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102nd Congress (1991-1992)

Sponsor: [Sen. Domenici, Pete V. \[R-NM\]](#) (Introduced 08/02/1991)

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--S.1671--

S.1671

One Hundred Second Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January, one thousand nine hundred and ninety-two

An Act

To withdraw land for the Waste Isolation Pilot Plant, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Waste Isolation Pilot Plant Land Withdrawal Act'.

(b) TABLE OF CONTENTS-

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

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- Sec. 21. Consultation and cooperation agreement.
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- Sec. 23. Authorizations of appropriations.

SEC. 2. DEFINITIONS.

For purposes of this Act:

- (1) ADMINISTRATOR- The term 'Administrator' means the Administrator of the Environmental Protection Agency.
- (2) AGREEMENT- The term 'Agreement' means the July 1, 1981, Agreement for Consultation and Cooperation, as amended by the November 30, 1984 'First Modification', the August 4, 1987 'Second Modification', and the March 18, 1988 'Third Modification', or as it may be amended after the date of enactment of this Act, between the State and the United States Department of Energy as authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164; 93 Stat. 1259, 1265).
- (3) CONTACT-HANDLED TRANSURANIC WASTE- The term 'contact-handled transuranic waste' means transuranic waste with a surface dose rate not greater than 200 millirem per hour.
- (4) DECOMMISSIONING PHASE- The term 'decommissioning phase' means the period of time beginning with the end of the disposal phase and ending when all shafts at the WIPP repository have been back-filled and sealed.
- (5) DISPOSAL- The term 'disposal' means permanent isolation of transuranic waste from the accessible environment with no intent of recovery, whether or not such isolation permits the recovery of such waste.
- (6) DISPOSAL PHASE- The term 'disposal phase' means the period of time, during which transuranic waste is disposed of at WIPP, beginning with the initial emplacement of transuranic waste underground for disposal and ending when the last container of transuranic waste, as determined by the Secretary, is emplaced underground for disposal.
- (7) DISPOSAL REGULATIONS- The term 'disposal regulations' means the environmental regulations for the disposal of spent nuclear fuel, high-level radioactive waste, and transuranic waste under section 8.
- (8) EEG- The term 'EEG' means the Environmental Evaluation Group for the Waste Isolation Pilot Plant referred to in section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (Pub. L. 100-456; 102 Stat. 1918, 2073).
- (9) ENGINEERED BARRIERS- The term 'engineered barriers' means backfill, room seals, panel seals, and any other manmade barrier components of the disposal system.
- (10) HIGH-LEVEL RADIOACTIVE WASTE- The term 'high-level radioactive waste' has the meaning given such term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)).
- (11) 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, 1990 (55 Fed. Reg. 47700), and any amendments thereto, pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(12) REMOTE-HANDLED TRANSURANIC WASTE- The term 'remote-handled transuranic waste' means transuranic waste with a surface dose rate of 200 millirem per hour or greater.

(13) RETRIEVAL- The term 'retrieval' means the removal of transuranic waste and the container in which it has been retained and any material contaminated by such waste from the underground repository at WIPP.

(14) SECRETARY- The term 'the Secretary' means the Secretary of Energy.

(15) SPENT NUCLEAR FUEL- The term 'spent nuclear fuel' has the meaning given such term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)).

(16) STATE- The term 'the State' means the State of New Mexico.

(17) SUPPLEMENTAL STIPULATED AGREEMENT- The term 'Supplemental Stipulated Agreement' means the Supplemental Stipulated Agreement Resolving Certain State Off-Site Concerns Over WIPP, dated December 27, 1982, to the Stipulated Agreement Between DOE and the State in State of New Mexico ex rel. Bingaman v. DOE, Case No. CA 81-0363 JB (D. N. Mex.), dated July 1, 1981.

(18) TEST PHASE- The term 'test phase' means the period of time, during which test phase activities are conducted, beginning with the initial receipt of transuranic waste at WIPP and ending when the earliest of the following events occurs:

(A) The requirements described in section 7(b) are met.

(B) The Administrator determines under section 8(d)(1)(B) that the WIPP facility will not comply with the disposal regulations.

(C) The time period described in paragraphs (2) and (3) of section 8(d) expires.

(D) The Secretary is required by section 9(b)(2) to implement the retrieval plan.

(19) TEST PHASE ACTIVITIES- The term 'test phase activities' means the testing and experimentation activities to determine the suitability of WIPP as a repository for the permanent isolation of transuranic waste.

(20) TRANSURANIC WASTE- The term 'transuranic waste' means waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years, except for--

(A) high-level radioactive waste;

(B) waste that the Secretary has determined, with the concurrence of the Administrator, does not need the degree of isolation required by the disposal regulations; or

(C) waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with part 61 of title 10, Code of Federal Regulations.

(21) WIPP- The term 'WIPP' means the Waste Isolation Pilot Plant project authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164; 93 Stat. 1259, 1265) to demonstrate the safe disposal of radioactive waste materials generated by atomic energy defense activities.

(22) WITHDRAWAL- The term 'Withdrawal' means the geographical area consisting of the lands described in section 3(c).

SEC. 3. LAND WITHDRAWAL AND RESERVATION FOR WIPP.

(a) LAND WITHDRAWAL, JURISDICTION, AND RESERVATION-

(1) LAND WITHDRAWAL- Subject to valid existing rights, and except as otherwise provided in this 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) JURISDICTION- Except as otherwise provided in this Act, jurisdiction over the Withdrawal is transferred from the Secretary of the Interior to the Secretary.

(3) RESERVATION- Such lands are reserved for the use of the Secretary for the construction, experimentation, operation, repair and maintenance, disposal, shutdown, monitoring, decommissioning, and other authorized activities associated with the purposes of WIPP as set forth in section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164; 93 Stat. 1259, 1265), and this Act.

(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 any memoranda of understanding accompanying such land orders, 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; and

(B) file copies of the map described in paragraph (1) and the legal description of the Withdrawal with the Congress, the Secretary, the Governor of the State, 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, nor may any provision be construed to establish, a reservation to the United States with respect to any water or water rights. Nothing in this Act shall affect any water rights acquired by the United States prior to the date of enactment of this Act. The United States may apply for and obtain water rights for purposes associated with this Act only in accordance with the substantive and procedural requirements of the laws of the State.

SEC. 4. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) GENERAL AUTHORITY- The Secretary shall be responsible for the management of the Withdrawal, consistent with 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 the Interior and the State in discharging such responsibility.

(b) MANAGEMENT PLAN-

(1) DEVELOPMENT- Within 1 year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of the Interior and the State, 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 may permit such non-WIPP related uses of the Withdrawal as the Secretary determines to be appropriate, including domestic livestock grazing and hunting and trapping in accordance with the following requirements:

(A) GRAZING- The Secretary 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, in consultation with the Secretary of the Interior, 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. 1901 et seq.).

(B) HUNTING AND TRAPPING- The Secretary may permit hunting and trapping within the Withdrawal in accordance with applicable laws and regulations of the United States and the State, except that the Secretary, after consultation with the Secretary of the Interior and the State, 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 shall dispose of salt tailings extracted from the Withdrawal that the Secretary 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) MINING-

(A) IN GENERAL- Except as provided in subparagraph (B), no surface or subsurface mining or oil or gas production, 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.

(B) EXCEPTION- Existing rights under Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C shall not be affected unless the Administrator determines, after consultation with the Secretary and the Secretary of the Interior, that the acquisition of such leases by the Secretary is required to comply with the final disposal regulations or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(c) CLOSURE TO PUBLIC- If during the land withdrawal made by section 3(a) the Secretary 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 may take whatever action the Secretary 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 and the Secretary of the Interior 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 1 year after the date of the enactment of this Act, the Secretary shall submit the management plan developed under subsection (b) to the Congress and the State. Any amendments to the plan shall be submitted promptly to the Congress and the State.

SEC. 5. TEST PHASE AND RETRIEVAL PLANS.

(a) IN GENERAL- Not later than 7 months after the date of the enactment of this Act, the Secretary shall prepare, and submit to the Administrator for review, a test phase plan and a retrieval plan in accordance with

this section. The Secretary shall give notice in the Federal Register of submission of such plans and provide an opportunity for public access to such plans.

(b) TEST PHASE PLAN- The test phase plan and any modification of the plan, as appropriate, shall--

(1) set forth the test phase activities to be conducted at WIPP;

(2) specify the quantities and types of transuranic waste required for such activities;

(3) provide a detailed description of how the test phase activities will provide information directly relevant to a certification of compliance with the final disposal regulations or to compliance with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); and

(4) include justification for all such activities.

(c) RETRIEVAL PLAN- The retrieval plan and any modification of the plan, as appropriate, shall set forth a detailed plan for the removal of transuranic waste emplaced at WIPP during the test phase, if such removal is required under any provision of this Act.

(d) APPROVAL BY ADMINISTRATOR-

(1) IN GENERAL- The Administrator shall determine, in a single rulemaking procedure, whether to approve, in whole or in part, or disapprove the test phase plan and whether to approve or disapprove the retrieval plan. The Administrator shall, in accordance with paragraph (3), publish in the Federal Register a final rule setting forth the approval or disapproval in accordance with this subsection not later than 10 months after the date of the enactment of this Act.

(2) STANDARDS FOR APPROVAL-

(A) TEST PHASE PLAN- The Administrator shall approve the test phase plan, or any modification to the plan, in whole or in part, if the Administrator determines that the experiments will provide data that are directly relevant to a certification of compliance with the final disposal regulations or to compliance with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(B) RETRIEVAL PLAN- The Administrator shall approve the retrieval plan, or any modification to the plan, if the Administrator determines that it will provide for satisfactory retrieval of all transuranic waste emplaced during the test phase from WIPP should retrieval of such waste be required.

(3) RULEMAKING PROCEDURE- The Administrator shall conduct the rulemaking required in paragraph (1) under section 553 of title 5, United States Code, except that sections 556 and 557 of such title shall not apply.

(4) CONSEQUENCES OF APPROVAL- If the Administrator approves the test phase plan, in whole or in part, and the retrieval plan under this subsection, the Secretary may immediately proceed with test phase activities to the extent they have been approved in the rule described in paragraph (3) and to the extent the requirements of section 6(b) have been met.

(e) RECONSIDERATION OF DISAPPROVED PLANS- If any plan, or portion of a plan, is not approved under subsection (d), the Secretary may submit a revised plan, or portion, to the Administrator. Such revised plan, or portion, shall be considered in accordance with the procedures applicable under such subsection, except that final action shall be completed within 3 months of submission to the Administrator.

(f) MODIFICATIONS TO TEST PHASE PLAN OR RETRIEVAL PLAN- The Secretary may submit modifications to the test phase plan or retrieval plan. Such modifications shall be considered in accordance with the procedures applicable under subsection (d), except that final action shall be completed within 3 months of submission to the Administrator.

SEC. 6. TEST PHASE ACTIVITIES.

(a) GENERAL AUTHORITY- The Secretary is authorized, subject to subsections

(b) and (c), to conduct test phase activities in accordance with the test

phase plan.

(b) REQUIREMENTS FOR COMMENCEMENT OF TEST PHASE ACTIVITIES- The Secretary may not transport any transuranic waste to WIPP to conduct test phase activities under subsection (a) unless the following requirements are met:

(1) FINAL DISPOSAL REGULATIONS ISSUED- The final disposal regulations are issued and published in the Federal Register under section 8(b).

(2) TERMS OF NO-MIGRATION DETERMINATION COMPLIED WITH- The Administrator has determined that the Secretary has complied with the terms and conditions of the No-Migration Determination. The determination of the Administrator under this paragraph shall not be subject to rulemaking or judicial review.

(3) TEST PHASE AND RETRIEVAL PLANS APPROVED- The Secretary has issued, and the Administrator has approved, the test phase plan and the retrieval plan under section 5.

(4) EMERGENCY RESPONSE TRAINING-

(A) REVIEW- The Secretary of Labor, acting through the Occupational Safety and Health Administration, has reviewed the emergency response training programs of the Department of Energy that apply to WIPP.

(B) CERTIFICATION- The Secretary of Labor, acting through the Occupational Safety and Health Administration, has certified that the Department of Labor has reviewed emergency response training programs of the Department of Energy that apply to WIPP and has concurred that such programs are in compliance with part 1910.120 of title 29, Code of Federal Regulations. Such certification shall not be subject to rulemaking or judicial review.

(5) CERTIFICATION OF SAFETY- The Secretary has certified, through the issuance of safety analysis documents, that the safety of test phase activities to be completed at WIPP can be ensured through procedures that would not compromise the type, quantity, or quality of data collected from such test phase activities. Such certification shall not be subject to rulemaking or judicial review.

(6) STABILITY OF ROOMS USED FOR TESTING- The Secretary of Energy shall issue a plan to ensure that the mined rooms in the underground repository at WIPP in which transuranic waste may be emplaced will remain sufficiently stable and safe to permit uninterrupted testing for the duration of such activities. The Secretary of Labor, acting through the Mine Safety and Health Administration, shall review such plan and concur that the plan ensures that the mined rooms in the underground repository at WIPP in which transuranic waste may be emplaced will remain sufficiently stable and safe to permit uninterrupted testing for the duration of such activities. Such issuance and concurrence shall not be subject to rulemaking or judicial review.

(c) LIMITATIONS- Test phase activities conducted under subsection (a) shall be subject to the following limitations:

(1) QUANTITY OF WASTE THAT MAY BE TRANSPORTED- During the test phase, the Secretary may transport to WIPP--

(A) only such quantities of transuranic waste as the Administrator has approved for test phase activities under section 5; and

(B) in no event more than 1/2 of 1 percent of the total capacity of WIPP as described in section 7(a)(3).

(2) REMOTE-HANDLED WASTE-

(A) TRANSPORTATION AND EMPLACEMENT- The Secretary may not transport to or emplace remote-handled transuranic waste at WIPP during the test phase.

(B) STUDY-

(i) IN GENERAL- Within 3 years after the date of the enactment of this Act, the Secretary shall complete a study on remote-handled transuranic waste in consultation with affected States, the Administrator, and after the solicitation of views of other interested parties.

(ii) REQUIREMENTS OF STUDY- Such study shall include an analysis of the impact of remote-handled transuranic waste on the performance assessment

of WIPP and a comparison of remote-handled transuranic waste with contact-handled transuranic waste on such issues as gas generation, flammability, explosiveness, solubility, and brine and geochemical interactions.

(iii) PUBLICATION- The Secretary shall publish the findings of such study in the Federal Register.

(d) PERFORMANCE ASSESSMENT REPORT-

(1) IN GENERAL- The Secretary shall publish, during the test phase, a biennial performance assessment report, consisting of a documented analysis of the long-term performance of WIPP. Each such report shall be provided to the State, the Administrator, the National Academy of Sciences, and the EEG for their review and comment.

(2) RESPONSES BY SECRETARY TO COMMENTS- If, within 120 days of the publication of a performance assessment report under paragraph (1), the State, the Administrator, the National Academy of Sciences, or the EEG provide written comments on the report, the Secretary shall submit written responses to the comments to the State, the Administrator, the National Academy of Sciences, and the EEG, and to other appropriate entities or persons after consultation with the State, within 120 days of receipt of the comments.

SEC. 7. DISPOSAL OPERATIONS.

(a) TRANSURANIC WASTE LIMITATIONS-

(1) REM LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE-

(A) 1,000 REMS PER HOUR- No transuranic waste received at WIPP may have a surface dose rate in excess of 1,000 rems per hour.

(B) 100 REMS PER HOUR- No more than 5 percent by volume of the remote-handled transuranic waste received at WIPP may have a surface dose rate in excess of 100 rems per hour.

(2) CURIE LIMITS FOR REMOTE-HANDLED TRANSURANIC WASTE-

(A) CURIES PER LITER- Remote-handled transuranic waste received at WIPP shall not exceed 23 curies per liter maximum activity level (averaged over the volume of the canister).

(B) TOTAL CURIES- The total curies of the remote-handled transuranic waste received at WIPP shall not exceed 5,100,000 curies.

(3) CAPACITY OF WIPP- The total capacity of WIPP by volume is 6.2 million cubic feet of transuranic waste.

(b) REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS- The Secretary may commence emplacement of transuranic waste underground for disposal at WIPP only upon completion of--

(1) the Administrator's certification under section 8(d)(1) that the WIPP facility will comply with the disposal regulations;

(2) the submission to the Congress by the Secretary of plans for decommissioning WIPP and post-decommissioning management of the Withdrawal under section 13;

(3) the expiration of the 180-day period beginning on the date on which the Secretary notifies the Congress that the requirements of section 9(a)(1) have been met;

(4) the acquisition by the Secretary (whether by purchase, condemnation, or otherwise) of Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C, unless the Administrator determines, under section 4(b)(5), that such acquisition is not required;

(5) the submittal to the Congress by the Secretary of comprehensive recommendations for the disposal of all transuranic waste under the control of the Secretary, including a timetable for the disposal of such waste; and

(6) the completion by the Secretary, with notice and an opportunity for public comment, of a survey identifying all transuranic waste types at all sites from which wastes are to be shipped to WIPP, and--

(A) the results of such survey shall be made available to the public and be provided to the Administrator; and

(B) such survey shall not be subject to rulemaking or judicial review.

SEC. 8. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.

(a) REINSTATEMENT-

(1) IN GENERAL- Except as provided in paragraph (2), the disposal regulations issued by the Administrator on September 19, 1985, and contained in subpart B of part 191 of title 40, Code of Federal Regulations, shall be in effect.

(2) EXCEPTIONS- Paragraph (1) shall not apply to--

(A) the 3 aspects of sections 191.15 and 191.16 of such regulations that were the subject of the remand ordered in *Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency*, 824 F.2d 1258 (1st Cir. 1987); and

(B) the characterization, licensing, construction, operation, or closure of any site required to be characterized under section 113(a) of Public Law 97-425.

(b) ISSUANCE OF REGULATIONS-

(1) IN GENERAL- Subject to the limitation in paragraph (2), the Administrator shall issue, not later than 6 months after the date of the enactment of this Act, final disposal regulations. Such regulations shall be issued in a rulemaking proceeding conducted under section 553 of title 5, United States Code, except that sections 556 and 557 of such title shall not apply.

(2) LIMITATION- The regulations required by this subsection shall not be applicable to the characterization, licensing, construction, operation, or closure of any site required to be characterized under section 113(a) of Public Law 97-425.

(c) ISSUANCE OF CRITERIA FOR CERTIFICATION OF COMPLIANCE WITH DISPOSAL REGULATIONS-

(1) PROPOSED CRITERIA- Not later than 1 year after the date of the enactment of this Act, the Administrator shall, by rule pursuant to section 553 of title 5, United States Code, propose criteria for the Administrator's certification of compliance with the final disposal regulations, and sections 556 and 557 of such title shall not apply.

(2) FINAL CRITERIA- Not later than 2 years after the date of the enactment of this Act, the Administrator shall, by rule pursuant to section 553 of title 5, United States Code, issue final criteria for the Administrator's certification of compliance with the final disposal regulations, and sections 556 and 557 of such title shall not apply.

(d) DISPOSAL REGULATIONS-

(1) COMPLIANCE WITH DISPOSAL REGULATIONS-

(A) IN GENERAL- The Secretary shall comply at WIPP with the final disposal regulations. Within 7 years of the date of the first receipt of transuranic waste at WIPP, the Secretary shall submit to the Administrator an application for certification of compliance with such regulations.

(B) CERTIFICATION BY ADMINISTRATOR- Within 1 year of receipt of the application under subparagraph (A), the Administrator shall certify, by rule pursuant to section 553 of title 5, United States Code, whether the WIPP facility will comply with the final disposal regulations, and sections 556 and 557 of such title shall not apply.

(C) JUDICIAL REVIEW- Judicial review of the certification of the Administrator under subparagraph (B) shall not be restricted by the provisions of section 221 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2271(c)).

(D) LIMITATION- Any certification of the Administrator under subparagraph (B) may only be made after the application is submitted to the Administrator under subparagraph (A).

(2) FAILURE TO CERTIFY- Except as provided in paragraph (3), if, upon

the expiration of the 10-year period beginning on the date of the first receipt of transuranic waste at WIPP, the Administrator has not certified that the WIPP facility will comply with the final disposal regulations--

(A) the Secretary shall implement the retrieval plan under section 10 and the decommissioning and post-decommissioning plans under section 13;

(B) following implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management; and

(C)(i) no permit or variance issued with respect to test phase activities or disposal operations pursuant to section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924), or other applicable hazardous waste laws, with respect to WIPP, shall remain in effect later than 1 year after implementation of the retrieval plan; and

(ii) all transuranic waste shall be removed from the State unless, prior to the expiration of such 1-year period, a new permit or variance is issued pursuant to section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924), or other applicable hazardous waste laws.

(3) EXTENSION OF DEADLINE- The 10-year period in paragraph (2) may be extended once by the Administrator for not more than 2 years, if the Administrator determines that additional time is necessary for the Administrator to complete the rulemaking under paragraph (1)(B) or for the Administrator's certification to become effective under this subsection.

(e) CONFLICT RESOLUTION- If the State disagrees with the Secretary's application under subsection (d)(1)(A), the State may invoke the conflict resolution provisions of the Agreement.

(f) PERIODIC RECERTIFICATION-

(1) BY SECRETARY- Not later than 5 years after the initial receipt of transuranic waste for disposal at WIPP, and every 5 years thereafter until the end of the decommissioning phase, the Secretary shall submit to the Administrator and the State documentation of continued compliance with the final disposal regulations.

(2) CONCURRENCE BY ADMINISTRATOR- The Administrator shall, not later than 6 months after receiving a submission under paragraph (1), determine whether or not the WIPP facility continues to be in compliance with the final disposal regulations. A determination under this paragraph shall not be subject to rulemaking or judicial review.

(g) ENGINEERED AND NATURAL BARRIERS, ETC- The Secretary shall use both engineered and natural barriers, and waste form modifications, at WIPP to isolate transuranic waste after disposal to the extent necessary to comply with the final disposal regulations.

SEC. 9. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.

(a) IN GENERAL-

(1) APPLICABILITY- Beginning on the date of the enactment of this Act, the Secretary shall comply with respect to WIPP, with--

(A) the regulations issued by the Administrator establishing the generally applicable environmental standards for the management and storage of spent nuclear fuel, high-level radioactive waste, and transuranic radioactive waste and contained in subpart A of part 191 of title 40, Code of Federal Regulations;

(B) the Clean Air Act (40 U.S.C. 7401 et seq.);

(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(D) title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.; commonly referred to as the 'Safe Drinking Water Act');

(E) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(F) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(G) all other applicable Federal laws pertaining to public health and

safety or the environment; and

(H) all regulations promulgated, and all permit requirements, under the laws described in subparagraphs (B) through (G).

(2) PERIODIC OVERSIGHT BY ADMINISTRATOR AND STATE- 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 laws, regulations, and permit requirements described in paragraph (1) to the Administrator, and, with the law described in paragraph (1)(C), to the State.

(3) DETERMINATION BY ADMINISTRATOR OR STATE- The Administrator or the State, as appropriate, shall determine not later than 6 months after receiving a submission under paragraph (2) whether the Secretary is in compliance with the laws, regulations, and permit requirements described in paragraph (1) with respect to WIPP.

(b) DETERMINATION OF NONCOMPLIANCE DURING TEST PHASE-

(1) DETERMINATION BY ADMINISTRATOR- If the Administrator determines at any time during the test phase that the WIPP facility does not comply with any law, regulation, or permit requirement described in subsection (a)(1), the Administrator shall request a remedial plan from the Secretary describing actions the Secretary will take to comply with such law, regulation, or permit requirement.

(2) CONSEQUENCES OF NONCOMPLIANCE- If--

(A) a remedial plan is not received from the Secretary within 6 months of a determination of noncompliance under paragraph (1); or

(B) the Administrator determines, by rule pursuant to section 553 of title 5, United States Code, that a remedial plan requested under paragraph (1) is inadequate to bring the WIPP facility into compliance;

then the Secretary shall implement the retrieval plan under section 10 and the decommissioning and post-decommissioning plans under section 13, and, following implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(c) DETERMINATION OF NONCOMPLIANCE DURING DISPOSAL PHASE AND DECOMMISSIONING PHASE-

(1) DETERMINATION BY THE ADMINISTRATOR- If the Administrator determines at any time during the disposal phase or decommissioning phase that the WIPP facility does not comply with any law, regulation, or permit requirement described in subsection (a)(1), the Administrator shall request a remedial plan from the Secretary describing actions the Secretary will take to comply with such law, regulation, or permit requirement.

(2) CONSEQUENCES OF NONCOMPLIANCE- If--

(A) a remedial plan is not received from the Secretary within 6 months of a determination of noncompliance under paragraph (1); or

(B) the Administrator determines, by rule pursuant to section 553 of title 5, United States Code, that a remedial plan requested under paragraph (1) is inadequate to bring the WIPP facility into compliance;

then the Secretary shall retrieve, to the extent practicable, any transuranic waste and any material contaminated by such waste from underground at WIPP, and implement the decommissioning and post-decommissioning plans under section 13. Following completion of such retrieval and implementation of such plans, the land withdrawal made by section 3(a) shall terminate and the land shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(d) SAVINGS PROVISION- The authorities provided to the Administrator and to the State pursuant to this section are in addition to the enforcement authorities available to the State pursuant to State law and to the Administrator, the State, and any other person, pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (40

U.S.C. 7401 et seq.).

SEC. 10. RETRIEVABILITY.

(a) REQUIREMENT OF RETRIEVABILITY-

(1) IN GENERAL- Transuranic waste emplaced in WIPP for purposes of the test phase shall be retrievable during the test phase, and for such period of time subsequent to the test phase as may be needed to provide for its retrieval in the event that--

(A) the Secretary or the Administrator determines that WIPP does not comply with the final disposal regulations;

(B) the transuranic waste needs to be retrieved for engineering modification or for repackaging for permanent disposal; or

(C) such retrieval is necessary to protect the public health and safety and the environment.

(2) ANNUAL DETERMINATION OF RETRIEVABILITY- Beginning 1 year after the initial emplacement of transuranic waste underground at WIPP, and continuing annually throughout the test phase, the Secretary, after consultation with the Administrator, shall publish in the Federal Register the Secretary's determination of whether all such waste emplaced underground at WIPP remains, and will remain, fully retrievable during the test phase.

(3) ANNUAL DEMONSTRATION OF RETRIEVABILITY- The Secretary shall demonstrate, on an annual basis, in conjunction with the determination required in paragraph (2), that a sample of transuranic waste is retrievable. In making such demonstration, the Secretary shall not take any action to affect the test phase.

(4) FAILURE TO MAINTAIN RETRIEVABILITY- Upon a determination by the Secretary under paragraph (2) that transuranic waste cannot remain retrievable, and that corrective action is not possible, the Administrator and the State may, pursuant to the authorities provided in the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or any other applicable hazardous waste law, take action to ensure the retrieval or removal of all transuranic waste in WIPP.

(b) IMPLEMENTATION OF RETRIEVAL PLAN- The Secretary shall implement the retrieval plan or take corrective action to ensure the retrievability of transuranic waste in the event that a determination is made under subsection (a)(2) that the waste is not or will not otherwise remain retrievable.

(c) CONFLICT RESOLUTION- The State may invoke the conflict resolution provisions of the Agreement if it determines that there is an insufficient basis for the Secretary's annual determination of retrievability or that the demonstration of retrievability does not ensure that transuranic waste will be retrievable.

SEC. 11. MINE SAFETY.

(a) MINE SAFETY AND HEALTH ADMINISTRATION- The Mine Safety and Health Administration of the Department of Labor shall inspect WIPP not less than 4 times each year and in the same manner as it evaluates mine sites under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), and shall provide the results of its inspections to the Secretary. The Secretary shall make the results of such inspections publicly available and shall take necessary actions to ensure the prompt and effective correction of any deficiency, including suspending specific activities as necessary to address identified health and safety deficiencies.

(b) BUREAU OF MINES- The Bureau of Mines of the Department of the Interior shall prepare an annual evaluation of the safety of WIPP.

SEC. 12. BAN ON HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL.

The Secretary shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.

SEC. 13. DECOMMISSIONING OF WIPP.

(a) PLAN FOR WIPP DECOMMISSIONING- Within 5 years after the date of the enactment of this Act, the Secretary shall submit to the Congress, the

State, the Secretary of the Interior, and the Administrator, a plan for the decommissioning of WIPP. In addition to activities required under the Agreement, the plan shall conform to the disposal regulations that apply to WIPP at the time the plan is prepared. The Secretary shall consult with the Secretary of the Interior and the State in the preparation of such plan.

(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING- Within 5 years after the date of the enactment of this Act, the Secretary shall develop a plan for the management and use of the Withdrawal following the decommissioning of WIPP or the termination of the land withdrawal. The Secretary shall consult with the Secretary of the Interior and the State in the preparation of such plan and shall submit such plan to the Congress.

SEC. 14. SAVINGS PROVISIONS.

(a) CAA AND SWDA- No provision of this Act may be construed to supersede or modify the provisions of the Clean Air Act (42 U.S.C. 7401 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(b) EXISTING AUTHORITY OF EPA AND STATE- No provision of this Act may 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--

- (1) the Clean Air Act (42 U.S.C. 7401 et seq.);
- (2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), including all terms and conditions of the No-Migration Determination; or
- (3) any other applicable clean air or hazardous waste law.

SEC. 15. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.

(a) 15T4-Year Authorization- There are authorized to be appropriated to the Secretary for payments to the State \$20,000,000 for each of the 15 fiscal years beginning with the fiscal year in which the transport of transuranic waste to WIPP is initiated.

(b) SUBSEQUENT AUTHORIZATIONS- There are authorized to be appropriated to the Secretary, for payments to the State for any fiscal year after the last fiscal year to which subsection (a) applies, such sums as the Congress may, by law, authorize to be appropriated.

(c) INFLATION ADJUSTMENT-

(1) IN GENERAL- In the case of any fiscal year after the first fiscal year to which subsection (a) applies, the dollar amount specified in such subsection shall be increased or decreased, as the case may be, by an amount equal to--

- (A) such dollar amount; multiplied by
 - (B) the inflation increase or decrease determined under paragraph (2).
- (2) CALCULATION OF INFLATION INCREASE OR DECREASE- For purposes of paragraph (1), the inflation increase or decrease for any fiscal year is the percentage (if any) by which the inflation index for the preceding fiscal year is greater than or less than, as the case may be, the inflation index for the fiscal year prior to the first fiscal year to which subsection (a) applies.

(3) INFLATION INDEX- For purposes of paragraph (2), the inflation index for any fiscal year is the average of the Consumer Price Index (as published by the Department of Labor) for the 12 months in such fiscal year.

(d) ELIGIBLE ASSISTANCE- A portion of the payments under this section--

- (1) shall be made available to units of local government in Lea and Eddy counties in the State; and
- (2) may also be provided for independent environmental assessment and economic studies associated with WIPP.

SEC. 16. TRANSPORTATION.

(a) SHIPPING CONTAINERS- No transuranic waste may be transported by or for the Secretary to or from WIPP, except in packages--

- (1) the design of which has been certified by the Nuclear Regulatory Commission; and
- (2) that have been determined by the Nuclear Regulatory Commission to satisfy its quality assurance requirements.

The determination under paragraph (2) shall not be subject to rulemaking or judicial review.

(b) NOTIFICATION- In addition to activities required pursuant to the Supplemental Stipulated Agreement, prior to any transportation of transuranic waste by or for the Secretary to or from 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 WIPP.

(c) ACCIDENT PREVENTION AND EMERGENCY PREPAREDNESS-

(1) TRAINING-

(A) IN GENERAL- In addition to activities required pursuant to the Supplemental Stipulated Agreement, the Secretary shall, to the extent provided in appropriation Acts, provide technical assistance and funds for the purpose of training public safety officials, and other emergency responders as described in part 1910.120 of title 29, Code of Federal Regulations, in any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from WIPP. Within 30 days of the date of the enactment of this Act, the Secretary shall submit a report to the Congress and to the States and Indian tribes through whose jurisdiction the Secretary plans to transport transuranic waste on the training provided through fiscal year 1992.

(B) ONGOING TRAINING- If determined by the Secretary, in consultation with affected States and Indian tribes, to be necessary and appropriate, training described in subparagraph (A) shall continue after the date of the enactment of this Act until the transuranic waste shipments to or from WIPP have been terminated.

(C) REVIEW OF TRAINING- The Secretary shall periodically review the training provided pursuant to subparagraph (A) 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 part 1910.120 of title 29, 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 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 WIPP; and

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

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

(d) TRANSPORTATION SAFETY PROGRAMS- The Secretary shall, to the extent provided in appropriation Acts, provide in-kind, financial, technical, and other appropriate assistance to any State or Indian tribe through whose jurisdiction the Secretary plans to transport transuranic waste to or from WIPP, for the purpose of WIPP-specific transportation safety programs not otherwise addressed in this section. These programs shall be developed with, and monitored by, the Secretary.

(e) SANTA FE BYPASS- No transuranic waste may be transported from the Los

Alamos National Laboratory to WIPP until--

- (1) an amount of funds sufficient to construct the Santa Fe bypass has been made available to the State;
- (2) the Santa Fe bypass has been completed; or
- (3) the Administrator has made the certification required under section 8(d)(1)(B).

(f) STUDY OF TRANSPORTATION ALTERNATIVES-

(1) IN GENERAL- The Secretary shall conduct a study comparing the shipment of transuranic waste to the WIPP facility by truck and by rail, including the use of dedicated trains, and shall submit a report on the study in accordance with paragraph (2). Such report shall include--

- (A) a consideration of occupational and public risks and exposures, and other environmental impacts;
- (B) a consideration of emergency response capabilities; and
- (C) an estimation of comparative costs.

(2) REPORT- The report required in paragraph (1) shall be submitted to the Congress not later than 1 year after the date of the enactment of this Act.

(g) EMERGENCY RESPONSE MEDICAL TRAINING-

(1) DETERMINATION OF SECRETARY- If the Secretary determines that emergency response medical training for incidents involving transuranic waste being transported to or from WIPP is inadequate, the Secretary shall take immediate action to correct the inadequacies and, if necessary, suspend transportation of such transuranic waste. If the State disagrees with the Secretary's determination under this paragraph, the State may invoke the conflict resolution provisions of the Agreement.

(2) STATE ADVISORY GROUP- The Secretary shall encourage the Governor of the State to appoint, within 30 days after the date of the enactment of this Act, an advisory group of health professionals and other experts in the field to review emergency response medical training programs for incidents involving transuranic waste being transported to or from WIPP. If such advisory group is established--

(A) its purpose shall be to review, within 60 days after its establishment and annually thereafter, the Department of Energy's emergency response medical training programs for incidents involving transuranic waste being transported to or from WIPP, and to report its findings to the State, the Secretary of Labor, acting through the Occupational Safety and Health Administration, and the Secretary; and

(B) the Secretary shall review the findings of the advisory group in consultation with the Secretary of Labor, acting through the Occupational Safety and Health Administration.

SEC. 17. ACCESS TO INFORMATION.

(a) IN GENERAL- The Secretary shall--

(1) provide the State, the National Academy of Sciences, and the EEG with free and timely access to data relating to health, safety, or environmental issues at WIPP;

(2) provide the State and the EEG with preliminary reports relating to health, safety, or environmental issues at WIPP; and

(3) to the extent practicable, permit the State and the EEG to attend meetings relating to health, safety, or environmental issues at WIPP with expert panels and peer review groups.

(b) EVALUATION AND PUBLICATION- The State, the National Academy of Sciences, and 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 regulations, decommissioning, safety analyses, and other activities relating to WIPP.

(c) CONSULTATION AND COOPERATION- The Secretary shall consult and cooperate

with the EEG under the terms of Contract No. DE-AC04-89AL58309 in the performance of its responsibility to conduct an independent technical review and evaluation of WIPP under section 1433 of the National Defense Authorization Act, Fiscal Year 1989 (102 Stat. 2073).

SEC. 18. JUDICIAL REVIEW OF EPA ACTIONS.

A civil action for judicial review of any final action of the Administrator under this Act may be brought only in the United States Court of Appeals for the Tenth Circuit or for the District of Columbia, and shall be brought not later than the 60th day after the date of such final action.

SEC. 19. TECHNOLOGY STUDY.

Within 3 years after the date of the enactment of this Act, the Secretary shall submit to the Congress a study reviewing the technologies that are available and that are being developed for the processing or reduction of volumes of radioactive wastes. The study shall include an identification of technologies involving the use of chemical, physical, and thermal (including plasma) processing techniques.

SEC. 20. STATEMENT FOR PURPOSES OF PUBLIC LAW 96-164.

For purposes of subsection (c) of section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96-164; 93 Stat. 1265), this Act shall be considered to amend such section.

SEC. 21. CONSULTATION AND COOPERATION AGREEMENT.

Nothing in this Act shall affect the Agreement or the Supplemental Stipulated Agreement between the State and the United States Department of Energy except as explicitly stated herein.

SEC. 22. BUY AMERICAN REQUIREMENTS.

(a) COMPLIANCE WITH BUY AMERICAN ACT- No funds appropriated or transferred pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the 'Buy American Act').

(b) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS-

(1) IN GENERAL- In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(2) NOTICE TO RECIPIENTS OF ASSISTANCE- In providing financial assistance under this Act, the Secretary shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by the Congress.

SEC. 23. AUTHORIZATIONS OF APPROPRIATIONS.

(a) FOR ADMINISTRATOR-

(1) IN GENERAL- There are authorized to be appropriated to the Administrator for the purpose of fulfilling the responsibilities of the Administrator under this Act, \$10,000,000 for fiscal year 1992, \$12,000,000 for fiscal year 1993, \$14,000,000 for fiscal year 1994, and such sums as may be necessary for fiscal years 1995 through 2001.

(2) REPORT- The Administrator shall, not later than September 30, 1993, and annually thereafter, issue a report to the Congress on the status of and resources required for the fulfillment of the Administrator's responsibilities under this Act.

(b) TRANSFERS FROM SECRETARY TO ADMINISTRATOR AND SECRETARY OF LABOR-

The Secretary is authorized to transfer from amounts appropriated for environmental restoration and waste management for fiscal years 1992 and 1993, and (to the extent approved in appropriation Acts) for fiscal years 1994 through 2001, such sums as may be necessary to fulfill the

responsibilities of the Administrator under this Act and the Secretary of Labor under paragraphs (4) and (6) of section 6(b).

(c) ACQUISITION OF LEASEHOLD- There are authorized to be appropriated to the Secretary such sums as may be necessary to acquire the Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.