

**(c) Applicability to certain repositories**

The provisions of this chapter 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.

(Pub. L. 97-425, § 8, Jan. 7, 1983, 96 Stat. 2205.)

**§ 10108. Applicability to transportation**

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97-425, § 9, Jan. 7, 1983, 96 Stat. 2206.)

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

**§ 10121. 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 10107 of this title, 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 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97-425, title I, § 101, Jan. 7, 1983, 96 Stat. 2206.)

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

**§ 10131. Findings and purposes**

(a) 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 chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97-425, title I, § 111, Jan. 7, 1983, 96 Stat. 2207.)

**§ 10132. Recommendation of candidate sites for site characterization****(a) Guidelines**

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Adminis-

trator 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 President**

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

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

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities

relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

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

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

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

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

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

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

(E)(i)<sup>1</sup> 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 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).<sup>2</sup>

(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 10133(b)(1) of this title.

(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 on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or

<sup>1</sup> So in original. There is no cl. (ii).

<sup>2</sup> So in original. Probably should be "subparagraph (D)."

excavations under this section shall not exceed a diameter of 6 inches.

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

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

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

**(d) Preliminary activities**

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

(Pub. L. 97-425, title I, § 112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(b)-(d), Dec. 22, 1987, 101 Stat. 1330-228; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100-202 and Pub. L. 100-203, § 5011(b), amended par. (1) identically, redesignating subpars. (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting “subparagraph (B)” for “subparagraphs (B) and (C)”, and striking out former subpar. (C) which read as follows: “Not later than July 1, 1989, the Secretary shall nominate 5 sites, which

shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository. The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B).”

Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203, § 5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec. (d) which read as follows: “After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section.”

Subsec. (e). Pub. L. 100-202 and Pub. L. 100-203, § 5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L. 100-202 and Pub. L. 100-203, § 5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec. (e) read as follows: “Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983.”

Pub. L. 100-202 and Pub. L. 100-203, § 5011(c), amended section identically, redesignating subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, § 5011(c), amended section identically, redesignating subsec. (f) as (e).

CHANGE OF NAME

“United States Geological Survey” substituted for “Geological Survey” in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy  
Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10132(c)(1).

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

**§ 10133. Site characterization**

**(a) In general**

The Secretary shall carry out, in accordance with the provisions of this section, appropriate