



WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL
ACT

OCTOBER 7, 1991.—Ordered to be printed

Mr. MILLER of California, from the Committee on Interior and
Insular Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2637 which on June 13, 1991, was referred jointly to the Com-
mittee on Interior and Insular Affairs, the Committee on Energy and Commerce,
and the Committee on Armed Services]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was re-
ferred the bill (H.R. 2637) to withdraw lands for the Waste Isola-
tion Pilot Plant, and for other purposes, having considered the
same, report favorably thereon with amendments and recommend
that the bill as amended do pass.

The amendments are as follows:

Section 9(a)(1)(B) is amended to read as follows:

(B) the standards and requirements for radionu-
clides promulgated by the Administrator under section
112 of the Clean Air Act (42 U.S.C. 7412); and

Section 13 is amended to read as follows:

SEC. 13. SOLID WASTE DISPOSAL ACT; CLEAN AIR ACT.

(a) **AUTHORITY OF STATE OF NEW MEXICO.**—Except as pro-
vided in sections 6 and 9, nothing in this Act shall be con-
strued to either enhance or diminish the authority of the
State of New Mexico under the Solid Waste Disposal Act
(42 U.S.C. 6901 et seq.).



(b) **CLEAN AIR ACT.**—Nothing in this Act shall be construed to supersede or modify the provisions of section 118 of the Clean Air Act (42 U.S.C. 7418).

(c) **SOLID WASTE DISPOSAL ACT.**—Nothing in this Act shall be construed to supersede or modify the provisions of section 6001 of the Solid Waste Disposal Act. (42 U.S.C. 6961).

Section 9(a)(2) is amended to read as follows:

(2) **PERIODIC OVERSIGHT BY THE ADMINISTRATOR AND THE STATE OF NEW MEXICO.**—The Secretary shall, not later than 2 years after the date of the enactment of this Act, and biennially thereafter, submit documentation of continued compliance with the regulatory requirements described in paragraphs (1)(A) and (1)(B), to the Administrator, and with the regulatory requirements described in paragraph (1)(C), to the State of New Mexico.

Section 9(b) is amended to read as follows:

(b) **In the Event of Noncompliance During the Test Phase.**—

(1) **DETERMINATION BY ADMINISTRATOR.**—In the event that the Administrator determines at any time during the test phase that—

(A) the WIPP facility will not comply with the disposal standards under subsection (c)(1)(B);

(B) the Secretary is not conducting test phase activities involving underground emplacement of transuranic radioactive waste in a manner that allows the waste to be readily retrieved as required by condition (4) of the non-migration determination described at page 47,720 of volume 55, No. 220 of the Federal Register or

(C) conditions at the WIPP facility do not allow the waste to be readily retrieved as required by such condition,

the Administrator shall request a remedial plan from the Secretary describing actions the Secretary will take to demonstrate compliance with these regulatory requirements.

(2) **DETERMINATION BY STATE.**—In the event that the State of New Mexico determines at any time during the test phase that the Secretary has not complied with the standards applicable to owners and operators of hazardous waste, treatment, storage, and disposal facilities under section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924) with respect to activities at WIPP, the State of New Mexico shall request a remedial plan from the Secretary describing actions the Secretary will take to demonstrate compliance with these regulatory requirements.

(3) **IMPLEMENTATION OF RETRIEVAL PLAN.**—If a remedial plan is not received from the Secretary within 6

months of a determination of noncompliance with a regulatory requirement described in paragraph (1) or (2), or if the Administrator or the State of New Mexico, as appropriate, finds any such remedial plan to be inadequate to demonstrate compliance with such regulatory requirement, the Secretary shall implement the retrieval plan required under section 5(c).

Section 2(2) is amended by striking “and the August 4, 1987” and all that follows through “or as” and inserting the following: “the August 4, 1987 ‘Second Modification’, and the March 18, 1988 ‘Third Modification’, or as”.

Section 2(8) is amended by inserting “panel seals,” after “room seals”.

Sections 3 and 4 of the bill are amended to read as follows:

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR WIPP.

(a) **LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.**—

(1) **LAND WITHDRAWAL.**—Subject to valid existing rights, the limitation described in paragraph (3), and except as otherwise provided in the Act, the lands described in subsection (c) are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including without limitation the mineral leasing laws, the geothermal leasing laws, the material sale laws (except as provided in section 4(b)(4) of this Act), and the mining laws.

(2) **RESERVATION.**—Such lands are reserved for use by the Secretary for conducting test phase activities.

(3) **DURATION.**—

(A) **10 YEARS.**—The land withdrawal made by paragraph (1) shall be in effect for a period not to exceed 10 years after the date of enactment of this Act.

(B) **UPON TERMINATION.**—Except as otherwise provided in this paragraph, upon the termination of the land withdrawal made by paragraph (1) (or any extensions or renewals thereof made by subsequent Acts of Congress) the Secretary of the Interior shall open the Withdrawal to the operation of the public land laws, including the mining, mineral leasing, and geothermal leasing laws, unless the Secretary of the Interior determines that as a result of use of the Withdrawal by the Secretary of Energy during the period of the land withdrawal described in subparagraph (A), the lands are contaminated or otherwise would present a danger to the public health or safety if opened to such operation.

(C) **DECONTAMINATION.**—In the event of a determination by the Secretary of the Interior, pursuant to subparagraph (B) that the opening of any portion of the Withdrawal to the operation of the public land laws would present a danger to the public health or safety, the Secretary of Energy

shall advise the Secretary of the Interior as to the feasibility and practicability of decontaminating such portion of the Withdrawal and taking such other steps as may be necessary to remove such danger.

(D) **MITIGATION OF DANGER.**—If the Secretary of Energy advises the Secretary of the Interior under subparagraph (C), that steps to remove dangers to the public health and safety are feasible and practicable, the Secretary of Energy shall take such steps and shall advise the Secretary of the Interior upon their completion, so that the Secretary of the Interior may open some or all of the Withdrawal to operation of the public land laws.

(E) **FINDING OF IMPRACTICABILITY.**—If the Secretary of Energy advises the Secretary of the Interior under subparagraph (C), that steps to remove dangers to the public health and safety are not feasible or practicable, the lands described in subsection (c) shall be withdrawn by the Secretary of the Interior under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) solely for purposes of decontaminating the Withdrawal and otherwise removing dangers to the public health and safety. The Secretary of Energy shall continue to reimburse the Secretary of the Interior for the costs of managing such lands during the period of any withdrawal under this subparagraph. The Secretary of Energy shall undertake no activities on any lands subject to any such withdrawal except in connection with steps to decontaminate or otherwise remove dangers to public health and safety on the Withdrawal.

(F) **LIMITATION.**—This paragraph shall not apply to the land withdrawal made by subsection (f).

(b) **REVOCATION OF PUBLIC LAND ORDERS.**—Public Land Order 6403 of June 29, 1983, as modified by Public Land Order 6826 of January 28, 1991, and the memorandum of understanding accompanying Public Land Order 6826, are revoked.

(c) **LAND DESCRIPTION.**—

(1) **BOUNDARIES.**—The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled “WIPP Withdrawal Site Map,” dated October 9, 1990, and on file with the Bureau of Land Management, New Mexico State Office, are established as the boundaries of the Withdrawal.

(2) **LEGAL DESCRIPTION AND MAP.**—Within 30 days after the date of the enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the Withdrawal;

(B) file copies of the map described in paragraph (1) and the legal description of the Withdrawal with the Committees on Energy and Natural Resources and Armed Services of the United States Senate, the Committees on Interior and Insular Affairs, Energy and Commerce, and Armed Services of the United States House of Representatives, the Secretary of Energy, the Governor of the State of New Mexico, and the Archivist of the United States.

(d) **TECHNICAL CORRECTIONS.**—The map and legal description referred to in subsection (c) shall have the same force and effect as if they were included in this Act. The Secretary of the Interior may correct clerical and typographical errors in the map and legal description.

(e) **WATER RIGHTS.**—This Act does not establish a reservation to the United States with respect to any water or water rights on the Withdrawal. Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of New Mexico on or before the date of the enactment of this Act.

(f) **ADDITIONAL LAND WITHDRAWAL.**—

(1) **IN GENERAL.**—Subject to valid existing rights, the lands referred to in paragraph (2), and all other lands within the boundaries of the area specified on the map referred to in such paragraph which may become subject to the operation of the public land laws, are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws) and from the operation of the mineral leasing and geothermal leasing laws.

(2) **LAND DESCRIPTION.**—The lands referred to in paragraph (1) are the public lands comprising approximately 5100 acres in Eddy County, New Mexico, as generally depicted on the map entitled “Lechuguilla Cave Protection Area”, dated June 1991, and filed in accordance with paragraph (3).

(3) **PUBLICATION AND FILING.**—As soon as possible after the date of the enactment of this Act, the Secretary of the Interior shall publish in the Federal Register a notice containing the legal description of the lands withdrawn by paragraph (1), and shall file such legal description and the map referred to in paragraph (2) with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(4) **TECHNICAL CORRECTIONS.**—The map and legal description referred to in paragraphs (2) and (3), respectively, shall have the same force and effect as if they were included in this Act except that the Secretary of the Interior may correct clerical and typographical errors in such map and legal description.

(5) PUBLIC INSPECTION.—Copies of the map and legal description referred to in paragraphs (2) and (3), respectively, shall be available for public inspection in the offices of the Director and appropriate State Director of the Bureau of Land Management.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(A) GENERAL AUTHORITY.—The Secretary of the Interior shall be responsible for the management of the Withdrawal pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), this Act, and other applicable law, and shall consult with the Secretary of Energy and the State of New Mexico in discharging such responsibility and any other responsibility required by this Act.

(b) MANAGEMENT PLAN.—

(1) DEVELOPMENT.—Within one year after the date of the enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Energy and the State of New Mexico, shall develop a management plan for the use of the Withdrawal until the end of the decommissioning phase.

(2) PRIORITY OF WIPP-RELATED USES.—Any use of the Withdrawal for activities not associated with WIPP shall be subject to such conditions and restrictions as may be necessary to permit the conduct of WIPP-related activities.

(3) NON-WIPP RELATED USES.—The management plan developed under paragraph (1) shall provide for the maintenance of wildlife habitat and shall provide that the Secretary of the Interior may permit such non-WIPP related uses of the Withdrawal as the Secretary of the Interior determines to be appropriate, including domestic livestock grazing and hunting and trapping in accordance with the following requirements:

(A) GRAZING.—The Secretary of the Interior may permit grazing to continue where established before the date of the enactment of this Act, subject to such regulations, policies, and practices as the Secretary of the Interior, in consultation with the Secretary of Energy, determines to be necessary or appropriate. The management of grazing shall be conducted in accord with applicable grazing laws and policies, including—

(i) the Act entitled “An Act to stop injury to public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes,” approved June 28, 1934 (43 U.S.C. 315 et seq., commonly referred to as the “Taylor Grazing Act”);

(ii) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.); and

(iii) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902 et seq.).

(B) HUNTING AND TRAPPING.—The Secretary of the Interior may permit hunting and trapping within the Withdrawal in accordance with applicable laws and regulations of the United States and the State of New Mexico, except that the Secretary of the Interior, after consultation with the Secretary of Energy and the State of New Mexico, may issue regulations designating zones where, and establishing periods when, no hunting or trapping is permitted for reasons of public safety, administration, or public use and enjoyment.

(4) DISPOSAL OF SALT TAILINGS.—The Secretary of the Interior shall dispose of salt tailings extracted from the Withdrawal that the Secretary of Energy determines are not needed for backfill at WIPP. Disposition of such tailings shall be made under sections 2 and 3 of the Act of July 31, 1947, (30 U.S.C. 602, 603; commonly referred to as the “Materials Act of 1947”).

(5) PROHIBITION ON MINING.—No surface or subsurface mining, including slant drilling from outside the boundaries of the Withdrawal, shall be permitted at any time (including after decommissioning) on lands on or under the Withdrawal.

(c) CLOSURE TO THE PUBLIC.—If during the withdrawal made by section 3(a) the Secretary of Energy determines in consultation with the Secretary of the Interior that the health and safety of the public or the common defense and security require the closure to the public use of any road, trail, or other portion of the Withdrawal, the Secretary of Energy may take whatever action the Secretary of Energy determines to be necessary to effect and maintain the closure and shall provide notice to the public of such closure.

(d) MEMORANDUM OF UNDERSTANDING.—The Secretary of the Interior and the Secretary of Energy shall enter into a memorandum of understanding to implement the management plan developed under subsection (b). Such memorandum shall remain in effect until the end of the decommissioning phase.

(e) SUBMISSION OF PLAN.—Within one year after the date of the enactment of this Act, the Secretary of the Interior shall submit the management plan developed under subsection (b) to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, and the State of New Mexico. Any amendments to the plan shall be submitted promptly to those Committees and the State of New Mexico.

SEC. 18. ENVIRONMENTAL EVALUATION GROUP.

(a) **ACCESS TO DATA, REPORTS AND MEETINGS.**—The Secretary shall—

- (1) provide the EEG with free and timely access to data relating to WIPP produced or obtained by the Secretary or contractors of the Secretary;
- (2) provide the EEG with preliminary reports relating to WIPP; and
- (3) permit the EEG to attend meetings relating to WIPP with expert panels, peer review groups, and appropriate Federal agencies.

(b) **EVALUATION AND PUBLICATION.**—The EEG may evaluate and publish analyses of the Secretary's plans for test phase activities, monitoring, transportation, operations, decontamination, retrieval, performance assessment, compliance with Environmental Protection Agency standards, decommissioning, safety analyses, and other activities relating to WIPP.

(c) **CONSULTATION AND COOPERATION.**—The Secretary shall consult and cooperate with the EEG in carrying out the requirements of this section.

In section 5(c), after "respectively." insert the following sentence:

Such plan shall include specific plans for the interim management and storage of any such removed waste and specify the location of such storage.

At the end of section 6(c), add the following new paragraph:

(4) **STABILITY OF ROOMS USED FOR TESTING.**—Transuranic radioactive waste may be emplaced in mined rooms in the underground repository at WIPP to conduct test phase activities only after the Secretary of the Interior, acting through the Bureau of Mines, has certified to the Secretary that such rooms will remain stable for the duration of such activities.

SEC. 19. ASSISTANCE AND TRAINING FOR STATES AND INDIAN TRIBES IMPACTED BY WIPP SHIPMENTS.

(a) **ASSISTANCE AND TRAINING.**—The Secretary shall, to such extent and for such amounts as are provided in advance in appropriations Acts, provide training and in-kind, financial, technical and other appropriate assistance for accident prevention, emergency management and administration, and public information activities to any State or Indian tribe through whose jurisdiction the Department of Energy will transport transuranic radioactive waste to or from WIPP. This assistance and training shall be provided during the 10-year period described in section 3(a)(3)

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated no more than \$3 million for each fiscal year during the 10-year period described in section 3(a)(3) to carry out the purposes of subsection (a). Except that, if the Secretary determines that an amount greater than \$3 million per year is necessary to ensure the safe transportation of transuranic radioactive waste to or from

WIPP during such period, and this sum is approved by the House Committee on Interior and Insular Affairs, the Senate Committee on Environment and Public Works, and the House and Senate Committees on Appropriations, such sums as may be necessary are authorized to be appropriated to carry out the purposes of subsection (a).

Section 17(a) is amended by striking "request the National Academy of Sciences to".

Section 17 is amended by adding at the end the following new subsection:

(c) **FUNDING.**—Of amounts appropriated to the Department of Energy for research and development, the Secretary shall use an amount not to exceed \$300,000 to carry out the study required under this section.

PURPOSE

The purpose of H.R. 2637 is to withdraw lands and establish the regulatory basis for the Waste Isolation Pilot Plant ("WIPP")

BACKGROUND AND NEED

Lands owned by the United States and administered by the Bureau of Land Management are open to public use under the mining and general land laws unless legally withdrawn and reserved for a particular public purpose. Under section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714), public lands may be withdrawn either by act of Congress or by the Secretary of the Interior. The Secretary may withdraw parcels of 5,000 or more acres for no more than twenty years at a time. While the Secretary may renew an administrative withdrawal, land can be withdrawn permanently only through legislation.

In order to construct and operate the WIPP, land must be withdrawn from the public lands and reserved for the purpose of the WIPP. The WIPP consists of several surface buildings used to house personnel and equipment, four access and ventilation shafts extending about 2,150 feet below the surface, and an extensive network of waste storage tunnels. The storage tunnels are located near the middle of salt beds that are nearly 2,000 feet thick. The Carlsbad site was chosen for the WIPP, in part, because its salt beds are among the thickest in the nation, it is uninhabited, and no holes for mining or oil drilling penetrate the storage area. The WIPP cost approximately \$1 billion to build and \$100 million per year to operate, or a total cost of over \$2.5 billion over the operating life of the facility.

The Department of Energy ("DOE") plans to operate the WIPP for 25 years, after which institutional controls will be implemented "for as long a period of time as is practicable" to ensure that radiation does not escape from the

facility. Because the period of active use and institutional controls will exceed 20 years, a statutory land withdrawal is desirable.

Legislation also is needed to impose additional restrictions on the use of the WIPP. Public Law 96-164 grants DOE broad authority to conduct research and develop waste disposal capability at the WIPP, independent of regulation by the Nuclear Regulatory Commission. While DOE has agreed to significant restrictions on the exercise of this authority under agreements with the State of New Mexico and other interested authorities, the Committee believes legislation is warranted to codify certain of these agreements and to impose additional restrictions.

First, the Committee believes legislation is in order to bar disposal of certain types of radioactive waste at the WIPP. Second, the Committee believes legislation is necessary to prevent the permanent disposal of any transuranic waste in the WIPP until DOE has complied with the Environmental Protection Agency (EPA) disposal standards for transuranic waste. Third, the Committee believes that further regulation of planned DOE test activities is warranted to ensure that they are conducted in a manner that will pose no threat to the health and safety of the people of New Mexico. Fourth, the Committee believes legislation is necessary to make clear which agency is responsible for determining compliance with the various environmental regulations to which the WIPP is subject.

History of the WIPP land withdrawals

The Secretary of the Interior withdrew the WIPP site for DOE to perform its Site and Preliminary Design Validation Program on March 30, 1982. (42 C.F.R. Public Land Order 6232.) On June 29, 1983, the Secretary withdrew the same lands for purposes of constructing the WIPP. (43 C.F.R. Public Land Order 6403). Each withdrawal was for a period of eight years. Neither permitted the receipt, storage, or burial of any radioactive wastes at the site. H.R. 2637 revokes both of the Secretary's public land orders.

Early in 1991, the Interior Department issued another withdrawal (43 C.F.R. Public Land Order 6826) that would have allowed operations involving radioactive waste at the site to begin. The Interior Committee, however, blocked that move by exercising its authority under section 204(e) of the Federal Land Policy and Management Act of 1976 (Committee Resolution No. 4) in order to allow time for the Congress to act on legislative land withdrawal.

Compliance with environmental standards

Under section 121(a) of the Nuclear Waste Policy Act of 1982, section 161b. of the Atomic Energy Act of 1954, and section 2(a)(6) of Reorganization Plan No. 3 of 1970, the EPA is responsible for setting standards for protecting the environment from the escape of radioactive materials from nuclear waste repositories. EPA issued such standards in 1985. 40 C.F.R. Part 191. The EPA stand-

ards are divided into two parts: (i) standards for management and storage, which are defined as activities that do not involve isolating the waste from the environment with no intent of recovery; and (ii) standards for disposal, which are defined as permanently isolating the waste from the environment with no intent of recovery.

Subpart A of the EPA's management and storage standards requires the Secretary of Energy to manage and store radioactive wastes so as to provide reasonable assurance that the combined annual dose equivalent to any member of the Public in the general environment will not exceed 25 millirems to the whole body (about one-third of the average dose received by Americans from medical sources each year) or 75 millirems to any critical organ.

Subpart B of EPA's disposal standards requires "a reasonable expectation" that cumulative releases of radioactive materials to the environment over the next 10,000 years will have a "likelihood" of not exceeding specified amounts. Subpart B does not require "complete assurance" of compliance with the release limits, only a "reasonable expectation . . . that compliance will be achieved."

On July 17, 1987, the U.S. Court of Appeals for the First Circuit struck down subpart B because EPA had not adequately explained certain inconsistencies between the disposal standard and the agency's safe drinking water standards, and because the EPA had not given the public adequate notice and opportunity to comment on certain requirements. *Natural Resources Defense Council v. EPA*, 824 F. 2d 1258 (1st Cir. 1987). Four years after the court struck down subpart B, EPA has still not promulgated the rule.

It is the Committee's conclusion that EPA has been unjustifiably dilatory in repromulgating this crucial rule, that the rule should be issued in draft form immediately, and that it be finalized within nine months. The Committee also concludes that the EPA subpart B standards should be finalized before DOE begins its test program involving emplacement of radioactive wastes at the WIPP, so the Department knows what standards it needs to demonstrate compliance with as it performs its planned tests.

Test phase

In keeping with the WIPP's statutory mission as a research and development facility, DOE intends to conduct an experimental program at the WIPP during the first five to ten years of the facility's operation. DOE testified that these experiments "will examine issues of generic interest to defense waste isolation, as well as address issues which must be resolved to support isolation of [transuranic] wastes at the WIPP."

As of June 1991, DOE had completed detailed plans for only one experiment requiring the placement of radioactive waste in the WIPP. The State of New Mexico's Environmental Evaluation Group believes that the proposed experiment will not accomplish what it is supposed to and is not satisfied that the proposed experiment is justified technically. The National Academy of Sciences' panel reviewing the WIPP also has said DOE failed to make an adequate case for the planned experiments.

Defense waste program

Since 1942, DOE and its predecessor agencies have generated vast amounts of radioactive waste in the course of developing, producing, testing and maintaining nuclear weapons. These wastes are divided into three classes:

(1) High-level wastes are the wastes remaining after weapons materials (uranium and plutonium) have been extracted from reactor fuel. High-level wastes release intense heat and penetrating radiation. They remain dangerous for thousands of years and must be permanently isolated from the environment. These wastes, currently stored at facilities in South Carolina, Idaho and the State of Washington, will be disposed of permanently in the civilian geologic repository in accordance with the Nuclear Waste Policy Act of 1982.

(2) Low-level wastes consist of discarded protective clothing, tools, equipment, rags and other trash that have been contaminated with radioactive materials. Low-level wastes contain little or no plutonium or other heavier-than-uranium elements. They release less heat and penetrating radiation than high-level wastes and remain hazardous for only a few hundred years. Defense low-level wastes are buried in shallow trenches at facilities in Idaho, Tennessee, South Carolina and the State of Washington.

(3) Transuranic wastes, like low-level wastes, consist of discarded protective clothing, tools, equipment, rags, and other trash that have been contaminated with radioactive materials. Unlike low-level wastes, however, transuranic wastes contain plutonium or other heavier-than-uranium (transuranic) elements. The release low heat and penetrating radiation like low-level waste, but because the transuranic elements have long half-lives high-level waste, they remain hazardous for thousands of years.

Transuranic wastes are divided further into two classes: contact-handled and remote-handled. Contact-handled transuranic wastes are those that emit only alpha radiation. Alpha radiation is dangerous if inhaled or ingested but will not penetrate skin. Ordinary 55-gallon metal drums provide adequate shielding to protect against exposure. Remote-handled transuranic wastes are those that emit beta or gamma radiation. Gamma radiation is highly penetrating; wastes emitting it must be heavily shielded in special casks.

Transuranic wastes are currently produced and temporarily stored at sites in California, Colorado, Idaho, Illinois, Nevada, New Mexico, Ohio, Tennessee, South Carolina and the State of Washington. Approximately 5,000 cubic meters of transuranic waste are produced at the ten sites per year. Nearly half of this amount is produced at the Rocky Flats Plant near Golden, Colorado.

Prior to 1970, transuranic wastes were routinely buried in shallow trenches near the production sites. About 192,000 cubic meters of transuranic waste was disposed of in this manner. Since 1970, transuranic waste has been stored in metal drums or boxes so it can be easily retrieved and moved to a permanent repository.

About one-third of all transuranic waste buried or stored at all DOE sites is found at the Idaho National Engineering Laboratory near Idaho Falls, Idaho. About 60 percent of all transuranic waste retrievably stored in the nation is stored at Idaho Falls.

None of the sites at which transuranic waste is presently stored or buried was designed to meet environmental protection standards issued by the U.S. Environmental Protection Agency.

Early history of the WIPP project

Little attention was paid to the problem of radioactive waste management during the early years of the nuclear weapons program. In 1957—fifteen years into the program—the National Academy of Sciences issued a report that concluded nuclear wastes could be safely isolated from the public and the environment through deep geologic repositories, but little progress was made toward siting such a repository until the 1970's.

A fire at the Rocky Flats Plant in 1969 finally brought a sense of urgency to developing a permanent repository for nuclear defense wastes. The fire resulted in substantial amounts of additional plutonium-contaminated debris which, like other transuranic wastes produced at Rocky Flats, was shipped to the Idaho National Engineering Laboratory for "temporary" storage. The shipments provoked strong protests from the State of Idaho, which objected to becoming a dumping ground for the nation's nuclear defense wastes.

In response to Idaho's objections, the Atomic Energy Commission, which handled the nuclear weapons program from 1947 through 1974, promised to establish a permanent repository and remove the wastes from Idaho by 1980.

In keeping with the National Academy of Science's recommendation in its 1957 report, the AEC focused its search for a repository site on salt formations. The National Academy of Sciences recommended salt deposits because they (i) are found in geologically stable areas with few earthquakes; (ii) lack moving groundwater that could transport radioactive materials to the surface; (iii) are easily mined; and (iv) they slowly and inexorably move to seal any tunnels, shaft or cracks.

At the invitation of the Governor of New Mexico and local officials, the Energy Research and Development Administration (ERDA), which managed the nuclear weapons program from the AEC's dissolution in 1975 until DOE was created in 1977, began thorough site investigations in the Carlsbad area in 1975. Congress authorized funding for the research, development and construction of the WIPP in Public Law 94-187 in 1976.

The WIPP's role in the Government's nuclear waste program has changed frequently. At first, the AEC envisioned the WIPP as both a pilot facility for commercial high-level wastes resulting from chemical reprocessing of spent power reactor fuel and a permanent disposal site for transuranic defense wastes. By 1975, however, as uncertainties arose over the commercial waste program, ERDA redefined the WIPP's mission, canceling its role in the commercial program and planning to bury only transuranic defense wastes there. When DOE succeeded ERDA in 1977, the WIPP was considered for the disposal of high-level defense waste, although the

WIPP subsequently was designated as a site for commercial spent fuel.

The WIPP enabling legislation

Congress finally put an end to Administration changes to the WIPP's mission when, in December 1979, it enacted Public Law 96-164, the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980. Reacting to the Administration's efforts to open the WIPP to commercial spent fuel and to subject the WIPP to licensing by the Nuclear Regulatory Commission, the House Armed Services Committee had sought to deauthorize the project entirely. Ultimately, however, House and Senate conferees agreed to continue funding the WIPP subject to a clear statement of congressional intent.

Public Law 96-164 expressly limited the WIPP's mission to research and development activities designed to demonstrate the feasibility of disposing of defense wastes. It expressly exempted the WIPP from Nuclear Regulatory Commission licensing. And although it required DOE to consult and cooperate with the State of New Mexico concerning the project, it rejected any notion that the State could block its operation as DOE had proposed. On this latter point the conferees concluded that "to bind the United States to refrain from establishing or operating a nuclear waste storage facility if the State objected" might "constitute an unlawful delegation of Federal power."

Less than two months after signing the WIPP enabling legislation into law, President Carter sought to terminate the project. Acting on the advice of his Interagency Review Group on Nuclear Waste Management, President Carter concluded that a separate unlicensed facility for transuranic defense wastes did not fit his plans for a comprehensive nuclear waste management program and would not be an efficient use of funds. On March 4, 1980, President Carter formally sought to rescind funds appropriated for the WIPP in accordance with the Impoundment Control Act of 1974. Congress declined to act on the proposed rescission and the project continued.

Consultation and cooperation with New Mexico

Public Law 96-164 required DOE to enter into a written agreement with the State setting forth the framework for consultation and cooperation to resolve the State's public health and safety concerns.

DOE and New Mexico executed the required Agreement for Cooperation on July 1, 1981. The Agreement was amended on November 30, 1984, and again on August 3, 1987. In addition, DOE entered into a Stipulated Agreement with the State on July 1, 1981, in settlement of a lawsuit New Mexico had filed against DOE. The Stipulated Agreement was followed by a supplemental Agreement resolving additional State concerns on December 27, 1982. Finally, on May 10, 1988, DOE and the State entered into an agreement on Principles pertaining to emergency assistance funding. Collectively, these agreements impose detailed restrictions and conditions on DOE's operation of the WIPP and provide the State of New Mexico a powerful role in the WIPP's operation.

SUMMARY OF LEGISLATION

H.R. 2637 withdraws the WIPP site for use by DOE for a maximum of ten years, thus reserving to Congress an opportunity to review the results of DOE's test program before committing the site for permanent disposal operations. The ten-year withdrawal in the Committee bill provides DOE with the authority to conduct its test-phase. However, further Congressional action would be required before permanent disposal operations at the site are allowed.

H.R. 2637 provides that the withdrawn lands will continue to be managed by the Bureau of Land Management in accordance with a memorandum of understanding to be executed between DOE and the Department of the Interior. The primary surface use of the land is grazing, which would be permitted except in limited areas closed by DOE. H.R. 2637 prohibits mining at the site.

H.R. 2637 requires that EPA publish the new waste disposal standards before DOE can bring any waste to the WIPP site for purposes of testing (the test phase is described below). The Committee believes there are two strong reasons for this requirement: first, it does not make sense to begin a test program designed to show compliance with disposal standards if those standards do not yet exist; and second, the requirement is likely to bring pressure to bear on EPA from within the administration to finalize the disposal standards.

In addition to the requirement for publication of the permanent disposal standards, H.R. 2637 requires DOE to prepare and EPA to approve a detailed plan for retrieval of the wastes in the event the WIPP is found to be unsuitable. H.R. 2637 requires EPA to determine, following notice and public comment, that DOE has complied with its management and storage and disposal standards before DOE begins putting transuranic wastes in the WIPP for purposes of permanent disposal.

H.R. 2637 requires compliance with several additional environmental standards before various phases of the plant's operation may begin. Before DOE can begin its planned test phase, for example, DOE must meet certain conditions of the EPA's No Migration Determination issued under RCRA. The test phase, disposal phase, and decommissioning operations are governed by all applicable health, safety and environment laws. DOE must submit biennially documentation of continued compliance to EPA or the State of New Mexico, as appropriate, and the latter must determine whether DOE is in compliance within 6 months of any such submissions.

H.R. 2637 provides for careful scrutiny of DOE's test phase activities by EPA and the State of New Mexico, and limits the amount of waste to those amounts approved by EPA as necessary to demonstrate compliance with the disposal standards, with a cap of one half percent of the capacity of the WIPP. In addition, there is a strict requirement for retrieval of the waste in the event of non-compliance with any relevant regulatory requirements.

H.R. 2637 provides for impact assistance to the State of New Mexico of \$20 million per year for five years during the test phase, plus a lump sum payment of \$200 million at the beginning of the operations phase.

H.R. 2637 prohibits the use of high-level radioactive waste or spent nuclear fuel for experiments or the storage, management, or disposal of high-level waste or spent fuel at the WIPP. H.R. 2637 codifies limitations on the amount of transuranic wastes that may be shipped to the WIPP as described in DOE's Supplemental Environmental Impact Statement (SEIS) on the WIPP, produced in 1990. The capacity of the WIPP facility is limited to 5.6 million cubic feet of contact-handled TRU waste and 95,000 cubic feet of remote-handled TRU waste.

SECTION-BY-SECTION ANALYSIS

Sec. 1 Short title

This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Act."

Sec. 2 Definitions

This section contains definitions of terms important to the bill.

Sec. 3 Land withdrawal and reservation for the WIPP

Sec. 3(a) provides that sixteen square miles of the WIPP lands are withdrawn for a period not to exceed ten years for use by the Secretary of Energy for test phase activities at the WIPP. It also provides for reopening to operation of the public land laws, potential decontamination, and other disposition of the land in the event this withdrawal is terminated.

The Committee's intent in providing only temporary withdrawal of the WIPP lands at this time is to reserve one last opportunity for Congressional approval before the WIPP site is committed for use as the nation's first permanent deep geologic repository for transuranic radioactive waste. The project and DOE's management of it have had a controversial history, and may still have significant problems. In light of this history, the Committee is reluctant to delegate the crucial decision to commit the WIPP site as a permanent repository to any agency. Since this bill specifies all the necessary requirements for disposal operations as well as test phase operations, the Committee anticipates that, if all those requirements are satisfied, a subsequent "permanent" withdrawal will be relatively simple and expeditious undertaking.

Sec. 3(b) revokes the administrative land withdrawal orders that have been issued by the Secretary of the Interior.

Sec. 3(c) describes the land included in the withdrawal.

Sec. 3(d) provides for technical corrections to the land description and map defining the withdrawn lands.

Sec. 3(e) provides that the Act does not establish or reduce any water rights of the United States with respect to the withdrawal.

Sec. 3(f) provides for withdrawal of an additional 5,100 acres of BLM-managed public lands in the Dark Canyon Special Management Area in order to provide additional protection for Lechuguilla Cave and other resources and values of these lands, which are adjacent to Carlsbad Caverns and Guadalupe Mountains National Parks. This withdrawal will preclude mineral and geothermal leasing, disposal, or mineral entry, but will not affect other uses (such

as grazing) otherwise permissible on these lands, which will continue to be managed by the BLM.

Sec. 4 Establishment of management responsibilities

Sec. 4(a) retains responsibility for management of the withdrawal in the Secretary of the Interior, subject to consultation with the Secretary of Energy and the State of New Mexico.

Sec. 4(b) provides that the Secretary of the Interior shall prepare a management plan for the withdrawal that addresses grazing, hunting and trapping, wildlife habitat, disposal of salt tailings, and mining. No surface or subsurface mining or drilling are permitted at any time, including after decommissioning of the WIPP.

Sec. 4(c) provides for closure of portions of the surface of the withdrawn lands to public access for reasons of public health and safety or common defense and security.

Sec. 4(d) provides for a memorandum of understanding between the Secretaries of the Interior and Energy to implement the management plan.

Sec. 4(e) requires the Secretary of the Interior to submit the management plan and any amendments thereto, within a year of enactment, to the appropriate committees of the Congress and to the State of New Mexico.

Sec. 5 Plan for test phase activities

Sec. 5(a) requires the Secretary of Energy, after consultation with federal and state agencies, to review and update the WIPP Test Phase Plan annually, with the first such update due six months after enactment of the Act.

Sec. 5(b) requires that before test phase activities involving transuranic ("TRU") wastes at the WIPP may begin, the Secretary must submit individual plans that specify the quantities and types of waste required and obtain the approval of the EPA Administrator.

Sec. 5(c) requires DOE to prepare a retrieval plan (which must be approved by EPA) to be used in the event the site cannot comply or continue to comply with disposal standards or hazardous waste requirements. The retrieval plan also must specify where waste will be stored in the event it must be removed from the WIPP.

Sec. 5(d) requires DOE to submit the test plans and the retrieval plan to the State of New Mexico for review, and to establish a procedure for conflict resolution in the event of disagreement.

Sec. 6 Test phase activities

Sec. 6(a) authorizes the Secretary, subject to conditions in sections 6 (b) and (c), to conduct test phase activities at the WIPP in accordance with the plan and revisions described in section 5.

Sec. 6(b) provides that, prior to the conduct of test phase activities involving movement of waste to the WIPP, the following conditions must be met: (i) the EPA disposal standards must take effect; (ii) conditions five, six and seven of the EPA's No Migration Determination under RCRA must be met; (iii) EPA must approve the retrieval plan and test plans; and (iv) the State of New Mexico must complete its review of the retrieval and test plans pursuant to section 5, including any necessary conflict resolution procedures.

Sec. 6(c) imposes the following limitations on test phase activities at the WIPP: (i) the EPA Administrator must determine that movement of specific quantities of TRU waste to the WIPP is necessary to perform test phase activities; (ii) no more than 4,250 55-gallon drums of TRU waste, or one-half of one percent of the total capacity of the WIPP, whichever is less, may be used; and (iii) emplacement of remote-handled TRU waste during the test phase is prohibited. In addition, the EPA must certify annually, on the basis of information provided by the Secretary, that the waste remains retrievable. Waste may be emplaced in mined rooms for test phase activities only after the Bureau of Mines certifies that such rooms will remain stable for the duration of such activities. It is the intent of the Committee that tests not be started in rooms from which waste will have to be removed before the tests are completed because of the instability of the mined rooms.

Sec. 7 Disposal operations

Sec. 7(a) limits the capacity of the WIPP facility to 5.6 million cubic feet of contact-handled TRU waste and 95,000 cubic feet of remote-handled TRU waste.

Sec. 7(b) provides that the Secretary may commence permanent disposal operations at the WIPP upon completion of: (i) the Administrator's certification that the EPA disposal standards are satisfied; (ii) the submission to Congress of plans for decommissioning and post-decommissioning management of the WIPP; and (iii) the enactment of a subsequent "permanent" land withdrawal by Congress. Inasmuch as this bill sets out the requirements to be satisfied for beginning disposal operations at the WIPP, the Committee intends that if those requirements are met, this subsequent permanent withdrawal should be a fairly simple and expeditious undertaking.

Sec. 7(c) provides that if the ten-year period of the land withdrawal expires without the Administrator certifying compliance with the EPA disposal standards, the Secretaries of Energy and the Interior must implement the retrieval plan and the decommissioning plan.

Sec. 8 Issuance of Environmental Protection Agency standards

Sec. 8(a) requires the EPA Administrator to promulgate proposed waste disposal standards for spent fuel, high-level, and transuranic wastes within three months of enactment.

Sec. 8(b) requires the EPA Administrator to promulgate final waste disposal standards within nine months of enactment.

The Committee finds that the Administrator has been unreasonably dilatory in repromulgating these standards since they were struck down by a Court of Appeals in 1987. Both this short deadline and the section 6(b) requirement that the disposal standards be in effect prior to the shipment of any waste to the WIPP are expressions of the Committee's impatience with these delays.

Sec. 9 Compliance with EPA standards

Sec. 9(a) requires DOE, until the WIPP is decommissioned, to meet all applicable health, safety and environmental laws, including: (i) the EPA standards for management and storage of radioac-

tive waste at Subpart A of 40 CFR Part 191; (ii) the NESHAP standard for radionuclides in section 112 of the Clean Air Act; and (iii) the Solid Waste Disposal Act (RCRA). DOE must biennially submit documentation of continued compliance to EPA or the State of New Mexico, depending on which has the relevant enforcement jurisdiction (which is not altered by this bill), and the latter must determine whether DOE is in compliance within six months of any such submissions.

Sec. 9(b) requires that during the test phase DOE shall develop a remedial plan in the event of non-compliance during the test phase with the EPA disposal standards or the hazardous waste (RCRA) standards, or in the event that retrievability cannot be maintained. If the remedial plan is not received by the appropriate administering agency within six months, or the administering agency concludes the plan is inadequate to demonstrate compliance, the retrieval plan must be implemented.

Sec. 9(c) provides that, before any TRU waste may be emplaced underground at the WIPP for disposal, the EPA Administrator must certify, on the basis of documentation submitted by the Secretary, that the WIPP facility will comply with the EPA disposal standards at Subpart B of 40 C.F.R. Part 191. DOE must demonstrate compliance to the satisfaction of the EPA administrator with the EPA disposal standards every two years throughout the operations phase and the decommissioning phase.

Sec. 9(d) provides that if, during the operations phase or decommissioning phase, the Administrator determines that compliance with any regulatory standards has not been demonstrated, he shall request the Secretary to prepare a remedial plan to come into compliance. If the remedial plan is not submitted within six months or the Administrator finds it to be inadequate to demonstrate compliance, the Secretary must retrieve the TRU waste to the extent practicable.

Sec. 9(e) requires the EPA Administrator to issue regulations within six months of enactment governing its oversight and certification processes, including provisions for public participation.

Sec. 10 Ban on high-level radioactive waste

Sec. 10 bans transport to or emplacement of high-level radioactive waste in the WIPP.

Sec. 11 Authorization

Sec. 11 authorizes such sums as may be necessary for DOE to acquire outstanding potash and oil and gas leases on the WIPP site.

Sec. 12 Decommissioning of the WIPP

Sec. 12(a) requires DOE to prepare a decommissioning plan for the WIPP within five years of enactment.

Sec. 12(b) requires DOE to prepare a management plan for the withdrawal after decommissioning within five years of enactment.

Sec. 13 Solid Waste Disposal Act; Clean Air Act

Sec. 13(a) clarifies that this Act is not intended to alter the rights of the State of New Mexico under the Solid Waste Disposal Act,

except insofar as it specifies the consequences of findings of non-compliance with that Act in sections 6 and 9.

Sec. 13(b) clarifies that the Act is not intended to modify section 118 of the Clean Air Act, which makes that act applicable to federal facilities.

Sec. 13(c) clarifies that the Act is not intended to modify section 6001 of the Solid Waste Disposal Act, which makes that act applicable to federal facilities.

Sec. 14 Economic assistance

Sec. 14(a) requires the Secretary to encourage business and employment opportunities related to the WIPP in the State of New Mexico and especially in Lea and Eddy counties, and to report annually to the state on such activities.

Sec. 14(b) provides for impact assistance payments to New Mexico in amounts up to \$100 million for the test phase and an additional \$200 million for the operations phase. A portion of all payments must be distributed to affected local governments, and a portion must be used for equipment and training needs of the health care community. There is also authorization to establish a socioeconomic impact monitoring group in New Mexico, at a cost of up to \$1 million for the first year and \$750,000 for subsequent years.

Sec. 15 Shipping containers

Sec. 15 requires that all shipping containers used to transport waste to the WIPP be certified by the Nuclear Regulatory Commission and satisfy the Commission's quality assurance requirements.

Sec. 16 Santa Fe bypass

Sec. 16 requires that the Santa Fe bypass either be fully funded or completed prior to any shipment of waste from the Los Alamos National Laboratory to the WIPP.

Sec. 17 Study of transportation alternatives

Sec. 17(a) requires DOE to conduct a study comparing the impact of shipping waste to the WIPP by rail to the impact of truck shipments. The study must include consideration of occupational and public risks and exposures, environmental impacts, emergency response capabilities, comparative costs, and findings and recommendations.

Sec. 17(b) requires the study to be submitted to Congress by December 1, 1992.

Sec. 17(c) authorizes up to \$300,000 for this study.

Sec. 18 Environmental evaluation group

Sec. 18(a) requires DOE to provide the Environmental Evaluation Group ("EEG") in New Mexico with timely access to data, preliminary reports, and access to meetings.

Sec. 18(b) provides that the EEG may publish analyses of DOE's plans, activities, and studies at the WIPP.

Sec. 18(c) requires DOE to consult and cooperate with EEG in carrying out the requirements of this section.

Sec. 19 Assistance and training for States and Indian tribes impacted by the WIPP shipments

Sec. 19(a) requires DOE to provide training and in-kind, financial, technical and other appropriate assistance for emergency planning and response to states and Indian tribes through whose jurisdiction the WIPP wastes will be shipped.

Sec. 19(b) authorizes up to \$3 million dollars for this purpose for each fiscal year during the test phase. Greater sums may be authorized if the Secretary of Energy determines they are necessary to ensure safety and such greater sums are approved by the House Committee on Interior and Insular Affairs, the Senate Committee on Environment and Public Works, and the House and Senate Committees on Appropriations.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATIONS

A hearing on the draft Department of Energy WIPP Land Withdrawal Bill, which was subsequently introduced by Rep. Skeen as H.R. 1834, was held by the Subcommittee on Energy and the Environment on April 16, 1991. The Subcommittee staff drafted its own bill, which was marked up by the Subcommittee and favorably recommended to the Committee on Interior and Insular Affairs with amendments on June 12, 1991. The bill, as recommended by the Subcommittee on Energy and the Environment, was introduced by Subcommittee Chairman Kostmayer as H.R. 2637. The Committee on Interior and Insular Affairs favorably reported H.R. 2637, with additional amendments, to the House by voice vote on June 26, 1991.

CHANGES IN EXISTING LAW

If enacted, H.R. 2637 would make no changes in existing law.

OVERSIGHT STATEMENT

The Committee intends to monitor carefully the implementation of this legislation to ensure compliance with the intent of the Act. The Act requires several reports to be submitted to appropriate Congressional committees. The Act requires the Department of Energy to come back to Congress for a subsequent, "permanent" land withdrawal prior to the commencement of permanent disposal operations at the WIPP. Oversight hearings will be necessary in connection with that subsequent withdrawal. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

INFLATIONARY IMPACT STATEMENT

The Committee finds that enactment of this measure would have no inflationary impact on the national economy.

COST AND BUDGET ACT COMPLIANCE

The Committee has determined that only a minimal increase in the Federal expenditure will result from enactment of this bill. The report of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 12, 1991.

Hon. GEORGE MILLER,
Chairman, Committee on Interior and Insular Affairs, House of
Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2637, the Waste Isolation Pilot Plant Withdrawal Act. Enactment of H.R. 2637 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2637.
2. Bill title: Waste Isolation Pilot Plant Withdrawal Act.
3. Bill status: As amended and ordered reported by the House Committee on Interior and Insular Affairs on June 26, 1991.
4. Bill purpose: H.R. 2637 would reserve lands surrounding the Department of Energy's (DOE) waste isolation pilot plant (WIPP) in New Mexico for use by the Secretary of Energy for a period of 10 years, to conduct tests with nuclear waste at the WIPP facility. The bill authorizes DOE to conduct planned test activities at WIPP, and limits the amount of waste that may be transported to WIPP during the test phase to one-half of one percent of the facility's capacity. H.R. 2637 directs the Environmental Protection Agency (EPA) to issue final standards for the disposal of spent fuel, high-level, and transuranic radioactive waste within 9 months of the bill's enactment, and makes WIPP testing conditional upon issuance of these final standards. The bill authorizes payments to New Mexico of \$20 million annually over the 1991-1995 period for mitigating the environmental, economic and other impacts of WIPP, and \$3 million annually over a 10-year period for accident prevention, emergency management, and public information activities in states along waste shipment routes to WIPP.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Specified authorizations.....	23	23	23	23	3
Estimated authorizations.....		5	12	27	58
Total authorizations.....	23	28	35	50	61
Estimated outlays.....	23	27	34	48	59

The costs of this bill fall primarily within budget function 050.
Basis of Estimate: The estimate assumes that this legislation will be enacted before the end of fiscal year 1991, that amounts author-

will be appropriated prior to the beginning of each fiscal year, and that spending will occur at historical rates for similar activities.

Section 6 authorizes DOE to conduct test phase activities at WIPP with transuranic radioactive waste. Based on information from DOE, CBO estimates that the cost of shipping waste to WIPP and conducting planned testing activities would be about \$5 million in 1993, after final EPA regulations on nuclear waste disposal are issued, and would total about \$100 million over the planned 5-year testing period. Without enactment of H.R. 2637, no nuclear waste could be shipped to WIPP, and tests to determine whether the facility is suitable for a long-term disposal site could not occur. If DOE is not authorized to begin testing with nuclear waste at WIPP, the department could implement plans for a long-term delay at the site. These plans would involve maintaining the WIPP facility for use at a later date, while continuing nonradioactive testing at the site, and would result in a substantial reduction in the WIPP budget.

Section 11 authorizes such sums as are necessary for DOE to acquire certain mineral and oil and gas leases within the WIPP land withdrawal. Because DOE has already acquired these leases, this authorization does not contribute to the cost of the bill.

Section 14 authorizes appropriations of \$20 million annually over the 1991-1995 period and up to \$200 million as necessary after 1995 for mitigating environmental and economic impacts. Public Law 102-27 appropriated \$20 million for 1991; we estimate an additional \$20 million would be appropriated annually in 1996 and beyond until DOE's testing program is completed.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of H.R. 2637 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Kim Cawley.

11. Estimate approved by: C. G. Nuckals (for James L. Blum, Assistant Director for Budget Analysis).

by existing mineral leases in these lands through active use of its existing authorities, including the authority for exchanges under the Federal Land Policy and Management Act of 1976.

BRUCE F. VENTO.

ADDITIONAL VIEWS OF REPRESENTATIVE BRUCE F. VENTO

Although H.R. 2637 deals extensively with nuclear-regulatory policies to be applied to the WIPP facility, it also includes significant provisions related to the withdrawal of public lands for this facility and thus involves matters within the primary jurisdiction of the Subcommittee on National Park and Public Lands, which I lead, and therefore are ones in which I took a particular interest during the Committee's consideration of the bill.

The Committee adopted the text of sections 3 and 4 of the bill, concerning the withdrawal of public lands, as set forth in an amendment I offered during the markup of H.R. 2637.

These provisions, including section 3(a)(3) (B), (C), (D), and (E) concerning the possible need to decontaminate the WIPP site or to have the area kept closed to public use after the expiration of the withdrawal made by the bill, are closely patterned after corresponding provisions of the Military Lands Withdrawal Act of 1986 (Public Law 99-606), which is appropriate since the WIPP is a research facility for military wastes.

Section 3(f)'s withdrawal of some 5,100 acres in the same county as the WIPP facility was prompted by concerns about the possible effects of mineral exploration and other activities on the recently-discovered, world-class Lechuguilla Cave and other resources and values in BLM-managed public lands near Carlsbad Caverns and Guadalupe Mountains National Parks, an area of many caves.

The 1986 discovery of a major passage in Lechuguilla Cave in Carlsbad Caverns National Park began a new era of cave explorations in the Guadalupe Mountains. Lechuguilla Cave has been revealed to be more than 55 miles in length and more than 1,500 feet deep—exceeding Carlsbad Caverns in both length and depth—and to have many rare and outstanding features.

For a number of years, there have been proposals for National Park status, wilderness designation, or other protective measures for Forest Service and BLM wilderness study areas and other lands in this part of New Mexico, including the Dark Canyon Special Management Area. Greater protection of caves from the demonstrated adverse effects of mineral exploration is a major objective of some proponents of such measures. Section 3(f) is intended to afford interim protection to the Dark Canyon area, pending further consideration of additional protective measures for those and other lands. In the meantime, the area would be off-limits to mineral activities but other uses would not be precluded.

Both the Bureau of Land Management and the National Park Service are to be commended for their initiative and cooperation in developing agreements to protect Lechuguilla Cave and other resources in this area. The withdrawal of the Dark Canyon Special Management Area will supplement and support these efforts by the agencies. In addition, BLM should address problems presented

ADDITIONAL VIEW—H.R. 2637

The Majority is to be commended for recognizing the need to resolve the issue of permanently disposing of transuranic (TRU) waste, currently stored at ten sites around the country. While we voted with the majority on H.R. 2637 by voice vote, in an effort to support a legislative resolution of this critical environmental problem, we have several significant reservations about provisions of the bill.

We are particularly concerned that this bill contains sufficient objectionable components that it has had a chilling effect on the willingness of the other two Committees of jurisdiction, Energy and Commerce and Armed Services, to take action. We hope this is not realized, lest the many hours of hard work devoted to this bill, particularly by both the Energy and Environment Subcommittee's Ranking Member John Rhodes and Subcommittee Chairman Peter Kostmayer, will have been wasted.

Before we highlight our specific objections, it is important to point out the activities undertaken by the Department of Energy regarding WIPP since Secretary Watkins came to DOE more than two years ago.

DOE ACTIVITY REGARDING WIPP

When Secretary Watkins took office in early 1989, controversy surrounded WIPP. The project was plagued by timing delays and management problems, as well as issues regarding health and safety. As a result, Watkins undertook a comprehensive review of the WIPP project.

In October 1989, DOE issued its first version of the WIPP Decision Plan. Essentially, it is a "road map" of the major activities (including deadlines), which Admiral Watkins has said must be completed before the first sample of waste can be brought to the site, scheduled for Summer of 1991.

DOE has provided at least 9 updates (known as revisions) of its Decision Plan to the Congress, various state officials, other federal agencies, and several oversight groups for comment, in an attempt to continuously consult and inform interested parties.

Since the Decision Plan was first issued, more than 36 major activities have been completed, including the issuance of all major state permits necessary to get on site, the issuance of a Supplemental Environmental Impact Statement, and the granting of a No Migration Determination from the Environmental Protection Agency, which is the principal federal regulatory agency monitoring DOE's activities at WIPP.

In addition, DOE has compiled dozens of reports and plans, which outline specific activities of most all aspects of the planned shipment, receipt, and testing of the waste at WIPP.

Virtually all of these reports and plans are reviewed by officials from the State of New Mexico, officials from states along the transportation routes, environmental groups, the public, etc. In short, all significant aspects of the WIPP project have been and will continue to be reviewed and commented on by a wide range of groups.

OBJECTIONABLE PROVISIONS OF H.R. 2637

Below are a summary of the key objectionable areas of the bill. While this is not an all inclusive list, it does represent many of the concerns raised by Republican Members who offered amendments at the full Committee markup.

(1) EPA oversight.—EPA's oversight in this bill is excessive. It essentially establishes an EPA "superstructure" that is so pervasive as to create a potential regulatory morass. The Majority's fundamental distrust of the Department of Energy is demonstrated most clearly by provisions of the bill requiring excessive EPA approval. Our concern is that the distrust manifested in the bill will result in unnecessary and chronic delays in this program.

In our view, an effort to keep a tight rein on DOE may result in creating another regulatory structure that will have the unintended effect of being less responsive than DOE has been perceived to be. While we agree with the concept of allowing EPA to verify DOE's compliance with the permanent disposal standards at the end of the test phase, it seems unnecessary to have the Agency giving final approval at so many points along the way—approving such activities as individual test plans, deciding what waste is necessary for underground testing, approving a specific retrieval plan, etc. This is particularly unnecessary when so many of those activities have been completed, or already have procedures established for review by a range of outside groups.

A few quick examples: the bill calls for EPA to approve the DOE Test Plan each year. EPA has already reviewed the Test Plan and will continue to comment on its contents during the life of the project; and, in approving the No Migration Determination (NMD), EPA formally accepted the Test Plan as the basis for issuing the NMD. In the NMD, if the tests significantly exceed the scope of the Test Plan, DOE has to notify EPA and await additional approval of those tests.

A final concern regarding EPA oversight is that in provisions of the bill where EPA gives approval to various activities and plans in the bill, there is no mechanism requiring them to act by a certain date.

While there is some merit to the Majority's view that imposition of a deadline would be a motivation for DOE to wait until it has passed, we feel there ought to be a "trigger" that allows the various activities to go forward. It seems to us that if the goal of the Majority is to open WIPP, this type of approach may do just the opposite.

(2) EPA's 191b Standard must be issued in final form before the test program can begin and the Standard must be issued in draft form within 3 months of enactment and in final form within 9 months of enactment.—This is of particular concern to us for two reasons: (1) the timing set by the bill is unreasonably tight based

on testimony by the Administration during hearings; (2) this is a specific example of what we mentioned above, where there is no mechanism for action if EPA fails to issue the final disposal standards in the time outlined.

The issue of the 191b standards emerged as a contentious point of discussion throughout the hearings and the negotiations on the bill. The Majority believes the tight timeframe will put pressure on the Administration to promulgate the regulations. We do not agree with this premise, in light of the many difficulties encountered between agencies in issuing regulations of this type. While we do agree that the regulations should have been promulgated much sooner, it is unreasonable to hold this project hostage to well known inter-agency procedural delays inherent in the federal government.

In our view, this provision is particularly misguided given that the EPA, the State of New Mexico, and a long list of well-respected independent technical groups (that have assessed the WIPP project) have indicated that the new 191 b Standard will not be substantially different from the old Standard in terms of requirements. The technical groups in particular have urged that DOE begin testing as soon as possible, using the old Standard as a guide.

(3) The need to return to the Congress in ten years to receive a permanent land withdrawal to begin the disposal phase.—This seems unnecessary to us, given that the level of oversight in this bill is so extensive. It seems that the last action an Administration (Democrat or Republican) should have to take is to come back to the Congress for another land withdrawal.

We particularly take exception to language in the Committee Report that states that "a subsequent permanent withdrawal will be a relatively simple and expedited undertaking." In our view that is sheer folly and defies common sense.

The problems with this statement are clear: House Rules provide a labyrinth of potential procedural delays that a "permanent" land withdrawal bill could easily become mired in; further, a second land withdrawal bill gives Members opposed to WIPP another opportunity to add peripheral stipulations to the project, slowing implementation of the operational phase; and finally, such a bill would provide an excellent opportunity to halt the project, should a Member seek to prevent such a bill from coming to the floor, a particularly good possibility in the Senate.

(4) Approval of a WIPP Retrieval Plan, which includes a specific site for the waste if the WIPP site is deemed unsuitable, before the Test Phase could begin.—This provision is of concern for 3 reasons: (1) It would be a waste of the taxpayers money because there may be several reasons for retrieval and those reasons may affect where the waste is sent; (2) In the No Migration Determination, EPA did not specify where the waste had to go, but said that DOE must have a schedule and location of the waste within 6 months of determining the site is unsuitable; and, (3) this is likely to set off a political firestorm, given the likelihood that any state that would be a possible candidate would refuse to cooperate, thereby delaying the project while a site is located.

CONCLUSION

Those represent our basic concerns with H.R. 2637. We want to again stress, however, that the Majority has demonstrated a willingness to tackle a controversial issue, in an attempt to resolve this and they are to be commended for that. On both sides of the aisle there has been an effort to cooperate to ensure that the project will go forward, while seeking to effectively balance the very important environmental concerns associated with this problem.

The uneasiness we feel is that while the effort to ensure that the WIPP facility opens has taken its "first steps" legislatively, our fear is that a number of the provisions in the bill will slow the project unnecessarily—perhaps preventing the sincere goal of both the Majority and Minority from being achieved.

DON YOUNG.
JOHN J. RHODES III.
ROBERT J. LAGOMARSINO.
JAMES V. HANSEN.
JOHN T. DOOLITTLE.
CHARLES H. TAYLOR.
CRAIG THOMAS.
WAYNE ALLARD.
DICK SCHULZE.
JOEL HEFLEY.
BEN BLAZ.
BOB SMITH.
RON MARLENEE.
JOHN J. DUNCAN, Jr.

○

Handwritten notes:
No comment
6/27/74
~~6/27/74~~