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(3) Beatty, Nevada.—The State of Nevada, in accordance with the provisions of its compact, may limit the volume of low-level radioactive waste accepted for disposal at the regional disposal facility located at Beatty, Nevada to a total of 1,400,000 cubic feet of low-level radioactive waste during the 7-year period beginning January 1, 1986, and ending December 31, 1992 (as based on an average annual volume of 200,000 cubic feet of low-level radioactive waste).

(c) Commercial Nuclear Power Reactor Allocations.—

(1) Amount.—Subject to the provisions of subsections (a) through (g) each commercial nuclear power reactor shall upon request receive an allocation of low-level radioactive waste disposal capacity (in cubic feet) at the facilities referred to in subsection (b) during the 4-year transition period beginning January 1, 1986 and ending December 31, 1989, and during the 3-year licensing period beginning January 1, 1990, and ending December 31, 1992, in an amount calculated by multiplying the appropriate number from the following table by the number of months remaining in the applicable period as determined under paragraph (2).

Reactor Type	4-year Licensing Period		3-year Licensing Period	
	In Sited Region	All Other Locations	In Sited Region	All Other Locations
PWR	1027	871	934	685
BWR	2300	1951	2091	1533

(2) Method Of Calculation.—For purposes of calculating the aggregate amount of disposal capacity available to a commercial nuclear power reactor under this subsection, the number of months shall be computed beginning with the first month of the applicable period, or the sixteenth month after receipt of a full power operating license, whichever occurs later.

(3) Unused Allocations.—Any unused allocation under paragraph (1) received by a reactor during the transition period or the licensing period may be used at any time after such reactor receives its full power license or after the beginning of the pertinent period, whichever is later, but not in any event after December 31, 1992, or after commencement of operation of a regional disposal facility in the compact region or State in which such reactor is located, whichever occurs first.

(4) Transferability.—Any commercial nuclear power reactor in a State or compact region that is in compliance with the requirements of subsection (e) may assign any disposal capacity allocated to it under this subsection to any other person in each State or compact region. Such assignment may be for valuable consideration and shall be in writing, copies of which shall be filed at the affected compact commissions and States, along with the assignor's unconditional written waiver of the disposal capacity being assigned.

(5) Unusual Volumes.—

(A) The Secretary may, upon petition by the owner or operator of any commercial nuclear power reactor, allocate to such reactor disposal capacity in excess of the amount calculated under paragraph (1) if the Secretary finds and states in writing his reasons for so finding that making additional capacity available for such reactor through this paragraph is required to permit unusual or unexpected operating, maintenance, repair or safety activities.

Prohibition.

(B) The Secretary may not make allocations pursuant to subparagraph (A) that would result in the acceptance for disposal of more than 800,000 cubic feet of low-level radioactive waste or would result in the total of the allocations made pursuant to this subsection exceeding 11,900,000 cubic feet over the entire seven-year interim access period.

Prohibition.

(6) Limitation.—During the seven-year interim access period referred to in subsection (a), the disposal facilities referred to in subsection (b) shall not be required to accept more than 11,900,000 cubic feet of low-level radioactive waste generated by commercial nuclear power reactors.

Prohibition.

(d)(1) Surcharges.—The disposal of any low-level radioactive waste under this section (other than low-level radioactive waste generated in a sited compact region) may be charged a surcharge by the State in which the applicable regional disposal facility is located, addition to the fees and surcharges generally applicable for disposal of low-level radioactive waste in the regional disposal facility involved. Except as provided in sub-section (e)(2), such surcharges shall not exceed—

(A) in 1986 and 1987, \$10 per cubic foot of low-level radioactive waste;

(B) in 1988 and 1989, \$20 per cubic foot of low-level radioactive waste; and

(C) in 1990, 1991, and 1992, \$40 per cubic foot of low-level radioactive waste.

(2) Milestone Incentives.—

(A) Escrow Account.—Twenty-five per centum of all surcharge fees received by a State pursuant to paragraph (1) during the seven-year period referred to in subsection (a) shall be transferred on a monthly basis to an escrow account held by the Secretary. The Secretary shall deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States. The Secretary shall act as trustee for such funds and shall invest them in interest-bearing United States Government Securities with the highest available yield. Such funds shall be held by the Secretary until—

(i) paid or repaid in accordance with subparagraph (B) or (C); or

(ii) paid to the State collecting such fees in accordance with subparagraph (F).

(B) Payments.—

(i) July 1, 1986.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning on the date of enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and ending June 30, 1986, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance

with subparagraph (D) if the milestone described in subsection (e)(1)(A) is met by the State in which such waste originated.

(ii) January 1, 1988.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning July 1, 1986 and ending December 31, 1987, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(B) is met by the state in which such waste originated (or its compact region, where applicable).

(iii) January 1, 1990.—The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1988 and ending December 31, 1989, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if the milestone described in subsection (e)(1)(C) is met by the State in which such waste originated (or its compact region, where applicable).

(iv) The twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992, and transferred to the Secretary under subparagraph (A), shall be paid by the Secretary in accordance with subparagraph (D) if, by January 1, 1993, the State in which such waste originated (or its compact region, where applicable) is able to provide for the disposal of all low-level radioactive waste generated within such State or compact region.

(C) Failure To Meet January 1, 1993 Deadline.—If, by January 1, 1993, a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region—

(i) each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, shall be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1993 as the generator or owner notifies the State that the waste is available for shipment; or<sup>3</sup>

(ii) if such State elects not to take title to, take possession of, and assume liability for such waste, pursuant to clause (i), twenty-five per centum of any amount collected by a State under paragraph (1) for low-level radioactive waste disposed of under this section during the period beginning January 1, 1990 and ending December 31, 1992 shall be repaid, with interest, to each generator from whom such surcharge was

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<sup>3</sup>The United States Supreme Court struck down this provision because it was unconditional. (*N.Y. vs. United States* 112 S. Ct. 2408 (June 19, 1992)).

collected. Repayments made pursuant to this clause shall be made on a monthly basis, with the first such repayment beginning on February 1, 1993, in an amount equal to one thirty-sixth of the total amount required to be repaid pursuant to this clause, and shall continue until the State (or, where applicable, compact region) in which such low-level radioactive waste is generated is able to provide for the disposal of all such waste generated within such State or compact region or until January 1, 1996, whichever is earlier.

If a State in which low-level radioactive waste is generated elects to take title to, take possession of, and assume liability for such waste pursuant to clause (i), such State shall be paid such amounts as are designated in subparagraph (B)(iv). If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated provides for the disposal of such waste at any time after January 1, 1993 and prior to January 1, 1996, such State (or, where applicable, compact region) shall be paid in accordance with subparagraph (D) a lump sum amount equal to twenty-five per centum of any amount collected by a State under paragraph (1): *Provided, however,* That such payment shall be adjusted to reflect the remaining number of months between January 1, 1993 and January 1, 1996 for which such State (or, where applicable, compact region) provides for the disposal of such waste. If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

(D) Recipients Of Payments.—The payments described in subparagraphs (B) and (C) shall be paid within thirty days after the applicable date—

(i) if the State in which such waste originated is not a member of a compact region, to such State;

(ii) if the State in which such waste originated is a member of the compact region, to the compact commission serving such State.

(E) Uses Of Payments.—

(i) Limitations.—Any amount paid under subparagraphs (B) or (C) may only be used to—

(I) establish low-level radioactive waste disposal facilities;

(II) mitigate the impact of low-level radioactive waste disposal facilities on the host State;

(III) regulate low-level radioactive waste disposal facilities; or

(IV) ensure the decommissioning, closure, and care during the period of institutional control of low-level radioactive waste disposal facilities.

(ii) Reports.—

(I) Recipient.—Any State or compact commission receiving a payment under subparagraphs (B) or (C) shall,

Reports.

on December 31 of each year in which any such funds are expended, submit a report to the Department of Energy itemizing any such expenditures.

(II) Department Of Energy.—Not later than six months after receiving the reports under subclause (I), the Secretary shall submit to the Congress a summary of all such reports that shall include an assessment of the compliance of each such State or compact commission with the requirements of clause (i).

(F) Payment To States.—Any amount collected by a State under paragraph (1) that is placed in escrow under subparagraph (A) and not paid to a State or compact commission under subparagraphs (B) and (C) or not repaid to a generator under subparagraph (C) shall be paid from such escrow account to such State collecting such payment under paragraph (1). Such payment shall be made not later than 30 days after a determination of ineligibility for a refund is made.

Prohibition.

(G) Penalty Surcharges.—No rebate shall be made under this subsection of any surcharge or penalty surcharge paid during a period of noncompliance with subsection (e)(1).

(e) Requirements For Access To Regional Disposal Facilities.—

(1) Requirements For Non-sited Compact Regions And Non-member States.—Each non-sited compact region, or State that is not a member of a compact region that does not have an operating disposal facility, shall comply with the following requirements:

(A) By July 1, 1986, each such non-member State shall ratify compact legislation or, by the enactment of legislation or the certification of the Governor, indicate its intent to develop a site for the location of a low-level radioactive waste disposal facility within such State.

(B) By January 1, 1988.—

(i) each non-sited compact region shall identify the State in which its low-level radioactive waste disposal facility is to be located, or shall have selected the developer for such facility and the site to be developed, and each compact region or the State in which its low-level radioactive waste disposal facility is to be located shall develop a siting plan for such facility providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application and shall delegate authority to implement such plan;

(ii) each non-member State shall develop a siting plan providing detailed procedures and a schedule for establishing a facility location and preparing a facility license application for a low-level radioactive waste disposal facility and shall delegate authority to implement such plan; and

(iii) The siting plan required pursuant to this paragraph shall include a description of the optimum way to attain operation of the low-level radioactive waste disposal facility involved, within the time period specified in this Act. Such plan shall include a description of the objectives and a sequence of deadlines for all entities required to take action to implement such plan, including, to the extent practicable, an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning facility operation. Such plan shall also identify, to the extent

practicable, the process for (1) screening for broad siting areas; (2) identifying and evaluating specific candidate sites; and (3) characterizing the preferred site(s), completing all necessary environmental assessments, and preparing a license application for submission to the Nuclear Regulatory Commission or an Agreement State.

(C) By January 1, 1990.—

(i) a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State; or

(ii) the Governor (or, for any State without a Governor, the chief executive officer) of any State that is not a member of a compact region in compliance with clause (i), or has not complied with such clause by its own actions, shall provide a written certification to the Nuclear Regulatory Commission, that such State will be capable of providing for, and will provide for, the storage, disposal, or management of any low-level radioactive waste generated within such State and requiring disposal after December 31, 1992, and include a description of the actions that will be taken to ensure that such capacity exists.

(D) By January 1, 1992, a complete application (as determined by the Nuclear Regulatory Commission or the appropriate agency of an agreement State) shall be filed for a license to operate a low-level radioactive waste disposal facility within each non-sited compact region or within each non-member State.

(E) The Nuclear Regulatory Commission shall transmit any certification received under subparagraph (C) to the Congress and publish any such certification in the Federal Register.

(F) Any State may, subject to all applicable provisions, if any, of any applicable compact, enter into an agreement with the compact commission of a region in which a regional disposal facility is located to provide for the disposal of all low-level radioactive waste generated within such State, and, by virtue of such agreement, may, with the approval of the State in which the regional disposal facility is located, be deemed to be in compliance with subparagraphs (A), (B), (C), and (D).

(2) Penalties For Failure To Comply.—

(A) By July 1, 1986.—If any State fails to comply with subparagraph (1)(A)—

(i) any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning July 1, 1986, and ending December 31, 1986, be charged 2 times the surcharge otherwise applicable under subsection (d); and

(ii) on or after January 1, 1987, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(B) By January 1, 1988.—If any non-sited compact region or non-member State fails to comply with paragraph (1)(B)—

(i) any generator of low-level radioactive waste within such region or non-member State shall—

Federal  
Register,  
publication.  
Contracts.

(I) for the period beginning January 1, 1988, and ending June 30, 1988, be charged 2 times the surcharge otherwise applicable under subsection (d); and

(II) for the period beginning July 1, 1988, and ending December 31, 1988, be charged 4 times the surcharge otherwise applicable under subsection (d); and

(ii) on or after January 1, 1989, any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(C) By January 1, 1990.—If any non-sited compact region or non-member State fails to comply with paragraph (1)(C), any low-level radioactive waste generated within such region or non-member State may be denied access to the regional disposal facilities referred to in paragraphs (1) through (3) of subsection (b).

(D) By January 1, 1992.—If any non-sited compact region or non-member State fails to comply with paragraph (1)(D), any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d).

Prohibition.

(3) Denial Of Access.—No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

Termination.

(4) Restoration Of Suspended Access; Penalties For Failure To Comply.—Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of subsection (e) shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f)(1) Administration.—Each State and compact commission in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) is located shall have authority—

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that—

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1).

(2) Availability Of Information During Interim Access Period.—

Nevada.  
South Carolina.  
Washington.

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

Nevada.  
South Carolina.  
Washington.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) Proprietary Information.—

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State—

(I) consents in writing to restrict the dissemination of the information to those who are directly involved in monitoring under subparagraph (A) and who have a need to know;

(II) accepts liability for wrongful disclosure; and

(III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under this Act may be required to disclose such information under State law.

(g) Nondiscrimination.—Except as provided in subsections (b) through (e), low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.

Commerce and  
trade.  
Government  
organization  
and employees.  
Prohibition.

42 USC 2021f.  
Defense and  
national  
security.  
Health.  
Safety.

**Sec. 6. Emergency Access.**

(a) In General.—The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request For Emergency Access.—Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

Health.

(c) Determination Of Nuclear Regulatory Commission.—

Defense and national security. Safety.

(1) Required Determination.—Not later than 45 days after receiving a request under subsection (b), the Nuclear Regulatory Commission shall determine whether—

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) The threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to section 5(c) or ceasing activities that generate low-level radioactive waste.

Prohibition.

(2) Required Notification.—If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e), no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

Defense and national security. Health. Safety.

(d) Temporary Emergency Access.—Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c). Absent a determination that no alternative consistent with the public health and safety would mitigate the threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

Defense and national security. Health. Safety.

(e) Extension Of Emergency Access.—

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c), if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the

immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

(f) Reciprocal Access.—Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval By Compact Commission.—Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f).

Prohibitions.

(h) Limitations.—No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders for more than 20 percent of the total volume of low-level radioactive waste accepted for disposal at such facility during the previous calendar year.

(i) Volume Reduction And Surcharges.—Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in this Act.

(j) Deduction From Allocation.—Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, if generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 5(c).

Prohibition.

(k) Agreement States.—Any agreement under section 274 of the Atomic Energy Act of 1954 (42 USC 2021) shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.

42 USC 2021g.

**Sec. 7. Responsibilities Of The Department Of Energy.**

(a) Financial And Technical Assistance.—The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States determined by the Secretary to require assistance for purposes of carrying out this Act—

Health.  
Safety.  
Science and  
technology.  
Transportation.

(1) continuing technical assistance to assist them in fulfilling their responsibilities under this Act. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a

computerized database to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under this Act.

Science and  
technology.  
Transportation.

(b) Reports.—The Secretary shall prepare and submit to the Congress on an annual basis a report which (1) summarizes the progress of low-level waste disposal siting and licensing activities within each compact region, (2) reviews the available volume reduction technologies, their applications, effectiveness, and costs on a per unit volume basis, (3) reviews interim storage facility requirements, costs, and usage, (4) summarizes transportation requirements for such wastes on an inter- and intra-regional basis, (5) summarizes the data on the total amount of low-level waste shipped for disposal on a yearly basis, the proportion of such wastes subjected to volume reduction, the average volume reduction attained, and the proportion of wastes stored on an interim basis, and (6) projects the interim storage and final disposal volume requirements anticipated for the following year, on a regional basis.

42 USC 2021h.

**Sec. 8. Alternative Disposal Methods.**

(a) Not later than 12 months after the date of enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Not later than 24 months after the date of enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Commission shall, in consultation with the States and other interested persons, identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.

42 USC 2021i.

**Sec. 9. Licensing Review And Approval.**

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state shall—

(1) not later than 12 months after the date of enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.

42 USC 2021j.

**Sec. 10. Radioactive Waste Below Regulatory Concern.**

(a) Not later than 6 months after the date of enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Commission shall establish standards and procedures, pursuant to existing authority, and develop the technical capability for considering and acting upon petitions to exempt specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

(b) The standards and procedures established by the Commission pursuant to subsection (a) shall set forth all information required to be submitted to the Commission by licensees in support of such petitions, including, but not limited to—

(1) a detailed description of the waste materials, including their origin, chemical composition, physical state, volume, and mass; and

(2) The concentration or contamination levels, half-lives, and identities of the radionuclides present.

Health.  
Safety.  
Regulation.

Such standards and procedures shall provide that, upon receipt of a petition to exempt a specific radioactive waste stream from regulation by the Commission, the Commission shall determine in an expeditious manner whether the concentration or quantity of radionuclides present in such waste stream requires regulation by the Commission in order to protect the public health and safety. Where the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission shall take such steps as may be necessary, in an expeditious manner, to exempt the disposal of such radioactive waste from regulation by the Commission.

**B. LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985 (TITLE II, INCLUDES: NW, CENTRAL, SE, CENTRAL MIDWEST, MW, ROCKY MOUNTAIN, NE INTERSTATE COMPACTS)**

**Title II—Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act**

42 USC 2021d note.

**Sec. 201. Short Title.**

This Title may be cited as the “Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act.”

**Subtitle A—General Provisions**

42 USC 2021d note.

**Sec. 211. Congressional Finding.**

The Congress hereby finds that each of the compacts set forth in subtitle B is in furtherance of the Low-Level Radioactive Waste Policy Act.

42 USC 2021d note.

**Sec. 212. Conditions of Consent to Compacts.**

The consent of the Congress to each of the compacts set forth in subtitle B—

Effective date.

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, as amended; and

(3) is granted only for so long as the regional commission, committee, or board established in the compact complies with all of the provisions of such Act.

42 USC 2021d note.

**Sec. 213. Congressional Review.**

The Congress may alter, amend, or repeal this Act with respect to any compact set forth in subtitle B after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided in such compact.

**Subtitle B—Congressional Consent To Compacts**

42 USC 2021d note.

Alaska.  
Hawaii.  
Idaho.  
Montana.  
Oregon.  
Utah.  
Washington.  
Wyoming.

**Sec. 221. Northwest Interstate Compact on Low-level Radioactive Waste Management.**

The Consent of Congress is hereby given to the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming to enter into the Northwest Interstate Compact on Low-level Radioactive Waste Management, and to each and every part and article thereof. Such compact reads substantially as follows:

**Northwest Interstate Compact On Low-Level Radioactive Waste Management**

**Article I—Policy And Purpose**

Health.  
Safety.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

**Article II—Definitions**

As used in this compact:

(1) ~~“Facility”~~ means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities;

(2) ~~“Low-level waste”~~ means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than ten (10) nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) ~~“Generator”~~ means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) ~~“Host state”~~ means a state in which a facility is located.

### Article III—Regulatory Practices

Transportation.

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) Authorization of the containers in which such waste may be shipped, and a requirement that generators use only that type of container authorized by the state;

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

Transportation.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

### Article IV—Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in article V.

(3) Until such time as paragraph (2) of article IV takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state, and shall contain at least the following:

(A) The generator's name and address;

(B) A description of the contents of the low-level waste container.

Regulations.

(C) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with

applicable Federal regulations and such additional requirements as may be imposed by the host state;

(D) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

Health.  
Safety.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one (1) party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in their region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

Hazardous  
materials.  
Idaho.  
Oregon.  
Prohibition.  
Washington.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

#### **Article V—Northwest Low-Level Waste Compact Committee**

Regulations.

The governor of each party state shall designate one (1) official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modification in such regulations. Notwithstanding any provision of article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds (2/3) vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

**Article VI—Eligible Parties And Effective Date**

Alaska. Hawaii.  
Idaho. Montana.  
Oregon. Utah.  
Washington.

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two (2) states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

Effective date.  
Wyoming.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

42 USC 2021b  
note.  
Effective date.

(3) Paragraph (2) of article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five (5) year period.

**Article VII—Severability**

Provisions held  
invalid.

If any provision of this compact, or its application to any person or circumstances, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

42 USC 2021d  
note.

**Sec. 222. Central Interstate Low-level Radioactive Waste Compact.**

Arkansas.  
Iowa. Kansas.  
Louisiana.  
Minnesota.  
Missouri.  
Nebraska.  
North Dakota.  
Oklahoma.

The consent of Congress is hereby given to the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma to enter into the Central Interstate Low-Level Radioactive Waste Compact, and to each and every part and article thereof. Such compact reads substantially as follows:

**Central Interstate Low-Level Radioactive Waste Compact**

**Article I—Policy And Purpose**

42 USC 2021b  
note.  
Environmental  
protection.  
Health.  
Safety.

The party states recognize that each state is responsible for the management of its non-federal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573) has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety and welfare of their citizens and the environment and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits and obligations among the party states.

**Article II—Definitions**

As used in this compact, unless the context clearly requires a different construction:

a. ~~Commission~~” means the Central Interstate Low-Level Radioactive Waste Commission;

b. ~~disposal~~” means the isolation and final disposition of waste;

c. ~~extended care~~” means the care of a regional facility including necessary corrective measures subsequent to its active use for waste management until such time as the regional facility no longer poses a threat to the environment or public health;

d. ~~facility~~” means any site, location, structure or property used or to be used for the management of waste;

e. ~~generator~~” means any person who, in the course of or as incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research or mining in a party state, produces or processes waste. ~~Generator~~” does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

f. ~~host state~~” means any party state in which a regional facility is situated or is being developed;

42 USC 2021b  
note.

g. ~~low-level radioactive waste~~” or ~~waste~~” means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: High-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended through 1978.

42 USC 2014.

h. ~~management of waste~~” means the storage, treatment or disposal of waste;

i. ~~notification of each party state~~” means transmittal of written notice to the Governor, presiding officer of each legislative body and any other persons designated by the party state’s Commission member to receive such notice;

j. ~~party state~~” means any state which is a signatory party to this compact;

k. ~~person~~” means any individual, corporation, business enterprise, or other legal entity, either public or private;

l. ~~region~~” means the area of the party states;

m. ~~regional facility~~” means a facility which is located within the region and which has been approved by the Commission for the benefit of the party States;

n. ~~site~~” means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

o. ~~state~~” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands or any other territorial possession of the United States;

p. ~~storage~~” means the holding of waste for treatment or disposal; and

q. ~~treatment~~” means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render such waste after for transport or management, amendable for recovery, convertible to another usable material, or reduced in volume.

**Article III—Rights And Obligations**

a. There shall be provided within the region one or more regional facilities which together provide sufficient capacity to manage all wastes generated within the region. It shall be the duty of regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of this Act, and each party state shall have the right to have the wastes generated within its borders managed at such facility.

Regulation.

b. To the extent authorized by Federal law and host State law, a host state shall regulate and license any regional facility within its borders and ensure the extended care of such facility.

c. Rates shall be charged to any user of the regional facility, set by the operator of a regional facility and shall be fair and reasonable and be subject to the approval of the host state. Such approval shall be based upon criteria established by the Commission.

d. A host state may establish fees which shall be charged to any user of a regional facility and which shall be in addition to the rates approved pursuant to section c. of this Article, for any regional facility within its borders. Such fees shall be reasonable and shall provide the host state with sufficient revenue to cover any costs associated with such facilities. If such fees have been reviewed and approved by the Commission and to the extent that such revenue is insufficient, all party states shall share the costs in a manner to be determined by the Commission.

Regulation.  
Transportation.

e. To the extent authorized by Federal law, each party state is responsible for enforcing any applicable Federal and state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders and shall adopt practices that will ensure that waste shipments originating within its borders and destined for a regional facility will conform to applicable packaging and transportation laws and regulations.

f. Each party state has the right to rely on the good faith performance of each other party state.

g. Unless authorized by the Commission, it shall be unlawful after January 1, 1986, for any person:

Exports.

1. to deposit at a regional facility, waste not generated within the region;
2. to accept, at a regional facility, waste not generated within the region;
3. to export from the region, waste which is generated within the region; and
4. to transport waste from the site at which it is generated, except to a regional facility.

**Article IV—The Commission**

Central  
Interstate Low-  
Level  
Radioactive  
Waste  
Commission,  
establishment.

a. There is hereby established the Central Interstate Low-Level Radioactive Waste Commission. The Commission shall consist of one voting member from each party state to be appointed according to the laws of each state. The appointing authority of each party state shall notify the Commission in writing of the identity of its member and any alternates. An alternate may act on behalf of the member only in the absence of such member. Each state is responsible for the expenses of its member of the Commission.

b. Each Commission member shall be entitled to one vote. Unless otherwise provided herein, no action of the Commission shall be bonding unless a majority of the total membership casts its vote in the affirmative.

c. The Commission shall elect from among its membership a chairman. The Commission shall adopt and publish, in convenient form, by-laws and policies which are not inconsistent with this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the chairman, by petition of a majority of the membership or upon the call of a host state member.

e. The Commission may initiate any proceedings or appear as an intervenor or party in interest before any court of law, or any Federal, state or local agency, board or Commission that has jurisdiction over any matter arising under or relating to the terms of the provisions of this compact. The Commission shall determine in which proceedings it shall intervene or otherwise appear and may arrange for such expert testimony, reports, evidence or other participation in such proceedings as may be necessary to represent its views.

f. The Commission may establish such committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of waste.

Contracts.

g. The Commission may employ and compensate a staff limited only to those persons necessary to carry out its duties and functions. The Commission may also contract with and designate any person to perform necessary functions to assist the Commission. Unless otherwise required by the acceptance of a Federal grant, the staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the Federal government and shall be compensated from funds of the Commission.

h. Funding for the Commission shall be as follows:

1. The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Party states shall equally contribute to the Commission budget on an annual basis, an amount not to exceed \$25,000 until surcharges are available for that purpose. Host states shall begin imposition of the surcharges provided for in this section as soon as practicable and shall remit to the Commission funds resulting from collection of such surcharges within 60 days of their receipt; and

2. Each state hosting a regional facility shall annually levy surcharges on all users of such facilities, based on the volume and characteristics of wastes received at such facilities, the total of which:

(A) Shall be sufficient to cover the annual budget of the Commission; and

(B) shall be paid to the Commission, provided, however, that each host state collecting such surcharges may retain a portion of the collection sufficient to cover the administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

Audit.  
Report.

i. The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public account shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by this Article.

Grants.

Reports.

j. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services, conditional or otherwise from any person and may receive, utilize and dispose of same, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor,

grantor or lender, shall be detailed in the annual report of the Commission.

Prohibition.

k. (1) Except as otherwise provided herein, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators, transporters of waste, owners and operators of facilities shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto.

Prohibitions.

(2) The Commission herein established is a legal entity separate and distinct from the party states and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken by them in their official capacity.

1. Any person or party state aggrieved by a final decision of the Commission may obtain judicial review of such decisions in the United States District Court in the District wherein the Commission maintains its headquarters by filing in such court a petition for review within 60 days after the Commission's final decision. Proceedings thereafter shall be in accordance with the rules of procedure applicable in such court.

m. The Commission shall:

Report.

1. Receive and approve the application of a non-party state to become a party state in accordance with Article VII;

2. submit an annual report, and otherwise communicate with, the Governors and the presiding officers of the legislative bodies of the party states regarding the activities of the Commission;

3. hear and negotiate disputes which may arise between the party states regarding this compact;

4. require of and obtain from the party states, and non-party states seeking to become party states, data and information necessary to the implementation of Commission and party states' responsibilities;

5. approve the development and operation of regional facilities in accordance with Article V;

Contracts.  
Exports.  
Imports.

6. notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the Commission, including the affirmative vote of any host state which may be affected;

7. revoke the membership of a party state in accordance with Articles V and VII;

8. require all party states and other persons to perform their duties and obligations arising under this compact by an appropriate action in any forum designated in section e. of Article IV; and

9. take such action as may be necessary to perform its duties and functions as provided in this compact.

#### **Article V—Development And Operation Of Regional Facilities**

a. Following the collection of sufficient data and information from the states, the Commission shall allow each party state the opportunity to volunteer as a host for a regional facility.

b. If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the Commission, based on the criteria in section c. of this Article, then the Commission shall publicly seek applicants for the development and operation of regional facilities.

c. The Commission shall review and consider each applicant's proposal based upon the following criteria:

1. The capability of the applicant to obtain a license from the applicable authority;
2. the economic efficiency of each proposed regional facility, including the total estimated disposal and treatment costs per cubic foot of waste;
3. financial assurances;
4. accessibility to all party states; and
5. such other criteria as shall be determined by the Commission to be necessary for the selection of the best proposal, based on the health, safety and welfare of the citizens in the region and the party states.

Health.  
Safety.

d. The Commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in section c. and the needs of the region.

e. Following notification of each party state of the results of the preliminary selection process, the Commission shall:

1. Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance with the proposal originally submitted to the Commission or as modified with the approval of the Commission; and
2. require the appropriate state or states or the U.S. Nuclear Regulatory Commission to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted.

f. The preliminary selection or selections made by the Commission pursuant to this Article shall become final and receive the Commission's approval as a regional facility upon the issuance of license by the licensing authority. If a proposed regional facility fails to become licensed, the Commission shall make another selection pursuant to the procedures identified in this Article.

g. The Commission may, by two-thirds affirmative vote of its membership, revoke the membership of any party state which, after notice and hearing, shall be found to have arbitrarily or capriciously denied or delayed the issuance of a license or permit to any person authorized by the Commission to apply for such license or permit. Revocation shall be in the same manner as provided for in section e. of Article VII.

#### Article VI—Other Laws And Regulations

Prohibition.

a. Nothing in this compact shall be construed to:

1. Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any Federal agency expressly conferred thereon by the Congress;
2. prevent the application of any law which is not otherwise inconsistent with this compact;
3. prohibit or otherwise restrict the management and waste on the site where it is generated if such is otherwise lawful;

4. affect any judicial or administrative proceeding pending on the effective date of this compact;

5. alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

Research and  
development.  
Prohibition.

6. affect the generation or management of waste generated by the Federal government or federal research and development activities.

Regulations.

b. No party state shall pass or enforce any law or regulation which is inconsistent with this compact.

c. All laws and regulations or parts thereof of any party state which are inconsistent with this compact are hereby declared null and void for purposes of this compact. Any legal right, obligation, violation or penalty arising under such laws or regulations prior to enactment of this compact shall not be affected.

Prohibition.  
Regulations.

d. No law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

#### **Article VII—Eligible Parties, Withdrawal, Revocation, Entry Into Force, Termination**

Arkansas.  
Iowa.  
Kansas.  
Louisiana.  
Minnesota.  
Missouri.  
Nebraska.  
North Dakota.  
Oklahoma.

a. This compact shall have as initially eligible parties the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota and Oklahoma. Such initial eligibility shall terminate on January 1, 1984.

b. Any state may petition the Commission for eligibility. A petitioning state shall become eligible for membership in the compact upon the unanimous approval of the Commission.

Prohibition.

c. An eligible state shall become a member of the compact and shall be bound by it after such state has enacted the compact into law. In no event shall the compact take effect in any state until it has been entered into force as provided for in section f. of this Article.

Effective date.  
Prohibition.

d. Any party state may withdraw from this compact by enacting a statute repeating the same. Unless permitted earlier by unanimous approval of the Commission, such withdrawal shall take effect five-years after the Governor of the withdrawing state has given notice in writing of such withdrawal to each Governor of the party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Effective date.

e. Any party state which fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing have its privileges suspended or its membership in the compact revoked by the Commission. Revocation shall take effect one year from the date such party state receives written notice from the Commission of its action. The Commission may require such party state to pay to the Commission, for a period not to exceed five years from the date of notice of revocation, an amount determined by the Commission based on the anticipated fees which the generators of such party state would have paid to each regional facility and an amount equal to that which such party state would have contributed in accordance with section d. of Article III, in the event of insufficient revenues. The Commission shall use such funds to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which such party state would have

contributed to the annual budget of the Commission if such party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation; however, any legal obligations of such party state arising prior to the effective date of revocation shall not cease until they have been fulfilled. Written notice of revocation of any state's membership in the company shall be transmitted immediately following the vote of the Commission, by the chairman, to the Governor of the affected party state, all other Governors of the party states and the Congress of the United States.

f. This compact shall become effective after enactment by a least three eligible states and after consent has been given to it by the Congress. The Congress shall have the opportunity to withdraw such consent every five-years. Failure of the Congress to withdraw its consent affirmatively shall have the effect of renewing consent for an additional five-year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this Article and to the power to ban the exportation of waste pursuant to Article III.

Prohibition.

g. The withdrawal of a party state from this compact under section d. of this Article or the revocation of a state's membership in this compact under section 3. of this Article shall not affect the applicability of this compact to the remaining party states.

Termination.

h. This compact shall be terminated when all party states have withdrawn pursuant to section d. of this Article.

#### Article VIII—Penalties

a. Each party state, consistent with its own law, shall prescribe and enforce penalties against any person for violation of any provision of this compact.

Regulations.

b. Each party state acknowledges that the receipt by a regional facility of waste packaged or transported in violation of applicable laws and regulations can result in sanctions which may include suspension or revocation of the violator's right of access to the regional facility.

#### Article IX—Severability And Construction

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purpose thereof.

42 USC 2021d  
note.

Alabama.  
Florida.  
Georgia.  
Mississippi.  
North Carolina.  
South Carolina.  
Tennessee.  
Virginia.

**Sec. 223. Southeast Interstate Low-level Radioactive Waste Management Compact.**

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of the Congress is hereby given to the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to enter into the Southeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

**Southeast Interstate Low-Level Radioactive Waste Management Compact**

**Article I—Policy And Purpose**

Research and  
development.

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the State for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573), has provided for encouraged the development of low level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

42 USC 2021b  
note.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort; provide sufficient facilities for the proper management of low-level radioactive waste generated in the region; promote the health and safety of the region; limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region; encourage the reduction of the amounts of low-level waste generated in the region; distribute the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states; and ensure the ecological and economical management of low-level radioactive wastes.

Regulations.

Implicit in the Congressional consent to this compact is the expectation by Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. expeditious enforcement of federal rules, regulations, and laws;
2. imposing sanctions against those found to be in violation of federal rules, regulations, and laws;
3. timely inspection of their licensees to determine their capability to adhere to such rules, regulations, and laws;
4. timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act, as amended.

42 USC 2021b  
note.

### Article II—Definitions

As used in this compact, unless the context clearly requires a different construction:

1. ~~“Commission” or “Compact Commission”~~ means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

2. ~~“Facility”~~ means a parcel of land, together with the structure, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

3. ~~“Generator”~~ means any person who produces or processes low-level radioactive waste in the course of, or as an incident to, manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage, or disposal of wastes with respect to such waste generated outside the region.

4. ~~“High-level waste”~~ means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel, and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

5. ~~“Host state”~~ means any state in which a regional facility is situated or is being developed.

42 USC 2014.

6. ~~“Low-level radioactive waste” or “waste”~~ means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954, or as may be further defined by Federal law or regulation.

7. ~~“Party state”~~ means any state which is a signatory party to this compact.

8. ~~“Person”~~ means any individual, corporation, business enterprise, or other legal entity (either public or private).

9. ~~“Region”~~ means the collective party states.

10. ~~“Regional facility”~~ means (1) a facility as defined in this article which has been designated, authorized, accepted, or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

11. ~~“State”~~ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

42 USC 2021.

12. ~~“Transuranic wastes”~~ means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under section 274 of the Atomic Energy Act of 1954.

13. ~~“Waste management”~~ means the storage, treatment, or disposal of waste.

### Article III—Rights And Obligations

Prohibition.

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit, or abridge those rights.

(A) Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities and, additionally, shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article 4(e)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

(B) If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the Commission.

(C) Each party state must establish the capability to regulate, license, and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities in accordance with the provisions of Article 5, section (b).

(D) Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

(E) Each party state must provide to the Commission on an annual basis any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation.

(F) Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of waste requiring disposal.

Regulations.  
Transportation.

#### Article IV—The Commission

Southeast  
Interstate Low-  
Level  
Radioactive  
Waste  
Management  
Commission,  
establishment.

(A) There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission (~~“Commission”~~ or ~~“Compact Commission”~~). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

(B) Each commission member is entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

(C) The Commission must elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, bylaws which are consistent with this compact.

(D) The Commission must meet at least once a year and also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission must be open to the public.

(E) The Commission has the following duties and powers:

1. To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(b).
  2. To receive and approve the application of a nonparty state to become an eligible state in accordance with the provisions of Article 7(c).
  3. To submit an annual report and other communications to the Governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.
  4. To develop and use procedures for determining, consistent with consideration for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.
  5. To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities.
  6. To develop and adopt, within one year after the Commission is constituted as provided in Article 7(d) procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article 7(d), and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.
- In developing criteria, the Commission must consider the following; the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic, and ecological impacts on the air, land, and water resources of the party states.
- The Commission shall conduct such hearings, require such reports, studies, evidence, and testimony, and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility.
7. In accordance with the procedures and criteria developed pursuant to section (e)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility.
  8. To require of and obtain from party states, eligible states seeking to become party states, and nonparty states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities.

Report.

Health.  
Safety.

Environmental  
protection.  
Health.  
Safety.  
Transportation.

Reports.  
Studies.

Prohibition.

Contracts.  
Imports.

9. Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of a host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facility's capability to handle such wastes.

10. To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states as an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has jurisdiction over the management of wastes. The authority to act, intervene, or otherwise appear shall be exercised by the Commission, only after approval by a majority vote of the Commission.

11. To revoke the membership of a party state in accordance with Article 7(f).

F. The Commission may establish any advisory committees as it deems necessary for the purpose of advising the Commission on any matters pertaining to the management of low-level radioactive waste.

G. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

H. Funding for the Commission must be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay twenty-five thousand dollars to the Commission which shall be used for costs of the Commission's services.

2. Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

a. must be sufficient to cover the annual budget of the Commission;

b. must represent the financial commitments of all party states to the Commission;

c. must be paid to the Commission;

*Provided, however,* That each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

3. The Commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states and must remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

**Audit report.** I. The Commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by Article 4(e)(3).

**Grants.** J. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state, or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and condition, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender shall be detailed in the annual report to the Commission.

**Report.** K. The Commission is not responsible for any costs associated with:

- (1) the creation of any facility,
- (2) the operation of any facility,
- (3) the stabilization and closure of any facility,
- (4) the post-closure observation and maintenance of any facility,

or

- (5) the extended institutional control, after post-closure observation and maintenance of any facility.

L. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within nonparty states when authorized by the Commission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

**Exports.** M. 1. The Commission herein established is a legal entity separate and distinct from the party states capable of acting in its own behalf and is liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not personally be liable for action taken by them in their official capacity.

**Prohibition.** 2. Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators and transporters of wastes and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

#### **Article V—Development And Operation Of Facilities**

A. Any party state which becomes a host state in which a regional facility is operated shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

**Health.** B. A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure

Notwithstanding the four-year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and

safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

C. Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

**Prohibition.** D. No party state shall have any form of arbitrary prohibition on the treatment, storage, or disposal of low-level radioactive waste within its borders.

E. No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.<sup>4</sup>

**Article VI—Other Laws And Regulations**

**Prohibition.** A. Nothing in this compact shall be construed to:

(1) Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

**42 USC 2021.** (2) Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located.

(3) Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact.

(4) Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article 3, Article 4, and Article 5 and shall be subject to any action lawfully taken pursuant thereto.

**Prohibition.** (5) Prohibit any storage or treatment of waste by the generator on its own premises.

(6) Affect any judicial or administrative proceeding pending on the effective date of this compact.

(7) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions.

**42 USC 2021b note. Research and development.** (8) Affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the United States Department of Energy or federal research and development activities as defined in Public Law 96-573.

(9) Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

**Prohibition. Regulation.** B. No party shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

<sup>4</sup>Public Law 101-171 (103 Stat. 1289), November 22, 1989 added new section E.

Prohibition.  
Regulation.

C. Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

D. Restrictions of waste management of regional facilities pursuant to Article 4 shall be enforceable as a matter of state law.

**Article VII—Eligible Parties; Withdrawal; Revocation; Entry Into Force; Termination**

Alabama.  
Florida.  
Georgia.  
Mississippi.  
North Carolina.  
South Carolina.  
Tennessee.  
Virginia.

A. This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

B. Any state not expressly declared eligible to become a party state to this compact in section (A) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to such provisions of this section. Upon satisfactorily meeting the conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the manner as those states declared eligible in section (a) of this Article.

C. Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article 4(H)(1). The Commission is the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

D. 1. The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article 4(H)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission; shall cause legislation to be introduced in Congress which grants the consent of Congress to this compact; and shall do those things necessary to organize the commission and implement the provisions of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (C) of this Article.

Effective date.

3. The consent of Congress shall be required for the full implementation of this compact. The provisions of Article 5, section (D) shall not become effective until the effective date of the import ban authorized by Article 4, section (L) as approved by Congress. Congress may by law withdraw its consent only every five years.

Prohibition.

E. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

F. Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as

a party state. Any sanction shall be imposed only upon the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than ninety days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission must, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action, along with a copy of the resolution, to the Governors, the Presidents of the Senates, and the Speakers of the Houses of Representatives of the party states, as well as chairmen of the appropriate committees of Congress.

G. Subject to the provisions of Article 7, section H., any party state may withdraw from the compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the Governor of such party state of the rescission of the Compact. The Commission, upon receipt of the verification, shall as soon as practicable provide copies of such verification to the Governor, the presidents of the Senates, and the Speakers of the Houses of Representatives of the party states as well as the chairmen of the appropriate committees of the Congress.<sup>5</sup>

H. The right of a party state to withdraw pursuant to section G. shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress.

South Carolina.

For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.<sup>6</sup>

I. This compact may be terminated only by the affirmative action of the Congress or by rescission of all laws enacting the compact in each party state.<sup>7</sup>

#### Article VIII—Penalties

A. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provisions of this compact.

Regulation.

B. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

<sup>5</sup>Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new language to section G.

<sup>6</sup>Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new language to section H.

<sup>7</sup>Public Law 101-171 (103 Stat. 1290) November 22, 1989 added new section I.

**Article IX—Severability And Construction**

Provisions held  
invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution, of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any State participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

**Sec. 224. Central Midwest Interstate Low-level Radioactive Waste Compact.**

42 USC 2021d  
note.  
Illinois.  
Kentucky.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of the Congress hereby is given to the States of Illinois and Kentucky to enter into the Central Midwest Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

**Central Midwest Interstate Low-Level Radioactive Waste Compact**

**Article I—Policy And Purpose**

There is created the Central Midwest Interstate Low-Level Radioactive Waste Compact.

42 USC 2021b  
note.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 USC 2021), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.<sup>8</sup>

a) It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

Health.  
Safety.

- 1) providing the instrument and the framework for a cooperative effort;
- 2) providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;
- 3) protecting the health and safety of the citizens of the region;
- 4) limiting the number of facilities required to manage low-level radioactive waste generated in the region effectively and efficiency;
- 5) promoting the volume and source reduction of low-level radioactive waste generated in the region;
- 6) distributing the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states and among generators and other persons who use regional facilities to manage their waste;

<sup>8</sup>Public Law 103-439 (108 Stat. 4607) Nov. 2, 1994

Regulations.

7) ensuring the ecological and economical management of low-level radioactive waste, including the prohibition of shallow-land burial of waste; and

8) promoting the use of above-ground facilities and other disposal technologies providing greater and safer confinement of low-level radioactive waste than shallow-land burial facilities.

b) Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

- 1) expeditious enforcement of federal rules, regulations and laws;
- 2) imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and
- 3) timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

**Article II—Definitions**

As used in this compact, unless the context clearly requires a different construction:

a) ~~—Commission~~” means the Central Midwest Interstate Low-Level Radioactive Waste Commission.

b) ~~—Decommissioning~~” means the measures taken at the end of a facility’s operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

c) ~~—Disposal~~” means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

d) ~~—Eligible~~” state means either the State of Illinois or the Commonwealth of Kentucky.

e) ~~—Extended care~~” means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or clean-up necessary to protect public health and the environment from radioactive releases from a regional facility.

f) ~~—Facility~~” means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

g) ~~—Generator~~” means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U. S. Nuclear Regulatory Commission or a party state, to produce or possess such waste.

h) ~~—Host state~~” means any party state that is designated by the Commission to host a regional facility, provided that a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10 percent of the total volume recorded on such manifests for the region during the same year shall not be designated a host state.

i) ~~—Institutional control~~” means those activities carried out by the host state to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator to the state or federal government. These activities must include, but need not be

limited to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state, and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state, but institutional control may not be relied upon for more than 100 years following transfer of control of the disposal site to the state or federal government.

j) ~~“Long-term liability”~~ means the financial obligation to compensate any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and to provide for the costs for accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility.

42 USC 2014.

k) ~~“Low-level radioactive waste”~~ or ~~“waste”~~ means radioactive waste not classified as (1) high-level radioactive waste, (2) transuranic waste, (3) spent nuclear fuel, or (4) by-product material as defined in section 11e.(2) of the Atomic Energy Act of 1954. This definition shall apply notwithstanding any declaration by the federal government, a state or any regulatory agency that any radioactive material is exempt from any regulatory control.<sup>9</sup>

l) ~~“Management plan”~~ means the plan adopted by the Commission for the storage, transportation, treatment and disposal of waste within the region.

m) ~~“Manifest”~~ means a shipping document identifying the generator of waste, the volume of waste, the quantity of radionuclides in the shipment, and such other information as may be required by the appropriate regulatory agency.

n) ~~“Party state”~~ means any eligible state which enacts the compact into law and pays the membership fee.

o) ~~“Person”~~ means any individual, corporation, business enterprise or other legal entity, either public or private, and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity.

p) ~~“Region”~~ means the geographical area of the party states.

q) ~~“Regional facility”~~ means any facility as defined in Article II(f) that is (1) located within the region, and (2) established by a party state pursuant to designation of that state as a host state by the Commission.<sup>10</sup>

r) ~~“Shallow-land burial”~~ means a land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth’s surface; however, this definition shall not include an enclosed, engineered, strongly structurally enforced and solidified bunker that extends below the earth’s surface.

s) ~~“Site”~~ means the geographic location of a facility.

t) ~~“Source reduction”~~ means those administrative practices that reduce the radionuclide levels in low-level radioactive waste or that prevent the generation of additional low-level radioactive waste.

u) ~~“State”~~ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

<sup>9</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section k.

<sup>10</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section q.

v) —“Storage” means the temporary holding of waste for treatment or disposal.

w) —“Treatment” means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

x) —“Volume reduction” means those methods including, but not limited to, biological, chemical, mechanical and thermal methods used to reduce the amount of space that waste materials occupy and to put them into a form suitable for storage or disposal.

y) —“Waste management” means the source and volume reduction, storage, transportation, treatment or disposal of waste.

### Article III—The Commission

Central  
Midwest  
Interstate Low-  
Level  
Radioactive  
Waste  
Commission  
establishment.

a) There is created the Central Midwest Interstate Low-Level Radioactive Waste Commission. Upon the eligible states becoming party states, the Commission shall consist of two voting Commissioners from each state eligible to be designated a host state under Article VI(b), one voting Commissioner from any other party state, and for each regional facility, one non-voting Commissioner who is an elected official of local government and a resident of the county where that regional facility is located. The Governor of each party state shall notify the Commission in writing of its Commissioners and any alternates.<sup>11</sup>

b) Each voting Commissioner is entitled to one vote. No action of the Commission is binding unless a majority of the voting membership casts its vote in the affirmative. In addition, no agreement by the Commission under Article III(i)(1), Article III(i)(2), or Article III(i)(3) is valid unless all voting Commissioners from the party state in which the facility where waste would be sent cast their votes in the affirmative.<sup>12</sup>

Public  
information.

c) The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, by-laws and policies that are not inconsistent with this compact, including procedures that conform with the provisions of the Federal Administrative Procedure Act (5 USC ss. 500 to 559) to the greatest extent practicable in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d) The Commission shall meet at least once annually and shall also meet upon the call of any voting Commissioner.<sup>13</sup>

e) All meetings of the Commission and its designated committees shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded. A roll call may be required upon request of any voting Commissioner.<sup>14</sup>

<sup>11</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section a.

<sup>12</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section b.

<sup>13</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section d.

<sup>14</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section e.

f) The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management, waste generation and source and volume reduction.

g) The Office of the Commission shall be in Illinois. The Commission may appoint or contract for and compensate such staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.<sup>15</sup>

Public  
inspection.  
Records.

h) All files, records and data of the Commission shall be open to reasonable public inspection and may be copied upon payment of reasonable fees to be established where appropriate by the Commission, except for information privileged against introduction in judicial proceedings. Such fees may be waived or shall be reduced substantially for not-for-profit organizations.

Contracts.  
Prohibitions.

i) The Commission may:

1) Enter into an agreement with any person to allow waste from outside the region to be disposed of at facilities in the region. However, no such agreement shall be effective unless and until ratified by a law enacted by the party state to which the waste would be sent for disposal.

2) Enter into an agreement with any person to allow waste described in Article VII(a)(6) to be treated, stored, or disposed of at regional facilities. However, no such agreement shall be effective unless and until ratified by a law enacted by the host state of the regional facility to which the waste would be sent for treatment, storage, or disposal.

Reports.

3) Enter into an agreement with any person to allow waste from outside the region to be treated or stored at facilities in the region.

However, any such agreement shall be revoked as a matter of law if, within one year of the effective date of the agreement, a law is enacted ordering such revocation by the party state to which the waste would be sent for treatment or storage.

Prohibition.

4) Approve, or enter into an agreement with any person for, the export of waste from the region.

5) Approve the disposal of waste generated within the region at a facility in the region other than a regional facility, subject to the limitations of Articles V(f) and VII(a)(6).

6) Require that waste generated within the region be treated or stored at available regional facilities, subject to the limitations of Articles V(f), VII(a)(3) and VII(a)(6).

7) Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

8) Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are

<sup>15</sup>Public Law 103-439 (108 Stat. 4608), November 2, 1994, amended section g.

protected, provided that a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10 percent of the total volume recorded on such manifests for the region during the same year shall not be designated a host state or be required to store the region's waste. In determining the 10 percent exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste.

9) Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

10) Suspend the privileges or revoke the membership of a party state.<sup>16</sup>

j) The Commission shall:

Report.

1) Submit within 10 days of its execution to the governor and the appropriate officers of the legislative body of the party state in which any affected facility is located a copy of any agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3).

2) Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission. The annual report shall include a description of the status of the activities taken pursuant to any agreement entered into by the Commission under Article III(i)(1), Article III(i)(2) or Article III(i)(3) and any violation of any provision thereof, and a description of the source, volume, activity, and current status of any waste from outside the region or waste described under Article VII(a)(6) that was treated, stored, or disposed of in the region in the previous year.

3) Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

4) Adopt and amend, as appropriate, a regional management plan that plans for the establishment of needed regional facilities.

5) Adopt an annual budget.<sup>17</sup>

k) Funding of the budget of the Commission shall be provided as follows:

1) Each state, upon becoming a party state, shall pay \$50,000 to the Commission which shall be used for the administrative costs of the Commission.

2) Each state hosting a regional facility shall levy surcharges on each user of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

A) be sufficient to cover the annual budget of the Commission; and

B) be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection.

<sup>16</sup>Public Law 103-439 (108 Stat. 4609), November 2, 1994, amended section i.

<sup>17</sup>Public Law 103-439 (108 Stat. 4609), November 2, 1994, amended section j.

Audit.  
Contracts.  
Reports.

l) The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of Commission funds and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this Article.

Grants.  
Report.

m) The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission. The Commission shall establish guidelines for the acceptance of donations, grants, equipment, supplies, materials and services and shall review such guidelines annually.

n) The Commission is not liable for any costs associated with any of the following:

- 1) the licensing and construction of any facility;
- 2) the operation of any facility;
- 3) the stabilization and closure of any facility;
- 4) the extended care of any facility;
- 5) the institutional control, after extended care of any facility;

or

- 6) the transportation of waste to any facility.

Transportation.

o) The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Commissioners are not personally liable for actions taken by them in their official capacity.<sup>18</sup>

p) Except as provided under Article III(n), Article III(o), Article VI(p) and Article VI(q), nothing in this compact alters liability for any action, omission, course of conduct or liability resulting from any causal or other relationships.<sup>19</sup>

q) Any person aggrieved by a final decision of the Commission, which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decision.

#### Article IV—Regional Management Plan

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

Health.  
Safety.

a) Adopt procedures for determining, consistent with considerations of public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.

<sup>18</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, changed after the first sentence ~~Members of the Commission~~ to ~~Commissioners~~.

<sup>19</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section p.

b) Develop and adopt policies promoting source and volume reduction of waste generated within the region.

c) Develop alternative means for the treatment, storage and disposal of waste, other than shallow-land burial or underground injection well.

d) Prepare a draft regional management plan that shall be made available in a convenient form to the public for comment. The Commission shall conduct one or more public hearings in each party state prior to the adoption of the regional management plan. The regional management plan shall include the Commission's response to public and party state comment.

#### **Article V—Rights And Obligations Of Party States**

a) Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b) Other than the provisions of Article V(f) and VII(a)(6), each party state has the right to have all wastes generated within borders managed at regional facilities. This right shall be subject to the provisions of this Compact. All party states have an equal right of access to any facility outside the region made available to the region by any agreement entered into by the Commission pursuant to Article III(i)(4).<sup>20</sup>

Exports.

c) Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III(i)(4).<sup>21</sup>

Contracts.

Prohibition.

Regulations.

Transportation.

d) To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this Section shall be construed to require a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.

e) Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

Kentucky.

Prohibition.

f) Waste originating from the Maxey Flats nuclear waste disposal site in Fleming County, Kentucky shall not be shipped to any facility in Illinois for storage, treatment or disposal. Disposition of these wastes shall be the sole responsibility of the Commonwealth of Kentucky and such waste shall not be subject to the provisions of Articles IX(b)(3) and (4) of this compact.<sup>22</sup>

#### **Article VI—Development And Operation Of Facilities**

a) Any party state may volunteer to become a host state, and the Commission may designate that state as a host state.

b) If all regional facilities required by the regional management plan are not developed pursuant to Article VI(a), or upon notification that an existing regional facility will be closed, the Commission may designate a party state as a host state. A party state shall not be designated as a host state for any regional facility under this Article VI(b) unless that state's

<sup>20</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section b.

<sup>21</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section c.

<sup>22</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section f.

total volume of waste recorded on low-level radioactive waste manifests for any year is more than 10% of the total volume recorded on such manifests for the region during the same year. In determining the 10% exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste, or waste described in Article VII(a)(6).<sup>23</sup>

Prohibition.

c) Each party state designated as host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental, engineering and economic viability of possible facility locations.<sup>24</sup>

d) Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders or for other good cause shown and consistent with the purposes of this Compact.<sup>25</sup>

e) After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.<sup>26</sup>

f) To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.<sup>27</sup>

g) The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an additional regional facility is or may be required to meet the needs of the region.<sup>28</sup>

h) Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is shorter. Upon request of a host state, the Commission may modify the period of its designation.<sup>29</sup>

i) A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any costs including, but not limited to, the planning, siting, licensing, operation, pre-closure corrective action or clean-up, monitoring, inspection, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may provide for payment to units of local government affected by a regional facility for costs incurred in connection with such facility. This fee system may also

<sup>23</sup>Public Law 103-439 (108 Stat. 4610), November 2, 1994, amended section b.

<sup>24</sup>Public Law 103-439 (108 Stat. 4611), November 2, 1994, repealed section c and renumbered section d. to section c.

<sup>25</sup>Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended and renumbered section -e- to section -d.-

<sup>26</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section f to e.

<sup>27</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section g to f.

<sup>28</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section h to g.

<sup>29</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section i to h.

include reasonable revenue beyond the costs incurred for the host state, subject to approval by the Commission. The fee system shall include incentives for source or volume reduction and may be based on the hazard of the waste. A host state shall submit an annual financial audit of the operation of the regional facility to the Commission.<sup>30</sup>

42 USC 10101  
note.  
Health.  
Safety.

j) A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned.

A host state shall also provide for the extended care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured, unless, pursuant to the federal Nuclear Waste Policy Act of 1982, the federal government has assumed title and custody of the regional facility and the federal government thereby has assumed responsibility to provide for the extended care of such facility.<sup>31</sup>

Environmental  
protection.  
Health.  
Prohibition.  
Safety.

k) A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This Section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within 3 working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.<sup>32</sup>

Prohibition.  
Transportation.

l) If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational, provided that the region's waste shall not be stored in a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year which is less than 10% of the total volume recorded on the manifests for the region during the same year. In determining the 10% exclusion, there shall not be included waste recorded on low-level radioactive waste manifests by a person whose principal business is providing a service by arranging for the collection, transportation, treatment, storage or disposal of such waste, or waste described in Article VII(a)(6).<sup>33</sup>

m) A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.<sup>34</sup>

n) The host state shall create an ~~Extended Care and Long-Term Liability Fund~~ and shall allocate sufficient fee revenues, received pursuant to Article VI(i), to provide for the costs of:

- 1) decommissioning and other procedures required for the proper closure of a regional facility;
- 2) monitoring, inspection and other procedures required for the proper extended care of a regional facility;

<sup>30</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section j to i.

<sup>31</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section k to j.

<sup>32</sup>Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section l and renumbered it to become section k.

<sup>33</sup>Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section m and renumbered it to become section l.

<sup>34</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, renumbered section n to m.

Environmental.  
Health.  
Protection.  
Contracts.  
Gifts and  
property.  
Health.  
Insurance.

3) undertaking any corrective action or clean-up necessary to protect human health and the environment from radioactive releases from a regional facility; and

4) compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility; the host state may allocate monies in this Fund in amounts as it deems appropriate to purchase insurance or to make other similar financial protection arrangements consistent with the purposes of this Fund; this Article VI(n) shall in no manner limit the financial responsibilities of the site operator under Article VI(o), the party states under Article VI(p), or any person who sends waste to a regional facility, under Article VI(q).<sup>35</sup>

Health.  
Real property  
Insurance.

o) The operator of a regional facility shall purchase an amount of property and third-party liability insurance deemed appropriate by the host state, pay the necessary periodic premiums at all times and make periodic payments to the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) for such amounts as the host state reasonably determines is necessary to provide for future premiums to continue such insurance coverage, in order to pay the costs of compensating any person for medical and other expenses incurred from damages to human health, personal injuries suffered from damages to human health and damages or losses to real or personal property, and accomplishing any necessary corrective action or clean-up on real or personal property caused by radioactive releases from a regional facility. In the event of such costs resulting from radioactive releases from a regional facility, the host state should, to the maximum extent possible, seek to obtain monies from such insurance prior to using monies from the Extended Care and Long-Term Liability Fund.<sup>36</sup>

Contracts.  
Prohibition.

p) All party states shall be liable for the cost of extended care and long-term liability in excess of monies available from the Extended Care and Long-Term Liability Fund, as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). A party state may meet such liability for costs by levying surcharges upon generators located in the party state. The extent of such liability shall be based on the proportionate share of the total volume of waste placed in the regional facility by generators located in each such party state. Such liability shall be joint and several among the party states with a right of contribution between the party states. However, this Section shall not apply to a party state with a total volume of waste recorded on low-level radioactive waste manifests for any year that is less than 10% of the total volume recorded on such manifests for the region during the same year.<sup>37</sup>

q) Any person who sends waste from outside the region or waste described in Article VII(a)(6) for treatment, storage or disposal at a regional facility shall be liable for the cost of extended care and long-

<sup>35</sup>Public Law 103-439 (108 Stat. 4611), November 2, 1994, amended section -ø" and renumbered it to become section n.

<sup>36</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, amended section p and renumbered it to become section o.

<sup>37</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, amended section q and renumbered it to become section p.

term liability of that regional facility in excess of the monies available from the Extended Care and Long-Term Liability Fund as set forth in Article VI(n) and from the property and third-party liability insurance as set forth in Article VI(o). The extent of the liability for the person shall be based on the proportionate share of the total volume of waste sent by that person to the regional facility.<sup>38</sup>

**Article VII—Other Laws And Regulations**

Prohibitions.

a) Nothing in this compact:

1) abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2) prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3) prohibits any storage or treatment of waste by the generator on its own premises;

4) affects any administrative or judicial proceeding pending on the effective date of this compact;

5) alters the relations between the respective internal responsibility of the government of a party state and its subdivisions;

Research and development.

6) establishes any right to the treatment, storage or disposal at any facility in the region or provides any authority to prohibit export from the region of waste that is owned or generated by the United States Department of Energy, owned or generated by the United States Navy as a result of the decommissioning of vessels of the United States Navy, or owned or generated as the result of any research, development, testing or production of any atomic weapon; or.<sup>39</sup>

Taxes.

Transportation.

7) affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any state or its political subdivisions to tax or impose fees on the waste managed at any facility within its borders;

Contracts.

8) requires a party state to enter into an agreement with the U. S. Nuclear Regulatory Commission; or

9) alters or limits liability of transporters of waste and owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.

b) For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

Prohibition. Regulations.

c) No law, rule, regulation, fee or surcharge of a party state, or of any of its subdivisions or instrumentalities, may be applied in a manner which discriminates against the generators of another party state.

Prohibition.

d) No person who provides a service by arranging for collection, transportation, treatment, storage or disposal of waste from outside the region shall be allowed to dispose of any waste, regardless of origin, in the region unless specifically permitted under an agreement entered into by the Commission in accordance with the requirements of Article III(i)(1).<sup>40</sup>

<sup>38</sup>Public Law 103-439 (108 Stat. 4612), November 2, 1994, added a new section q.

<sup>39</sup>Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section 6.

<sup>40</sup>Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section d.

**Article VIII—Eligible Parties, Withdrawal, Revocation, Entry Into Force, Termination**

Illinois.  
Kentucky.

a) Eligible parties to this compact are the State of Illinois and Commonwealth of Kentucky. Eligibility terminates on April 15, 1985.

b) An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in Article III(k)(1).

c) The Commission is formed upon the appointment of the Commissioners and the tender of the membership fee payable to the Commission by the eligible states. The Governor of Illinois shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provisions of this compact.<sup>41</sup>

d) Other than the special circumstances for withdrawal in section (f) of this Article, either party state may withdraw from this compact at any time by repealing the authorizing legislation, but no withdrawal may take effect until 5 years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of the other state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

Effective date.

e) This compact becomes effective July 1, 1984, or at any date subsequent to July 1, 1984, upon enactment by the eligible states. However, Article IX(b) shall not take effect until the Congress has by law consented to this compact. The Congress shall have an opportunity to withdraw such consent every 5 years. Failure of the Congress affirmatively to withdraw its consent has the effect of renewing consent for an additional 5 year period. The consent given to this compact by the Congress shall extend to the power of the region to ban the shipment of waste into the region pursuant to Article III(i)(1) and to prohibit exportation of waste generated within the region under Article III(i)(4).<sup>42</sup>

Exports.  
Prohibition.

Effective date.

f) A state which has been designated a host state may withdraw from the compact. The option to withdraw must be exercised within 90 days of the date the governor of the designated state receives written notice of the designation. Withdrawal becomes effective immediately after notice is given in the following manner. The governor of the withdrawing state shall give notice in writing to the Commission and to the governor of each party state. A state which withdraws from the compact under this section forfeits any funds already paid pursuant to this compact. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

<sup>41</sup>Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section c.

<sup>42</sup>Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section e.

**Article IX—Penalties**

a) Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b) Unless authorized by the Commission pursuant to Article III(i), or otherwise provided in this Compact, after January 1, 1986 it is a violation of this Compact:

1) for any person to deposit at a facility in the region waste from outside the region;

2) for any facility in the region to accept waste from outside the region;

3) for any person to export from the region waste that is generated within the region;

4) for any person to dispose of waste at a facility other than a regional facility;

5) for any person to deposit at a regional facility waste described in Article VII(a)(6); or

6) for any regional facility to accept waste described in Article VII(a)(6).<sup>43</sup>

Regulation.

c) It is a violation of this compact for any person to treat or store waste at a facility other than a regional facility if such treatment or storage is prohibited by the Commission under Article III(i)(6).<sup>44</sup>

d) Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules or regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

e) Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

**Article X—Severability And Construction**

Provisions held invalid.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

<sup>43</sup>Public Law 103-439 (108 Stat. 4613), November 2, 1994, amended section b.

<sup>44</sup>Public Law 103-439 (108 Stat. 4614), November 2, 1994, added new section c, and redesignated the old sections c and d as sections d and e, respectively.

**42 USC 2021d note.**

Iowa. Indiana. Michigan. Minnesota. Missouri. Ohio. Wisconsin.

**Sec. 225. Midwest Interstate Low-level Radio Active Waste Management Compact.**

The consent of Congress is hereby given to the States of Iowa, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin to enter into the Midwest Interstate Compact on Low-Level Radioactive Waste Management. Such compact is as follows:

**Midwest Interstate Low-Level Radio Active Waste Management Compact**

**Article I—Policy And Purpose**

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

**Research and development.**

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (42 USC 2021b to 2021d), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states acknowledge that the Congress has declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

**Health. Safety.**

a. It is the policy of the party states to enter into a regional low-level radioactive waste management compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;
2. Providing sufficient facilities for the proper management of low-level radioactive waste generated in the region;
3. Protecting the health and safety of the citizens of the region;
4. Limiting the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region;
5. Encouraging the reduction of the amounts of low-level radioactive waste generated in the region;
6. Distributing the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and among generators and other persons who use regional facilities to manage their waste; and
7. Ensuring the ecological and economical management of low-level radioactive wastes.

**Regulations.**

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expedient enforcement of federal rules, regulations and laws;
2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and
3. Timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

## Article II—Definitions

As used in this compact, unless the context clearly requires a different construction:

a. ~~Care~~” means the continued observation of a facility after closure for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensing and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. ~~Commission~~” means the Midwest Interstate Low-Level Radioactive Waste Commission.

c. ~~Decommissioning~~” means the measures taken at the end of a facility’s operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

d. ~~Disposal~~” means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

e. ~~Eligible state~~” means a state qualified to be a party state to this compact as provided in Article VIII.

f. ~~Facility~~” means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which issued or is being developed for the treatment, storage or disposal of low-level radioactive waste.

g. ~~Generator~~” means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U. S. Nuclear Regulatory Commission or a party state, to produce or possess such waste. Generator does not include a person who provides a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region.

h. ~~Host state~~” means any state which is designated by the Commission to host a regional facility.

i. ~~Low-Level radioactive waste~~” or ~~waste~~” means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (42 USC 2014).

j. ~~Management plan~~” means the plan adopted by the Commission for the storage, transportation, treatment and disposal of waste within the region.

k. ~~Party state~~” means any eligible state which enacts the compact into law.

l. ~~Person~~” means any individual, corporation, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, business enterprise or legal entity.

m. ~~Region~~” means the area of the party states.

n. ~~Regional facility~~” means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the Commission.

o. ~~Site~~” means the geographic location of a facility.

p. ~~State~~” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

q. ~~Storage~~ means the temporary holding of waste for treatment or disposal.

r. ~~Treatment~~ means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

s. ~~Waste management~~ means the storage, transportation, treatment, or disposal of waste.

### Article III—The Commission

Midwest  
Interstate Low-  
Level  
Radioactive  
Waste  
Commission,  
establishment.  
Prohibition.

a. There is hereby created the Midwest Interstate Low-Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

b. Each Commission member is entitled to one vote. No action of the Commission is binding unless a majority of the total membership cast their vote in the affirmative.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws, and policies which are not inconsistent with this compact, including procedures which substantially conform with the provisions of federal law on administrative procedure compiled at 5 USC 500 to 559 in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or a Commission member.

e. All meetings of the commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

Contracts.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

Contracts.

h. The Commission may:

1. Enter into an agreement with any person, state, or group of states for the right to use regional facilities for waste generated outside of the region and for the right to use facilities outside the region for waste generated within the region. The right of any person to use a regional facility for waste generated outside of the region requires an affirmative vote of a majority of the Commission,

including the affirmative vote of the member of the host state in which any affected regional facility is located.

Reports.

2. Approve the disposal of waste generated within the region at a facility other than a regional facility.

3. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

4. Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected.

5. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

6. Suspend the privileges or revoke the membership of a party state by a two-thirds vote of the membership in accordance with Article VIII.

i. The Commission shall:

Report.

1. Receive and act on the petition of a nonparty state to become an eligible state.

2. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.

3. Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

4. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to Article IV, a regional management plan which designates host states for the establishment of needed regional facilities.

5. Adopt an annual budget.

j. Funding of the budget of the Commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay \$50,000 or \$1,000 per cubic meter of waste shipped from that state in 1980, whichever is lower, to the Commission which shall be used for the administrative costs of the Commission;

2. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

(a) Be sufficient to cover the annual budget of the Commission; and

(b) Represent the financial commitments of all party states to the Commission; and

(c) Be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

Audit.  
Contracts.  
Report.

k. The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to annually audit all receipts and disbursements of Commission funds, and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this Article.

- Grants. 1. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or
- Report. from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.
  - m. The Commission is not liable for any costs associated with any of the following:
    - 1. The licensing and construction of any facility.
    - 2. The operation of any facility,
    - 3. The stabilization and closure of any facility,
    - 4. The care of any facility,
    - 5. The extended institutional control, after care of any facility, or
    - Transportation. 6. The transportation of waste to any facility.
  - n. 1. The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the Commission are not liabilities of the party states. Members of the Commission are not personally liable for actions taken by them in their official capacity.
    - 2. Except as provided under sections m. and n.1. of this article, nothing in this compact alters liability for any act, omission, course of conduct or liability resulting from any causal or other relationships.
  - Prohibition. o. Any person aggrieved by a final decision of the Commission may obtain judicial review of such decision in any court of competent jurisdiction by filing in such court a petition for review within 60 days after the Commission's final decision.

**Article IV—Regional Management Plan**

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

- Health. a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region.
- Safety. b. Develop and consider policies promoting source reduction of waste generated within the region.
- c. Develop and adopt procedures and criteria for identifying a party state as a host state for a regional facility. In developing these criteria, the Commission shall consider all the following:
  - Health. 1. The health, safety, and welfare of the citizens of the party states.
  - Safety. 2. The existence of regional facilities within each party state.
  - Transportation. 3. The minimization of waste transportation.
  - 4. The volumes and types of wastes generated within each party state.
  - 5. The environmental, economic, and ecological impacts on the air, land and water resources of the party states.
- Reports. d. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed regional facility.
- Studies.

e. Prepare a draft management plan, including procedures, criteria and host states, including alternatives, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption of the management plan. The management plan shall include the Commission's response to public and party state comment.

#### **Article V—Rights And Obligations Of Party States**

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Each party state has the right to have all wastes generated within its borders managed at regional facilities subject to the provisions contained in Article IX.c. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to Article III.

Exports.

c. Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under Article III.

Prohibition.

Regulations.

Transportation.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

#### **Article VI—Development And Operation Of Facilities**

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state upon a two-thirds vote of its members.

b. If all regional facilities required by the regional management plan are not developed pursuant to section a., or upon notification that an existing regional facility will be closed, the Commission may designate a host state.

Prohibition.

c. Each party state designated as a host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including but not limited to geological, environmental and economic viability of possible facility locations.

d. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility only upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders.

e. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.

f. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the extended care of that facility.

g. The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an additional regional facility is or may be required to meet the needs of the region. The Commission shall make this designation following the procedures established under Article IV.

h. Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the Commission may modify the period of its designation.

Audit.

i. A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide the host state with sufficient revenue to cover any cost, including but not limited to the planning, siting, licensure, operation, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may also include reasonable revenue beyond costs incurred for the host state, subject to approval by the Commission. A host shall submit an annual financial audit of the operation of the regional facility to the Commission. The fee system may include incentives for source reduction and may be based on the hazard of the waste as well as the volume.

Health.  
Safety.

j. A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

Prohibitions.

k. A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within three working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

l. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational.

m. A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

#### Article VII—Other Laws And Regulations

Prohibitions.

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

- 3. Prohibits any storage or treatment of waste by the generator on its own premises;
- 4. Affects any administrative or judicial proceedings pending on the effective date of this compact;
- 5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;
- 6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U. S. Department of Energy or successor agencies or federal research and development activities as described in section 31 of the Atomic Energy Act of 1954 (42 USC 2051); or
- 7. Affects the rights and powers of any party state or its political subdivisions to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders or affects the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.
- 8. Requires a party state to enter into any agreement with the U. S. Nuclear Regulatory Commission.
- 9. Alters or limits liability of transporters of waste, owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.
  - b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.
  - c. No law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

**Article VIII—Eligible Parties, Withdrawal, Revocation, Entry Into Force, Termination**

- a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia and Wisconsin. Eligibility terminates on July 1, 1984.
- b. Any state not eligible for membership in the compact may petition the Commission for eligibility. The Commission may establish appropriate eligibility requirements. These requirements may include but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of all host states. Any state becoming eligible upon the approval of the Commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.
- c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in Article IIIj.1.
- d. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provision of this compact.

Prohibition.

e. Any party state may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

f. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges suspended or its membership in the compact revoked by the Commission in accordance with Article III.h.6. Revocation takes effect one year from the date the affected party state receives written notice from the Commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party state's membership in the compact immediately following the vote of the Commission to the governor of the affected party state, all other governors of the party states and the Congress of the United States.

Effective date.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by Congress. The Congress shall have an opportunity to withdraw such consent every five years. Failure of the Congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this article and to the power of the Commission to ban the shipment of waste from the region pursuant to Article III.

h. The withdrawal of a party state from this compact under section e. of this article or the suspension or revocation of a state's membership in this compact under section f. of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the Commission to be a host state has 90 days from receipt by the Governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section e. of this article. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

**Article IX—Penalties**

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. Unless otherwise authorized by the Commission pursuant to Article III.h. after January 1, 1986, it is a violation of this compact:

1. For any person to deposit at a regional facility waste not generated within the region;
2. For any regional facility to accept waste not generated within the region;

- Exports. 3. For any person to export from the region waste which is generated within the region; or
- 4. For any person to dispose of waste at a facility other than a regional facility.
- Regulations. c. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.
- d. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

**Article X—Severability And Construction**

Provisions held invalid. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

42 USC 2021d note.  
 Arizona.  
 Colorado.  
 Nevada. New Mexico. Utah.  
 Wyoming.

**Sec. 226. Rocky Mountain Low-level Radioactive Waste Compact.**  
 In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact. Such compact is substantially as follows:

**Rocky Mountain Low-Level Radioactive Waste Compact**

**Article I—Findings And Purpose**

- Research and development. (a) The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States Congress, by enacting the —Low-Level Radioactive Waste Policy Act” (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
- 42 USC 2021b note.
- Health. Safety. (b) It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

### Article II—Definitions

As used in this compact, unless the context clearly indicates otherwise:

- (a) ~~Board~~ means the Rocky Mountain low-level radioactive waste board;
- (b) ~~Carrier~~ means a person who transports low-level waste;
- (c) ~~Disposal~~ means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;
- (d) ~~Facility~~ means any property, equipment or structure used or to be used for the management of low-level waste;
- (e) ~~Generate~~ means to produce low-level waste;
- (f) ~~Host state~~ means a party state in which a regional facility is located or being developed;
- (g) ~~Low-level waste~~ or ~~waste~~ means radioactive waste other than:
  - (i) Waste generated as a result of defense activities of the federal government or federal research and development activities;
  - (ii) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;
  - (iii) Waste material containing transuranic elements with contamination levels greater than ten (10) nanocuries per gram of waste material;
  - (iv) By-product material as defined in section 11e.(2) of the ~~Atomic Energy Act of 1954~~, as amended November 8, 1978; or
  - (v) Wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium.
- (h) ~~Management~~ means collection, consolidation, storage, treatment, incineration or disposal;
- (i) ~~Operator~~ means a person who operates a regional facility;
- (j) ~~Person~~ means an individual, corporation, partnership or other legal entity, whether public or private;
- (k) ~~Region~~ means the combined geographic area within the boundaries of the party states; and
- (l) ~~Regional facility~~ means a facility within any party state which either:
  - (i) has been approved as a regional facility by the board; or
  - (ii) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

Nevada.

### Article III—Rights, Responsibilities, And Obligations

Nevada.

(a) There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one (1) regional facility shall be open and operating in a party state other than Nevada within six (6) years after this compact becomes law in Nevada and in one (1) other state.

Health.  
Safety.

(b) Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

(c) Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent (20%) or more in

cubic feet except as otherwise determined by the board of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection (d) of this article.

(d) A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(i) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article IV before allowing site preparation or physical construction to begin;

Health.  
Safety.

(ii) Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(iii) Subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(iv) Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

Report.

(v) Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

Report.

(vi) Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

Nevada.

(e) Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under subsection (c) of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

(f) Each party state:

Regulations.  
Transportation.

(i) Agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(A) Periodic inspection of packaging and shipping practices;

(B) Periodic inspections of waste containers while in the custody of carriers; and

(C) Appropriate enforcement actions with respect to violations.

Regulations.  
Transportation.

(ii) Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(iii) May impose fees to recover the cost of the practices provided for in paragraph (i) and (ii) of this subsection;

Regulations.

- (iv) Shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and
- (v) May impose requirements or regulations more stringent than those required by this subsection.

#### **Article IV—Board Approval Of Regional Facilities**

- (a) Within ninety (90) days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.
- (b) A regional facility shall be approved by the board if and only if the board determines that:
  - (i) There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and
  - (ii) The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

#### **Article V—Surcharges**

- (a) The board shall impose a ~~compact~~ surcharge” per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.
- (b) A host state may impose a ~~state~~ surcharge” per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

#### **Article VI—The Board**

Prohibition.  
Rocky  
Mountain  
Low-Level  
Radioactive  
Waste Board,  
establishment.

- (a) The ~~Rocky Mountain~~ low-level radioactive waste board”, which shall not be an agency or instrumentality of any party state, is created.
- (b) The board shall consist of one (1) member from each party state. The governor shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member’s duties on the board in the member’s absence.
- (c) Each party state is entitled to one (1) vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.
- (d) The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline or termination of any of its employees.

(e) The board shall pay necessary travel and reasonable per diem expenses of its members, alternates, and advisory committee members.

(f) The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty (30) days. Any action taken by telephone shall be noted in the minutes of the board.

(g) The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

(h) The board may establish its offices in space provided for that purpose by any of the party states, or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

Contracts.

(i) Consistent with available funds, the board may contract for necessary personnel services to carry out its duties. Staff shall be employed without regard for the personnel, civil service, or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

(j) The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

Audit.  
Report.

(k) The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

Report.

(l) The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(m) Upon legislative enactment of this compact, each party state shall consider the need to appropriate seventy thousand dollars (\$70,000.00) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection (a) of article V of this compact.

Grants.  
Report.

(n) The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the board.

(o) In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

Report.

(i) Shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(ii) May assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(iii) Shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(iv) Shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(v) May keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(vi) Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(vii) May develop a regional low-level waste management plan;

(viii) May establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

Contracts.  
Prohibition.

(ix) May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(x) Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(xi) Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

Records.

(xii) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(xiii) Shall have the power to sue; and

(xiv) When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

#### Article VII—Prohibited Acts And Penalties

(a) It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

Exports.

(b) After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) The economic impact of the export of the waste on the regional facilities;

(ii) The economic impact on the generator of refusing to permit the export of the waste; and

(iii) The availability of a regional facility appropriate for the disposal of the waste involved.

(c) After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

Imports.

(i) the impact of importing waste on the available capacity and projected life of the regional facilities;

(ii) the economic impact on the regional facilities; and

(iii) the availability of a regional facility appropriate for the disposal of the type of waste involved.

(d) It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) the impact of allowing such management on the available capacity and projected life of the regional facilities;

(ii) the availability of a facility appropriate for the disposal of the type of waste involved;

(iii) the existence of transuranic elements in the waste; and

(iv) the economic impact on the regional facilities.

(e) Any person who violates subsection (a) or (b) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which would have been charged for disposal of the waste at a regional facility.

(f) Any person who violates subsection (c) or (d) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which were charged for management of the waste at a regional facility.

(g) The civil penalties provided for in subsections (e) and (f) of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

(h) Out of any civil penalty collected for a violation of subsection (a) or (b) of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(i) Any civil penalty collected for a violation of subsection (c) or (d) of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(j) Violations of subsection (a), (b), (c), or (d) of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

Prohibition.

(k) No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

**Article VIII—Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion**

Arizona.  
Colorado.  
Nevada.  
New Mexico.  
Utah.  
Wyoming.

(a) Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

(b) An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor this adopting compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

Effective date.

(c) This compact shall take effect when it has been enacted by the legislatures of two (2) eligible states. However, subsections (b) and (c) of article VII shall not take effect until Congress has by law consented to this compact. Every five (5) years after such consent has been given, Congress may by law withdraw its consent.

Nevada.

(d) A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but not such repeal shall take effect until two (2) years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five (5) years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

(e) A party state may be excluded from this compact by a two-thirds (2/3) vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligation under this compact. Such an exclusion may be terminated upon a two-thirds (2/3) vote of the members acting in a meeting.

**Article IX—Construction And Severability**

(a) The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

Prohibition.

(b) Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

Provisions held invalid.

(c) If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

**42 USC 2021d note. Sec. 227. Northeast Interstate Low-level Radioactive Waste Management Compact.**

42 USC 2021d.  
Connecticut.  
Delaware.  
Maryland.  
New Jersey.

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act, the consent of the Congress is hereby given to the States of Connecticut, New Jersey, Delaware, and Maryland to enter into the Northeast Interstate Low-Level Radioactive Waste Management Compact. Such compact is substantially as follows:

**Northeast Interstate Low-Level Radioactive Waste Management Compact**

**Article I—Policy And Purpose**

Research and development.

There is hereby created the Northeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize that the Congress has declared that each state is responsible for providing for the availability of capacity, either within or outside its borders, for

42 USC 2021d  
note.

disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of atomic energy defense activities of the federal government, as defined in the Low-Level Radioactive Waste Policy Act (P. L. 96-573, ~~“The Act”~~), or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Act has provided for and encouraged the development of regional low-level radioactive waste compacts to manage such waste. The party states recognize that the long-term, safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

Health.  
Safety.

In order to promote the health and safety of the region, it is the policy of the party states to: enter into a regional low-level radioactive waste management compact as a means of facilitating an interstate cooperative effort, provide for proper transportation of low-level waste generated in the region, minimize the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits, and obligations of proper low-level radioactive waste management equitably among the party states, and ensure the environmentally sound and economical management of low-level radioactive waste.

#### Article II—Definitions

As used in this compact, unless the context clearly requires a different construction:

- a. ~~“commission”~~ means the Northeast Interstate Low-Level Radioactive Waste Commission established pursuant to Article IV of this compact;
- b. ~~“custodial agency”~~ means the agency the government designated to act on behalf of the government owner of the regional facility;
- c. ~~“disposal”~~ means the isolation of low-level radioactive waste from the biosphere inhabited by man and his food chains;
- d. ~~“facility”~~ means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level waste, but shall not include on-site treatment or storage by a generator;
- e. ~~“generator”~~ means a person who produces or processes low-level waste, but does not include persons who only provide a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region;
- f. ~~“high-level waste”~~ means 1) 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 concentration; and 2) any other highly radioactive material determined by the federal government as requiring permanent isolation;
- g. ~~“host state”~~ means a party state in which a regional facility is located or being developed;
- h. ~~“institutional control”~~ means the continued observation, monitoring, and care of the regional facility following transfer of control of the regional facility from the operator to the custodial agency;

i. ~~low-level waste~~” means radioactive waste that 1) is neither high-level waste nor transuranic waste, nor spent nuclear fuel, nor by-product material as defined in section 11e (2) of the Atomic Energy Act of 1954 as amended; and 2) is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in P. L. 96-573, or federal research and development activities;

j. ~~party state~~” means any state which is a signatory party in good standing to this compact;

k. ~~person~~” means an individual, corporation, business enterprise or other legal entity, either public or private and their legal successors;

l. ~~post-closure observation and maintenance~~” means the continued monitoring of a closed regional facility to ensure the integrity and environmental safety of the site through compliance with applicable licensing and regulatory requirements; prevention of unwarranted intrusion, and correction of problems;

m. ~~region~~” means the entire area of the party states;

n. ~~regional facility~~” means a facility as defined in this section which has been designated or accepted by the Commission;

o. ~~state~~” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territory subject to the laws of the United States;

p. ~~storage~~” means the holding of waste for treatment or disposal;

q. ~~transuranic waste~~” means waste material containing radionuclides with an atomic number greater than 92 which are excluded from shallow land burial by the federal government;

r. ~~treatment~~” means any method, technique or process, including storage for decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render such waste safer for transport or disposal, amenable for recovery, convertible to another usable material or reduced in volume;

s. ~~waste~~” means low-level radioactive waste as defined in this section;

t. ~~waste management~~” means the storage, treatment, transportation, and disposal, where applicable, of waste.

### Article III—Rights And Obligations

a. There shall be provided within the region one or more regional facilities which, together with such other facilities as may be made available to the region, will provide sufficient capacity to manage all wastes generated within the region.

Exports.  
Prohibition.

1. Regional facilities shall be entitled to waste generated within the region, unless otherwise provided by the Commission. To the extent regional facilities are available, no waste generated within a party state shall be exported to facilities outside the region unless such exportation is approved by the Commission and the affected host state(s).

Prohibition.

2. After January 1, 1986, no person shall deposit at a regional facility waste generated outside the region, and further, no regional facility shall accept waste generated outside the region, unless approved by the Commission and the affected host state(s).

b. The rights, responsibilities and obligations of each party state to this compact are as follows:

1. Each party state shall have the right to have all wastes generated within its borders managed at regional facilities, and shall

have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV(i)(11). The right of access by a generator within a party state to any regional facility is limited by the generator's adherence to applicable state and federal laws and regulations and the provisions of this compact.

Regulations.  
Transportation.

2. To the extent not prohibited by federal law, each party state shall institute procedures which will require shipments of low-level waste generated within or passing through its borders to be consistent with applicable federal packaging and transportation regulations and applicable host state packaging and transportation regulations for management of low-level waste; provided, however, that these practices shall not impose unreasonable, burdensome impediments to the management of low-level waste in the region. Upon notification by a host state that a generator, shipper, or carrier within the party state is in violation of applicable packaging or transportation regulations, the party state shall take appropriate action to ensure that such violations do not recur.

3. Each party state may impose reasonable fees upon generators, shippers, or carriers to recover the cost of inspections and other practices under this compact.

4. Each party state shall encourage generators within its borders to minimize the volumes of waste requiring disposal.

5. Each party state has the right to rely on the good faith performance by every other party state of acts which ensure the provision of facilities for regional availability and their use in a manner consistent with this compact.

6. Each party state shall provide to the Commission any data and information necessary for the implementation of the Commission's responsibilities, and shall establish the capability to obtain any data and information necessary to meet its obligation as herein defined.

7. Each party state shall have the capability to host a regional facility in a timely manner and to ensure the post-closure observation and maintenance, and institutional control of any regional facility within its borders.

Prohibition.  
Transportation.

8. No non-host party state shall be liable for any injury to persons or property resulting from the operation of a regional facility or the transportation of waste to a regional facility; however, if the host state itself is the operator of the regional facility, its liability shall be that of any private operator.

c. The rights, responsibilities and obligations of a host state are as follows:

1. To the extent not prohibited by federal law, a host state shall ensure the timely development and the safe operation, closure, post-closure observation and maintenance, and institutional control of any regional facility within its borders.

Prohibition.

2. In accordance with procedures established in Articles V and IX, the host state shall provide for the establishment of a reasonable structure of fees sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, and institutional control of a regional facility. It may also establish surcharges to cover the regulatory costs, incentives, and compensation associated with a regional facility; provided, however, that without the express approval of the

Commission, no distinction in fees or surcharges shall be made between persons of the several states party to this compact.

3. To the extent not prohibited by federal law, a host state may establish requirements and regulations pertaining to the management of waste at a regional facility; provided, however, that such requirements shall not impose unreasonable impediments to the management of low-level waste within the region. Nor may a host state or a subdivision impose such restrictive requirements on the siting or operation of a regional facility that, along or as a whole, they serve as unreasonable barriers or prohibitions to the siting or operation of such a facility.

4. Each host state shall submit to the Commission annually a report concerning each operating regional facility within its borders. The report shall contain projections of the anticipated future capacity and availability of the regional facility, a financial audit of its operations, and other information as may be required by the Commission; and in the case of regional facilities in institutional control or otherwise no longer operating, the host states shall furnish such information as may be required on the facilities still subject to their jurisdiction.

5. A host state shall notify the Commission immediately if any exigency arises which requires the permanent, temporary, or possible closure of any regional facility located therein at a time earlier than projected in its most recent annual report to the Commission. The Commission may conduct studies, hold hearings, or take such other measures to ensure that the actions taken are necessary and compatible with the obligations of the host state under this compact.

Prohibition.  
Regulations.

Report.

Audit.

Report.

Studies.

**Article IV—The Commission**

Northeast  
Interstate Low-  
Level  
Radioactive  
Waste  
Commission,  
establishment.

Prohibition.

Regulations.

a. There is hereby created the Northeast Interstate Low-Level Radioactive Waste Commission. The Commission shall consist of one member from each party state to be appointed by the Governor according to procedures of each party state, except that a host state shall have two members during the period that it has an operating regional Governor shall notify the Commission in writing of the identity of the facility. The member and one alternate, who may act on behalf of the member only in the member's absence.

b. Each Commission member shall be entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative.

c. The Commission shall elect annually from among its members a presiding officer and such other officers as it deems appropriate. The Commission shall adopt and publish, in convenient form, such rules and regulations as are necessary for due process in the performance of its duties and powers under this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the presiding officer, or upon the call of a party state member.

e. All meetings of the Commission shall be open to the public with reasonable prior public notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal matters. All Commission actions and decisions shall be made in open meetings and appropriately recorded. A roll call vote may be required upon request of any party state or the presiding officer.

- f. The Commission may establish such committees as it deems necessary.
- Contracts.** g. The commission may appoint, contract for, and compensate such limited staff as it determines necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission.
- h. The Commission shall adopt an annual budget for its operations.
- i. The Commission shall have the following duties and powers:
1. The Commission shall receive and act on the application of a non-party state to become an eligible state in accordance with Article VII(e).
  2. The Commission shall receive and act on the application of an eligible state to become a party state in accordance with Article VII(b).
- Report.** 3. The commission shall submit an annual report to and otherwise communicate with the governors and the presiding officer of each body of the legislature of the party states regarding the activities of the Commission.
4. Upon request of party states, the Commission shall mediate disputes which arise between the party states regarding this compact.
5. The Commission shall develop, adopt and maintain a regional management plan to ensure safe and effective management of waste within the region, pursuant to Article V.
- Report.** 6. The Commission may conduct such legislative or adjudicatory **Studies.** hearings, and require such reports, studies, evidence and testimony as are necessary to perform its duties and functions.
- Regulation.** 7. The Commission shall establish by regulation, after public notice and opportunity for comment, such procedural regulations as deemed necessary to ensure efficient operation, the orderly gathering of information, and the protection of the rights of due process of affected persons.
8. In accordance with the procedures and criteria set forth in Article V, the Commission shall accept a host state's proposed facility as a regional facility.
9. In accordance with the procedures and criteria set forth in Article V, the Commission may designate, by a two-thirds vote, host states for the establishment of needed regional facilities. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facilities.
- Prohibition.** 10. The commission may require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary for the implementation of Commission responsibilities.
- Contracts.** 11. The Commission may enter into agreements with any **Imports.** person, state, regional body, or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of the representatives of the host state in which any affected regional facility is located. This shall be done only after the Commission and the host state have made an assessment of the affected facilities' capability to handle such wastes

- and of relevant environmental, economic, and public health factors, as defined by the appropriate regulatory authorities.
- Exports.** 12. The Commission may, upon petition, grant an individual generator or group of generators in the region the right to export wastes to a facility located outside the region. Such grant of right shall be for a period of time and amount of waste and on such other terms and conditions as determined by the Commission and approved by the affected host states.
- Report.** 13. The Commission may appear as an intervenor or party in interest before any court of law, federal, state or local agency, board or commission that has jurisdiction over the management of wastes. Such authority to intervene or otherwise appear shall be exercised only after a two-thirds vote of the Commission.
- views, the Commission may arrange for any expert testimony, reports, evidence or other participation as it deems necessary.
14. The Commission may impose sanctions, including but not limited to, fines, suspension of privileges and revocation of the membership of a party state in accordance with Article VII. The Commission shall have the authority to revoke, in accordance with Article VII(g), the membership of a party state that creates unreasonable barriers to the siting of a needed regional facility or refuses to accept host state responsibilities upon designation by the Commission.
- Regulation.** 15. The Commission shall establish by regulation criteria for and shall review the fee and surcharge systems in accordance with Articles V and IX.
16. The Commission shall review the capability of party states to ensure the siting, operation, post-closure observation and maintenance, and institutional control of any facility within its borders.
17. The Commission shall review the compact legislation every five years prior to federal congressional review provided for in the Act, and may recommend legislative action.
- Regulations.** 18. The Commission has the authority to develop and provide to party states such rules, regulations and guidelines as it deems appropriate for the efficient, consistent, fair and reasonable implementation of the compact.
- j. There is hereby established a Commission operating account. The Commission is authorized to expend monies from such account for the expenses of any staff and consultants designated under section (g) of this Article and for official Commission business. Financial support of the Commission account shall be provided as follows:
1. Each eligible state, upon becoming a party state, shall pay \$70,000 to the Commission, which shall be used for administrative cost of the Commission.
  2. The commission shall impose a "commission surcharge" per unit of waste received at any regional facility as provided in Article V.
  3. Until such time as at least one regional facility is in operation and accepting waste for management, or to the extent that revenues under paragraphs (1) and (2) of this section are unavailable or insufficient to cover the approved annual budget of the Commission, each party state shall pay an apportioned amount of the difference between the funds available and the total budget in accordance with the following formula:

(a) 20 percent in equal shares;

(b) 30 percent in the proportion that the population of the party state bears to the total population of all party states, according to the most recent U. S. census;

(c) 50 percent in the proportion that the waste generated for management in each party state bears to the total waste generated for management in the region for the most recent calendar year in which reliable data are available, as determined by the Commission.

Audit.  
Report.

k. The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission accounts and funds and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV(i)(3).

Grants.  
Loans.

Report.

l. The Commission may accept, receive, utilize and dispose for any of this purposes and functions any and all donations, loans, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation, loans, or grant accepted pursuant to this paragraph, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission. The Commission shall by rule establish guidelines for the acceptance of donations, loans, grants of money, equipment, supplies, materials and services. This shall provide that no donor, grantor or lender may derive unfair or unreasonable advantage in any proceeding before the Commission.

Prohibitions.

m. The Commission herein established is a body corporate and politic, separate and distinct from the party states and shall be so liable for its own actions. Liabilities of the Commission shall not be deemed liabilities of the party states, nor shall members of the Commission be personally liable for action taken by them in their official capacity.

1. The Commission shall not be responsible for any costs or expenses associated with the creation, operation, closure, post-closure observation and maintenance, and institutional control of any regional facility, or any associated regulatory activities of the party states.

2. Except as otherwise provided herein, this compact shall not be construed to alter the incidence of liability of any kind for any act, omission, or course of conduct. Generators, shippers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

Courts, U.S.  
District of  
Columbia.

Prohibition.

Courts, U.S.

n. The United States district courts in the District of Columbia shall have original jurisdiction of all actions brought by or against the Commission. Any such action initiated in a state court shall be removed to the designated United States district court in the manner provided by Act of June 25, 1948 as amended (28 USC 14446). This section shall not alter the jurisdiction of the United States Court of Appeals for the District of Columbia Circuit to review the final administrative decisions of the Commission as set forth in the paragraph below.

o. The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the final administrative decisions of the Commission.

1. Any person aggrieved by a final administrative decision may obtain review of the decision by filing a petition for review within 60 days after the Commission's final decision.

2. In the event that review is sought of the Commission's decision relative to the designation of a host state, the Court of Appeals shall accord the matter an expedited review, and, if the Court does not rule within 90 days after a petition for review has been filed, the Commission's decision shall be deemed to be affirmed.

Prohibition.

3. The courts shall not substitute their judgement for that of the Commission as to the decisions of policy or weight of the evidence on questions of fact. The Court may affirm the decision of the Commission or remand the case for further proceedings if it finds that the petitioners has been aggrieved because the finding, inferences, conclusions or decisions of the Commission are:

- a. in violation of the Constitution of the United States;
- b. in excess of the authority granted to the Commission by this compact;
- c. made upon unlawful procedure to the detriment of any person;
- d. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Regulations.

4. The Commission shall be deemed to be acting in a legislative capacity except in those instances where it decides, pursuant to its rules and regulations, that its determinations are adjudicatory in nature.

#### **Article V—Host State Selection And Development And Operation Of Regional Facilities**

a. The Commission shall develop, adopt, maintain, and implement a regional management plan to ensure the safe and efficient management of waste within the region. The plan shall include the following:

1. a current inventory of all generators within the region;
2. a current inventory of all facilities within the region, including information on the size, capacity, location, specific waste being handled, and projected useful life of each facility;
3. consistent with considerations for public health and safety as defined by appropriate regulatory authorities, a determination of the type and number of regional facilities which are presently necessary and projected to be necessary to manage waste generated within the region;

Health.  
Safety.

4. reference guidelines, as defined by appropriate regulatory authorities, for the party states for establishing the criteria and procedures to evaluate locations for regional facilities.

b. The Commission shall develop and adopt criteria and procedures for reviewing a party state which volunteers to host a regional facility within its borders. These criteria shall be developed with public notice and shall include the following factors: the capability of the volunteering party state to host a regional facility in a timely manner and to ensure its post-closure observation and maintenance, and institutional control; and the anticipated economic feasibility of the proposed facility.

1. Any party state may volunteer to host a regional facility within its borders. The Commission may set terms and conditions to encourage a party state to volunteer to be the first host state.

2. Consistent with the review required above, the Commission shall, upon a two-thirds affirmative vote, designate a volunteering party state to serve as a host state.

c. If all regional facilities required by the regional management plan are not developed pursuant to section (b), or upon notification that an existing facility will be closed, or upon determination that an additional regional facility is or may be required, the Commission shall convene to consider designation of a host state.

1. The Commission shall develop and adopt procedures for designating a party state to be a host state for a regional facility. The Commission shall base its decision on the following criteria:

Health.  
Safety.

- a. the health, safety and welfare of citizens of the party states as defined by the appropriate regulatory authorities;
- b. the environmental, economic, and social effects of a regional facility on the party states;

The Commission shall also base its decision on the following criteria:

Transportation.

- c. economic benefits and costs;
- d. the volumes and types of waste generated within each party state;
- e. the minimization of waste transportation; and
- f. the existence of regional facilities within the party states.

2. Following its established criteria and procedures, the Commission shall designate by a two-thirds affirmative vote a party state to serve as a host state. A current host state shall have the right of first refusal for a succeeding regional facility.

Studies.

3. The Commission shall conduct such hearings and studies, and take such evidence and testimony as is required by its approved procedures prior to designating a host state. Public hearings shall be held upon request in each candidate host state prior to final evaluation and selection.

4. A party state which has been designated as a host state by the Commission and which fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

d. Each host state shall be responsible for the timely identification of a site and the time development and operation of a regional facility. The proposed facility shall meet geologic, environmental and economic criteria which shall not conflict with applicable federal and host state laws and regulations.

Report.

1. To the extent not prohibited by federal law, a host state may regulate and license any facility within its borders.

2. To the extent not prohibited by federal law, a host state shall ensure the safe operation, closure, post-closure observation and maintenance, and institutional control of a facility, including adequate financial assurances by the operator and adequate emergency response procedures. It shall periodically review and report to the Commission on the status of the post-closure and institutional control funds and the remaining useful life of the facility.

3. A host state shall solicit comments from each party state and the Commission regarding the siting, operation, financial assurances, closure, post-closure observation and maintenance, and institutional control of a regional facility.

e. A host state intending to close a regional facility within its borders shall notify the Commission in writing of its intention and reasons therefore.

1. Except as otherwise provided, such notification shall be given to the Commission at least five years prior to the scheduled date of closure.

Health.  
Safety.

2. A host state may close a regional facility within its borders in the event of an emergency or if a condition exists which constitutes a substantial threat to public health and safety. A host state shall notify the Commission in writing within three days of its action and shall within 30 working days, show justification for the closing.

3. In the event that a regional facility closes before an additional or new facility becomes operational, the Commission shall make interim arrangements for the storage or disposal of waste generated within the region until such time that a new regional facility is operational.

f. Fees and surcharges shall be imposed equitably upon all users of a regional facility, based upon criteria established by the Commission.

Regulations.

1. A host state shall, according to its lawful administrative procedures, approve fee schedules to be charged to all users of the regional facility within its borders. Except as provided herein, such fee schedules shall be established by the operator of a regional facility, under applicable state regulations, and shall be reasonable and sufficient to cover all costs related to the development, operation, closure, post-closure observation and maintenance, institutional control of the regional facility. The host state shall determine a schedule for contributions to the post-closure observation and maintenance, and institutional control funds. Such fee schedules shall not be approved unless the Commission has been given reasonable opportunity to review and make recommendations on the proposed fee schedules.

Regulation.

2. A host state may, according to its lawful administrative procedures impose a state surcharge per unit of waste received at any regional facility within its borders. The state surcharge shall be in addition to the fees charged for waste management. The surcharge shall be sufficient to cover all reasonable costs associated with administration and regulation of the facility. The surcharge shall not be established unless the Commission has been provided reasonable opportunity to review and make recommendations on the proposed state surcharge.

3. The Commission shall impose a commission surcharge per unit of waste received at any regional facility. The total monies collected shall be adequate to pay the cost and expenses of the Commission and shall be remitted to the Commission on a timely basis as determined by the Commission. The surcharge may be increased or decreased as the Commission deems necessary.

4. Nothing herein shall be construed to limit the ability of the host state, or the political subdivision in which the regional facility is situated, to impose surcharges for purposes including, but not limited to, host community compensation and host community development incentives. Such surcharges shall be reasonable and shall not be imposed unless the Commission has been provided reasonable opportunity to review and make recommendations on the proposed surcharge. Such surcharge may be recovered through the approved fee and surcharge schedules provided for in this section.

**Article VI—Other Laws And Regulations**

42 USC 2021.  
Prohibition.

a. Nothing in this compact shall be construed to abrogate or limit the regulatory responsibility or authority of the U.S. Nuclear Regulatory Commission or of an Agreement State under section 274 of the Atomic Energy Act of 1954, as amended.

Prohibition.

b. The laws or portions of those laws of a party state that are not inconsistent with this compact remain in full force.

Prohibition.

c. Nothing in this compact shall make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective.

Prohibition.

d. No judicial or administrative proceeding pending on the effective date of the compact shall be affected by the compact.

42 USC 2021b  
note.  
Research and  
development.

e. Except as provided for in Article III(b)(2) and (c)(3), this compact shall not affect the relations between and the respective internal responsibilities of the government of a party state and its subdivisions.

Taxes.  
Transportation.

f. The generation, treatment, storage, transportation, or disposal of waste generated by the atomic energy defense activities of the federal government, as defined in P.L. 96-573, or federal research and development activities are not affected by this compact.

Prohibition.

g. To the extent that the rights and powers of any state or political subdivision to license and regulate any facility within its borders and to impose taxes, fees, and surcharges on the waste managed at that regional facility do not operate as an unreasonable impediment to the transportation, treatment or disposal of waste, such rights and powers shall not be diminished by this compact.

Prohibition.

h. No party state shall enact any law or regulation or attempt to enforce any measure which is inconsistent with this compact. Such measures may provide the basis for the Commission to suspend or terminate a party state's membership and privileges under this compact.

Prohibition.

i. All laws and regulations, or parts thereof of any party state or subdivision or instrumentality thereof which are inconsistent with this compact are hereby repealed and declared null and void. Any legal right, obligation, violation or penalty arising under such laws or regulations prior to the enactment of this compact, or not in conflict with it, shall not be affected.

j. Subject to Article III(c)(2), no law or regulation of a party state or subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

k. No law, ordinance, or regulation of any party state or any subdivision or instrumentality thereof shall prohibit, suspend, or unreasonably delay, limit or restrict the operation of a siting or licensing agency in the designation, siting, or licensing of a regional facility. Any such provision in existence at the time of ratification of this compact is hereby repealed.

**Article VII—Eligible Parties, Withdrawal, Revocation, Entry Into Force, Termination**

Connecticut.  
Delaware.  
Maine.  
Maryland.  
Massachusetts.  
New  
Hampshire.  
New Jersey.  
New York.  
Pennsylvania.  
Rhode Island.  
Vermont.

a. The initially eligible parties to this compact shall be the eleven states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Initial eligibility will expire June 30, 1984.

b. Each state eligible to become a party state to this compact shall be declared a party state upon enactment of this compact into law by the state, repeal of all statutes or statutory provisions that pose unreasonable impediments to the capability of the state to host a regional facility in a timely manner, and upon payment of the fees required by Article IV(j)(1). An eligible state may become a party to this compact by an executive order by the governor of the state and upon payment of the fees required by Article IV(j)(1). However, any state which becomes a party state by executive order shall cease to be a party state upon the final adjournment of the next general or regular session of its legislature, unless this compact has by then been enacted as a statute by the state and all statutes and statutory provisions that conflict with the compact have been repealed.

Effective date.

c. The compact shall become effective in a party state upon enactment by that state. It shall not become initially effective in the region until enacted into law by three party states and consent given to it by the Congress.

d. The first three states eligible to become party states to this compact which adopt this compact into law as required in Article VII(b) shall immediately, upon the appointment of their Commission members, constitute themselves as the Northeast Interstate Low-Level Radioactive Waste Commission. They shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

1. The Commission shall be the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and of the laws of the party states relating to the enactment of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section (b) of this Article.

e. Any state not expressly declared eligible to become a party state to this compact in section (a) of this Article may petition the Commission to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact pursuant to the provisions of this section, including a public hearing on the application. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of the representatives of the host states in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

Prohibition.

f. No state holding membership in any other regional compact for the management of low-level radioactive waste may become a member of this compact.

g. Any party state which fails to comply with the provisions of this compact or to fulfill its obligations hereunder may have its privileges

suspended or, upon a two-thirds vote of the Commission, after full opportunity for hearing and comment, have its membership in the compact revoked. Revocation shall take effect one year from the date the affected party state receives written notice from the Commission of its action. All legal rights of the affected party state established under this compact shall cease upon the effective date of revocation, except that any legal obligations of that party state arising prior to revocation will not cease until they have been fulfilled. As soon as practicable after a Commission decision suspending or revoking party state status, the Commission shall provide written notice of the action and a copy of the resolution to the governors and the presiding officer of each body of the state legislatures of the party states, and to chairmen of the appropriate committees of the Congress.

h. Any party state may withdraw from this compact by repealing its authorization legislation, and all legal rights under this compact of the party state cease upon repeal. However, no such withdrawal shall take effect until five years after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Commission and to the governor of each party state. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to that time.

1. Upon receipt of the notification, the Commission shall, as soon as practicable, provide copies to the governors and the presiding officer of each body of the state legislatures of the party states, and to the chairmen of the appropriate committees of the Congress.

2. A regional facility in a withdrawing state shall remain available to the region for five years after the date the Commission receives written notification of the intent to withdraw or until the prescheduled dates of closure, whichever occurs first.

i. This compact may be terminated only by the affirmative action of the Congress or by the repeal of all laws enacting the compact in each party state. The Congress may by law withdraw its consent every five years after the compact takes effect.

1. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections (b) and (e) of this Article.

2. The withdrawal of a party state from this compact under section (h) or the revocation of a state's membership in this compact under section (g) of this Article shall not affect the applicability of the compact to the remaining party states.

#### **Article VIII—Penalties**

a. Each party state, consistent with federal and host state regulations and laws, shall enforce penalties against any person not acting as an official of a party state for violation of this compact in the party state. Each party state acknowledges that the shipment to a host state of waste packaged or transported in violation of applicable laws and regulations can result in the imposition of sanctions by the host state. These sanctions may include, but are not limited to, suspension or revocation of the violator's rights of access to the facility in the host state.

Regulations.

b. Without the express approval of the Commission, it shall be unlawful for any person to dispose of any low-level waste within the region except at a regional facility; provided, however, that this restriction shall not apply to waste which is permitted by applicable federal or state regulations to be discarded without regard to its radioactivity.

c. Unless specifically approved by the Commission and affected host state(s) pursuant to Article IV, it shall be a violation of this compact for: 1) any person to deposit at a regional facility waste not generated within the region; 2) any regional facility to accept waste not generated within the region; and 3) any person to export from the region waste generated within the region.

d. Primary responsibility for enforcing provisions of the law will rest with the affected state or states. The Commission, upon a two-thirds vote of its members, may bring action to seek enforcement or appropriate remedies against violators of the provisions and regulations for this compact as provided for in Article IV.

**Article IX—Compensation Provisions**

a. The responsibility for ensuring compensation and clean-up during the operational and post-closure periods rests with the host state, as set forth herein.

1. The host state shall ensure the availability of funds and procedures for compensation of injured persons, including facility employees, and property damage (except any possible claims for diminution of property values) due to the existence and operation of a regional facility, and for clean-up and restoration of the facility and surrounding areas.

Prohibition.

2. The state may satisfy this obligation by requiring bonds, insurance, compensation funds, or any other means or combination of means, imposed either on the facility operator or assumed by the state itself, or both. Nothing in this article alters the liability of any person or governmental entity under applicable state and federal laws.

b. The Commission shall provide a means of compensation for persons injured or property damaged during the institutional control period due to the radioactive and waste management nature of the regional facility. This responsibility may be met by a special fund, insurance, or other means.

Contracts.  
Insurance.

1. The Commission is authorized, at its discretion, to impose a waste management surcharge, to be collected by the operator or owner of the regional facility; to establish a separate insurance entity, formed by but separate from the Commission itself, but under such terms and conditions as it decides, and exempt from state insurance regulation; to contract with this company or other entity for coverage; or to take any other measures, or combination of measures, to implement the goals of this section.

Regulations.

2. The existence of this fund or other means of compensation shall not imply liability by the Commission, the non-host party states, or any of their officials and staff, which are exempted from liability by other provisions of this compact. Claims or suits for compensation shall be directed against the fund, the insurance company, or other entity, unless the Commission, by regulation, directs otherwise.

c. Notwithstanding any other provisions, the Commission fund, insurance, or other means of compensation shall also be available for third party relief during the operational and post-closure periods, as the Commission may direct, but only to the extent that no other funds, insurance, tort compensation, or other means are available from the host state or other entities, under section a. of this Article or otherwise; provided, that this Commission contribution shall not apply to clean-up

or restoration of the regional facility and its environs during the operational and post-closure period.

d. The liability of the Commission's fund, insurance entity, or any other means of compensation shall be limited to the amount currently contained therein; provided that the Commission may set some lower limit to ensure the integrity and availability of the fund or other entity for liability.

**Article X—Severability And Construction**

Provisions  
held invalid.

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared by a federal court of competent jurisdiction to be contrary to the Constitution of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. The provisions of this compact shall be liberally construed to give effect to the purpose thereof.<sup>45</sup>

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<sup>45</sup>Amends Public Law 96-573 by striking out sections 1, 2, 3, 4 and inserting in lieu thereof Public Law 99-240.

**C. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT CONSENT ACT**

**Public Law 100-319**

**102 Stat. 471**

**May 19, 1988**

**An Act**

To grant the consent of the Congress to the Appalachian States Low-Level Radioactive Waste Compact.

Appalachian States Low-Level Radioactive Waste Compact Consent Act.  
42 USC 2021d note.

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

**Sec. 1. Short Title**

This Act may be cited as the —Appalachian States Low-Level Radioactive Waste Compact Act.”

**Sec. 2. Congressional Finding.**

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act.

42 USC 2021d note.

**Sec. 3. Conditions of Consent to Compact.**

The consent of the Congress to the compact set forth in section 5—  
(1) shall become effective on the date of the enactment of this Act,

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act, and

(3) is granted only for so long as the Appalachian States Low-Level Radioactive Waste Commission, advisory committees, and regional boards established in the compact comply with all the provisions of such Act.

42 USC 2021d note.

**Sec. 4. Congressional Review.**

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided for in such compact.

42 USC 2021d note.

**Sec. 5. Appalachian States Low-level Radioactive Waste Compact.**

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2)), the consent of Congress is given to the States of Pennsylvania, West Virginia, and any eligible States as defined in Article 5(A) of the Appalachian States Low-Level Radioactive Waste Compact to enter into such compact. Such compact is substantially as follows:

Delaware.  
Maryland.  
Pennsylvania.  
West Virginia.  
Waste disposal.

**Appalachian States Low-Level Radioactive Waste Compact**

**Preamble**

Whereas, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 USC sections2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

Public health  
and safety.

Whereas, Under section 4(a)(1)(A) of the Low-Level Radioactive Waste Policy Act (42 USC section 2021d(a)(1)(A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders;

Whereas, To promote the health, safety and welfare of residents within, the Commonwealth of Pennsylvania and other eligible states as defined in Article 5(A) of this compact shall enter into a compact for the regional management and disposal of low-level radioactive waste.

Now, therefore, the Commonwealth of Pennsylvania and the state of West Virginia and other eligible states hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

#### Article I—Definitions

As used in this compact, unless the context clearly indicates otherwise:

(a) ~~Broker~~” means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) ~~Carrier~~” means a person who transports low-level waste to a regional facility.

(c) ~~Commission~~” means the Appalachian States Low-Level Radioactive Waste Commission.

(d) ~~Disposal~~” means the isolation of low-level waste from the biosphere.

(e) ~~Facility~~” means any real personal property within the region, and improvements thereof or thereon, and any and all plant structures, machinery and equipment acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) ~~Generate~~” means to produce low-level waste requiring disposal.

(g) ~~Generator~~” means a person whose activity results in the production of low-level waste requiring disposal.

(h) ~~Hazardous life~~” means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by Federal law or by standards to be set by a host state, whichever is more restrictive.

(i) ~~Host state~~” means Pennsylvania or other party state so designated by the Commission in accordance with Article 3 of this compact.

(j) ~~Institutional control period~~” means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) ~~Low-level waste~~” means radioactive waste that:

(1) is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 as amended; and

(2) is classified by the Federal Government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal Government, as defined in Public Law 96-573, or Federal research and development activities.

(l) ~~Management~~” means the reproduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) ~~Operator~~” means a person who operates a regional facility.

(n) ~~Party state~~ means any state that has become a party in accordance with Article 5 of this compact.

(o) ~~Person~~ means an individual, corporation, partnership or other legal entity, whether public or private.

(p) ~~Region~~ means the combined geographic area within the boundaries of the party states.

(q) ~~Regional facility~~ means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) ~~Shallow land burial~~ means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) ~~Transuranic waste~~ means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the Federal Government.

Establishment.

(A) Creation and Organization.

(1) ~~Creation~~—There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

(2) ~~Commission Membership~~—The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one-half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

(3) ~~Compensation~~—Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

(4) ~~Voting Power~~—Each Commission member is entitled to one vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and

the disposal and management of low-level waste within that host state.

(5) Organization and –

(a) The Commission shall provide for its own organization and procedures and shall adopt by-laws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

Public  
information.

(b) All meetings of the Commission shall be open to the public with at least 14 days' advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Administrative Procedure Act (5 U.S.C. Chapter 5, Subchapter II, and Chapter 7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of or hearing complaints or charges brought against an employee or other public agents unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least 14 days prior to the Executive Session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting shall be null and void.

Records.  
Public  
Information.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened Executive Session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 USC section 552) and applicable Pennsylvania law and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law, the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

(B) Powers and Duties.

The Commission:

Regulations.  
Research and  
development.

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by Federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by Federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and Federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

Contracts.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

Records.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article (2)(A)(5)(e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available, to the party states and to the public, information concerning low-level waste management and disposal needs, technologies, and problems.

Records.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

- Records.** (1) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.
- Reports.** (m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.
- Contracts.** (n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.
- Regulations.** (o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.
- (p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any Federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.
- (C) Budget and Operation.
- (1) Fiscal Year—The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.
- (2) Current Expense Budget—Upon legislative enactment of this compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission’s estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:
- Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed \$200,000.
- Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such cost will not exceed \$100,000.
- The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.
- (3) Annual Budget Request—For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region’s waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2(B)(k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) Annual Report to Include Budget—The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit—

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees

Reports.

The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

Public information.

(b) Each signatory party, by its duly authorized officers, shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

**<sup>1</sup>Article III—Rights, Responsibilities And Obligations Of Party States**

(A) Regional Facilities.

There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable Federal laws and regulations.

(B) Equal Access to Regional Facilities.

Public health and safety.

Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three (3) days of this action and shall, within thirty (30) working days, provide in writing the reasons for the closing.

(C) Initial Host State.

Pennsylvania and party states which generate 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the three years 1982 through 1984, are designated as “initial host states” and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Exemption From Being Initial Host State.

<sup>1</sup> There was no “Article II” in the original slip law.

Party states which generate less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania, based on a comparison of averages over the years 1982 through 1984, shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Useful Life of Regional Facilities.

Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a 30-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the Federal Government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

(F) Duties of Host State.

Each host state shall:

(a) Cause a regional facility to be sited and developed on a timely basis.

(b) Ensure by law, consistent with applicable state and Federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by Federal law, a host state may adopt more stringent laws, rules or regulations than required by Federal law.

(c) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

(d) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

(e) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

(f) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

Environmental  
protection.  
Public health  
and safety.

Reports.

(g) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(h) Prohibit the use of any shallow land burial, as defined in Article 1®), and develop alternative means for treatment, storage and disposal of low-level waste.

(i) Establish by law, to the extent not prohibited by Federal law, requirements for financial responsibility, including, but not limited to:

(i) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(ii) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventative or corrective measures of low-level waste to the regional facility; and

(iii) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

(G) Duties of Party State.

Each party state:

(a) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2(C)(2) and (3).

(b) To the extent authorized by Federal law shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

(iii) Appropriate enforcement actions with respect to violations.

(c) To the extent authorized by Federal law, shall, after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

(d) Shall maintain a registry of all generators and quantities generated within the state.

(H) Liability.

In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the

Records.

region's low-level waste disposed of at the facility, part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

Claims.

(I) Failure of Party State to Fulfill Obligations.

A party state which fails to fulfill its obligations, including timely funding of the Commission, may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal equitable remedies available to the party states.

#### Article IV—Prohibited Acts And Penalties

(A) Prohibition.

It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) Waste Disposed of Within Region.

After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purpose of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

Public health  
and safety.

(a) The impact on the health, safety and environmental quality of the citizens of the party states;

Environmental  
protection.

(b) The impact of importing waste on the available capacity and projected life of the regional facility;

(c) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Waste Generated Within Region.

Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Liability.

Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or Federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state the ability and willingness to comply with the law.

(E) Conflict of Interest.

(1) Prohibitions—

No commissioner, officer or employee shall:

Employment and unemployment. Contracts.

(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him by the Commission for services performed within the scope of his official duties.

(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

(2) Forfeiture of Office or Employment—Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

(3) Agreement Void—Any contract or agreement knowingly made in contravention of this section is void.

(4) Criminal and Civil Sanctions—

Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

**Article V—Eligibility, Entry Into Effect, Congressional Consent, Withdrawal**

Delaware. Maryland. Pennsylvania. West Virginia.

(A) Eligibility.

Only the States of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this compact.

(B) Entry into Effect.

An eligible state may become a party state by legislative enactment of this compact or by executive order of the governor adopting this compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first federal session of its legislature convened thereafter, unless the legislature shall have enacted this compact before such adjournment.

Effective dates.

(C) Congressional Consent.

This compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article 4 (B) and (C) shall not take effect until Congress has consented to this compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) Withdrawal.

A party state may withdraw from the compact by repealing the enactment of this compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

**Article VI—Construction And Severability**

(A) Construction.

The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

(B) Severability.

If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

**D. SOUTHWESTERN LOW-LEVEL RADIOACTIVE  
WASTE DISPOSAL COMPACT CONSENT ACT**

**Public Law 100-712**

**102 Stat. 4773**

**Nov. 23, 1988**

**An Act**

Southwestern  
Low-Level  
Radioactive  
Waste Disposal  
Compact  
Consent Act.

**42 USC 2021d  
note.**

Environmental  
protection.

**42 USC 2021d  
note.**

**42 USC 2021d  
note.**

**42 USC 2021d  
note.**

State listing.

To grant the consent of the Congress to the Southwestern Low-Level Radioactive Waste Disposal Compact.

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

**Sec. 1. Short Title.**

This Act may be cited as the ~~Southwestern Low-Level Radioactive Waste Disposal Compact Consent Act.~~"

**Sec. 2. Congressional Finding.**

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act.

**Sec. 3. Conditions of Consent to Compact.**

The consent of the Congress to the compact set forth in section 5—

(1) shall become effective on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act; and

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

**Sec. 4. Congressional Review.**

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of enactment of this Act, and at such intervals thereafter as may be provided in such compact.

**Sec. 5. Southwestern Low-Level Radioactive Waste Compact.**

In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of Congress is given to the states of Arizona, California, and any eligible states, as defined in article VII of the Southwestern Low-Level Radioactive Waste Disposal Compact, to enter into such compact. Such compact is substantially as follows:

**Article I—Compact Policy And Formation**

The party states hereby find and declare all of the following :

(A) The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC section 2021b to 2021j, incl.), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

Public health  
and safety.

(C) It is policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of Title 42 of the United States Code, or the Nuclear Regulatory Commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

### Article II—Definitions

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) ~~“Commission”~~ means the Southwestern Low-Level Radioactive Waste Commission established in article III of this compact.

(B) ~~“Compact region”~~ or ~~“region”~~ means the combined geographical area with the boundaries of the party states.

(C) ~~“Disposal”~~ means the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if the state hosts a disposal facility.

(D) ~~“Generate,”~~ when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) ~~“Generator”~~ means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) ~~“Host county”~~ means a county, or similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) ~~“Host state”~~ means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) ~~“Institutional control period”~~ means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) ~~“Low-level radioactive waste”~~ means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 USC section 2014(e)(2)).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the Federal Government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC section 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration

greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) ~~Management~~ means collection, consolidation, storage, packaging, or treatment.

(K) ~~Major generator state~~ means a party state which generates 10 percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten percent of the total amount, ~~Major generator state~~ means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) ~~Operator~~ means a person who operates a regional disposal facility.

(M) ~~Party state~~ means any state that has become a party in accordance with article VII of this compact.

(N) ~~Person~~ means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) ~~Postclosure period~~ means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) ~~Regional disposal facility~~ means a non-Federal low-level radioactive waste disposal facility established and operated under this compact.

(Q) ~~Site closure and stabilization~~ means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) ~~Transporter~~ means a person who transports low-level radioactive waste.

(S) ~~Uranium mine and mill tailings~~ means waste resulting from mining and processing of ores containing uranium.

### **Article III—The Commission**

#### **Establishment.**

(A) There is hereby established the Southwestern Low-Level Radioactive Waste Commission.

(1) The Commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the Commission in writing of the identity of the member and any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the Commission which is necessary for the host state's members to compose at least 51 percent of the membership on the Commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the Commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the members of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party and shall serve at the pleasure of the governor of the host state.

(B) The Commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the Commission shall not be personally liable for actions taken in their official capacity. The liabilities of the Commission shall not be deemed liabilities of the party states.

(C) The Commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of Commission action shall be governed by the laws of the host state. The Commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The Commission's records shall be subject to the host state's public records law, and the meetings of the Commission shall be open and public in accordance with the host state's open meeting law.

(E) The Commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The Commission members shall be compensated according to the appointing state's law.

(F) Each Commission member is entitled to one vote. A majority of the Commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the Commission is necessary for the Commission to take any action.

(G) The Commission has all of the following duties and authority:

(1) The Commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The Commission shall meet at least once a year and otherwise as business requires.

(3) The Commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the

radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility.

The host state shall set, and the Commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the Commission and Commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the Commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article IV shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The Commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

Records.

(6) The Commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the Commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the Commission.

Reports.

(7) The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

Gifts and property.

(8) The Commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the Commission.

However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of Title 42 of the United States Code, any payments paid from the special escrow account for which the Secretary of Energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of Title 42 of the United States Code.

Reports.

(9) The Commission shall submit communications to the governors to the presiding officers of the legislatures of the party states regarding the activities of the Commission, including an annual report to be submitted on or before January 15 of each year. The Commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods

which are alternative technologies to the shallow land burial of low-level radioactive waste.

Public  
information.

(10) The Commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

Records.

(11) The Commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.

Records.

(12) The Commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.

(13) The Commission may establish advisory committees for the purpose of advising the Commission on the disposal and management of low-level radioactive waste.

(14) The Commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the Commission shall bind a party state.

(15) The Commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.

(16) The Commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.

(17) The Commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the Commission may hire or retain, or both, legal counsel.

(18) The Commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.

(19) The Commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met—

(a) The Commission approves the importation agreement by a two-thirds vote of the Commission.

(b) The Commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.

(20) The Commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The Commission may approve the petition only by a two-thirds vote of the Commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the Commission.

(21) The Commission may approve, only by a two-thirds vote of the Commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.

(22) The Commission shall, not later than 10 years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

**Article IV—Rights, Responsibilities, And Obligations Of Party States**

(A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.

(B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.

(C)(1) Upon the effective date of this compact, the State of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least 30 years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the State of California.

If the State of California does not extend this obligation, the party state, other than the State of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

Public health  
and safety.

(2) The host state may close its regional disposal facility when necessary for public health or safety.

(D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC sections 2021b to 2021j, incl.).

(E) A host state shall do all of the following:

(1) Cause a regional disposal facility to be developed on a timely basis.

Public health  
and safety.

(2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.

(3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:

(a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.

(b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.

(c) Assure that charges are assessed without discrimination as to the party state of origin.

Reports.

(4) Submit an annual report to the Commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.

(5) The host state and the operator shall notify the Commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.

Commerce and  
trade.

Transportation.  
Utilities.

Records.

(F) Each party state is subject to the following duties and authority:

(1) To the extent authorized by federal law, each party shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:

(a) Periodic inspections of packaging and shipping practices.

(b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.

(c) Appropriate enforcement actions with respects to violations.

(2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).

(3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.

(4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.

(6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

(7) Each party state shall provide the Commission with any data and information necessary for the implementation of the Commission's responsibilities, including taking those actions necessary to obtain this data or information.

(8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article III.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

**Article V—Approval Of Regional Facilities**

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the Commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

**Article VI—Prohibited Acts And Penalties**

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article III.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article III.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the Commission or the host state.

**Article VII—Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion**

(A) The States of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the Commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the Commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

**Effective date.**

(E) This compact shall take effect upon the enactment by statute by the legislatures of the State of California and at least 1 other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every 5 years after its effective date, pursuant to federal law.

**Article VIII—Construction And Severability**

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provision or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 USC section 2011 *et seq.*).

(2) An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 USC section 2021).

(E) Nothing in this compact confers any new authority on the states or Commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the Nuclear Regulatory Commission.

**E. TEXAS LOW-LEVEL RADIOACTIVE WASTE  
DISPOSAL COMPACT CONSENT ACT**

**Public Law 105-236**

**112 Stat. 1542**

**September 20, 1998**

**An Act**

To grant the consent of the Congress to the Texas Low-Level  
Radioactive Waste Disposal Compact.

Texas Low-Level  
Radioactive  
Waste Disposal  
Compact Consent  
Act.

42 USC 2021d  
note.

42 USC 2021d  
note.

42 USC 2021d  
note.  
Effective date.

42 USC 2021d  
note.

42 USC 2021d  
note.  
Maine,  
Vermont.

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

**Sec. 1. Short Title.**

This Act may be cited as the ~~“Texas Low-Level Radioactive Waste Disposal Compact Consent Act.”~~

**Sec. 2. Congressional Finding.**

The Congress finds that the compact set forth in section 5 is in furtherance of the Low-Level Radioactive Waste Policy Act (42 USC 2021b et seq.).

**Sec. 3. Conditions of Consent to Compact.**

The Consent of the Congress to the compact set forth in section 5—

(1) shall become effect on the date of the enactment of this Act;

(2) is granted subject to the provisions of the Low-Level Radioactive Waste Policy Act (42 USC 2021b et seq.); and

(3) is granted only for so long as the regional commission established in the compact complies with all of the provisions of such Act.

**Sec. 4. Congressional Review.**

The Congress may alter, amend, or repeal this Act with respect to the compact set forth in section 5 after the expiration of the 10-year period following the date of the enactment of this Act, and at such intervals thereafter as may be provided in such compact.

**Sec. 5. Texas Low-Level Radioactive Waste Compact.**

(a) CONSENT OF CONGRESS.—In accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 USC 2021d(a)(2)), the consent of Congress is given to the States of Texas, Maine, and Vermont to enter into the compact set forth in subsection (b).

**Article I. Policy And Purpose**

SEC. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive water. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a

cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

#### **Article II. Definitions**

SEC. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~Act~~ means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 USC 2021b-2021j).

(2) ~~Commission~~ means the Texas Low-Level Radioactive Waste Disposal compact Commission established in Article III of this compact.

(3) ~~Compact facility~~ or ~~facility~~ means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) ~~Disposal~~ means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) ~~Generate~~ when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) ~~Generator~~ means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

(7) ~~Host county~~ means a county in the host state in which a disposal facility is located or is being developed.

(8) ~~Host state~~ means a party state in which a compact facility is located or is being developed. The State of Texas is the host state under this compact.

(9) ~~Institutional control period~~ means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) ~~Low-Level radioactive waste~~ has the same meaning as that term is defined in section 2(9) of the Act (42 USC 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) ~~Management~~ means collection, consolidation, storage, packaging, or treatment.

(12) ~~Operator~~ means a person who operates a disposal facility.

(13) ~~Party state~~ means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and Vermont are initial party states under this compact.

(14) ~~Person~~ means an individual, corporation, partnership or other legal entity, whether public or private.

(15) ~~Transporter~~ means a person who transports low-level radioactive waste.

**Article III. The Commission****Establishment.**

SEC. 3.01. There is hereby established the Texas Low-Level Radioactive Waste disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

SEC. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

SEC. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

SEC. 3.04. The Commission shall:

**Records.**

(1) Compensate its members according to the host state's law.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the non-host party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

**Records.**

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a non-host party state to store low-level radioactive waste generated outside of the state.

**Reports.  
Deadlines.**

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

**Public  
information.**

(9) Assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.

**Records.**

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

**Deadlines.**

(11) By no later than 180 days after all members of the commission are appointed under section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host

state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all non-host party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from non-host party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the non-host party states in order to assure that over the life of this agreement shipments from the non-host party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

SEC 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material, which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

SEC. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

**Article IV. Rights, Responsibilities, And Obligations Of Party**

SEC. 4.01. The host state shall develop and have full administrative control over the development, management and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the non-host party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of section 3.04(11) of Article III.

SEC. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in section 3.05(7) of Article III.

SEC. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

SEC. 4.04. The host state shall do the following

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

Notification.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in sections 402,272 and 402,273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the non-host party states. Fees shall also be sufficient to reasonably support the activities of the Commission.

Reports.

(5) Submit an annual report to the commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

Notification.

(6) Notify the Commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at non-compact facilities.

Notification.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

SEC. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each non-host party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by Congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the commission's activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under section 7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 USC sections 1 to 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the commission and host state—

(A) an accounting of waste shipped and proposed be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

SEC. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

#### **Article V. Party State Contributions**

SEC. 5.01. Each party state, except the host state, shall contribute a total of \$25 million to the host state. Payments shall be deposited in the host state treasure to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60<sup>th</sup> day after the date of congressional ratification of this compact, each state shall pay to the host state \$12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each non-host party state shall pay to the host state an additional \$12.5 million.

Deadline.

SEC. 5.02. As an alternative, the host state and the non-host states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in section 5.01 of this article.

#### **Article VI. Prohibited Acts And Penalties**

SEC. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in section 3.05(7) of Article III.

SEC. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR Part 20.302.

SEC. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

#### **Article VII. Eligibility, Entry Into Effect; Congressional Consent; Withdrawal; Exclusion**

SEC. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial non-host party states under section 3.04(11) of Article III and section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states names in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the composition of the commission and those pertaining to section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

SEC. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this compact.

SEC. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state's legislature, without the consent of the non-host party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission, provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

Effective Date.

SEC. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the non-host party states may continue to use the facility during that time. The financial obligation of the non-host party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any non-host party state payment under sections 4.05(5) and (6) of Article IV or Article V, the non-host party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the non-host party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

Effective date.

SEC. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under sections 4.05(5) and (6) of Article IV that were due during the two-year period, and shall not be entitled to any refund of payments previously made.

Effective date.

SEC. 7.06. Any party state that substantially fails to comply with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), except that a party state may appeal the commission's revocation decision to the United States District Court in accordance with section 3.06 of Article III. Revocation shall take effect one year from date such party state receives written notice from the commission of a final action.

Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

**Effective date.**

SEC. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro-rata share of the commission's expenses.

SEC. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of Congress every five years after its date, pursuant to federal law.

SEC. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the non-host party states, to modify the provisions contained in section 3.04(11) of Article III to comply with section 402.219(c)(1), Texas Health & Safety Code, as long as the modification does not impair the rights of the initial non-host party states.

**Article VIII. Construction And Severability**

SEC. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

SEC. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

SEC. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care or any other activity relating to the compact facility. No non-host party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners and operators of the facility shall be liable for their acts, omissions, conduct or relationships in accordance with applicable law. By entering into this compact and securing the ratification by Congress of its terms, no party state acquires a potential liability under section 5(d)(2)(C) of the Act (42 USC section 2021e(d)(2)(C)) that did not exist prior to entering into this compact.

SEC. 8.04. If a party state withdraws from the compact pursuant to section 7.03 of Article VII or has its membership in this compact revoked pursuant to section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under section 8.03 of this article.

SEC. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If

any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

SEC. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) The United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 USC section 2011 *et. seq.*).

(2) An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 USC 2021).

SEC. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission



# **High-Level Radioactive Waste**



## *6. High-Level Radioactive Waste*

### Contents

<b>A. NUCLEAR WASTE POLICY ACT OF 1982, AS AMENDED.....</b>	<b>417</b>
Sec. 1. Short Title and Table of Contents .....	417
Sec. 2. Definitions .....	417
Sec. 3. Separability .....	420
Sec. 4. Territories and Possessions .....	420
Sec. 5. Ocean Disposal .....	420
Sec. 6. Limitation on Spending Authority .....	420
Sec. 7. Protection of Classified National Security Information .....	420
Sec. 8. Applicability .....	420
Sec. 9. Applicability .....	421
<b>Title I—Disposal And Storage Of High-Level Radioactive Waste, Spent</b>	
<b>Nuclear Fuel, And Low-Level Radioactive Waste .....</b>	<b>421</b>
Sec. 101. State and Affected Indian Tribe Participation in	
Development of Proposed Repositories for Defense Waste .....	421
Sec. 111. Findings and Purposes .....	421
Sec. 112. Recommendation of Candidate Sites for Site	
Characterization .....	422
Sec. 113. Site Characterization .....	425
Sec. 114. Site Approval and Construction Authorization .....	427
Sec. 115. Review of Repository Site Selection .....	430
Sec. 116. Participation of States .....	433
Sec. 117. Consultation with States and Affected Indian Tribes .....	436
Sec. 118. Participation of Indian Tribes .....	438
Sec. 119. Judicial Review of Agency Actions .....	440
Sec. 120. Expedited Authorizations .....	441
Sec. 121. Certain Standards and Criteria .....	441
Sec. 122. Disposal of Spent Nuclear Fuel .....	442
Sec. 123. Title to Material .....	442
Sec. 124. Consideration of Effect of Acquisition of Water Rights .....	442
Sec. 125. Termination of Certain Provisions .....	443
<b>Subtitle B—Interim Storage Program .....</b>	<b>443</b>
Sec. 131. Findings and Purposes .....	443
Sec. 132. Available Capacity for Interim Storage of Spent Nuclear	
Fuel .....	443
Sec. 133. Interim at Reactor Storage .....	443
Sec. 134. Licensing of Facility Expansions and Transshipments .....	444
Sec. 135. Storage of Spent Nuclear Fuel .....	445
Sec. 136. Interim Storage Fund .....	451
Sec. 137. Transportation .....	454
<b>Subtitle C—Monitored Retrievable Storage .....</b>	<b>454</b>
Sec. 141. Monitored Retrievable Storage .....	454
Sec. 142. Authorization of Monitored Retrievable Storage .....	457
Sec. 143. Monitored Retrievable Storage Commission .....	457
Sec. 144. Survey .....	459
Sec. 145. Site Selection .....	459
Sec. 146. Notice of Disapproval .....	460
Sec. 147. Benefits Agreement .....	460

Sec. 148. Construction Authorization .....	461
Sec. 149. Financial assistance .....	461
Subtitle D—Low-Level Radioactive Waste .....	462
Sec. 151. Financial Arrangements for Low-level Radioactive Waste Site Closure .....	462
Subtitle E—Redirection Of The Nuclear Waste Program .....	463
Sec. 160. Selection of Yucca Mountain Site .....	463
Sec. 161. Siting a Second Repository .....	463
Subtitle F—Benefits .....	464
Sec. 170. Benefits Agreements .....	464
Sec. 171. Content of Agreements .....	464
Sec. 172. Review Panel .....	466
Sec. 173. Termination .....	467
Subtitle G—Other Benefits .....	467
Sec. 174. Consideration in Siting Facilities .....	467
Sec. 175. Report .....	467
Subtitle H—Transportation .....	468
Sec. 180. Transportation .....	468
Title II—Research, Development, And Demonstration Regarding Disposal Of High-Level Radioactive Waste And Spent Nuclear Fuel .....	468
Sec. 211. Purpose .....	468
Sec. 212. Applicability .....	469
Sec. 213. Identification of Sites .....	469
Sec. 214. Siting Research and Related Activities .....	470
Sec. 215. Test and Evaluation Facility Siting Review and Reports .....	471
Sec. 216. Federal Agency Actions .....	472
Sec. 217. Research And Development on Disposal of High-level Radioactive Waste .....	472
Sec. 218. Research and Development on Spent Nuclear Fuel .....	475
Sec. 219. Payments to States and Indian Tribes .....	477
Sec. 220. Study of Research and Development Needs for Monitored Retrievable Storage Proposal .....	477
Sec. 221. Judicial Review .....	477
Sec. 222. Research on Alternatives for the Permanent Disposal of High-level Radioactive Waste .....	477
Sec. 223. Technical Assistance to Non-nuclear Weapon States in the Field of Spent Fuel Storage and Disposal .....	477
Sec. 224. Subseabed Disposal .....	478
Title III—Other Provisions Relating To Radioactive Waste .....	479
Sec. 301. Mission Plan .....	479
Sec. 302. Nuclear Waste Fund .....	481
Sec. 303. Alternative Means of Financing .....	485
Sec. 304. Office of Civilian Radioactive Waste Management .....	485
Sec. 305. Location of Test and Evaluation Facility .....	486
Sec. 306. Nuclear Regulatory Commission Training Authorization .....	486
Title IV—Nuclear Waste Negotiator .....	487
Sec. 401. Definition .....	487
Sec. 402. The Office of the Nuclear Waste Negotiator .....	487
Sec. 403. Duties of the Negotiator .....	487
Sec. 404. Environmental Assessment of Sites .....	488
Sec. 405. Site Characterization; Licensing .....	489

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Sec. 406. Monitored Retrievable Storage .....	489
Sec. 407. Environmental Impact Statement .....	489
Sec. 408. Administrative Powers of the Negotiator .....	490
Sec. 409. Cooperation of Other Departments and Agencies .....	490
Sec. 410. Termination of the Office.....	491
Sec. 411. Authorization of Appropriations.....	491
<b>Title V—Nuclear Waste Technical Review Board .....</b>	<b>491</b>
Sec. 501. Definitions .....	491
Sec. 502. Nuclear Waste Technical Review Board .....	491
Sec. 503. Functions .....	492
Sec. 504. Investigatory Powers .....	492
Sec. 505. Compensation of Members .....	492
Sec. 506. Staff.....	492
Sec. 507. Support Services .....	493
Sec. 508. Report .....	493
Sec. 509. Authorization of Appropriations.....	493
Sec. 510. Termination of the Board .....	493
<b>B. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT OF 1992—(ENVIRONMENTAL PROTECTION STANDARDS) .....</b>	<b>494</b>
<b>Title VIII – High-Level Radioactive Waste .....</b>	<b>494</b>
Sec. 801. Nuclear Waste Disposal.....	494
Sec. 803. Nuclear Waste Management Plan .....	495
<b>C. PERTINENT PROVISIONS OF THE RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—(WASTE INCIDENTAL TO REPROCESSING).....</b>	<b>496</b>
Sec. 3116. Defense Site Acceleration Completion. ....	496
<b>D. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT OF 2005—(GREATER-THAN-CLASS C WASTE) .....</b>	<b>498</b>
Sec. 631. Safe Disposal of Greater-Than-Class C Radioactive Waste. .	498



**A. NUCLEAR WASTE POLICY ACT OF 1982, AS  
AMENDED****Public Law 97-425****96 Stat. 2201****January 7, 1983****Sec. 1. Short Title and Table of Contents**

This Act may be cited as the "Nuclear Waste Policy Act of 1982."  
(TOC not duplicated here.)

**42 USC 10101.****Sec. 2. Definitions**

For purposes of this Act:

(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 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113.

(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 power plant required to be licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 USC 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.

(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 USC 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 USC 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 305.

(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 9a) or (b) of section 1151 of title 18, United States Code; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 USC 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 137(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).

(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) 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).<sup>1</sup>

#### OTHER PROVISIONS

42 USC 10102.

#### **Sec. 3. Separability**

If an provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

42 USC 10103.

#### **Sec. 4. Territories and Possessions**

Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980.

42 USC 10104.

#### **Sec. 5. Ocean Disposal**

Nothing in this Act shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972.

42 USC 10105.

#### **Sec. 6. Limitation on Spending Authority**

The authority under this Act 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 USC 10106.

#### **Sec. 7. Protection of Classified National Security Information**

Nothing in this Act shall require the release or disclosure to any person or to the Commission of any classified national security information.

42 USC 10107.

#### **Sec. 8. Applicability**

(a) ATOMIC ENERGY DEFENSE ACTIVITIES—Subject to the provisions of subsection (c), the provisions of this Act shall not apply with respect to any atomic energy defense activity or to any facility used in conjunction with any such activity.

(b) EVALUATION BY PRESIDENT—(1) Not later than 2 years after the date of the enactment of this Act, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I 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 describe 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 for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository of 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 especial account established under section 302.

(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

<sup>1</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5002, added subsecs., 30-34.

Act of 1973 (42 USC 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 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 USC 10108.

**Sec. 9. Applicability**

**TRANSPORTATION**—NOTHING in this Act shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

**Title I—Disposal And Storage Of High-Level Radioactive Waste, Spent Nuclear Fuel, And Low-Level Radioactive Waste**

42 USC 10121.

**Sec. 101. State and Affected Indian Tribe Participation in Development of Proposed Repositories for Defense Waste**

(a) **NOTIFICATION TO STATES AND AFFECTED INDIAN TRIBES**—Notwithstanding the provisions of section 8, 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.

(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, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 116(c) or 118(b) shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

**Subtitle A—Repositories For Disposal Of High-Level Radioactive Waste And Spent Nuclear Fuel**

42 USC 10131.

**Sec. 111. Findings and Purposes**

(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;

(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 may 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 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 government 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 USC 10132.

**Sec. 112. Recommendation of Candidate Sites for Site Characterization**

(a) **GUIDELINES**—Not later than 180 days after the date of the enactment of this Act, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated

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

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

Recommendation  
date.

(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.

Environmental  
assessment.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detail 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 guidelines;

(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)(i) 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, and section 119. 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 (D).

(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).

(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 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 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—

Decision  
transmittal or  
notification.

(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 decision making 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 USC 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.<sup>2</sup>

**42 USC 10133.****Sec. 113. Site Characterization**

(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) 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 subsection (b)(1).

Plan submittal,  
review and  
comment.

(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, plan for any investigation activities that may affect the capabilities 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) plan for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by the 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); 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 placed 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.

<sup>2</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5011, amended section 112; Public Law 102-154, Title I, Nov. 13, 1991, 105 Stat. 1000 substituted “United States Geological Survey” for “Geological Survey” in subsection (a).

Public  
availability;  
hearings.

(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.

Report.

(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 USC 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 sites 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 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.

Reports.

(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 decision making 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 USC 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.<sup>3</sup>

**42 USC 10134.**

Notification of  
decision.

**Sec. 114. Site Approval and Construction Authorization**

(a) HEARINGS AND PRESIDENTIAL RECOMMENDATION—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, 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 and this section, including the information described in subparagraph (A) through subparagraph (G).

Public  
availability.

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 USC 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;

<sup>3</sup>Public Law 100-203 (101 Stat. 1330) (1987), section 5011, amended section 113.

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 116(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 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 USC 4332(2)(C), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(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, 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 proceeding 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 deadlines by not more than 12 months if, not less than 30 days before such deadlines, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in

Construction  
authorization  
applications.

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) PROTECT 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.

Report  
submittal to  
Secretary and  
Congress.

(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 deadlines, 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.

Report  
response, filing  
with Congress.

(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 USC 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 USC 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 USC 4321 *et seq.*) and this section, the Secretary need not consider alternative 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 USC 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 under the Atomic Energy Act of 1954 (42 USC 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 USC 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.<sup>4</sup>

**42 USC 10135. Sec. 115. Review of Repository Site Selection**

(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 recommend such site to the Congress under section 114, unless the Government 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. If 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 after a recommendation for approval of such site is made by the President under section 114, 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—

Notice of  
disapproval,  
submittal to  
Congress.

<sup>4</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5011, amended section 114.

(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.

Introduction of  
resolution.

(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, 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 of Members of the Senate designated by such chairman.

Committee  
recommendations.

(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.

Discharge of  
committee.

(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 privilege 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 unfurnished business of the Senate until disposed of.

Debate.

(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 rules of the Senate, the vote on final approval of such resolution shall occur.

Appeals.

(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 section 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.

Discharge of committee.

(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.

Resolution, consideration and debate.

(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, 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 USC 10136.**

**Sec. 116. Participation of States**

Potentially  
acceptable site.

(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. 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, 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 to the Governor

or legislature of such State shall be considered to refer instead to such other person or entity.

Notice of disapproval, submittal to Congress.

(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. 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 or authorized by written agreement entered into pursuant to section 117(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.

Grants.

(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, test, 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).

(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 each 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; 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 1987.<sup>5</sup>

(d) ~~ADDITIONAL NOTIFICATION AND CONSULTATION~~—Whenever the Secretary is required under any provision of this Act 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 USC 10137. Sec. 117. Consultation with States and Affected Indian Tribes**

(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.

Information  
request,  
response.

(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, 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), and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and

<sup>5</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5032, amended section 116(c).

Report to  
Congress.

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, 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), or (2) the written request of the State or Indian tribe in any affected State notified under section 116(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 no later than 6 months after such notification.<sup>6</sup>

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) or section 118(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

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<sup>6</sup>Public Law 104-66, § 1051(i), deleted the following from subsection (c): “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 negotiation 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.”

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;

State  
notification.  
Transportation  
of radioactive  
waste and spent  
nuclear fuel.  
Monitoring and  
testing.

(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 formation 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.<sup>7</sup>

**42 USC 10138.**  
Notice of  
disapproval,  
submittal to  
Congress.

**Sec. 118. Participation of Indian Tribes**

(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. 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.

Grants.

(b) FINANCIAL ASSISTANCE—(1) The Secretary shall make grants to each affected tribe notified under section 116(a) for the purpose of participating in activities required by section 117 or authorized by written agreement entered into pursuant to section 117(c). Any salary or travel

<sup>7</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5011, added section 117(d).

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). 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 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 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) 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

Report  
submittal.

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.

Grants,  
limitation.

(5) 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;

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

(iv) the date of the enactment of the Nuclear Waste Policy Amendments Acts of 1987;<sup>8</sup> whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 112(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) 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.

Funding.

(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) 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 USC 10139.

**Sec. 119. Judicial Review of Agency Actions**

(a) JURISDICTION OF UNITED STATES COURTS OF APPEALS—

(1) Except for review in the Supreme Court of 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;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this subtitle;

<sup>8</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5033, amended section 118(b)(5)(ii) and (iv).

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*) with respect to any action under this subtitle, or as required under section 135(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); or

(F) for review of any research and development activity under title II.

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

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

42 USC 10140.

**Sec. 120. Expedited Authorizations**

(a) **ISSUANCE OF AUTHORIZATION**—(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 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 USC 10141.

**Sec. 121. Certain Standards and Criteria**

(a) **ENVIRONMENTAL PROTECTION AGENCY STANDARDS**—Not later than 1 year after the date of the enactment of this Act, 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 USC

2011 *et seq.*) and the Energy Reorganization Act of 1974 (42 USC 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, 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 Statements—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 USC 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

42 USC 10142.

**Sec. 122. Disposal of Spent Nuclear Fuel**

Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle 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 USC 10143.

**Sec. 123. Title to Material**

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this subtitle shall constitute a transfer to the Secretary of title to such waste or spent fuel.

42 USC 10144.

**Sec. 124. Consideration of Effect of Acquisition of Water Rights**

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 USC 10145. Sec. 125. Termination of Certain Provisions**

Sections 119 and 120 shall cease to have effect at such time as a repository developed under this subtitle is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

**Subtitle B—Interim Storage Program****42 USC 10151. Sec. 131. Findings and Purposes**

(a) FINDINGS—The congress finds that—

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

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

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

(b) Purposes.—The purposes of this subtitle are—

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

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

**42 USC 10152. Sec. 132. Available Capacity for Interim Storage of Spent Nuclear Fuel**

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

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

(2) economic considerations;

(3) continued operation of such reactor;

(4) any applicable provisions of law; and

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

**42 USC 10153. Sec. 133. Interim at Reactor Storage**

Licensing  
procedures.

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) for use at the site of any civilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable

procedures or rules of the Commission in effect prior to such establishments, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

42 USC 10154.

**Sec. 134. Licensing of Facility Expansions and Transshipments**

a) ORAL ARGUMENT—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 USC 2239) on an application for a license, or for an amendment to an existing license, filed after the date of the enactment of this Act, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral arguments shall 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

Summary  
submittal of  
facts, data and  
arguments.

submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral arguments. Of the material that may be submitted by the parties during oral arguments, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

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

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear

power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 USC 2011 *et seq.*) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

(c) **Judicial Review.**—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

**42 USC 10155. Sec. 135. Storage of Spent Nuclear Fuel**

(a) **STORAGE CAPACITY**—(1) Subject to section 8, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on the date of the enactment of this Act, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 USC 2011 *et seq.*) or the Energy Reorganization Act of 1974 (42 USC 5801 *et seq.*); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on the date of enactment of this Act;

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

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

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

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

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

Facility.

(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) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

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

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

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

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

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

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

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such

capability is not necessary for the continued orderly operation of such reactor.

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

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

Public  
availability.

(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.

5 USC 701 *et*.  
*seq.*  
Judicial review.

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

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

(d) REVIEW OF SITES AND STATE PARTICIPATION—(1) In carrying out the provisions of this subtitle with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or

- facility for such interim storage of spent fuel of his intention to investigate that site or facility.
- Investigation.** (2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary in cooperation with the State and Indian tribes, shall develop and publish minimum guideline 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.
- Guidelines.**
- Cooperative agreement.** (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.
- Process of consultation and cooperation.** (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.
- Report to Congress.** (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.

Notice of disapproval, submittal to Congress.

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

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

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

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

Resolution.

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

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

shall be considered to refer to the resolution described in such subparagraph.

Affected Tribal  
Council.

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

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

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

5 USC 553.

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

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

(i) COORDINATION WITH RESEARCH AND DEVELOPMENT PROGRAM—To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 217 from spent

nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

42 USC 10156.

**Sec. 136. Interim Storage Fund**

(a) CONTRACTS—

(1) During the period following the date of the enactment of this Act, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel resulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this subtitle: *Provided, however,* That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 135(a). Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

Study; report to Congress.

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

Publication in Federal Register.

Fees.

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

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

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

(b) LIMITATION—No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be stored by the Secretary in any storage capacity provided under this subtitle unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the

contracts referred to in this section if such spent nuclear fuel were generated by any other person.

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

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

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

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

(d) USE OF STORAGE FUND—The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this subtitle, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this subtitle;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 135;

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

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

Payments.

(e) IMPACT ASSISTANCE—(1) Beginning the first fiscal year which commences after the date of the enactment of this Act, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional boundaries of such government or governments and authorized under this subtitle: *Provided, however,* That such impact assistance payments shall not exceed (A) ten percentum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less:

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii) provision of public services related to the providing of such interim storage authorized under this title, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

Regulations.

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

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a).

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this subtitle in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

Unit of local  
government.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on the date of the enactment of this subsection, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

Report to  
Congress.

(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.

Budget  
submittal.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

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

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

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall

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

Interest  
payments.

(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.

Deferral.

42 USC 10157.

**Sec. 137. Transportation**

(a) TRANSPORTATION—(1) Transportation of spent nuclear fuel under section 136(a) shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

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

**Subtitle C—Monitored Retrievable Storage**

42 USC 10161.

**Sec. 141. Monitored Retrievable Storage**

(a) FINDINGS—The Congress finds that—

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

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction 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 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.

Consultations.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (b)(1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

Environmental  
assessment.

Submittal to  
Congress.

(c) ENVIRONMENTAL IMPACT STATEMENTS—(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act, an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

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

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

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

Payments.

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

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

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

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

Regulations.

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

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302 (c) and

shall be available only to the extent provided in advance in appropriation Acts.

Consultations.

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

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

(h) PARTICIPATION OF STATES AND INDIAN TRIBES—Any facility authorized pursuant to this section shall be subject to the provisions of sections 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.

42 USC 10162.

**Sec. 142. Authorization of Monitored Retrievable Storage**

(a) NULLIFICATION OF OAK RIDGE SITTING PROPOSAL—The proposal the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear power plant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.<sup>9</sup>

42 USC 10163.

**Sec. 143. Monitored Retrievable Storage Commission**

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

(B)<sup>75</sup> Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

Reports.

(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—

<sup>9</sup> As added by Public Law 100-203, Title V, § 5021, Dec. 22, 1987, 101 Stat. 1330-232, added sections 142-149.

(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.

#### Reports.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.<sup>10</sup>

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

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B) (i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such

<sup>10</sup> Entire section added by As added by Public Law 100-203, Title V, § 5021, Dec. 22, 1987, 101 Stat. 1330-232; Public Law 100-507 (102 Stat. 2541) (1988) section 2, extended the report deadline from 6/1/89 to 11/1/89.

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 USC 10164. Sec. 144. Survey**

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

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

**42 USC 10165. Sec. 145. Site Selection**

(a) GENERAL—The Secretary may select the site evaluated under section 144 that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

(b) LIMITATION—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

(c) **SITE SPECIFIC ACTIVITIES**—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) **ENVIRONMENTAL ASSESSMENT**—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

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

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

(f) **NOTIFICATION OF SELECTION**—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) **LIMITATION**—No monitored retrievable storage facility authorized pursuant to section 142 (b) may be constructed in the State of Nevada.

42 USC 10166.

**Sec. 146. Notice of Disapproval**

(a) **IN GENERAL**—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

(b) **REFERENCES**—For purposes of carrying out the provisions of this subsection, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

42 USC 10167.

**Sec. 147. Benefits Agreement**

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 145, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

**42 USC 10168.****Sec. 148. Construction Authorization**

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

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

(b) APPLICATION FOR CONSTRUCTION LICENSE—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

(c) LICENSING—Any monitored retrievable storage facility authorized pursuant to section 142(b) shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 USC 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

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

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 115(d);

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of the facility at any one time may not exceed 15,000 metric tons of heavy metal.

**42 USC 10169.****Sec. 149. Financial assistance**

The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government

in the case of a monitored retrievable storage facility in the same manner as for a repository.<sup>11</sup>

#### Subtitle D—Low-Level Radioactive Waste

#### **42 USC 10171. Sec. 151. Financial Arrangements for Low-level Radioactive Waste Site Closure**

(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 USC 2231), 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 USC 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, 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.

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<sup>11</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5021, added sections 142-149.

(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.

### Subtitle E—Redirection Of The Nuclear Waste Program

#### 42 USC 10172. **Sec. 160. Selection of Yucca Mountain Site**

(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.

(b) Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170.<sup>12</sup>

#### 42 USC 10172a. **Sec. 161. Siting a Second Repository**

(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, the Secretary shall phase out in an orderly manner funding for all research programs in existence on such date of enactment 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 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.<sup>13</sup>

<sup>12</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5011, added new Subtitle E.

<sup>13</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5012, amended Subtitle E by adding section 161.

**Subtitle F— Benefits****42 USC 10173. Sec. 170. Benefits Agreements**

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

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

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

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

(b) AMENDMENT—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

(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.<sup>14</sup>

**42 USC 10173a. Sec. 171. Content of Agreements**

(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 in accordance with the following schedule:

<sup>14</sup> As added P.L. 100-202, § 101(d), [Title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121, and amended P.L. 100-203, Title V, § 5031, Dec. 22, 1987, 101 Stat. 1330-237. Refers to Sec. 170-175.

**BENEFITS SCHEDULE**

(amounts in \$ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after the 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 shall provide that—

(1) a Review Panel be established in accordance with section 172;

(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 of 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).

(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 shall constitute a commitment by the United States to make payments in accordance with such agreement.

**42 USC 10173b. Sec. 172. Review Panel**

(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 six other members as follows:

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

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

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

(4) one 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 four years each.

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

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

(c) DUTIES—The Review Panel shall—

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

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

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) INFORMATION—The Secretary shall promptly make available promptly any information in the Secretary's possession requested by the Panel or its Chairman.

(e) FEDERAL ADVISORY COMMITTEE ACT—The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this title.

**42 USC 10173c. Sec. 173. Termination**

(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.

**Subtitle G—Other Benefits****42 USC 10174. Sec. 174. Consideration in Siting Facilities**

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

**42 USC 10174a. Sec. 175. Report**

(a) IN GENERAL—Within one year of the date of the enactment of the Nuclear Waste Policy Amendments Act of 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, 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.<sup>15</sup>

### **Subtitle H—Transportation**

**42 USC 10175. Sec. 180. Transportation**

(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.<sup>16</sup>

### **Title II—Research, Development, And Demonstration Regarding Disposal Of High-Level Radioactive Waste And Spent Nuclear Fuel**

**42 USC 10191. Sec. 211. Purpose**

It is the purpose of this title—

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

<sup>15</sup>Public Law 100-203 (101 Stat. 1330) (1987), section 5031, amended title I by adding Subtitles F and G.

<sup>16</sup>Public Law 100-203 (101 Stat. 1330) (1987), section 5061, amended title I by adding Subtitle H.

(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 USC 10192. Sec. 212. Applicability**

The provisions of this title are subject to section 8 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 USC 10193. Sec. 213. Identification of Sites**

(a) GUIDELINES—Not later than 6 months after the date of the enactment of this Act 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 United States 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, 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.

(b) SITE IDENTIFICATION BY THE SECRETARY—(1) Not later than 1 year after the date of the enactment of this Act, 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 operation facility, and with the exception of the primary areas under review by the Secretary on the date of the enactment of this Act 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 1000 persons as determined by the most recent census unless such sites contain high-level radioactive waste prior to identification under this title. 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 discussible impact of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

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

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

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

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

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 302(d) may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.<sup>17</sup>

42 USC 10194.

**Sec. 214. Siting Research and Related Activities**

(a) IN GENERAL—Not later than 30 months after the date on which the Secretary completes the identification of sites under section 213, 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. 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) 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, 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 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;

<sup>17</sup> P.L. 102-285, Sec. 10(a), May 18, 1992, 106 Stat. 171, renamed the Geological Survey and provided that on and after May 18, 1992, it shall be known as the United States Geological Survey. An earlier statute, P.L. 102-154, Title I, Nov. 13, 1991, 105 Stat. 1000, had provided for the identical change of name effective on and after Nov. 13, 1991.

(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 for the disposal of such material.

**42 USC 10195.**

**Sec. 215. Test and Evaluation Facility Siting Review and Reports**

(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 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—

Process of  
consultation  
and  
cooperation.

(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.

(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 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 USC 10196. Sec. 216. Federal Agency Actions**

(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.

(b) ENVIRONMENTAL REVIEW—(1) No action of the Secretary or any other Federal agency required by this title or section 301 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 USC 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this title.

(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 USC 4321 *et seq.*).

**42 USC 10197. Sec. 217. Research And Development on Disposal of High-level Radioactive Waste**

(a) PURPOSE—Not later than 64 months after the date of the enactment of this Act, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 214, as part of and as an extension of siting research activities of such site under such section, 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—

Environmental  
assessment.

(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;

(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 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.

Testing.

(c) OPERATION—(1) Not later than 88 months after the date of the enactment of this Act, 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, 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 mitigation, 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 power plant 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 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 for the conducting of generically applicable test 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, or under the Atomic Energy Act of 1954 (42 USC 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, 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; 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, the test and evaluation facility, and the facilities authorized in section 217, 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 USC 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 USC 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). Nothing in this subsection may be construed to limit siting

research activities conducted under section 214. 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.

Terminations.

(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 USC 10198.

**Sec. 218. Research and Development on Spent Nuclear Fuel**

(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, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 214 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 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. 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, 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. Such spent nuclear fuel shall not be subject to the provisions of section 135(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.

(e) RELATION TO SPENT NUCLEAR FUEL STORAGE PROGRAM—The spent nuclear fuel storage program authorized in section 135 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, Space, and Technology<sup>18</sup> 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

Report to  
congressional  
committees.

<sup>18</sup> P.L. 103-437, Sec. 15(c)(10), substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology.”

(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 USC 10199.

**Sec. 219. Payments to States and Indian Tribes**

(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. 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 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). 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, or to an affected Indian tribe where the potential site has been identified under such section.

(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. Annual payments shall be prorated on a 365-day basis to the specified dates.

42 USC 10200.

**Sec. 220. Study of Research and Development Needs for Monitored Retrievable Storage Proposal**

Report to  
Congress.

Not later than 6 months after the date of the enactment of this Act, 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) with respect to a monitored retrievable storage facility.

42 USC 10201.

**Sec. 221. Judicial Review**

Judicial review of research and development activities under this shall be in accordance with the provisions of section 119.

42 USC 10202.

**Sec. 222. Research on Alternatives for the Permanent Disposal of High-level Radioactive Waste**

Research on Alternatives for the Permanent Disposal of High-Level Radioactive Waste—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 examinations of various waste disposal options.

42 USC 10203.

**Sec. 223. Technical Assistance to Non-nuclear Weapon States in the Field of Spent Fuel Storage and Disposal**

(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.

Joint notice,  
publication in  
Federal  
Register.

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

Joint notice,  
reissuance.

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

Expressions of  
interest.

(c) Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear power plants 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.

Non-nuclear  
weapon state.

(e) For the purposes of this subsection, 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 USC 438).

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

42 USC 10204.  
Reports.

**Sec. 224. Subseabed Disposal**

(a) REPEALED. Public Law 104-66, title I, section 1051(d), December 21, 1995, 109 Stat. 716.

(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH—

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science 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 Science, 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 Science, and the

first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, 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 December 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) REPEALED. Public Law 104-66, title I, section 1051(d), 109 Stat. 716, December 21, 1995.<sup>19</sup>

### **Title III—Other Provisions Relating To Radioactive Waste**

#### **42 USC 10221. Sec. 301. Mission Plan**

(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. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with respect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this Act 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;

<sup>19</sup>Public Law 97-425, title II, section 224, as added Public Law 100-202, section 101(d), title III, (101 Stat. 1329-104, 1329-12), December 22, 1987; Public Law 100-203, title V, section 5063 (101 Stat. 1330-253), December 22, 1987; as amended Public Law 104-66, title I, section 1051(d) (109 Stat. 716), December 21, 1995; Public Law 105-245, title III, section 309(b)(2)(E) (112 Stat. 1853), October 7, 1998.

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this Act, 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);

(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; 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, 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.

Public  
inspection and  
agency  
comments.  
Publication in  
Federal  
Register.

(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.

Plan submittal  
to  
congressional  
committees.

(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. 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 USC 10222.

**Sec. 302. Nuclear Waste Fund**

Fees.

(a) CONTRACTS—(1) In the performance of his functions under this Act, 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 in subsection (d).

Fees.

(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, 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, 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 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, 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). 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.

Collection and  
payment  
procedures.  
Review.

42 USC 6421.  
Transmittal to  
Congress.

(4) Not later than 180 days after the date of enactment of this Act, 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 insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act.

(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.

Disposal  
services, terms  
and conditions.  
License  
renewal or  
issuance.

(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 USC 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 USC 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) may be disposed of by the Secretary in any repository constructed under this Act 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, may be disposed of by the Secretary in any repository constructed under this Act unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

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

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

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

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

(d) USE OF WASTE FUND—The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under Titles I and II, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored retrievable storage facility or test evaluation facility constructed under this Act;

(2) the conducting of nongeneric research, development, and demonstration activities under this Act;

(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

Disposal of  
radioactive  
waste or spent  
nuclear fuel.

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 section 116, 118 and 219.

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.

Report to  
Congress.

(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.

Budget  
submittal.

(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 II of title 31, United States Code. 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.

(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. A total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of

the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transactions the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

Interest  
payments.

(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.

Deferral.

The rate of such interest shall be determined by the Secretary of 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 USC 10223.  
Study.

**Sec. 303. Alternative Means of Financing**

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.

Report to  
Congress.

42 USC 10224.

**Sec. 304. Office of Civilian Radioactive Waste Management**

(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.

(b) FUNCTIONS OF DIRECTOR—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, 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) AUDIT BY GAO—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct an audit of the Office, in accord 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

Report to  
Congress.  
42 USC 10225.

Comptroller General shall submit a report on the results of each audit conducted under this section.<sup>20</sup>

**Sec. 305. Location of Test and Evaluation Facility**

(a) REPORT TO CONGRESS—Not later than 1 year after the date of the enactment of this Act, 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 with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such tests 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 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 USC 10226.  
Regulations or  
guidance.

**Sec. 306. Nuclear Regulatory Commission Training Authorization**

NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION—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 power plant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant 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, and the Commission within the 12-month period following enactment of this Act shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

Report to  
Congress.

<sup>20</sup>Public Law 97-425, title III, section 304, (96 Stat. 2661), January 7, 1983; Public Law 104-66, title I, Subtitle E, section 1052(1), (109 Stat. 719), December 21, 1995; P.L. 108-271, Sec. 8(b) renamed General Accounting Office and Government Accountability Office.

### Title IV—Nuclear Waste Negotiator

- 42 USC 10241. Sec. 401. Definition**  
 For purposes of this title, the term "State" means each of the several States and the District of Columbia.<sup>21</sup>
- 42 USC 10242. Sec. 402. The Office of the Nuclear Waste Negotiator**  
 (a) ESTABLISHMENT—There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.<sup>22</sup>  
 (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 any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.
- President of U.S. 42 USC 10243. Sec. 403. Duties of the Negotiator**  
 (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 of 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

<sup>21</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5041, added title IV; Public Law 102-486 (102 Stat 2923); Oct. 24, 1992.

<sup>22</sup>Public Law 100-507 (102 Stat 2541) (1988) section 1 amended section 402(a).

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) 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).

(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 USC 2012 *et seq.*), title II of the Energy Reorganization Act of 1982 (42 USC 5841 *et seq.*) and any other law applicable to authorization of such construction.

**42 USC 10244. Sec. 404. Environmental Assessment of Sites**

(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).

(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, section 119.

(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).

(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; 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 USC 10245. Sec. 405. Site Characterization; Licensing**

(a) SITE CHARACTERIZATION—Upon enactment of legislation to implement an agreement to site a repository negotiated under section 403(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, 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 of Indian tribe entering into the agreement.

(b) LICENSING—(1) Upon 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 USC 10246. Sec. 406. Monitored Retrievable Storage**

(a) CONSTRUCTION AND OPERATION—Upon enactment of legislation to implement an agreement negotiated under section 403(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.

Grants.

(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 USC 10247. Sec. 407. Environmental Impact Statement**

(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 USC 4321 *et seq.*)

(b) PREPARATION—A final environmental impact statement shall be prepared by the Secretary under such Act 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 alternative to such site in the preparation of such statement.

**42 USC 10248. Sec. 408. Administrative Powers of the Negotiator**

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);

Contracts.

(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 USC App.)

**42 USC 10249. Sec. 409. Cooperation of Other Departments and Agencies**

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 USC 10250. Sec. 410. Termination of the Office**

The Office shall cease to exist not later than 30 days after the date 7 years after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987.<sup>23</sup>

**42 USC 10251. Sec. 411. Authorization of Appropriations**

Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this title.<sup>24</sup>

### Title V—Nuclear Waste Technical Review Board

**2 USC 10261. Sec. 501. Definitions**

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.<sup>25</sup>

**2 USC 10262. Sec. 502. Nuclear Waste Technical Review Board**

(a) ESTABLISHMENT—There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

President of  
U.S.

(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 from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

President of  
U.S.

(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, 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;

<sup>23</sup>Public Law 102-486 (106 Stat. 2923).

<sup>24</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5041, added title IV.

<sup>25</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5051, added title V

(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, 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 USC 10263. Sec. 503. Functions**

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, including—

(1) site characterization activities; and

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

**42 USC 10264. Sec. 504. Investigatory Powers**

(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 USC 10265. Sec. 505. Compensation of Members**

(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 USC 10266. Sec. 506. Staff**

(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 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 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 of GS-18 of the General Schedule.

**42 USC 10267. Sec. 507. Support Services**

(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 USC 10268. Sec. 508. Report**

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.

**42 USC 10269. Sec. 509. Authorization of Appropriations**

Notwithstanding subsection (d) of section 302, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this title.

**42 USC 10270. Sec. 510. Termination of the Board**

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.<sup>26</sup>

<sup>26</sup>Public Law 100-203 (101 Stat. 1330) (1987) section 5051, added title V.

**B. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT OF 1992—(ENVIRONMENTAL PROTECTION STANDARDS)**

**Title VIII – High–Level Radioactive Waste<sup>1</sup>**

**42 USC 10141 note.**

**Sec. 801. Nuclear Waste Disposal**

(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS—

(1) PROMULGATION—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 USC 10141(a)), section 161b. of the Atomic Energy Act of 1954 (42 USC 2201(b)), and any other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than one year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

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

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

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

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

(3) APPLICABILITY—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the

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<sup>1</sup>Note: This Act consists of Public Law 102-486 (106 Stat. 2921) enacted on October 24, 1992, and generally appears in title 42, United States Code.

Administrator to set generally applicable standards for radiation protection.

(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

(1) MODIFICATIONS—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the nuclear Waste Policy Act of 1982 (42 USC 10141(b)), as necessary, to be consistent with the Administrator's standards promulgated under subsection (a).

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

(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

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

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

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

42 USC 10101  
note.

**Sec. 803. Nuclear Waste Management Plan**

(a) PREPARATION AND SUBMISSION OF REPORT—The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 USC 10101 *et seq.*) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

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

(c) AUTHORIZATION OF APPROPRIATIONS—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**C. PERTINENT PROVISIONS OF THE RONALD W.  
REAGAN NATIONAL DEFENSE AUTHORIZATION ACT  
FOR FISCAL YEAR 2005—(WASTE INCIDENTAL TO  
REPROCESSING)**

**50 USC 2601  
note.**

**Sec. 3116. Defense Site Acceleration Completion.<sup>1</sup>**

(a) IN GENERAL.—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974, and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term "high-level radioactive waste" does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the "Secretary"), in consultation with the Nuclear Regulatory Commission (in this section referred to as the "Commission"), determines—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

(3)(A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

(B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and

(iii) pursuant to plans developed by the Secretary in consultation with the Commission.

(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.—

(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

<sup>1</sup> Note: Public Law 108-375, Division C, Title XXXI, section 3116 (118 Stat. 2162), October 28, 2004.

(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended.

(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

(c) INAPPLICABILITY TO CERTAIN MATERIALS.— Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

(d) COVERED STATES.—For purposes of this section, the following States are covered States:

(1) The State of South Carolina.

(2) The State of Idaho.

(e) CONSTRUCTION.—

(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.

(3) Nothing in this section amends the definition of "transuranic waste" or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act or part 191 of title 40, Code of Federal Regulations.

(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).

(5) Nothing in this section amends the West Valley Demonstration Act (42 U.S.C. 2121a note).

(f) JUDICIAL REVIEW.—Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

(2) Any failure of the Commission to carry out its responsibilities under subsection (b).

**D. PERTINENT PROVISIONS OF THE ENERGY  
POLICY ACT OF 2005—(GREATER-THAN-CLASS C  
WASTE)**

**Sec. 631. Safe Disposal of Greater-Than-Class C Radioactive Waste.**<sup>1</sup>

Notification.

(a) RESPONSIBILITY FOR ACTIVITIES TO PROVIDE STORAGE

FACILITY.—The Secretary shall provide to Congress official notification of the final designation of an entity within the Department to have the responsibility of completing activities needed to provide a facility for safely disposing of all greater-than-Class C low-level radioactive waste.

(b) REPORTS AND PLANS.—

(1) REPORT ON PERMANENT DISPOSAL FACILITY.—

(A) PLAN REGARDING COST AND SCHEDULE FOR COMPLETION OF EIS AND ROD.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with Congress, shall submit to Congress a report containing an estimate of the cost and a proposed schedule to complete an environmental impact statement and record of decision for a permanent disposal facility for greater-than-Class C radioactive waste.

(B) ANALYSIS OF ALTERNATIVES.—Before the Secretary makes a final decision on the disposal alternative or alternatives to be implemented, the Secretary shall—

(i) submit to Congress a report that describes all alternatives under consideration, including all information required in the comprehensive report making recommendations for ensuring the safe disposal of all greater-than-Class C low-level radioactive waste that was submitted by the Secretary to Congress in February 1987; and

(ii) await action by Congress.

(2) SHORT-TERM PLAN FOR RECOVERY AND STORAGE.—

Deadline.

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a plan to ensure the continued recovery and storage of greater-than-Class C low-level radioactive sealed sources that pose a security threat until a permanent disposal facility is available.

(B) CONTENTS.—The plan shall address estimated cost, resource, and facility needs.

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<sup>1</sup>Public Law 109-58 (119 Stat. 788), August 8, 2005: added Section 631.

# **Uranium Mill Tailings**



## *7. Uranium Mill Tailings*

### Contents

<b>A. URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978, AS AMENDED</b> .....	<b>503</b>
Sec. 1. Short Title and Table of Contents.....	503
Sec. 2. Findings and Purposes.....	503
<b>Title I—Remedial Action Program</b> .....	503
Sec. 101. Definitions.....	503
Sec. 102. Designation of Processing Sites.....	504
Sec. 103. State Cooperative Agreements.....	506
Sec. 104. Acquisition and Disposition of Lands and Materials.....	507
Sec. 105. Indian Tribe Cooperative Agreements.....	510
Sec. 106. Acquisition of Lands by Secretary.....	511
Sec. 107. Financial Assistance.....	511
Sec. 108. Remedial Action.....	512
Sec. 109. Rules.....	513
Sec. 110. Enforcement.....	513
Sec. 111. Public Participation.....	513
Sec. 112. Termination: Authorization.....	514
Sec. 113. Limitation.....	514
Sec. 114. Reports to Congress.....	514
Sec. 115. Active Operations: Liability for Remedial Action.....	515
<b>Title II—Uranium Mill Tailings Licensing And Regulation</b> .....	516
Sec. 201. Definition.....	516
Sec. 202. Custody of Disposal Site.....	516
Sec. 203. Authority to Establish Certain Requirements.....	518
Sec. 204. Cooperation with States.....	519
Sec. 205. Authorities of Commission Respecting Certain Byproduct Material.....	522
Sec. 206. Authority of Environmental Protection Agency Respecting Certain Byproduct Material.....	523
Sec. 207. Authorization of Appropriation for Grants.....	524
Sec. 208. Effective Date.....	524
Sec. 209. Consolidation of Licenses and Procedures.....	525
<b>Title III—Study And Designation Of Two Mill Tailings Sites In New Mexico</b> .....	525
Sec. 301. Study.....	525
Sec. 302. Designation by Secretary.....	525
<b>B. PERTINENT PROVISIONS OF THE ENERGY POLICY ACT OF 1992—(REMEDIAL ACTION AND URANIUM REVITALIZATION)</b> .....	<b>527</b>
<b>Title X – Remedial Action And Uranium Revitalization</b> .....	527
<b>Subtitle A – Remedial Action at Active Processing Sites</b> .....	527
Sec. 1001. Remedial Action Program.....	527
Sec. 1002. Regulations.....	528
Sec. 1003. Authorization of Appropriations.....	529
Sec. 1004. Definitions.....	529
<b>Subtitle B—Uranium Revitalization</b> .....	529

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Sec. 1011. Overfeed Program.....	529
Sec. 1012. National Strategic Uranium Reserve .....	530
Sec. 1013. Sale of Remaining DOE Inventories .....	530
Sec. 1014. Responsibility for the Industry.....	530
Sec. 1015. Annual Uranium Purchase Reports.....	530
Sec. 1016. Uranium Inventory Study.....	531
Sec. 1017. Regulatory Treatment of Uranium Purchases.....	531
Sec. 1018. Definitions .....	531
<b>C. NATIONAL DEFENSE AUTHORIZATION FISCAL YEAR</b>	
<b>2001—(PROVISIONS PERTAINING TO REMEDIAL ACTION</b>	
<b>AT MOAB SITE) .....</b>	<b>533</b>
Title XXXIV—Naval Petroleum Reserves .....	533
Sec. 3403. Disposal of Oil Shale Reserve Numbered 2 .....	533

**A. URANIUM MILL TAILINGS RADIATION CONTROL  
ACT OF 1978, AS AMENDED****Public Law 95-604****92 Stat. 3021****November 8, 1978****An Act****Sec. 1. Short Title and Table of Contents**

This Act may be cited as the "Uranium Mill Tailings Radiation Control Act of 1978." (TOC not duplicated here.)

**42 USC 7901.****Sec. 2. Findings and Purposes**

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this Act are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

**Title I—Remedial Action Program****42 USC 7911.****Sec. 101. Definitions**

For purposes of this title—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971

under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

42 USC 2011  
note.  
42 USC 2021.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this title shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b).

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5 of the United States Code.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

42 USC 7912.

**Sec. 102. Designation of Processing Sites**

(a)(1) As soon as practicable, but no later than one year after enactment of this Act, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah  
Green River, Utah  
Mexican Hat, Utah  
Durango, Colorado  
Grand Junction, Rifle, Colorado (two sites)  
Gunnison, Colorado  
Naturita, Colorado  
Maybell, Colorado  
Slick Rock, Colorado (two sites)  
Shiprock, New Mexico  
Ambrosia Lake, New Mexico  
Riverton, Wyoming

Converse County, Wyoming  
 Lakeview, Oregon  
 Falls City, Texas  
 Tuba City, Arizona  
 Monument Valley, Arizona  
 Lowman, Idaho  
 Canonsburg, Pennsylvania

Remedial  
 action.

Subject to the provisions of this title, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this title. The Secretary shall within one year of the date of enactment of this Act also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this title. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92-314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

Health hazard  
 assessment.

(b) Within one year from the date of the enactment of this Act, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

Notification.

(c) Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and where appropriate, the Indian tribes and the Secretary of the Interior.

(d) The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e)(1) The designation of processing sites within one year after enactment under this section shall include, to the maximum extent practicable, the areas referred to in section 101(6)(B).

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any areas described in section 101(6)(B) as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this title.

42 USC 7911.

(3) The Secretary shall designate as a processing site within the meaning of section 101(6) any real property, or improvements thereon, in Edgemont, South Dakota, that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

(f)(1) DESIGNATION. Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the "Moab site") located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the

Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA-917, is designated as a processing site.

(2) APPLICABILITY. This title applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that—

(A) sections 103, 104(b), 107(a), 112(a), and 115(a) of this title shall not apply; and

(B) a reference in this title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this subsection [enacted October 30, 2000].

(3) REMEDIATION. Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 USC 7420 note; Public Law 105-261, including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.<sup>1</sup>

42 USC 7917.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this title shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this title to the date of enactment of this Act shall be treated as a reference to the date of the enactment of this paragraph and in determining the State share under section 107 of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to the date of the enactment of this paragraph which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this title.<sup>2</sup>

42 USC 7913.

**Sec. 103. State Cooperative Agreements**

(a) After notifying a State of the designation referred to in section 102 of this title, the Secretary subject to section 113, is authorized to enter into cooperative agreement with such State to perform remedial actions at each designated processing site in such State (other than a site location on Indian lands referred to in section 105). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

Terms and  
Conditions.

(b) Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 108.

<sup>1</sup>As amended, Public Law 106-398, section 1, (114 Stat. 1654), October 30, 2000.

<sup>2</sup>Public Law 97-415 (96 Stat. 2067)(1983), added (3) to section 102(e).

Written  
consent.

(c)(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 104, each cooperative agreement with a State under section 103 shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

Waiver.

(2) Such written consent shall include a waiver by each such person on behalf of himself, herself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claims thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any remedial action.

(d) Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 104(b)(1) in furtherance of the provisions of this title and to carry out such agreement and enforce this Act and any rules prescribed under this Act. Such right of entry under this section or section 106 into an area described in section 101(6)(B) shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) The Secretary may, in any cooperative agreement enter into this section or section 105, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 101(6)(B). Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to enactment of this Act, and unless the application for such reimburse was filed by such owner within one year after a agreement under this section or section 105 is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this Act with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 275(a) of the Atomic Energy Act of 1954.

42 USC 7914.

**Sec. 104. Acquisition and Disposition of Lands and Materials**

(a) Each cooperative agreement under section 103 shall require the State where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

Residual  
radioactive  
material,  
removal.

(b)(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 106(a)(2) is designated by the Secretary, with the concurrence of the Commission, of such disposition and stabilization.

(c) No State shall be required under subsection (a) or (b) to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 101(6)(A), and

(2) the site used for disposition of the residual radioactive materials.

(d) In the case of each processing site designated under this title other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in any appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place. For purposes of this subsection, the term “site” does not include any property described in section 101(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.<sup>3</sup>

Notification.

Rules and  
regulations.

(e)(1) The terms and conditions of any cooperative agreement with a State under section 103 shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a), the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interest to the United States as provided in subsection (f).

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

<sup>3</sup> P.L. 104-259, § 4(a), Oct. 9, 1996, 110 Stat. 3174 amended Sec. (d) by inserting last sentence.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f)(1) Each agreement under section 103 shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b), for the disposition of such materials, shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this title. No payment shall be made in connection with the transfer of such property from fund appropriated for purposes of this Act other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this title, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after the date of enactment of this Act. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h).

(g) Each agreement under section 103 which permits any sale described in subsection (e)(1)(A) shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

Fair market  
value.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this title shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) No provision of any agreement under section 103 shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States

applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

**42 USC 7915.****Sec. 105. Indian Tribe Cooperative Agreements**

(a) After notifying the Indian tribe of the designation pursuant to section 102 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 113, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 102. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purpose of this Act. Such terms and conditions shall require the following:

**Terms and conditions.**

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 108 by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this title, to carry out such agreement, and to enforce any rules prescribed under this Act.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on land described on subsection (a) to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the commission, subject to section 104(f)(2) and (h).

**42 USC 7916.**

Uranium Mill  
Tailings  
Remedial Action  
Amendments  
Act of 1988.  
42 USC 7901  
note.  
Public lands.  
State listing.

**Sec. 106. Acquisition of Lands by Secretary**

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this title or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interest in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this Act, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming;

and  
(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 USC 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 204 of the Federal Land Policy and Management Act (43 USC 1714) shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the Concurrence of the chief administrative officer of such agency.<sup>4</sup>

**42 USC 7917.****Sec. 107. Financial Assistance**

(a) In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein pursuant to section 103 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this title, except the proportionate share of the administrative costs associated with

<sup>4</sup>Public Law 100-616 (102 Stat. 3192) amended section 106(2).

the acquisition of lands and interests therein acquired by the State pursuant to this title.

(b) In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

42 USC 7918.

**Sec. 108. Remedial Action**

(a)(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275a. of the Atomic Energy Act of 1954. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior. Residual radioactive material from a processing site designated under this title may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this title.<sup>5</sup>

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 275a. of the Atomic Energy Act of 1954 and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.<sup>6</sup>

(3) Notwithstanding paragraph (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275a. of the Atomic Energy Act of 1954 in final form by such date, remedial action taken by the Secretary under this title shall comply with standards proposed by the Administrator under such section 275a. until such time as the Administrator promulgates the standards in final form.<sup>7</sup>

Evaluation.

(b) Prior to undertaking any remedial action at a designated site pursuant to this title, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials at the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this title. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to

<sup>5</sup> P.L. 104-259, § 4(a), Oct. 9, 1996, 110 Stat. 3174 amended Sec. (a)(1) by inserting last 2 sentences.

<sup>6</sup>Public Law 97-415 (96 Stat. 2067) (1983 section 18 repealed second sentence of section 108(a)(2), which read:

No such remedial action may be undertaken under this section before the promulgation by the Administrator of such standards.

<sup>7</sup>Public Law 97-415 (96 Stat. 2067)(1983) section 18 added new paragraph (3) to section 108(a).

- the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all cost of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 or under State law as permitted under section 274 of such Act.
- 42 USC 2021.**
- 42 USC 7919.** **Sec. 109. Rules**  
The Secretary may prescribe such rules consistent with the purposes of this Act as he deems appropriate pursuant to title V of the Department of Energy Organization Act.
- 42 USC 7920.** **Sec. 110. Enforcement**  
(a)(1) Any person who violates any provision of this title or any cooperative agreement entered into pursuant to this title or any rule prescribed under this Act concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than \$1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5, United States Code.  
(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.  
(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this section.  
(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.  
(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this title or any cooperative agreement or any such rule by injunction or other equitable remedy.
- 5 USC 500 et seq.** *Notice, hearing opportunity.*  
*Jurisdiction.*
- 42 USC 7172.** (b) Subsection (a) shall not apply to any license requirement under the Atomic Energy Act of 1954. Such licensing requirements shall be forced by the Commission as provided in such Act.
- 42 USC 2011 note.**
- 42 USC 7921.** **Sec. 111. Public Participation**  
In carrying out the provisions of this title, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the State where processing sites and disposal sites are located.

**42 USC 7922.****Sec. 112. Termination: Authorization**

(a)(1) The authority of the Secretary to perform remedial action under this title shall terminate on September 30, 1998, except that—

**Water.**

(A) the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation, and

(B) the Secretary may continue operation of the disposal site in Mesa County, Colorado (known as the Cheney disposal cell) for receiving and disposing of residual radioactive material from processing sites and of byproduct material from property in the vicinity of the uranium milling site located in Monticello, Utah, until the Cheney disposal cell has been filled to the capacity for which it was designed, or September 30, 2023, whichever comes first.

(2) For purposes of this subsection, the term byproduct material<sup>8</sup> has the meaning given that term in section 11e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

(b) The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this title shall be available until expended.<sup>8</sup>

**42 USC 7923.****Sec. 113. Limitation**

The authority under this title to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

**42 USC 7924.****Sec. 114. Reports to Congress**

(a) Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this Act and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this title;

(2) described the extent of participation by the States and Indian tribe in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands

<sup>8</sup>Public Law 100-616, section 3, (102 Stat. 3192), Nov. 5, 1988; Public Law 102-486, title X, Subtitle C, section 1031, (106 Stat. 2951), Oct. 24, 1992; Public Law 104-259, section 2 (110 Stat. 3173), Oct. 9, 1996.

of the United States containing residual radioactive materials and other radioactive materials and other radioactive waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such reports.

Cooperation.

(c) Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this title and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

42 USC 7925.

**Sec. 115. Active Operations: Liability for Remedial Action**

42 USC 2011  
note.

(a) No amount may be expended under this title with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act at which production of any uranium product from ores (other than from residual radioactive materials) takes place. This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.<sup>9</sup>

42 USC 2021.  
Study.

(b) In the case of each processing site designated under this title, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before the date of the enactment of this Act may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide

<sup>9</sup> P.L. 104-259, § 4(a), Oct. 9, 1996, 110 Stat. 3174 amended Sec. (a) by inserting last sentence.

copies thereof to the Congress, as promptly as practicable following the date of the enactment of this Act. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

## Title II—Uranium Mill Tailings Licensing And Regulation

### Sec. 201. Definition

42 USC 2014.  
Byproduct  
material.

Section 11e. of the Atomic Energy Act of 1954, is amended to read as follows:

e. The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

### Sec. 202. Custody of Disposal Site

42 USC 2113.  
42 USC 2002.  
42 USC 2014.  
42 USC 2111.

(a) Chapter 8 Of the Atomic Energy Act of 1954, is amended by adding the following new section at the end thereof:

Sec. 83. Ownership And Custody Of Certain By-product Material And Disposal Sites.—

a. Any license issued or renewed after the effective date of this section under section 62 or section 81 for any activity which results in the production of any byproduct materials, as defined in section 11e.(2), shall contain such terms and conditions as the commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

42 USC 2014.

(2) ownership of any byproduct material, as defined in section 11e.(2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

b. (1) Any license in effect on the date of the enactment of this section shall either contain such terms and conditions on renewal thereof after the effective date of this section, or comply with paragraphs (1) and (2) upon the termination of such license, whichever first occurs.

Rule,  
regulation or  
order.

(b)(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11e.(2), pursuant to such license shall be transferred to—

(A) the United States, or

(B) the State in which such land is located, at the option of such State.

(2) Unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such

determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 84(b) in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If the transfer to the United States of title to such by-product material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

42 USC 2092.

(4) In the case of any such license under section 62, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, wealth, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.

42 USC 2014.

(6) The transfer of title to land or byproduct materials, as defined in section 11e.(2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11e.(2), the license shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

c. Upon termination on any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

(b) this section shall be effective three years after the enactment of this Act.

42 USC 2113  
note.  
Effective date.

(c) The table of contents for chapter 8 of the Atomic Energy Act of 1954, is amended by inserting the following new item after the item relating to section 82: Sec. 83. Ownership and custody of certain byproduct material and disposal sites.

**Sec. 203. Authority to Establish Certain Requirements**

42 USC 2201.  
42 USC 2231.

Section 161 of the Atomic Energy Act of 1954, is amended, by adding the following new subsection at the end thereof:

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

42 USC 2014.

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided before termination of any license for byproduct material as defined in section 11e.(2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection, the need for long term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as

defined in section 11e.(2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission, pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

**Sec. 204. Cooperation with States**

42 USC 2021. (a) Section 274b. of the Atomic Energy Act of 1954, is amended by adding "as defined in section 11e.(1)" after the words "byproduct materials" in paragraph (1) by renumbering paragraphs (2) and (3) as paragraph (3) and (4); and by inserting the following new paragraph immediately after paragraph(1):

42 USC 2021. (2) byproduct materials as defined in section 11e.(2);

(b) Section 274d.(2) of such Act is amended by inserting the following before the word "compatible": "in accordance with the requirements of subsection o. and in all other respects."

Agreement. (c) Section 274n. of such Act is amended by adding the following new sentence at the end thereof: "As used in this section, the term "agreement" includes any amendment to any agreement."

(d) Section 274j. of such Act is amended—

(1) by inserting "all or part of" after "suspend";

(2) by inserting "(1)" after "finds that"; and

Review. (3) by adding at the end before the period the following: or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

(e)(1) Section 274 of such Act is amended by adding the following new subsection at the end thereof:

o. In the licensing and regulation of byproduct material, as defined in section 11e.(2) of this Act, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection b., a State shall require—

(1) compliance with the requirements of subsection b. of section 83 (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to section 83, 84, and 275, and

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such licenses, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 11e.(2); and

(D) prohibit any major construction activities with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material and if transfer to the United States of such material is required in accordance with section 83b. of this Act, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 161x of this Act. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission.

42 USC 2201.

42 USC 2021  
note.

(2) The provisions of the amendment made by paragraph (1) of this subsection (which adds a new subsection o. to section 274 of the Atomic Energy Act of 1954) shall apply only to the maximum extent practicable during the three-year period beginning on the date of the enactment of this Act.<sup>10</sup>

42 USC 2021.  
42 USC 2014.

(f) Section 274c. of such Act is amended by inserting the following new sentence after paragraph (4) thereof: The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to

<sup>10</sup>Public Law 96-106 (93 Stat. 800) (1979), section 22(d) amends section 204(e) by adding new paragraph (2)

termination of a license for byproduct material, as defined in section 11e.(2).

42 USC 2021

(g) Nothing in any amendment made by this section shall preclude any State from exercising any other authority permitted under the Atomic Energy Act of 1954 respecting any byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954.

42 USC 2014.  
42 USC 2021.

(h)(1) During the three-year period beginning on the date of the enactment of this Act, notwithstanding any other provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to section 274 of the Atomic Energy Act of 1954) respecting (A) byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, or (B) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the date of the enactment of this Act, except that such State authority shall be exercised in a manner which, to the extent practicable, is consistent with the requirements of section 274o. of the Atomic Energy Act of 1954 (as added by section 204(e) of this Act). The Commission shall have the authority to ensure that such section 274o. is implemented by any such State to the extent practicable during the three-year period beginning on the date of the enactment of this Act. Nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act.<sup>11</sup>

42 USC 2014.

42 USC 2022.

(2) An agreement entered into with any State as permitted under section 274 of the Atomic Energy Act of 1954 with respect to byproduct material as defined in section 11e.(2) of such Act, may be entered into at any time after the date of the enactment of this Act but no such agreement may take effect before the date three years after the date of the enactment of this Act.

42 USC 2014.  
42 USC 2021.

(3) Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274b. of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material, as defined in section 11e.(2) of such Act, the Commission shall not, until the end of three-year period beginning on the date of the enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated, suspended, or amended to provide for such Federal licensing. If, at the end of such three-year period, a State has not entered into such an agreement with respect to byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material.<sup>12</sup> *Provided, however,* That, in the case of a State which has exercised any authority under State law pursuant to an agreement entered into under section 274 of the Atomic

42 USC 2021.

<sup>11</sup>Public Law 96-106 (93 Stat. 799) (1979), section 22(b) amended section 204(h)(1) by substituting a complete new section 204(h)(l). Before amendment, section 204(h)(l) read as follows:

(H)(l) On or before the date three years after the date of the enactment of this Act, notwithstanding any amendment made by this title, any State may exercise any authority under State law respecting byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, in the same manner, and to the same extent, as permitted before the enactment of this Act.

<sup>12</sup>Public Law 96-106 (93 Stat. 799) (1979), section 22(a) added section 204(h)(93).

Energy Act of 1954, the State authority over such byproduct material may be terminated, and the Commission authority over such material may be exercised, only after compliance by the Commission with the same procedures as are applicable in the case of termination of agreements under section 274j. of the Atomic Energy Act of 1954.<sup>13</sup>

**Sec. 205. Authorities of Commission Respecting Certain Byproduct Material**

(a) Chapter 8 of the Atomic Energy Act of 1954, is amended by adding the following new section at the end thereof:

42 USC 2114. Sec. 84. Authorities Of Commission Respecting Certain Byproduct Material.

a. The Commission shall insure that the management of any byproduct material, as defined in section 11e.(2), is carried out in such manner as—

42 USC 2114. (1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material,

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

42 USC 6091. (3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

Rule,  
regulation or  
order.  
42 USC 2111. b. In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Civil penalty.  
42 USC 2282. Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234.

Nothing in this section affects any authority of the Commission under any other provision of this Act.

42 USC 2111.  
42 USC 2112. (b) The first sentence of section 81 of the Atomic Energy Act of 1954, is amended to read as follows: No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84.

<sup>13</sup>Public Law 97-415 (96 Stat. 2067) (1983), section 19 added this language.

*Supra.*

(c) The table of content for such chapter 8 is amended by inserting the following new item after the item relating to section 83:

Sec. 84. Authorities of Commission respecting certain byproduct material.

**Sec. 206. Authority of Environmental Protection Agency Respecting Certain Byproduct Material**

(a) Chapter 19 of the Atomic Energy Act of 1954, is amended by inserting after section 274 the following new section:

42 USC 2022.

Sec. 275. Health And Environmental Standards For Uranium Mill Tailings.—

Rule.

a. As soon as practicable, but not later than one year after the date of enactment of this section, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailing Radiation Control Act of 1978. Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended. The Administrator may periodically revise any standard promulgated pursuant to this subsection.

42 USC 6901  
note.

42 USC 2014.  
Rule.

b. (1) As soon as practicable, but not later than eighteen months after the enactment of this section, the Administrator shall, by rule, promulgate standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11e.(2) of this Act, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards: *Provided, however,* That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11e.(2) of this Act. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 274b.(2) shall apply such revised standard in the case of any license for byproduct material as defined in section 11e.(2) or any revision thereof.

42 USC 2021.

Notice, hearing opportunity. Publication in Federal Register.

Consultation.

Judicial Review.

5 USC 701 *et seq.*

42 USC 2021.

33 USC 1251 note.  
42 USC 2014.  
42 USC 7401 note.  
42 USC 2018 *et seq.*

42 USC 2014 note.

c. (1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish, the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112

of title 28, United States Code. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. The judgment of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

d. Implementation and enforcement of the standards promulgated pursuant to subsection b. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274b.(2) of this Act shall implement and enforce such standards in accordance with subsection o. of such section.

e. Nothing in this Act applicable to byproduct material, as defined in section 11e.(92) of this Act, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.

(b) The table of contents for chapter 19 of the Atomic Energy Act is amended by inserting the following new item after the item relating to section 274:

Sec. 275. Health and Environmental Standards for Uranium Tailings.

**Sec. 207. Authorization of Appropriation for Grants**

There is hereby authorized to be appropriated for fiscal year 1980 to the Nuclear Regulatory Commission not to exceed \$500,000 to be used for making grants to States which have entered into agreements with the Commission under section 274 of the Atomic Energy Act of 1954, to aid in the development of State regulatory programs under such section which implement the provisions of this Act.

**Sec. 208. Effective Date**

Except as otherwise provided in this title the amendments made by this title shall take effect on the date of the enactment of this Act.

42 USC 2011  
note.

### **Sec. 209. Consolidation of Licenses and Procedures**

The Regulatory Commission shall consolidate, to the maximum extent practicable, licenses and licensing procedures under amendments made by this title with licenses and licensing procedures under other authorities contained in the Atomic Energy Act of 1954.

42 USC 2113  
note.

## **Title III—Study And Designation Of Two Mill Tailings Sites In New Mexico**

42 USC 7941.

### **Sec. 301. Study**

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) or under State authority as permitted under section 274 of such Act or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake- New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailing site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after enactment of this Act, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this Act shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

42 USC 2021.

Report to  
Congress.

42 USC 7942.

### **Sec. 302. Designation by Secretary**

(a) Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 301, notwithstanding the limitations contained in section 301, notwithstanding the limitations contained in section 101(6)(A) and in section 115(a), if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 301, the Secretary may designate either or both of the sites referred to in section 301 as a processing site for purposes of title I. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such title concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

Submittal to  
congressional  
committees.

(b)(1) No designation under subsection (a) shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an

adjournment sine die) after receipt by such Committees of such designation.

(c) Except as otherwise specifically provided in subsection (a), any remedial action under title I with respect to any sites designated under this title shall be subject to the provisions of title I (including the authorization of appropriations referred to in section 112(b)).

**B. PERTINENT PROVISIONS OF THE ENERGY POLICY  
ACT OF 1992—(REMEDIAL ACTION AND URANIUM  
REVITALIZATION)**

**Public Law 102-486****106 Stat. 2946****October 24, 1992**

\* \* \* \*

**Title X – Remedial Action And Uranium Revitalization**

**Subtitle A – Remedial Action at Active Processing Sites**

**42 USC 2296a.****Sec. 1001. Remedial Action Program.**

(a) IN GENERAL. Except as provided in subsection (b), the costs of decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at such site which results or has resulted in the production of byproduct material.

(b) REIMBURSEMENT—

(1) IN GENERAL—The Secretary of Energy shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the costs described in such subsection as are—

(A) determined by the Secretary to be attributable to byproduct material generated as an incident of sales to the United States; and

(B) either—

(i) incurred by such licensee not later than December 31, 2007; or

(ii) incurred by a licensee after December 31, 2007, in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Secretary.<sup>1</sup>

(2) AMOUNT.—

(A) To Individual Active Site Uranium Licensees.—The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 2296a-l of this title and, for uranium mill tailings only, shall not exceed an amount equal to \$6.25 multiplied by the dry short tons of byproduct material located on October 24, 1992 at the site of the activities of such licensee described in subsection (a) of this section, and generated as an incident of sales to the United States.<sup>2</sup>

(B) TO ALL ACTIVE SITE URANIUM LICENSEES—Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed \$350,000,000.<sup>3</sup>

<sup>1</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section ll(a), (112 Stat. 3484), Nov. 13, 1998; Public Law 106-317, section 1 (114 Stat. 1277), October 19, 2000.

<sup>2</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section ll(a), (112 Stat. 3484), Nov. 13, 1998; Public Law 106-317, section 1 (114 Stat. 1277), October 19, 2000.

<sup>3</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section ll(a), (112 Stat. 3484), Nov. 13, 1998; Public Law 106-317, section 1 (114 Stat. 1277), October 19, 2000.

(C) TO THORIUM LICENSEES—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed \$ 365,000,000, and may only be made for off-site disposal. Such payments shall not exceed the following amounts:

- (i) \$ 90,000,000 in fiscal year 2002.
- (ii) \$ 55,000,000 in fiscal year 2003.
- (iii) \$ 20,000,000 in fiscal year 2004.
- (iv) \$ 20,000,000 in fiscal year 2005.
- (v) \$ 20,000,000 in fiscal year 2006.
- (vi) \$ 20,000,000 in fiscal year 2007.<sup>4</sup>

(D) INFLATION ESCALATION INDEX—The amounts in subparagraphs (A), (B), and (C) of this paragraph shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) ADDITIONAL REIMBURSEMENT—

(i) DETERMINATION OF EXCESS—The Secretary shall determine as of July 31, 2005, whether the amount authorized to be appropriated pursuant to section 1003, when considered with the \$6.25<sup>5</sup> per dry short ton limit on Reimbursement, exceeds the amount reimbursable to the licensees under subsection (b)(2).

(ii) IN THE EVENT OF EXCESS—If the Secretary determines under clause (i) that there is an excess, the Secretary may allow reimbursement in excess of \$6.25 per dry short ton on a prorated basis at such sites where the costs reimbursable under subsection (b)(1) of this section exceed the \$6.25 per dry short ton limitation described in paragraph (2) of such subsection.<sup>6</sup>

(3) BYPRODUCT LOCATION—Notwithstanding the requirement of paragraph (2)(A) that byproduct material be located at the site on the date of the enactment of this Act, byproduct material moved from the site of the Edgemont Mill to a disposal site as the result of the decontamination, decommissioning, reclamation, and other remedial action of such mill shall be eligible for reimbursement to the extent eligible under paragraph (1).

**42 USC 2296a-1. Sec. 1002. Regulations**

Within 180 days of the date of the enactment of this Act, the Secretary shall issue regulations government reimbursement under section 1001. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a request for the amount of reimbursement together with reasonable documentation in support thereof, to the Secretary. Any such request for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 1001.

<sup>4</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section; P.L. 107-222, Sec. 1(a), rewrote subpar. (C), which formerly read:

~~“(C) To thorium licensees—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed \$140,000,000 and may only be made for off-site disposal.”~~

<sup>5</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section. ll(a), (112 Stat. 3484), Nov. 13, 1998; Public Law 106-317, section 1 (114 Stat. 1277), October 19, 2000.

<sup>6</sup>As amended, Public Law 104-259, section 3(a), (110 Stat. 3173), Oct. 9, 1996; Public Law 105-388, section ll(a), (112 Stat. 3484), Nov. 13, 1998; Public Law 106-317, section 1 (114 Stat. 1277), October 19, 2000.

**42 USC 2296a-2. Sec. 1003. Authorization of Appropriations**

(a) IN GENERAL—There is authorized to be appropriated \$715,000,000 to carry out this part. The aggregate amount authorized in the preceding sentence shall be increased annually as provided in section 2296a of this title, based upon an inflation index to be determined by the Secretary.<sup>7</sup>

(b) SOURCE.—Funds described in subsection (a) shall be provided from the Fund established under section 1801 of the Atomic Energy Act of 1954.

**42 USC 2296a-3. Sec. 1004. Definitions**

For purposes of this subtitle:

(1) The term "active uranium or thorium processing site" means—

(A) any uranium or thorium processing site, including the mill containing byproduct material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Secretary or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be—

(i) in the vicinity of such site; and

(ii) contaminated with residual byproduct material;

(2) The term "byproduct material" has the meaning given such term in section 11e.(2) of the Atomic Energy Act of 1954, (42 U.S.C. 2014(e)(2)); and

(3) The term "decontamination, decommissioning, reclamation, and other remedial action" means work performed prior to or subsequent to the date of the enactment of this Act which is necessary to comply with all applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et. seq.), or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

**Subtitle B—Uranium Revitalization****42 USC 2296b. Sec. 1011. Overfeed Program.**

(a) URANIUM PURCHASES—To the maximum extent permitted by sound business practice, the Corporation shall purchase uranium in accordance with subsection (b) and overfeed it into the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by enrichment services customers, taking into account costs associated with depleted tailings.

(b) USE OF DOMESTIC URANIUM—Uranium purchased by the Corporation for purposes of this section shall be of domestic origin and purchased from domestic uranium producers to the extent permitted

<sup>7</sup>As Amended Public Law 104-259, section 3(b), (110 Stat. 3174), Oct. 9, 1996; Public Law 105-388, section 11(b), (112 Stat. 3485), Nov. 13, 1998; P.L. 107-222, Sec. 1(b), struck out "\$490,000,000" and inserted "\$715,000,000."

under the multilateral trade agreements (as defined in section 2(4) of the Uruguay Round Agreements Act and the North American Free Trade Agreement.<sup>8</sup>

**42 USC 2296b-1. Sec. 1012. National Strategic Uranium Reserve**

There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of natural uranium and uranium equivalents contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on the date of the enactment of this Act and for 6 years thereafter, use of the Reserve shall be restricted to military purposes and government research. Use of the Department of Energy's stockpile of enrichment tails existing on the date of the enactment of this Act shall be restricted to military purposes for 6 years thereafter.

**42 USC 2296b-2. Sec. 1013. Sale of Remaining DOE Inventories**

The Secretary, after making the transfer required under section 1407 of the Atomic Energy Act of 1954, may sell, from time to time, portions of the remaining inventories of raw or low-enriched uranium of the Department that are not necessary to national security needs, to the Corporation, at a fair market price. Sales under this section may be made only if such sales will not have a substantial adverse impact on the domestic uranium mining industry. Proceeds from sales under this subsection shall be deposited into the general fund of the United States Treasury.

**42 USC 2296b-3. Sec. 1014. Responsibility for the Industry**

(a) CONTINUING SECRETARIAL RESPONSIBILITY—The Secretary shall have a continuing responsibility for the domestic uranium industry to encourage the use of domestic uranium. The Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to subsection (b).

(b) ENCOURAGE EXPORT.—The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organization, shall encourage the export of domestic uranium. Within 180 days after the date of the enactment of this Act, the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

**42 USC 2296b-4. Sec. 1015. Annual Uranium Purchase Reports**

(a) IN GENERAL—By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator of the Energy Information Administration, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator, and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) CONGRESSIONAL ACCESS—The information provided to the Secretary pursuant to this section shall be made available to the Congress by March 1 of each year.

<sup>8</sup>Public Law 102-486, title X, section 1011 (106 Stat. 2948), October 24, 1992; Public Law 106-36, title I, section 1002(g)(1), (113 Stat. 133), June 25, 1999.

**42 USC 2296b-5. Sec. 1016. Uranium Inventory Study**

Within one year after the date of the enactment of this Act, the Secretary shall submit to the Congress a study and report that includes—

(1) a comprehensive inventory of all Government owned uranium or uranium equivalents, including natural uranium, depleted tailings, low-enriched uranium, and highly enriched uranium available for conversion to commercial use;

(2) a plan for the conversion of inventories of foreign and domestic highly enriched uranium to low-enriched uranium for commercial use;

(3) an estimation of the potential need of the United States for inventories of highly enriched uranium;

(4) an analysis and summary of technological requirements and costs associated with converting highly enriched uranium to low-enriched uranium, including the construction of facilities if necessary;

(5) an estimation of potential net proceeds from the conversion and sale of highly enriched uranium;

(6) recommendations for implementing a plan to convert highly enriched uranium to low-enriched uranium; and

(7) recommendations for the future use and disposition of such inventories.

**42 USC 2296b-6. Sec. 1017. Regulatory Treatment of Uranium Purchases.**

(a) ENCOURAGEMENT—The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this subtitle, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium, or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) REPORT.—Within 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary shall report to the Congress on the progress of the Secretary in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this subtitle.

(c) SAVINGS PROVISION.—This section may not be construed to authorize the Secretary to take any action in violation of the multilateral trade agreements (as defined in section 2(4) of the Uruguay Round Agreements Act) or the North American Trade Agreement.<sup>9</sup>

**42 USC 2296b-7. Sec. 1018. Definitions**

For purposes of this subtitle:

(1) The term "Corporation" means the United States Enrichment Corporation established under section 1301 of the Atomic Energy Act of 1954, as added by this Act or its successor.<sup>10 11</sup>

(2) The term "country of origin" means—

<sup>9</sup>As amended, Public Law 106-36, title I, section 1002(g)(2), (113 Stat. 133), June 25, 1999.

<sup>10</sup>As amended by Public Law 104-134, title III, Ch. 1, Subch. A, section 3117(b), (110 Stat. 1321-350), April 16, 1996. [added "or its successor"].

<sup>11</sup>As amended, Public Law 104-134, title III, section 3117(b), (110 Stat. 1321-350), April 26, 1996.

(A) with respect to uranium, that country where the uranium was mined;

(B) with respect to enriched uranium, that country where the uranium was mined and enriched; or

(C) with respect to enrichment services, that country where the enrichment services were performed.

(3) The term "domestic origin" refers to any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States.

(4) The term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment.

(5) The term "non-affiliated" refers to a seller who does not control, and is not controlled by or under common control with the buyer.

(6) The term "overfeed" means to use uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(7) The term "utility regulatory authority" means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by an electric utility or independent power producer. For purposes of this paragraph, the terms "electric utility", "State agency", "Federal agency", and "ratemaking authority" have the respective meanings given such terms in section 3 of the Public Utility Regulatory Policies Act of 1978.

**C. NATIONAL DEFENSE AUTHORIZATION FISCAL  
YEAR 2001—(PROVISIONS PERTAINING TO REMEDIAL  
ACTION AT MOAB SITE)**

**Public Law 106-398**

**114 Stat. 1654A-484**

**October 30, 2000**

\* \* \* \*

**Title XXXIV—Naval Petroleum Reserves**

\* \* \* \*

**10USC 7420  
note.**

**Sec. 3403. Disposal of Oil Shale Reserve Numbered 2**

(a) Transfer to Indian Tribe.--Section 3405 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 ( 10 U.S.C. 7420 note; Public Law 105-261) is amended to read as follows:

◆◆◆◆

**“Sec. 3405. Disposal of Oil Shale Reserve Numbered 2**

◆◆◆◆

(i) Remedial action at Moab site.

(1)(A) The Secretary of Energy shall prepare a plan for remediation, including ground water restoration, of the Moab site in accordance with title I of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7911 et seq.). The Secretary of Energy shall enter into arrangements with the National Academy of Sciences to obtain the technical advice, assistance, and recommendations of the National Academy of Sciences in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants. If the Secretary prepares a remediation plan that is not consistent with the recommendations of the National Academy of Sciences, the Secretary shall submit to Congress a report explaining the reasons for deviation from the National Academy of Sciences' recommendations.

(B) The remediation plan required by subparagraph (A) shall be completed not later than one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [enacted Oct. 30, 2000], and the Secretary of Energy shall commence remedial action at the Moab site as soon as practicable after the completion of the plan.

(C) The license for the materials at the Moab site issued by the Nuclear Regulatory Commission shall terminate one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [enacted Oct. 30, 2000], unless the Secretary of Energy determines that the license may be terminated earlier. Until the license is terminated, the Trustee, subject to the availability of funds appropriated

specifically for a purpose described in clauses (i) through (iii) or made available by the Trustee from the Moab Mill Reclamation Trust, may carry out—

(i) interim measures to reduce or eliminate localized high ammonia concentrations in the Colorado River, identified by the United States Geological Survey in a report dated March 27, 2000;

(ii) activities to dewater the mill tailings at the Moab site; and

(iii) other activities related to the Moab site, subject to the authority of the Nuclear Regulatory Commission and in consultation with the Secretary of Energy.

(D) As part of the remediation plan for the Moab site required by subparagraph (A), the Secretary of Energy shall develop, in consultation with the Trustee, the Nuclear Regulatory Commission, and the State of Utah, an efficient and legal means for transferring all responsibilities and title to the Moab site and all the materials therein from the Trustee to the Department of Energy.

(2) The Secretary of Energy shall limit the amounts expended in carrying out the remedial action under paragraph (1) to—

(A) amounts specifically appropriated for the remedial action in an appropriation Act; and

(B) other amounts made available for the remedial action under this subsection.

(3)(A) The royalty payments received by the Secretary of Energy under subsection (e) shall be available to the Secretary, without further appropriation, to carry out the remedial action under paragraph (1) until such time as the Secretary determines that all costs incurred by the United States to carry out the remedial action (other than costs associated with long-term monitoring) have been paid.

(B) Upon making the determination referred to in subparagraph (A), the Secretary of Energy shall transfer all remaining royalty amounts to the general fund of the Treasury and release to the Tribe the royalty interest retained by the United States under subsection (e).

(4)(A) Funds made available to the Department of Energy for national security activities shall not be used to carry out the remedial action under paragraph (1), except that the Secretary of Energy may use such funds for program direction directly related to the remedial action.

(B) There are authorized to be appropriated to the Secretary of Energy to carry out the remedial action under paragraph (1) such sums as are necessary.

(5) If the Moab site is sold after the date on which the Secretary of Energy completes the remedial action under paragraph (1), the seller shall pay to the Secretary of Energy, for deposit in the general fund of the Treasury, the portion of the sale price that the Secretary determines resulted from the enhancement of the value of the Moab site as a result of the remedial action. The enhanced value of the Moab site shall be equal to the difference between—

(A) the fair market value of the Moab site on the date of enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [enacted Oct. 30, 2000], based on information available on that date; and

(B) the fair market value of the Moab site, as appraised on completion of the remedial action.

(6)(A) Not later than October 1, 2019, the Secretary of Energy shall complete remediation at the Moab site and removal of the tailings to the Crescent Junction site in Utah.

(B) In the event the Secretary of Energy is unable to complete remediation at the Moab Site by October 1, 2019, the Secretary shall submit to Congress a plan setting forth the projected completion date and the estimated funding to meet the revised date. The Secretary shall submit the plan, if required, to Congress not later than October 2, 2019.<sup>1</sup>

(b) URANIUM MILL TAILINGS—Section 102 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 USC 7912) is amended by adding at the end the following new subsection:

~~(f) DESIGNATION OF MOAB SITE AS PROCESSING SITE—~~

(1) DESIGNATION—Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the “Moab site”) located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA-917, is designated as a processing site.

(2) APPLICABILITY—This title applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a), except that—

(A) sections 103, 104(b), 107(a), 112(a), and 115(a) of this title shall not apply; and

(B) a reference in this title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this subsection.

(3) REMEDIATION—Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 USC 7420 note; Public Law 105-261), including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.”.

(c) CONFORMING AMENDMENT—Section 3406 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 USC 7420 note; Public Law 105-261) is amended by adding at the end the following new subsection:

(f) Oil Shale Reserve Numbered 2.—This section does not apply to the transfer of Oil Shale Reserve Numbered 2 under section 3405.”.

<sup>1</sup> P.L. 110-181, Div. C, Title XXXIV, § 3402, Jan. 28, 2008, 122 Stat. 590 added Subsection (6)(A) and (6)(B).

