



ENTERED

DAVID H. LEROY  
NEGOTIATOR

## WIPP Library

The Honorable John/Jane Doe  
Governor  
State Capitol, USA

May 3, 1991

Dear Governor Doe:

With this letter, which is being sent at the same time to all Governors and Indian tribal leaders, I want to introduce you to the Office of the Nuclear Waste Negotiator (NWN). I also want to invite any questions you might have regarding NWN and its mission.

Enclosed with this letter is basic information about NWN, including a copy of the legislation that created the Office. Also enclosed are copies of articles on NWN that have appeared recently in several newspapers.

These articles candidly discuss a concern that leaders around the country have raised in meetings with me: the fairness and effectiveness of current methods for siting controversial facilities such as those for storing radioactive waste. For many years, the location of such facilities has been determined by a siting policy which can generally be described as Decide - Announce - Defend. This process often focuses on the technical and scientific qualifications of a particular site and then solicits public comment that compels the siting agency to defend its initial assessment. This policy has often resulted in significant controversy, placing proponents at odds with the host community and other affected parties. The net effect has often been to minimize the host community's own assessment of risks, costs, and benefits while impeding constructive public dialogue and ignoring community values, considerations, and perceptions. The result in many, if not most, instances has been to polarize parts of the host community, create antagonism, and minimize the exchange of credible information upon which cooperation and negotiation can be based.

The Decide - Announce - Defend policy can be contrasted with the approach of NWN. At the heart of our approach is the concept of voluntary participation. While this voluntary approach continues to recognize the need for credible scientific and technical assessments, the process itself is left largely in the control and at the initiative of a prospective host. Emphasis is placed on open and frank dialogue that allows a prospective host to weigh the risks, costs, and benefits as well as to discuss and debate relevant social, political, economic, ecological, health, and ethical considerations.



May 3, 1991

Page two

As the head of NWN, my job is to make resources and information available upon which prospective hosts may make their own judgments about whether to proceed with further discussion and negotiation. To assist me in this task, I have assembled a staff of competent and dedicated individuals.

My role is not to be a proponent for a site. Rather, it is to provide a neutral, open, fair, and credible forum for all interested and affected parties to obtain information and express their views. In performing this role, my staff and I will operate independently of all other government agencies, including the Department of Energy.

I hope that this brief introduction to NWN has been helpful. Within the next few weeks, a member of my staff will contact your office to see if you have any questions or would like additional information.

Sincerely,

David H. Leroy  
Negotiator

cc: Congressional Delegation w/enclosure

Enclosure



Name of Indian Tribal Leader  
Name of Indian Tribe  
Address

May 3, 1991

Dear Name of Tribal Leader:

With this letter, which is being sent at the same time to all Indian tribal leaders and state governors, I want to introduce you to the Office of the Nuclear Waste Negotiator (NWN). I also want to invite any questions you might have regarding NWN and its mission.

Enclosed with this letter is basic information about NWN, including a copy of the legislation that created the Office. Also enclosed are copies of articles on NWN that have appeared recently in several newspapers.

These articles candidly discuss a concern that leaders around the country have raised in meetings with me: the fairness and effectiveness of current methods for siting controversial facilities such as those for storing radioactive waste. For many years, the location of such facilities has been determined by a siting policy which can generally be described as Decide - Announce - Defend. This process often focuses on the technical and scientific qualifications of a particular site and then solicits public comment that compels the siting agency to defend its initial assessment. This policy has often resulted in significant controversy, placing proponents at odds with the host community and other affected parties. The net effect has often been to minimize the host community's own assessment of risks, costs, and benefits while impeding constructive public dialogue and ignoring community values, considerations, and perceptions. The result in many, if not most, instances has been to polarize parts of the host community, create antagonism, and minimize the exchange of credible information upon which cooperation and negotiation can be based.

The Decide - Announce - Defend policy can be contrasted with the approach of NWN. At the heart of our approach is the concept of voluntary participation. While this voluntary approach continues to recognize the need for credible scientific and technical assessments, the process itself is left largely in the control and at the initiative of a prospective host. Emphasis is placed on open and frank dialogue that allows a prospective host to weigh the risks, costs, and benefits as well as to discuss and debate over relevant social, political, economic, ecological, health, and ethical considerations.

May 3, 1991  
Page two

As the head of NWN, my job is to make resources and information available upon which prospective hosts may make their own judgments as to whether to proceed with further discussion and negotiation. To assist me in this task, I have assembled a staff of competent and dedicated individuals.

My role is not to be a proponent for a site. Rather, it is to provide a neutral, open, fair, and credible forum for all interested and affected parties to obtain information and express their views. In performing this role, my staff and I will operate independently of all other government agencies, including the Department of Energy. We will also respect the tribal authority and responsibility to protect the health, safety, and environmental interests of tribal members. This includes treaty-protected interests in resources extending beyond reservation boundaries. We also recognize the importance of not playing tribal interests against the interests of state governments as well as the propriety of treating all tribes and states equally.

I hope that this brief introduction to NWN has been helpful. Within the next few weeks, a member of my staff will contact your office to see if you have any questions or would like additional information.

Sincerely,

David H. Leroy  
Negotiator

Enclosure



David H. Leroy  
Negotiator

Headquarters:  
3050 North Lakeharbor Lane  
Suite 100  
Boise, Idaho 83703  
Mailing Address:  
Boise, Idaho 83777  
208/334-9876  
208/334-9880 (Fax)

Washington Liaison Office:  
1823 Jefferson Place, N.W.  
Washington, D.C. 20036  
202/634-6244  
202/634-6251 (Fax)

Charles B. Lempesis  
Chief of Staff

Putnam Coes  
Deputy Chief of Staff

Patrick Sullivan  
Legislative Affairs

Robert Mussler  
Counsel

Vern Nelson  
Media Affairs

Laura Anthony  
Executive Assistant

Thomas Lien  
Special Assistant

Marilyn Gano  
Executive Assistant

Donna Evans  
Administrative Assistant

Henry Ebert  
Staff Assistant

Brad Hoaglun  
Staff Assistant



# THE NUCLEAR WASTE POLICY ACT OF 1982<sup>1</sup>

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

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

## SHORT TITLE AND TABLE OF CONTENTS

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Definitions.
- Sec. 3. Separability.
- Sec. 4. Territories and possessions.
- Sec. 5. Ocean disposal.
- Sec. 6. Limitation on spending authority.
- Sec. 7. Protection of classified national security information.
- Sec. 8. Applicability.
- Sec. 9. Applicability.

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

Sec. 101. State and affected Indian tribe participation in development of proposed repositories for defense waste.

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

- Sec. 111. Findings and purposes.
- Sec. 112. Recommendation of candidate sites for site characterization.
- Sec. 113. Site characterization.
- Sec. 114. Site approval and construction authorization.
- Sec. 115. Review of repository site selection.
- Sec. 116. Participation of States.
- Sec. 117. Consultation with States and Indian tribes.
- Sec. 118. Participation of Indian tribes.
- Sec. 119. Judicial review of agency actions.
- Sec. 120. Expedited authorizations.
- Sec. 121. Certain standards and criteria.
- Sec. 122. Disposal of spent nuclear fuel.
- Sec. 123. Title of material.
- Sec. 124. Consideration of effect of acquisition of water rights.
- Sec. 125. Termination of certain provisions.

---

<sup>1</sup>This Act consists of the Act of Jan. 7, 1983 (Public Law 97-425; 96 Stat. 2201), as amended by P. L. 100-203 (December 22, 1987). The Act is generally classified to 42 U.S.C. 10101 and following. Bracketed notes at the end of each section indicate the United States Code citation for the reader's convenience.



#### **SUBTITLE B – INTERIM STORAGE PROGRAM**

- Sec. 131. Findings and purposes.
- Sec. 132. Available capacity for interim storage of spent nuclear fuel.
- Sec. 133. Interim at-reactor storage.
- Sec. 134. Licensing of facility expansions and transshipments.
- Sec. 135. Storage of spent nuclear fuel.
- Sec. 136. Interim Storage Fund.
- Sec. 137. Transportation.

#### **SUBTITLE C – MONITORED RETRIEVABLE STORAGE**

- Sec. 141. Monitored retrievable storage.
- Sec. 142. Authorization of monitored retrievable storage.
- Sec. 143. Monitored Retrievable Storage Commission.
- Sec. 144. Survey.
- Sec. 145. Site selection.
- Sec. 146. Notice of disapproval.
- Sec. 147. Benefits agreement.
- Sec. 148. Construction authorization.
- Sec. 149. Financial assistance.

#### **SUBTITLE D – LOW-LEVEL RADIOACTIVE WASTE**

- Sec. 151. Financial arrangements for site closure.

#### **SUBTITLE E – REDIRECTION OF THE NUCLEAR WASTE PROGRAM**

- Sec. 160. Selection of Yucca Mountain site.
- Sec. 161. Siting a second repository.

#### **SUBTITLE F – BENEFITS**

- Sec. 170. Benefits agreements.
- Sec. 171. Content of agreements.
- Sec. 172. Review panel.
- Sec. 173. Termination.

#### **SUBTITLE G – OTHER BENEFITS**

- Sec. 174. Consideration in siting facilities.
- Sec. 175. Report.

#### **SUBTITLE H – TRANSPORTATION**

- Sec. 180. Transportation.
- Sec. 181. Transportation of plutonium by aircraft through United States airspace.

### **TITLE II – RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL**

- Sec. 211. Purpose.
- Sec. 212. Applicability.
- Sec. 213. Identification of sites.
- Sec. 214. Siting research and related activities.
- Sec. 215. Test and evaluation facility siting review and reports.
- Sec. 216. Federal agency actions.
- Sec. 217. Research and development on disposal of high-level radioactive waste.
- Sec. 218. Research and development on spent nuclear fuel.
- Sec. 219. Payments to States and affected Indian tribes.
- Sec. 220. Study of research and development needs for monitored retrievable storage proposal.
- Sec. 221. Judicial review.
- Sec. 222. Research on alternatives for the permanent disposal of high-level radioactive waste.
- Sec. 223. Technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.
- Sec. 224. Subseabed disposal.



Sec. 225. Dry cask storage.

**TITLE III – OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE**

- Sec. 301. Mission plan.
- Sec. 302. Nuclear Waste Fund.
- Sec. 303. Alternate means of financing.
- Sec. 304. Office of Civilian Radioactive Waste Management.
- Sec. 305. Location of test and evaluation facility.
- Sec. 306. Nuclear Regulatory Commission training authorization.

**TITLE IV – NUCLEAR WASTE NEGOTIATOR**

- Sec. 401. Definition.
- Sec. 402. The Office of Nuclear Waste Negotiator.
- Sec. 403. Duties of the Negotiator.
- Sec. 404. Environmental assessment of sites.
- Sec. 405. Site characterization; licensing.
- Sec. 406. Monitored retrievable storage.
- Sec. 407. Environmental impact statement.
- Sec. 408. Administrative powers of the Negotiator.
- Sec. 409. Cooperation of other departments and agencies.
- Sec. 410. Termination of the office.
- Sec. 411. Authorization of appropriations.

**TITLE V – NUCLEAR WASTE TECHNICAL REVIEW BOARD**

- Sec. 501. Definitions.
- Sec. 502. Nuclear Waste Technical Review Board
- Sec. 503. Functions
- Sec. 504. Investigatory powers.
- Sec. 505. Compensation of members.
- Sec. 506. Staff.
- Sec. 507. Support services.
- Sec. 508. Report.
- Sec. 509. Authorization of appropriations.
- Sec. 510. Termination of the Board.

**DEFINITIONS**

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

- (1) The term "Administrator" means the Administrator of the Environmental Protection Agency.
- (2) The term "affected Indian tribe" means any Indian tribe –
  - (A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;
  - (B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.
- (3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:
  - (A) naval reactors development;
  - (B) weapons activities including defense inertial confinement fusion;
  - (C) verification and control technology;
  - (D) defense nuclear materials production;
  - (E) defense nuclear waste and materials by-products management;
  - (F) defense nuclear materials security and safeguards and security investigations; and



- (G) defense research and development.
- (4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 112 [42 U.S.C. 10132] for site characterization, approved by the President under section 112 [42 U.S.C. 10133] for site characterization, or undergoing site characterization under section 113 [42 U.S.C. 10133].
- (5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.
- (6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 [42 U.S.C. 2133, 2134(b)].
- (7) The term "Commission" means the Nuclear Regulatory Commission.
- (8) The term "Department" means the Department of Energy.
- (9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.
- (10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.
- (11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.
- (12) The term "high-level radioactive waste" means —
- (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
  - (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.
- (13) The term "Federal agency" means any Executive agency, as defined in section 105 of title 5, United States Code [5 U.S.C. 105].
- (14) The term "Governor" means the chief executive officer of a State.
- (15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act [43 U.S.C. 1602(c)].
- (16) The term "low-level radioactive waste" means radioactive material that —
- (A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954 [42 U.S.C. 2014(e)(2)]; and
  - (B) the Commission, consistent with existing law, classifies as low-level radioactive waste.
- (17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 304 [42 U.S.C. 10224].
- (18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.
- (19) The term "reservation" means —
- (A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code [18 U.S.C. 1151]; or
  - (B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).
- (20) The term "Secretary" means the Secretary of Energy.
- (21) The term "site characterization" means —
- (A) siting research activities with respect to a test and evaluation facility at a candidate site; and



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

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

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

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

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

(26) The term "Storage Fund" means the Interim Storage Fund established in section 136(c).

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

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

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 302(c) [42 U.S.C. 10222].

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) [42 U.S.C. 10132(b)(1)(B)] on May 27, 1986.

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

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

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

(34) The term "monitored retrievable storage facility" means the storage facility described in section 141(b)(1) [42 U.S.C. 10161(b)(1)].

[42 U.S.C. 10101]

#### SEPARABILITY

**Sec. 3.** If any provision of this Act [42 U.S.C. 10101 et seq.], or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act [42 U.S.C. 10101 et seq.], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[42 U.S.C. 10102]



**Sec. 4.**

**TERRITORIES AND POSSESSIONS**

**Sec. 4.** Nothing in this Act [42 U.S.C. 10101 et seq.] shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980 (48 U.S.C. 1491).<sup>1</sup>  
[42 U.S.C. 10103]

**OCEAN DISPOSAL**

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

**LIMITATION ON SPENDING AUTHORITY**

**Sec. 6.** The authority under this Act [42 U.S.C. 10101 et seq.] to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.  
[42 U.S.C. 10105]

**PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION**

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

**APPLICABILITY**

**Sec. 8.** (a) Atomic energy defense activities. Subject to the provisions of subsection (c), the provisions of this Act [42 U.S.C. 10101 et seq.] shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President.

(1) Not later than 2 years after the date of the enactment of this Act [enacted Jan. 7, 1983], the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I [42 U.S.C. 10131 et seq.] for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I [42 U.S.C. 10131 et seq.] for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 302 [42 U.S.C. 10222].

<sup>1</sup>The text of section 605 is as follows:

"Sec. 605. (a) Prior to the granting of any license, permit, or other authorization or permission by any agency or instrumentality of the United States to any person for the transportation of spent nuclear fuel or high-level radioactive waste for interim long-term, or permanent storage to or for the storage of such fuel or waste on any territory or possession of the United States, the Secretary of the Interior is directed to transmit to the Congress a detailed report on the proposed transportation or storage plan, and no such license, permit, or other authorization or permission may be granted nor may any such transportation or storage occur unless the proposed transportation or storage plan has been specifically authorized by Act of Congress: *Provided*, That the provisions of this section shall not apply to the cleanup and rehabilitation of Bikini and Enewetak Atolls.

"(b) For the purpose of this section the words 'territory or possession' include the Trust Territory of the Pacific Islands and any area not within the boundaries of the several States over which the United States claims or exercises sovereignty."



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

(c) Applicability to certain repositories. The provisions of this Act [42 U.S.C. 10101 et seq.] shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.  
[42 U.S.C. 10107]

#### APPLICABILITY TO TRANSPORTATION LAWS

**Sec. 9.** Nothing in this Act [42 U.S.C. 10101 et seq.] shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.<sup>1</sup>  
[42 U.S.C. 10108]

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

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

**Sec. 101.** (a) Notification to States and affected Indian tribes. Notwithstanding the provisions of section 8 [42 U.S.C. 10107], upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.<sup>2</sup>

(b) Participation of States and affected Indian tribes. Following the receipt of any notification under subsection (a), the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to rights of participation and consultation identical to those provided in sections 115 through 118 [42 U.S.C. 10135-10138], except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) [42 U.S.C. 10136(c), 10138(b)] shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.  
[42 U.S.C. 10121]

<sup>1</sup>Pub. L. 96-295, §301, June 30, 1980, provides as follows:

“Sec. 301. (a) The Nuclear Regulatory Commission, within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

<sup>2</sup>Pub. L. 95-601, § 14(a), Nov. 6, 1978, provides as follows:

“Sec. 14. (a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.”



**SUBTITLE A – REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL**

**FINDINGS AND PURPOSES**

**Sec. 111. (a) Findings.** The Congress finds that –

- (1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;
- (2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;
- (3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;
- (4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;
- (5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this Act [42 U.S.C. 10101 et seq.];
- (6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and
- (7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

**(b) Purposes.** The purposes of this subtitle [42 U.S.C. 10131 et seq.] are –

- (1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;
- (2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;
- (3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and
- (4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

[42 U.S.C. 10131]

**RECOMMENDATION OF CANDIDATE SITES FOR SITE CHARACTERIZATION**

**Sec. 112. (a) Guidelines.** Not later than 180 days after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface



facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

**(b) Recommendation by Secretary to the President.**

**(1)(A)** Following the issuance of guidelines under subsection (a) and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

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

**(C)** Such recommendations under subparagraph (B) shall be consistent with the provisions of section 305 [42 U.S.C. 10225].

**(D)** Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include –

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

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

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

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

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

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

**(E)** The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code [5 U.S.C. 701 et seq.], and section 119 [42 U.S.C. 10139]. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

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

**(G)** Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

**(2)** Before nominating any site the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 113(b)(1) [42 U.S.C. 10133(b)(1)].

**(3)** In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress upon the date of enactment of this Act [enacted Jan. 7, 1983] or (ii) the Secretary certifies that such available information from other



sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this Act [42 U.S.C. 10101 et seq.] or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) **Presidential review of recommended candidate sites.**

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) **Preliminary activities.** Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act [42 U.S.C. 4332(2)(E), (F)].

(e) [Redesignated]

(f) [Deleted]

[42 U.S.C. 10132]

#### SITE CHARACTERIZATION

**Sec. 113.** (a) In general. The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) and section 112(b)(2) [42 U.S.C. 10132(b)(2)] and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under section 112(b)(1).

(b) **Commission and States.**

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment —

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include —

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;



(iv) criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a) [42 U.S.C. 10132(a)]; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions.

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) In conducting site characterization activities —

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site —

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall —

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under subtitle F [42 U.S.C. 10173 et seq.] with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(4) [Deleted]

(d) Preliminary activities. Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], or require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act [42 U.S.C. 4332(2)(E), (F)].

[42 U.S.C. 10133]



SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

**Sec. 114. (a) Hearings and Presidential recommendation.**

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 113 [42 U.S.C. 10133], the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 113 [42 U.S.C. 10133] and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

- (A) a description of the proposed repository, including preliminary engineering specifications for the facility;
- (B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;
- (C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;
- (D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;
- (E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;
- (F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;
- (G) such other information as the Secretary considers appropriate; and
- (H) any impact report submitted under section 116(c)(2)(B) [42 U.S.C. 10136(c)(2)(B)] by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act [42 U.S.C. 4332(2)(E), (F)].

(b) Submission of application. If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 115 [42 U.S.C. 10135], the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site



designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application. Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

- (1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;
- (2) any matters of contention regarding such application; and
- (3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action. The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (c)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to subtitle C of this Act, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule.

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement.

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.



(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.].

(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 [42 U.S.C. 5841 et seq.].

(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

[42 U.S.C. 10134]

#### REVIEW OF REPOSITORY SITE SELECTION

**Sec. 115.** (a) **Definition.** For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at -- for a repository, with respect to which a notice of disapproval was submitted by -- on --". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) **State or Indian tribe petitions.** The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 114 [42 U.S.C. 10134], unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118 [42 U.S.C. 10136, 10138]. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) **Congressional review of petitions.** If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 [42 U.S.C. 10136, 10138] after a recommendation for approval of such site is made by the President under section 114 [42 U.S.C. 10134], such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) **Procedures applicable to the Senate.**

(1) The provisions of this subsection are enacted by the Congress --

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 116 or 118 [42 U.S.C. 10136, 10138], a resolution of repository siting approval shall be introduced (by request) in the Senate by



the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

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

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

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

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

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

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

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

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

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

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

(e) Procedures applicable to the House of Representatives.

(1) The provisions of this subsection are enacted by the Congress —

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and



(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

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

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

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

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

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

(f) Computation of days. For purposes of this section —

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) and the 60-day period referred to in subsections (d) and (e).

(g) Information provided to Congress. In considering any notice of disapproval submitted to the Congress under section 116 or 118 [42 U.S.C. 10136, 10138], the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

[42 U.S.C. 10135]

#### PARTICIPATION OF STATES

**Sec. 116.** (a) Notification of States and affected tribes. The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after the date of enactment of this Act [enacted Jan. 7, 1983]. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this title [42 U.S.C. 10121 et seq.], the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions.

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any



reference in this subtitle [42 U.S.C. 10131 et seq.] to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114 [42 U.S.C. 10134]. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

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

(c) Financial Assistance.

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 117 [42 U.S.C. 10137] or authorized by written agreement entered into pursuant to section 117(c) [42 U.S.C. 10137(c)]. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government –

(i) to review activities taken under this subtitle with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 113(b) [42 U.S.C. 10133(b)].

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth –

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation



of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government. (B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following —

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 115 [42 U.S.C. 10135]; or

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

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for —

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under title IV.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

(d) Additional notification and consultation. Whenever the Secretary is required under any provision of this Act [42 U.S.C. 10101 et seq.] to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

[42 U.S.C. 10136]

#### CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

**Sec. 117.** (a) Provision of information.

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this subtitle [42 U.S.C. 10131 et seq.], and shall not renew such activities until the Governor or legislature of such



State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation. In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 112(c) [42 U.S.C. 10132(c)], and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle [42 U.S.C. 10131 et seq.], the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement. Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c) [42 U.S.C. 10132(c)], or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) [42 U.S.C. 10136(a)] to the Secretary, whichever first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress. Such written agreement shall specify procedures –

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

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

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

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

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the



**Sec. 118.**

formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative. The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

[42 U.S.C. 10137]

**PARTICIPATION OF INDIAN TRIBES**

**Sec. 118.** (a) Participation of Indian tribes in repository siting decisions. Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114 [42 U.S.C. 10134]. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance.

(1) The Secretary shall make grants to each affected tribe notified under section 116(a) [42 U.S.C. 10136(a)] for the purpose of participating in activities required by section 117 [42 U.S.C. 10137] or authorized by written agreement entered into pursuant to section 117(c) [42 U.S.C. 10137(c)]. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 112(c) [42 U.S.C. 10132(c)]. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe –

(i) to review activities taken under this subtitle [42 U.S.C. 10131 et seq.] with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle [42 U.S.C. 10131 et seq.] with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.



(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 112(c) [42 U.S.C. 10132(c)] an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5)(A) An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following —

- (i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;
- (ii) the date on which such site is disapproved under section 115 [42 U.S.C. 10135];
- (iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site; or
- (iv) the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987];

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 112(c) [42 U.S.C. 10132(c)] and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2)<sup>1</sup> with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2)<sup>2</sup> to such Indian tribe, except for —

- (i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and
- (ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 302 [42 U.S.C. 10222].  
[42 U.S.C. 10138]

#### JUDICIAL REVIEW OF AGENCY ACTIONS

#### Sec. 119. (a) Jurisdiction of United States Courts of Appeals.

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action —

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this subtitle [42 U.S.C. 10131 et seq.];

<sup>1</sup>So in original. Reference probably should be to paragraph (3).

<sup>2</sup>So in original. Reference probably should be to paragraph (1), (2), or (3).



## Sec. 120.

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

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

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] with respect to any action under this subtitle [42 U.S.C. 10131 et seq.], or as required under section 135(c)(1) [42 U.S.C. 10155(c)(1)], or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 112(b)(1) or 135(c)(2) [42 U.S.C. 10132(b)(1), 10155(c)(2)]; or

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

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

(b) *adline* for commencing action. A civil action for judicial review described under subsection (a)(1) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

[42 U.S.C. 10139]

### EXPEDITED AUTHORIZATIONS

#### Sec. 120. (a) Issuance of authorizations.

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this subtitle [42 U.S.C. 10131 et seq.] requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) *Terms of authorizations.* Any authorization issued or granted pursuant to subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

[42 U.S.C. 10140]

### CERTAIN STANDARDS AND CRITERIA

Sec. 121. (a) *Environmental Protection Agency standards.* Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) *Commission requirements and criteria.*

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.], in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.



(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

(2) For purposes of this Act [42 U.S.C. 10101 et seq.], nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement. The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act [42 U.S.C. 4332(2)(E), (F)].

[42 U.S.C. 10141]

#### DISPOSAL OF SPENT NUCLEAR FUEL

**Sec. 122.** Notwithstanding any other provision of this subtitle [42 U.S.C. 10131 et seq.], any repository constructed on a site approved under this subtitle [42 U.S.C. 10131 et seq.] shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 114 [42 U.S.C. 10134(b)-(d)].

[42 U.S.C. 10142]

#### TITLE TO MATERIAL

**Sec. 123.** Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this subtitle [42 U.S.C. 10131 et seq.] shall constitute a transfer to the Secretary of title to such waste or spent fuel.

[42 U.S.C. 10143]

#### CONSIDERATION OF EFFECT OF ACQUISITION OF WATER RIGHTS

**Sec. 124.** The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

[42 U.S.C. 10144]

#### TERMINATION OF CERTAIN PROVISIONS

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

[42 U.S.C. 10145]

### SUBTITLE B – INTERIM STORAGE PROGRAM

#### FINDINGS AND PURPOSES

**Sec. 131.** (a) Findings. The Congress finds that –

(1) the persons owning and operating civilian nuclear power reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and



(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this subtitle, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) Purposes. The purposes of this subtitle [42 U.S.C. 10151 et seq.] are —

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this subtitle [42 U.S.C. 10151 et seq.], for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

[42 U.S.C. 10151]

#### AVAILABLE CAPACITY FOR INTERIM STORAGE OF SPENT NUCLEAR FUEL

**Sec. 132.** The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with —

(1) the protection of the public health and safety, and the environment;

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

(5) the views of the population surrounding such reactor.

[42 U.S.C. 10152]

#### INTERIM AT REACTOR STORAGE

**Sec. 133.** The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) or use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

[42 U.S.C. 10153]

#### LICENSING OF FACILITY EXPANSIONS AND TRANSHIPMENTS

**Sec. 134.** (a) Oral argument. In any Commission hearing under section 189 of the Atomic Energy Act of 1954 [42 U.S.C. 2239] on an application for a license, or for an amendment to an existing license, filed after the date of the enactment of this Act [enacted Jan. 7, 1983], to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing.

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



- (A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and
- (B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.
- (2) In making a determination under this subsection, the Commission —
- (A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and
- (B) shall not consider —
- (i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered;
- or
- (ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.
- (3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] before December 31, 2005.
- (4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.
- (c) Judicial review. No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless —
- (1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and
- (2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.
- [42 U.S.C. 10154]

#### STORAGE OF SPENT NUCLEAR FUEL

#### Sec. 135. (a) Storage capacity.

- (1) Subject to section 8 [42 U.S.C. 10107], the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:
- (A) use of available capacity at one or more facilities owned by the Federal Government on the date of the enactment of this Act [enacted Jan. 7, 1983], including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not —
- (i) render such facilities subject to licensing under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.]; or
- (ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], if such facility is already being used, or has previously been used, for such storage or for any similar purpose;
- (B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person



**Sec. 135.**

or at any site owned by the Federal Government on the date of enactment of this Act [enacted Jan. 7, 1983];

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 136(a) [42 U.S.C. 10156(a)], and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term "facility" means any building or structure.

**(b) Contracts.**

(1) Subject to the capacity limitation established in subsections (a)(1) and (d) the Secretary shall offer to enter into, and may enter into, contracts under section 136(a) [42 U.S.C. 10156(a)] with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that —

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

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

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

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

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

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

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

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

**(c) Environmental review.**

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

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility



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

- (i) an estimate of the amount of storage capacity to be made available at such site;
- (ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;
- (iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;
- (iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;
- (v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;
- (vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and
- (vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code [5 U.S.C. 701 et seq.]. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 119 [42 U.S.C. 10139].

(d) Review of sites and State participation.

(1) In carrying out the provisions of this subtitle [42 U.S.C. 10151 et seq.] with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 [this section] to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.



(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

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

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

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 [42 U.S.C. 10135(d)-(f)] and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at --, with respect to which a notice of disapproval was submitted by -- on --.". The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and<sup>1</sup> legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last

<sup>1</sup>So in original.



blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 [42 U.S.C. 10135(d)-(f)] to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

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

(e) Limitations. Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this Act [42 U.S.C. 10101 et seq.] is available for disposal of such spent nuclear fuel.

(f) Report. The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1982].

(g) Criteria for determining adequacy of available storage capacity. Not later than 90 days after the date of the enactment of this Act [enacted Jan. 7, 1983], the Commission pursuant to section 553 of the Administrative Procedures Act,<sup>2</sup> shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

(h) Application. Notwithstanding any other provision of law, nothing in this Act [42 U.S.C. 10101 et seq.] shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act [enacted Jan. 7, 1983].

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

[42 U.S.C. 10155]

#### INTERIM STORAGE FUND

#### Sec. 136. (a) Contracts.

(1) During the period following the date of the enactment of this Act [enacted Jan. 7, 1983], but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate

<sup>2</sup>So in original. Reference probably should be to section 553 of title 5, United States Code.



or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this subtitle: *Provided, however,* That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 135(a) [42 U.S.C. 10155(a)]. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after the date of the enactment of this Act [enacted Jan. 7, 1983], submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this subtitle [42 U.S.C. 10151 et seq.] shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this subtitle [42 U.S.C. 10151 et seq.] with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle [42 U.S.C. 10151 et seq.].

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 137 [42 U.S.C. 10157], nothing in this or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) *Limitation.* No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code [5 U.S.C. 101, 102], may be stored by the Secretary in any storage capacity provided under this subtitle [42 U.S.C. 10151 et seq.] unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) *Establishment of Interim Storage Fund.* There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (c),<sup>1</sup> which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on the date of the enactment of this Act [enacted Jan. 7, 1983] for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) *Use of Storage Fund.* The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this subtitle [42 U.S.C. 10151 et seq.], including—

<sup>1</sup>So in original. Reference should be to subsections (a), (b), and (f).

<sup>2</sup>So in original. Reference probably should be to subsection (f).



- (1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this subtitle [42 U.S.C. 10151 et seq.];
  - (2) the administrative cost of the interim storage program;
  - (3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 135 [42 U.S.C. 10155];
  - (4) the cost of transportation of spent nuclear fuel; and
  - (5) impact assistance as described in subsection (e).
- (e) Impact assistance.
- (1) Beginning the first fiscal year which commences after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional boundaries of such government or governments and authorized under this subtitle [42 U.S.C. 10151 et seq.]: *Provided, however,* That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less;
  - (2) Payments made available to States and units of local government pursuant to this section shall be —
    - (A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and
    - (B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this title [42 U.S.C. 10121 et seq.], and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.
  - (3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.
  - (4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).
  - (5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement establishment of storage capacity authorized under this subtitle [42 U.S.C. 10151 et seq.] in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.
  - (6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on the date of the enactment of this subsection [enacted Jan. 7, 1983], and any other unit of government below the State level which is a unit of general government as determined by the Secretary.
- (f) Administration of Storage Fund.
- (1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.
  - (2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code [31 U.S.C. 1101 et seq.]. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.
  - (3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States —
    - (A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and



**Sec. 137.**

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

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code [31 U.S.C. 1511 et seq.].

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle [31 U.S.C. 10151 et seq.], the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code [31 U.S.C. 3101 et seq.], and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

[42 U.S.C. 10156]

**TRANSPORTATION**

**Sec. 137. (a)**

(1) Transportation of spent nuclear fuel under section 136(a) [42 U.S.C. 10136(a)] shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this Act [42 U.S.C. 10101 et seq.], shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

[42 U.S.C. 10157]

**SUBTITLE C—MONITORED RETRIEVABLE STORAGE**

**MONITORED RETRIEVABLE STORAGE**

**Sec. 141. (a) Findings.** The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;



- (2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;
- (3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;
- (4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and
- (5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this Act [42 U.S.C. 10101 et seq.] should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.
- (b) Submission of proposal by Secretary.
- (1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—
- (A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;
- (B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;
- (C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and
- (D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.
- (2) Such proposal shall include—
- (A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;
- (B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;
- (C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and
- (D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this Act [42 U.S.C. 10101 et seq.].
- (3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.
- (4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (b)(1).<sup>1</sup> The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.
- (c) Environmental impact statements.
- (1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)]. The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environ-

<sup>1</sup>So in original. Reference probably should be to paragraph (1).



mental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

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

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

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

(f) Impact assistance.

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

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

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

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

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

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302(c) [42 U.S.C. 10222(c)] and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation. No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 112 [42 U.S.C. 10132]. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes. Any facility authorized pursuant to this section shall be subject to the provisions of sections 115, 116(a), 116(b), 116(d), 117, and 118 [42 U.S.C. 10135, 10136(a), (b), (d), 10137, 10138]. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 [42 U.S.C. 10135-10138] to a repository shall be considered to refer to a monitored retrievable storage facility.

[42 U.S.C. 10161]

#### AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

**Sec. 142.** (a) Nullification of Oak Ridge siting proposal. The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee,



is annulled and revoked. In carrying out the provisions of sections 144 and 145 [42 U.S.C. 10164, 10165], the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization. The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149 [42 U.S.C. 10163-10169]. [42 U.S.C. 10162]

#### MONITORED RETRIEVABLE STORAGE COMMISSION

##### Sec. 143. (a) Establishment.

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987] from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall —

- (i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;
- (ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;
- (iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and
- (iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on —

- (A) repository design and construction;
- (B) waste package design, fabrication and standardization;
- (C) waste preparation;
- (D) waste transportation systems;
- (E) the reliability of the national system for the disposal of radioactive waste;
- (F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and
- (G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.



**Sec. 144.**

- (ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.
- (B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.
- (ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.
- (iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.
- (iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.
- (C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

[42 U.S.C. 10163]

**SURVEY**

**Sec. 144.** After the MRS Commission submits its report to the Congress under section 143, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would –

- (1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;
- (2) minimize the impacts of transportation and handling of such fuel and waste;
- (3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;
- (4) impose minimal adverse effects on the local community and the local environment;
- (5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;
- (6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and
- (7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

[42 U.S.C. 10164]

**SITE SELECTION**

**Sec. 145.** (a) In general. The Secretary may select the site evaluated under section 144 [42 U.S.C. 10164] that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

(b) Limitation. The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a) [42 U.S.C. 10164(a)].

(c) Site specific activities. The Secretary may conduct such site specific activities at each site surveyed under section 144 [42 U.S.C. 10164] as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment. Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)]. The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information



regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection.

(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection. The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) Limitation. No monitored retrievable storage facility authorized pursuant to section 142(b) [42 U.S.C. 10162(b)] may be constructed in the State of Nevada. [42 U.S.C. 10165]

#### NOTICE OF DISAPPROVAL

Sec. 146. (a) In general. The selection of a site under section 145 [42 U.S.C. 10165] shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 [42 U.S.C. 10165] shall not be effective except as provided under section 115(c) [42 U.S.C. 10135(c)].

(b) References. For purposes of carrying out the provisions of this subsection, references in section 115(c) [42 U.S.C. 10135(c)] to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) [42 U.S.C. 10136(b) or 10138(a)] shall be considered to refer to a notice of disapproval under this section. [42 U.S.C. 10166]

#### BENEFITS AGREEMENT

Sec. 147. Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145 [42 U.S.C. 10165], the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170 [42 U.S.C. 10173]. [42 U.S.C. 10167]

#### CONSTRUCTION AUTHORIZATION

Sec. 148. (a) Environmental impact statement.

(1) Once the selection of a site is effective under section 146 [42 U.S.C. 10166], the requirements of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1) [42 U.S.C. 10161(b)(1)].

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) [42 U.S.C. 10161(b)(1)] in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b) [42 U.S.C. 10162(b)].

(b) Application for construction license. Once the selection of a site for a monitored retrievable storage facility is effective under section 146 [42 U.S.C. 10166], the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

(c) Licensing. Any monitored retrievable storage facility authorized pursuant to section 142(b) [42 U.S.C. 10162(b)] shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 [42



U.S.C. 5842(3)]. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1) [42 U.S.C. 10161(b)(1)].

(d) Licensing conditions. Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that —

- (1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d) [42 U.S.C. 10135(d)];
- (2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;
- (3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and
- (4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

[42 U.S.C. 10168]

#### FINANCIAL ASSISTANCE

Sec. 149. The provisions of section 116(c) or 118(b) [42 U.S.C. 10136(c) or 10138(b)] with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

[42 U.S.C. 10169]

#### SUBTITLE D — LOW-LEVEL RADIOACTIVE WASTE

##### FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE

Sec. 151. (a) Financial arrangements.

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 [42 U.S.C. 2231 et seq.], such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021], by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on the date of the enactment of this Act [enacted Jan. 7, 1982] prior to termination of such licenses.

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

(b) Title and custody.

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

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

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



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

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

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

[42 U.S.C. 10171]

## SUBTITLE E – REDIRECTION OF THE NUCLEAR WASTE PROGRAM

### SELECTION OF YUCCA MOUNTAIN SITE

**Sec. 160.** (a) In general.

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170 [42 U.S.C. 10173].

[42 U.S.C. 10172]

### SITING A SECOND REPOSITORY

**Sec. 161.** (a) Congressional action required. The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

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

(c) Termination of granite research. Not later than 6 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment [enacted Dec. 22, 1987] designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria. In the event that the Secretary at any time after such date of enactment [enacted Dec. 22, 1987] considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 112) such potentially disqualifying factors as –

(1) seasonal increases in population;

(2) proximity to public drinking water supplies, including those of metropolitan areas; and

(3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

[42 U.S.C. 10172a]

## SUBTITLE F – BENEFITS

### BENEFITS AGREEMENTS

**Sec. 170.** (a) In general.

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence



**Sec. 171.**

of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this subtitle may be made available only in accordance with a benefits agreement under this section.

(b) Amendment. A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173 [42 U.S.C. 10173c].

(c) Agreement with Nevada. The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage. The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation. Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review. Decisions of the Secretary under this section are not subject to judicial review.  
[42 U.S.C. 10173]

**CONTENT OF AGREEMENTS**

**Sec. 171. (a) In general.**

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 [42 U.S.C. 10173] in accordance with the following schedule:

**BENEFITS SCHEDULE**  
(amounts in \$ millions)

<b>Event</b>	<b>MRS</b>	<b>Repository</b>
(A) Annual payments prior to first spent fuel receipt:	5	10
(B) Upon first spent fuel receipt:	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility:	10	20

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

(A) "MRS" means a monitored retrievable storage facility,

(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

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

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment



under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

(6) Except as provided in paragraph (7), the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

(b) Contents. A benefits agreement under section 170 [42 U.S.C. 10173] shall provide that—

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

(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3) [42 U.S.C. 10136(c)(1)(B)(ii), (c)(2), 10138(b)(2)(A)(ii), (b)(3)].

(c) The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 170 [42 U.S.C. 10173] shall constitute a commitment by the United States to make payments in accordance with such agreement.

[42 U.S.C. 10173a]

#### REVIEW PANEL

**Sec. 172.** (a) In general. The Review Panel required to be established by section 171(b)(1) of this Act shall consist of a Chairman selected by the Secretary in consultation with the Governor of the State or governing body of the Indian tribe, as appropriate, that is party to such agreement and 6 other members as follows:

(1) 2 members selected by the Governor of such State or governing body of such Indian tribe;

(2) 2 members selected by units of local government affected by the repository or monitored retrievable storage facility;

(3) 1 member to represent persons making payments into the Waste Fund, to be selected by the Secretary; and

(4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms.

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties. The Review Panel shall—

(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;



**Sec. 173.**

- (3) recommend corrective actions to the Secretary;
  - (4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and
  - (5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.
- (d) Information. The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.
- (e) Federal Advisory Committee Act. The requirements of the Federal Advisory Committee Act [5 U.S.C. Appx.] shall not apply to a Review Panel established under this title.  
[42 U.S.C. 10173b]

**TERMINATION**

- Sec. 173.** (a) In general. The Secretary may terminate a benefits agreement under this title if—
- (1) the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or
  - (2) the Secretary determines that the Commission cannot license the facility within a reasonable time.
- (b) Termination by State or Indian tribe. A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.
- (c) Decisions of the Secretary. Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.  
[42 U.S.C. 10173c]

**SUBTITLE G—OTHER BENEFITS**

**CONSIDERATION IN SITING FACILITIES**

- Sec. 174.** The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.  
[42 U.S.C. 10174]

**REPORT**

- Sec. 175.** (a) In general. Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171 [42 U.S.C. 10173a], and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.
- (b) Impacts to be considered. Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—
- (1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;
  - (2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;
  - (3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;
  - (4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;
  - (5) medical care, including emergency services and hospitals;
  - (6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;
  - (7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;
  - (8) vocational training and employment services;



- (9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;
- (10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;
- (11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;
- (12) availability of energy;
- (13) tourism and economic development, including the potential loss of revenue and future economic growth; and
- (14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

[42 U.S.C. 10174a]

## SUBTITLE H – TRANSPORTATION

### TRANSPORTATION

**Sec. 180.** (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purpose by the Commission.

(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

(c) The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

[42 U.S.C. 10175]

### TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIRSPACE

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

(b) Responsibilities of the Nuclear Regulatory Commission –

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

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

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

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

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



- (4) **Evaluation.** The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 [42 U.S.C. 5841 et seq.] and subsection (a) in accordance with the National Environmental Policy Act of 1969 [83 Stat. 852; 42 U.S.C. 4321 et seq.] and all other applicable law.
- (c) **Content of certification.** A certification referred to in subsection (a) with respect to a container shall include —
- (1) the determination of the Nuclear Regulatory Commission as to the safety of such container;
  - (2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and
  - (3) a statement that the container did not rupture or release its contents into the environment during testing.
- (d) **Design of testing procedures.** The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.
- (e) **Testing results: reports and public disclosure.** The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.
- (f) **Alternative routes and means of transportation.** With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.
- (g) **Inapplicability to medical devices.** Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.
- (h) **Inapplicability to military uses.** Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.
- (i) **Inapplicability to previously certified containers.** This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 [89 Stat. 413; 42 U.S.C. 5841 note].
- (j) **Payment of costs.** All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

## **TITLE II — RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL**

### **PURPOSE**

**Sec. 211.** It is the purpose of this title [42 U.S.C. 10191 et seq.]—

- (1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;
- (2) to authorize the Secretary, pursuant to this title [42 U.S.C. 10191 et seq.]—
  - (A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and
  - (B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and



(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.  
[42 U.S.C. 10191]

#### APPLICABILITY

**Sec. 212.** The provisions of this title [42 U.S.C. 10191 et seq.] are subject to section 8 [42 U.S.C. 10107] and shall not apply to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.  
[42 U.S.C. 10192]

#### IDENTIFICATION OF SITES

**Sec. 213. (a) Guidelines.** Not later than 6 months after the date of the enactment of this Act [enacted Jan. 7, 1983] and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, United States Code [5 U.S.C. 553], general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this title [42 U.S.C. 10191 et seq.].

(b) Site identification by the Secretary.

(1) Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], and following promulgation of guidelines under subsection (a), the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on the date of the enactment of this Act [enacted Jan. 7, 1983] for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this title [42 U.S.C. 10191 et seq.]. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

- (A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a);
- (B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;
- (C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;
- (D) a description of the decision process by which such site was recommended; and
- (E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such



**Sec. 214.**

site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 302(d) [42 U.S.C. 10222(d)] may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

[42 U.S.C. 10193]

**SITING RESEARCH AND RELATED ACTIVITIES**

**Sec. 214. (a)** In general. Not later than 30 months after the date on which the Secretary completes the identification of sites under section 213 [42 U.S.C. 10193], the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 218 [42 U.S.C. 10198].<sup>1</sup> The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 302(d) [42 U.S.C. 10222(d)] may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

**(b)** Public meetings and environmental assessment. Not later than 6 months after the date on which the Secretary completes the identification of sites under section 213 [42 U.S.C. 10193], and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

**(c)** Restrictions. Except as provided in section 218 [42 U.S.C. 10198]<sup>1</sup> with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a) —

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

**(d)** Title to material. The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 302 [42 U.S.C. 10222(a), (b)] for the disposal of such material.

[42 U.S.C. 10194]

**TEST AND EVALUATION FACILITY SITING REVIEW AND REPORTS**

**Sec. 215. (a)** Consultation and cooperation. The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 213 [42 U.S.C. 10193] shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term "process of consultation and cooperation" means a methodology —

(1) by which the Secretary —

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

<sup>1</sup>So in original. Reference probably should be to section 217.



(b) **Written agreements.** The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

- (1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;
- (2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;
- (3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;
- (4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and
- (5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) **Limitation.** Except as specifically provided in this section, nothing in this title [42 U.S.C. 10195 et seq.] is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.  
[42 U.S.C. 10195]

#### FEDERAL AGENCY ACTIONS

**Sec. 216. (a) Cooperation and coordination.** Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this title and the mission plan under section 301 [42 U.S.C. 10221].

(b) **Environmental review.**

(1) No action of the Secretary or any other Federal agency required by this title or [42 U.S.C. 10191 et seq.] section 301 [42 U.S.C. 10221] with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], or to require the preparation of environmental reports, except as otherwise specifically provided for in this title [42 U.S.C. 10191 et seq.].

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

[42 U.S.C. 10196]

#### RESEARCH AND DEVELOPMENT ON DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

**Sec. 217. (a) Purpose.** Not later than 64 months after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214 [42 U.S.C. 10194], as part of and as an extension of siting research activities of such site under such section [42 U.S.C. 10194], the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

- (1) to supplement and focus the repository site characterization process;
- (2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;
- (3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 212 [42 U.S.C. 10192];<sup>1</sup>

<sup>1</sup> So in original. Reference probably should be to section 214.



- (4) to validate, under actual conditions, the scientific models used in the design of a repository;
  - (5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;
  - (6) to supplement the siting data, the generic and specific geological characteristics developed under section 214 [42 U.S.C. 10194] relating to isolating disposal materials in the physical environment of a repository;
  - (7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and
  - (8) to establish operating capability without exposing workers to excessive radiation.
- (b) Design. The Secretary shall design each test and evaluation facility—
- (1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;
  - (2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and
  - (3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.
- (c) Operation.
- (1) Not later than 88 months after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 301 [42 U.S.C. 10221], for purposes of—
    - (A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;
    - (B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;
    - (C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;
    - (D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;
    - (E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;
    - (F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—
      - (i) seismic events leading to the coupling of aquifers through the test and evaluation facility;
      - (ii) thermal pulses significantly greater than the maximum calculated; and
      - (iii) human intrusion creating a direct pathway to the biosphere; and
    - (G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Island nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.
  - (2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.
- (d) Use of existing Department facilities. During the conducting of siting research activities under section 214 [42 U.S.C. 10194] and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on the date of the enactment of this Act [enacted Jan. 7, 1983] for the conducting of generically applicable tests regarding packaging, handling,



and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers. The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this Act [42 U.S.C. 10101 et seq.], or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

(f) Role of Commission.

(1)(A) Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subtitle, for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 301 [42 U.S.C. 10221]; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 305 [42 U.S.C. 10225], the test and evaluation facility, and the facilities authorized in section 217 [this section], shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 202 of the Energy Reorganization Act of 1974 [42 U.S.C. 5842].

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review. The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under section 217(a) [subsec. (a) of this section]. Nothing in this subsection may be construed to limit siting research activities conducted under section 214 [42 U.S.C. 10194]. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations.

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) determined by the Secretary to be useful in carrying out the purposes of this Act [42 U.S.C. 10101 et seq.].

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

[42 U.S.C. 10197]



RESEARCH AND DEVELOPMENT ON SPENT NUCLEAR FUEL

**Sec. 218. (a) Demonstration and cooperative programs.** The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 [42 U.S.C. 10194] at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b), the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies; spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

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

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

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

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance utility-provided, at-reactor storage capabilities, if authorized in any other provision of this Act [42 U.S.C. 10101 et seq.] or in any other provision of law.

**(c) Dry storage research and development.**

(1) The consultative and technical assistance referred to in subsection (b)(2) may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on the date of the enactment of this Act [enacted Jan. 7, 1983]. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 135 [42 U.S.C. 10155], the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 135 [42 U.S.C. 10155]. Such spent nuclear fuel shall not be subject to the provisions of section 135(e) [42 U.S.C. 10155(e)].

**(d) Funding.** The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a), as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 136 [42 U.S.C. 10156].

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

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



(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.  
[42 U.S.C. 10198]

#### PAYMENTS TO STATES AND INDIAN TRIBES

**Sec. 219.** (a) **Payments.** Subject to subsection (b), the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 215 [42 U.S.C. 10195]. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 215 [42 U.S.C. 10195] with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed \$3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 217(h) [42 U.S.C. 10197(h)]. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 213 [42 U.S.C. 10193], or to an affected Indian tribe where the potential site has been identified under such section [42 U.S.C. 10193].

(b) **Limitation.** The Secretary shall make any payment to a State under subsection (a) only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 215 [42 U.S.C. 10195]. Annual payments shall be prorated on a 365-day basis to the specified dates.  
[42 U.S.C. 10199]

#### STUDY OF RESEARCH AND DEVELOPMENT NEEDS FOR MONITORED RETRIEVABLE STORAGE PROPOSAL

**Sec. 220.** Not later than 6 months after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 141(b) [42 U.S.C. 10161(b)] with respect to a monitored retrievable storage facility.  
[42 U.S.C. 10200]

#### JUDICIAL REVIEW

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

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

**Sec. 222.** The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.  
[42 U.S.C. 10202]

#### TECHNICAL ASSISTANCE TO NON-NUCLEAR WEAPON STATES IN THE FIELD OF SPENT FUEL STORAGE AND DISPOSAL

**Sec. 223.** (a) It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) (1) Within 90 days of enactment of this Act [enacted Jan. 7, 1983], the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii)



**Sec. 224.**

consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

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

(c) Following publication of the annual joint notice referred to in subsection (b), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) For the purposes of this subsection,<sup>1</sup> the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons [(21 U.S.C. 438)] [unclassified].

(f) Nothing in this subsection shall authorize the Department or the Commission to take any action not authorized under existing law.

[42 U.S.C. 10203]

**SUBSEABED DISPOSAL**

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

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

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

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

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

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

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

(b) Office of subseabed disposal research.

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Energy Research of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Energy Research, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Energy Research,

<sup>1</sup>So in original. Reference probably should be to this section.



and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

- (i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;
- (ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and
- (iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(5) The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office.

[42 U.S.C. 10204]

#### DRY CASK STORAGE<sup>1</sup>

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

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

- (1) consider the costs of dry cask storage technology, the extent to which dry cask storage on the site of civilian nuclear power reactors will affect human health and the environment, the extent to which the storage on the sites of civilian nuclear power reactors affects the costs and risk of transporting spent nuclear fuel to a central facility such as a monitored retrievable storage facility, and any other factors the Secretary considers appropriate;
- (2) consider the extent to which amounts in the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 [42 U.S.C. 10222(c)] can be used, and should be used, to provide funds to construct, operate, maintain and safeguard spent nuclear fuel in dry cask storage at the sites for civilian nuclear power reactors;
- (3) consult with the Commission and include the views of the Commission in the report under paragraph (1); and
- (4) solicit the views of State and local governments and the public.

### TITLE III — OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

#### MISSION PLAN

**Sec. 301.** (a) Contents of mission plan. The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act [42 U.S.C. 10101 et seq.]. The mission plan shall include —

<sup>1</sup>So in original.



- (1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;
  - (2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this Act [42 U.S.C. 10101 et seq.] and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;
  - (3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this Act [42 U.S.C. 10101 et seq.], the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;
  - (4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;
  - (5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;
  - (6) the guidelines issued under section 112(a) [42 U.S.C. 10132(a)];
  - (7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;
  - (8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;
  - (9) an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;
  - (10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this Act [42 U.S.C. 10101 et seq.]; and
  - (11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.
- (b) Submission of mission plan.
- (1) Not later than 15 months after the date of the enactment of this Act [enacted Jan. 7, 1983.], the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.



(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after the date of the enactment of this Act [enacted Jan. 7, 1983]. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

[42 U.S.C. 10221]

#### NUCLEAR WASTE FUND

#### Sec. 302. (a) Contracts.

(1) In the performance of his functions under this Act [42 U.S.C. 10101 et seq.], the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after the date of enactment of this Act [enacted Jan. 7, 1983], the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after the date of enactment of this Act [enacted Jan. 7, 1983], establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 123 [42 U.S.C. 10143], to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) 126(b).<sup>1</sup> In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after the date of enactment of this Act [enacted Jan. 7, 1983], the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to ensure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during

<sup>1</sup>So in original. Reference to 126(b) probably should be omitted.



such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421].

(5) Contracts entered into under this section shall provide that —

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subtitle.<sup>1</sup>

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement.

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

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

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

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

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code [5 U.S.C. 101, 102]) may be disposed of by the Secretary in any repository constructed under this Act [42 U.S.C. 10101 et seq.] unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than —

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

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

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code [5 U.S.C. 101, 102], may be disposed of by the Secretary in any repository constructed under this Act [42 U.S.C. 10101 et seq.] unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund. There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of —

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (c), which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on the date of the enactment of this Act [enacted Jan. 7, 1983] for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

<sup>1</sup>So in original. Reference probably should be to this section and subtitle A of title I.



(d) Use of Waste Fund. The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under titles I and II [42 U.S.C. 10121 et seq., 10191 et seq.], including—

- (1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored retrievable storage facility, or test and evaluation facility constructed under this Act [42 U.S.C. 10101 et seq.];
- (2) the conducting of nongeneric research, development, and demonstration activities under this Act [42 U.S.C. 10101 et seq.];
- (3) the administrative cost of the radioactive waste disposal program;
- (4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored retrievable storage site, or to be used in a test and evaluation facility;
- (5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored retrievable storage site, or a test and evaluation facility site and necessary or incident to such repository, monitored retrievable storage facility, or test and evaluation facility; and
- (6) the provision of assistance to States, units of general local government, and Indian tribes under sections 116, 118, and 219 [42 U.S.C. 10136, 10138, 10199].<sup>1</sup>

No amount may be expended by the Secretary under this subtitle for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund.

- (1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.
- (2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code [31 U.S.C. 1101 et seq.]. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.
- (3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—
  - (A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and
  - (B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.
- (4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code [31 U.S.C. 1511 et seq.].
- (5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such

<sup>1</sup>So in original. Reference probably should be to sections 116, 118, 141, and 219.



obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code [31 U.S.C. 3101 et seq.], and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

[42 U.S.C. 10222]

#### ALTERNATIVE MEANS OF FINANCING

**Sec. 303.** The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983].

[42 U.S.C. 10223]

#### OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

**Sec. 304. (a) Establishment.** There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code [5 U.S.C. 5315].

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

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

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

[42 U.S.C. 10224]

#### LOCATION OF TEST AND EVALUATION FACILITY

**Sec. 305. (a) Report to Congress.** Not later than 1 year after the date of the enactment of this Act [enacted Jan. 7, 1983], the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.



(b) Procedures.

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in title I [42 U.S.C. 10121 et seq.] with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in title I [42 U.S.C. 10121 et seq.] with respect to the site selection and development of repositories.

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 115 [42 U.S.C. 10135].

[42 U.S.C. 10225]

NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION

**Sec. 306.** The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator requalification programs; requirements governing NRC<sup>1</sup> administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following enactment of this Act [enacted Jan. 7, 1983], and the Commission within the 12-month period following enactment of this Act [enacted Jan. 7, 1983] shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

[42 U.S.C. 10226]

TITLE IV – NUCLEAR WASTE NEGOTIATOR

DEFINITION

**Sec. 401.** For purposes of this title, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands.

[42 U.S.C. 10241]

THE OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

**Sec. 402. (a) Establishment.** There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) The Nuclear Waste Negotiator.

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5, United States Code.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with

<sup>1</sup>So in original. Probably should be “Commission”.



**Sec. 403.**

any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.  
[42 U.S.C. 10242]

**DUTIES OF THE NEGOTIATOR**

**Sec. 403.** (a) Negotiations with potential hosts.

- (1) The Negotiator shall –
  - (A) seek to enter into negotiations on behalf of the United States, with –
    - (i) the Governor of any State in which a potential site is located; and
    - (ii) the governing body of any Indian tribe on whose reservation a potential site is located; and
  - (B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.
- (2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this title to the Governor shall be considered to refer instead to such other person or entity.
- (b) Consultation with affected States, subdivisions of States, and tribes. In addition to entering into negotiations under subsection (a), the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.
- (c) Consultation with other Federal agencies. The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.
- (d) Proposed agreement.
  - (1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) and an environmental assessment prepared under section 404(a) [42 U.S.C. 10244(a)] for the site concerned.
  - (2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 116(c), 117, and 118(b) [42 U.S.C. 10136(c), 10137, 10138(b)].
  - (3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.  
(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.
  - (4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this title only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2012 et seq.], title II of the Energy Reorganization Act of 1982 [42 U.S.C. 5841 et seq.] and any other law applicable to authorization of such construction.  
[42 U.S.C. 10243]

**ENVIRONMENTAL ASSESSMENT OF SITES**

**Sec. 404.** (a) In general. Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 403(a) [42 U.S.C. 10243(a)].

(b) Contents.

- (1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.



- (2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.
- (c) Judicial review. The issuance of an environmental assessment under subsection (a) shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code, and section 119 [5 U.S.C. 701 et seq.; 42 U.S.C. 10139].
- (d) Public hearings.
- (1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.
  - (2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) and the site characterization plan described in section 113(b)(1) [42 U.S.C. 10133(b)(1)].
- (e) Public availability. Each environmental assessment prepared under subsection (a) shall be made available to the public.
- (f) Evaluation of sites.
- (1) In preparing an environmental assessment under subsection (a), the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless –
    - (A) such preliminary boring or excavation activities were in progress on or before the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987]; or
    - (B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this Act or any other law.
  - (2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.
- [42 U.S.C. 10244]

#### SITE CHARACTERIZATION: LICENSING

**Sec. 405.** (a) Site characterization. Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(a) [42 U.S.C. 10243(a)], the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance with section 113 [42 U.S.C. 10133], except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing.

- (1) Upon the completion of site characterization activities carried out under subsection (a), the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.
- (2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

[42 U.S.C. 10245]

#### MONITORED RETRIEVABLE STORAGE

**Sec. 406.** (a) Construction and operation. Upon enactment of legislation to implement an agreement negotiated under section 403(a) [42 U.S.C. 10243(a)] to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance. The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

[42 U.S.C. 10246]



ENVIRONMENTAL IMPACT STATEMENT

**Sec. 407.** (a) In general. Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 405(b) shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(b) Preparation. A final environmental impact statement shall be prepared by the Secretary under such Act [42 U.S.C. 4321 et seq.] and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption.

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this title at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this title at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

[42 U.S.C. 10247]

ADMINISTRATIVE POWERS OF THE NEGOTIATOR

**Sec. 408.** In carrying out his functions under this title, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this title, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

[42 U.S.C. 10248]

COOPERATION OF OTHER DEPARTMENTS AND AGENCIES

**Sec. 409.** Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this title.

[42 U.S.C. 10249]



## TERMINATION OF THE OFFICE

**Sec. 410.** The Office shall cease to exist not later than 30 days after the date 5 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].  
[42 U.S.C. 10250]

## AUTHORIZATION OF APPROPRIATIONS

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

## TITLE V – NUCLEAR WASTE TECHNICAL REVIEW

## DEFINITIONS

**Sec. 501.** As used in this title:

- (1) The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board.
- (2) The term "Board" means the Nuclear Waste Technical Review Board established under section 502 [42 U.S.C. 10262].  
[42 U.S.C. 10261]

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

**Sec. 502.** (a) Establishment. There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members.

- (1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987] from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).
- (2) The President shall designate a member of the Board to serve as chairman.
- (3)(A) The National Academy of Sciences shall, not later than 90 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).
  - (B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).
  - (C)(i) Each person nominated for appointment to the Board shall be –
    - (I) eminent in a field of science or engineering, including environmental sciences; and
    - (II) selected solely on the basis of established records of distinguished service.
  - (ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this title.
  - (iii) No person shall be nominated for appointment to the Board who is an employee of –
    - (I) the Department of Energy;
    - (II) a national laboratory under contract with the Department of Energy; or
    - (III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.
- (4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).
- (5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

[42 U.S.C. 10262]



#### FUNCTIONS

**Sec. 503.** The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], including –

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

[42 U.S.C. 10263]

#### INVESTIGATORY POWERS

**Sec. 504.** (a) **Hearings.** Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) **Production of documents.**

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

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

[42 U.S.C. 10264]

#### COMPENSATION OF MEMBERS

**Sec. 505.** (a) **In general.** Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

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

[42 U.S.C. 10265]

#### STAFF

**Sec. 506.** (a) **Clerical staff.**

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 U.S.C. 5301 et seq., 5331 et seq.] relating to classification and General Schedule pay rates.

(b) **Professional staff.**

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

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

(3) Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 U.S.C. 5301 et seq., 5331 et seq.] relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

[42 U.S.C. 10266]

#### SUPPORT SERVICES

**Sec. 507.** (a) **General services.** To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.



(b) Accounting, research, and technology assessment services. The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

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

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

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

[42 U.S.C. 10267]

#### REPORT

**Sec. 508.** The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

[42 U.S.C. 10268]

#### AUTHORIZATION OF APPROPRIATIONS

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

[42 U.S.C. 10269]

#### TERMINATION OF THE BOARD

**Sec. 510.** The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

[42 U.S.C. 10270]



**SUMMARY**

**OFFICE OF THE NUCLEAR WASTE NEGOTIATOR  
PANEL MEETING**

**March 11, 1991**

**Prepared by:  
Technical Resources, Inc.  
3202 Tower Oaks Blvd.  
Rockville, Maryland 20852  
Tel: 301-321-5250  
FAX: 301-231-6377**



# OFFICE OF THE NUCLEAR WASTE NEGOTIATOR PANEL MEETING SUMMARY

March 11, 1991

## Introduction

The Office of the Nuclear Waste Negotiator Panel Discussion was held March 11, 1991, in Washington, D.C. The purpose of the meeting was to provide guidance to the Negotiator for developing a negotiation process that will assist in siting high-level nuclear waste facilities.

## Background

The Office of the Nuclear Waste Negotiator was established under the 1987 Amendments to the Nuclear Waste Policy Act. These Amendments established a 5-year term for the Negotiator that ends on January 21, 1993. The Senate confirmed President Bush's nomination of David H. Leroy as the first United States Nuclear Waste Negotiator on August 4, 1990.

The mission of the Negotiator is to seek negotiations with States and Indian tribes in order to reach a proposed agreement that sets forth the terms and conditions under which a State or tribe would be willing to host a repository or a monitored retrievable storage (MRS) facility for high-level nuclear waste. The Negotiator established three broad objectives to help accomplish his mission within the time constraints of his term:

- *Independence.* Create and maintain the identity and mission of the Nuclear Waste Negotiator as a new and autonomous Federal initiative separate from all other past and ongoing efforts to site high-level nuclear waste management projects.
- *Credibility.* Earn and maintain trust by proceeding with integrity, honesty, and objectivity.
- *Understanding.* Comprehend and appreciate the history of past and ongoing siting efforts in order to understand the perceptions of, concerns about, objections to, and justifications for high-level nuclear waste facilities.

## Meeting Structure and Issues

The panel meeting summarized in this document is part of the Negotiator's ongoing effort to incorporate a broad base of experience and expertise in designing a process to involve the general public as well as the designated representatives of States and Indian tribes in managing the Nation's high-level nuclear waste. Members of the panel included representatives from the nuclear waste and energy industries, environmental advocacy organizations and public interest groups, voter and taxpayer organizations, scientific and technical organizations, and Federal agencies (see List of Participants). A list of general issues to be considered for discussion was distributed to the panel members prior to the meeting. This list was amended and prioritized by the panel members as follows:



1. What is the best means of soliciting a dialogue with a prospective host State or tribe?
2. How does the Negotiator balance the need for openness and public disclosure with the need for candor in the negotiation?
3. What do you perceive to be the role and mission of the Nuclear Waste Negotiator?
4. Who are the stakeholders who should be involved in the negotiation? Who decides who sits at the table?
5. What items, if any, constitute legitimate and appropriate benefits that should be discussed with or offered to a prospective host State or tribe? Is it appropriate or beneficial to provide a menu of potential benefits to a host jurisdiction? What is the duty of the Negotiator to examine the potential detriments to a prospective host State or tribe?
6. How can the Negotiator best assist prospective hosts in assessing the potential costs and benefits of a proposed facility?
7. How should credible factual and scientific information be obtained and disseminated during the process?
8. By what process can the Negotiator (or anyone else) determine whether a State or tribe is indeed a willing Host? To what degree can the general public be involved in determining the willingness of a prospective host?
9. How can the public be best involved in the process?

#### **Discussion of Issues**

A general discussion of each issue was preceded by an opportunity for each panel member to make opening remarks.

##### *1. What is the best means of soliciting a dialogue with a prospective host State or tribe?*

The discussion reflected panel members' concern for the need to build public confidence in and credibility for the Negotiator and the negotiation process. Panel members suggested that the Negotiator guard against the appearance of "closed-door" negotiations. Panel members expressed that the Negotiator should take a proactive stance in providing an open negotiation process through a culturally diverse, broad, and flexible dialogue with the public. Other panel members suggested the need for a designated time period during which requests for information from community and political leaders would be confidential, followed by complete openness as the negotiations progress.

Recommendations for developing credibility for the Negotiator and the negotiation process included:



- **Maintain a physical and bureaucratic distance from the "Washington Establishment" and Federal agencies in which the public has little confidence.**
- **Educate the public on the role of the Negotiator and the negotiation process. It was suggested that the Negotiator provide substantive information to the public before issuing a Request for Proposals (RFP), including historical information on the need for a nuclear waste facility and the siting process; information on the nature and amount of waste that a facility would receive; information on the physical characteristics and impacts of a facility; and a clear statement on what is being proposed, including distinguishing between a MRS and a repository, to serve as the basis of any discussion. To assist in disseminating information, it was suggested that the Negotiator distribute a newsletter in addition to making public speaking engagements and other public appearances that would be covered by the news media.**
- **Respond to public concerns about nuclear waste "dumps" and general public criticism of national energy policy and the nuclear establishment. The Negotiator should be an emissary both to and from States, tribes, and potential host communities.**
- **Provide credible technical and scientific information to the public. Although some panel members suggested that the Negotiator provide cost-benefit analyses of the impacts to communities from high-level nuclear waste facilities, most panel members suggested that such an approach would be controversial because no analysis would be applicable to all potential hosts and the validity of a community-specific analysis would be questioned even within that specific community. As an alternative to providing cost-benefit analyses, it was suggested that the Negotiator serve as a conduit for credible information to be used by individual communities in evaluating their own costs and benefits. An additional suggestion was to provide potential host communities with independent technical assistance (an independent consultant) to assist them in sifting through and evaluating information and in analyzing specific costs and benefits to their communities.**

**2. *How does the Negotiator balance the need for openness and public disclosure with the need for candor in the negotiation?***

**Recommendations for balancing the need for openness and public disclosure with the need for candor in the negotiations included:**

- **Provide for a period at the beginning of the negotiation process when contacts between local and State officials and the Negotiator would be kept confidential. This period would allow local and State officials the opportunity to explore the negotiation process and details related to hosting a high-level nuclear waste facility without committing to any negotiation and without subjecting the official to potentially adverse political fallout from fact-finding inquiries.**
- **Provide for a phased negotiation process to include an initial period of public education on the negotiation process, on nuclear waste facilities, and on the nature of waste received by such facilities, followed by a period of confidentiality, and then complete openness for the duration of the negotiations. This process should also include the ability of a community to withdraw from the negotiations at any time.**



- **Maintain openness throughout the entire negotiation process: any process involving confidential discussions might undermine the credibility of the Negotiator and the negotiation process. The Negotiator could also interact with the public to provide credible information on a continual basis. A completely open process could allay local officials' apprehension of contacting the Negotiator because the public would already be informed of the noncommittal nature of the process and information requests.**
- **Provide information to State and tribal governments only, as it is these governments' responsibility to determine the most appropriate means to inform and involve their constituencies.**

**3. *What do you perceive to be the role and mission of the Nuclear Waste Negotiator?***

Panel members agreed that information dissemination to the public is an important role of the Negotiator. Many panel members expressed their belief that the negotiation process is an opportunity to bring the American people and the political leadership together in an open format to address the national nuclear waste problem. It is envisioned that the Negotiator would serve as both a conduit for information and an impartial facilitator, "a guardian of a process, not the result of one." The Negotiator could work with communities to determine the terms and conditions that Congress will need to meet in siting a high-level nuclear waste facility. Many panel members thought the Negotiator should serve as a channel for conveying to Federal government leaders the concerns expressed by States, tribes, local officials, and the public regarding the siting of high-level nuclear waste facilities, general energy policy issues, and the negotiation process itself.

Panel members suggested that the Negotiator's role includes reporting to Congress both on success in negotiating a site for a high-level nuclear waste facility or on why negotiations are not working, if negotiations do not produce results that lead to siting a facility. Panel members commented that the measure of the negotiation process' success is not necessarily the identification of a host for a high-level nuclear waste facility; rather, it might be having successful communications with the public and a thorough hearing of relevant issues and opinions. It was noted that a lack of willingness by States or tribes to negotiate could have a profound impact on public policy.

It was also mentioned that the United States Environmental Protection Agency found architectural design concepts and scale models to be useful in siting facilities; communities could use models as a catalyst to begin discussions of the potential economic and environmental impacts that a similar facility could have on the community. Other panel members disagreed with the use of models because it might create the perception that the size and character of a facility are not negotiable.

It was strongly suggested that the Negotiator's role include ensuring fairness and equity in the negotiation process with regard to communities of color and economically disadvantaged communities.

**4. *Who are the stakeholders who should be involved in the negotiation? Who decides who sits at the table?***

Panel members commented that a high-level nuclear waste facility affects more than the individual host community. Entire States and regions will be involved because of the need to transport nuclear wastes to the facility, creating a potential problem in making the negotiation



process available to all affected jurisdictions and interests. Opinions varied on how to address this issue. Since stakeholders at each negotiation would probably be different as a result of jurisdiction-specific conditions, some panel members suggested that negotiations be conducted with State Governors and tribal leaders only. Other participants in the negotiations would be at the discretion of the Governors and tribal leaders. The Negotiator, however, should actively encourage broad representation. It was also suggested that the Negotiator use judgment based on local and regional input in identifying stakeholders. Another suggestion was that a preliminary topic for negotiation is identifying the stakeholders to be involved in subsequent negotiations.

Panel members suggested that the Negotiator act to ensure that all potential stakeholders have equal access to negotiations. Many potential stakeholders (e.g., Native American tribes and economically disadvantaged communities) may not have the technical or financial resources that are available to larger jurisdictions, States, and the Federal government. The Negotiator might play a role in providing resources for technical assistance and travel.

5. *What items, if any, constitute legitimate and appropriate benefits that should be discussed with or offered to a prospective host State or tribe? Is it appropriate or beneficial to provide a menu of potential benefits to a host jurisdiction? What is the duty of the Negotiator to examine the potential detriments to a prospective host State or tribe?*

Panel members expressed the opinion that while providing a list of possible benefits from a high-level nuclear waste facility to potential host communities may encourage interest in the negotiation process, the menu of benefits itself could be a floor for negotiations. It was suggested that a "skeletal" list of benefits might be useful. Panel members remarked that the Negotiator also has the responsibility to inform potential hosts of known detrimental aspects of constructing and operating a high-level nuclear waste facility.

An alternative suggestion was to prepare a list of benefits specific for each potential host, since a general list of benefits may not address the specific needs, concerns, and perspectives of individual jurisdictions and cultures. Others expressed the opinion that providing a list of predetermined costs and benefits to a potential host would not be as productive as developing a list through an interactive process with a potential host. Negotiations could also include provisions for community involvement in construction, operation, and oversight of a facility, including guidelines for preventing a MRS from becoming a repository. To avoid the perception that a community is being "bought off," panel members suggested that emphasis be placed on addressing health, safety, and environmental concerns before discussing economic benefits that a community might expect in return for hosting a high-level nuclear waste facility.

6. *How can the Negotiator best assist prospective hosts in assessing the potential costs and benefits of a proposed facility?*

Panel members suggested that the Negotiator utilize information provided by both Federal agencies, including the Department of Energy (DOE), and outside sources. If a potential host questioned the validity of information provided by the Negotiator, it would be the hosts' responsibility to acquire outside information. Other panel members suggested that the Federal government provide resources to potential hosts who do not have the necessary technical or financial resources to obtain independent technical evaluations. Another suggestion was that a technical review board independently evaluate data prior to its dissemination to communities to overcome the public suspicion of information furnished by Federal agencies.



7. *How should credible factual and scientific information be obtained and disseminated during the process?*

**Recommendations for obtaining and disseminating credible factual and scientific information included:**

- **Information acquisition.** Panel members cited problems in acquiring relevant information, including difficulties in accessing information from some Federal agencies and industry sources, different viewpoints of what constitutes valid information, mistrust of information provided by Federal agencies, poor past performance of Federal agencies in implementing experimental systems in the field, and poor readability of technical documents.
- **Information dissemination.** Panel members agreed that there are different ways to best disseminate information to different audiences. Suggestions included assisting host communities to find "interpreters" for technical information, establishing within potential host communities a reading room containing all available and relevant information, improving the readability of technical documents, regularly distributing newsletters and news reports, sponsoring and attending public meetings, and giving equal merit to different viewpoints of what constitutes valid and relevant information.

8. *By what process can the Negotiator (or anyone else) determine whether a State or tribe is indeed a willing host? To what degree can the general public be involved in determining the willingness of a prospective host?*

Panel members had few specific suggestions on how to determine whether a State or tribe is actually a willing host--other than encouraging a statewide referendum or simply asking the State Governor or tribal leader. The majority of the panel members expressed the view that the responsibility for involving the public lies with the Governors or tribal leaders. Differences in States and tribes make it difficult to form general guidelines that the Negotiator could apply equally. Most panel members suggested that the Negotiator take a State- or tribal-specific approach.

9. *How can the public be best involved in the process?*

Most of the suggestions made by panel members repeated ideas discussed under other topics, including the need for openness, public education, and dissemination of technical information in a way that can be understood by the general public.



## LIST OF PARTICIPANTS

**Paula Alford**  
Nuclear Waste Technical Review Board

**Laura Anthony**  
Office of the U.S. Nuclear Waste Negotiator

**William Barnard**  
Nuclear Waste Technical Review Board

**John W. Bartlett**  
U.S. Department of Energy

**Ron Callen**  
Nuclear Waste Program Assessment Office

**Ted Chaskelson**  
Federal Mediation and Conciliation Service

**R. Putnam Coes**  
Office of the U.S. Nuclear Waste Negotiator

**Diane D'Arrigo**  
Nuclear Information and Resources Service

**Scott Saleska**  
Institute for Energy and  
Environmental Research

**Harold B. Finger**  
U.S. Council for Energy Awareness

**Floyd Gallpin**  
U.S. Environmental Protection Agency

**Joseph M. Greenblott (rapporteur)**  
Technical Resources, Inc.

**Richard J. Guimond**  
U.S. Environmental Protection Agency

**Gail Herzenberg (facilitator)**  
Technical Resources, Inc.

**Kemp Houck**  
Don't Waste Us

**Felix M. Killar**  
U.S. Council for Energy Awareness

**Elizabeth Kraft**  
League of Women Voters Education Fund

**Steven P. Kraft**  
Edison Electric Institute

**Charles B. Lempesis**  
Office of the U.S. Nuclear Waste Negotiator

**David H. Leroy**  
U.S. Nuclear Waste Negotiator

**Robert M. Mussler**  
Office of the U.S. Nuclear Waste Negotiator

**Carol Oldershaw**  
Don't Waste Us

**Richard Regan (representing Don Hancock)**  
Southwest Research and Information Center

**Dan Reicher**  
Natural Resources Defense Council

**Pete Swanson**  
Federal Mediation and Conciliation Service

**Joseph Youngblood**  
Nuclear Regulatory Commission

**Kathy Yuracko**  
Office of Management and Budget





**TECHNICAL RESOURCES, INC.**

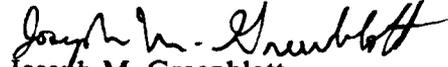
3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852  
(301) 231-5250 • FAX (301) 231-6377 • TELEX 386441

20 March 1991

David H. Leroy  
United States Nuclear Waste Negotiator

This is to certify that the attached meeting summary of the Nuclear Waste Negotiator Panel Meeting, held March 11, 1991 in Washington, D.C., is true and correct to the best of my knowledge.

TECHNICAL RESOURCES, INC.

  
Joseph M. Greenblott



# A 2-Year Mission Based on Waste

## Nuclear Negotiator Seeks Site For Residue of Power Plants

By Thomas W. Lippman  
Washington Post Staff Writer

David H. Leroy knows people snicker when they hear what his job is.

"People smile and assume it's impossible," he said in an interview yesterday. "But I like challenges, and this certainly is one. I think this mission is very doable."

Believing that David Leroy's job is doable is the definition of optimism. The 43-year-old lawyer and Republican activist from Idaho is the nation's first nuclear waste negotiator. He has two years to find a "volunteer host" to store the nation's growing mountain of highly radioactive waste from nuclear power plants.

If he can pull it off, he will have solved a problem that has plagued the nuclear industry, federal regulators and Congress since the 1950s and is one of the biggest obstacles to the growth of nuclear power today.

Spent fuel from nuclear reactors will be dangerously radioactive for thousands of years. By the end of the century, an estimated 40,000 metric tons of it will have accumulated at the nation's 111 nuclear power plants and a handful of federally owned reactors. Most of it is stored temporarily in racks submerged in pools of water at the power plants, but there has never been a consensus on where to put it permanently.

In the past, scientists considered dumping it at sea, or launching it into space. Current policy, adopted by Congress in 1987 amendments to the Nuclear Waste Policy Act, calls for the Energy Department to create a subterranean repository beneath Yucca Mountain, Nev. But scientific disputes and resolute opposition from the state have delayed that project until 2010 at least.

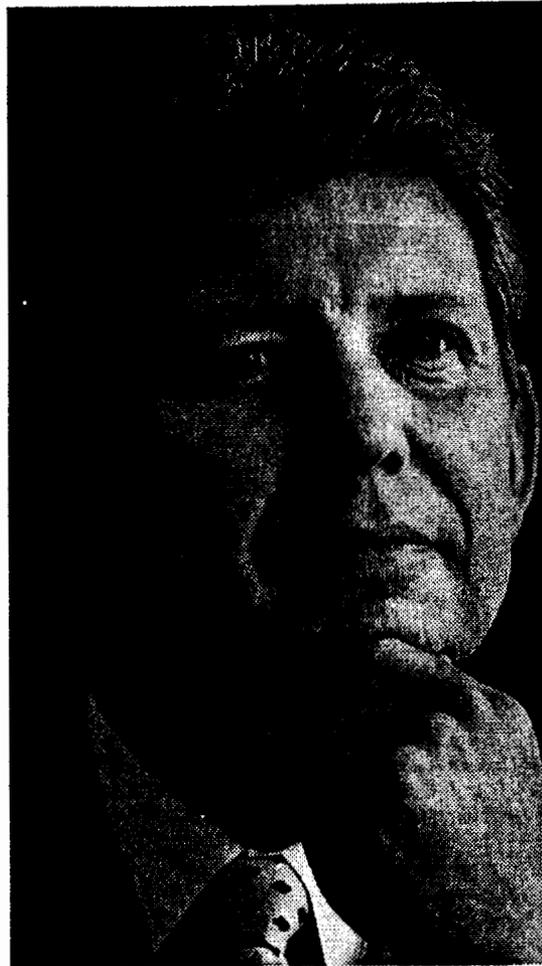
Leroy's assignment is to find a state or Indian tribe willing to accept such a facility or a temporary storage site that would house the waste until a permanent repository is ready. His position was created by the same 1987 law that designated Yucca Mountain, but was not filled until President Bush nominated him last summer.

A former attorney general and lieutenant governor of Idaho and unsuccessful Republican candidate for governor in 1986, he has set up his permanent office in Boise, but he also has a two-person staff in Washington. He said his proposed first-year budget is \$2.5 million.

"I'm the guardian of a process, not the guarantor of a result," he said. "My challenge is to create a process by which states become willing to step forward to help solve a significant national problem."

Up to now, he said, "no proposal has ever been made that offers a governor an opportunity for neutrality. The challenge is to formulate a proposal that is not automatically an issue for a governor in the next election just for a willingness to listen."

He said he sent out about 250 letters to governors, environmental groups, anti-nuclear activists, Indian tribal leaders, state attorneys general and organizations such as the National League of Cities



BY RICH LIPSON—THE WASHINGTON POST

David H. Leroy seeks "volunteer host" to store nuclear plant waste: "People smile and assume it's impossible."

asking them to participate in "a truly new and different process based on openness and volunteerism to locate sites for these controversial facilities. There will be no compromise on safety or good science."

The next task, he said, is to figure out what he has to offer to any jurisdiction that might respond favorably. In the next four months, he said, he plans to devise "a sophisticated package of opportunities that will include but not emphasize money, the opportunity for participation and shared control, economic expansion and indirect benefits, maybe some health care."

Before his Senate confirmation, Sen. Richard H. Bryan (D-Nev.), a strong opponent of the Yucca Mountain project, asked Leroy in writing what he would do if an Indian reservation hungry for economic growth decided to volunteer but the state in which the tribe's reservation is located objected.

He replied that no agreement could be implemented without state cooperation, and therefore he would "negotiate and consult with both the governor and tribal leaders" about any such site.

If no central storage site can be found, he said, he might recommend other solutions, such as on-site storage in above-ground dry casks, as is done at Virginia Power's Surry plant, or reprocessing of the spent fuel. The United States, almost alone among nuclear nations, does not reprocess spent fuel because of fear that its byproduct—plutonium—might get into the wrong hands.

If a storage site is found, Leroy said, everyone concerned should be satisfied that the project's benefits are worthwhile. "You can't bribe a jurisdiction to forfeit the safety of unborn generations," he said.



**NUCLEAR WASTE**

# Nuke waste negotiator seeks new disposal sites

The U.S. Dept. of Energy finally signed a formal agreement last month with an independent official whose task it is to find new sites in which to store the nation's output of high-level nuclear waste.

The new U.S. Nuclear Waste Negotiator is David H. Leroy, a 43-year-old former Idaho lieutenant governor and attorney general. The position was mandated under the 1987 amendments to the Nuclear Waste Policy Act but was never filled by the Reagan administration.

Leroy, who was confirmed by the Senate in August, will have to negotiate as a neutral party with states, Indian reservations and other jurisdictions for sites to house at least one permanent underground geologic repository for the waste, and an aboveground "monitored retrieval storage facility"

that will temporarily store the waste until it goes to its final resting place.

He steps into a difficult job. DOE and Nevada are now fighting over the agency's plan to locate a \$100-billion permanent waste repository at Yucca Mountain, near Las Vegas. "The agreement with DOE emphasizes that we're an independent agency," says Leroy. "This is important to enhance the likelihood that states and tribes will work with us without being limited by problems or concerns they may have had with past programs."

According to Leroy, about 25,000 metric tons of high-level waste is now generated each year by commercial reactors and nuclear weapon plants. Leroy's office will be scouting locations in all 50 states and 275 tribal reservations, he says, with requests for proposals to be sent to governors and



Leroy emphasizes independence from DOE

tribal leaders between June and October 1991.

However, his job is set to expire in 1993. "We want to be in focused negotiations by then," he says. •

ENVIRONMENT / NUCLEAR DILEMMA

# Ex-Idaho Official Handed Atomic Waste Hot Potato

David Leroy seeks a temporary home for 4 million spent reactor fuel rods from the nation's utilities. So far, states have balked.

By RUDY ABRAMSON  
TIMES STAFF WRITER

WASHINGTON—It took more than two years, but the White House at last has a man who is going to try to find a temporary home for the glut of spent nuclear reactor fuel rods that are now outgrowing their storage compartments at power plants across the country.

David Leroy, former Idaho attorney general, former lieutenant governor, bright light of the Gem State GOP, has taken on what may be the most hopeless \$80,000-a-year job that George Bush has had to offer.

"Obviously, there is no guarantee of success," Leroy concedes, with a touch of understatement about his new job. "But the opportunity is exciting, and we are going to pursue it aggressively."

Here, in brief, is his problem:

At the beginning of this year, electrical utilities in the United States had somewhere around 4 million used-up nuclear reactor fuel rods on hand, most of them sequestered in deep pools of water.

They cool there year after year, but they remain dangerously radioactive.

In cases where power companies have had nuclear reactors for a long time, those pools are almost filled to capacity. Besides residual uranium, the spent rods contain radioactive byproducts of strontium, cesium and iodine, meaning they not only emit gamma radiation similar to X-rays, but they remain "hot" for hundreds of years.

Under a longstanding agreement, the federal government is committed to begin taking these used rods off the utilities' hands in 1998.

Utilities that have nuclear plants have been collecting a surcharge from their customers to help foot the bill. They have a trust fund of almost \$3 billion.

The plan is eventually to consign all of these spent fuel rods to deep, dry geological deposits, where they can be left to the ages. But it will take 20 years

at minimum, and probably much longer, before any permanent repository is ready.

The current site-of-choice is Yucca Mountain in Nevada, but Nevada isn't exactly ecstatic about the prospect. State officials have gone to court to try to ban the nuclear graveyard from the state. The federal government wants the courts to sanction a further evaluation.

Leroy is caught in something of a political cooling-pool himself. Under the law, the temporary storage facility that his new agency wants to construct somewhere cannot be built until a permanent repository has been licensed.

This was the precaution Congress took to assure that the temporary site—or MRS, for Monitored Retrievable Storage—would not inadvertently become permanent.

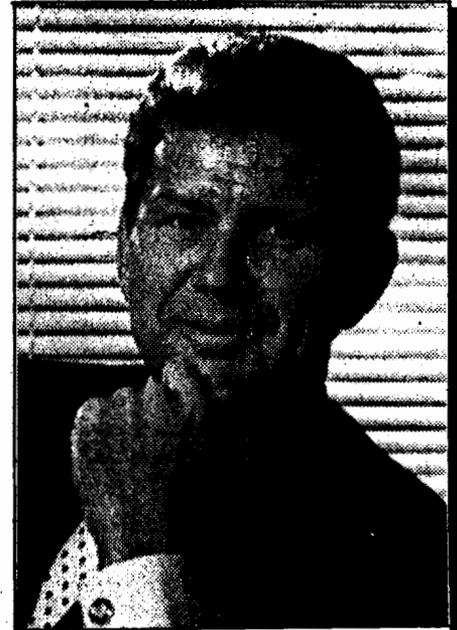
Several years ago, it appeared that the MRS would be built at the Oak Ridge National Laboratory in Tennessee, which had land available after plans for an experimental fast-breeder reactor project were canceled.

But state political leaders protested, and other states followed suit. If Oak Ridge, Tenn., the birthplace of nuclear power, wanted no part of MRS, neither did they, voters and officials reasoned.

Now comes former state official Leroy, with a new approach: To offset any perception that Washington is trying to foist the waste site on any state, he has decided to set up the headquarters of the new nuclear waste negotiator's office in Boise.

This fall, he plans to send a request for proposals on an MRS site to officials of all 50 states, the U.S. territories and leaders of American Indian tribes.

He plans to use as his model a 75-page presentation that the Energy Department used when it set out to find a site for its gigantic superconducting super collider—an atom-smasher costing several billion dollars and reputed to be history's most expensive scientific instrument. That project was eagerly sought in a competition won by



Leroy's argument will be that the temporary storage site will be safe and that it will bring jobs to the state, and a handsome payroll as well.

Texas.

Needless to say, Leroy's argument will be that the MRS will be safe and that it will bring jobs to the state, and a handsome payroll as well.

"This has greatly suffered from both confusion and alienation, and we hope to bring to the fore a whole new attitude and political process," Leroy says. "We hope to see volunteerism where there has been none before. We hope we are even going to have competition for this."

When Congress created the negotiator's job, it bestowed the same kind of statutory independence that it gave the Nuclear Regulatory Commission, but it also gave the new office no more than a five-year lifetime.

That means Leroy now has two years to find a home for the nuclear spent rods.

Meanwhile, the utilities that have full storage pools are beginning to turn to solid cast-iron storage containers and lined concrete bunkers to hold the portion of waste that has cooled enough.

The President never promised him a Rose Garden, Leroy concedes.



# Leroy beginning search for nuclear waste site

**Kevin Richert**  
Post Register

BOISE — In a few months, David Leroy will go to state governors and tribal leaders, looking for partners who will accept a share of the nation's high-level nuclear waste.

He says his timing is good for finding takers. There's the threat of a recession. Federal offices are being shut down or cut back across the nation. When Leroy comes pitching the growth industry of radioactive waste, he expects people to listen attentively.

Is this economic ghoulishness? Is it unflagging — or unfounded — optimism? Perhaps it's the latter. For Leroy, the Bush administration's nuclear waste negotiator charged with finding a temporary or permanent home for 70,000 metric tons of



Leroy

nuclear waste, optimism is a job requirement.

Sitting in his lakefront office, dressed in a jogging suit for a lunch-hour run, the 43-year-old Leroy exudes hope. Never mind that his job sounds a lot like an uphill marathon. Leroy, Idaho's former attorney general and lieutenant governor, leans forward in his chair and talks enthusiastically.

"I didn't take the job for political purpose or advantage," he said. "I took this job because it created the most exciting opportunity this decade to create a whole new relationship between the federal government and its sovereign states and tribes."

Leroy is sold on the search process, even though it hasn't yet begun in earnest. He says it won't be a "forced siting" of a waste dump that stirs up conflicts between the federal government and states. Instead, he says it will be an open process — but one that allows a governor or tribal leader to negotiate without political fallout and the opportunity to back out at

See LEROY, Page A4

## LEROY

From Page A1

any time.

And he hopes it will create a friendly rivalry between several sites that want a share of the nuclear industry's most dangerous wastes — mostly spent fuel rods from commercial nuclear reactors.

Since he was confirmed by the Senate last summer, Leroy has talked informally with about three dozen landowners, consultants and scientists. He won't get in touch with governors and tribal leaders until at least June when he sends out formal invitations to negotiate.

The invitations will be modeled after the solicitations for bids for the Superconducting Super Collider, a multi-billion dollar physics research project that drew bids from dozens of states, including Idaho. But Leroy knows that nuclear waste is a tougher sell. As one state official has told him, his proposal has every conceivable political strike against it.

"We should be so lucky to get 45 or so states to express an interest?" he said.

Leroy, a Republican, was nearly elected Idaho's governor in 1986. He

doesn't say how he would have reacted as governor to an invitation to build a federal nuclear waste dump. But in his current position, he just wants to find a governor who will listen. Then the issue can be discussed at public hearings, debated by state legislators, or decided in a referendum.

"We don't want a governor to say yes. We want a governor to say maybe," he said. "We're willing to discuss it openly."

Leroy's proposal will go to all 50 states. That includes Idaho, where Gov. Cecil Andrus has adamantly opposed more nuclear waste shipments. It also includes Nevada, where state officials have fought the Department of Energy's plans to build a permanent dump for high-level waste.

What's in it for the states? Jobs, although Leroy says it's impossible to guess how many. After all, it will be up to the states to decide if they want a temporary or permanent waste dump, or a national or regional site.

It's something of a paradox. Leroy says he's offering a chance for states to improve their quality of life — a project with ties to government, business and education. But at the same time, he's been warned not to "overpromise" about the economic benefits of a waste dump.



## STEPS IN NEGOTIATOR'S YEAR-END REPORT WILL BE TOOL FOR DESIGNING WASTE TALKS

David Leroy, the country's nuclear waste negotiator, will release a year-end report later this month that includes a 63-step proposal for talks with states and Indian tribes willing to consider taking a monitored retrievable storage (MRS) facility or high-level nuclear waste repository.

Steps in the report, which summarizes the independent office's activities during the past 100 days and which is expected to be released around January 16 when Leroy addresses the Nuclear Waste Technical Review Board, will be a tool in designing the negotiation process. They range from step 1's completion of the draft document to step 63's construction of a federal waste facility.

Leroy repeatedly stressed during an interview last week that he wants to create a fair, open and credible process. "I don't view the role of negotiator as guaranteeing a successful siting," the former Idaho state attorney general and lieutenant governor said, "but creating a proper process that, hopefully, gives interested candidates a chance to say, 'Maybe.'"

To do that the 63 steps will be subjected to a series of discussions and public hearings over a five-month period, giving interested parties and the public a say in how the negotiations process should come together. Designing the process may be as sensitive as trying to site a facility, Leroy said.

Starting the third week in January, Leroy's office will convene special panels and contact a variety of interest groups for their reaction to the proposal. The steps will be revised in March, based on reactions, followed by a massive mailing of the draft outline to people with knowledge of high-level nuclear waste and personal contacts.

Leroy's office in March also will announce the start of five nationwide public hearings on the structure and content of this future interaction with states and tribes. The final negotiations process will be refined in May before it becomes the subject of a public hearing.

All of this will be done before Leroy's office sends requests for proposals to governors and Indian tribal leaders. That mailing is expected to occur sometime between June and October. And whether Leroy initially focuses on trying to find potential volunteers for an MRS or repository will depend on the responses he receives.

Official expressions of interest would have to come from a governor or other state agent. Leroy's office already has received at least 36 unofficial inquiries of interest in either facility. Those inquiries, he said, are general and follow no regional pattern or pattern as to who submitted them. One or two of the sites fall into the federal facility category, such as a closed military base—a category that one industry official speculated last year could have the least number of obstacles (NF, 28 May '90, 9). The source made the comment while talking about a likely private sector search for potential volunteers.

But Leroy, thus far, has avoided seeking a dialogue with governors or officials in any state because he wants a consistent vehicle for those talks. The negotiator readily admits he is not facing an easy task during the remaining 25 months of his office's charter. "There are no guarantees of success," he said. "If this had been easy, it would have been accidentally discovered and accomplished a long time ago."

Perhaps one of the biggest challenges Leroy will face is overcoming the public's negative perception of nuclear waste—the "not in my backyard" or NIMBY syndrome as it is called that surrounds all types of waste issues in the U.S. NIMBY, he said, is normal.

A negotiated agreement with a potential volunteer might be placed on a statewide referendum, he said. And a benefits package with the state could stress safety first and compensation last. "My first obligation is to create a process which doesn't automatically become a significant issue against a governor to say, 'Maybe,'" he said. It will be up to DOE to determine if the site is suitable for nuclear waste storage or disposal.

The negotiator's office has checked with DOE and elsewhere for ideas of what might be included in a so-called menu of compensations a potential host could choose from. Though many of the items might include such things as advanced education centers, hospitals, and new or improved roads, Leroy said safety and some kind of shared control over the facility will be even more important.

In the realm of safety, for instance, Leroy said there could be a range of choices about the now undesignated MRS' technology and operation. How the waste is transported and a limitation on the interim storage facility's size might also address some safety concerns, he said.

Leroy also believes that any negotiations with a potential volunteer for an MRS could involve talks on provisions in the Nuclear Waste Policy Amendments Act that link the start of MRS operations to progress in the repository program. The statutory tie, which aimed to ease any fears that the storage facility would become a de facto repository, is likely to be modified and not broken, he said. And any modification might still include a specific timetable.

In the area of shared control, Leroy said a jurisdiction might have a say in facility operations and might be able to close it down if problems develop.

By law, Congress must ratify any negotiated agreement with a potential volunteer. According to DOE, that ratification must come before the end of 1992 if it is to use an MRS to meet its contractual obligation to begin accepting spent fuel in 1998.

"While I'm very mindful of DOE's schedules," Leroy said, "I will not serve well if I make hasty decisions." Instead, his office will create and keep its own schedule—something that could cause him to seek an extension when his office's charter expires in January 1993 if there is progress and no final agreement or to report to the president earlier if there is no progress in sight.

—Elaine Hiruo, Washington



# Magic Valley

## Mission impossible? Ex-Idaho attorney general takes on daunting job of finding permanent nuclear waste site

By N.S. Nokkontved  
Times-News writer

TWIN FALLS — Most people see it as mission impossible, but David Leroy remains quixotically optimistic about his new job.

Leroy, a former Idaho lieutenant governor, attorney general and Ada County prosecutor, was recently named federal nuclear negotiator. His task is to find someplace to put about 70,000 tons of the nation's deadliest radioactive waste.

"My mission is to create an entirely new and different process that credibly empowers states, Indian tribes and the public to determine the terms upon which they are willing to participate in the siting process," the 43-year-old Boise attorney said.

Closely tied to his success or failure is the fate of nearly 1 million cubic feet of high-level radioactive waste stored at the Idaho National Engineering Laboratory.

"I can't envision any state willing to

make that deal," said Chris Brown, southern Nevada coordinator for Citizen Alert, an activist group.

Leroy was appointed by President Bush to find a waste storage site — permanent, temporary or "monitored retrievable" — for the nation's spent nuclear fuel and high-level wastes generated by nuclear weapons production as mandated by the 1987 Nuclear Waste Policy Amendments Act.

The law is known to some as the "screw-Nevada bill" because it also selected Yucca Mountain northwest of Las Vegas as the government's preferred site for a deep geologic waste repository.

Brown said Leroy is looking for someone who's poor enough to be willing to deal, reducing what should be a scientific investigation to a matter of economics.

"It smacks of all the worst aspects of government bureaucracy using money to support bad policy," Brown said.

Leroy denies there will be economic blackmail.

"There will be very little room for allegations of economic exploitation," he said. He added that he is not trying to "buy" a disposal site.

Success, said Leroy, doesn't necessarily mean actually finding a site, but creating a process that works.

"There is no certainty exactly where this process will go, no certainty of assumptions what the results will be," Leroy said. And that is what makes the job exciting, he said.

Leroy, who narrowly lost the 1986 Idaho gubernatorial election to Cecil Andrus, will work out of Boise in his new job. His office has a \$2.3 million annual budget, including Leroy's salary of \$115,300.

In November, Leroy and Energy Secretary James Watkins signed a "memorandum of understanding" formalizing the relationship between Leroy's Office of U.S. Nuclear Waste Negotiator and the Energy Department.

Leroy says any potential site will be



David Leroy  
Not trying to 'buy' a disposal site

Please see JOB/B4

### Job

Continued from B1

scrutinized scientifically and congressionally before any decisions are made.

But his critics don't hold out any hope of finding a repository site.

"I don't think he can find a volunteer site for a repository or a monitored retrievable storage site," said Don Hancock, director of the Southwest Research and Information Center's Nuclear Waste Safety Project.

Hancock says his criticism is not aimed at Leroy.

"It wouldn't make any difference who the negotiator is," Hancock said. "The Department of Energy is the villain in this drama, not Mr. Leroy."

The government has generated public skepticism by using politics to solve technical problems, Hancock said.

"Too many people have been lied to too often," he said.

Anything Leroy tries to do will be colored by the Energy Department's track record on this issue, Hancock said.

"I think that makes his job impossible," he said.

Leroy is undaunted.

"I remain an optimist," he said.

The process he hopes to establish would emphasize safety first and compensation last, he said. It would include local governments in the selection and operation of potential waste sites.

But he knows he may not find any takers.

"Though I will zealously seek a willing recipient, I am not the guarantor of success," Leroy said. "I am the guardian of a fair and credible process."

Such a process, he said, is the way the federal system was meant to work.

"It is no longer possible to create these facilities by force," Leroy said.

"I believe it's more important to create an honest process."

Hancock sees that "honest policy" as little more than bribery.

"Fundamentally it's going to come down to money," he said. "I'm not convinced it's a good idea" to pay some government entity to take the facility.

"The wastes we're talking about are lethal literally for hundreds of generations," he said.

The problem requires a technical solution, Hancock said, not political or economic arm-twisting.

He said it would be better to leave the waste stored where it is generated until a permanent technical solution can be found. That may be 50 years, or more, away.

Such temporary storage would reduce the radiation exposure risks to workers and civilian populations from transporting and handling the waste, he said.



# Radioactive Exchange - HLW Focus Interview

January 17, 1991

ON THE OFFICE OF THE HLW NEGOTIATOR . . . . . DIRECTOR, DAVID LEROY

*The following interview with David Leroy, the Director of the Office of the HLW Negotiator was conducted by Exchange Publisher, Edward L. Helminski in December.*

**David, the first thing I want to ask is the usual question, why did you ever want to take this job? Most people look at it as a no-win situation.**

I was eager to accept the challenge. The fact that people viewed the job as impossible only made it more alluring to me. It is an exciting opportunity to try to bring good politics to good science and solve a key, worldwide problem.

**You're going to be stationed in Idaho, not Washington -- Why?**

Well, I come from state government and I'm very sympathetic to the frustrations of dealing with the Federal government over long distances. I'm aware of the credibility problems the Department of Energy has had in this area, and I'm aware of the animosity focused on the Congress in some parts of the West related to the HLW program.

It seemed an important symbolic gesture to me that we illustrate the independence of the Office of Nuclear Waste Negotiator from the Department of Energy, and from every other Federal institution, by situating it in a different location. Boise was an appropriate choice, both because of its western location and because I already resided there. The White House was amenable to that; the Congress was amenable to that.

However, recognizing, that our office must coordinate negotiations and proposals with the various federal agencies involved, I have established a Washington Liaison office where I will spend a good deal of time.

**Who are the key staffers so far?**

My Chief of Staff is Chuck Lempeis, a lawyer from Northern Idaho who has a degree in social ecology, was active politically in the State and who, like me, has a background in public communications and public relations activities.

Our Washington, D.C. liaison staff includes: Bob Mussler, a former Associate in the General Counsel's Office at the Department of Energy, and before that

at the EPA, and Putnam Coves, a former Special Assistant to OCRWM Director John Bartlett. Both Mussler and Coves provide me with the institutional background related to the HLW program that I need to carry out my job.

Pat Sullivan, formerly with Senator Jim McClure (R-ID) and the Senate Energy and Natural Resources Committee will work on Congressional liaison matters. Also on board is Tom Lien, who will be our Chief Financial Officer and Special Assistant to the Chief of Staff.

**Is everyone a full-time employee? Or are they detailees from DOE?**

We have no detailees from DOE. We're exploring the possibility of acquiring detailees from several departments, but have none yet.

**You signed a Memo of Understanding [MOU] explicitly stating your independence from the Department. Why?**

In my view that was a very important initiative. The MOU was meant to not only underscore that "independence," but also to begin to detail the working relationship which we will have with the DOE.

I want to establish a paper trail of exactly what it is we request of the Department and encourage their timely response to our requests.

It is also important to note that the MOU states that both the requests and the materials exchanged with DOE will be matters of public record.

It seemed to me that in this first MOU an important commitment is made to keeping the public informed through an open process as the two independent entities work back and forth together. All I have to sell is credibility.

Because of the perception that DOE has labored under so many suspicions and allegations about the management of this program and their agenda as operator of the program and facilities, I wanted to do the best I could from the first possible moment to

show that we are not only independent but that we are willing to work in the open forum of public scrutiny. I think that also helps the Department.

This process must be open, broadly involve the public, be ultimately credible and be fair and ethical. The challenge of the Negotiator under the 1987 Amendments Act is to bring a totally new perspective and process to play in siting of these facilities for our country. The idea was to allow states or tribes themselves to indicate willingness rather than to force anyone to do anything on these controversial facilities.

The '87 Amendments emphasized the NIMBY syndrome and recognized the NIM-TO, "Not in my Term of Office," attitude of politicians. It also recognized a very fundamental rule of politics at the state government level -- public perception is the reality.

We have to work with public concerns and fears of risk. We have to work with governors who are going to be subjected to a review of the citizenry at the next election, so it is essential that our program be presented in such a way that it does not immediately become the principal political issue against the governor in the next upcoming election. This is particularly important where it may take several election cycles to ultimately site a facility through the negotiation process.

So our process has to be totally different, totally new. Once we find a state, or more than one state that is interested, we must fully involve the public in determining whether or not that state itself is willing. If we can do that with an innovative proposal and with an open and honest assessment of willingness, then it may well be that we can present political possibilities to this country for siting which have not yet been found. All of this must be done in a way that neither the science nor the technology nor the safety of the populace is compromised. It's a very difficult task.

It is also important to understand that I am not a technician, I am not a scientist -- I am a communicator. I am a former state government official and we have neither the time nor the expertise, with the small staff that we have, to reinvent the wheel. We will need to obtain information and assistance from many quarters of the federal government, from many outside experts and consultants, and

from many state governments as we begin to work. I feel the process of pledging publicly through the MOU how we will be working with the Department of Energy underscores our independence and also emphasizes that we intend to operate openly.

**Does that mean all your communications with the Department will be included in the public records? You won't have any executive communications?**

Well, I don't know all the circumstances in which we will find ourselves and, of course, we will have to work expediently in all quarters. But I am committed to making our negotiation process open and credible by involving the public, by permitting public interest groups and others to work with us and know what we do with the Department and others. I think that's an important part of the negotiation process and I'm committed to it.

**The majority of people who have supported the HLW Negotiator's office (including DOE officials) and have pushed for getting someone appointed are of the view that the office's key role -- if not its only role -- is to work toward siting the MRS, with little or no time spent on the repository. How do you envision delegating your time?**

We'll look at both. I've pledged to go forward soliciting sites for both the MRS and the permanent HLW repository. This will be done in our Request for Proposals (RFP). The initial document may contain references and seek willing sites for both, or we may divide the document. But the initial round of communications to the states and tribes will solicit willing hosts for both facilities. Afterward, depending on where the market interest focuses, we will begin to concentrate our efforts, but the commitment under the statute is that the Negotiator will attempt to site both facilities.

Different groups inside and outside government have different aspirations for our office. Many federal officials do indeed believe that our best opportunity is for siting an MRS. However, there are those both within Federal circles and in state government circles that have aspirations for us to find a possible back-up site for a permanent repository.

The Office of the Negotiator is scheduled to expire in January of 1993. We intend to use the months between now and then to make an aggressive, best effort using the limited resources that the office has,



to identify every possibility for willing, technically qualified sites for both the permanent repository and the monitored retrieval storage facility. After our initial RFP is issued, we will hopefully have some indications of willingness for one or both facilities. But if we should get indications of willingness only on the MRS side, then we will certainly focus our efforts there, in trying to qualify those candidate sites as the law requires. If, however, we are able to find willing candidates for both facilities, we will move forward on both facilities. At this time, there is no indication that one will be preferred over the other by the potential host states.

**You have referred to issuing an RFP. Is this the principal vehicle you intend to use to solicit interest in hosting either the repository or the MRS?**

Yes. The principal vehicle for communicating the possibility of negotiation will be a written document that can best be described as either a proposal or a Request for Proposals possibly modeled along the lines of the DOE Supercollider proposal, which was some seventy-five pages or so in length. That proposal was successful enough to get over 45 states initially indicating some type of interest.

**But that was generally viewed as a project that would bring in highly paid professionals and spur economic development. It wasn't a nuclear waste disposal site.**

Well, I am hopeful that we will be able to present both the HLW repository and the MRS as positive economic projects, featuring a number of incentives and concepts for incentives. We might be able to include some co-locating of other federal projects and emphasize education, jobs creation and the opportunity for centering technological advances and world-leading research. We plan to combine such incentives with monetary benefits. Perhaps we can develop a package attractive enough to stimulate competition among states for one or both of the HLW facilities.

**You say you are looking to entice a host state by bringing in other federal projects?**

Yes. On November 15 we sent out a letter to every cabinet department and other relevant federal agencies asking cooperation in identifying possible projects within their departments that could be co-located with either the MRS or the HLW repository.

**I assume as of this date you haven't received many responses.**

So far, we have received responses from approximately one third of the departments and agencies that we contacted. None have identified likely co-location projects yet.

**What about other DOE projects or facilities?**

We've not yet reached any understanding or had a sophisticated dialogue with the DOE as to what personnel, what facilities, what programs might be available to be co-located with either a repository or the MRS facility, but I would expect that this set of issues and that set of opportunities and resources will be one of the benefits which we can discuss in our proposal to the states.

**Dave, what is your timetable for the coming year? When will you issue this RFP?**

From January through March, we will concentrate on the initial development and conceptualization of our program and of our proposal. In April, we will conduct public participation hearings. May and June will be devoted to finalizing and preparing both our proposal and our process, and sometime between June '91 and October '91 we will issue an invitation for expressions of interest to governors and tribal leaders -- the Request for Proposals that I have mentioned.

A fundamental principle of this document will be that indicating a willingness to talk to the Negotiator's office will not commit a state or tribe to anything but a simple willingness to talk.

This written document will describe a menu of possibilities of benefits and protections which states or tribes might consider as fundamental to their negotiations. It will stress safety first and compensation last. It will describe many types of negotiable benefits and it will also suggest opportunities for the selection of various technologies that might be preferred by one jurisdiction or another for one facility or the other.

It will include some discussion of the opportunity for shared control of the facility to give the jurisdiction a better comfort level about the safety issues once the facility becomes operational.



**In developing this solicitation for expressions of interest, will you go through a public hearing process? I know it's not required, but have you thought of putting out a draft document prior to putting out a final one?**

Yes. We intend to conduct five or more nationwide public hearings in April of this year. We're also still discussing what types of processes would be effective to obtain input to develop the RFP. Over the past couple of months we have written to more than a hundred groups and associations around the country requesting their thoughts and ideas as to what else might be included in this process of public consultation.

The groups contacted range from the National Resource Defense Council to the National Governors Association. They range from the East Coast to the West Coast. They range from the very small to the very largest. We are very serious about incorporating ideas from all quarters into both the process and the proposal. We will use workshops and solicit comments by mail and in person as we develop both the process and the draft RFP.

**So far you have only mentioned negotiating with the States and local tribes. What about local communities, local officials that may be interested in supporting an MRS or a repository?**

The statute that establishes the HLW Negotiator's office provides that I negotiate with governors or tribal leaders only. Perhaps it was designed drawing from past experience in Tennessee where local government officials were enthusiastic about siting an MRS facility but state government officials ultimately killed the possibility.

I pledged at my confirmation process and in a series of written responses to inquiries from Congress to work through the Governor of a state even in the case where tribal leaders may themselves, in their sovereign nation, wish to encourage a siting. I will consult with affected entities of all types and speak with those localities interested in our program. I will make it very clear to local private citizens and local government officials who favor hosting either type of HLW facility that the ultimate negotiations will be conducted with the governor or such other persons as the governor or state law authorizes to speak for the entire state.

I will not be a salesman with the intent to promote a facility to the people of a state or tribe. Instead, it is my task to determine first, whether or not a state on its own is truly willing; second, when and under what conditions, negotiations might start with the governor; and third, to assure that we go forward with only states that have technically qualified sites for a facility.

**So, if some local group did come up to you, whether it was a community or some organization, you would refer them to the governor's office?**

Yes. We will consistently refer them to the governor and to their state government to attempt to begin to determine what their own state's position may be on indicating a willingness to hear our proposal.

**What about Nevada? Will you make any specific effort to deal with Nevada as a singular situation or will you just let them be covered under the general process that you're pursuing?**

I intend to treat Nevada like every other state. I am very interested in observing and understanding the political situation and the public passions in Nevada, but as of yet, I have deliberately stayed away from going to Yucca Mountain because I think it is important for the people of this country and the people of Nevada to know that I intend to treat every state equally.

My statute specifies fifty-eight jurisdictions defined under the term "states" which should be surveyed by the Negotiator for their willingness to host a HLW facility. Nevada is only one of those, and will be treated the same as the others.

**What if DOE comes up with a proposed site? Wouldn't you get involved in developing a Host State agreement?**

Under the Act the HLW Negotiator is the guardian of a process, not the guarantor of a result in siting. The National Energy Strategy currently being developed by the administration is considering a plank which encourages the negotiator to create a process which might be used not only for the siting of these particular facilities, but might also be available in the future for the siting of other facilities. The negotiator process was designed to run parallel with other initiatives that the Department of Energy might be able to achieve. It's certainly possible that



---

the Department may find opportunities for an MRS that would not meet the negotiator criteria but could be usefully explored by the Department itself in addition to the efforts of the negotiator. However, the Department has said several times that it places its highest hopes for an MRS siting with the Negotiator. Our aggressive, best effort will be to achieve that siting. ◀



# Hired to Negotiate, but Shunned by All

By MATTHEW L. WALD  
Special to The New York Times

WASHINGTON, Feb. 8 — President Bush gave him the job of knocking on the doors of the nation's governors. But all are afraid to answer. Where he hoped for a yes, he would now consider himself lucky with a maybe.

A half year after he became the Federal Government's newest hope in the tortuous effort to dispose of four decades of highly radioactive nuclear waste, David H. Leroy has made no visible progress in his job of persuading a state or an Indian tribe to accept the waste.

So far, Mr. Leroy says, all the people with whom he needs to negotiate will not be caught dead talking to him.

Officials of several Western states who knew the 43-year-old negotiator when he was Lieutenant Governor of Idaho, from 1983 to 1987, say he is not exaggerating his pariah status. "His fear is accurate," said W. Val Oveson, the Lieutenant Governor of Utah. "If someone knows who he is, and what he's doing, and finds him on the schedule of any politician, it's going to be a major news story."

Under the Nuclear Waste Policy Act, the 1987 law that created his job, Mr. Leroy is supposed to negotiate with governors to discover what would induce them to play host. The thinking was that local opposition might be overcome by economic benefits, which would include hundreds of jobs.

But nuclear waste is so unpopular with voters, Mr. Leroy said, that if he walked into any governor's office and created the impression that that state was being singled out "I would instantly have created the principal issue in that governor's next re-election campaign."

So Mr. Leroy is planning to approach all 50 states with a request for proposals. And he has lowered his sights. "I don't expect them to say yes," he said in a recent interview. "I simply hope they'll say maybe."

## A Governor's Accord Is Essential

If they all turn him down, he said in his confirmation hearing last summer, "I would follow up to determine with each state the circumstances and conditions of the refusals," to see if there were any "ideas or possibilities" in the refusals that could lead to further discussions.

Exactly what inducements he can offer is not clear. Mr. Leroy says his job

is to design a negotiating process. But whatever state or Indian reservation accepts the nuclear waste will gain hundreds of construction jobs, a smaller number of extremely long-term jobs for plant operators, and perhaps some research contracts and public works projects. In his confirmation hearings, Mr. Leroy promised that if an Indian tribe volunteered to accept the waste he would not proceed without the approval of that state's governor as well.

Under the 1987 law, Mr. Leroy is looking for sites for two kinds of "repositories," as the Government prefers to call what their opponents call a "dump."

In a recent interview in his office a few blocks north of the White House, in an antique brick town house with a brass plaque that looks as if it should mark a historic site but says instead, "United States Nuclear Waste Negotiator," Mr. Leroy cheerfully recited the conventional wisdom about his mission.

Opposition to nuclear waste, he said, goes beyond the standard nimby ("not in my backyard") and even beyond nimtoo ("not in my term of office"), and all the way to nuac ("not under any circumstances").

One category of repository is a permanent burial spot. The Energy Department is engaged in a \$1 billion examination of a site selected by Congress for that purpose, Yucca Mountain, about 100 miles north of Las Vegas. Yucca was chosen as the prime

## Incentives are slim for a state to bury America's nuclear waste.

candidate by the same law that established Mr. Leroy's job. But Nevada is fighting tooth and nail, and some scientists think the site is impractical. They say water could get into the site and spread the waste, so Mr. Leroy is looking for another.

Even if Yucca Mountain is eventually opened, it seems unlikely to be available until well into the next century. So Mr. Leroy is also looking for an interim storage site, where the waste, mostly spent fuel rods from civilian power plants, could be stored until a permanent repository is built. There is also waste from the production of nuclear weapons.

### Interim vs. Permanent

Interim is the only basis on which high-level radioactive waste has been stored since the nuclear age began, however, and since it is not clear when this waste will be moved, the distinction between interim and permanent is

## A visit from one Bush aide can be a politician's death knell.

not clear. One clear difference though is method; the interim site would use a system called "monitored retrievable storage," with above-ground tombs envisioned by the Energy Department. At a permanent site, the waste would be buried.

Seeking to prevent a temporary site from turning into a permanent one by default, Congress, specified that a monitored retrievable storage repository could not be built until a permanent site was well in hand. Under those circumstances, the interim site would not be very useful. If Mr. Leroy finds a candidate for an interim site, the law would have to be amended if it was to be used before a permanent site was found. President Bush called for such an amendment in the draft of his national energy strategy, now being circulated among Federal agencies.

Oak Ridge, Tenn., the site of a major Government nuclear laboratory, expressed interest in being the host for a monitored retrievable storage complex a few years ago, but the idea was dropped because of opposition from the Governor of Tennessee, Lamar Alexander, now the nominee for Education Secretary.

### An Optimistic Negotiator

Mr. Leroy is optimistic, though, that other potential sites will be found for temporary and permanent storage.

Nevada, which would have the most to gain if another state asked for the privilege that Congress has said should go to Yucca Mountain, is not hopeful. "Frankly, it's difficult for me to see somebody volunteering to undertake that," said Senator Richard H. Bryan, a Democrat who is a former Governor of the state.

Electric utilities, on the other hand, are anxious for Mr. Leroy to succeed. Most reactors were built with the idea that their waste would be trucked away after a matter of months or a few years. The pools of water built to hold the waste temporarily are filling rapidly. Some utilities have moved the spent fuel into huge steel casks, which can be stored away from the reactor.

"People aren't going to like a forest of casks," said a spokeswoman for one such company, who spoke on the condition of anonymity. And the lack of a permanent repository is emerging as a major stumbling block to construction of reactors.

But if the idea is presented in the right way, Mr. Leroy says, volunteers will emerge. The Energy Department's request for proposals for the superconducting supercollider received 43 favorable responses, he pointed out.



Andrea Mohin/The New York Times

David H. Leroy, who is still looking for a dumping site for the nation's nuclear waste.

(The \$8.6 billion collider, the world's largest particle accelerator, is to be built in Waxahachie, Tex.)

### Keeping Washington at Distance

Mr. Leroy does not closely associate himself with the Energy Department. A former Idaho Attorney General who was active in Republican Presidential campaigns, he makes a point of noting that his headquarters is in Boise, far from his Washington liaison office and the Energy Department.

He envisions a brokered solution, in which the Federal Government offers to build roads, a hospital and other benefits, perhaps including a nuclear science program at the state university. "We simply are not going to be able to buy people with money," he said.

In his Senate confirmation hearing he said, "It is not the task of the nuclear negotiator to ask any jurisdiction to trade off the lives and safety of future generations of children for large sums of money."

But Shira Flax, a lobbyist for the Sierra Club in Washington, said in an interview: "That's the only way he'll get it, to buy them out. No one will do that without a lot of money; the only thing that has worked is a bribe."

Mr. Leroy puts it more gently. "The host must be self-convinced of the benefits which are associated with such a program," he said.



# The Arizona Daily Star

©1991 The Arizona Daily Star

No. 57 \*

Final Edition, Tucson, Tuesday, February 26, 1991

## Leroy tries out his nuclear waste pitch on UA conference



A.E. Ariza, The Arizona Daily Star

David Leroy is on an unpopular mission

By Keith Bagwell  
The Arizona Daily Star

David H. Leroy wants to talk to every governor and Indian tribal leader in the United States.

So far, they don't want to talk to Leroy.

Leroy is peddling nuclear waste — he is looking for a state or an Indian tribe to offer land for a waste repository, a dump.

Since no one is contacting him, Leroy has taken his case on the road — to seminars and other public forums — and yesterday he made his pitch to the University of Arizona's Waste Management '91 conference.

### "Most controversial program"

"This is the most controversial environmental program ever, and it has polarized America," he said.

"In siting a repository, we must deal with risk — and the fear people have of all things nuclear," he said.

President Bush last year named Leroy, 43, a Republican Party activist in Idaho,

"This is the most controversial environmental program ever, and it has polarized America."

David Leroy  
U.S. nuclear waste negotiator

as the nation's first nuclear waste negotiator.

His \$80,000-a-year job is to convince governors or tribal leaders that benefits of hosting a dump for the nation's most deadly nuclear waste outweigh the health risks.

### Little time to succeed

The Boise lawyer realizes he faces a stiff challenge and has little time — his job ends in January 1993 — to succeed.

"It's like the Starship Enterprise — we're going beyond where we've ever gone before," Leroy said.

"But it's an exciting possibility to maybe be able to solve one of the most

difficult problems in America," he said.

The "high-level" radioactive waste for which Leroy seeks a dump site consists of spent fuel rods from commercial reactors — laden with plutonium and other highly radioactive, long-lived metals — now in pools at reactors sites.

Also qualifying as "high-level" radioactive waste is plutonium, radioactive for hundreds of thousands of years, and other dangerous and long-lived wastes from military nuclear weapons programs.

### No site is targeted

Leroy vowed not to target any state or tribal land and not to push anyone to accept a dump site for such wastes. "I've decided to become one of America's best listeners," he said.

And he pledged not to engage in any deal-making behind the scenes. "I intend to explore the resolution of this problem openly — with honesty and integrity," Leroy said.

Between June and October of this year, he will send information-filled invi-

tations to governors and tribal leaders across the country, he said.

### A number of incentives

The 1987 radioactive waste law that created Leroy's job earmarked \$10 million to \$20 million a year for any state or tribe that hosted a dump site. "That alone has not attracted anyone," he conceded.

But Leroy said a host has many other incentives. "I want to talk of safety first — for workers and the general public — and of compensation last," he said.

Other benefits he said, are shared control of the facility between the federal government and the host; technological development; jobs; new roads, railroads and airports; and a center for excellence at a nearby university.

Such a facility, he said, would cause a ripple effect in the local economy, leading to many more jobs in the area.

And states with existing radioactive contamination sites — like the Rocky Flats weapons facility near Denver — have an added incentive in that they could have a nearby place to put contaminated materials, he said.



National Journal March 16, 1991

**HE'S AT LEAST AS POPULAR AS A TAX COLLECTOR**

BY MARGARET L. KRIZ

**D**avid H. Leroy has a deal he'd like to make with financially strapped governors and Indian tribal leaders.

The government's chief nuclear waste negotiator, Leroy is asking states and tribes to donate land that could be used as a final home for nearly 20,000 metric tons of radioactive waste that have accumulated at 111 nuclear power plants across the land. In return, Leroy says he can offer the prospect of increased federal assistance for road improvements, health care and education, along with a menu of other safety incentives and economic benefits.

"There never has been a better time at which our proposal might receive a warm reception," Leroy said in an interview. "Because of economic dislocations, the states themselves are having revenue shortfalls of significant dimensions. With federal government budget reductions, there are dozens of federal base closures."

That's all well and good, but to most people who hold elective office at the state or tribal levels, nuclear waste is political poison. It took the White House nearly two years to find someone who'd take the \$80,000-a-year job. Since his confirmation in August, Leroy, a Republican who was once Idaho's attorney general and lieutenant governor, has been spending much of his time getting ready to knock on doors. He said he has been meeting with government, industry and outside groups for advice on how to proceed. In a move designed to illustrate the independence of his post, Leroy operates out of Boise, Idaho, although he also has a Washington office.

The nuclear waste negotiator's office was established by 1987 amendments to the Nuclear Waste Policy Act. The legislation gave the negotiator until Jan. 21, 1993, to find a waste site.

Leroy says he recognizes that even getting a foot in the door with most local leaders won't be easy. At least one state official has told him that his

request "will start with every conceivable political strike against it," he said. "And that's a very fair summary."

This summer, he plans to formally ask governors and tribal leaders to submit a wish list of things Washington could underwrite—in exchange for a waste site. The notion of getting local cooperation through economic incentives—assuming that in a time of tight federal budgets, Congress would readily approve the extra spending—has been criticized by many antinuclear groups. "The idea of bribing communities to take waste for money is a bad one," said Diane D'Arrigo, nuclear active waste project director for the Nuclear Information and Resource Service, a Washington-based group.

Leroy says that's not a fair assessment of his role. "You cannot simply bribe a jurisdiction to give away the safety of future generations," he said, noting that strict safety standards would be enforced.

Once an official indicates a willingness to negotiate, Leroy said, a prospective storage site would be studied to make sure that it is not located in an earthquake-prone region and that the

site can safely hold the nuclear waste without contaminating nearby air, water or land. "The process is not driven by the technical side of science until we get someone who's willing to talk to us," he said.

That approach worries some antinuclear activists. "They're divorcing good science from the process," said J.R. Wilkinson, administrative assistant for Citizen Alert, a Nevada grass-roots group. "The nuclear industry is desperate to find a hole to put this stuff in, and now they are trying to find some poor area that will accept it."

Wilkinson charged that politics won out over science in 1987, when Congress designated Nevada's Yucca Mountain as the sole nuclear waste site that the Energy Department should study. "Rather than setting down the scientific specifications of what is the safest rock [formation] to put this waste in and trying to find such a site, they took the politically expedient route" of selecting Yucca Mountain, he said. "Now we have this carpet-bagging salesman trying to find some tribe or state to take this stuff."

The Yucca Mountain project is on hold; Nevada has gone to court to keep the Energy Department from studying further whether the site is scientifically suitable. The nuclear industry is pressing Capitol Hill for legislation eliminating Nevada's right to block use of Yucca Mountain.

Leroy concedes that he'll be dogged by opposition. "We don't have time to make a wholesale effort to change public attitudes or opinions about the risks associated with everything and anything nuclear," he said.

Leroy sees his role as that of a conduit, not a salesman. "Through me, every state and every tribe will have an opportunity to discuss with Congress the terms in their own interest in which they might be willing to help address a national need," he said. "We're hoping to create a political condition under which a state may volunteer. We're looking for governors that are willing to say maybe."



Federal negotiator David H. Leroy  
Radioactive waste, anyone? Please?

John Elert

