Summary of the Nuclear Waste Policy Act

The Nuclear Waste Policy Act of 1982 created a timetable and procedure for establishing a permanent, underground repository for high-level radioactive waste by the mid-1990s, and provided for some temporary federal storage of waste, including spent fuel from civilian nuclear reactors. State governments were authorized to veto a national government decision to place a waste repository within their borders, and the veto would stand unless both houses of Congress voted to override it. The Act also called for developing plans by 1985 to build monitored retrievable storage (MRS) facilities, where wastes could be kept for 50 to 100 years or more and then be removed for permanent disposal or for reprocessing.

Congress assigned responsibility to the U.S. Department of Energy (DOE) to site, construct, operate, and close a repository for the disposal of spent nuclear fuel and high-level radioactive waste. The U.S. Environmental Protection Agency (EPA) was directed to set public health and safety standards for releases of radioactive materials from a repository, and the U.S. Nuclear Regulatory Commission (NRC) was required to promulgate regulations governing construction, operation, and closure of a repository. Generators and owners of spent nuclear fuel and high-level radioactive waste were required to pay the costs of disposal of such radioactive materials. The waste program, which was expected to cost billions of dollars, would be funded through a fee paid by electric utilities on nuclear-generated electricity. An Office of Civilian Radioactive Waste Management was established in the U.S. Department of Energy (DOE) to implement the Act.

Permanent repositories

The Nuclear waste policy Act required the Secretary of Energy to issue guidelines for selection of sites for construction of two permanent, underground nuclear waste repositories. DOE was to study five potential sites, and then recommend three to the President by January 1, 1985. Five additional sites were to be studied and three of them recommended to the president by July 1, 1989 as possible locations for a second repository. A full environmental impact statement was required for any site recommended to the President.

Locations considered to be leading contenders for a permanent repository were basalt formations at the government's Hanford Nuclear Reservation in Washington; volcanic tuff formations at its Nevada nuclear test site, and several salt formations in Utah, Texas, Louisiana and Mississippi. Salt and granite formations in other states from Maine to Georgia had also been surveyed, but not evaluated in great detail.

The President was required to review site recommendations and submit to Congress by March 31, 1987 his recommendation of one site for the first repository, and by March 31, 1990, his recommendation for a second repository. The amount of high-level waste or spent fuel that could be placed in the first repository was limited to the equivalent of 70,000 metric tons of heavy metal until a second repository was built. The Act required the national government to take ownership of all nuclear waste or spent fuel at the reactor site, transport it to the repository, and thereafter be responsible for its containment.

Temporary spent fuel storage

The Act authorized DOE to provide up to 1,900 metric tons of temporary storage capacity for spent fuel from civilian nuclear reactors. It required that spent fuel in temporary storage facilities be moved to permanent storage within three years after a permanent waste repository went into operation. Costs of temporary storage would be paid by fees collected from electric utilities using the storage.

Monitored retrievable storage

The Act required the Secretary of Energy to report to Congress by June 1, 1985 on the need for and feasibility of a monitored retrievable storage facility (MRS) and specified that the report was to include five different combinations of proposed sites and facility designs, involving at least three different locations. Environmental assessments were required for the sites. It barred construction of an MRS facility in a state under consideration for a permanent waste repository.

State veto of site selected

The Act required DOE to consult closely throughout the site selection process with states or Indian tribes that might be affected by the location of a waste facility, and allowed a state (governor or legislature) or Indian tribe to veto a federal decision to place within its borders a waste repository or temporary storage facility holding 300 tons or more of spent fuel, but provided that the veto could be overruled by a vote of both houses of Congress.

Payment of costs

The Act established a Nuclear Waste Fund composed of fees levied against electric utilities to pay for the costs of constructing and operating a permanent repository, and set the fee at one mill per kilowatt-hour of nuclear electricity generated. Utilities were charged a one-time fee for storage of spent fuel created before enactment of the law. Nuclear waste from defense activities was exempted from most provisions of the Act, which required that if military waste were put into a civilian repository, the government would pay its pro rata share of the cost of development, construction and operation of the repository. The Act authorized impact assistance payments to states or Indian tribes to offset any costs resulting from location of a waste facility within their borders.

Source: Wikipedia.

U.S. Department of Energy
Office of Civilian Radioactive
Waste Management
Washington, D.C. 20585

March 2004

Nuclear Waste Policy Act AS AMENDED

WITH APPROPRIATIONS ACTS APPENDED

THE NUCLEAR WASTE POLICY ACT OF 1982[1]

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".

[1] This reproduction of the Act consists of the Act of Jan. 7, 1983 (Public Law 97-425; 96 Stat. 2201), as amended by P.L. 100-203, Title V, Subtitle A (December 22, 1987), P.L. 100-507 (October 18, 1988), and P.L. 102-486 (The Energy Policy Act of 1992, October 24, 1992). The Act is generally codified at 42 U.S.C. 10101 and following. Bracketed notes at the end of each section indicate the United States Code citation for the reader's convenience.

SUBTITLE B-INTERIM STORAGE PROGRAM

SUBTITLE C-MONITORED RETRIEVABLE STORAGE

SUBTITLE D-LOW-LEVEL RADIOACTIVE WASTE

SUBTITLE E-REDIRECTION OF THE NUCLEAR WASTE PROGRAM

TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

TITLE IV—NUCLEAR WASTE NEGOTIATOR

TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

ENERGY POLICY ACT OF 1992

TITLE VIII - HIGH-LEVEL RADIOACTIVE WASTE

APPENDIX

EXCERPTS FROM ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACTS FISCAL YEARS 1984-2002

DEFINITIONS

Sec. 2. For purposes of this Act [42 U.S.C. 10101 et seq.]:

(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; and

(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 [42 U.S.C. 10132] for site characterization, approved by the President under section 112 [42 U.S.C. 10133] for site characterization, or undergoing site characterization under section 113 [42 U.S.C. 10133].

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

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

(7) The term “Commission” means the Nuclear Regulatory Commission.

(8) The term “Department” means the Department of Energy.

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

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

(11) The term “engineered barriers” means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term “high-level radioactive waste” means—

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

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

(13) The term “Federal agency” means any Executive agency, as defined in section 105 of title 5, United States Code [5 U.S.C. 105].

(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

(C) radioactive waste.

(17) The term "'Office" means the Office of Civilian Radioactive Waste Management established in section 304 [42 U.S.C. 10224].

(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 [18 U.S.C. 1151]; 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 136(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) [42 U.S.C. 10222].

(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) [42 U.S.C. 10132(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) [42 U.S.C. 10161(b)(1)].

[42 U.S.C. 10101]

SEPARABILITY

Sec. 3. If any provision of this Act [42 U.S.C. 10101 et seq.], or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act [42 U.S.C. 10101 et seq.], 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.

[42 U.S.C. 10102]

TERRITORIES AND POSSESSIONS

Sec. 4. Nothing in this Act [42 U.S.C. 10101 et seq.] 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).[1]

[42 U.S.C. 10103]

[1] The text of section 605 is as follows: "Sec. 605. (a) Prior to the granting of any license, permit, or other authorization or permission by any agency or instrumentality of the United States to any person for the transportation of spent nuclear fuel or high-level radioactive waste for interim long-term, or permanent storage to or for the storage of such fuel or waste on any territory or possession of the United States, the Secretary of the Interior is directed to transmit to the Congress a detailed report on the proposed transportation or storage plan, and no such license, permit, or other authorization or permission may be granted nor may any such transportation or storage occur unless the proposed transportation or storage plan has been specifically authorized by Act of Congress: Provided, That the provisions of this section shall not apply to the cleanup and rehabilitation of Bikini and Enewetak Atolls."(b) For the purpose of this section the words `territory or possession' include the Trust Territory of the Pacific Islands and any area not within the boundaries of the several States over which the United States claims or exercises sovereignty."

OCEAN DISPOSAL

Sec. 5. Nothing in this Act [42 U.S.C. 10101 et seq.] shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1401 et seq.].
[42 U.S.C. 10104]

LIMITATION ON SPENDING AUTHORITY

Sec. 6. The authority under this Act [42 U.S.C. 10101 et seq.] 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.
[42 U.S.C. 10105]

PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION

Sec. 7. Nothing in this Act [42 U.S.C. 10101 et seq.] shall require the release or disclosure to any person or to the Commission of any classified national security information.
[42 U.S.C. 10106]

APPLICABILITY

Sec. 8. (a) Atomic energy defense activities. Subject to the provisions of subsection (c), the provisions of this Act [42 U.S.C. 10101 et seq.] 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 [enacted Jan. 7, 1983], the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I [42 U.S.C. 10131 et seq.] 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 [42 U.S.C. 10131 et seq.]

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 [42 U.S.C. 10222].

(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 [42 U.S.C. 10101 et seq.] 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.
[42 U.S.C. 10107]

APPLICABILITY TO TRANSPORTATION LAWS

Sec. 9. Nothing in this Act [42 U.S.C. 10101 et seq.] shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.[2]
[42 U.S.C. 10108]

[2] Pub. L. 96-295, § 301, June 30, 1980, provides as follows: "Sec. 301. (a) The Nuclear Regulatory Commission, within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

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 [42 U.S.C. 10107], 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.[3]

(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 [42 U.S.C. 10135-10138], except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) [42 U.S.C. 10136(c), 10138(b)] shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.
[42 U.S.C. 10121]

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—

[3] Pub. L. 95-601, § 14(a), Nov. 6, 1978, provides as follows: "Sec. 14. (a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal."

(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 [42 U.S.C. 10101 et seq.];

(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 [42 U.S.C. 10131 et seq.] 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.
[42 U.S.C. 10131]

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 [enacted Jan. 7, 1983], 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 [42 U.S.C. 10225].

(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) 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 [5 U.S.C. 701 et seq.], and section 119 [42 U.S.C. 10139]. 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) [42 U.S.C. 10133(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 [enacted Jan. 7, 1983] 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 [42 U.S.C. 10101 et seq.] 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 [42 U.S.C. 4332(2)(E), (F)].

(e) [Redesignated]

(f) [Deleted]

[42 U.S.C. 10132]

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) [42 U.S.C. 10132(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 section 112(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) [42 U.S.C. 10132(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 environmental 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 [42 U.S.C. 10173 et seq.] 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.

(4) [Deleted]

(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 require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act [42 U.S.C. 4332(2)(E), (F)].
[42 U.S.C.10133]

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 [42 U.S.C. 10133], 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 [42 U.S.C. 10133] 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 io 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) [42 U.S.C. 10136(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 for 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 [42 U.S.C. 4332(2)(E), (F)].

(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 [42 U.S.C. 10135], 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.

[42 U.S.C.10134]

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 [42 U.S.C. 10134], 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 [42 U.S.C. 10136, 10138]. 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 [42 U.S.C. 10136, 10138] after a recommendation for approval of such site is made by the President under section 114 [42 U.S.C. 10134], 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 [42 U.S.C. 10136, 10138], a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same

repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4) (A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for .the resolution of the Senate.

(e) Procedures applicable to the House of Representatives.

(1) The provisions of this subsection 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 [42 U.S.C. 10136, 10138], 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.
[42 U.S.C. 10135]

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 [enacted Jan. 7, 1983]. 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 [42 U.S.C. 10121 et seq.], 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 [42 U.S.C. 10131 et seq.] 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 [42 U.S.C. 10134]. 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 [42 U.S.C. 10137] or authorized by written agreement entered into pursuant to section 117(c) [42 U.S.C. 10137(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) [42 U.S.C, 10I33(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 [42 U.S.C. 10135]; 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 [enacted Dec. 22, 1987].

(c) Additional notification and consultation. Whenever the Secretary is required under any provision of this Act [42 U.S.C. 10101 et seq.] 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.
[42 U.S.C. 10136]

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 [42 U.S.C. 10131 et seq.], and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation. In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 112(c) [42 U.S.C. 10I32(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 [42 U.S.C. 10131 et seq.], 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 I12(c) [42 U.S.C. 10132(c)], or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) [42 U.S.C. 10136(a)] to the Secretary, whichever first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin

negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress. Such written agreement shall specify procedures –

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State. or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 116(c) [42 U.S.C. 10136(b)] or section 118(b) [42 U.S.C. 10138(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.
[42 U.S.C. 10137]

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 [42 U.S.C. 10134]. 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) [42 U.S.C. 10136(a)] for the purpose of participating in activities required by section 117 [42 U.S.C. 10137] or authorized by written agreement entered into pursuant to section 117(c) [42 U.S.C. 10137(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) [42 U.S.C. 10132(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 [42 U.S.C. 10131 et seq.] 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 [42 U.S.C. 10131 et seq.] 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) [42 U.S.C. 10132(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) (A) 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 [42 U.S.C. 10135];

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

(iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987];

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 112(c) [42 U.S.C. 10132(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)[4] 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)[5] 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 [42 U.S.C. 10222].

[42 U.S.C. 10138]

[4] So in original. Reference probably should be to paragraph (3).

[5] So in original. Reference probably should be to paragraph (1), (2), or (3).

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 [42 U.S.C. 10131 et seq.];

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this subtitle [42 U.S.C. 10131 et seq.];

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle [42 U.S.C. 10131 et seq.];

(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 [42 U.S.C. 10131 et seq.], or as required under section 135(c)(1) [42 U.S.C. 10155(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) [42 U.S.C. 10132(b)(1), 10155(c)(2)]; or

(F) for review of any research and development activity under title II [42 U.S.C. 10191 et seq.].

(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.

(b) 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.

[42 U.S.C. 10139]

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 [42 U.S.C. 10131 et seq.] 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.
[42 U.S.C. 10140]

CERTAIN STANDARDS AND CRITERIA

Sec. 121. (a) Environmental Protection Agency standards.[6] Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], 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

[6] See Section 801 of the Energy Policy Act of 1992, page 83.

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 [42 U.S.C. 10101 et seq.], 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 [42 U.S.C. 4332(2)(E), (F)].
[42 U.S.C. 10141]

DISPOSAL OF SPENT NUCLEAR FUEL

Sec. 122. Notwithstanding any other provision of this subtitle [42 U.S.C. 10131 et seq.], any repository constructed on a site approved under this subtitle [42 U.S.C. 10131 et seq.] 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 [42 U.S.C. 10134(b)-(d)].
[42 U.S.C. 10142]

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 [42 U.S.C. 10131 et seq.] shall constitute a transfer to the Secretary of title to such waste or spent fuel.
[42 U.S.C. 10143]

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.
[42 U.S.C. 10144]

TERMINATION OF CERTAIN PROVISIONS

Sec. 125. Sections 119 and 120 [42 U.S.C. 10139,10140] shall cease to have effect at such time as a repository developed under this subtitle [42 U.S.C. 10131 et seq]. is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.
[42 U.S.C. 10145]

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 [42 U.S.C 10151 et seq.] 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 [42 U.S.C. 10151 et seq.], 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.

[42 U.S.C. 10151]

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.

[42 U.S.C. 10152]

Sec. 133. The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) or 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.
[42 U.S.C. 10153]

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 [enacted Jan. 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) 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.
[42 U.S.C. 10154]

STORAGE OF SPENT NUCLEAR FUEL

Sec. 135. (a) Storage capacity.

(1) Subject to section 8 [42 U.S.C. 10107], 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 [enacted Jan. 7, 1983], 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)], if 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 [enacted Jan. 7, 1983];

(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) [42 U.S.C. 10156(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) [42 U.S.C. 10156(a)] with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage, facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review.

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

(2) (A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessments 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 [5 U.S.C. 701 et seq.]. 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 [42 U.S.C. 10139].

(d) Review of sites and State participation.

(1) In carrying out the provisions of this subtitle [42 U.S.C. 10151 et seq.] with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 [this section] 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 [42 U.S.C. 10135(d)-(f)] 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[7] 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 [42 U.S.C. 10135(d)-(f)] 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 [42 U.S.C. 10101 et seq.] 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 [enacted Jan. 7, 1983].

(g) Criteria for determining adequacy of available storage capacity. Not later than 90 days after the date of the enactment of this Act [enacted Jan. 7, 1983], the

[7] So in original

Commission pursuant to section 553 of the Administrative Procedures Act,[8] 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 [42 U.S.C. 10101 et seq.] shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act [enacted Jan. 7, 1983].

(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).
[42 U.S.C 10155]

INTERIM STORAGE FUND

Sec. 136. (a) Contracts.

(1) During the period following the date of the enactment of this Act [enacted Jan. 7, 1983], 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

[8] So in original. Reference probably should be to section 553 of title 5, United States Code.

storage capacity specified in section 135(a) [42 U.S.C. 10155(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 [enacted Jan. 7, 1983], 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 [42 U.S.C. 10151 et seq.] 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 [42 U.S.C. 10151 et seq.] with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle [42 U.S.C. 10151 et seq.].

(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 [42 U.S.C. 10157], 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 [5 U.S.C. 101, 102], may be stored by the Secretary in any storage capacity provided under this subtitle [42 U.S.C. 10151 et seq.] 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),[9] 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 [enacted Jan. 7, 1983] 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),[10] 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 [42 U.S.C. 10151 et seq.], including-

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this subtitle [42 U.S.C. 10151 et seq.];

(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 [42 U.S.C. 10155];

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

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

[9] So in original. Reference should be to subsection (a), (b), and (f).

[10] So in original. Reference probably should be to subsection (f).

(e) Impact assistance.

(1) Beginning the first fiscal year which commences after the date of the enactment of this Act [enacted Jan. 7, 1983], 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 jurisdictional boundaries of such government or governments and authorized under this subtitle [42 U.S.C. 10151 et seq.]: 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 [42 U.S.C. 10121 et seq.], 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 establishment of storage capacity authorized under this subtitle [42 U.S.C. 10151 et seq.] 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 [enacted Jan. 7, 1983], 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 [31 U.S.C. 1101 et seq.]. 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 [31 U.S.C. 1511 et seq.].

(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 [31 U.S.C. 10151 et seq.], 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 [31 U.S.C. 3101 et seq.], 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.

[42 U.S.C 10156]

TRANSPORTATION

Sec. 137. (a)

(1) Transportation of spent nuclear fuel under section 136(a) [42 U.S.C. 10136(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 [42 U.S.C. 10101 et seq.], 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.

[42 U.S.C 10157]

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 [42 U.S.C. 10101 et seq.] 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 [42 U.S.C. 10101 et seq.].

(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).[11] 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

[11] So in original. Reference probably should be to paragraph (1).

issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(d) Licensing. Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 [42 U.S.C. 5842(3)]. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(e) Clarification. Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance.

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302(c) [42 U.S.C. 10222(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 [42 U.S.C. 10132]. 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 [42 U.S.C. 10135, 10136(a), (b), (d), 10137, 10138]. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 [42 U.S.C. 10135-10138] to a repository shall be considered to refer to a monitored retrievable storage facility.
[42 U.S.C. 10161]

AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

See. 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 [42 U.S.C. 10164, 10165], 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 [42 U.S.C. 10163-10169].
[42 U.S.C. 10162]

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 [enacted Dec. 22, 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.

(4) 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 well 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 function.

(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.

[42 U.S.C.10163]

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 significarft volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

[42 U.S.C. 10164]

SITE SELECTION

Sec. 145. (a) In general. The Secretary may select the site evaluated under section 144 [42 U.S.C. 10164] 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) [42 U.S.C. 10164(a)].

(c) Site specific activities. The Secretary may conduct such site specific activities at each site surveyed under section 144 [42 U.S.C. 10164] 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) [42 U.S.C. 10162(b)] may be constructed in the State of Nevada.
[42 U.S.C. 10165]

NOTICE OF DISAPPROVAL

Sec. 146. (a) In general. The selection of a site under section 145 [42 U.S.C. 10165] 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 [42 U.S.C. 10165] shall not be effective except as provided under section 115(c) [42 U.S.C. 10135(c)].

(b) References. For purposes of carrying out the provisions of this subsection, references in section 115(c) [42 U.S.C. 10135(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) [42 U.S.C. 10136(b) or 10138(a)] shall be considered to refer to a notice of disapproval under this section.
[42 U.S.C.10166]

BENEFITS AGREEMENT

Sec. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145 [42 U.S.C. 10165], the Indian tribe 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 [42 U.S.C. 10173].
[42 U.S.C. 10167]

CONSTRUCTION AUTHORIZATION

Sec. 148. (a) Environmental impact statement.

(1) Once the selection of a site is effective under section 146 [42 U.S.C. 10166], 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) [42 U.S.C. 10161(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) [42 U.S.C. 10161(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) [42 U.S.C. 10162(b)].

(b) Application for construction license. Once the selection of a site for a monitored retrievable storage facility is effective under section 146 {42 U.S.C. 10166], 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) [42 U.S.C. 10162(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) [42 U. S.C. 10161(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) [42 U.S.C. 10135(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.
[42 U.S.C. 101681]

FINANCIAL ASSISTANCE

Sec. 149. The provisions of section 116(c) or 118(b) [42 U.S.C. 10136(c) or 10138(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.
[42 U.S.C.10169]

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 et seq.], 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 [enacted Jan. 7, 1983] 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.
[42 U.S.C. 10171]

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 [enacted Dec. 22,1987].

(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170 [42 U.S.C. 14173].
[42 U.S.C.10172]

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 [enacted Dec. 22, 1987], the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment [enacted Dec. 22,1987] designed 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 [enacted Dec. 22, 1987] 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) seasonal 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.

[42 U.S.C. 10172(a)]

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, certifies 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 [42 U.S.C. 10173(c)].

(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.
[42 U.S.C. 10173]

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 [42 U.S.C. 10173] 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 dust 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 [42 U.S.C. 10173] shall provide that—

(1) a Review Panel be established in accordance. with section 172 [42 U.S.C. 10173(b)];

(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 regulation 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) [42 U.S.C. 10136(c)(1)(B)(ii), (c)(2), 10138(b)(2)(A)(ii), (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 [42 U.S.C. 10173] shall constitute a commitment by the United States to make payments in accordance with such agreement.
[42 U.S.C. 10173(a)]

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 promptly 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 [5 U.S.C. Appx.] shall not apply to a Review Panel established under this title.
[42 U.S.C.10173(b)]

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.
[42 U.S.C. 10173(c)]

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.
[42 U.S.C.10174]

REPORT

Sec. 175. (a) In general. Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 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 [42 U.S.C. 10173(a)], 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 construction, operation, and eventual closure of the repository facility.

[42 U.S.C. 10174(a)]

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 purpose 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.

[42 U.S.C. 10175]

TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIRSPACE

Sec. 181. (a) In general. Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the airspace of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94-79 [89 Stat. 413; 42 U.S.C. 5841 note], and all other applicable laws.

(b) Responsibilities of the Nuclear Regulatory Commission –

(1) Determination of safety. The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

(2) Testing. In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall –

(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

(B) require an actual crash test of a cargo aircraft fully loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

(3) Limitation. The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

(4) Evaluation. The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 [42 U.S.C. 5841 et seq.] and subsection (a) in accordance with the National Environmental Policy Act of 1969 [83 Stat. 852; 42 U.S.C. 4321 et seq.] and all other applicable law.

(c) Content of certification. A certification referred to in subsection (a) with respect to a container shall include—

(1) the determination of the Nuclear Regulatory commission as to the safety of such container;

(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

(3) a statement that the container did not rupture or release its contents into the environment during testing.

(d) Design of testing procedures. The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

(e) Testing results; reports and public disclosure. The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

(f) Alternative routes and means of transportation. With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

(g) Inapplicability to medical devices. Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(h) Inapplicability to military uses. Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(i) Inapplicability to previously certified containers. This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 [89 Stat. 413; 42 U.S.C. 5841 note].

(j) Payment of costs. All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

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 [42 U.S.C. 10191 et seq.]—

(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 [42 U.S.C. 10191 et seq.]—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

[42 U.S.C. 10191]

APPLICABILITY

Sec. 212. The provisions of this title [42 U.S.C. 10191 et seq.] are subject to section 8 [42 U.S.C. 10107] 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.

[42 U.S.C. 10192]

IDENTIFICATION OF SITES

Sec. 213. (a) Guidelines. Not later than 6 months after the date of the enactment of this Act [enacted Jan. 7, 1983] 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 [5 U.S.C. 553], 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 [42 U.S.C. 10191 et seq.].

(b) Site identification by the Secretary.

(1) Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], 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 [enacted Jan. 7, 1983] 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 [42 U.S.C. 10191 et seq.]. 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) [42 U.S.C. 10222(d)] may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

[42 U.S.C. 10193]

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 [42 U.S.C. 10193], 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 [42 U.S.C. 10198].[12] 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) [42 U.S.C. 10222(d)] maybe 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 [42 U.S.C. 10193], 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.

[12] So in original. Reference probably should be to section 217

(c) Restrictions. Except as provided in section 218 [42 U.S.C. 10198][13] 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 [42 U.S.C. 10222(a), (b)] for the disposal of such material.
[42 U.S.C. 10194]

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 [42 U.S.C. 10193] 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;

[13] So in original. Reference probably should be to section 217.

(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 [42 U.S.C. 10195 et seq.] 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.
[42 U.S.C. 10195]

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 [42 U.S.C. 10221].

(b) Environmental review.

(1) No action of the Secretary or any other Federal agency required by this title or [42 U.S.C. 10191 et seq.] section 301 [42 U.S.C. 10221] 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 [42 U.S.C. 10191 et seq.].

(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.].

[42 U.S.C. 10196]

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 [enacted Jan. 7, 1983], the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214 [42 U.S.C. 10194], as part of and as an extension of siting research activities of such site under such section [42 U.S.C. 10194], 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 under section 212 [42 U.S.C. 10192];[14]

(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 [42 U.S.C. 10194] 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 [enacted Jan. 7, 1983], the Secretary shall begin an in situ testing program at the test and

[14] So in original. Reference probably should be to section 214.

evaluation facility in accordance with the mission plan developed under section 301 [42 U.S.C. 10221], 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.

(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 [42 U.S.C. 10194] 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 [enacted Jan. 7, 1983] 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 [42 U.S.C. 10101 et seq.], 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 [enacted Jan. 7, 1983], 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 [42 U.S.C. 10221]; 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 [42 U.S.C. 10225], the test and evaluation facility, and the facilities authorized in section 217 [this section], 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) [subsec. (a) of this section]. Nothing in this subsection may be construed to limit siting research activities conducted under section 214 [42 U.S.C. 10194]. 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 [42 U.S.C. 10101 et seq.].

(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.

[42 U.S.C. 10197]

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 [enacted Jan. 7, 1983], the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 [42 U.S.C. 10194] at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies; spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements. To carry out the programs described in subsection (a), the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this Act [42 U.S.C. 10101 et seq.] 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 [enacted Jan. 7, 1983]. 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 [42 U.S.C. 10155], 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 t42 U.S.C. 10155]. Such spent nuclear fuel shall not be subject to the provisions of section 135(e) [42 U.S.C. 10155(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 [42 U.S.C. 10156].

(e) Relation to spent nuclear fuel storage program. The spent nuclear fuel storage program authorized in section 135 [42 U.S.C. 10155] shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary

modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

[42 U.S.C. 10198]

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 [42 U.S.C. 10195]. 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 [42 U.S.C. 10195] 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) [42 U.S.C. 10197(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 [42 U.S.C. 10193], or to an affected Indian tribe where the potential site has been identified under such section [42 U.S.C. 10193].

(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 [42 U.S.C. 10195]. Annual payments shall be prorated on a 365-day basis to the specified dates.

[42 U.S.C. 10199]

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 [enacted Jan. 7, 1983], 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) [42 U.S.C. 10161(b)] with respect to a monitored retrievable storage facility.

[42 U.S.C. 10200]

JUDICIAL REVIEW

Sec. 221. Judicial review of research and development activities under this title [42 U.S.C. 10191 et seq.] shall be in accordance with the provisions of section 119 [42 U.S.C. 10139].
[42 U.S.C. 10201]

RESEARCH ON ALTERNATIVES FOR THE PERMANENT DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

Sec. 222. 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.
[42 U.S.C. 10202]

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 [enacted Jan. 7, 1983], the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Following publication of the annual joint notice referred to in subsection (b), 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,[15] 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)] [unclassified].

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.
[42 U.S.C. 10203]

SUBSEABED DISPOSAL

Sec. 224. (a) Study. Within 270 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the Secretary shall report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste. The report under this subsection shall include—

(1) an assessment of the current state of knowledge of subseabed disposal as an alternative technology for disposal of spent nuclear fuel and high-level radioactive waste;

(2) an estimate of the costs of subseabed disposal;

[15] So in original. Reference probably should be to this section.

(3) an analysis of institutional factors associated with subseabed disposal, including international aspects of a decision of the United States to proceed with subseabed disposal as an option for nuclear waste management;

(4) a full discussion of the environmental and public health and safety aspects of subseabed disposal;

(5) recommendations on alternative ways to structure an effort in research, development, and demonstration with respect to subseabed disposal; and

(6) the recommendations of the Secretary with respect to research, development and demonstration in subseabed disposal of spent nuclear fuel and high-level radioactive waste.

(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 a 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 [enacted Dec. 22, 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 [enacted Dec. 22, 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).

(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.
[42 U.S.C. 10204]

DRY CASK STORAGE[16]

Sec. 225. (a) Study. During the period between the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 and October 1, 1988, the Secretary of Energy (hereinafter in this section referred to as the "Secretary") shall conduct a study and evaluation of the use of dry cask storage technology at the sites of civilian nuclear power reactors for the temporary storage of spent nuclear fuel until such time as a permanent geologic repository has been constructed and licensed by the Nuclear Regulatory Commission (hereinafter in this section referred to as the "Commission") and is capable of receiving spent nuclear fuel. The Secretary shall report to Congress on the study under this paragraph by October 1, 1988.

(b) Contents of study. In conducting the study under paragraph (1) the Secretary shall –

(1) consider the costs of dry cask storage technology, the extent to which dry cask storage on the site of civilian nuclear power reactors will affect human health and the environment, the extent to which the storage on the sites of civilian nuclear power reactors affects the costs and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors the Secretary considers appropriate;

[16] So in original.

(2) consider the extent to which amounts in the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 [42 U.S.C. 10222(c)] can be used, and should be used, to provide funds to construct, operate, maintain and safeguard spent nuclear fuel in dry cask storage at the sites for civilian nuclear power reactors;

(3) consult with the Commission and include the views of the Commission in the report under paragraph (1); and

(4) solicit the views of State and local governments and the public.

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 [42 U.S.C. 10101 et seq.]. 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 [42 U.S.C. 10101 et seq.] 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 [42 U.S.C. 10101 et seq.], 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 session 112(a) [42 U.S.C. 10132(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 [42 U.S.C. 10101 et seq.]; 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 [enacted Jan. 7,1983], 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 [enacted Jan. 7, 1983]. 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.

[42 U.S.C. 10221]

NUCLEAR WASTE FUND

Sec. 302. (a) Contracts.

(1) In the performance of his functions under this Act [42 U.S.C. 10101 et seq.], 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 [enacted Jan. 7, 1983], 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 [enacted Jan. 7, 1983], 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 [42 U.S.C. 10143], 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) 12b(b).[17] 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 [enacted Jan. 7, 1983], 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 ensure 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

[17] So in original. Reference to 12b(b) probably should be omitted.

accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421].

(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.[18]

(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

[18] So in original. Reference probably should be to this section and subtitle A of title 1.

[5 U.S.C. 101, 102]) may be disposed of by the Secretary in any repository constructed under this Act [42 U.S.C. 10101 et seq.] 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 [5 U.S.C. 101, 102], may be disposed of by the Secretary in any repository constructed under this Act [42 U.S.C. 10101 et seq.] 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 [enacted Jan. 7, 1983] 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 [42 U.S.C. 10121 et seq., 10191 et seq.], 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 [42 U.S.C. 10101 et seq.];

(2) the conducting of nongeneric research, development, and demonstration activities under this Act [42 U.S.C. 10101 et seq.];

(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 [42 U.S.C. 10136, 10138, 10199].[19]

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 [31 U.S.C. 1101 et seq.]. The budget of the Waste Fund shall consist

[19] So in original. Reference probably should be to sections 116,118, 141, and 219.

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 [31 U.S.C. 1511 et seq.].

(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 [31 U.S.C. 3101 et seq.], 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 tine 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.

[42 U.S.C.10222]

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 [enacted Jan. 7, 1983].

[42 U.S.C. 10223]

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 [5 U.S.C. 5315].

(b) Functions of Director. The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act [42 U.S.C. 10101 et seq.], subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress. The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Annual audit by Comptroller General. The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.
[42 U.S.C. 10224]

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 [enacted Jan. 7, 1983], 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 [42 U.S.C. 10121 et seq.] 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 1 [42 U.S.C. 10121 et seq.] 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 [42 U.S.C. 10135].
[42 U.S.C. 10225]

NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION

Sec. 306. 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[20] 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 [enacted Jan. 7, 1983], and the Commission within the 12-month period following enactment of this Act [enacted Jan. 7, 1983] shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.
[42 U.S.C. 10226]

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.[21]
[42 U.S.C. 10241]

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.

[20] So in original. Probably should be “Commission”.

[21] As amended by Section 802 of the Energy Policy Act of 1992. See page 84.

(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.

[42 U.S.C. 10242]

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;

(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) [42 U.S.C. 10244(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) [42 U.S.C. 10136(c), 10137, 10138(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.

[42 U.S.C.10243]

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) [42 U.S.C. 10243(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 [5 U.S.C. 701 et seq.; 42 U.S.C. 10139].

(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) [42 U.S.C. 10133(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 [enacted Dec. 22, 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.

[42 U.S.C. 10244]

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) [42 U.S.C. 10243(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 accordance with section 113 [42 U.S.C. 10133], 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.

[42 U.S.C. 10245)

MONITORED RETRIEVABLE STORAGE

Sec. 406. (a) Construction and operation. Upon enactment of legislation to implement an agreement negotiated under section 403(a) [42 U.S.C. 10243(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.

[42 U.S.C. 10246]

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 [42 U.S.C. 4321 et seq.] 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.

[42 U.S.C. 10247]

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 section 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.).

[42 U.S.C. 10248]

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.

[42 U.S.C.10249]

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 [enacted Dec. 22, 1987].[22]

[42 U.S.C. 10250]

[22] As amended by Section 802 of the Energy Policy Act of 1992. Sec page 84.

AUTHORIZATION OF APPROPRIATIONS

Sec. 411. Notwithstanding subsection (d) of section 302 [42 U.S.C. 10222(d)], and subject to subsection (e) of such section [42 U.S.C. 10222(e)], there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section [42 U.S.C. 10222(c)], such sums as may be necessary to carry out the provisions of this title.
[42 U.S.C. 10251]

TITLE. V—NUCLEAR WASTE TECHNICAL REVIEW

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 [42 U.S.C. 10262].
[42 U.S.C.10261]

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 [enacted Dec. 22, 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 [enacted Dec. 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) 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 [enacted Dec. 22, 1987], except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and b shall serve for 4 years, to be designated by the President at the time of appointment.

[42 U.S.C. 10262]

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 [enacted Dec. 22, 1987], including –

(1) site characterization activities; and

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

[42 U.S.C. 10263]

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.

[42 U.S.C. 10264]

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.

[42 U.S.C. 10265]

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 competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 U.S.C. 5301 et seq., 5331 et seq.] 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 [5 U.S.C. 5301 et seq., 5331 et seq.] 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.

[42 U.S.C. 10266]

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.
[42 U.S.C. 10267]

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 [enacted Dec. 22, 1987].
[42 U.S.C. 10268]

AUTHORIZATION OF APPROPRIATIONS

Sec. 509. Notwithstanding subsection (d) of section 302 [42 U.S.C. 10222(d)], and subject to subsection (e) of such section [42 U.S.C. 10222(e)], there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section [42 U.S C 10222(c)] such sums as may be necessary to carry out the provisions of this title.
[42 U.S.C. 10269]

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.
[42 U.S.C. 10270]

ENERGY POLICY ACT OF 1992

TITLE VIII—HIGH-LEVEL RADIOACTIVE WASTE

NUCLEAR WASTE DISPOSAL

Sec. 801. 42 USC 10141 note.

(a) Environmental Protection Agency Standards.
(1) Promulgation. Notwithstanding the provisions of section 12 l(a) of the Nuclear Waste Policy Act of 1982 [42 U.S.C. 210141(a)], section 161 b. of the Atomic Energy Act of 1954 [42 U.S.C. 2201(b)], and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and

consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

(2) Study by National Academy of Sciences. Within 90 days after the date of the enactment of this Act, the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

(3) Applicability. The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

(b) Nuclear Regulatory Commission requirements and criteria.

(1) Modifications. Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear

Waste Policy Act of 1982 [42 U.S.C. 10141(b)], as necessary, to be consisttent with the Administrator's standards promulgated under subsection (a).

(2) Required assumptions. The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to –

(A) prevent any 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.

(c) Post-closure oversight. Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

(1) breaching the repository's engineered or geologic barriers; or

(2) increasing the exposure of individual members of the public to radiation beyond allowable limits.

OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

Sec. 802.

(a) Extension. Section 410 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10250) is amended by striking “5 years” and inserting “7 years”.

(b) Definition of State. Section 401 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10241) is amended –

(1) by striking “States,” the first place it appears and inserting “States and”; and

(2) by inserting a period after “District of Columbia” and striking the remainder of the sentence.

NUCLEAR WASTE MANAGEMENT PLAN

Sec. 803. 42 USC 10101 note.
(a) Preparation and submission of the report. The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency,

shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 [42 U.S.C.10101 et seq.] are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might arise by the addition of new nuclear generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, and need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

(b) Opportunity for public comment. In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

(c) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary to carry out this section.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT 1984

PUBLIC LAW 98-50—JULY 14,1983

NUCLEAR WASTE DISPOSAL FUND

97 STAT. 255

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $306,675,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amount available for obligation in this account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1985

PUBLIC LAW 98-360—JULY 16, 1984

NUCLEAR WASTE DISPOSAL FUND

98 STAT. 414

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $327,669,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amount available for obligation in this account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1986

PUBLIC LAW 99-141—NOV. 1, 1985

NUCLEAR WASTE DISPOSAL FUND

99 STAT. 573

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $521,460,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1987

PUBLIC LAW 99-500—OCT. 18,1986

NUCLEAR WASTE DISPOSAL FUND

100 STAT.1783-205

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $499,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury: *Provided*, That of the funds available, $2,500,000 shall be provided to the State of Oregon for the purpose of researching, with respect to nuclear activities carried out at the Hanford Federal Reservation in Richland, Washington, the effects of such nuclear activities on the health of the people of Oregon and on the environment of Oregon.

PUBLIC LAW 99-591—OCT. 30, 1986

100 STAT. 3341-205

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, including the acquisition of real property or facility construction or expansion, $499,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury: *Provided*, That of the funds available, $2,500,000 shall be provided to the State of Oregon for the purpose of researching, with respect to nuclear activities carried out at the Hanford Federal Reservation in Richland, Washington, the effects of such nuclear activities on the health of the people of Oregon and on the environment of Oregon.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT, 1988

PUBLIC LAW 100-202—DEC. 22, 1987

NUCLEAR WASTE DISPOSAL FUND

101 STAT. 1329-121

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $360,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury. In paying the amounts determined to be appropriate as a result of the decision in Wisconsin Electric Power Co. v. Department of Energy, 778 F. 2d 1 (D.C. Cir. 1985), the Department of Energy shall pay, from the Nuclear Waste Fund, interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Fund. Funds appropriated pursuant to this Act may be used to provide payments equivalent to taxes to special purpose units of local government at the candidate sites.

Subtitle A of title V, Nuclear Waste Policy Amendments Act of 1987, contained in H.R. 3545, Omnibus Budget Reconciliation Act of 1987 as agreed to and reported by the Committee on Conference on H.R. 3545 is included herein and shall be effective as if it has been enacted into law.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT, 1989

PUBLIC LAW 100-371—JULY 19, 1988

NUCLEAR WASTE DISPOSAL FUND

102 STAT. 867

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $369,832,000, to remain available until expended, to be derived from the

Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation to the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury: *Provided*, That any proceeds resulting from the sale of assets purchased from the Nuclear Waste Fund shall be returned to the Nuclear Waste Fund: *Provided further*, That of the amount herein appropriated not to exceed $11,000,000, at an annualized rate, may be provided to the State of Nevada for the period of July 1,1988 through June 30,1989, for the conduct of its oversite responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, of which not more than $1,500,000 may be expended for socioeconomic studies and not more than $1,500,000 may be expended on transportation studies: *Provided further*, That not more than $5,000,000, at an annualized rate, may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C.1913.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACTS, 1990

PUBLIC LAW 101-101—SEPT. 29,1989

NUCLEAR WASTE DISPOSAL FUND

103 STAT. 658

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property and facility construction or expansion, $346,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) to issue obligations to the Secretary of the Treasury: *Provided*, That any proceeds resulting from the sale of assets purchased from the Nuclear Waste Fund shall be returned to the Nuclear Waste Fund: *Provided further*, That of the amount herein appropriated not the exceed $5,000,000, may be provided to the State of Nevada, for the conduct of its oversight responsibilities pursuant to the Nuclear Waste Police Act of 1982, Public Law 97-425, as amended, of which $1,000,000 is to be available for the University of Nevada-Reno to carry out infrastructure studies related to nuclear waste, and of which not more than $1,000,000 may be expended for geology and hydrology studies carried out by the University of Nevada system and not more than $1,000,000 may be expended for socioeconomic and transportation studies: *Provided further*, That nor more than $6,000,000 may be

provided to the State of Nevada, at the discretion of the Secretary of Energy, to conduct appropriate activities pursuant to the Act: *Provided further*, That not more that $5,000,000, may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant Act: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C.1913: *Provided further*, That of the amount appropriated herein, up to $10,000,000 shall be made available to the University of Nevada, Las Vegas (UNLV), to provide computing resources to the State of Nevada to carry out its independent analyses and oversight responsibilities under the Nuclear Waste Policy Act of 1982 and for use by UNLV. The funds shall be made available by direct payment to UNLV in the amount of the purchase price of a supercomputer or couples minisupercomputers. UNLV shall take title to and assume ownership of the computer hardware and software that are purchased with these funds.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT, 1991

PUBLIC LAW 101-514—NOV. 5,1990

NUCLEAR WASTE DISPOSAL FUND

104 STAT. 2090

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $242,833,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority prusuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: *Provided*, That of the amount herein appropriated, within available funds, not to exceed $4,146,000, may be provided to the State of Nevada, for the conduct of its oversight responsibilities-pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, $622,000 is to be available for the University of Nevada, Reno for infrastructure studies related to nuclear waste, and $207,000 is to be available to the University of Nevada, Las Vegas, to carry out transportation studies related to nuclear waste: *Provided further*, That not more than $4,892,000, may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C.1913: Provided further, that none of the funds herein appropriated may be used for litigation expenses: *Provided further*, That of the amount appropriated herein, ap to $4,146,000 shall be available for infrastructure studies and other research and development work to be carried out by the University of Nevada, Las Vegas, (UNLV) and the University of Nevada, Reno.

In paying the amounts determined to be appropriate as a result of the decision in Consolidated Edison Company of New York v. Department of Energy, 870 F.2d 694 (D.C. Cir.1989), the Department of Energy shall pay interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund. Such payments may be made by credits to future utility payments into the fund.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT, 1992

PUBLIC LAW 102-104—AUG. 17,1991

NUCLEAR WASTE DISPOSAL FUND

105 STAT. 527

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $275,071,000, to remain available until expended; to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: *Provided*, That of the amount herein appropriated, within available funds, not to exceed $5,000,000, may be provided to the State of Nevada, for the conduct of its oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That of the amount herein appropriated, not more than $4,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of funds herein provided among the affected units of local government shall be determined by the Department of Energy (DOE) and made available to the State and affected units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, each entity shall provide certification to the DOE, that all funds expended from such direct payment moneys have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar

activites: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C. 1913: *Provided further*, That none of the funds herein appropriated may be used for litigation expenses: *Provided further*, That of the amount appropriated herein, up to $3,500,000 shall be available for infrastructure studies and other research and development work to be carried out by the University of Nevada, Las Vegas (UNLV) and the University of Nevada, Reno. Funding to the universities will be administered by the DOE through a cooperative agreement.

In paying the amounts determined to be appropriate as a result of the decision in Consolidated Edison Company of New York v. Department of Energy 870 F.2d 694 (D.C. Cir.1989), the Department of Energy shall pay interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund. Such payments may be made by credits to future utility payments into the Fund.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT, 1993

PUBLIC LAW 102-377—OCT. 2,1992

NUCLEAR WASTE DISPOSAL FUND

106 STAT.1333

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $275,071,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise his authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: *Provided*, That of the amount herein appropriated, within available funds, not to exceed $5,000,000, may be provided to the State of Nevada, for the sole purpose in the conduct of its oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That of the amount herein appropriated, not more that $6,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of funds herein provided among the affected units of local government shall be determined by the Department of Energy (DOE) and made available to the State and affected units of local government by direct payment: *Provided further*, That within 90 days of the completion of each

Federal fiscal year, each entity shall provide certification to the DOE, that all funds expended from such direct payment moneys have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C. 1913: *Provided further*, That none of the funds herein appropriated may be used for litigation expenses: *Provided further*, That grant funds are not to be used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That of the amount appropriated herein, up to $3,700,000 shall be available for infrastructure studies and other research and development work to be carried out by the Universities of Nevada, Reno and Las Vegas, and the Desert Research Institute, and at least $750,000 to continue funding for the Mobile Sampling Platform developed and operated by the Environmental Research Center at the University of Nevada, Las Vegas. Funding to the Universities will be administered by the DOE through a cooperative agreement.

In paying the amounts determined to be appropriate as a result of the decision in Consolidated Edison Company of New York v. Department of Energy 870 F.2d 694 (D.C. Cir.1989), the Department of Energy shall pay interest at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund. Such payments may be made by credits to future utility payments into the fund.

DEFENSE NUCLEAR WASTE DISPOSAL

106 STAT.1336

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $100,000,000, to remain available until expended, all of which shall be used in accordance with the terms and conditions of the Nuclear Waste Fund appropriation of the Department of Energy contained in this title.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1994

PUBLIC LAW 103-126—OCT. 28,1993

NUCLEAR WASTE DISPOSAL FUND

107 STAT.1327

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $260,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise her authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: *Provided*, That of the amount herein appropriated, within available funds, not to exceed $5,500,000, may be provided to the State of Nevada, for the sole purpose of conduct of its scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That of the amount herein appropriated, not more that $7,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That within ninety days of the completion of each Federal fiscal year, each State or local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any her funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be used 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 18 U.S.C. 1913: *Provided further*, That none of the funds herein appropriated may be used for litigation expenses: *Provided further*, That none of the funds herein appropriated may be used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That none of the funds provided under this Act shall be made available for Phase II-B grants to study the feasibility of siting a Monitored Retrievable Storage Facility.

DEFENSE NUCLEAR WASTE DISPOSAL

107 STAT.1328

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $100,000,000, to remain available until expended, all of which shall be used in accordance with the terms and conditions of the Nuclear Waste Fund appropriation of the Department of Energy contained in this title.

ENERGY AND WATER DEVELOPWNT APPROPRIATION

ACT, 1995

PUBLIC LAW 103-316—AUG. 26,1994

NUCLEAR WASTE DISPOSAL FUND

108 STAT.1716

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $392,800,000, to remain available until expended, to be derived from the Nuclear Waste Fund. To the extent that balances in the fund are not sufficient to cover amounts available for obligation in the account, the Secretary shall exercise her authority pursuant to section 302(e)(5) of said Act to issue obligations to the Secretary of the Treasury: *Provided*, That of the amount herein appropriated, within available funds, not to exceed $5,500,000, may be provided to the State of Nevada, for the sole purpose of conduct of its scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That of the amount herein appropriated, not more that $7,000,000 may be provided to affected local governments, as defined in the Act, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of the funds herein provided among the

affected units of local government shall be determined by the units of local government by direct payment: *Provided further,* That within ninety days of the completion of each Federal fiscal year, each State or local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97-425, as amended. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be used directly or indirectly to influence legislative or for any lobbying activity as provided in Section 1913 of title 18, United States Code: *Provided further,* That none of the funds herein appropriated may be used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act.

DEFENSE NUCLEAR WASTE DISPOSAL

108 STAT.1717

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $129,430,000, to remain available until expended, all of which shall be used in accordance with the terms and conditions of the Nuclear Waste Fund appropriation of the Department of Energy contained in this title.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1996

PUBLIC LAW 104-46—Nov. 13,1995

NUCLEAR WASTE DISPOSAL FUND

109 STAT. 413

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $151,600,000, to remain available until expended, to be derived from the Nuclear Waste Fund.

DEFENSE NUCLEAR WASTE DISPOSAL

109 STAT. 414

For nuclear waste disposal activities to carry out the purposes of Public Law 9725, as amended, including the acquisition of real property or facility construction or expansion, $248,400,000, to remain available until expended: *Provided*, That of the amount herein appropriated, $85,000,000 shall be available for obligation and expenditure only for an interim storage facility and only upon the enactment of specific statutory authority.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1997

PUBLIC LAW 104-206—Sept. 30, 1996

NUCLEAR WASTE DISPOSAL FUND

110 STAT. 2995

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $182,000,000, to remain available until expended, to be derived from the Nuclear Waste

Fund: *Provided*, That none of the funds provided herein shall be distributed to the State of Nevada or affected units of local government (as defined by Public Law 97-425) by direct payment, grant, or other means, for financial assistance under section 116 of the Nuclear Waste Policy Act of 1982, as amended: *Provided further*, That the foregoing proviso shall not apply to payments in lieu of taxes under section 116(c)(3)(A) of the Nuclear Waste Policy Act of 1982, as amended: *Provided further*, That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include: (1) the preliminary design concept for the critical elements for the repository and waste package; (2) a total system performance assessment, based upon the design concept and the scientific data and analysis available H. R. 3816-13 by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards; (3) a plan and cost estimate for the remaining work required to complete a license application; and (4) an estimate of the costs to construct and operate the repository in accordance with the design concept.

DEFENSE NUCLEAR WASTE DISPOSAL

110 STAT. 2997

For nuclear waste disposal activities to carry out the purposes of Pubic Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $200,000,000, to remain available until expended.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1998

PUBLIC LAW 105-62—Oct.13,1997

NUCLEAR WASTE DISPOSAL FUND

111 STAT.1331

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $160,000,000, to remain available until expended, to be derived from the Nuclear Waste Fund; of which $4,000,000 shall be available to the Nuclear Regulatory Commission to license a multi-purpose canister design; and of which not to exceed $5,000,000 may be

provided to affected local governments, as defined in Public Law 97-425, to conduct appropriate activities pursuant to the Act: *Provided*, That the distribution of the funds to the units of local government shall be determined by the Department of Energy: *Provided further*, That the funds shall be made available to the units of local government by direct payment: *Provided further*, That within ninety days of the completion of each Federal fiscal year, each local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97-425. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multistate efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That none of the funds provided herein shall be distributed to the State of Nevada by direct payment, grant, or other means, for financial assistance under section 116 of the Nuclear Waste Policy Act of 1982, as amended: *Provided further*, That the foregoing proviso shall not apply to payments in lieu of taxes under section 116(c)(3)(A) of the Nuclear Waste Policy Act of 1982, as amended.

DEFENSE NUCLEAR WASTE DISPOSAL

111 STAT.1333

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $190,000,000, to remain available until expended.

ENERGY AND WATER DEVELOPMENT APPROPRIATION

ACT 1999

PUBLIC LAW 105-245—Oct. 7,1998

NUCLEAR WASTE DISPOSAL FUND

112 STAT.1848

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $169,000,000, to remain available until expended, of which $165,000,000 is to be derived from the Nuclear Waste Fund; and of which not to exceed $250,000 may be provided to the Department of Energy to reimburse the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, and not to exceed $5,540,000 may be provided to affected local governments, as defined in Public Law 97-425, to conduct appropriate activities pursuant to the Act: *Provided*, That the distribution of the funds to the units of local government shall be determined by the Department of Energy: *Provided further*, That the funds shall be made available to the units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, each local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97-425. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multi-state efforts or other coalition building activities inconsistent with the restrictions contained in this Act.

DEFENSE NUCLEAR WASTE DISPOSAL

112 STAT.1850

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $189,000,000, to remain available until expended.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT 2000

PUBLIC LAW 106-60—Sept. 29,1999

NUCLEAR WASTE DISPOSAL FUND

113 STAT. 491

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $240,500,000 to be derived from the Nuclear Waste Fund: *Provided*, That not to exceed $500,000 may be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, (Public Law 97-425) as amended: *Provided further*, That not to exceed $5,432,000 may be provided to affected units of local governments, as defined in Public Law 97-425, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further*, That the funds shall be made available to the State and units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the State and each local entity shall provide certification to the Department of Energy, that all funds expended from such payments have been expended for activities as defined in Public Law 97-425. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C.1913;

(2) used for litigation expenses; or (3) used to support multi-state efforts or other coalition building activities inconsistent with the restrictions contained in this Act.

DEFENSE NUCLEAR WASTE DISPOSAL

113 STAT. 493

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $112,000,000, to remain available until expended.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2001

PUBLIC LAW 106-377—Oct. 27, 2000

NUCLEAR WASTE DISPOSAL FUND

114 STAT.1441

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $191,074,000, to remain available until expended and to be derived from the Nuclear Waste Fund: *Provided*, That not to exceed $2,500,000 may be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That $6,000,000 shall be provided to affected units of local governments, as defined in Public Law 97-425, to conduct appropriate H. R. 4733-15 activities pursuant to the Act: *Provided further*, That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further*, That the funds for the State of Nevada shall be made available solely to the Nevada Division of Emergency Management by direct payment and units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the Nevada Division of Emergency Management and the Governor of the State of Nevada and each local entity shall provide certification to the Department of Energy that all

funds expended from such payments have been expended for activities authorized by Public Law 97-425 and this Act. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C.1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That all proceeds and recoveries by the Secretary in carrying out activities authorized by the Nuclear Waste Policy Act of 1982 in Public Law 97-425, as amended, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended.

DEFENSE NUCLEAR WASTE DISPOSAL

114 STAT.1441

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $200,000,000, to remain available until expended.

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 2002

PUBLIC LAW 107-66—Nov.12, 2001

NUCLEAR WASTE DISPOSAL FUND

115 STAT. 209

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $95,000,000, to remain available until expended and to be derived from the Nuclear Waste Fund: *Provided*, That not to exceed $2,500,000 shall be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities pursuant to the Nuclear Waste Policy Act of

1982, Public Law 97-425; as amended: *Provided further*, That $6,000,000 shall be provided to affected units of local governments, as defined in Public Law 97-425, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further*, That the funds for the State of Nevada shall be made available solely to the Nevada Division of Emergency Management by direct payment and units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the Nevada Division of Emergency Management and the Governor of the State of Nevada and each local entity shall provide certification to the Department of Energy that all funds expended from such payments have been expended for activities authorized by Public Law 97-425 and this Act. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C.1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That all proceeds and recoveries realized by the Secretary in carrying out activities authorized by the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended.

DEFENSE NUCLEAR WASTE DISPOSAL

115 STAT. 209

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, $280,000,000, to remain available until expended.

Energy and Water Development Appropriation Act, 2003

PUBLIC LAW 108–007 — FEB. 20, 2003

NUCLEAR WASTE DISPOSAL FUND

117 STAT. 148-149

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $145,000,000, to remain available until expended and to be derived from the Nuclear Waste Fund: *Provided*, That not to exceed $2,500,000 shall be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97–425, as amended: *Provided further*, That $7,000,000 shall be provided to affected units of local governments, as defined in Public Law 97–425, to conduct appropriate activities pursuant to the Act: *Provided further*, That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further*, That the funds for the State of Nevada shall be made available solely to the Nevada Division of Emergency Management by direct payment and units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the Nevada Division of Emergency Management and the Governor of the State of Nevada and each local entity shall provide certification to the Department of Energy that all funds expended from such payment shave been expended for activities authorized by Public Law 97–425 and this Act. Failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That all proceeds and recoveries realized by the Secretary in carrying out activities authorized by the Nuclear Waste Policy Act of 1982, Public Law 97–425, as amended, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended.

DEFENSE NUCLEAR WASTE DISPOSAL

117 STAT. 151

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $315,000,000, to remain available until expended.

Energy and Water Development Appropriation Act, 2004

PUBLIC LAW 108 – 137 — DEC. 1, 2003

NUCLEAR WASTE DISPOSAL FUND

117 STAT. 1855

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $190,000,000, to remain available until expended and to be derived from the Nuclear Waste Fund: *Provided*, That none of the funds provided herein may be used for international travel.

DEFENSE NUCLEAR WASTE DISPOSAL

117 STAT. 1857

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, $390,000,000, to remain available until expended.

Nuclear Waste Policy Act (1982)

Joseph P. Tomain

Regulation of nuclear power was transferred from military to civilian control with the passage of the Atomic Energy Act of 1954. Although the dangers of radioactivity were known before the act, it was not until the passage of the Nuclear Waste Policy Act (NWPA) (P.L. 97-425, 96 Stat. 2201) that the back end of the fuel cycle was addressed.

HAZARDS OF NUCLEAR WASTE

The central problem of nuclear waste derives from the facts that radioactivity may last for many thousands of years and must be contained so it no longer presents a significant risk to human health or to the environment. Nuclear waste is generated from many sources. The mining and milling process generates radioactive debris known as mill tailings, which constitute a low-level source of radioactivity. Mill tailings are addressed in the Uranium Mill Tailings and Radiation Control Act of 1978. Radioactive materials are also generated from medical and industrial uses. Certain low-level wastes are addressed in the Low-Level Radioactive Waste Policy Amendments Act of 1985. By far the largest source of radioactive waste results from the generation of electricity by commercial nuclear reactors, which produce tens of thousands of tons of spent nuclear fuel. The primary problem at commercial nuclear power sites is that temporary storage facilities for spent fuel are full and require expansion until a permanent disposal site is completed. In addition, thousands of tons of nuclear waste are generated through military uses.

The NWPA requires the Department of Energy (DOE) to dispose of nuclear waste safely and with environmentally acceptable methods in a geologic formation with the intent to bury designated waste at underground disposal sites. The National Academy of Sciences began looking for disposal sites in the mid-1950s. Preliminary screening identified four large potentially promising regions of either salt domes or bedded salt mines. These formations offer relatively safe space for nuclear waste because they restrict the flow of water that can spread radioactivity.

In 1970 the Atomic Energy Commission identified specific disposal sites, and in the late 1970s, the National Waste Terminal Storage Program helped develop the technology necessary for repository licensing, construction, operation, and closure. In 1980 the Department of Energy, after engaging in an environmental impact statement process, selected mined geologic repositories as the preferred storage space for spent commercial nuclear fuel. All of those efforts culminated in the Nuclear Waste Policy Act of 1982.

PROVISIONS OF THE NWPA

Although the federal government has the primary responsibility for permanent disposal of such waste, the costs of disposal are intended to be the responsibility of generators and owners of the waste and spent fuel. The act also recognizes an important role for public and state participation. The reason for the broad participation of other sovereigns is because repositories must be located somewhere and choosing a site is,

as correctly predicted, controversial. Thus, the statute involves the secretary of energy, the president, Congress, the states, Native American tribes, and the general public in the site selection process.

In 1983 the Department of Energy located nine sites in six states as potential repository sites. Based on initial studies, the president approved three sites in Hannaford, Washington; Defsmith County, Texas; and Yucca Mountain, Nevada. In 1987 Congress amended the Nuclear Waste Policy Act, directing the Department of Energy to study only Yucca Mountain, which is now the designated site awaiting NRC approval. The selection of Yucca Mountain has not been without controversy. In *Nevada v. Watkins* the United States Court of Appeals for the Ninth Circuit rejected the state's challenge of legislative authority for this decision. Pursuant to NWPA, Nevada exercised a veto over site selection, and that veto was overridden in both houses of Congress.

CHALLENGES TO THE ACT

Since the passage of the NWPA, the siting program has faced a number of challenges, including legislative mandates, regulatory modification, fluctuating funding levels, and the evolving and often conflicting needs and expectations of various and diverse interest groups. The challenges from scientists, citizens, legislators, and governors all complicated the process, generating increased Congressional dissatisfaction.

The identification and scheduling of disposal sites have not been finalized as of the date of this writing. In 1997 Congress directed the DOE to complete a "viability assessment" of the Yucca Mountain site. The viability assessment was codified into law by the Energy and Water Development Appropriations Act, which directed that no later than September 3, 1998, the secretary of energy provide to the president and Congress a viability assessment of the Yucca Mountain site. The viability assessment must include:

1. preliminary design concept of the repository and waste package
2. total system performance assessment describing the probable behavior of the repository relative to overall system performance
3. plan and cost estimate for remaining work required to retain a license
4. an estimate of costs to construct and operate the repository

The NWPA envisioned that site selection would be completed in 1998 and that a facility would then be available to accept waste. That date, of course, has passed. The site characterization process and the politics involved have become increasingly complex. In 1987 the DOE announced an opening date in 2003, a date that also was not met. In 1989 a further delay was announced by the Department of Energy to 2010.

In December 1998 the DOE submitted its assessment to the president and Congress. The viability assessment indicated that the site required further study, although it supported a recommendation of the site to the president. The Department of Energy now seeks final authorization from the Nuclear Regulatory Commission to develop the site as a repository. Consequently, Yucca Mountain is currently earmarked for receipt of waste upon Nuclear Regulatory Commission approval.

Nuclear wastes are currently located in 129 sites in thirty-nine different states, which include seventy-two commercial nuclear reactor sites, a commercial storage site, forty-three research sites, and ten Department of Energy sites. Once the major disposal site is finalized, the secretary of energy is authorized to enter into contracts with owners and generators of spent nuclear fuel for storage. In addition, transportation plans

Nuclear Waste Policy Act of 1982, as Amended.

Sections 131 through 137 – Subtitle B - Interim Storage Program

Sections 142 through 149 – Subtitle C - Monitored Retrievable Storage Program

SUBTITLE B–INTERIM STORAGE PROGRAM

Sec. 131. Findings and Purposes

(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.

Sec. 132. Available Capacity for Interim Storage of Spent Nuclear Fuel

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.

Sec. 133. Interim at Reactor Storage

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 establishments, of any

technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

Sec. 134. Licensing of Facility Expansions and Transshipments

(a) ORAL ARGUMENT–In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 USC 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 arguments shall 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 arguments. Of the material that may be submitted by the parties during oral arguments, 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 questions 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 USC 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 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. 135. Storage of Spent Nuclear Fuel

(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 USC 2011 et seq.) or the Energy Reorganization Act of 1974 (42 USC 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 USC 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 of structure.
(b) CONTRACTS–(1) Subject to the capacity limitation established in subsections (a)(1) and (d), the Secretary shall offer to enter into, and may enter into contracts under section 136(a) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that–

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site, of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including-

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.
(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.
(c) ENVIRONMENTAL REVIEW–(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 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.

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(B) The issuance of any environmental assessment under this paragraph shall be considered to be 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 State and Indian tribes, shall develop and publish minimum

guidelines for public participation in such negotiations, but the adequacy of such guidelinesor 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 beconsidered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 and such resolution thereafter becomes law.

For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____ _____, with respect to which a notice of disapproval was submitted by _____ on _____. The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term "affected Tribal Council" means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) LIMITATIONS–Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this Act is available for disposal of such spent nuclear fuel.

(f) REPORT.–The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after the date of the enactment of this Act.

(g) CRITERIA FOR DETERMINING ADEQUACY OF AVAILABLE STORAGE CAPACITY–Not later than 90 days after the date of the enactment of this Act, the Commission pursuant to section 553 of the Administrative Procedures Act, shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance

of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) APPLICATION–Notwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.

(i) COORDINATION WITH RESEARCH AND DEVELOPMENT PROGRAM–To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 217 from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

Sec. 136. Interim Storage Fund

(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 storagecapacity 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 jurisdictional boundaries of such government or governments and authorized under this subtitle: *Provided, however,* That such impact assistance payments shall not exceed (A) ten percentum 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. Transportation

(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

(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 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 USC 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 USC 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b) (1).

(d) LICENSING–Any facility authorized pursuant to this section shall be subject to licensing under section 202(3)) of the Energy Reorganization Act of 1974 (42 USC 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 migrate 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 development 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.

Sec. 142. Authorization of Monitored Retrievable Storage

(a) NULLIFICATION OF OAK RIDGE SITTING PROPOSAL–The proposal 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 power plant 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.

Sec. 143. Monitored Retrievable Storage Commission

(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 monitor ed 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 well 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.

Sec. 144. Survey

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.

Sec. 145. Site Selection

(a) 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 USC 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.

Sec. 146. Notice of Disapproval

(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.

Sec. 147. Benefits Agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribe 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.

Sec. 148. Construction Authorization

(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 USC 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 USC 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 the facility at any one time may not exceed 15,000 metric tons of heavy metal.

Sec. 149. Financial assistance

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.

must be undertaken in an environmentally safe and sound manner. Although the commercial nuclear power market has been stagnant for nearly two decades, nuclear waste disposal issues continue to be an important part of the nation's energy planning.

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