretary under this section; or

[(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

[(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

[(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in any repository constructed under this Act unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

[(A) June 30, 1983; or

[(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

[(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

[(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be disposed of by the Secretary in any repository constructed under this Act unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

[(c) ESTABLISHMENT OF NUCLEAR WASTE FUND.—There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

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

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

[(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

[(d) USE OF WASTE FUND.—The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under titles I and II, including—

[(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored, retrievable

storage facility or test and evaluation facility constructed under this Act;

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

[(3) the administrative cost of the radioactive waste disposal program;

[(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored, retrievable storage site or to be used in a test and evaluation facility;

[(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility; and

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

No amount may be expended by the Secretary under this subtitle for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

[(e) ADMINISTRATION OF WASTE FUND.—(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

[(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

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

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

[(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except

that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

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

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

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

[ALTERNATIVE MEANS OF FINANCING

[SEC. 303. The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the

Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after the date of the enactment of this Act.

[OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

[SEC. 304. (a) ESTABLISHMENT.—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

[(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

[(c) ANNUAL REPORT TO CONGRESS.—The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

[(d) AUDIT BY GAO.—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

[LOCATION OF TEST AND EVALUATION FACILITY

[SEC. 305. (a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

[(b) PROCEDURES.—(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in title I with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

[(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in title I with respect to the site selection and development of repositories.

[(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the

location for a repository prior to the date on which the designation of such site is effective under section 115.

[NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION

[SEC. 306. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.—The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following enactment of this Act, and the Commission within the 12-month period following enactment of this Act shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

[TITLE IV—NUCLEAR WASTE NEGOTIATOR

[DEFINITION

[SEC. 401. For purposes of this title, the term "State" means each of the several States and the District of Columbia.

[THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

[SEC. 402. (a) ESTABLISHMENT.—There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

[(b) THE NUCLEAR WASTE NEGOTIATOR.—(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code.

[(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

[DUTIES OF THE NEGOTIATOR

[SEC. 403. (a) NEGOTIATIONS WITH POTENTIAL HOSTS.—(1) The Negotiator shall—

[(A) seek to enter into negotiations on behalf of the United States with—

[(i) the Governor of any State in which a potential site is located; and

[(ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

[(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

[(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.

[(b) CONSULTATION WITH AFFECTED STATES, SUBDIVISIONS OF STATES, AND TRIBES.—In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

[(c) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

[(d) PROPOSED AGREEMENT.—(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) for the site concerned.

[(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b).

[(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal Law.

[(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

[(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2012 et seq.), title II of the

Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

[ENVIRONMENTAL ASSESSMENT OF SITES

[SEC. 404. (a) IN GENERAL.—Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a).

[(b) CONTENTS.—(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

[(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

[(c) JUDICIAL REVIEW.—The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119.

[(d) PUBLIC HEARINGS.—(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

[(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1).

[(e) PUBLIC AVAILABILITY.—Each environmental assessment prepared under subsection (a) shall be made available to the public.

[(f) EVALUATION OF SITES.—(1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

[(A) such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987; or

[(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.

[(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

[SITE CHARACTERIZATION; LICENSING

[SEC. 405. (a) SITE CHARACTERIZATION.—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a), the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in ac-

cordance with section 113, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

[(b) LICENSING.—(1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

[(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

[MONITORED RETRIEVABLE STORAGE

[SEC. 406. (a) CONSTRUCTION AND OPERATION.—Upon enactment of legislation to implement an agreement negotiated under section 403(a) to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

[(b) FINANCIAL ASSISTANCE.—The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

[ENVIRONMENTAL IMPACT STATEMENT

[SEC. 407. (a) IN GENERAL.—Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(b) PREPARATION.—A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

[(c) ADOPTION.—(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

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

[(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

[ADMINISTRATIVE POWERS OF THE NEGOTIATOR

[SEC. 408. In carrying out his functions under this title, the Negotiator may—

[(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

[(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code;

[(3) promulgate such rules and regulations as may be necessary to carry out such functions;

[(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

[(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

[(6) accept voluntary and uncompensated services, notwithstanding the provisions of sections 1342 of title 31, United States Code;

[(7) adopt an official seal, which shall be judicially noticed;

[(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

[(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

[(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

[COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

[SEC. 409. Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title.

[TERMINATION OF THE OFFICE

[SEC. 410. The Office shall cease to exist not later than 30 days after the date 7 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 411. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title.

[TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

[DEFINITIONS

[SEC. 501. As used in this title:

[(1) The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.

[(2) The term "Board" means the Nuclear Waste Technical Review Board established under section 502.

[NUCLEAR WASTE TECHNICAL REVIEW BOARD

[SEC. 502. (a) ESTABLISHMENT.—There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

[(b) MEMBERS.—(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

[(2) The President shall designate a member of the Board to serve as chairman.

[(3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

[(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

[(C)(i) Each person nominated for appointment to the Board shall be—

[(I) eminent in a field of science or engineering, including environmental sciences; and

[(II) selected solely on the basis of established records of distinguished service.

[(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.

[(iii) No person shall be nominated for appointment to the Board who is an employee of—

[(I) the Department of Energy;

[(II) a national laboratory under contract with the Department of Energy; or

[(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

[(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

[(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

[FUNCTIONS

[SEC. 503. The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, including—

[(1) site characterization activities; and

[(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

[INVESTIGATORY POWERS

[SEC. 504. (a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

[(b) PRODUCTION OF DOCUMENTS.—(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

[(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

[COMPENSATION OF MEMBERS

[SEC. 505. (a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

[(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

[STAFF

[SEC. 506. (a) CLERICAL STAFF.—(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

[(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competi-

tive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

[(b) PROFESSIONAL STAFF.—(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

[(2) Not more than 10 professional staff members may be appointed under this subsection.

[(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

[SUPPORT SERVICES

[SEC. 507. (a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

[(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

[(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

[(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

[(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

[REPORT

[SEC. 508. The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 509. Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title.

[TERMINATION OF THE BOARD

[SEC. 510. The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Nuclear Waste Policy Act of 1997".

(b) TABLE OF CONTENTS.—

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) ACCEPT, ACCEPTANCE.—The terms "accept" and "acceptance" mean the Secretary's act of taking possession of spent nuclear fuel or high-level radioactive waste.

(2) ACCEPTANCE SCHEDULE.—The term "acceptance schedule" means the schedule established in section 508 for acceptance of spent nuclear fuel and high-level radioactive waste.

(3) AFFECTED INDIAN TRIBE.—The term "affected Indian tribe" means any Indian tribe—

(A) within whose reservation boundaries the interim storage facility or a repository for spent nuclear fuel or high-level radioactive waste, or both, is proposed to be located; or

(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

(4) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

(5) ATOMIC ENERGY DEFENSE ACTIVITY.—The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) Naval reactors development.

(B) Weapons activities including defense inertial confinement fusion.

(C) Verification and control technology.

(D) Defense nuclear materials production.

(E) Defense nuclear waste and materials byproducts management.

(F) Defense nuclear materials security and safeguards and security investigations.

(G) Defense research and development.

(6) CIVILIAN NUCLEAR POWER REACTOR.—The term "civilian nuclear power reactor" means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

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

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

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

(10) DISPOSAL SYSTEM.—The term "disposal system" means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

(11) ENGINEERED BARRIERS.—The terms "engineered barriers" and "engineered systems and components", mean man made components of a disposal system. Such terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

(12) HIGH-LEVEL RADIOACTIVE WASTE.—The term "high-level radioactive waste" means—

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

(B) the highly radioactive material resulting from atomic energy defense activities; and

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

(13) FEDERAL AGENCY.—The term "Federal agency" means any Executive agency, as defined in section 105 of title 5, United States Code.

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

(15) INTEGRATED MANAGEMENT SYSTEM.—The term "integrated management system" means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste.

(16) INTERIM STORAGE FACILITY.—The term "interim storage facility" means a facility designed and constructed for the receipt, handling, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

(17) INTERIM STORAGE FACILITY SITE.—The term "interim storage facility site" means the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and

withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

(18) LOW-LEVEL RADIOACTIVE WASTE.—The term "low-level radioactive waste" means radioactive material that—

(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

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

(19) METRIC TONS URANIUM.—The terms "metric tons uranium" and "MTU" mean the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

(20) NUCLEAR WASTE FUND.—The term "Nuclear Waste Fund" means the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

(21) OFFICE.—The term "Office" means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

(22) PACKAGE.—The term "package" means the primary container that holds, and is in direct contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials and any overpack that are emplaced at a repository.

(23) PROGRAM APPROACH.—The term "program approach" means the Civilian Radioactive Waste Management Program Plan, dated May 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

(24) REPOSITORY.—The term "repository" means a system designed and constructed under title II of this Act for the permanent geologic disposal of spent nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

(25) SECRETARY.—The term "Secretary" means the Secretary of Energy.

(26) SITE CHARACTERIZATION.—The term "site characterization" means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(27) SPENT NUCLEAR FUEL.—The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor fol-

lowing irradiation, the constituent elements of which have not been separated by reprocessing.

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

(29) WITHDRAWAL.—The term "withdrawal" has the same definition as that set forth in the Federal Land Policy and Management Act (43 U.S.C. 1702 et seq.).

(30) YUCCA MOUNTAIN SITE.—The term "Yucca Mountain site" means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

SEC. 3. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) while spent nuclear fuel can be safely stored at reactor sites, the expeditious movement to and storage of such spent nuclear fuel at a centralized Federal facility will enhance the nation's environmental protection;

(2) while the Federal Government has the responsibility to provide for the centralized interim storage and permanent disposal of spent nuclear fuel and high-level radioactive waste to protect the public health and safety and the environment, the costs of such storage and disposal should be the responsibility of the generators and owners of such waste and fuel, including the Federal Government;

(3) in the interests of protecting the public health and safety, enhancing the nation's environmental protection, promoting the nation's energy security, and ensuring the Secretary's ability to commence acceptance of spent nuclear fuel and high-level radioactive waste no later than January 31, 2002, it is necessary for Congress to authorize the interim storage facility;

(4) deficit-control measures designed to limit appropriation of general revenues have limited the availability of the Nuclear Waste Fund for its intended purposes; and

(5) the Federal Government has the responsibility to provide for the permanent disposal of waste generated from United States atomic energy defense activities.

(b) PURPOSES.—The purposes of this Act are—

(1) to direct the Secretary to develop an integrated management system in accordance with this Act so that the Department can accept spent nuclear fuel or high-level radioactive waste for interim storage commencing no later than January 31, 2002, and for permanent disposal at a repository commencing no later than January 17, 2010;

(2) to provide for the siting, construction, and operation of a repository for permanent geologic disposal of spent nuclear fuel and high-level radioactive waste in order to adequately protect the public and the environment;

(3) to take those actions necessary to ensure that the consumers of nuclear energy, who are funding the Secretary's activities under this Act, receive the services to which they are entitled and realize the benefits of enhanced protection of public health and safety, and the environment, that will ensue from the Sec-

retary's compliance with the obligations imposed by this Act; and

(4) to provide a schedule and process for the expeditious and safe development and commencement of operation of an integrated management system and any necessary modifications to the transportation infrastructure to ensure that the Secretary can commence acceptance of spent nuclear fuel and high-level radioactive waste no later than January 31, 2002.

TITLE I—OBLIGATIONS

SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

(a) DISPOSAL.—The Secretary shall develop and operate a repository for the permanent geologic disposal of spent nuclear fuel and high-level radioactive waste.

(b) ACCEPTANCE.—The Secretary shall accept spent nuclear fuel and high-level radioactive waste for storage at the interim storage facility pursuant to section 204 in accordance with the acceptance schedule, beginning not later than January 31, 2002.

(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary.

(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

TITLE II—INTEGRATED MANAGEMENT SYSTEM

SEC. 201. INTERMODAL TRANSFER.

(a) TRANSPORTATION.—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site. If direct rail access becomes available to the interim storage facility site, the Secretary may use rail transportation to meet the requirements of this title.

(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than January 31, 2002.

(c) ACQUISITIONS.—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and rights-of-way as required to facilitate replacement of land and city wastewater disposal activities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than January 31, 2002.

(e) NOTICE AND MAP.—Within 6 months of the date of enactment of this Act, the Secretary shall—

(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this section; and

(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in legal descriptions and make minor adjustments in the boundaries.

(f) IMPROVEMENTS.—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

(g) HEAVY-HAUL TRANSPORTATION ROUTE.—

(1) DESIGNATION OF ROUTE.—The route for the heavy-haul truck transport of spent nuclear fuel and high-level radioactive waste shall be as designated in the map dated July 21, 1997 (referred to as "Heavy-Haul Route") and on file with the Secretary.

(2) TRUCK TRANSPORTATION.—The Secretary, in consultation with the State of Nevada and appropriate counties and local jurisdictions, shall establish reasonable terms and conditions pursuant to which the Secretary may utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from Caliente, Nevada, to the interim storage facility site.

(3) IMPROVEMENTS AND MAINTENANCE.—Notwithstanding any other law—

(A) the Secretary shall be responsible for any incremental costs related to improving or upgrading Federal, State, and local roads within the heavy-haul transportation route utilized, and performing any maintenance activities on such roads, as necessary, to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste; and

(B) any such improvement, upgrading, or maintenance activity shall be funded solely by appropriations made pursuant to sections 401 and 403 of this Act.

(h) LOCAL GOVERNMENT INVOLVEMENT.—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

SEC. 202. TRANSPORTATION PLANNING.

(a) TRANSPORTATION READINESS.—The Secretary shall take those actions that are necessary and appropriate to ensure that the Secretary is able to accept and transport spent nuclear fuel and high-level radioactive waste beginning not later than January 31, 2002. As soon as is practicable following the enactment of this Act, the Secretary shall analyze each specific reactor facility in the order of priority established in the acceptance schedule, and develop a

logistical plan to assure the Secretary's ability to transport spent nuclear fuel and high-level radioactive waste.

(b) TRANSPORTATION PLANNING.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility no later than January 31, 2002. Among other things, such planning shall provide a schedule and process for addressing and implementing, as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, and transportation tracking programs.

SEC. 203. TRANSPORTATION REQUIREMENTS.

(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

(c) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary shall provide technical assistance and funds to States, affected units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste for training for public safety officials of appropriate units of local government. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Secretary's duty to provide technical and financial assistance under this subsection shall be limited to amounts specified in annual appropriations.

(2) EMPLOYEE ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary shall provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste or emergency response or post-emergency response with respect to such transportation.

(B) TRAINING.—Training under this paragraph—

(i) shall cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations;

(ii) shall be consistent with any training standards established by the Secretary of Transportation; and

(iii) shall include—

(I) a training program applicable to persons responsible for responding to emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste;

(II) instruction of public safety officers in procedures for the command and control of the response to any incident involving the waste; and

(III) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving spent nuclear fuel or high-level radioactive waste being transported.

(3) GRANTS.—To implement this subsection, grants shall be made under section 401(c).

(4) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(d) USE OF PRIVATE CARRIERS.—The Secretary, in providing for the transportation of spent nuclear fuel and high-level radioactive waste under this Act, shall by contract use private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination by the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at a reasonable cost.

(e) TRANSFER OF TITLE.—Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.

(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of section 20109 of title 49, United States Code (in the case of employees of railroad carriers), and section 31105 of title 49, United States Code (in the case of employees operating commercial motor vehicles), or the Commission (in the case of all other employees).

(g) TRAINING STANDARD.—

(1) REGULATION.—No later than 12 months after the date of enactment of this Act, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of

spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

(2) SECRETARY OF TRANSPORTATION.—If the Secretary of Transportation determines, in promulgating the regulation required by paragraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation and the Commission shall use their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

(3) TRAINING STANDARDS CONTENT.—The training standards required to be promulgated under paragraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

(A) a specified minimum number of hours of initial off site instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

(4) AUTHORIZATION.—There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

SEC. 204. INTERIM STORAGE.

(a) AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations and shall commence operation in phases by January 31, 2002. The interim storage facility shall store spent nuclear fuel and high-level radioactive waste until the Secretary is able to transfer such fuel and waste to the repository.

(b) DESIGN.—The design of the interim storage facility shall provide for the use of storage technologies licensed or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

(c) LICENSING.—

(1) PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than January 31, 2002.

(2) FIRST PHASE.—No later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more than 10,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 36 months from the date of the submittal of the application for such license.

(3) SECOND PHASE.—The Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. The license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.

(d) ADDITIONAL AUTHORITY.—

(1) CONSTRUCTION.—For the purpose of complying with subsection (a), the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of this Act and shall commence construction of the first phase of the interim storage facility subsequent to submittal of the license application except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

(2) FACILITY USE.—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of this Act and within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

(e) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

(1) PRELIMINARY DECISIONMAKING ACTIVITIES.—The Secretary's activities under this section, including the selection of a site for the interim storage facility, the preparation and submittal of any license application, and the construction and operation of any facility shall be considered preliminary decisionmaking activities for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or require any environmental review under subparagraph (E) or (F) of such Act.

(2) ENVIRONMENTAL IMPACT STATEMENT.—

(A) FINAL DECISION.—A final decision of the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—

(i) shall assume that 40,000 MTU will be stored at the facility; and

(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

(B) CONSIDERATIONS.—Such Environmental Impact Statement shall not consider—

(i) the need for the interim storage facility, including any individual component thereof;

(ii) the time of the initial availability of the interim storage facility;

(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

(f) JUDICIAL REVIEW.—Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.

(g) WASTE CONFIDENCE.—The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Commission of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(h) SAVINGS CLAUSE.—Nothing in this Act shall affect the Commission's procedures for the licensing of any technology for the dry storage of spent nuclear fuel at the site of any civilian nuclear power reactor as adopted by the Commission under section 218 of the Nu-

clear Waste Policy Act of 1982, as in effect prior to the date of the enactment of this Act. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

SEC. 205. PERMANENT DISPOSAL.

(a) SITE CHARACTERIZATION.—

(1) GUIDELINES.—The guidelines promulgated by the Secretary and published at 10 CFR part 960 are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.

(2) SITE CHARACTERIZATION ACTIVITIES.—The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization if the Secretary modifies or eliminates those site characterization activities designed to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).

(3) DATE.—No later than December 31, 2002, the Secretary shall apply to the Commission for authorization to construct a repository that will commence operations no later than January 17, 2010. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.

(4) MAXIMIZING CAPACITY.—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository.

(b) LICENSING.—Within one year of the date of enactment of this Act, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

(1) CONSTRUCTION AUTHORIZATION.—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

(B) with adequate protection of the health and safety of the public; and

(C) consistent with the common defense and security.

(2) LICENSE.—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

(B) with adequate protection of the health and safety of the public; and

(C) consistent with the common defense and security.

(3) CLOSURE.—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission's regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment upon finding that there is reasonable assurance that the repository can be permanently closed—

(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

(B) with adequate protection of the health and safety of the public; and

(C) consistent with the common defense and security.

(4) POST-CLOSURE.—The Secretary shall take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

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

(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

(c) MODIFICATION OF REPOSITORY LICENSING PROCEDURE.—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of only that quantity of spent nuclear fuel or high-level radioactive waste that is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

(d) LICENSING STANDARDS.—Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall not promulgate, by rule or otherwise, standards for protection of the public from releases of radioactive materials or radioactivity from the repository and any such standards existing on the date of enactment of this Act shall not be incorporated in the Commission's licensing regulations. The Commission's repository licensing determinations for the protection of the public shall be based solely on

a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1)(A) and applied in accordance with the provisions of paragraph (1)(B). The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards:

(1) RELEASE STANDARD.—

(A) ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the Commission, in consultation with the Administrator of the Environmental Protection Agency, determines by rule that such standard would not provide for adequate protection of the health and safety of the public and establishes by rule another standard which will provide for adequate protection of the health and safety of the public. Such standard shall constitute an overall system performance standard.

(B) APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.—The Commission shall issue the license if it finds reasonable assurance that—

(i) for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on a deterministic or probabilistic evaluation of the overall performance of the disposal system; and

(ii) for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository, there is likely to be compliance with the overall system performance standard based on regulatory insight gained through the use of a probabilistic integrated performance model that uses best estimate assumptions, data, and methods.

(2) HUMAN INTRUSION.—The Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(3), shall be sufficient to—

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

(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits as specified in paragraph (1).

(e) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) SUBMISSION OF STATEMENT.—Construction and operation of the repository shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall submit an environmental impact statement on the construction and operation of

the repository to the Commission with the application for construction authorization.

(2) CONSIDERATIONS.—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, alternative sites for the repository, the time of the initial availability of the repository, or any alternatives to the isolation of spent nuclear fuel and high-level radioactive waste in a repository.

(3) ADOPTION BY COMMISSION.—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). In any such statement prepared with respect to the repository, the Commission shall not consider the need for a repository, the time of initial availability of the repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(f) JUDICIAL REVIEW.—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

SEC. 206. LAND WITHDRAWAL.

(a) WITHDRAWAL AND RESERVATION.—

(1) WITHDRAWAL.—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

(2) JURISDICTION.—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

(3) RESERVATION.—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

(b) LAND DESCRIPTION.—

(1) BOUNDARIES.—The boundaries depicted on the map entitled "Interim Storage Facility Site Withdrawal Map," dated July 28, 1995, and on file with the Secretary, are established as the boundaries of the interim storage facility site.

(2) BOUNDARIES.—The boundaries depicted on the map entitled "Yucca Mountain Site Withdrawal Map," dated July 28,

1995, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

(3) NOTICE AND MAPS.—Within 6 months of the date of enactment of this Act, the Secretary shall—

(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

(4) NOTICE AND MAPS.—Concurrent with the Secretary's application to the Commission for authority to construct the repository, the Secretary shall—

(A) publish in the Federal Register a notice containing a legal description of the Yucca Mountain site; and

(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

(5) CONSTRUCTION.—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

SEC. 207. PRIVATE STORAGE FACILITIES.

(a) COMMISSION ACTION.—Upon application by one or more private entities for a license for an independent spent fuel storage installation not located at the site of a civilian nuclear power reactor, the Commission shall review such license application and issue a license for one or more such facilities at the earliest practicable date, to the extent permitted by the applicable provisions of law and regulation.

(b) SECRETARY'S ACTIONS.—The Secretary shall encourage efforts to develop private facilities for the storage of spent nuclear fuel by providing any requested information and assistance, as appropriate, to the developers of such facilities and to State and local governments and Indian tribes within whose jurisdictions such facilities may be located, and shall cooperate with the developers of such facilities to facilitate compatibility between such facilities and the integrated management system.

(c) OBLIGATION.—The Secretary shall satisfy the Secretary's obligations under this Act notwithstanding the development of private facilities for the storage of spent nuclear fuel or high-level radioactive waste.

TITLE III—LOCAL RELATIONS

SEC. 301. ON-SITE REPRESENTATIVE.

The Secretary shall offer to Nye County, Nevada, an opportunity to designate a representative to conduct on-site oversight activities

at the Yucca Mountain site. Reasonable expenses of such representatives shall be paid by the Secretary.

SEC. 302. BENEFITS AGREEMENTS.

(a) IN GENERAL.—

(1) SEPARATE AGREEMENTS.—The Secretary shall offer to enter into separate agreements with Nye County, Nevada, and Lincoln County, Nevada, concerning the integrated management system.

(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of Nye County, Nevada, and Lincoln County, Nevada.

(b) AMENDMENT.—An agreement entered into under subsection (a) may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with subsection (c).

(c) TERMINATION.—The Secretary shall terminate an agreement under subsection (a) if any element of the integrated management system may not be completed.

(d) LIMITATION.—Only 1 agreement each for Nye County, Nevada, and Lincoln County, Nevada, may be in effect at any one time.

(e) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

SEC. 303. CONTENT OF AGREEMENTS.

(a) IN GENERAL.—

(1) SCHEDULE.—The Secretary, subject to appropriations, shall make payments to the party of a benefits agreement under section 302(a) in accordance with the following schedule:

BENEFITS SCHEDULE

[Amounts in millions]

Event	*County*
(A) Annual payments prior to first receipt of fuel	*$2.5*
(B) Upon first spent fuel receipt	*$5*
(C) Annual payments after first spent fuel receipt until closure of facility	*$5*

(2) DEFINITIONS.—For purposes of this section, the term—

(A) "spent fuel" means high-level radioactive waste or spent nuclear fuel; and

(B) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) ANNUAL PAYMENTS.—Annual payments prior to first spent fuel receipt under line (A) of the benefit schedule shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under line (C) of the benefit schedule shall be made on the anniversary date of such first spent fuel receipt.

(4) REDUCTION.—If the first spent fuel payment under line (B) is made within 6 months after the last annual payment prior

to the receipt of spent fuel under line (A) of the benefit schedule, such first spent fuel payment under line (B) of the benefit schedule shall be reduced by an amount equal to 1/12 of such annual payment under line (A) of the benefit schedule for each full month less than 6 that has not elapsed since the last annual payment under line (A) of the benefit schedule.

(b) CONTENTS.—A benefits agreement under section 302 shall provide that—

(1) the parties to the agreement shall share with one another information relevant to the licensing process for the interim storage facility or repository, as it becomes available; and

(2) the affected unit of local government that is party to such agreement may comment on the development of the integrated management system and on documents required under law or regulations governing the effects of the system on the public health and safety.

(c) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under section 302 shall constitute a commitment by the United States to make payments in accordance with such agreement.

SEC. 304. ACCEPTANCE OF BENEFITS.

(a) CONSENT.—The acceptance or use of any of the benefits provided under this title by any affected unit of local government shall not be deemed to be an expression of consent, express, or denied, either under the Constitution of the State of Nevada or any law thereof, to the siting of the interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State of Nevada, to oppose the siting in Nevada of the interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

(c) LIABILITY.—No liability of any nature shall accrue to be asserted against the State of Nevada, its Governor, any official thereof, or any official of any governmental unit thereof, premised solely upon the acceptance or use of benefits under this title.

SEC. 305. RESTRICTION ON USE OF FUNDS.

None of the funding provided under section 303 may be used—

(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

(2) for litigation purposes; and

(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

SEC. 306. INITIAL LAND CONVEYANCES.

(a) CONVEYANCE OF PUBLIC LANDS.—Within 120 days after October 1, 1998, the Secretary of the Interior, or other agency with jurisdiction over the public lands described in subsection (b), shall convey the public lands described in subsection (b) to the appropriate county, unless the county notifies the Secretary of the Interior or the

head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye, County of Lincoln, or the City of Caliente under this subsection that are subject to a Federal grazing permit or a similar federally granted privilege shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the privilege would be able to legally terminate such privilege under the statutes and regulations existing on October 1, 1998, unless the Federal agency, county or city, and the affected holder of the privilege negotiate an agreement that allows for an earlier conveyance, but in no case to occur earlier than October 1, 1998.

(b) SPECIAL CONVEYANCES.—Subject to valid existing rights and notwithstanding any other law, the Secretary of the Interior or the head of the other appropriate agency shall convey:

(1) To the County of Nye, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:

Map 1: Proposed Pahrump Industrial Park Site

Map 2: Proposed Lathrop Wells (Gate 510) Industrial Park Site

Map 3: Pahrump Landfill Sites

Map 4: Amargosa Valley Regional Landfill Site

Map 5: Amargosa Valley Municipal Landfill Site

Map 6: Beatty Landfill/Transfer station Site

Map 7: Round Mountain Landfill Site

Map 8: Tonopah Landfill Site

Map 9: Gabbs Landfill Site.

(2) To the County of Lincoln, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:

Map 2: Lincoln County, Parcel M, Industrial Park Site, Jointly with the City of Caliente

Map 3: Lincoln County, Parcels F and G, Mixed Use, Industrial Sites

Map 4: Lincoln County, Parcels H and I, Mixed Use and Airport Expansion Sites

Map 5: Lincoln County, Parcels J and K, Mixed Use, Airport and Landfill Expansion Sites

Map 6: Lincoln County, Parcels E and L, Mixed Use, Airport and Industrial Expansion Sites.

(3) To the City of Caliente, Nevada, the following public lands depicted on the maps dated October 11, 1995, and on file with the Secretary:

Map 1: City of Caliente, Parcels A, B, C and D, Community Growth, Landfill Expansion and Community Recreation Sites

Map 2: City of Caliente, Parcel M, Industrial Park Site, jointly with Lincoln County.

(c) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The activities of the Secretary and the head of any other Federal agency in connection with subsections (a) and (b) shall be considered preliminary decision making activities. No such activity shall require the preparation of an environmental impact statement under section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

SEC. 307. PAYMENTS EQUAL TO TAXES.

(a) TAXABLE AMOUNTS.—In addition to financial assistance provided under this title, the Secretary is authorized to grant to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amount such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.

(b) TERMINATION.—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

(c) ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.—

(1) PERIOD.—Any affected Indian tribe or affected unit of local government may not receive any grant under subsection (a) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.

(2) ACTIVITIES.—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

TITLE IV—FUNDING AND ORGANIZATION

SEC. 401. PROGRAM FUNDING.

(a) CONTRACTS.—

(1) AUTHORITY OF SECRETARY.—In the performance of the Secretary's functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such spent fuel or waste upon the payment of fees in accordance with paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended.

(2) ANNUAL FEES.—

(A) ELECTRICITY.—

(i) IN GENERAL.—Under a contract entered into under paragraph (1) there shall be a fee for electricity generated by civilian nuclear power reactors and sold on or after the date of enactment of this Act. The aggregate amount of such fees collected during each fiscal

year shall be no greater than the annual level of appropriations for expenditures on the integrated management system for that fiscal year, minus—

(I) any unobligated balance of fees collected during the previous fiscal year; and

(II) such appropriations required to be funded by the Federal Government pursuant to section 403.

(ii) FEE LEVEL.—The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that for the period commencing with fiscal year 1999 and continuing through the fiscal year in which disposal at the repository commences—

(I) the average annual fee collected under this subparagraph shall not exceed 1.0 mill per-kilowatt hour generated and sold; and

(II) the fee in any fiscal year in such period shall not exceed 1.5 mill per kilowatt hour generated and sold.

Thereafter, the annual fee collected under this subparagraph shall not exceed 1.0 mill per-kilowatt hour generated and sold. Fees assessed pursuant to this subparagraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended.

(B) EXPENDITURES IF SHORTFALL.—If, during any fiscal year, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

(i) any unobligated balance collected pursuant to this section during the previous fiscal year, and

(ii) such appropriations required to be funded by the Federal Government pursuant to section 403,

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of appropriations.

(C) RULES.—The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

(3) ONE-TIME FEES.—The one-time fees collected under contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 before the date of enactment of this Act on spent nuclear fuel, or high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor before April 7, 1983, shall be paid to the Nuclear Waste Fund. The Secretary shall collect all such fees before the expiration of fiscal year 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. In paying such a fee, the person delivering such spent nuclear fuel or high-level radioactive wastes, to the Secretary shall have no further financial obligation under this paragraph to the Federal Government

for the long-term storage and permanent disposal of such spent nuclear fuel or high-level radioactive waste.

(b) ADVANCE CONTRACTING REQUIREMENT.—

(1) IN GENERAL.—

(A) LICENSE ISSUANCE AND RENEWAL.—The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

(i) such person has entered into a contract under subsection (a) with the Secretary; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under subsection (a).

(B) PRECONDITION.—The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of spent nuclear fuel and high-level radioactive waste that may result from the use of such license.

(2) DISPOSAL IN REPOSITORY.—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

(3) ASSIGNMENT.—The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) DISPOSAL CONDITION.—No spent nuclear fuel or high-level radioactive waste generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be stored or disposed of by the Secretary at the interim storage facility or repository in the integrated management system developed under this Act unless, in each fiscal year, such department funds its appropriate portion of the costs of such storage and disposal as specified in section 403.

(c) NUCLEAR WASTE FUND.—

(1) IN GENERAL.—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

(A) all receipts, proceeds, and recoveries realized by the Secretary before the date of enactment of this Act;

(B) any appropriations made by the Congress before the date of enactment of this Act to the Nuclear Waste Fund;

(C) all interest paid on amounts invested by the Secretary of the Treasury under paragraph (3)(B); and

(D) the one-time fees collected pursuant to subsection (a)(3).

(2) USE.—The Nuclear Waste Fund shall be used only for purposes of the integrated management system.

(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

(A) IN GENERAL.—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund; and

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

(C) EXEMPTION.—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

(d) USE OF APPROPRIATED FUNDS.—During each fiscal year, the Secretary may make expenditures of funds collected after the date of enactment of this Act under this section and section 403, up to the level of appropriations for that fiscal year pursuant to subsection (f) only for purposes of the integrated management system.

(e) PROHIBITION ON USE OF APPROPRIATIONS AND NUCLEAR WASTE FUND.—The Secretary shall not make expenditures of funds collected pursuant to this section or section 403 to design or construct packages for the transportation, storage, or disposal of spent nuclear fuel from civilian nuclear power reactors.

(f) APPROPRIATIONS.—

(1) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial mat-

ters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

(2) APPROPRIATIONS.—Appropriations shall be subject to triennial authorization. During each fiscal year, the Secretary may make expenditures, up to the level of appropriations, out of the funds collected pursuant to this section and section 403, if the Secretary transmits the amounts appropriated for implementation of this Act to the Commission and the Nuclear Waste Technical Review Board in appropriate proportion to the collection of such funds.

(g) EFFECTIVE DATE.—This section shall take effect October 1, 1998, and section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall continue in effect until October 1, 1998.

SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

(a) CONTINUATION OF OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.—The Office of Civilian Radioactive Waste Management established under section 304(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of this Act, shall continue in effect subsequent to the date of enactment of this Act.

(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) AUDITS.—

(1) STANDARD.—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the date of enactment of this Act.

(3) COMPTROLLER GENERAL.—The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

(4) TIME.—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

(5) PUBLIC DOCUMENTS.—All audit reports shall be public documents and available to any individual upon request.

SEC. 403. DEFENSE CONTRIBUTION.

(a) ALLOCATION.—No later than one year from the date of enactment of this Act, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel, high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel, high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors shall include—

(1) an appropriate portion of the costs associated with research and development activities with respect to development of the interim storage facility and repository; and

(2) interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

(b) APPROPRIATION REQUEST.—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of materials described in subsection (a).

(c) REPORT.—In conjunction with the annual report submitted to Congress under section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities, and spent nuclear fuel from foreign research reactors requiring management in the integrated management system.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities as established under subsection (a).

TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 501. COMPLIANCE WITH OTHER LAWS.

If the requirements of any law are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and this Act in implementing the integrated management system. Any requirement of a State or political subdivision of a State is preempted if—

(1) complying with such requirement and a requirement of this Act is impossible; or

(2) such requirement, as applied or enforced, is an obstacle to accomplishing or carrying out this Act or a regulation under this Act.

SEC. 502. WATER RIGHTS.

(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights.

(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

SEC. 503. JUDICIAL REVIEW OF AGENCY ACTIONS.

(a) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—

(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

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

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

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

(D) for review of any environmental impact statement prepared or environmental assessment made pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

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

(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that the party did not know of the decision or action complained of or of the failure to act, and that a reasonable person acting under the circumstances would not have known of such decision, action, or failure to act, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(c) APPLICATION OF OTHER LAW.—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

SEC. 504. LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS.

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

(b) ADJUDICATORY HEARING.—

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

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

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

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

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

(B) shall not consider—

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

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless—

(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

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

(4) CONSTRUCTION.—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

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

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

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

SEC. 505. SITING A SECOND REPOSITORY.

(a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

SEC. 506. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.

(a) FINANCIAL ARRANGEMENTS.—

(1) STANDARDS AND INSTRUCTIONS.—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements estab-

lished by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) BONDING, SURETY, OR OTHER FINANCIAL ARRANGEMENTS.—If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) TITLE AND CUSTODY.—

(1) AUTHORITY OF SECRETARY.—The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) PROTECTION.—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

SEC. 507. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors,

technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs.

SEC. 508. ACCEPTANCE SCHEDULE.

The acceptance schedule shall be implemented in accordance with the following:

(1) PRIORITY RANKING.—Acceptance priority ranking shall be determined by the Department's "Acceptance Priority Ranking" report.

(2) ACCEPTANCE RATE.—Except as provided in paragraph (5), the Secretary's acceptance rate for spent nuclear fuel shall be no less than the following: 1,200 MTU in 2002 and 1,200 MTU in 2003, 2,000 MTU in 2004 and 2,000 MTU in 2005, 2,700 MTU in 2006, and 3,000 MTU thereafter.

(3) OTHER ACCEPTANCES.—In each year, once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed under the Nuclear Waste Policy Act of 1982 (as set forth in the Secretary's annual capacity report dated March 1995 (DOE/RW–0457)), the Secretary—

(A) shall accept from spent nuclear fuel from foreign research reactors and spent nuclear fuel from naval reactors and high-level radioactive waste from atomic energy defense activities, an amount of spent nuclear fuel and high-level radioactive waste which is—

(i) at least 25 percent of the difference between such annual acceptance rate and the annual rate specified in paragraph (2), or

(ii) 5 percent of the total amount of spent nuclear fuel and high-level radioactive waste actually accepted, whichever is higher. If such amount is less than the rate prescribed in the preceding sentence, the Secretary shall accept spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors which have permanently ceased operation; and

(B) may, additionally, accept any other spent nuclear fuel or high-level radioactive waste.

(4) EXCEPTION.—If the annual rate under the acceptance schedule is not achieved, the acceptance rate of the Secretary of the materials described in paragraph (3)(A) shall be the greater of the acceptance rate prescribed by paragraph (3) and calculated on the basis of the amount of spent nuclear fuel and high-level radioactive waste actually received or 5 percent of the total amount of spent nuclear fuel and high-level radioactive waste actually accepted.

(5) ADJUSTMENT.—If the Secretary is unable to begin acceptance by January 31, 2002 at the rate specified in paragraph (2) or if the cumulative amount accepted in any year thereafter is less than that which would have been accepted under the rate

specified in paragraph (2), the acceptance schedule shall, to the extent practicable, be adjusted upward such that within 5 years of the start of acceptance by the Secretary—

(A) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had begun acceptance in 2002; and

(B) thereafter the acceptance rate is equivalent to the rate that would be in place pursuant to paragraph (2) if the Secretary had commenced acceptance in 2002.

(6) EFFECT ON SCHEDULE.—The acceptance schedule shall not be affected or modified in any way as a result of the Secretary's acceptance of any material other than contract holders' spent nuclear fuel and high-level radioactive waste.

SEC. 509. SUBSEABED OR OCEAN WATER DISPOSAL.

Notwithstanding any other provision of law—

(1) the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste is prohibited; and

(2) no funds shall be obligated for any activity relating to the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste.

TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

SEC. 601. DEFINITIONS.

For purposes of this title—

(1) CHAIRMAN.—The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.

(2) BOARD.—The term "Board" means the Nuclear Waste Technical Review Board continued under section 602.

SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

(a) CONTINUATION OF NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of this Act, shall continue in effect subsequent to the date of enactment of this Act.

(b) MEMBERS.—

(1) NUMBER.—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) CHAIR.—The President shall designate a member of the Board to serve as Chairman.

(3) NATIONAL ACADEMY OF SCIENCES.—

(A) NOMINATIONS.—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) VACANCIES.—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the

Board from among persons who meet the qualifications described in subparagraph (C).

(C) NOMINEES.—

(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.

(4) VACANCIES.—Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) TERMS.—Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.

SEC. 603. FUNCTIONS.

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of spent nuclear fuel or high-level radioactive waste.

SEC. 604. INVESTIGATORY POWERS.

(a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) PRODUCTION OF DOCUMENTS.—

(1) RESPONSE TO INQUIRIES.—Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this title.

(2) EXTENT.—Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

SEC. 605. COMPENSATION OF MEMBERS.

(a) IN GENERAL.—Each member of the Board shall, subject to appropriations, be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

SEC. 606. STAFF.

(a) CLERICAL STAFF.—

(1) AUTHORITY OF CHAIRMAN.—Subject to paragraph (2), the Chairman may, subject to appropriations, appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) PROVISIONS OF TITLE 5.—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

(b) PROFESSIONAL STAFF.—

(1) AUTHORITY OF CHAIRMAN.—Subject to paragraphs (2) and (3), the Chairman may, subject to appropriations, appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) NUMBER.—Not more than 10 professional staff members may be appointed under this subsection.

(3) TITLE 5.—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

SEC. 607. SUPPORT SERVICES.

(a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may, subject to appropriations, procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

SEC. 608. REPORT.

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for expenditures such sums as may be necessary to carry out the provisions of this title.

SEC. 610. TERMINATION OF THE BOARD.

The Board shall cease to exist not later than one year after the date on which the Secretary begins disposal of spent nuclear fuel or high-level radioactive waste in the repository.

TITLE VII—MANAGEMENT REFORM

SEC. 701. MANAGEMENT REFORM INITIATIVES.

(a) IN GENERAL.—The Secretary is directed to take actions as necessary to improve the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

(b) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

SEC. 702. REPORTING.

(a) INITIAL REPORT.—Within 180 days of the date of enactment of this Act, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than January 31, 2002, and in accordance with the acceptance schedule;

(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary's obligations under this Act and the contracts;

(3) a detailed description of the Secretary's contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and

(4) an analysis by the Secretary of its funding needs for fiscal years 1996 through 2001.

(b) ANNUAL REPORTS.—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of—

(1) any modifications to the Secretary's schedule and timeline for meeting its obligations under this Act;

(2) the reasons for such modifications, and the status of the implementation of any of the Secretary's contingency plans; and

(3) the Secretary's analysis of its funding needs for the ensuing 5 fiscal years.

DISSENTING VIEWS

H.R. 1270 may respond to the short-term economic and public relations needs of the nuclear utility industry, but it does a disservice to our obligation to the American people to find real solutions to the nuclear waste dilemma.

Over the last fifty years, our nation has generated tens of thousands of tons of plutonium, enriched uranium, and other highly-radioactive nuclear materials and wastes. There is no problem as grave as finding a solution to the disposal of these deadly wastes. The need to do so in the safest and most responsible fashion is obvious—the failure to do so will subject future generations to possible lethal exposures for tens of thousands of years to come.

Sadly, the Nuclear Waste Policy Act of 1982 has all too frequently fallen short of meeting these objectives, in both its conception and execution. During the 1980s, many of us became intimately acquainted with the bad starts, false starts and mis-starts that racked DOE's management of this program. Congress then added insult to injury with enactment of the 1987 amendements to the Waste Policy Act, which abandoned any pretense of exploring multiple sites to ensure that selection of a permanent waste repository would be based on the soundest scientific footing, after a full-scale review of all the options and all the available data on safety, environmental, and public health concerns. Instead, Congress made a political decision to limit the search for a permanent nuclear waste dump to the Yucca Mountain site—thereby taking the remaining 98 Senators and 433 Representatives off the hook and handing the nuclear Queen of Spades to the State of Nevada. Congress then instructed DOE and the NRC to go forth and determine whether our political decision was technically supportable.

Over the last five years, the Department of Energy has finally begun to get moving on the studies and investigations that would provide an answer to the technical question of Yucca Mountain's suitability for use as our nation's permanent high-level nuclear waste repository. This legislation would undermine those efforts by reviving plans to store nuclear waste above ground in a so-called "interim" storage facility located in the State of Nevada. This would repeal the legal limitations currently placed on interim storage that were enacted to prevent interim storage from becoming permanent storage. In addition, H.R. 1270 would further erode critical environmental and public health and safety protections relating to transportation, interim storage and permanent disposal of spent fuel and other high-level nuclear waste.

Interim storage was a bad idea in 1982 (when it was dubbed "Away from Reactor Storage"), a bad idea in 1987 (when it was renamed "Monitored Retrievable Storage"), and it remains a bad idea in 1997. Why? Because an above-ground interim storage facility is really a dagger poised at the hearts of the underground permanent

waste repository. If we fund such a facility in Nevada, we run the risk that budget and political pressures will delay or terminate the search for a permanent solution, or so taint the integrity of the decision-making process. that politics—not science—will drive DOE to begin accepting nuclear waste. Congress then told DOE and NRC to do the scientific and technical studies required to determine the site's suitability, but failed to fully fund the programs aimed at achieving this objective. As a result, we still don't know whether Yucca Mountain will be a safe place to dispose of all the nation's nuclear waste. And if the Yucca Mountain site proves to be unsuitable, we won't have any ready alternatives. We'll be right back at square one.

And now, instead of correcting the errors of the past, we are approving new legislation that will even further erode public confidence in the fairness and integrity of this program. If H.R. 1270 passes, we will be no closer to a permanent solution to the high-level waste dilemma than we were when the first Nuclear Waste Policy Act passed back in 1982. A brief review of some of the "highlights" of this legislation reveals some of its most glaring inadequacies:

First, there's the "pass the buck" rate cap. By capping utility payments into the nuclear waste fund, requiring the fund to cover cost of both interim storage and the permanent repository, and failing to address what is likely to be at minimum at $4 billion shortfall in the waste fund, this bill sets the stage for nuclear utilities to escape full responsibility for paying the costs of the waste problem they created. There are only 109 operating nuclear reactors in the country, and no new reactors will be coming on line in the foreseeable future as we move to a competitive electricity market. In fact, many utilities are already moving to shut down the reactors they have. As a result, if we cap nuclear utility payments into the waste fund, there may not be enough money to complete the permanent repository. What will happen then? The buck will be passed along to the American taxpayer.

Next, there's "interim" storage oxymoron. Placing waste in an interim storage facility in Nevada virtually guarantees that the "interim" facility will become a *de facto* permanent repository. Once nuclear waste is moved away from the reactor sites, the nuclear industry won't care whether the permanent underground repository program withers on the vine. An oxymoron is a contradiction in terms—like jumbo shrimp or carnivorous vegetarian. If we allow an interim storage facility to be built in Nevada, the nuclear lobby will simply pull the plug on funding for the permanent repository and we will be left with the ultimate oxymoron—a permanent interim storage facility. Punting final resolution of this issue to future generations is simply irresponsibility. The generations that benefited from the electricity produced by nuclear power have the responsibility to pay for the permanent disposal of the waste generated as the result of nuclear power. We should not simply turn the problem over to our children, grandchildren, great-grandchildren by storing the waste in an above ground warehouse in Nevada for the next 50, 100, or 200 years.

Third, there's the "Charlie and the MTA" waste transport provisions. This bill opens the door to the largest radioactive waste

transportation project in human history, without adequate assurances of adequate safety protections. Forty-three states would face the risk of transportation accidents and radiation exposures from the casks. What's worse, if Yucca Mountains proves to be unsuitable, we'd have to pack up all the waste all over again and ship it somewhere else—thereby doubling the chance of a catastrophic radiological accident. In the old song, "Charlie and the MTA," the poor guy gets stranded in the Boston subway because he doesn't have the fare to get off the train. Under H.R. 1270, it will be the fate of high-level nuclear waste that's still unlearned: It may ride forever through the streets and railroads of our towns and cities with no place to get off.

What's worse, the transportation of this toxic waste is being rushed forward without adequate guarantees that every necessary precaution will be taken to avoid or mitigate the consequences of an accident. Indeed, under current law, the private DOE contractors who ship the waste may not have sufficient economic incentives to take every precaution to ensure its safe transport. Unlike contractors for the Defense Department and all other federal agencies, DOE nuclear contractors are totally shielded under the Price-Anderson Act from *any* financial liability for accidents they cause. As a result, a DOE contractor who incurs liability for acts of negligence, gross negligence, or willful misconduct can escape any financial liability for their misdeeds. The money to pay for the damage done by these corporate malfeasors comes directly out of the Nuclear Waste fund. In other words, grossly negligent contractors, or contractors who engage in willful misconduct that results in a transportation accident will be reimbursed out of the fund financed by the same ratepayers that supporters of this legislation are ostensibly seeking to protect. This is irresponsible.

Fourth, we have the "Holy Roman Empire" provision on environment impact statements. It's been said that the Holy Roman Empire was neither Holy, nor Roman, nor an Empire. Under H.R. 1270, there is something which is called an environmental impact statement, but it has so many loopholes in it that it doesn't protect the environment, doesn't examine impacts, and isn't really very much of a statement. Indeed, the bulk of the environmental impact statement (EIS) provisions in this legislation are restrictions on the nature, scope and content of the EIS.

Congress enacted the National Environmental Policy Act (NEPA) to assure a thorough review of the environmental impacts of major federal actions. This landmark environmental legislation was put in place to assure the public that before the federal government undertook a major action, it would conduct an assessment of its environmental impact (including an analysis of less harmful alternatives) and provide an opportunity for public input to the decision making process at an early stage.

There is no federal action that can have a greater long-term impact on public health, safety, and the environment than the disposal of all of the high-level radioactive waste from the nation's nuclear power plants for the next 10–20,000 years. By exempting, eviscerating or delaying NEPA analysis of all the major federal actions authorized under the bill (i.e., land conveyance, interim storage, permanent repository) H.R. 1270 negates the whole purpose of

NEPA. H.R. 1270 actually prevents an analysis of possible alternatives to all the aforementioned actions, which is the crux of the EIS process—creating an EIS that is completely hollow. Finally, it prevents truly meaningful public involvement in the decision-making process by allowing a gutted EIS process to occur only at the final licensing decision point, rather than early enough in the process where it might have a real impact.

Public trust and support of both an interim storage facility and the permanent repository is essential to the success of the radioactive waste program. The DOE already has a considerable credibility problem which will only be made worse by eliminating or gutting the ability of the public to provide input to these major decisions. Interim storage could exist for 100 years or more and the permanent repository must exist for tens of thousands of years. Forcing decisions of this magnitude without careful consideration of the environmental consequences and the alternatives is a recipe for disaster.

Fifth, we have the "Indiana Jones and the Temple of Doom" provision, which directs the NRC in its licensing process to assume that no human intrusion can occur for 1,000 years. Even though the scientific experts say the human intrusion is possible, the regulators directed to just assume that no 27th century Indiana Jones could ever penetrate the Nuclear Temple of Doom we're building out in Nevada. Even though the Chairman of the Nuclear Waste Technical Review Panel testified that the human intrusion problem was "intractable," H.R. 1270 directs the regulators to simply assume its existence away. This flies in the face of sound science and common sense. In 1995, the National Academy of Sciences issued a report which examined the issue of human intrusion in some depth. The Academy concluded that:

> [I]t is not reasonable to assume that a system of post-closure oversight of the repository can be developed, based on active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits. We do recommend that the consequences of an intrusion be calculated to assess the resilience of the repository to intrusion.

Accordingly, the National Academy recommended that EPA determine what human intrusion scenarios might be most appropriate as a part of its rulemaking. With H.R. 1270, we ignore that recommendation in favor of a blanket directive to the regulators to assume the human intrusion problem away. In other words, whatever problems we find difficult to solve, H.R. 1270 pretends don't exist.

Sixth, we have the "millirems and malignancies" provision. H.R. 1270 actually repeals current law and forbids the Environmental Protection Agency from issuing radiation exposure standards for the permanent waste repository. Instead, to receive a license, the repository need only meet an excessively high 100 millirem radiation exposure standard issued by the NRC that poses a lifetime risk of one cancer death for every 285 exposed individuals.

Radiation protection standards for repositories must be designed to protect the public for 10,000 years or more. There must be a strong technical basis for the standards and a public process in order to have scientifically sound, publicly acceptable standards. Congress should not try to set statutory radiation protection standards for radioactive waste disposal. We are not radiation experts. We should not abandon the existing process of setting radiation protection standards based on scientific and technical deliberations, and replace it with one based on politics.

While sponsors of H.R. 1270 complain that EPA has taken too long to set radiation protection standards, they conveniently forget the reasons why this has been the case. The first draft radiation standards for the permanent waste issued back when the Reagan Administration controlled the Environmental Protection Agency and seemed to think that the letters EPA stood for "Every Polluter's Ally." These proposed rules were junked in 1987 after several states and the environmental community successfully sued EPA for having proposed standards that were inadequate to protect human health and the environment. EPA then went back to the drawing board to repromulgate standards that would meet the requirements of the law. When the nuclear industry became concerned that EPA actually would propose tougher standards, they succeeded in getting a provision attached to Energy Policy Act of 1992 which barred EPA from issuing any standards until after the National Academy of Sciences first completed a study on this matter. NAS issued their report in 1995, which recommended that EPA determine a radiation standard based on the risk to individuals as a result of exposure to radiation released from the repository that takes into account the fact that peak releases could occur tens of thousands of years from now.

With this legislation, we will be tossing the approach recommended in the NAS report in the trash bin and replacing it with a totally inadequate and arbitrary standard that ignores the recommendations of the scientific community. The standard in the bill is totally inconsistent with the NAS recommendations regarding: (1) the process of setting a radiation standard; (2) the level of the standards; (3) who should be protected by the standard; (4) how human intrusion should be addressed; and (5) what time period should be considered for the standards. The NAS noted that a 100 millirem standard is used internationally as an upper limit for ALL sources of radiation, and that other countries "apportion this total radiation dose limit among the respective . . . sources of exposure, typically allocating to high-level waste disposal a range of" 10 to 30 millirems per year.

Moreover, despite arguments by the bill's sponsors to the contrary, the Substitute's 100 millirem per year radiation exposure standard is NOT the international standard used today to protect the public from radiation emitted from storage of spent fuel and other operations at a nuclear reactor. Indeed, it far exceeds the standards adopted abroad for their high-level waste and spent nuclear fuel programs, including Sweden (10 millirem/year), France (25 millirem/year), Finland and Switzerland (10 millirem/year) and Canada (1 millirem/year).

Finally, we have the "No-Go for Seniors PAYGO" provision. According to a September 18, 1997 letter the Committee received from Rep. Spratt, the Ranking Democrat on the House Budget Committee:

> Although the bill provides for a savings of $0.2 billion over five years, the offset occurs in the last year of the five-year period. The recent reconciliation legislation cleared the PAYGO scorecard of any credits heretofore accumulated. *Based on CBO scoring, this bill would result in costs being entered on the PAYGO scorecard for fiscal years 1999–2001, and potentially therefore an entitlement sequestration in those years.* If recent experience is any guide, the PAYGO scorecard will once again accumulate some credits. *Nonetheless, as long as the offset included in the bill does not occur until 2002, Congress and the administration will have to enact subsequent savings or revenue legislation to make sure this legislation does not cause an entitlement sequester.* (emphasis added)

In other words, in its reckless rush to create a nuclear waste dump in Nevada, H.R. 1270 actually confronts America's seniors with the prospect of cuts in their Medicare and Medicaid benefits. Given the fact that Congress is highly unlikely to raise taxes to offset the costs of this program, the PAYGO problems created by this bill forces us to confront the Hobson's choice of making cuts in entitlement programs or having to make further cuts in the budget for important domestic discretionary programs. America's seniors should not have to suffer additional cuts in their Medicare benefits in order to satisfy the wishes of the nuclear utility industry, and we should not be forced into another round of cuts in education, environmental protection, or other domestic discretionary programs because of nuclear waste legislation.

In short, H.R. 1270 is rife with the same short-sighted thinking and special interest provisions that helped create the current nuclear waste dilemma in the first place. We have come to the conclusion that this bill fails to provide the minimal level of protection needed to assure the integrity of the site selection process and protect public health, safety, and the environment. While we commend our Democratic colleagues for their efforts to improve this legislation, we regretfully cannot support the product of their efforts in light of the fatal flaws enumerated above.

During the Commerce Committee's Subcommittee and full Committee markups of H.R. 1270, Rep. Markey offered a series of amendments which were intended to correct some of the most glaring deficiencies in this legislation, as follows:

> An amendment to strike the bill's provisions that: (1) bar EPA from setting high-level radiation protection standards for the permanent repository and instead direct the NRC to establish an excessively high statutory radiation standard of 100 millirems.
>
> An amendment to delete the ridiculous requirement built into this bill that the NRC shall assume no human intrusion into the repository will be possible for 1,000 years.

An amendment to strike the bill's provisions that provide for various exemptions from National Environmental Policy Act requirements that an environmental impact statement (EIS) be prepared for the transportation, interim storage, and permanent waste repository.

An amendment to reinstate the provisions of current law which restrict an interim facility from being located in Nevada and limit its size and schedule in order to link its construction to completion of the permanent repository.

An amendment to specify that all high-level radioactive defense nuclear waste must be disposed of in the permanent repository, and that the repository be large enough to accommodate all of the waste generated by defense programs and by all civilian power plants licensed as of the date of enactment of this Act.

An amendment to lift the 1.5 mil cap on the nuclear waste fund, so that DOE will be able to pay for both interim storage and permanent disposal of nuclear waste in the event that more utilities decommission their reactors early due to safety problems or competitive pressures brought on by the advent of retail electricity competition.

In light of the Committee's rejection of each of these amendments, as well as the amendments relating to transportation which were offered by our colleague Rep. McCarthy, as well as the amendment offered by Rep. DeGette regarding the NEPA exemptions, we cannot support passage of H.R. 1270. In its present form, this bill endangers public health, safety, and the environment, and does not merit adoption by the House. We respectfully dissent.

EDWARD J. MARKEY.
DIANA DEGETTE.
ELIZABETH FURSE.
HENRY A. WAXMAN.

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