Mr. Aspin, from the Committee on Armed Services, submitted the following REPORT

(To accompany H.R. 2637 which on June 13, 1991, was referred jointly to the Committee 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 Armed Services, to whom was referred the bill (H.R. 2637) to withdraw lands from the Waste Isolation Pilot Plant, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE: TABLE OF CONTENTS

(a) Short Title.—This Act may be cited as the “Waste Isolation Pilot Plant Land Withdrawal Act of 1991”.

(b) Table of Contents.—The table of contents for this Act is as follows:

SEC. 1. Short title; table of contents.

SEC. 2. Definitions.

SEC. 3. Land withdrawal and reservation for the WIPP.

SEC. 4. Establishment of management responsibilities.

SEC. 5. Compliance with EPA regulations and inclusion of engineered barriers.

SEC. 6. Experimental program during test phase.

SEC. 7. Additional test phase requirements.

SEC. 8. Disposal phase.


SEC. 10. Decommissioning of the WIPP.

SEC. 11. Economic assistance.

SEC. 12. Consultation and cooperation agreement.

SEC. 13. Treatment of waste introduced at WIPP before enactment.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) Administrator.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(3) ATOMIC ENERGY DEFENSE ACTIVITY.—The term “atomic energy defense activity” has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(4) CONTACT-HANDED TRANSRONIC WASTE.—The term “contact-handled transuranic waste” means waste from atomic energy defense activities with a specific activity greater than 100 nanocuries per gram of waste and a surface dose rate of less than 200 millirems per hour.

(5) DISPOSAL REGULATIONS.—The term “disposal regulations” means the regulations issued by the Environmental Protection Agency pursuant to authority under other provisions of law establishing the generally applicable environmental standards for the disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in part B of part 191 of title 40, Code of Federal Regulations.

(6) EEG.—The term “EEG” means the Environmental Evaluation Group for the WIPP site described pursuant to subsection (c), a perusal of the Federal Register for the WIPP site described pursuant to subsection (c), and the memorandum of understanding for each of the orders are hereby revoked.

(7) GOVERNOR.—The term “Governor” means the Governor of the State of New Mexico.

(8) HIGH-LEVEL RADIOACTIVE WASTE.—The term “high-level radioactive waste” has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(9) MANAGEMENT AND STORAGE REGULATIONS.—The term “management and storage regulations” means the regulations issued by the Environmental Protection Agency establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic waste and contained in part A of part 191 of title 40, Code of Federal Regulations.

(10) NO-MIGRATION DETERMINATION.—The term “No-Migration Determination” means the Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant published by the Environmental Protection Agency on November 14, 1989 (43 FR 47790).

(11) PERFORMANCE ASSESSMENT REPORT.—The term “performance assessment report” means the documented analysis of the long-term performance of the WIPP that is published annually by the Department of Energy.

(12) REMOTE-HANDED TRANSRONIC WASTE.—The term “remote-handled transuranic waste” means transuranic waste from atomic energy defense activities with a surface dose rate between 200 millirems per hour and 1,000 rems per hour.

(13) SECRETARY.—The term “Secretary” means the Secretary of Energy.

(14) SPENT NUCLEAR FUEL.—The term “spent nuclear fuel” has the same meaning as is provided in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(15) THE STATE.—The term “the State” means the State of New Mexico.

(16) TRANSRONIC WASTE.—The term “transuranic waste” has the same meaning as provided for “transuranic radioactive waste” in part 191 of title 40, Code of Federal Regulations. The term includes such waste that is also mixed waste regulated as hazardous waste under the Solid Waste Disposal Act.


(18) WIPP SITE.—The term “WIPP site” means the lands and resources withdrawn and reserved by this Act and described in section 3(c).

SEC. 2. LAND WITHDRAWAL AND RESERVATION FOR THE WIPP

(a) Withdawal, Jurisdiction, and Reservation.—

(1) Withdawal.—Subject to valid existing rights and except as otherwise provided in this Act, the WIPP site described pursuant to subsection (c) is withdrawn from entry, sale, or other disposition under the public land laws, from all forms of appropriation under the mining laws, and from operation of the mineral leasing laws and the geothermal leasing laws.

(2) JURISDICTION.—Except as otherwise provided in section 5(c), jurisdiction over the WIPP site is transferred from the Secretary of the Interior to the Secretary of Energy.

(3) RESERVATION.—

(A) IN GENERAL.—The WIPP site is reserved for the use of the Secretary of Energy for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purposes of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (35 Stat. 1265), and this Act.

(B) WATER RIGHTS.—Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the WIPP site. Nothing in this Act shall be construed as authorizing the appropriation of water on the WIPP site by the United States after the date of enactment of this Act, except in accordance with the law of the State. This subparagraph shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

(b) REVOCAITION OF PUBLIC LAND ORDERS.—Public Land Order 6403, of June 28, 1983, Public Land Order 6526, of January 29, 1981, and the memorandum of understanding referenced in each of the orders are hereby revoked.

(c) LAND DESCRIPTION.—

(1) IN GENERAL.—The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled “WIPP Withdrawal Site Map”, and dated October 9, 1990, are established as the boundaries of the WIPP site.

(2) LEGAL DESCRIPTION AND MAP.—Not later than thirty days after the date of enactment of this Act, the Secretary of the Interior shall—

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

(B) file copies of the legal description of the WIPP site, and the map described in paragraph (1), with—

(i) the Congress;

(ii) the Secretary; and

(iii) the State.

(d) TECHNICAL CORRECTIONS.—The legal description and map 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.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES

(a) GENERAL AUTHORITY.—The Secretary shall—

(1) have responsibility for the management of the WIPP site;

(2) consult and cooperate with the State under the terms of the Agreement in discharging the responsibilities required by this Act; and

(3) consult and cooperate with the EEG under the terms of Contract No. DE-AC04-89AL85000 in the performance of its responsibility to conduct an independent technical review and evaluation of the WIPP pursuant to section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the State and the Secretary of the Interior, shall develop a management plan for the WIPP site.

(c) ACTIVITIES NOT ASSOCIATED WITH THE WIPP.—

(A) IN GENERAL.—Any use of the lands for activities not associated with the WIPP shall be subject to such conditions and restrictions as are necessary to permit the use of the lands for WIPP activities, as determined by the Secretary, and subject to the provisions of the WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (35 Stat. 1265), and this Act.

(B) SPECIFIC ACTIVITIES.—In addition to other activities, the management plan shall provide for domestic livestock grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings remaining on the surface, and mining as follows:

(i) Grazing.—Subject to such regulations, policies, and practices as the Secretary determines are necessary or appropriate, the Secretary
shall permit grazing to continue where established prior to the date of
enactment of this Act. The grazing shall be conducted consistent with—
(I) title IV of the Federal Land Policy and Management Act
of 1976 (43 U.S.C. 1751 et seq.);
(II) the Act entitled "An Act to stop injury to the 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 known as the "Taylor Grazing Act");
et seq.); and
(IV) Executive Order 12343 (61 Federal Register 5985).

(ii) Hunting and Trapping.—

(D) IN GENERAL.—The Secretary shall permit hunting and trapping
within the WIPP site in accordance with applicable laws and
regulations of the United States and the State.

(ii) Restrictions.—The Secretary, after consultation with the
New Mexico Department of Game and Fish, may issue regulations
designating zones where, and establishing periods when, no hunting
or trapping is permitted for reasons of administration or public
safety.

(iii) Wildlife Habitat.—The Secretary shall manage the WIPP site
in a manner to maintain and preserve the wildlife habitat of the WIPP
site.

(iv) Salt Tailings.—The Secretary shall dispose of salt tailings that
are not needed for backfill at the WIPP site. Disposition shall be made
in accordance with sections 2 and 3 of the Act entitled "An Act to pro-
vide for the disposal of materials on the public lands of the United
States,-Juurnal. 929 and 663 (commonly known as the "Materiax Act of
1947.")

(v) Mining.—

(D) IN GENERAL.—Except as otherwise provided in subclause (II),
no surface mining or subsurface mining not related to the WIPP, includ-
ing, but not limited to, the placement of salt tailings, shall be
permitted on or under the WIPP site, including after decommis-
sioning.

(ii) Existing Oil and Gas Leases.—The Secretary of the Interior,
in consultation with the Secretary, shall undertake a study to de-
termine the effects, if any, of Federal Oil and Gas Leases No.
0NM 02933 and 003530 on activities to be conducted at the
WIPP site. The study shall include recommendations as to the
advisability of negotiating an exchange of the leases for federal
oil and gas leases outside the WIPP site or canceling the leases.

(c) Submission of Plan to Congress and the State.—The Secretary shall
submit the management plan developed pursuant to subsection (b) to the Congress and the
State. Any amendments to such plan shall be submitted promptly to the Congress and the
State.

(d) Closure to the Public.—If the Secretary determines that the health
and safety of the public or the common defense and security require the closure to
public use of a road, trail, or other portion of the WIPP site, the Secretary may take
such action as the Secretary considers necessary or desirable to effect and maintain the
closure.

(e) Cooperative Agreements.—The Secretary may enter into cooperative
agreements—
(1) with the Secretary of the Interior or the State, or both, for the administra-
tion of grazing within the WIPP site;
(2) with the State for the maintenance of the wildlife habitat of the WIPP
site; and

(3) with the Secretary of the Interior or the State, or both, to enforce the pro-
hibition on mining within the WIPP site.

(c) Compliance with EPA Regulations and Inclusion of Engineered Barriers.

(1) Proposed regulations.—Not later than 180 days after the date of enact-
ment of this Act, the Administrator shall publish in the Federal Register pro-
posed disposal regulations.

(2) Final regulations.—Not later than two years after the date of enact-
ment of this Act, the Administrator shall publish in the Federal Register final
regulations.

(d) Issuance of EPA Criteria for Determination of Compliance With Disposal
Regulations.—

(1) Proposed criteria.—Not later than 180 days after the date of enact-
ment of this Act, the Administrator shall publish the Federal Register pro-
posed criteria for the Secretary's determination of compliance with the disposal
regulations.

(2) Final criteria.—Not later than two years after the date of enact-
ment of this Act, the Administrator shall publish in the Federal Register final criteria
for the Secretary's determination of compliance with the disposal regulations.

(e) Compliance With EPA Regulations.—

(1) Management and Storage Regulations.—Beginning on the date of enact-
ment of this Act, the Secretary shall comply with the management and storage
regulations at the WIPP.

(2) Disposal Regulations.—

(A) Determination of Compliance.—The Secretary shall comply with
the disposal regulations at the WIPP. Except as provided in subsection (b),
not labor than 6 years after the date of enactment of this Act, the Secretary
shall make a determination of compliance with the disposal regulations
administered by the Administrator.

(B) Certification.—The Administrator shall certify to Congress whether
the Secretary has complied with the disposal regulations at the WIPP
within one year of receipt of the Secretary's determination of compliance.

(C) Initial Review.—The certificate shall be made in accordance with the
provisions of section 227(c) of title 42, United States Code.

(D) Inspections by a Court.—If a court of competent jurisdiction orders the
Administrator to reissue the regulations issued pursuant to subsection (a) or
prevents the Administrator from giving the regulations full force and effect, the
Secretary shall base his determination of compliance on the regulations issued
pursuant to subsection (a), unless the court order expressly finds and orders
that its injunction relates to substantive environmental, public health, or public
safety aspects of the regulations directly applicable to the WIPP.

(e) Failure to Comply.—

(1) In General.—If the Secretary has not submitted to the Administrator a
determination of compliance with the disposal regulations within six years after
the date of enactment of this Act, or the Administrator has certified that the
Secretary has not complied with the disposal regulations—
(A) the Secretary shall ensure that the waste is removed within one year
thereafter; and

(B) the Secretary or the State, or both, shall take all necessary measures to com-
ply with the regulations issued pursuant to section 3004 of the Solid Waste Dis-
posal Act, or other applicable hazardous waste laws, with respect to the
WIPP, shall remain in effect thereafter.

(2) Effect of Removal.—When all transuranic waste has been removed, the
WIPP shall be decommissioned. Following the decommissioning, the land
withdrawal provided by this Act shall terminate, and the land shall be managed by
the Secretary of the Interior through the Bureau of Land Management.

(3) Extension of Deadline.—If the Secretary's determination to the Administrator referred to in paragraph (1) may be ex-
tended for a period of no more than two years at the discretion of the Adminis-
trator if—

(A) the Secretary determines that the disposal regulations cannot be com-
plied with by the date referred to in paragraph (1);

(B) the Secretary notifies the Congress, the State, the Administrator, and the
State that additional time is needed to comply with the disposal
regulations; and
(c) the Administrator determines that additional time would provide relevant and useful data in a timely manner for determining or certifying compliance with the disposal regulations, or for confirming such compliance.

(e) Conflict Resolution.—If the State disagrees with the Secretary’s determination of compliance with the disposal regulations, or any proposed modification, and supporting documentation, to the State, the Administrator, the National Academy of Sciences, and the ESG.

(f) Review of Proposal or Proposed Modification.

(1) Review and Comment.—(A) Not later than 30 days after the submission of the proposal, or any proposed modification, the Administrator shall review the proposal, or proposed modification, and supporting documentation, and provide the comments of the Administrator to the Secretary. The comments shall include an evaluation of whether the proposed experiments will provide relevant and useful data in a timely manner for determining compliance with the disposal regulations, or for confirming such compliance.

(2) The Secretary shall request the State, the National Academy of Sciences, and the ESG each to carry out a review similar to the review described in subparagraph (A) and to provide their comments to the Secretary.

(2) Final Evaluation.—(A) Not later than 30 days after the Secretary completes the requirements of paragraph (e), the Administrator shall:

(i) review and evaluate whether the final experimental program published under paragraph (2)(C) will provide relevant and useful data in a timely manner for determining compliance with the disposal regulations, or for confirming such compliance;

(ii) set forth the factual basis upon which the evaluation is made; and

(iii) provide the evaluation to the Secretary, who shall give notice of receipt in the Federal Register and provide an opportunity for public access to these documents.

(3) Final Evaluation.

(B) The Secretary shall request the State, the National Academy of Sciences, and the ESG each to carry out a review similar to the review and evaluation described in subparagraph (A) and to provide the evaluation to the Secretary.

(d) Conflict Resolution.—If the State disagrees with the Secretary’s final experimental program plan published under subsection (c)(2), the State may invoke the conflict resolution provisions of the Agreement.

(e) Provisions That Apply to Experimental Program Reviewed Prior to Date of Enactment.

(1) Prior Review.—If the Secretary has provided an opportunity for review of, comment on, and evaluation of the elements of the experimental program proposal required in this section prior to the enactment of this Act, the provisions of this subsection shall apply.

(2) Submission of Documentation to Congress.—The Secretary may submit documentation of the review, comment, and evaluation process within 45 days after the enactment of this Act, as well as the comments and evaluations provided by the State, the Administrator, the National Academy of Sciences, and the ESG, to the Congress. These submissions shall constitute compliance with the requirements of subsections (b) and (c) of this section. If the Secretary has requested and not received final evaluations from the State, the Administrator, the National Academy of Sciences, and the ESG within 30 days after the enactment of this Act, the Secretary’s submission of documentation of the review, comment, and evaluation process shall constitute compliance with the requirements of subsections (b) and (c) of this section.

(f) Final Performance Assessment Report.

(1) Requirement.—(a) The Administrator shall require that the Secretary prepare and submit to Congress an annual performance assessment report during the operation of the experimental program. Copies of such report shall be provided to the State, the Administrator, the National Academy of Sciences, and the ESG. The first performance assessment report shall be submitted not later than 90 days after completion of the first year of operation of the experimental program.

(b) Contents of Report.—A performance assessment report shall contain the following:
(A) A description of the activities conducted under the experimental program during the period beginning with the commencement of the experimental program and ending with the year for which the report is submitted and the results of such activities.

(C) A summary of the overall performance of the WIPP during the conduct of such activities.

(D) A summary of air monitoring data collected during such activities.

(E) A summary of waste characterization data from the period before the commencement of the experimental program.

(F) A summary of analyses being performed to determine compliance with the disposal regulations.

(G) A report submitted more than 120 days after submission of an annual performance assessment report under paragraph (1), the Administrator shall evaluate and publish analyses of the report.

(H) The Secretary shall request the State and the BPA each to carry out an evaluation and publish an analysis similar to the evaluation and analysis described in subparagraph (A).

(I) Not later than 120 days after publication of analyses pursuant to subparagraph (A), the Secretary shall submit written responses to the State, the Administrator, and the BPA.

(2) The operator of the experimental program and any other appropriate entities or persons after consultation with the State.

(g) Operational Demonstration With Transuranic Waste.—No transuranic waste may be received at the WIPP for operational demonstration of the WIPP before—

(1) the Secretary's determination of compliance with the disposal regulations pursuant to section 5(c), and

(2) the Administrator's certification to Congress pursuant to section 5(c) that the Secretary has complied with the disposal regulations.

(h) Existing Obligations and Authorities.—Nothing in this section shall be construed to limit or in any manner affect the Administrator's authority to enforce and the Secretary's obligation to comply with all terms and conditions of the Non-Migration Determination.

SEC. 7. ADDITIONAL TEST PHASE REQUIREMENTS.

(a) Prohibition of Remote-Handled Transuranic Waste.—No remote-handled transuranic waste may be received at the WIPP during the conduct of the experimental program under section 6.

(b) Stability of Rooms Used for Testing.—

(1) Before Test Phase Begins.—No transuranic waste may be received at the WIPP for purposes of conducting the experimental program under section 6 until the Secretary of the Interior submits to the Secretary of Energy a report described in paragraph (3).

(2) After Test Phase Begins.—After submission of the first report under paragraph (1), the Secretary of the Interior shall submit a report described in paragraph (3) each year during the conduct of the experimental program, not later than the annual anniversary of the date on which the first report was submitted.

(3) Reports.—The report required under paragraphs (1) and (2) is a statement made by the Secretary of the Interior, acting through the Bureau of Mines, that, to the best of his knowledge and belief and based on expert advice, the mined rooms in the underground repository at WIPP will remain stable for the conduct of the experimental program during the 2-year period following submission of the report.

(c) Requirement of Retrievability.—

(1) In General.—Transuranic waste emplaced in the WIPP for purposes of the experimental program under section 6 shall be retrieved by the end of the period beginning with the commencement of the experimental program and ending with the later of the following:

(A) The end of the experimental program.

(B) The date on which the Administrator determines that the WIPP complies with the disposal regulations.

(2) Annual Determination of Retrievability.—(A) During the time period referred to in paragraph (1), the Secretary shall make an annual determination, taking into account the report submitted under subsection (b), of whether all transuranic waste is retrievable and can remain retrievable for at least the next 2 years.

(B) The Administrator shall review and concur in each determination of retrievability made by the Secretary under subparagraph (A).

(C) Annual Demonstration of Retrievability.—During the time period referred to in paragraph (1), the Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a simple or advanced waste retrieval is retrievable.

(4) Retrieval Plan.—(A) Sixty days after the enactment of this Act, the Secretary shall submit to the Administrator and the State a retrieval plan that provides for the retrieval of transuranic waste from the WIPP should retrieval be required. The retrieval plan shall include contingency plans for:

(i) transport of transuranic waste to any storage facility designated by the Secretary, which is permitted for storage of such waste under the Solid Waste Disposal Act, or other applicable hazardous waste law, and which is located outside of the State, in paragraphs (2) and (3), temporary storage subject to the limitations contained in paragraph (5).

(B) The Secretary shall implement the plan or take corrective action to ensure the retrievability of transuranic waste in the event that the Secretary does not make a determination under paragraph (2) that the waste is retrievable or the Administrator not concur in the Secretary's determination under paragraph (5).

(C) A determination of retrievability is incorrect.

(D) The demonstration of retrievability does not ensure that transuranic waste will be retrievable.

SEC. 8. DISPOSAL PHASE.

(a) Commencement.—The Secretary may emplace the first transuranic radioactive waste underground for disposal at WIPP after the Administrator certifies under section 5 to Congress that the Secretary has complied with the disposal regulations at the WIPP.

(b) Periodic Review.—

(1) By the Secretary.—During the period beginning 2 years after the first receipt of transuranic radioactive waste for disposal at WIPP and ending at the end of the decommissioning phase, the Secretary shall biennially demonstrate that disposal operations at the WIPP facility are being carried out in compliance with applicable laws and regulations and submit documentation of such demonstration to the Administrator.

(c) Determination of Noncompliance during Disposal Phase or Decommissioning Phase.—

(1) Remedial Plan.—If, during the disposal phase or decommissioning phase, the Administrator determines, after any submission under subsection (b), that the Secretary has not demonstrated compliance with any regulatory requirement described in such subsection, the Secretary shall prepare and submit to the Administrator a remedial plan describing actions the Secretary will take to demonstrate compliance with such regulatory requirement.

(2) Consequences of Noncompliance.—If a remedial plan is not received from the Secretary within 6 months of a determination of noncompliance under paragraph (1), or the Administrator finds any such plan inadequate to demonstrate compliance, then shipments of transuranic radioactive waste to WIPP are prohibited until the Administrator determines that an adequate remedial plan has been prepared and submitted by the Secretary.

SEC. 9. PROVISIONS APPLICABLE DURING TEST PHASE AND DISPOSAL PHASE.

(a) Transuranic Waste.—

(1) REM Limits for Remote-Handled Transuranic Waste.—

(A) 1,000 REMS PER HOUR.—No transuranic waste received at the WIPP may have a surface dose rate in excess of 1,000 rem per hour.
(2) CURIE LIMITS FOR REMOTE-HANDLED TRANURANIC WASTE.—

(3) CURIES PER LITER.—Remote-handled transuranic waste received at the WIPP shall not exceed 20 curies per liter maximum activity level (averaged over the volume of the canister).

(4) TOTAL CURIES.—The total curies of the remote-handled transuranic waste received at the WIPP shall not exceed 5,000 curies.

(5) CAPACIT Y LIMITS.—The total capacity of the WIPP by volume shall not be more than 5.26 million cubic feet of transuranic waste. Not more than 850,000 drums (or drum equivalents) of transuranic waste may be emplaced at the WIPP.

(b) HIGH-LEVEL RADIOACTIVE WASTE.—No spent nuclear fuel or high-level radioactive waste may be received at the WIPP.

(c) TRANSPORTATION.—

(1) SHIPMENT CONTAINERS.—No transuranic waste may be transported by or for the Secretary or from the WIPP except in packages—

(A) the design of which has been certified for the transportation of transuranic waste by the Nuclear Regulatory Commission; and

(B) that have been fabricated under a Quality Assurance Program approved by the Nuclear Regulatory Commission.

(2) NOTIFICATION.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, prior to any transportation of transuranic waste by or for the Secretary to or from the WIPP, the Secretary shall provide advance notification to States and Indian tribes through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP.

(d) TEMPORARY OR INTERMEDIATE STORAGE OF RETRIEVED TRANURANIC WASTE.—(1) Transuranic waste retrieved from the WIPP may be temporarily stored above ground at the WIPP site for a period of up to 90 days if the Secretary determines that temporary storage is necessary and that the waste will be reprocessed and returned to the WIPP in accordance with the requirements of this Act. This may be extended by the state or the Administrator, consistent with the requirements of the Solid Waste Disposal Act, or other applicable hazardous waste laws, and the Administrator determines an extension is consistent with the protection of human health and the environment.

(2) If all or part of the WIPP site is designated as an interim storage facility for transuranic waste, the Secretary must obtain approval from the State or the Administrator in accordance with the Solid Waste Disposal Act, or other applicable hazardous waste law, before any transuranic waste retrieved from the WIPP may be stored at such interim storage facility.

(e) EXISTING AUTHORITY OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE STATE.—Nothing in this Act shall be construed to limit or in any manner affect the Administrator’s or the State’s authority to enforce, and the Secretary’s obligation to comply with, all applicable provisions of the Solid Waste Disposal Act, or other applicable hazardous waste law, and all terms and conditions of the No-Merger Determination.

(f) STATE ADVISORY GROUP ON EMERGENCY RESPONSE MEDICAL TRAINING.—(1) It is the sense of Congress that—

(A) the Governor should appoint an advisory group of health professionals and other experts in the field to review emergency response medical training programs for the transportation of transuranic waste; and

(B) any such advisory group should periodically review the Department of Energy’s emergency response medical training programs and report its findings to the State and the Secretary.

(2) If such an advisory group is appointed, the Secretary shall review the findings of the advisory group. If the Secretary determines that emergency response medical training is inadequate, the Secretary shall take immediate action to correct the inadequacies and, if necessary, suspend transportation of transuranic waste.

(3) If the State disagrees with the Secretary’s determination under paragraph (2), the State may invoke the conflict resolution provisions of the Agreement.

(g) WIPP-RELATED BUSINESS AND EMPLOYMENT OPPORTUNITIES.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that are appropriate for the State, and in particular, for Los Alamos and Eddy counties.

(2) REPORT.—The Secretary shall report annually to Congress and the State on the activities conducted pursuant to paragraph (1).

(h) ACCESS TO INFORMATION.—The Secretary shall provide the Administrator, the State, and the EGG such data and other information relevant to health, safety, or environmental issues pertaining to the WIPP in a timely manner to enable the Administrator, the State, and the EGG to discharge their responsibilities.

SEC. 18. DECOMMISSIONING OF THE WIPP.

(a) PLAN FOR ENVIRONMENTAL CONTROLS AFTER DECOMMISSIONING.—

(1) IN GENERAL.—Not later than three years after the date of enactment of this Act, the Secretary shall submit a preliminary plan for active and passive institutional controls for managing the WIPP after decommissioning to the Congress, the State, and the EGG. The plan shall be updated as the Secretary determines necessary.

(2) CONSISTENCY WITH DISPOSAL REGULATIONS.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the plan shall be consistent with the disposal regulations.

(3) CONFLICT RESOLUTION.—If the State disagrees with the adequacy of the Secretary’s plan under this subsection, the State may invoke the conflict resolution provisions of the Agreement.

(b) MANAGEMENT PLAN FOR THE WIPP SITE AFTER DECOMMISSIONING.—Not later than two years after the date of enactment of this Act, the Secretary shall publish in the Federal Register a preliminary plan for the management and use of the WIPP site following the decommissioning of the WIPP. The plan shall be updated as the Secretary determines necessary.

(1) TRAINING.—

(A) IN GENERAL.—In addition to activities required pursuant to the December 27, 1982, Supplemental Stipulated Agreement, the Secretary shall ensure, to the extent provided in appropriations Acts, that technical assistance and funds are available for the purpose of training fire and police officials, and other emergency responders as defined by 29 C.F.R. 1910.120, in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from the WIPP. Within 30 days after the enactment of this Act, the Secretary shall submit a report to Congress and the State on the training provided through fiscal year 1991.

(B) ONGOING TRAINING.—If determined by the Secretary, in consultation with affected States and Indian tribes, to be necessary and appropriate, the training shall continue until the transuranic waste shipments to or from the WIPP have been terminated.

(C) REVIEW OF TRAINING.—The Secretary shall review the training, in consultation with affected States and Indian tribes. The training shall also be reviewed by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health for compliance with section 1910.120 of title 29 of the Code of Federal Regulations.

(D) COMPONENTS OF TRAINING.—The training shall cover procedures required for the safe routine transportation of transuranic waste, as well as procedures for dealing with emergency response situations including—
(i) instruction of government officials and public safety officers in procedures for the command and control of the response to any incident involving the waste;

(ii) instruction of emergency response personnel in procedures for the initial response to an incident involving transuranic waste being transported to or from the WIPP;

(iii) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving transuranic waste being transported to or from the WIPP; and

(iv) a public awareness campaign to provide information to the public about the transportation of transuranic waste to or from the WIPP.

(2) EQUIPMENT.—The Secretary may, to the extent provided in appropriations Acts, enter into agreements to assist, through monetary grants or contributions in-kind, States in acquiring equipment for response to an incident involving transuranic waste transported to or from the WIPP.

(c) ENVIRONMENTAL MONITORING RESEARCH CENTER.—Subject to the availability of appropriations, the Secretary shall enter into a contract with the Waste Management Evaluation and Research Consortium, operating through the Carlsbad Center for Environmental Research, for independent WIPP environmental assessment and monitoring services. Any such contract may provide for operating expenses of the program and amortization of buildings and equipment associated with the program.

(d) ECONOMIC IMPACT MONITORING.—(1) Subject to paragraph (3), the Secretary shall make annual payments to the State to prepare annual reports on the economic impact of the activities at the WIPP. Such reports shall quantify the impacts of the WIPP, including impacts on the State and affected units of local government.

(2) From amounts appropriated in fiscal year 1993, the Secretary shall reimburse the State for the cost of preparing the annual report for each fiscal year. In each subsequent fiscal year, there is authorized to be appropriated such sums as may be necessary to reimburse the State for the cost of preparing the annual report for such fiscal year.

(3) After the Secretary receives an annual report from the State, the Secretary shall provide a copy of the report to affected units of local government.

SEC. 12. CONSULTATION AND COOPERATION AGREEMENT.

Nothing in this act shall affect the Agreement between the state and the Department of Energy except as explicitly stated herein.

SEC. 13. TREATMENT OF WASTE INTRODUCED AT WIPP BEFORE ENACTMENT.

Transuranic waste introduced at the WIPP site prior to the enactment of this Act shall—

(1) be subject to the provisions of this Act; and

(2) be removed 180 days after the date of the enactment of this Act unless it will be used after such date in the experimental program under section 6.

PURPOSE

The purpose of H.R. 2687, as amended, is to withdraw 10,240 acres of land in Eddy County, New Mexico from the federal land laws for the exclusive use of the Department of Energy (DOE) for the construction, testing, operation, decommissioning, and post-decommissioning activities of the Waste Isolation Pilot Plant (WIPP). This land is currently managed by the Department of Interior and utilized by DOE under an administrative land order. As amended H.R. 2687 would authorize DOE to conduct an experimental program at WIPP, establish a significant role for the Environmental Protection Agency (EPA) in overseeing the facility, enhance the role of the State of New Mexico (the State), impose additional limitations and conditions on the mission and operation of the facility, and provide economic assistance to the State.

BACKGROUND

The Waste Isolation Pilot Plant (WIPP) is a deep geologic repository that was authorized by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96–164) in December of 1979 to demonstrate the feasibility of disposing of defense nuclear waste. Public Law 96–164 exempted WIPP from regulation by the Nuclear Regulatory Commission. By a stipulated agreement between the State of New Mexico and DOE entered into on July 1, 1981, emplacement of wastes of WIPP is limited to defense transuranic waste.

If the facility can be shown to comply with applicable laws and regulations, WIPP could receive up to 175,588 cubic meters (6.2 million cubic feet) of transuranic waste. The waste would be isolated from the human environment 2,150 feet below the ground in the Permian Basin, an ancient salt bed that is between 225 and 250 million years old. WIPP’s 100-acre storage area for transuranic waste is located near the middle of a 2,000 foot thick salt bed. This salt bed is among the thickest in the nation, and the storage area has not been penetrated by holes for mining or oil and gas drilling.

Construction of several surface buildings and subsurface facilities for testing, consisting of four access and ventilation shafts and a network of tunnels and waste storage rooms, has been completed at a cost of $700 million over the course of the project. In total almost $1 billion has been spent on the WIPP project including operations and construction. Future operating costs are estimated to be $100 million annually for the predicted 20 years of operations and decommissioning of the facility. Land must be reserved from any other public use to allow for the beginning of the test phase, which will determine if the facility can comply with regulations governing long-term disposal of radioactive waste.

While transuranic wastes are not highly radioactive, they represent a significant threat to human health. If even a minute quantity of plutonium, the major long-lived radioactive constituent of transuranic waste, becomes lodged in the lungs or other human organs, the alpha particles emitted from this man-made substance are very apt to create cancer. These wastes must be isolated for the foreseeable future because plutonium has a half-life of 24,000 years.

The United States has been generating radioactive waste in its national defense programs since the 1940's in three main forms: high level, low level, and transuranic wastes. Transuranic wastes represent 7.9 percent by volume of these wastes. Transuranic waste is defined as waste contaminated with nuclides heavier than uranium to the extent that the waste cannot be disposed of in a low-level waste site (waste with more than 100 nanocuries of transuranic radioactivity per gram of waste). It exists in a variety of physical forms including absorbent papers, glasses, cutting oils, solvents, sludges, tools and other articles and materials contaminated with particles of plutonium.

The transuranic waste that would be placed at WIPP results primarily from plutonium processing and fabrication, as well as from research and development activities at various DOE facilities. In the early years of the nuclear weapons program, transuranic wastes were placed in shallow land burial as low-level waste, and
approximately 192,000 cubic meters of such waste was disposed of in this fashion. Since 1970, these wastes have been stored in a retrievable manner at Department of Energy facilities pending disposal that would isolate it from the biosphere. About 62,000 cubic meters of transuranic waste is currently stored in this manner at ten DOE sites around the country. These sites are Lawrence Livermore National Laboratory in Livermore, California; Rocky Flats Plant in Golden, Colorado; Idaho National Engineering Laboratory in Idaho Falls, Idaho; Argonne National Laboratory in Argonne, Illinois; Nevada Test Site in Mercury, Nevada; Los Alamos National Laboratory in Los Alamos, New Mexico; Mound Facility in Miamisburg, Ohio; Oak Ridge Reservation in Oak Ridge, Tennessee; Savannah River Site in Aiken, South Carolina; and Hanford Reservation in Richland, Washington.

For purposes of handling at WIPP, transuranic waste is classified in one or two categories according to the radiation dose rate at the waste package or container surface: contact-handled or remote-handled. Ninety-seven percent of transuranic waste by volume is contact-handled and is stored in plastic bags inside 55-gallon, polyethylene-lined steel drums. Contact-handled waste emits only alpha radiation, which is dangerous if inhaled or ingested but will not penetrate the skin. The drums can be handled directly because the alpha radiation also does not penetrate the plastic or the drums. The remaining three percent of transuranic waste by volume is contaminated by fission products—primarily cesium-137—and produces radiation that penetrates metal drums. These wastes must be remotely handled and stored and transported in shielded casks.

About 60 percent of the transuranic waste to be disposed of in WIPP is mixed with hazardous waste components such as metallic lead in the form of glovebox parts and lead-lined gloves, and organic solvents such as methylene chloride and carbon tetrachloride. These mixed wastes are subject to the regulatory requirements of both the Solid Waste Disposal Act (for the hazardous components) and the Atomic Energy Act (for radioactive components). For the most part, the hazardous components of these wastes are so-called "listed" wastes under subtitle C of the Solid Waste Disposal Act and, therefore, subject to the land disposal restrictions of that Act. The land disposal restrictions include requirements for pretreatment of wastes prior to disposal and restrictions on storage. Pretreatment of these mixed wastes, however, might result in greater occupational radiation to workers.

The Solid Waste Disposal Act provides a process for allowing EPA to grant a variance to allow disposal of untreated mixed waste based on a demonstration that "there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (42 U.S.C. section 6924(g)(5)). On November 14, 1990, EPA granted such a variance to DOE for purposes of the experimental program at WIPP (Final Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant [55 F.R. 47700]). As a condition of the variance, DOE is restricted in the amount of transuranic waste that can be used during the experimental program—no more than 8,500 55-gallon drums of waste or drum equivalents, or 1 percent by volume of the design capacity can be placed. Prior to permanent disposal at WIPP, DOE would have to obtain an additional variance from EPA for that purpose.

Agreements with the State of New Mexico have imposed limitations and conditions on DOE's operation of WIPP, established a significant role for the State in its management, and provided a basis for assisting the State for supporting the facility. Public Law 96-164, which authorized WIPP as a research and development facility for defense nuclear waste, directed the Secretary to seek to enter into a written agreement for consultation and cooperation with the State of New Mexico. This law required the agreement to give the State the right to comment on, and make recommendations with regard to, public health and safety aspects of the project prior to certain major decision points. The agreement was also to establish procedures for the Secretary to receive, comment on, and resolve comments and recommendations made by the State, and procedures for further review and amendment of the agreement.

An Agreement for Consultation and Cooperation between the Department of Energy and the State of New Mexico was executed on July 1, 1981. The agreement was subsequently amended by the First Modification on November 30, 1984, and by the Second Modification on August 4, 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. A Supplemental Stipulated Agreement was reached on December 27, 1992, and an Agreement of Principles was entered into on May 10, 1998.

In addition to establishing a role for the State in managing the facility, these agreements provided a basis for assisting the State to obtain federal funds. Between fiscal years (FY) 1983 and 1987, $54.4 million in Department of Transportation appropriations were provided to New Mexico pursuant to DOE's pledge in the Consultation and Cooperation Agreement to assist the State in obtaining funds to improve its roads for transportation of waste to WIPP. In FY 1989, $45 million was authorized and appropriated from the national defense budget for a payment to the State of New Mexico for road improvements. The funds approved in FY 1989 have not yet been provided to the State because release was conditioned on withdrawal of the WIPP site. In addition, a general reduction resulting from sequestration reduced the amount available for payment to the state to $42.45 million.

In addition to funding for highway construction DOE has $40 million available for payment to the State. H.R. 1281, the Dire Emergency Supplemental Appropriations Act for 1991 made $20 million available to the Secretary for payment to the State of New Mexico and H.R. 2427, the Energy and Water Appropriations Act for FY 1992 provided another $20 million for payment to the State.

NEED FOR THE LEGISLATION

Lands owned by the United States and administered by the Bureau of Land Management are open to public use under the mining and public land laws unless withdrawn. Under section 204 of the Federal Land Policy and Management Act of 1976, public lands may be administratively withdrawn and reserved for a par-
ticular governmental use by the Secretary of the Interior. The Secretary may withdraw parcels of 5,000 or more acres for no more than 20 years at a time. Administrative land withdrawals can be extended but cannot accomplish a permanent land withdrawal.

The EPA regulations for disposal of radioactive waste, which were promulgated in 1987, would have required that the DOE exercise active institutional control over the disposal site for up to 100 years and passive control thereafter. It is likely that disposal regulations, when promulgated, will contain similar requirements.

DOE prefers statutory land withdrawal because it could provide permanent withdrawal and transfer of jurisdiction and control over the site to the DOE. On October 3, 1991, the Secretary of Energy wrote to the Congress to say that the Waste Isolation Pilot Plant was ready to begin an experimental program using transuranic waste and that while he preferred legislation to affect land withdrawal, the failure to attain such legislation and the readiness to begin testing had led him to request that the Secretary of the Interior complete the withdrawal administratively. Subsequently, on October 9, after the State of New Mexico filed for a preliminary injunction against the Secretary of Energy to block initiation of the test phase, the Secretary of Energy announced that he would withdraw shipments of transuranic waste to WIPP while the legal and regulatory issues raised by the lawsuit are settled.

The experimental program at the WIPP has as its objective reduction of uncertainties associated with the prediction of natural processes that might affect the long-term performance of WIPP so that DOE can determine if WIPP will comply with radioactive waste disposal regulations. The committee believes that it is essential that the experiments be conducted in the WIPP in order to have high confidence in the predicted performance of the WIPP.

The committee further believes that the conduct of tests in specially constructed facilities outside of the WIPP will unavoidably result in doubts about the validity of the experiments as well as increase the overall cost and introduce unnecessary delay.

The experimental program will include testing with transuranic waste in dry bin, wet bin, and solubility tests. Other tests that will not use transuranic waste include large-scale seal tests, rock mechanics tests, brine inflow and radionuclide migration tests, and hydrologic tests.

Legislation is needed to better define the regulatory environment in which the WIPP would operate. H.R. 2637 would ensure that EPA would have a significant role in certifying that WIPP complies with radioactive waste regulations both as a requirement for initiating disposal and throughout the operations phase. It would also provide protection for worker health and safety and for retrieval of the waste if testing fails to show that WIPP can comply with the disposal regulations. Finally, H.R. 2637 would encourage timely promulgation of the radioactive waste disposal regulations by setting a timeline for such promulgation and requiring that any determination that WIPP complies with these regulations be based on such promulgated regulations.

Assistance to the State of New Mexico is also an important objective of this legislation. The Nuclear Waste Policy Act in 1982, as amended, provides that states which host nuclear waste facilities should be compensated. The Second Modification to the Agreement for Consultation and Cooperation between the DOE and the State, executed on August 4, 1987, provided the DOE to seeking $190 million in additional funds for the State. The bill as recommended by the committee would authorize payments in furtherance of this commitment.

**SUMMARY OF MAJOR PROVISIONS OF THE COMMITTEE AMENDMENT**

H.R. 2637 would permanently withdraw the 10,240 acre WIPP site from the federal land laws and transfer authority for managing the WIPP site from the Department of Interior to the Department of Energy.

The bill would require the Secretary of Energy (the Secretary) to develop a management plan for the withdrawn land to provide for domestic livestock grazing, to allow hunting and trapping, and to preserve the wildlife habitat at the site. It also contains a prohibition on surface and subsurface mining except for two existing oil and gas leases. The two leases would be studied by the Secretary of Interior to determine whether they should be exchanged or canceled.

The bill would mandate compliance with regulations promulgated by EPA for management, storage, and disposal of transuranic waste as set forth in 40 C.F.R. 191. EPA's regulations, which govern all radioactive wastes, are in two parts: Subpart A contains regulations for management and storage of waste, and Subpart B contains regulations for permanent disposal. Subpart B of the regulations was remanded to EPA by a federal court in 1987 to be promulgated. The bill would direct EPA to publish draft disposal regulations within 180 days and final regulations within two years of the date of enactment. Under the bill a Secretarial determination that WIPP complies with standards for final disposal could be made until final disposal regulations are in effect.

Subpart A of the regulations would apply to WIPP upon the receipt of transuranic waste at the facility to begin the experimental program. Prior to allowing permanent transuranic waste, the Secretary would have to determine, and the EPA Administrator would have to certify, that WIPP complies with the radioactive waste disposal regulations.

The bill would require DOE to remove all transuranic waste from WIPP if the Secretary has not submitted a determination of compliance to the EPA Administrator within 6 years of the date of enactment. This time period could be extended by a maximum of two years if the Secretary and the EPA Administrator determine that additional time would provide relevant and useful data in a timely manner for determining compliance with the disposal regulations.

The Secretary would be directed to prepare a proposal for an experimental program that will enable the Secretary to determine if WIPP complies with radioactive waste regulations to be promulgated by the EPA. The plan would be subject to review and comment by the EPA, the State, the National Academy of Sciences, and the Environmental Evaluation Group (EEG), a quasi-state technical oversight group funded through contract with the DOE. If the
State disagrees with the Secretary's final experimental plan, the State would be authorized to invoke the conflict resolution procedure of the Agreement for Consultation and Cooperation Between the State and DOE regarding WIPP that was entered into in 1981.

The amount of waste placed for testing would be limited to no more than 0.55 percent of the total capacity of WIPP or no more than 4,675 drums or drum-equivalents.

The bill would direct the Secretary of Interior, acting through the Bureau of Mines, to annually report that to the best of his knowledge and belief, and based on expert advice, the mined rooms in WIPP will remain stable for the conduct of the experimental program during the two-year period following the report. If the Secretary of Interior fails to submit such a report, the DOE must immediately begin retrieving all waste placed at the WIPP site.

The bill would require the Secretary of Energy to annually determine, and the Administrator of EPA to concur, that the waste placed for testing is retrievable for at least the next two years. If the Secretary cannot determine, or if the EPA Administrator does not concur in such determination, the Secretary would be directed to implement the retrieval plan or take corrective action to ensure that the waste is retrievable.

Disposal operations would be allowed after the EPA Administrator certifies the Secretary's determination that WIPP complies with the radioactive waste disposal regulations. During disposal operations, the bill would require biannual demonstrations by DOE, and concurrence by the EPA Administrator, that such activities are being carried out in compliance with laws and regulations. If the EPA Administrator does not concur with the DOE demonstration, the Secretary would be required to submit a remedial plan to demonstrate compliance. If the EPA Administrator finds the remedial plan inadequate, additional shipments of transuranic waste to WIPP would be prohibited.

Design and plans for fabrication of all packages used to transport transuranic waste to WIPP would have to be approved by the Nuclear Regulatory Commission.

The bill states that it is the sense of Congress that the Governor of New Mexico appoint an advisory group to review emergency response medical training programs and that, if the advisory group is created and makes a report, the Secretary review the advisory group's findings and resolve any inadequacies identified.

The Secretary would be required to prepare a plan for decommissioning and post-decommissioning environmental controls at WIPP and the preparation of a separate plan for management of the WIPP site following decommissioning.

The bill would authorize payments, subject to appropriations, to the State of New Mexico for each drum or drum-equivalent of transuranic waste delivered to WIPP during the test and disposal phases. The bill would condition payments on waste received, paying $20,000 per drum or drum equivalent delivered during the test phase up to 0.55 percent of capacity, or 4,675 drums or drum equivalents. The total payments during the test phase therefore could not exceed $93.5 million. During the disposal phase, the bill would authorize payments of $600 per drum or drum equivalent up to the limit of the facility's 850,000 drum capacity. If all of the remaining 845,325 drums or drum equivalents were received, the total payment during the disposal phase would be $507,195,000.

The Secretary would be authorized, subject to the availability of appropriations, to provide training and equipment for accident prevention and emergency preparedness to those states and Indian tribes through whose jurisdiction the waste is transported.

The Secretary would be required, subject to the availability of appropriations, to enter into a contract with the Waste Management, Education and Research Consortium, acting through the Carlsbad Center for Environmental Research, for independent WIPP environmental assessment and monitoring services.

The Secretary would be required to make annual payments to the State to prepare annual reports on the economic impact of activities at the WIPP.

The bill explicitly provides that the Agreement for Consultation and Cooperation between the State of New Mexico and the Department of Energy is not affected in any way by the provisions of this bill. The bill would permit the State to invoke the conflict resolution process established by this agreement if it disagrees with specific plans and determinations required by this bill.

The bill would require that any transuranic waste placed at WIPP prior to enactment be subject to the provisions of the bill and be removed within 180 days after enactment unless it will be used for the experimental program.

**SECTION By SECTION ANALYSIS**

**Section 1. Short title; Table of Contents**

Section 1 contains the short title and the table of contents.

**Section 2. Definitions**

Section 2 contains definitions of terms used in the amendment including the "administrator" of EPA, the "agreement" between DOE and the State of New Mexico, "contact-handled transuranic waste", radioactive waste "disposal regulations", the Environmental Evaluation Group "EEG", the "Governor" of New Mexico, high-level radioactive waste, radioactive waste "management and storage regulations", the EPA's "No-Migration Determination", "remote handled transuranic waste", the "Secretary" of Energy, "spent nuclear fuel", "the State", "WIPP", and the "WIPP site".

**Section 3. Land withdrawal and reservation for the WIPP**

Section 3(a) would withdraw the WIPP site from public use, subject to valid existing rights and except as otherwise provided in the Act. It would also transfer jurisdiction over the WIPP site from the Secretary of Interior to the Secretary of Energy except as provided in section 5(d) regarding failure to comply with radioactive waste disposal regulations. Finally, it would reserve the WIPP site for the use of the Secretary of Energy for construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decontamination, and other activities set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164).
Section 3(b) would revoke Public Land Orders 6403 of June 29, 1963 and 6826 of January 1991 related to the WIPP site.

Section 3(c) contains the description of the WIPP site and would require the Secretary of Interior, not later than 30 days after enactment, to publish a notice containing the legal description of the site, and to file copies of the description with the Congress, the DOE and the State of New Mexico.

Section 3(d) would allow the Secretary of Interior to correct clerical and typographical errors to the legal description and map of the WIPP site.

Section 4. Establishment of management responsibilities

Section 4(a) would grant the Secretary of Energy responsibility for managing the WIPP site and would require the Secretary to consult and cooperate with the State of New Mexico and the EEG.

Section 4(b) would require the Secretary to develop a management plan for the WIPP site within one year of enactment in consultation with the State, and the Department of Interior and would make use of land for activities not associated with WIPP subject to conditions and restrictions established by the Secretary of Energy. The management plan would provide for grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings, and mining as follows: (1) the Secretary would establish regulations for grazing as are necessary or appropriate. The grazing shall be conducted consistent with the Federal Land Management Policy Act of 1976, the Taylor Grazing Act, Public Rangelands Improvement Act of 1978, and Executive Order 12548; (2) the Secretary would be required to permit hunting and trapping in accordance with applicable laws and regulations of the State and Federal governments subject to regulations issued, after consultation with the New Mexico Department of Game and Fish; (3) the Secretary would be required to manage the site in a manner to maintain and preserve the wildlife habitat; (4) the Secretary would be required to dispose of salt tailings not required for backfill of the WIPP site in accordance with the Materials Act of 1947; and (5) no surface or subsurface mining unrelated to WIPP, including slant drilling under the site would be permitted on or under the WIPP site including after decommissioning except for activities conducted under Oil and Gas Leases No. NMNM 02538 and 02553C. The Secretary of the Interior would be required to undertake a study to determine the effects of these two leases on the activities at the WIPP site and to recommend as to the advisability of leasing the leases for other leases outside the site or canceling the leases. The recommendations would be required to be submitted prior to the completion of the experimental program in section 6 and the leases would be subject to reasonable restrictions prescribed by the State, the Secretary of the Interior or the Secretary of Energy.

Section 4(c) would require the Secretary of Energy to submit the management plan to the Congress and the State, and to submit any amendments to such plan promptly to the Congress and the State.

Section 4(d) would allow the Secretary of Energy to take action to close any portion of the WIPP site he determines is required for health and safety of the public or for the common defense and security.

Section 4(e) would allow the Secretary to enter into cooperative agreements with the Secretary of Interior and the State for grazing; with the State for maintaining the wildlife habitat; and with the Secretary of Interior and the State, or both, to enforce the mining prohibition.

Section 5. Compliance with EPA regulations and inclusion of engineered barriers

Section 5(a) would require the EPA Administrator to promulgate proposed radioactive waste disposal regulations not later than 180 days after enactment, and final regulations no later than two years after enactment.

Section 5(b) would require the EPA Administrator to issue proposed criteria for determining whether the WIPP complies with disposal regulations not later than 180 days after enactment.

Final criteria would be required within two years of enactment.

Section 5(c) would require the Secretary to comply with radioactive waste management and storage regulations from the date of enactment. It would require the Secretary to make a determination of compliance with the disposal regulations within six years of enactment. The EPA Administrator would be required to certify that the Secretary has complied with disposal regulations within one year of Secretary's determination. The Administrator's certification would be judicially reviewable in accordance with the Administrative Procedures Act. If a court orders reissue of the disposal regulations, the Secretary could still base his determination of compliance upon the remaindered regulations unless the court order expressly finds and orders that its injunction relates to substantive environmental, public health, or public safety aspects of the regulations directly applicable to WIPP.

Section 5(d) would require the Secretary to remove all transuranic waste from WIPP if the Secretary has not submitted a determination of compliance with the disposal regulations within six years after enactment. After the waste has been removed, WIPP would be decommissioned and the land withdrawal would terminate, and the authority for managing the land would revert to the Secretary of the Interior. The EPA Administrator would be allowed to extend the six year deadline for no more than two years if the Administrator determines that additional time would provide relevant and useful data in a timely manner for determining or certifying compliance.

Section 5(e) would allow the State of New Mexico to invoke the conflict resolution provisions of the Agreement for Consultation and Cooperation Between the State and DOE regarding WIPP that was originally entered into in 1981.

Section 5(f) would require the WIPP to use engineered barriers as well as natural barriers to isolate waste and would allow the Secretary to make waste form modifications if such are needed to determine compliance.

Section 6. Experimental Program During Test Phase

Section 6(a) would authorize the Secretary to implement an experimental program. It would ban any waste from being received at WIPP until the Secretary has fulfilled the requirements of this sec-
tion. It would also limit waste emplaced during the experimental program to only so much as required for the experimental program, but not to exceed 0.55 percent of the total capacity of WIPP, or 4,675 drums (or drum equivalents).

Section 6(b) would require the Secretary to prepare a proposal for the WIPP experimental program in consultation with the State, the Administrator, the NAS and the EGG and make the document available to the public. The Secretary would also be required to prepare a proposal for any modifications to the original proposal. The proposal would be required to contain information on the proposed purpose of the experiments, how the data from the experiments will be used, the amount of waste required for the experiments, and the time schedule for the experiments. The proposal would also be required to include a determination by the Secretary that he has plans and procedures for retrieving waste as required by section 7; a summary of the preliminary performance assessment calculations; a determination that the test activities would not pose undue risk to the public health and safety or to the environment; and a determination that the proposed experiments will provide relevant and useful data in a timely manner for making the determination of compliance with disposal regulations, or for confirming compliance, and for the Administrator’s certification of compliance. The proposal would be submitted to the State, the EPA Administrator, NAS and EGG.

Section 6(c) would require the EPA Administrator to provide comments to the Secretary within 30 days after the submission of the proposal. It would also require the Secretary to request that the State, NAS and EGG submit comments within 30 days. Within 30 days after receipt of comments, the Secretary would be required to respond to the comments and publish a final experimental plan. EPA would be required to review and evaluate the experimental program within 30 days following the Secretary’s submittal of the final plan and the Secretary would be required to request that the State, NAS and EGG perform a similar review and evaluation.

Section 6(d) would allow the State of New Mexico to invoke the conflict resolution provisions of the Cooperation Agreement between DOE and the State if the State disagrees with the Secretary’s final experimental program.

Section 6(e) would allow the Secretary of Energy to meet the requirement for review of, comment on, the evaluation of the experimental program proposal by submitting documentation to the Congress within 45 days of enactment of such review, comment, and evaluation process. Compliance with this requirement would be assumed if the Secretary had requested and not received final evaluations from the State, the EPA Administrator, the NAS, and the EGG within 30 days of enactment.

Section 6(f) would require the Secretary of Energy to prepare and submit to Congress an annual performance assessment report during the experimental program.

Section 6(g) would prohibit transuranic waste from being received at the WIPP for operational demonstration before the Secretary of Energy determines and the EPA Administrator certifies that WIPP complies with the radioactive waste disposal regulations.

Section 6(h) would provide that nothing in section 6 be construed to limit or affect the EPA Administrator’s authority to enforce and the Secretary of Energy’s obligation to comply with all terms and conditions of the No-Migration Determination.

Section 7. Additional test phase requirements

Section 7(a) would prohibit any remote-handled transuranic waste from being received at WIPP during the experimental program.

Section 7(b) would prohibit use transuranic waste in the experimental program until the Secretary of the Interior, acting through the Bureau of Mines, submits to the Secretary of Energy a report that to the best of his knowledge and belief and based on expert advice, the mined rooms in the underground repository at WIPP will remain stable for the conduct of the experimental program for a two-year period. After the initial report, the Secretary of Interior would be required to submit annual reports that the mined rooms are stable or all waste emplaced in WIPP would have to be retrieved.

Section 7(c) would require that the waste emplaced for the experimental program be retrievable until testing is completed or the Secretary has determined and the EPA Administrator has certified that the facility complies with disposal regulations. The Secretary would be required to annually determine, and the EPA Administrator would be required to concur, that the waste is retrievable and can remain retrievable for at least two years. The Secretary would be required to annually demonstrate that a sample of transuranic waste is retrievable. The Secretary would be required to prepare a retrieval plan 60 days after enactment. The Secretary would be required to implement the retrieval plan or take corrective action if the Secretary does not make a determination that the waste is retrievable, or if the EPA Administrator does not concur. The State would be authorized to invoke the conflict resolution process if it determines that retrieval plan is defective, the annual determination of retrievability is incorrect or the waste is not retrievable.

Section 8. Disposal phase

Section 8(a) would allow the Secretary to emplace transuranic waste for disposal at WIPP after the EPA Administrator certifies under section 5 that the Secretary has complied with the disposal regulations.

Section 8(b) would require the Secretary to biennially demonstrate, and the EPA Administrator to concur, that disposal operations at WIPP are being carried out in compliance with applicable laws and regulations.

Section 8(c) would require the Secretary to prepare a remedial plan if the EPA Administrator has determined that the Secretary has not demonstrated compliance with applicable laws and regulations. If the remedial plan is not received within 6 months of a determination of noncompliance, or if the EPA Administrator does not concur in such report, then further shipments of transuranic waste would be prohibited until the Administrator is satisfied with the remedial plan.
Section 9. Provisions applicable during test phase and disposal phase

Section 9(a) would prevent any transuranic waste from being received at WIPP with a surface dose rate in excess of 1,000 rems per hour and no more than 5 percent of the remote-handled waste by volume could have a surface dose rate in excess of 100 rems per hour. Remote-handled waste which exceeded 23 curies per liter maximum activity level could not be received at WIPP and the total curies of remote-handled waste could not exceed 5,100,000 curies. The total capacity of WIPP would be limited to not more than 6.2 million cubic feet of transuranic waste or not more than 800,000 drums or drum equivalents.

Section 9(b) would prohibit any spent nuclear fuel or high-level radioactive waste from being received at WIPP.

Section 9(c) would require that the design and plans for fabrication of all packages used to transport transuranic waste to WIPP be approved by the Nuclear Regulatory Commission. It would also require the Secretary to provide advanced notification to states and Indian tribes through whose jurisdiction the Secretary intends to transport transuranic waste to or from WIPP.

Section 9(d) would allow temporary storage above ground for 90 days if the Secretary determines such storage is necessary and that the waste will be returned to WIPP in accordance with the requirements of the bill. This period could be extended if the State or the EPA Administrator determines an extension is consistent with the protection of human health and the environment. Before any transuranic waste retrieved from WIPP could be stored at a interim storage facility at the WIPP site, the Secretary would be required to obtain approval from the State or the EPA Administrator in accordance with the Solid Waste Disposal Act.

Section 9(e) provides that nothing in this bill shall be construed to limit or in any manner affect the Administrator's or the State's authority to enforce, or the Secretary's obligation to comply with, all applicable provisions of the Solid Waste Disposal Act.

Section 9(f) states that it is the sense of Congress that the Governor of New Mexico appoint an advisory group to review emergency response medical training programs and provides that, if the advisory group is created and makes a report, the Secretary shall review the advisory group's findings and correct any inadequacies identified.

Section 9(g) would require the Secretary to continue to encourage appropriate business and employment opportunities related to WIPP to the maximum extent practicable and to report annually on such activities.

Section 9(h) would require the Secretary to provide the Administrator, the State, and the EEG such data and other information pertaining to WIPP as is necessary to allow them to discharge their responsibilities in a timely manner.

Section 10. Decommissioning of the WIPP

Section 10(a) would require the Secretary to prepare a preliminary plan for active and passive institutional controls for managing WIPP after decommissioning not later than three years after enactment of the bill. The plan would be required to be consistent with the disposal regulations. If the State disagrees with the Secretary's plan, it is authorized to invoke the conflict resolution provision.

Section 10(b) would require the Secretary to prepare a preliminary plan for management and use of the WIPP site following decommissioning not later than two years after enactment of the bill.

Section 11. Economic assistance

Section 11(a) would authorize payments, subject to the availability of appropriations, to the State of New Mexico for each drum or drum-equivalent of transuranic waste delivered to WIPP during the test and disposal phases on a quarterly basis. The payments would be $20,000 per drum or drum equivalent delivered during the test phase up to 0.5 percent of capacity, or 4,075 drums or drum equivalents. During the disposal phase, the bill would authorize payments of $500 per drum or drum equivalent up to the limit of the facility's 50,000 drum capacity. If the Secretary does not make any required payment, the Governor would be empowered to prohibit further transuranic waste from being delivered at WIPP.

Section 11(b) would require the Secretary to ensure, subject to appropriations, that technical assistance and funds are available for the purpose of training public safety officials and other emergency responders in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste, and to report on training provided through FY 1991 within 30 days of enactment. If the Secretary determines such training is necessary, it may continue until transuranic waste shipments to WIPP have been terminated. The Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health would be required to review the training plans. The training would be required to cover safe transportation procedures as well as procedures dealing with emergency situations. The Secretary would also be authorized, subject to appropriations, to enter into agreements to assist the States in acquiring equipment for response to an incident involving transuranic waste transported to or from the WIPP.

Section 11(c) would direct the Secretary, subject to appropriations, to enter into a contract with the Waste Management Education and Research Consortium, acting through the Carlsbad Center for Environmental Research, for independent WIPP environmental assessment and monitoring services.

Section 11(d) would require the Secretary pay the State to prepare annual reports on the economic impact of activities at the WIPP.

Section 12. Consultation and cooperation agreement

Section 12 would state that the Agreement for Consultation and Cooperation between the State of New Mexico and the Department of Energy is not affected in any way by the provisions of this bill.
Section 13. Treatment of waste introduced at WIPP before enactment

Section 13 would require that any transuranic waste emplaced at WIPP prior to enactment be subject to the provisions of this bill and be removed 180 days after enactment unless such waste is to be used for the experimental program.

CHANGES IN EXISTING LAW

The bill, if enacted, would make no changes to existing law.

COMMITTEE POSITION

The Committee on Armed Services, on November 21, 1991, approved H.R. 2637, as amended, by voice vote.

FISCAL DATA

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlays resulting from the bill during fiscal year 1992 and the four following fiscal years.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,

Hon. Les Aspin,
Chairman, Committee on Armed Services,
U.S. House of Representaives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for an amendment in the nature of a substitute to H.R. 2637, the Waste Isolation Pilot Plant Land Withdrawal Act of 1991, as ordered reported by the House Committee on Armed Services on November 21, 1991.

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,

JAMES L. BLUM
(for Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

3. Bill status: As ordered reported by the House Committee on Armed Services on November 21, 1991.
4. Bill purpose: This bill reserves lands surrounding the Department of Energy's (DOE's) waste isolation pilot plant (WIPP) in New Mexico for use by the Secretary of Energy to conduct an experimental program at the WIPP facility, and to operate and decommission the facility as authorized. The experimental program would be aimed at determining the suitability of the site for storing transuranic waste material. The bill limits the amount of waste that may be transported to WIPP during the experimental program to 0.55 percent of the facility's capacity. This bill directs the Environmental Protection Agency (EPA) to issue final standards for the disposal of transuranic radioactive waste within two years of the bill's enactment, and requires EPA to certify, within six years of the bill's enactment, whether WIPP complies with the disposal regulations.

This bill authorizes payments to New Mexico based on the number of drums of waste material shipped to the WIPP facility. The bill also authorizes DOE to provide assistance for transportation safety training and equipment, to provide support for an independent environmental assessment, and to reimburse the State of New Mexico for an annual assessment of the economic impact of the WIPP facility.

5. Estimated cost to the Federal Government:

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The costs of this bill fall primarily within budget function 050. Estimated authorizations for 1992 do not include amounts already appropriated for the WIPP program.

The cost of this bill after 1996 depends on whether or not WIPP is determined to be an acceptable site for a permanent waste repository. If the site is determined to be suitable, as much as $510 million could be paid to New Mexico based upon future shipments to the site. Other compensation (about $3 million per year) authorized by this bill would continue over the facility's operational lifetime, estimated to be 20 years.

It is possible that DOE may proceed with the experimental program at WIPP without additional authorizing legislation. On October 9, 1991, the Department of the Interior notified DOE that it could store nuclear waste at WIPP under the modified administrative land withdrawal issued January 28, 1991. The State of New Mexico filed suit on October 9 seeking an injunction against this administrative land withdrawal. This case has not yet been decided. If DOE cannot begin its experimental program 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 if implemented, would result in a substantial reduction in expenditures for WIPP.

Consequently, some of the costs shown in the table could be incurred even if this legislation were not enacted. CBO's estimate of the cost of this bill would be reduced by about $80 million over the next five years if DOE is permitted to proceed with its current plans to begin an experimental program at WIPP without enactment of this bill.
Basis of Estimate: The estimate assumes that this legislation will be enacted early in fiscal year 1992, that amounts authorized will be appropriated for each fiscal year, and that spending will occur at historical rates for similar activities. The estimate assumes waste shipments to WIPP would begin in the second half of 1992.

Section 6 would authorize DOE to conduct experimental activities at WIPP with waste containing transuranic elements. 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, would grow to $38 million in 1996, and would total about $80 million over the planned five-year test phase.

Section 11 of the bill would authorize payments to New Mexico during the experimental program. The payments would be set at $20,000 per drum-equivalent of waste material stored in the WIPP site, up to a total of 4,675 drums of waste material. The DOE plans to ship this waste evenly over the next five years. However, the bill would require the DOE to comply with certain reporting requirements before shipments could begin. The DOE estimates that these requirements could be fulfilled within three months of the bill's enactment. Thus, we estimate that shipments would begin in the second half of fiscal year 1992 and that extra shipments would take place in 1993 to ease the backlog created by the delay in 1992. This timing would result in payments of $9 million to the state in 1992, and payments would total $94 million during the period of the estimate.

Section 11 also directs DOE to provide technical assistance and grants for training of public safety officials, acquisition of safety equipment, and other transportation safety programs in jurisdictions where waste would be transported to or from WIPP. Based on information from DOE, we estimate these activities would cost about $1.5 million annually.

The bill also would authorize funds for building, establishing, and operating the Carlsbad Environmental Research Center. Based on information from DOE, CBO estimates that costs for this program would total $26 million for the first five years of operations.

Beginning in 1993, the bill would authorize such sums as are necessary to reimburse New Mexico for an economic impact assessment group to study and report annually on the affect WIPP has on the state's economy. CBO estimates that these payments would be less than $1 million in each of fiscal years 1993 through 1996.

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 this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

7. Estimated cost to state and local governments: When DOE begins its experimental program at WIPP, New Mexico would receive $40 million in previously appropriated funds to mitigate the environmental and economic impacts of the facility. In addition, DOE estimates that this bill would authorize payments to New Mexico of $9 million in 1992 and as much as $600 million over the life of the facility. States and localities also would receive technical assistance and grants of about $1.5 million a year for transportation safety activities.

8. Estimate comparison: None.

9. Previous CBO estimate: CBO has prepared cost estimates for two other versions of H.R. 2637, the Waste Isolation Pilot Plant Withdrawal Act. We also prepared a cost estimate for S. 1671, the Waste Isolation Pilot Plant Withdrawal Act of 1991. Enactment of any of these bills would authorize DOE to proceed with an experimental program at WIPP. The major cost difference between these bills is their treatment of payments to New Mexico. Our previous estimates are summarized below.

On July 12, 1991, CBO prepared a cost estimate for H.R. 2637, the Waste Isolation Pilot Plant Withdrawal Act, as ordered reported by the House Committee on Interior and Insular Affairs on June 26, 1991. This version of H.R. 2637 authorizes payments of $20 million annually over the 1991 to 1995 period and up to $200 million as necessary after 1995 for mitigating environmental and economic impacts in New Mexico.

On October 22, 1991, CBO prepared a cost estimate for S. 1671, as ordered reported by the Senate Committee on Energy and Natural Resources on October 16, 1991. This bill also authorizes annual $20 million payments to New Mexico, from the date of the first shipment of waste until the facility is decommissioned. During the decommissioning period, annual payments of $13 million to the state would be authorized.

On November 26, 1991, CBO prepared a cost estimate for H.R. 2637, as ordered reported by the House Committee on Energy and Commerce on November 20, 1991. This version of H.R. 2637 authorizes DOE to provide assistance to public safety officials in any state or to any Indian tribe through whose jurisdiction DOE plans to ship waste to or from the WIPP facility. Based on information from DOE, CBO estimates this assistance would cost about $1.5 million annually.


C.G. NUCKOLS
(For James L. Blum, Assistant Director for Budget Analysis).

COMMITTEE COST ESTIMATE

The committee generally concurs with the estimate of authorizations as contained in the report of the Congressional Budget Office.

INFLATION-ImpACT STATEMENT

Pursuant to clause 20(4) of Rule XI of the Rules of the House of Representatives, the committee attempted to determine the inflationary impact of the bill.

The committee believes no precise method exists to identify the inflationary impact of the reported legislation.

Because the bill does not provide budget authority but rather authorization for appropriations, the economic effects of the bill will be determined by the level of appropriations that the Congress approves pursuant to the authorizations contained in the bill. The committee, therefore, concludes that the bill standing alone would have no significant inflationary impact.
Oversight Findings

With reference to clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

With reference to clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the legislation results from hearings and investigative activities into all aspects of the operations of the defense activities of the Department of Energy, as well as hearings related specifically to the Waste Isolation Pilot Plant.