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Senate

The Senate met at 9 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we thank You for this moment of quiet in which we can reaffirm who we are, whose we are, and why we are here. Once again, we commit ourselves to You as sovereign Lord of our lives and our Nation. Our ultimate goal is to please and serve You. You have called us to be servant leaders who glorify You in seeking to know and to do Your will in the unfolding of Your vision for America.

We spread out before You the specific decisions that must be made today. We claim Your presence in all that we do this day. Guide our thinking and our speaking. May our convictions be based on undeniable truth which has been refined by You.

Bless the women and men of this Senate as they work together to find the best solutions for the problems before our Nation. Help them to draw on the supernatural resources of Your spirit. Give them divine wisdom, penetrating discernment, and indomitable courage.

When this day draws to a close, may our deepest joy be that we received Your best for us and worked together for what is best for our Nation. In the name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I wish the Senate a good morning and a good day.

SCHEDULE

Mr. MURKOWSKI. On behalf of the leader, this morning the Senate will re-

sume consideration of S. 104, the Nuclear Policy Act. Under the order, following 3 minutes for debate, there will be a series of rollcall votes on or in relationship to the pending amendments. The last vote in that series will be final passage of the Nuclear Policy Act.

Following disposition of S. 104, there will be a period of morning business until the hour of 12:30 p.m. The Senate will recess at 12:30 p.m. until the hour of 2:15 to allow for the weekly policy conferences to meet. When the Senate reconvenes after the luncheons, it is hoped that we will be able to begin discussions on legislation regarding the IRS's unauthorized access to tax records. Therefore, Senators can expect additional votes today following the policy luncheons.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, the leadership time is reserved.

NUCLEAR WASTE POLICY ACT AMENDMENTS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 104 which the clerk will report.

The bill clerk read as follows:

A bill (S. 104) to amend the Nuclear Waste Policy Act of 1982.

The Senate resumed consideration of the bill.

Pending:

Murkowski amendment No. 26, in the nature of a substitute.

Lott (for Domenici) amendment No. 42 (to amendment No. 26) to provide that no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this act.

Lott (for Murkowski) amendment No. 43 (to amendment No. 42) to establish the level of annual fee for each civilian nuclear power reactor.

Bingaman amendment No. 31 (to amendment No. 26) to provide for the case in which the Yucca Mountain site proves to be unsuitable or cannot be licensed and to strike the automatic default to a site in Nevada.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I ask unanimous consent that privileges of the floor be extended to a staff member of mine, Brent Heberlee, throughout consideration of S. 104 and amendments thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 31

The PRESIDING OFFICER. There will now be 3 minutes debate prior to the vote on the Bingaman amendment No. 31.

Mr. MURKOWSKI. Mr. President, let me very briefly address the Bingaman amendment which I feel introduces some serious loopholes in S. 104's iron-clad process toward a safe, central interim storage facility.

The loopholes will be used, as they have in the past, to keep the nuclear waste where it is at 80 sites in 41 States, near schools and residential neighborhoods—right where it is today.

The history of the nuclear waste issue has taught us some simple lessons we must heed: Any decision regarding nuclear waste that can be delayed will be delayed; any decision that can be ignored will be ignored. That is why we have spent \$6 billion over 15 years, and the Federal Government is still unable to meet its legal and moral obligation to take the waste in 1998.

I implore my colleagues: Let us not be fooled again. S. 104 is designed to make sure there are no trap doors. The chart that I explained to my colleagues yesterday attempts to make a decision, force a decision now, not leave us with a way out or a copout.

I suggest to you that the Bingaman amendment as it is structured opens a loophole. It opens the process to political pressure. It invites indecision. It

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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continues the legacy of failure that the Department of Energy's nuclear waste program is noted for.

It would be my intention, Mr. President, to move to table the Bingaman amendment.

Mr. BINGAMAN addressed the Chair. The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, first, I ask unanimous consent that Anne Marie Murphy, who is a Congressional Fellow on Senator DURBIN's staff, be granted privileges of the floor today, April 15.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, the amendment I have offered goes to the heart of a flaw in S. 104. Without the amendment that I am offering, S. 104 will send nuclear waste to the site right next to Yucca Mountain even if Yucca Mountain fails as the geologic repository. We will then have a permanent aboveground repository rather than a geologic repository and will be able to shuffle off the responsibility for dealing with nuclear waste to our children and grandchildren.

There is an attempt in the bill to disguise this unfair policy with a provision that allows the President to send waste somewhere else if we pass a law to that effect within 24 months. But we are not going to pass a new nuclear waste law in 24 months especially if the reward for not doing so is to keep sending all the waste to Nevada where we can forget about it.

My amendment stops construction and operation of an interim storage site in Nevada if Yucca Mountain fails as a candidate repository at any time before it opens. If Yucca Mountain is not suitable as a repository, then it is not the right place for interim storage. We must have certainty that our ultimate solution for nuclear waste is based on having a geologic repository and that any action on an interim storage facility rises or falls with the fate of a permanent facility.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is on agreeing to the amendment.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I move to table the Bingaman amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. I announce that the Senator from Indiana [Mr. COATS] is necessarily absent.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

The result was announced—yeas, 59, nays, 39, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—59

Abraham	Grams	McConnell
Allard	Grassley	Moseley-Braun
Ashcroft	Gregg	Murkowski
Bennett	Hagel	Murray
Bond	Hatch	Nickles
Brownback	Helms	Roberts
Burns	Hollings	Roth
Cochran	Hutchinson	Santorum
Collins	Hutchinson	Sessions
Coverdell	Inhofe	Shelby
Craig	Jeffords	Smith (NH)
D'Amato	Johnson	Smith (OR)
DeWine	Kempthorne	Snowe
Domenici	Kohl	Specter
Enzi	Kyl	Stevens
Faircloth	Leahy	Thomas
Frist	Lott	Thompson
Gorton	Lugar	Thurmond
Graham	Mack	Warner
Gramm	McCain	

NAYS—39

Akaka	Daschle	Landrieu
Baucus	Dodd	Lautenberg
Biden	Dorgan	Levin
Bingaman	Durbin	Lieberman
Boxer	Feingold	Mikulski
Breaux	Feinstein	Moynihhan
Bryan	Ford	Reed
Bumpers	Glenn	Reid
Byrd	Harkin	Robb
Campbell	Inouye	Sarbanes
Chafee	Kennedy	Torricelli
Cleland	Kerrey	Wellstone
Conrad	Kerry	Wydin

NOT VOTING—2

Coats Rockefeller

The motion to lay on the table the amendment (No. 31) was agreed to.

Mr. MURKOWSKI. The Senate is not in order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order. There will now be 3 minutes for debate prior to the vote—

Mr. MURKOWSKI. Mr. President, I did not hear the vote count, and I wonder if my other colleagues did. I wonder if the President will repeat it.

The PRESIDING OFFICER. On the motion to table, Senators voting in the affirmative 59, voting in the negative 39. The motion to table is agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 43

The PRESIDING OFFICER. There will now be 3 minutes of debate prior to the vote on the Murkowski amendment No. 43.

The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, the purpose of this amendment is to protect the taxpayer by making it clear that nuclear waste user fees cannot exceed 1 mill per kilowatt hour without specified congressional authorization. The spent fuel disposal program is paid for with a fee that is currently set to 1 mill per kilowatt hour. My amendment simply pro-

TECTS the ratepayer by making it clear that the user fee cannot exceed 1 mill without congressional authorization. DOE's own budget projections show that a 1 mill fee is sufficient.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, in 1982, when this body adopted the Nuclear Waste Policy Act, we set, as the distinguished chairman of the committee has said, the amount the utilities would pay to build a permanent repository at 1 mill per kilowatt hour. In 14 years, we have collected \$8 billion. The total cost of the program is \$34 billion. The utilities' share of that cost is \$27 billion. So we are looking for the 1 mill fee to produce \$27 billion. The defense program's share is \$7 billion. The interest on the excess that sits in the Treasury is expected to make up the balance.

In 14 years, the Secretary of Energy has had the discretion, which we gave the Secretary, to raise this 1 mill fee to whatever it would take to pay the utilities' share of the program's cost. In 14 years, he or she has never seen fit to raise it. There is no point in tinkering with it now because it is working fine.

If there ever was a case where we are trying to fix a problem that does not exist, this is it. Leave the law as it is. We are adding \$2 billion to the \$27 billion cost now with the Murkowski bill. That is going to up the ante \$2 billion. One mill is fine for now. The utilities are happy with it. It is producing the amount of money we want. There is absolutely no reason for this amendment. I do not think we will have to raise it, but we might.

Mr. President, I yield back such time as I have.

The PRESIDING OFFICER. If all time is yielded back, the question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Indiana [Mr. COATS] is necessarily absent.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

The result was announced—yeas 66, nays 32, as follows:

[Rollcall Vote No. 41 Leg.]

YEAS—66

Abraham	Collins	Gorton
Allard	Coverdell	Graham
Bennett	Craig	Gramm
Bond	D'Amato	Grams
Breaux	DeWine	Grassley
Brownback	Dodd	Gregg
Burns	Domenici	Hagel
Campbell	Enzi	Hatch
Chafee	Faircloth	Helms
Cochran	Frist	Hollings

Hutchinson	Lott	Sarbanes
Hutchinson	Lugar	Sessions
Inhofe	Mack	Shelby
Inouye	McCain	Smith (NH)
Jeffords	McConnell	Smith (OR)
Johnson	Mikulski	Snowe
Kempthorne	Murkowski	Specter
Kohl	Nickles	Stevens
Kyl	Robb	Thomas
Leahy	Roberts	Thompson
Levin	Roth	Thurmond
Lieberman	Santorum	Warner

NAYS—32

Akaka	Daschle	Landrieu
Ashcroft	Dorgan	Lautenberg
Baucus	Durbin	Moseley-Braun
Biden	Feingold	Moynihan
Bingaman	Feinstein	Murray
Boxer	Ford	Reed
Bryan	Glenn	Reid
Bumpers	Harkin	Torricelli
Byrd	Kennedy	Wellstone
Cleland	Kerry	Wyden
Conrad	Kerry	

NOT VOTING—2

Coats	Rockefeller
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The amendment (No. 43) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. STEVENS. Mr. President, I move to lay it on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 42

The PRESIDING OFFICER. There will now be 3 minutes for debate prior to the vote on the Domenici amendment No. 42.

Mr. MURKOWSKI. I ask unanimous consent the yeas and nays be vitiated on the substitute amendment. I understand the underlying Domenici amendment is acceptable.

Mr. DOMENICI. Mr. President, my amendment is, in effect, a technical amendment which ensures that any joint resolution addressing a change to the fee set out in this bill does not automatically escape Budget Act scrutiny.

The underlying bill provides fast-track procedures for enacting the joint resolution. The procedures provide that all points of order are waived. My amendment provides that Budget Act points of order are not waived: It would be a bad precedent to waive Budget Act points of order when we don't have the measure before us for review.

The PRESIDING OFFICER. If there is no future debate, the question is on agreeing to the Domenici amendment.

The amendment (No. 42) was agreed to.

Mr. DOMENICI. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MURKOWSKI. I now ask for the yeas and nays on the passage of Senate bill 104.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

AMENDMENT NO. 26

The PRESIDING OFFICER. The bill is open to further amendment. If there

be no further amendment to be proposed, the question is on agreeing to the Murkowski amendment in the nature of a substitute, as amended.

The amendment (No. 26), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. There are 2 minutes for debate evenly divided at this time.

Mr. MURKOWSKI. Mr. President, the question before the body now is whether we want to leave the waste where it is, 41 States in 80 sites, or do something about the waste. Do we want the waste to move out again because of an inability to reach a decision? Where would it move? Nobody wants it in any of the 50 States. It would move out to the Pacific. God knows where it would move. Today we must make an important environmental decision which will lead to a safer future for all Americans.

Currently, Mr. President, as I have noted, we have the waste stored in 80 sites in 41 States. This is in addition to waste stored at DOE facilities, and it is in our backyards across the land. Do we want that waste to stay there, or do we want to move it? That is the question.

Every year that goes by our ability to continue to store nuclear waste at each of these sites in a safe and environmentally responsible way diminishes. Our temporary storage facilities were designed for just that—temporary storage. We have struggled with this nuclear waste issue for more than a decade. We have collected \$13 billion from the taxpayers, but some are unprepared to meet the Government's promise to take the waste by 1998, next year.

The administration's position would suggest that we are undermining the permanent repository program. They have not read the bill. The reality is that it is the only way to save the permanent repository program.

Mr. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. Order in the Chamber.

Mr. BYRD. Let's get order in the Senate. The rule requires that the Chair secure and maintain order in the Senate and in the galleries without a point of order being made from the floor.

I hope the Chair will insist on it, and I hope that Senators will respect the Chair.

Mr. MURKOWSKI. Let me remind you that the U.S. court of appeals has ruled that the Department of Energy has an obligation to take possession of the nuclear waste in 1998, whether or not a repository is ready. Damages for the Department of Energy's failure to perform are going to cost the American taxpayer tens of billions of dollars.

Now, the administration says that S. 104 would effectively establish Nevada

as a site for an interim storage facility before the viability assessment of Yucca Mountain as a permanent repository is completed. Well, they have not read the bill, Mr. President. S. 104 does not choose a site for interim storage before the viability assessment of Yucca Mountain is completed. If the viability assessment is positive, the bill provides that the interim storage facility will be constructed at the Nevada test site. If the viability assessment is negative, the bill provides that the President has 18 months and Congress has 2 years to choose another interim storage site.

This bill, Senate 104, protects the public health, environment, and extends the schedule for siting and licensing. It requires environmental impact statements. It provides the interim facility will be licensed. It shortens the license term of the interim facility to 40 years; it balance State and Federal laws, preempting only those State laws that are inconsistent with the act; it provides that the Environmental Protection Agency will set standards for a permanent repository, based upon the National Academy of Science recommendation.

So we have reached a crossroad, Mr. President. The job of fixing this program is ours. The time for fixing the program is now. Much progress has been made at Yucca Mountain. The 5-mile exploratory tunnel will soon be complete. If Yucca is found on unsuitable or is not licensed, it will be vital that we have a centralized interim site. I have a simple bottom line. We must chart a safe, predictable, and sure course to interim and permanent waste storage. There can be no trapdoors, Mr. President. I don't want to have to stand here next year or the year after doing this again. We have to ask ourselves, do we want to move the waste or simply leave it where it is?

We can choose now whether the Nation needs 80 interim storage sites, or just one. The arid, remote Nevada test site, where we have exploded scores of nuclear bombs during the cold war, is a safe and remote location for a monitored interim site. The time is now. I think S. 104 is the answer. So ask yourself, do you want to leave the waste where it is, in 40 States at 80 sites? Or do you want to move the waste from your State to one location, and that is the Nevada test site?

I reserve the remainder of my time for the Senator from Idaho, Senator CRAIG.

Mr. REID. Mr. President, how much time do the opponents of the legislation have?

The PRESIDING OFFICER (Mr. FRIST). Five minutes.

Mr. REID. The proponents have how much time?

The PRESIDING OFFICER. They have 33 seconds.

Mr. REID. I ask the Chair to advise the Senator when I have used 2 minutes.

Members of the Senate, you have seen bad legislation in your day, but

this is the worst. S. 104, as written, was bad. S. 104 in the substitute form is just as bad. People like Senator BINGAMAN have tried to improve this legislation. Senator BINGAMAN worked very hard. They tinkered with the edges. The proponents tried to pacify Senator BINGAMAN and others, and the legislation was not improved upon with their tinkering.

This legislation is bad in its substitute form and in its amended form. They have failed to deal with the transportation system at all. They haven't dealt with it. In Germany, in recent months, they tried to move six casks. They called out 30,000 police to take care of that—30,000. There were 170 people injured and 500 arrested. It cost \$150 million to move it less than 300 miles. The German parliament is reconsidering the program. There is nothing in this legislation to allow it to be carried through your State safely. Every environmental group in America opposes this legislation.

The terrorism possibilities with this legislation are replete, as we laid out on the floor yesterday. The Washington Post is only one newspaper that said "don't do it." Many newspapers throughout the country have said "don't do it."

The President is going to veto this because it is bad legislation, as agreed upon by his Secretary of Energy, head of the EPA, and by the Council of Environmental Quality. We picked a scientific group to give us insight and oversight of this legislation. They have told us that this legislation is bad. We, the Congress chartered these scientists. They are not from Nevada. They are bipartisan scientists, and they said the legislation is bad.

The United Transportation Union doesn't like the legislation. Doctors oppose this legislation. Churches, like the Lutheran Church and the Baptist ministry oppose this legislation. A group of environmentalists who deal with Native Americans in this country oppose this legislation.

This is bad legislation. If you want to cast a good vote, vote against this. It is a bad bill.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? Time will be charged equally against both sides.

Mr. BRYAN. Mr. President, what the Senate is asked to do this morning is a total repudiation and rejection of good science. S. 104 is opposed by the Nuclear Waste Technical Review Board, a body of eminent scientists, created pursuant to an act of Congress. They reviewed it last year in 1996 and last year. They say two things. First, it is unnecessary. Second, it interferes with the citing process, which is currently taking place. We dismantle the environmental laws in America if we enact this legislation.

In 1992, the Energy Efficiency Act directed the National Academy of Sciences in conjunction with EPA to develop a standard. They are about

ready to do that. This legislation rejects that standard and proposes a limitation on the ability of the National Academy of Sciences and the EPA to develop the standard that would provide minimal protections for health and safety.

The third point that needs to be made is that the Nevada test site is frequently referenced. That is the proposed site for the alternative storage, the interim storage. No study has ever been made that would indicate that the Nevada test site is either desirable or suitable as an interim storage facility.

The fourth point I make is that this legislation, in fact, preempts laws in my own State, unlike it does any other State in America. The environmental protection laws are essentially delegated to the States with their ability to enforce. This legislation would preempt that ability. So in Nevada we could not enforce clean air, clean water, safe drinking, RCRA, and other provisions.

The fifth point is that the National Environmental Policy Act is gutted by the provisions. It is bad legislation. I urge my colleagues to reject it, and I reserve the remainder of my time.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the sky is not falling. The National Academy of Science adopts standards and EPA uses them. That is in the bill. Save \$25 to \$30 billion. Honor our commitment since 1982 to abide by the law and the contracts of our Government and the Federal court and find a single, safe repository for nuclear waste. This is the number one environmental bill this year, if you are concerned about 80 sites spread across this country. The issue is good policy. S. 104 is good law. The Senate ought to support it unanimously.

The PRESIDING OFFICER. The opponents have 24 seconds.

Mr. BRYAN. Mr. President, let me take 12 seconds. It is late in the game. Any Senator who believes we do not eviscerate and emasculate the standards set by the National Academy of Science, look at page 37, my friends. That is why no environmental organization in America supports it; they all oppose it.

Ms. LANDRIEU. Mr. President, as we have engaged in this debate on the nation's strategy to deal with temporary storage of high-level nuclear waste, I have come to several conclusions. Certainly storage is a troublesome issue that has remained unresolved for the past 16 years. As time has gone by, it has become clearer and clearer that the Nation needs a more comprehensive strategy, not a piecemeal strategy, to handle all the issues associated with long-term storage of nuclear waste. Furthermore, given the vehemently strong opinions expressed by citizens, administrators, State and local officials, and others who would be affected by a centralized storage plan, I believe

we need to have the utmost confidence in the way we choose to dispose of spent fuel.

When we began to consider the Nuclear Waste Policy Act of 1997, I was optimistic about our ability to work toward the common goal of providing guidance on this issue. Supporters of the bill made an extremely credible case to me that something needs to be done. The Nuclear Waste Act of 1982 set up a trust fund to help pay for the cost of a permanent geologic repository. As part of the deal, the Department of Energy was directed to contract with utilities to accept spent fuel at a permanent repository by 1998, but now it cannot. The Nation's nuclear reactors have begun to run out of space for spent fuel in pools at reactor sites. Soon, more and more utilities will have to build above ground storage casks. I am sympathetic to the frustrations expressed by State governments and utilities over this breach. I am sure many of my colleagues agree with me.

Another issue that demands attention is the Nuclear Waste Fund. Congress has established 172 trust funds financed by taxpayers for specific purposes. Few have maintained their integrity in the spending process. The Nuclear Waste Fund is one of the few where the Government entered into an actual contract to perform a duty—to take on spent nuclear fuel by a time certain. Considering the history of this issue, I am opposed to the idea that ratepayers, who have already contributed over \$12 billion to the Nuclear Waste Fund for the construction of a permanent repository, should also have the cost of on-site storage passed on to them. Louisianians have paid over \$140 million into this fund since 1982, with no results. This is unacceptable. The public should be getting its money's worth. Otherwise, the money should not be spent.

Conversely, and most importantly, I am hesitant to commit to the construction of an interim storage facility if there are uncertainties associated with the designated permanent repository site. So much rests on a decision to place an interim site near Yucca Mountain. Will we transport the waste more than once if Yucca Mountain is unsuitable? How wise is it to ignore this possible outcome? This body several years ago requested a study from the Nuclear Waste Technical Review Board. Their findings were illustrative of the complexity of this effort. It seems that a particular element was found in the exploratory tunnel at Yucca Mountain. This element is generally present when there is fast flowing water in a location. No one expected this finding. Nor did anyone expect the Board to determine that utilities could go on safely storing nuclear waste at reactor sites for another decade. Both these findings show that certainties are hard to come by, even when from all indications, a clear outcome is expected. Mr. President, we

should not create a nuclear waste policy based on incomplete information. This issue is just too important.

For these reasons, I am unable at this time to support S. 104. I believe that the rationale for a comprehensive approach to waste storage is evident. The working process I have witnessed over the last few weeks between the leaders on this issue, if continued, could result in a measure that addresses all of the concerns raised by industry, State and local administrators including tribes, and the administration. I have felt for some time that a compromise on the provisions of S. 104 exists. In fact, a compromise was nearly achieved.

Mr. President, it is said that a rolling stone gathers no moss. I submit that we cannot afford to let moss grow. We need to adopt a clear policy sooner rather than later on this question. I am disappointed that compromise could not be found at this time, but I urge my colleagues to continue to work on finding solutions so that we can have a sensible nuclear waste policy for this Nation.

In closing I will say that permanent storage of nuclear waste is something that we need to do—we need to do it once and only once. It is of paramount importance that it be done correctly and to the satisfaction of all.

Mr. CHAFEE. Mr. President, I would like to make a few remarks about S. 104, the Nuclear Waste Policy Act of 1997.

Last year, I voted against S. 1936, the Nuclear Waste Policy Act of 1996 for several reasons. I felt that the measure rushed to build the interim site before the viability of the permanent site was considered. Also, under last year's bill, NEPA, the National Environmental Policy Act, would not have applied until quite late in the game, after great time and resources had been expended. It only would have applied to the licensing of the facility. It wouldn't have applied to construction of the facility at all. Finally, the radiation standards provided in S. 1936 were too lax, and EPA was virtually shut out of the process of setting such standards. Last year's bill was a take-it-or-leave-it proposal, and I chose to leave it.

When S. 104 was reported by the Energy Committee earlier this year, I had every intention of opposing the Nuclear Waste Policy Act, S. 104, again. But this year, the Energy Committee has worked hard to address the concerns that were raised about last year's proposal. After reviewing the changes made in the Murkowski substitute amendment, I have decided to vote in favor of the bill before us. While it is not perfect, the substitute is a significant improvement over last year's bill and this year's bill as reported by the Energy Committee. Is it a perfect bill? Not at all, but it is a far more reasonable solution to a terribly difficult situation than we have ever had before.

Years ago, Congress rejected reprocessing as an alternative to waste stor-

age. There aren't a lot of options when it comes to disposing of nuclear waste. Either it stays on site, or it goes to a centralized storage facility. I support centralized storage of nuclear waste; however, I believe that the effects of designating a central site must be considered before such a critical decision is reached.

The Department of Energy is committed to completing a viability study of Yucca Mountain as the permanent repository by the end of next year. Until that study is completed, I feel strongly that there is no reason to go forward with an interim facility at the nearby test site in Nevada. Under last year's bill, as well as the bill reported by the committee, the viability study was disregarded. Site preparation and construction would begin upon enactment of the legislation. Senator BINGAMAN worked closely with Senator MURKOWSKI and the Energy Committee to address this issue. The committee substitute amendment specifically precludes any work, beyond generic design, from going forward at the interim site, before the viability study of Yucca Mountain is completed. I also supported Senator BINGAMAN's amendment, which would have ensured that the interim storage facility would not become a de facto permanent repository if Yucca Mountain were deemed to be unsuitable. Regrettably, that amendment failed. While I was disappointed with the failure of this amendment, it was not enough to cause me to vote against the bill. Simply put, I believe it is highly unlikely that the viability study will be negative.

The substitute also strengthens the role of NEPA. Site preparation, construction, and the use of the interim facility are no longer exempt from NEPA. In fact, no construction at the interim site could proceed before an environmental impact statement is completed by the Nuclear Regulatory Commission. This is an enormous improvement over last year's bill, which disregarded NEPA at every step prior to the licensing of the facility.

The process for setting standards to protect the public from radiation at the Yucca Mountain site also is a marked improvement over previous measures. Rather than setting an arbitrary statutory standard, the substitute incorporates recent recommendations made by the National Academy of Sciences in setting an overall radiation standard for the repository.

Let me close by saying that the arguments on both sides of this issue have been persuasive. I want to recognize the undaunted persistence of Senators BRYAN and REID in articulating the potential implications of the bill and in arguing relentlessly for the interests of Nevada. I also want to commend Senator MURKOWSKI for his hard work and determination. Senator MURKOWSKI ably managed this very complex measure and was willing to accept suggestions and changes from other Senators that vastly improved the bill.

The bill, as passed, did not resolve all of my concerns, but it did resolve most of them.

Mr. DODD. Mr. President, I would like to say a few words about the Nuclear Waste Policy Act of 1997. My State of Connecticut is heavily dependent on nuclear power. I have long supported this energy source, and long been concerned about how to safely dispose of its waste.

I support the need for a national, permanent, geological repository for nuclear waste, but I cannot support the bill before us today. The Nuclear Waste Policy Act mandates construction of an above-ground, interim storage facility even before the scientific findings on the permanent repository at Yucca Mountain are completed. The Department of Energy has said that the viability studies for Yucca Mountain should be completed in 1998.

I remain concerned that construction of an interim facility would effectively stifle efforts to establish a permanent, geological repository. It is a costly and risky diversion from what should be our primary goal in this area: finding a safe, permanent place to store our nation's nuclear waste. We have already spent almost \$5 billion on the permanent facility and it is not even finished. It is estimated that the interim facility would cost an additional \$2 billion.

Let me remind you that the interim facility is above ground. If for any reason the scientific assessments for Yucca Mountain are negative, either the interim facility would become the de facto permanent repository without establishing its suitability as such, or the waste would have to be moved again. Either alternative is unacceptable.

One of the main reasons that I cannot support this bill, is my fear of what could happen if we must move the nuclear waste multiple times. Let us not forget that transporting nuclear waste is inherently risky and any accident or act of terrorism could prove disastrous. I do not want our communities in Connecticut and around the Nation to be at risk because we acted imprudently.

The supporters of this bill have tried to assure us that transporting nuclear waste is safe, and that environmental safeguards would be in place. I am convinced that this bill does not adequately protect public health and safety and that too many environmental laws are weakened.

In fact, this bill restricts the Environmental Protection Agency's [EPA] ability to set a drinking water standard at the nuclear waste repository. Let me remind you that last Congress the Senate passed the Safe Drinking Water amendments by a resounding vote of 98-0. Clearly, upholding Federal drinking water standards should be a priority in Nevada no less than in Connecticut. EPA is further restricted in its ability to adequately protect the population from radiation emissions. Granted, EPA can continue to set the

annual acceptable dose limit for radiation exposure, but the bill remains vague on any further action that EPA could take to protect the public health and safety from dangerous emission levels. Furthermore, language in the bill is so vague that it is unclear whether compliance with the Clean Water Act or the Clean Air Act would be required.

It seems to me that threatening public health and safety is the price of expediency. State laws that could slow the process of interim storage are simply preempted. The National Environmental Policy Act [NEPA], passed by Congress in 1969, establishes an environmental impact process for major Federal projects, like Yucca Mountain. The goal of the environmental impact process is to look at all alternatives to ensure that the most environmentally sound alternative is chosen. This bill severely restricts the NEPA decision-making process regarding transportation and the design of either repository. In effect, the public has no role in the decision-making process.

Now, I would like to clarify a few statements that have been made during this debate regarding the State of Connecticut.

I recognize the importance of safely storing nuclear waste and the impact this has on my State. It has been said that the situation in Connecticut is urgent. However, it is my understanding that there is sufficient capacity. The fuel pool at one of the facilities in my State should be able to accommodate waste from the other reactors until the end of their licenses and well into the next century. Decisions concerning the fourth facility, Connecticut Yankee, await a final decommissioning plan.

Last week, my colleague from Alaska, Mr. MURKOWSKI, mentioned a Hartford Courant editorial that, I might say, only marginally supported the bill. In fact, I believe the editorial was entitled, "The Lesser of Two Evils"—hardly a rousing endorsement.

Mr. President, I ask unanimous consent that there be printed in the RECORD another Connecticut editorial. This one is from the New London Day, a newspaper located in the southeastern part of Connecticut, just down the road from three of our nuclear reactors. The editorial, entitled, "Nagging Nuclear Waste Problem," states that "Many safety advocates believe that waste should not be sent to Yucca Mountain unless the facility is designated as suitable to hold the material long-term." The editorial goes on to say that, "Otherwise, opponents say, if the site is ultimately found to be unsuitable, waste will have to be shipped out again. It doesn't make any sense to have nuclear waste from 109 plants shipped all over the country unless it can be shipped once."

Mr. President, I concur with the rationale of the New London Day. We should wait for scientific verification of Yucca Mountain as a permanent storage site, before shipping nuclear

waste throughout Connecticut and our country.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NAGGING NUCLEAR-WASTE PROBLEM

America's difficulty in finding a solution to permanent storage for nuclear waste isn't confined to these shores. Europe is in an uproar about the same issue. A salt mine in the German town of Gorleben has been chosen as an interim storage disposal facility for German nuclear waste. The decision sparked widespread protests.

Adding outrage to the protests was the derailment of a train carrying casks holding radioactive material bound for the site. The casks weren't harmed. But the accident illustrated the point of opponents, which is that radiation shouldn't be shipped all over Europe.

The Senate Energy Committee is set to vote on a similar interim-storage facility for America, designating Yucca Mountain, Nev., for that distinction. The president has threatened to veto such a bill if it reaches his desk.

WAITING MAKES SENSE

President Bill Clinton is right. Although the country needs a site for nuclear waste, and an interim storage facility is appealing, it probably makes more sense to wait until a permanent facility is approved.

Many safety advocates believe that waste should not be sent to Yucca Mountain unless the facility is designated as suitable to hold the material long-term. Otherwise, opponents say, if the site is ultimately found to be unsuitable, waste will have to be shipped out again. It doesn't make any sense to have nuclear waste from 109 plants shipped all over the country unless it can be shipped once, stored * * *.

So far, though, the political process has been maddeningly inadequate to handle this touchy subject. Congress for years has forced the nuclear industry to pay billions to help build a storage facility that was supposed to be up and running by the end of this century. Instead, that facility won't open for at least a decade. In the meantime, all over the country nuclear plants' 40-foot-deep, spent-fuel pools are filling up with spent nuclear waste. The pools were never designed for long-term storage.

It might make more sense to rebate to the industry some of the many millions it has sent to the government to spend on other things while Congress and the Energy Department delayed building a waste facility. With the money, the nuclear plants can put their spent fuel rods in dry-cask storage, considered an expensive but extremely safe method of storing nuclear fuel.

The typical "cask" for such a task is 18 feet long, 8½ feet in diameter and made of concrete. It weighs 90 tons fully loaded and holds anywhere from nine to 25 fuel rods. This type of storage is considered safer than spent-fuel pools, because the pools have been known to leak occasionally, risking exposure of the fuel.

The best of all possible worlds would be for our political system to prove adequate to such thorny problems as nuclear waste. So far, such has not been the case. So the safest interim solution must be sought. With 109 plants around the country, shipping waste to a temporary facility seems short-sighted. Better to choose the safest temporary solution, and work for a permanent answer.

The PRESIDING OFFICER. All time has expired. The yeas and nays have been ordered.

The question occurs on final passage of S. 104, as amended.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from West Virginia [Mr. ROCKEFELLER] is necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia [Mr. ROCKEFELLER] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—65

Abraham	Grams	McConnell
Allard	Grassley	Moseley-Braun
Ashcroft	Gregg	Murkowski
Bennett	Hagel	Murray
Bond	Harkin	Nickles
Brownback	Hatch	Robb
Burns	Helms	Roberts
Chafee	Hollings	Roth
Cleland	Hutchinson	Santorum
Cochran	Hutchison	Sessions
Collins	Inhofe	Shelby
Coverdell	Jeffords	Smith (NH)
Craig	Johnson	Smith (OR)
D'Amato	Kempthorne	Snowe
DeWine	Kohl	Specter
Domenici	Kyl	Stevens
Enzi	Leahy	Thomas
Faircloth	Levin	Thompson
Frist	Lott	Thurmond
Gorton	Lugar	Warner
Graham	Mack	Wyden
Gramm	McCain	

NAYS—34

Akaka	Daschle	Landrieu
Baucus	Dodd	Lautenberg
Biden	Dorgan	Lieberman
Bingaman	Durbin	Mikulski
Boxer	Feingold	Moynihan
Breaux	Feinstein	Reed
Bryan	Ford	Reid
Bumpers	Glenn	Sarbanes
Byrd	Inouye	Torricelli
Campbell	Kennedy	Wellstone
Coats	Kerrey	
Conrad	Kerry	

NOT VOTING—1

Rockefeller

The bill (S. 104), as amended, was passed, as follows:

S. 104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Nuclear Waste Policy Act of 1982 is amended to read as follows:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Nuclear Waste Policy Act of 1997'.

"(b) TABLE OF CONTENTS.—

"Sec. 1. Short title and table of contents.

"Sec. 2. Definitions.

"TITLE I—OBLIGATIONS

"Sec. 101. Obligations of the Secretary of Energy.

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

"Sec. 201. Intermodal transfer.

"Sec. 202. Transportation planning.

"Sec. 203. Transportation requirements.

"Sec. 204. Viability assessment and Presidential determination.

"Sec. 205. Interim storage facility.

"Sec. 206. Permanent repository.

"Sec. 207. Compliance with the National Environmental Policy Act.

"Sec. 208. Land withdrawal.

"TITLE III—LOCAL RELATIONS

"Sec. 301. Financial assistance.

- "Sec. 302. On-Site Representative.
- "Sec. 303. Acceptance of benefits.
- "Sec. 304. Restrictions on use of funds.
- "Sec. 305. Land conveyances.

"TITLE IV—FUNDING AND ORGANIZATION

- "Sec. 401. Program funding.
- "Sec. 402. Office of Civilian Radioactive Waste Management.
- "Sec. 403. Federal contribution.

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

- "Sec. 501. Compliance with other laws.
- "Sec. 502. Judicial review of agency actions.
- "Sec. 503. Licensing of facility expansions and transshipments.
- "Sec. 504. Siting a second repository.
- "Sec. 505. Financial arrangements for low-level radioactive waste site closure.
- "Sec. 506. Nuclear Regulatory Commission training authority.
- "Sec. 507. Emplacement schedule.
- "Sec. 508. Transfer of title.
- "Sec. 509. Decommissioning Pilot Program.
- "Sec. 510. Water rights.

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

- "Sec. 601. Definitions.
- "Sec. 602. Nuclear Waste Technical Review Board.
- "Sec. 603. Functions.
- "Sec. 604. Investigatory powers.
- "Sec. 605. Compensation of members.
- "Sec. 606. Staff.
- "Sec. 607. Support services.
- "Sec. 608. Report.
- "Sec. 609. Authorization of appropriations.
- "Sec. 610. Termination of the board.

"TITLE VII—MANAGEMENT REFORM

- "Sec. 701. Management reform initiatives.
- "Sec. 702. Reporting.

"TITLE VIII—MISCELLANEOUS

- "Sec. 801. Sense of the Senate.
- "Sec. 802. Effective date.

"SEC. 2. DEFINITIONS.

"For purposes of this Act:

"(1) ACCEPT, ACCEPTANCE.—The terms 'accept' and 'acceptance' mean the Secretary's act of taking possession of spent nuclear fuel or high-level radioactive waste.

"(2) AFFECTED INDIAN TRIBE.—The term 'affected Indian tribe' means any Indian tribe—

"(A) whose reservation is surrounded by or borders an affected unit of local government, or

"(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 an interim storage facility or a repository if 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) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

"(4) ATOMIC ENERGY DEFENSE ACTIVITY.—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 byproducts management.

"(F) Defense nuclear materials security and safeguards and security investigations.

"(G) Defense research and development.

"(5) CIVILIAN NUCLEAR POWER REACTOR.—The term 'civilian nuclear power reactor' means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

"(6) COMMISSION.—The term 'Commission' means the Nuclear Regulatory Commission.

"(7) CONTRACTS.—The term 'contracts' means the contracts, executed prior to the date of enactment of the Nuclear Waste Policy Act of 1997, under section 302(a) of the Nuclear Waste Policy Act of 1982, by the Secretary and any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for acceptance of such waste or fuel by the Secretary and the payment of fees to offset the Secretary's expenditures, and any subsequent contracts executed by the Secretary pursuant to section 401(a) of this Act.

"(8) CONTRACT HOLDERS.—The term 'contract holders' means parties (other than the Secretary) to contracts.

"(9) DEPARTMENT.—The term 'Department' means the Department of Energy.

"(10) DISPOSAL.—The term 'disposal' means the emplacement in a repository of spent nuclear fuel, high-level radioactive waste, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits recovery of such material for any future purpose.

"(11) DISPOSAL SYSTEM.—The term 'disposal system' means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

"(12) EMBLACEMENT SCHEDULE.—The term 'emplacement schedule' means the schedule established by the Secretary in accordance with section 507(a) for emplacement of spent nuclear fuel and high-level radioactive waste at the interim storage facility.

"(13) ENGINEERED BARRIERS AND ENGINEERED SYSTEMS AND COMPONENTS.—The terms 'engineered barriers' and 'engineered systems and components', mean man-made components of a disposal system. These terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

"(14) HIGH-LEVEL RADIOACTIVE WASTE.—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, which includes any low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

"(15) FEDERAL AGENCY.—The term 'Federal agency' means any Executive agency, as defined in section 105 of title 5, United States Code.

"(16) INDIAN TRIBE.—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 in-

cluding any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

"(17) INTEGRATED MANAGEMENT SYSTEM.—The term 'integrated management system' means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste under title II of this Act.

"(18) INTERIM STORAGE FACILITY.—The term 'interim storage facility' means a facility designed and constructed for the receipt, handling, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

"(19) INTERIM STORAGE FACILITY SITE.—The term 'interim storage facility site' means the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

"(20) LOW-LEVEL RADIOACTIVE WASTE.—The term 'low-level radioactive waste' means radioactive material that—

"(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

"(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

"(21) METRIC TONS URANIUM.—The terms 'metric tons uranium' and 'MTU' means the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

"(22) NUCLEAR WASTE FUND.—The terms 'Nuclear Waste Fund' and 'waste fund' mean the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

"(23) OFFICE.—The term 'Office' means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

"(24) PROGRAM APPROACH.—The term 'program approach' means the Civilian Radioactive Waste Management Program Plan, dated May 6, 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

"(25) REPOSITORY.—The term 'repository' means a system designed and constructed under title II of this Act for the geologic disposal of spent nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

"(26) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

"(27) SITE CHARACTERIZATION.—The term 'site characterization' means activities, whether in a 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 facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability 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.

"(28) SPENT NUCLEAR FUEL.—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.

“(29) STORAGE.—The term ‘storage’ means retention of spent nuclear fuel or high-level radioactive waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

“(30) WITHDRAWAL.—The term ‘withdrawal’ has the same definition as that set forth in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

“(31) YUCCA MOUNTAIN SITE.—The term ‘Yucca Mountain site’ means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

“(32) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(33) SUITABLE.—The term ‘suitable’ means that there is reasonable assurance that the site features of a repository and the engineered barriers contained therein will allow the repository, as an overall system, to provide containment and isolation of radionuclides sufficient to meet applicable standards for protection of public health and safety.

“TITLE I—OBLIGATIONS

“SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

“(a) DISPOSAL.—The Secretary shall develop and operate an integrated management system for the storage and permanent disposal of spent nuclear fuel and high-level radioactive waste.

“(b) INTERIM STORAGE.—The Secretary shall store spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders at an interim storage facility pursuant to section 205 in accordance with the emplacement schedule, beginning no later than 18 months after issuance of a license for an interim storage facility under section 205(g).

“(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary. The Secretary shall procure all systems and components necessary to transport spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders to and among facilities comprising the Integrated Management System. Consistent with the Buy American Act (41 U.S.C. 10a-10c), unless the Secretary shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, all such systems and components procured by the Secretary shall be manufactured in the United States, with the exception of any transportable storage systems purchased by contract holders prior to the effective date of the Nuclear Waste Policy Act of 1997 and procured by the Secretary from such contract holders for use in the integrated management system.

“(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the

development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

“(e) PRIVATE SECTOR PARTICIPATION.—In administering the Integrated Management System, the Secretary shall, to the maximum extent possible, utilize, employ, procure and contract with, the private sector to fulfill the Secretary’s obligations and requirements under this Act.

“(f) PRE-EXISTING RIGHTS.—Nothing in this Act is intended to or shall be construed to modify—

“(1) any right of a contract holder under section 302(a) of the Nuclear Waste Policy Act of 1982, or under a contract executed prior to the date of enactment of this Act under that section; or

“(2) obligations imposed upon the Federal Government by the United States District Court of Idaho in an order entered on October 17, 1995 in United States v. Batt (No. 91-0054-S-EJL).

“(g) LIABILITY.—Subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary’s failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste for storage or disposal under this Act.

“TITLE II—INTEGRATED MANAGEMENT SYSTEM

“SEC. 201. INTERMODAL TRANSFER.

“(a) ACCESS.—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site.

“(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than 18 months after issuance of a license under section 205(g) for an interim storage facility designated under section 204(c)(1). Intermodal transfer and related activities are incidental to the interstate transportation of spent nuclear fuel and high-level radioactive waste.

“(c) ACQUISITIONS.—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

“(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and right-of-way within Lincoln County, Nevada, as required to facilitate replacement of land and city wastewater disposal facilities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than 2 years after the effective date of this section.

“(e) NOTICE AND MAP.—No later than 6 months after the effective date of this section, the Secretary shall—

“(1) publish in the Federal Register a notice containing a legal description of the

sites and rights-of-way to be acquired under this subsection; and

“(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors and legal descriptions and make minor adjustments in the boundaries.

“(f) IMPROVEMENTS.—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

“(g) LOCAL GOVERNMENT INVOLVEMENT.—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

“(h) BENEFITS AGREEMENT.—

“(1) IN GENERAL.—The Secretary shall offer to enter into an agreement with the City of Caliente and Lincoln County, Nevada concerning the integrated management system.

“(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of the City of Caliente and Lincoln County, Nevada.

“(3) AMENDMENT.—An agreement entered into under this subsection may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with paragraph (4).

“(4) TERMINATION.—The Secretary shall terminate the agreement under this subsection if any major element of the integrated management system may not be completed.

“(5) LIMITATION.—Only 1 agreement may be in effect at any one time.

“(6) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

“(i) CONTENT OF AGREEMENT.—

“(1) SCHEDULE.—In addition to the benefits to which the City of Caliente and Lincoln County is entitled to under this title, the Secretary shall make payments under the benefits agreement in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in millions)

Event	Payment
(A) Annual payments prior to first receipt of spent fuel	\$2.5
(B) Annual payments beginning upon first spent fuel receipt	\$5
(C) Payment upon closure of the intermodal transfer facility	\$5

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

“(A) ‘spent fuel’ means high-level radioactive waste or spent nuclear fuel; and

“(B) ‘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.—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) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 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 1/12 of such annual payment under paragraph (1)(A) for each full month less than 6 that has not elapsed since the last annual payment under paragraph (1)(A).

“(5) RESTRICTIONS.—The Secretary may not restrict the purposes for which the payments under this section may be used.

“(6) DISPUTE.—In the event of a dispute concerning such agreement, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

“(7) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under this section shall constitute a commitment by the United States to make payments in accordance with such agreement under section 401(c)(2).

“(j) INITIAL LAND CONVEYANCES.—

“(1) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after enactment of this Act, all right, title and interest of the United States in the property described in paragraph (2), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Lincoln, Nevada, unless the county notifies the Secretary of the Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Lincoln under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Lincoln County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

“(2) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, shall be conveyed under paragraph (1) to the County of Lincoln, Nevada:

Map 10: Lincoln County, Parcel M, Industrial Park Site

Map 11: Lincoln County, Parcel F, Mixed Use Industrial Site

Map 13: Lincoln County, Parcel J, Mixed Use, Alamo Community Expansion Area

Map 14: Lincoln County, Parcel E, Mixed Use, Pioche Community Expansion Area

Map 15: Lincoln County, Parcel B, Landfill Expansion Site.

“(3) CONSTRUCTION.—The maps and legal descriptions of special conveyances referred to in paragraph (2) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

“(4) EVIDENCE OF TITLE TRANSFER.—Upon the request of the County of Lincoln, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

“(k) This section shall become effective on the date on which the Secretary submits a license application under section 205 for an interim storage facility at a site designated under section 204(c)(1).

“SEC. 202. TRANSPORTATION PLANNING.

“(a) TRANSPORTATION READINESS.—The Secretary—

“(1) shall take such actions as are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities and from the mainline transportation facilities to the interim storage facility or repository, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas; and

“(2) not later than 24 months after the Secretary submits a license application under section 205 for an interim storage facility shall, in consultation with the Secretary of Transportation and affected States and tribes, and after an opportunity for public comment, develop and implement a comprehensive management plan that ensures safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site.

“(b) TRANSPORTATION PLANNING.—

“(1) IN GENERAL.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary’s transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility.

“(2) MATTERS TO BE ADDRESSED.—Among other things, planning under paragraph (1) shall provide a schedule and process for addressing and implementing, as necessary—

“(A) transportation routing plans;

“(B) transportation contracting plans;

“(C) transportation training in accordance with section 203;

“(D) public education regarding transportation of spent nuclear fuel and high-level radioactive waste; and

“(E) transportation tracking programs.

“(c) SHIPPING CAMPAIGN TRANSPORTATION PLANS.—

“(1) IN GENERAL.—The Secretary shall develop a transportation plan for the implementation of each shipping campaign (as that term is defined by the Secretary) from each site at which high-level nuclear waste is stored, consistent with the principles and procedures stated in Department of Energy Order No. 460.2 and the Program Manager’s Guide.

“(2) REQUIREMENTS.—A shipping campaign transportation plan shall—

“(A) be fully integrated with State and tribal government notification, inspection, and emergency response plans along the preferred shipping route or State-designated alternative route identified under subsection

(d) (unless the Secretary certifies in the plan that the State or tribal government has failed to cooperate in fully integrating the shipping campaign transportation plan with the applicable State or tribal government plans); and

“(B) be consistent with the principles and procedures developed for the safe transportation of transuranic waste to the Waste Isolation Pilot Plant (unless the Secretary certifies in the plan that a specific principle or procedure is inconsistent with a provision of this Act).

“(d) SAFE SHIPPING ROUTES AND MODES.—

“(1) IN GENERAL.—The Secretary shall evaluate the relative safety of the proposed shipping routes and shipping modes from each shipping origin to the interim storage facility or repository compared with the safety of alternative modes and routes.

“(2) CONSIDERATIONS.—The evaluation under paragraph (1) shall be conducted in a manner consistent with regulations promulgated by the Secretary of Transportation under authority of chapter 51 of title 49, United States Code, and the Nuclear Regulatory Commission under authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as applicable.

“(3) DESIGNATION OF PREFERRED SHIPPING ROUTE AND MODE.—Following the evaluation under paragraph (1), the Secretary shall designate preferred shipping routes and modes from each civilian nuclear power reactor and Department of Energy facility that stores spent nuclear fuel or other high-level defense waste.

“(4) SELECTION OF PRIMARY SHIPPING ROUTE.—If the Secretary designates more than 1 preferred route under paragraph (3), the Secretary shall select a primary route after considering, at a minimum, historical accident rates, population, significant hazards, shipping time, shipping distance, and mitigating measures such as limits on the speed of shipments.

“(5) USE OF PRIMARY SHIPPING ROUTE AND MODE.—Except in cases of emergency, for all shipments conducted under this Act, the Secretary shall cause the primary shipping route and mode or State-designated alternative route under chapter 51 of title 49, United States Code, to be used. If a route is designated as a primary route for any reactor or Department of Energy facility, the Secretary may use that route to transport spent nuclear fuel or high-level radioactive waste from any other reactor or Department of Energy facility.

“(6) TRAINING AND TECHNICAL ASSISTANCE.—Following selection of the primary shipping routes, or State-designated alternative routes, the Secretary shall focus training and technical assistance under section 203(c) on those routes.

“(7) PREFERRED RAIL ROUTES.—

“(A) REGULATION.—Not later than 1 year after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary of Transportation, pursuant to authority under other provisions of law, shall promulgate a regulation establishing procedures for the selection of preferred routes for the transportation of spent nuclear fuel and nuclear waste by rail.

“(B) INTERIM PROVISION.—During the period beginning on the date of enactment of the Nuclear Waste Policy Act of 1997 and ending on the date of issuance of a final regulation under subparagraph (A), rail transportation of spent nuclear fuel and high-level radioactive waste shall be conducted in accordance with regulatory requirements in effect on that date and with this section.

“SEC. 203. TRANSPORTATION REQUIREMENTS.

“(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste

may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

“(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and tribal governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

“(c) TECHNICAL ASSISTANCE.—

“(1) IN GENERAL.—

“(A) STATES AND INDIAN TRIBES.—As provided in paragraph (3), the Secretary shall provide technical assistance and funds to States and Indian tribes for training of public safety officials of appropriate units of State, local, and tribal government. A State shall allocate to local governments within the State a portion of any funds that the Secretary provides to the State for technical assistance and funding.

“(B) EMPLOYEE ORGANIZATIONS.—The Secretary shall provide technical assistance and funds for training directly to nonprofit employee organizations and joint labor-management organizations that demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation.

“(C) TRAINING.—Training under this section—

“(i) shall cover procedures required for safe routine transportation of materials and procedures for dealing with emergency response situations;

“(ii) shall be consistent with any training standards established by the Secretary of Transportation under subsection (g); and

“(iii) shall include—

“(I) a training program applicable to persons responsible for responding to emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste;

“(II) instruction of public safety officers in procedures for the command and control of the response to any incident involving the waste; and

“(III) instruction of radiological protection and emergency medical personnel in procedures for responding to an incident involving spent nuclear fuel or high-level radioactive waste being transported.

“(2) NO SHIPMENTS IF NO TRAINING.—(A) There will be no shipments of spent nuclear fuel and high-level radioactive waste through the jurisdiction of any State or the reservation lands of any Indian tribe eligible for grants under paragraph (3)(B) until the Secretary has made a determination that personnel in all State, local, and tribal jurisdictions on primary and alternative shipping routes have met acceptable standards of training for emergency responses to accidents involving spent nuclear fuel and high-level nuclear waste, as established by the Secretary, and unless technical assistance and funds to implement procedures for the safe routine transportation and for dealing with emergency response situations under paragraph (1)(A) have been available to a State or Indian tribe for at least 3 years prior to any shipment: *Provided, however*, That the Secretary may ship spent nuclear fuel and high-level radioactive waste if technical assistance or funds have not been made available due to (i) an emergency, including the sudden and unforeseen closure of a highway or rail line or the sudden and unforeseen need to remove spent fuel from a reactor be-

cause of an accident, or (ii) the refusal to accept technical assistance by a State or Indian tribe, or (iii) fraudulent actions which violate Federal law governing the expenditure of Federal funds.

“(B) In the event the Secretary is required to transport spent fuel or high-level radioactive waste through a jurisdiction prior to 3 years after the provision of technical assistance or funds to such jurisdiction, the Secretary shall, prior to such shipment, hold meetings in each State and Indian reservation through which the shipping route passes in order to present initial shipment plans and receive comments. Department of Energy personnel trained in emergency response shall escort each shipment. Funds and all Department of Energy training resources shall be made available to States and Indian tribes along the shipping route no later than three months prior to the commencement of shipments: *Provided, however*, That in no event shall such shipments exceed 1,000 metric tons per year: *Provided further*, That no such shipments shall be conducted more than four years after the effective date of the Nuclear Waste Policy Act of 1997.

“(3) GRANTS.—

“(A) IN GENERAL.—To implement this section, grants shall be made under section 401(c)(2).

“(B) GRANTS FOR DEVELOPMENT OF PLANS.—

“(i) IN GENERAL.—The Secretary shall make a grant of at least \$150,000 to each State through the jurisdiction of which and each federally recognized Indian tribe through the reservation lands of which a shipment of spent nuclear fuel or high-level radioactive waste will be made under this Act for the purpose of developing a plan to prepare for such shipments.

“(ii) LIMITATION.—A grant shall be made under clause (i) only to a State or a federally recognized Indian tribe that has the authority to respond to incidents involving shipments of hazardous material.

“(C) GRANTS FOR IMPLEMENTATION OF PLANS.—

“(i) IN GENERAL.—Annual implementation grants shall be made to States and Indian tribes that have developed a plan to prepare for shipments under this Act under subparagraph (B). The Secretary, in submitting the annual departmental budget to Congress for funding of implementation grants under this section, shall be guided by the State and tribal plans developed under subparagraph (B). As part of the Department of Energy's annual budget request, the Secretary shall report to Congress on—

“(I) the funds requested by States and federally recognized Indian tribes to implement this subsection;

“(II) the amount requested by the President for implementation; and

“(III) the rationale for any discrepancies between the amounts requested by States and federally recognized Indian tribes and the amounts requested by the President.

“(ii) ALLOCATION.—Of funds available for grants under this subparagraph for any fiscal year—

“(I) 25 percent shall be allocated by the Secretary to ensure minimum funding and program capability levels in all States and Indian tribes based on plans developed under subparagraph (B); and

“(II) 75 percent shall be allocated to States and Indian tribes in proportion to the number of shipment miles that are projected to be made in total shipments under this Act through each jurisdiction.

“(4) AVAILABILITY OF FUNDS FOR SHIPMENTS.—Funds under paragraph (1) shall be provided for shipments to an interim storage facility or repository, regardless of whether the interim storage facility or repository is

operated by a private entity or by the Department of Energy.

“(d) PUBLIC EDUCATION.—The Secretary shall conduct a program to educate the public regarding the transportation of spent nuclear fuel and high-level radioactive waste, with an emphasis upon those States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste.

“(e) COMPLIANCE WITH TRANSPORTATION REGULATIONS.—Any person that transports spent nuclear fuel or high-level radioactive waste under the Nuclear Waste Policy Act of 1997, pursuant to a contract with the Secretary, shall comply with all requirements governing such transportation issued by the Federal, State and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation that is in or affects interstate commerce must comply with such requirements, as required by section 5126 of title 49, United States Code.

“(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of section 20109 of title 49, United States Code (in the case of employees of railroad carriers) and section 31105 of title 49, United States Code (in the case of employees operating commercial motor vehicles), or the Commission (in the case of all other employees).

“(g) TRAINING STANDARD.—(1) No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

“(2) If the Secretary of Transportation determines, in promulgating the regulation required by subparagraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation and the Commission shall work through their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

“(3) The training standards required to be promulgated under subparagraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

“(A) a specified minimum number of hours of initial off site instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

“(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

“(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent

nuclear fuel and high-level radioactive waste.

"(4) There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

"SEC. 204. VIABILITY ASSESSMENT AND PRESIDENTIAL DETERMINATION.

"(a) VIABILITY ASSESSMENT.—No later than December 1, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include—

"(1) the preliminary design concept for the critical elements of the repository and waste package;

"(2) a total system performance assessment, based upon the preliminary design concept in paragraph (1) of this subsection and the scientific data and analysis available on June 30, 1998, describing the probable behavior of the repository relative to the overall system performance standard under section 206(f) of this Act or, if the standard under section 206(f) has not been promulgated, relative to an estimate by the Secretary of an overall system performance standard that is consistent with section 206(f);

"(3) a plan and cost estimate for the remaining work required to complete the license application under section 206(c) of this Act, and

"(4) an estimate of the costs to construct and operate the repository in accordance with the preliminary design concept in paragraph (1) of this subsection.

"(b) PRESIDENTIAL DETERMINATION.—No later than March 1, 1999, the President, in his sole and unreviewable discretion, may make a determination disqualifying the Yucca Mountain site as a repository, based on the President's views that the preponderance of information available at such time indicates that the Yucca Mountain site is not suitable for development of a repository of useful size. If the President makes a determination under this subsection—

"(1) the Secretary shall cease all activities (except necessary termination activities) at the Yucca Mountain site and section 206 of this Act shall cease to be in effect; and

"(2) no later than 6 months after such determination, the Secretary shall report to Congress on the need for additional legislation relating to the permanent disposal of nuclear waste.

"(c) PRELIMINARY SECRETARIAL DESIGNATION OF INTERIM STORAGE FACILITY SITES.—

"(1) If the President does not make a determination under subsection (b) of this section, no later than March 31, 1999, the Secretary shall make a preliminary designation of a specific site within Area 25 of the Nevada Test Site for planning and construction of an interim storage facility under section 205.

"(2) Within 18 months of a determination by the President that the Yucca Mountain site is unsuitable for development as a repository under subsection (b), the President shall designate a site for the construction of an interim storage facility. The President shall not designate the Hanford Nuclear Reservation in the State of Washington, and the Savannah River Site and Barnwell County in the State of South Carolina, or the Oak Ridge Reservation in the State of Tennessee, as a site for construction of an interim storage facility. If the President does not designate a site for the construction of an interim storage facility, or the construction of an interim storage facility at the designated site is not approved by law within 24 months of the President's determination that the Yucca Mountain site is not suitable for development as a repository, the interim stor-

age facility site as defined in section 2(19) of this Act is designated as the interim storage facility site for purposes of section 205. The interim storage facility site shall be deemed to be approved by law for purposes of this paragraph.

"SEC. 205. INTERIM STORAGE FACILITY.

"(a) NON-SITE-SPECIFIC ACTIVITIES.—As soon as practicable after the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary shall submit to the Commission a topical safety analysis report containing a generic design for an interim storage facility. If the Secretary has submitted such a report prior to such date of enactment, the report shall be deemed to have satisfied the requirement in the preceding sentence. No later than December 31, 1998, the Commission shall issue a safety evaluation report approving or disapproving the generic design submitted by the Secretary.

"(b) SITE-SPECIFIC AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site designated under section 204 and licensed by the Commission under this section. The Commission shall license the interim storage facility in accordance with the Commission's regulations governing the licensing of independent storage of spent nuclear fuel and high-level radioactive waste (10 CFR part 72). Such regulations shall be amended by the Commission as necessary to implement the provisions of this Act. The Commission may amend part 72 of title 10, Code of Federal Regulations with regard to facilities not covered by this Act as deemed appropriate by the Commission.

"(c) LIMITATIONS AND CONDITIONS.—

"(1) The Secretary shall not commence construction of an interim storage facility (which shall mean taking actions within the meaning of the term 'commencement of construction' contained in the Commission's regulations in section 72.3 of title 10, Code of Federal Regulations) before the Commission, or an appropriate officer or Board of the Commission, makes the finding under section 72.40(b) of title 10, Code of Federal Regulations.

"(2) After the Secretary makes the preliminary designation of an interim storage site under section 204, the Secretary may commence site data acquisition activities and design activities necessary to complete license application and environmental report under subsection (d) of this section.

"(3) Notwithstanding any other applicable licensing requirement, the Secretary may utilize facilities owned by the Federal Government on the date of enactment of the Nuclear Waste Policy Act of 1997 and located within the boundaries of the interim storage site, in connection with addressing any imminent and substantial endangerment to public health and safety at the interim storage facility site, prior to receiving a license from the Commission for the interim storage facility, for purposes of fulfilling requirements for retrievability during the first five years of operation of the interim storage facility.

"(d) LICENSE APPLICATION.—No later than 30 days after the date on which the Secretary makes a preliminary designation of an interim storage facility site under section 204, the Secretary shall submit a license application and an environmental report in accordance with applicable regulations (subpart B of part 72 of title 10, Code of Federal Regulations, and subpart A of part 51 of title 10, Code of Federal Regulations, respectively). The license application—

"(1) shall be for a term of 40 years; and

"(2) shall be for a quantity of spent nuclear fuel or high-level radioactive waste equal to

the quantity that would be emplaced under section 507 prior to the date that the Secretary estimates, in the license application, to be the date on which the Secretary will receive and store spent nuclear fuel and high-level radioactive waste at the permanent repository.

"(e) DESIGN.—

"(1) The design for the interim storage facility shall provide for the use of storage technologies which are licensed, approved, or certified by the Commission, to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

"(2) The Secretary shall consent to an amendment to the contracts to provide for reimbursement to contract holders for transportable storage systems purchased by contract holders if the Secretary determines that it is cost effective to use such transportable storage systems as part of the integrated management system: *Provided*, That the Secretary shall not be required to expend any funds to modify contract holders' storage or transport systems or to seek additional regulatory approvals in order to use such systems.

"(f) LICENSE AMENDMENTS.—

"(1) The Secretary may seek such amendments to the license for the interim storage facility as the Secretary may deem appropriate, including amendments to use new storage technologies licensed by the Commission or to respond to changes in Commission regulations.

"(2) After receiving a license from the Commission to receive and store spent nuclear fuel and high-level radioactive waste in the permanent repository, the Secretary shall seek such amendments to the license for the interim storage facility as will permit the optimal use of such facility as an integral part of a single system with the repository.

"(g) COMMISSION ACTIONS.—

"(1) The issuance of a license to construct and operate an interim storage facility shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Prior to issuing a license under this section, the Commission shall prepare a final environmental impact statement in accordance with the National Environmental Policy Act of 1969, the Commission's regulations, and section 207 of this Act. The Commission shall ensure that this environmental impact statement is consistent with the scope of the licensing action and shall analyze the impacts of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

"(2) The Commission shall issue a final decision granting or denying a license for an interim storage facility not later than 32 months after the date of submittal of the application for such license.

"(3) No later than 32 months following the date of enactment of the Nuclear Waste Policy Act of 1997, the Commission shall make any amendments necessary to the definition of 'spent nuclear fuel' in section 72.4 of title 10, Code of Federal Regulations, to allow an interim storage facility to accept (subject to such conditions as the Commission may require in a subsequent license)—

"(A) spent nuclear fuel from research reactors;

"(B) spent nuclear fuel from naval reactors;

"(C) high-level radioactive waste of domestic origin from civilian nuclear reactors that

have permanently ceased operation before such date of enactment; and

“(D) spent nuclear fuel and high-level radioactive waste from atomic energy defense activities.

Following any such amendments, the Secretary shall seek authority, as necessary, to store such fuel and waste at the interim storage facility. None of the activities carried out pursuant to this paragraph shall delay, or otherwise affect, the development, licensing, construction, or operation of the interim storage facility.

“SEC. 206. PERMANENT REPOSITORY.

“(a) REPOSITORY CHARACTERIZATION.—

“(1) CHARACTERIZATION OF THE YUCCA MOUNTAIN SITE.—The Secretary shall carry out site characterization activities at the Yucca Mountain site in accordance with the Secretary’s program approach to site characterization. Such activities shall be limited to only those activities which the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(2) GUIDELINES.—The Secretary shall amend the guidelines in part 960 of title 10, Code of Federal Regulations, to base any conclusions regarding whether a repository site is suitable on, to the extent practicable, an assessment of total system performance of the repository.

“(b) ENVIRONMENTAL IMPACT STATEMENT.—

“(1) PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT.—Construction and operation of the repository shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall prepare an environmental impact statement on the construction and operation of the repository and shall submit such statement to the Commission with the license application. The Secretary shall supplement such environmental impact statement as appropriate.

“(2) SCHEDULE.—

“(A) No later than September 30, 2000, the Secretary shall publish the final environmental impact statement under paragraph (1) of this subsection.

“(B) No later than October 31, 2000, the Secretary shall publish a record of decision on applying for a license to construct and operate a repository at the Yucca Mountain site.

“(c) LICENSE APPLICATION.—

“(1) SCHEDULE.—No later than October 31, 2001, the Secretary shall apply to the Commission for authorization to construct a repository at the Yucca Mountain site.

“(2) MAXIMIZING CAPACITY.—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository, in the most cost-effective manner, consistent with the need for disposal capacity.

“(3) DECISION NOT TO APPLY FOR A LICENSE FOR THE YUCCA MOUNTAIN SITE.—If, at any time prior to October 31, 2001, the Secretary determines that the Yucca Mountain site is not suitable or cannot satisfy the Commission’s regulations applicable to the licensing of a geological repository, the Secretary shall—

“(A) notify the Congress and the State of Nevada of the Secretary’s determinations and the reasons therefor; and

“(B) promptly take the actions described in paragraphs (1) and (2) of section 204(b).

“(d) REPOSITORY LICENSING.—The Commission shall license the repository according to the following procedures:

“(1) CONSTRUCTION AUTHORIZATION.—The Commission shall grant the Secretary a construction authorization for the repository, subject to such requirements or limitations as the Commission may incorporate pursuant to its regulations, upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

“(A) in conformity with the Secretary’s application, the provisions of this Act, and the regulations of the Commission;

“(B) without unreasonable risk to the health and safety of the public; and

“(C) consistent with the common defense and security.

“(2) LICENSE.—Following the filing by the Secretary of any additional information needed by the Commission to issue a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository, subject to such requirements or limitations as the Commission may incorporate pursuant to its regulations, if the Commission determines that the repository has been constructed and will operate—

“(A) in conformity with the Secretary’s application, the provisions of this Act, and the regulations of the Commission;

“(B) without unreasonable risk to the health and safety of the public; and

“(C) consistent with the common defense and security.

“(3) CLOSURE.—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission’s regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment, subject to such requirements or limitations as the Commission may incorporate pursuant to its regulations, upon finding that there is reasonable assurance that the repository can be permanently closed—

“(A) in conformity with the Secretary’s application, the provisions of this Act, and the regulations of the Commission;

“(B) without unreasonable risk to the health and safety of the public; and

“(C) consistent with the common defense and security.

“(4) POST-CLOSURE.—The Secretary shall take those actions necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

“(A) breaching the repository’s engineered or geologic barriers; or

“(B) increasing the risk of the repository beyond the standard established in subsection (f)(1).

“(5) APPLICATION OF HEALTH AND SAFETY STANDARDS.—The licensing determination of the Commission with respect to risk to the health and safety of the public under paragraphs (1), (2), or (3) of this subsection shall be based solely on a finding whether the repository can be operated in conformance with the overall performance standard in subsection (f)(1) of this section, applied in accordance with the provisions of subsection (f)(2) of this section and the standards established by the Administrator under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note).

“(e) MODIFICATION OF THE COMMISSION’S REPOSITORY LICENSING REGULATIONS.—The Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste (10 CFR part 60), as necessary, to be consistent with the provisions of this Act. The Commission’s regulations shall provide for the modification of the repository licensing procedure in subsection (d) of this section, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of spent nuclear fuel or high-level radioactive waste as is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

“(f) REPOSITORY LICENSING STANDARDS AND ADDITIONAL PROCEDURES.—In complying with the requirements of section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note), the Administrator shall achieve consistency with the findings and recommendations of the National Academy of Sciences, and the Commission shall amend its regulations with respect to licensing standards for the repository, as follows:

“(1) ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.—

“(A) RISK STANDARD.—The standard for protection of the public from releases of radioactive material or radioactivity from the repository shall limit the lifetime risk, to the average member of the critical group, of premature death from cancer due to such releases to approximately, but not greater than, 1 in 1000. The comparison to this standard shall use the upper bound of the 95-percent confidence interval for the expected value of lifetime risk to the average member of the critical group.

“(B) FORM OF STANDARD.—The standard promulgated by the Administrator under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note) shall be an overall system performance standard. The Administrator shall not promulgate a standard for the repository in the form of release limits or contaminant levels for individual radionuclides discharged from the repository.

“(C) ASSUMPTIONS USED IN FORMULATING AND APPLYING THE STANDARD.—In promulgating the standard under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note), the Administrator shall consult with the Secretary of Energy and the Commission. The Commission, after consultation with the Secretary, shall specify, by rule, values for all of the assumptions considered necessary by the Commission to apply the standard in a licensing proceeding for the repository before the Commission, including the reference biosphere and size and characteristics of the critical group.

“(D) DEFINITION.—As used in this subsection, the term ‘critical group’ means a small group of people that is—

“(i) representative of individuals expected to be at highest risk of premature death from cancer as a result of discharges of radionuclides from the permanent repository;

“(ii) relatively homogeneous with respect to expected radiation dose, which shall mean that there shall be no more than a factor of ten in variation in individual dose among members of the group; and

“(iii) selected using reasonable assumptions—concerning lifestyle, occupation, diet and eating and drinking habits, technological sophistication, or other relevant social and behavioral factors—that are based on reasonably available information, when the group is defined, on current inhabitants and conditions in the area of 50-mile radius surrounding Yucca Mountain contained

within a line drawn 50 miles beyond each of the boundaries of the Yucca Mountain site.

“(2) APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.—The Commission shall issue the construction authorization, license, or license amendment, as applicable, if it finds reasonable assurance that for the first 10,000 years following the closure of the repository, the overall system performance standard will be met based on a probabilistic evaluation, as appropriate, of compliance with the overall system performance standard in paragraph (1).

“(3) FACTORS.—For purposes of establishing the overall system performance standard in paragraph (1) and making the finding in paragraph (2)—

“(A) the Administrator and the Commission shall not consider climate regimes that are substantially different from those that have occurred during the previous 100,000 years at the Yucca Mountain site;

“(B) the Administrator and the Commission shall not consider catastrophic events where the health consequences of individual events themselves to the critical group can be reasonably assumed to exceed the health consequences due to impact of the events on repository performance; and

“(C) the Administrator and the Commission shall not base the standard in paragraph (1) or the finding in paragraph (2) on scenarios involving human intrusion into the repository following repository closure.

“(4) CONGRESSIONAL REVIEW.—

“(A) Any standard promulgated by the Administrator under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note) shall be deemed a major rule within the meaning of section 804(2) of title 5, United States Code, and shall be subject to the requirements and procedures pertaining to a major rule in chapter 8 of such title.

“(B) The effective date of the construction authorization for the repository shall be 90 days after the issuance of such authorization by the Commission, unless Congress is standing in adjournment for a period of more than one week on the date of issuance, in which case the effective date shall be 90 days after the date on which Congress is expected to reconvene after such adjournment.

“(5) REPORT TO CONGRESS.—At the time that the Commission issues a construction authorization for the repository, the Commission shall submit a report to Congress—

“(A) analyzing the overall system performance of the repository through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 10,000 years after repository closure and including the time after repository closure of maximum risk to the critical group of premature death from cancer due to repository releases;

“(B) analyzing the consequences of a single instance of human intrusion into the repository, during the first 1,000 years after repository closure, on the ability of the repository to perform its intended function.

“(g) ADDITIONAL ACTIONS BY THE COMMISSION.—The Commission shall take final action on the Secretary's application for construction authorization for the repository no later than 40 months after submission of the application.

“SEC. 207. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.

“(a) PRELIMINARY ACTIVITIES.—Each activity of the Secretary under sections 203, 204, 205(a), 205(c), 205(d), and 206(a) shall be considered a preliminary decision making activity. No such activity shall be considered final agency action for purposes of judicial review. No activity of the Secretary or the President under sections 203, 204, 205, or 206(a) 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 any environmental review under subparagraph (E) or (F) of section 102(2) of such Act (42 U.S.C. 4332(2)(E) or (F)).

“(b) STANDARDS AND CRITERIA.—The promulgation of standards or criteria in accordance with the provisions of this title, or under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note), shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of section 102(2) of such Act (42 U.S.C. 4332(2)(E) or (F)).

“(c) REQUIREMENTS RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.—

“(1) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)—

“(A) in any final environmental impact statement under section 205 or 206, the Secretary or the Commission, as applicable, shall not be required to consider the need for a repository or an interim storage facility; the time of initial availability of a repository or interim storage facility; the alternatives to geological disposal or centralized interim storage; or alternative sites to the Yucca Mountain site or the interim storage facility site designated under section 204(c)(1); and

“(B) compliance with the procedures and requirements of this title shall be deemed adequate consideration of the need for centralized interim storage or a repository; the time of initial availability of centralized interim storage or the repository or centralized interim storage; and all alternatives to centralized interim storage and permanent isolation of high-level radioactive waste and spent nuclear fuel in an interim storage facility or a repository, respectively.

“(2) The final environmental impact statement for the repository prepared by the Secretary and submitted with the license application for a repository under section 206(c) 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 satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

“(c) CONSTRUCTION WITH OTHER LAWS.—Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

“(d) JUDICIAL REVIEW.—Judicial review under section 502 of this Act of any environmental impact statement prepared or adopted by the Commission shall be consolidated with the judicial review of the licensing decision to which it relates.

“SEC. 208. LAND WITHDRAWAL.

“(a) WITHDRAWAL AND RESERVATION.—

“(1) WITHDRAWAL.—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

“(2) JURISDICTION.—Jurisdiction of any land within the interim storage facility site

and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

“(3) RESERVATION.—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

“(b) LAND DESCRIPTION.—

“(1) BOUNDARIES.—The boundaries depicted on the map entitled ‘Interim Storage Facility Site Withdrawal Map’, dated March 13, 1996, and on file with the Secretary, are established as the boundaries of the Interim Storage Facility site.

“(2) BOUNDARIES.—The boundaries depicted on the map entitled ‘Yucca Mountain Site Withdrawal Map’, dated July 9, 1996, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

“(3) NOTICE AND MAPS.—Concurrent with the Secretary's designation of an interim storage facility site under section 204(c)(1), the Secretary shall—

“(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

“(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

“(4) NOTICE AND MAPS.—Concurrent with the Secretary's application to the Commission for authority to construct the repository, the Secretary shall—

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

“(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

“(5) CONSTRUCTION.—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

“TITLE III—LOCAL RELATIONS

“SEC. 301. FINANCIAL ASSISTANCE.

“(a) GRANTS.—The Secretary is authorized to make grants to any affected Indian tribe or affected unit of local government for purposes of enabling the affected Indian tribe or affected unit of local government—

“(1) to review activities taken with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of the integrated management system on the affected Indian tribe or the affected unit of local government and its residents;

“(2) to develop a request for impact assistance under subsection (c);

“(3) to engage in any monitoring, testing, or evaluation activities with regard to such site;

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

“(5) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken with respect to such site.

“(b) SALARY AND TRAVEL EXPENSES.—Any salary or travel expense that would ordinarily be incurred by any affected Indian

tribe or affected unit of local government may not be considered eligible for funding under this section.

“(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

“(1) ASSISTANCE REQUESTS.—The Secretary is authorized to offer to provide financial and technical assistance to any affected Indian tribe or affected unit of local government requesting such assistance. Such assistance shall be designed to mitigate the impact on the affected Indian tribe or affected unit of local government of the development of the integrated management system.

“(2) REPORT.—Any affected Indian tribe or affected unit of local government may request assistance under this section 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 activities of the integrated management system.

“(d) OTHER ASSISTANCE.—

“(1) TAXABLE AMOUNTS.—In addition to financial assistance provided under this subsection, the Secretary is authorized to grant to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amount such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.

“(2) TERMINATION.—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

“(3) ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.—

“(A) PERIOD.—Any affected Indian tribe or affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.

“(B) ACTIVITIES.—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

“SEC. 302. ON-SITE REPRESENTATIVE.

“The Secretary shall offer to the unit of local government within whose jurisdiction a site for an interim storage facility or repository is located under this Act an opportunity to designate a representative to conduct on-site oversight activities at such site. The Secretary is authorized to pay the reasonable expenses of such representative.

“SEC. 303. ACCEPTANCE OF BENEFITS.

“(a) CONSENT.—The acceptance or use of any of the benefits provided under this title by any affected Indian tribe or affected unit of local government shall not be deemed to be an expression of consent, express, or implied, either under the Constitution of the State or any law thereof, to the siting of an interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

“(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State to oppose the siting in Nevada of an interim storage facility or repository pre-

vised upon or related to the acceptance or use of benefits under this title.

“(c) LIABILITY.—No liability of any nature shall accrue to be asserted against any official of any governmental unit of Nevada premised solely upon the acceptance or use of benefits under this title.

“SEC. 304. RESTRICTIONS ON USE OF FUNDS.

“None of the funding provided under this title may be used—

“(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

“(2) for litigation purposes; and

“(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

“SEC. 305. LAND CONVEYANCES.

“(a) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after the effective date of the construction authorization issued by the Commission for the repository under section 206(g), all right, title and interest of the United States in the property described in subsection (b), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Nye, Nevada, unless the county notifies the Secretary of the Interior or the head of such other appropriate agency in writing within 60 days of such date that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Nye County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

“(b) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, and on file with the Secretary shall be conveyed under subsection (a) to the County of Nye, Nevada:

Map 1: Proposed Pahrump Industrial Park Site

Map 2: Proposed Lathrop Wells (Gate 510) Industrial Park Site

Map 3: Pahrump Landfill Sites

Map 4: Amargosa Valley Regional Landfill Site

Map 5: Amargosa Valley Municipal Landfill Site

Map 6: Beatty Landfill/Transfer Station Site

Map 7: Round Mountain Landfill Site

Map 8: Tonopah Landfill Site

Map 9: Gabbs Landfill Site.

“(c) CONSTRUCTION.—The maps and legal descriptions of special conveyances referred to in subsection (b) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

“(d) EVIDENCE OF TITLE TRANSFER.—Upon the request of the County of Nye, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

“TITLE IV—FUNDING AND ORGANIZATION

“SEC. 401. PROGRAM FUNDING.

“(a) CONTRACTS.—

“(1) AUTHORITY OF THE SECRETARY.—In the performance of the Secretary's functions

under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such waste or spent fuel. Such contracts shall provide for payment of fees to the Secretary in the amounts set under paragraphs (2), (3), and (4), sufficient to offset expenditures described in subsection (c)(2). Subsequent to the enactment of the Nuclear Waste Policy Act of 1997, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act: *Provided*, That the Secretary shall consent to an amendment to such contracts as necessary to implement the provisions of this Act.

“(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

“(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus the percentage of such appropriation required to be funded by the Federal Government pursuant to section 403.

“(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

“(C) For purposes of this paragraph, the term ‘offsetting collection period’ means—

“(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

“(ii) the period on and after October 1, 2006.

“(3) NUCLEAR WASTE MANDATORY FEE.—

“(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

“(i) 1.0 mill per kilowatt-hour generated and sold, minus

“(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

Provided, That if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

“(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal Government that are specified in subsection (c)(2). In making this determination the Secretary shall—

“(i) rely on the ‘Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program’, dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the Government under subsection (c)(2);

“(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent ‘Annual Energy Outlook’ published by such Administration, in making any estimate of future nuclear power generation; and

“(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

“(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

“(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

“(4) ONE-TIME FEE.—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 January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

“(5) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403, the Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

“(6) EXPEDITED PROCEDURES FOR APPROVAL OF CHANGES TO THE NUCLEAR WASTE MANDATORY FEE.—

“(A) At any time after the Secretary transmits a proposal for a fee adjustment under paragraph (3)(C) of this subsection, a joint resolution may be introduced in either House of Congress, the matter after the resolving clause of which is as follows: ‘That Congress approves the adjustment to the basis for the nuclear waste mandatory fee, submitted by the Secretary on _____’. (The blank space being appropriately filled in with a date.)

“(B) A joint resolution described in subparagraph (A) shall be referred to the committees in each House of Congress with jurisdiction.

“(C) In the Senate, if the committee to which is referred a joint resolution described in subparagraph (A) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the date on which it is introduced, such committee may be discharged from further consider-

ation of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

“(D) In the Senate, the procedure under section 802(d) of title 5, United States Code, shall apply to a joint resolution described under subparagraph (A).

“(7) POINTS OF ORDER.—Notwithstanding any other provision of this Act, no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this Act.

“(8) LEVEL OF ANNUAL FEE.—Notwithstanding any other provision of this Act, except as provided in paragraph (3)(C), the level of annual fee for each civilian nuclear power reactor shall not exceed 1.0 mill per kilowatt-hour of electricity generated and sold.

“(b) ADVANCE CONTRACTING REQUIREMENT.—

“(1) IN GENERAL.—

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

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

“(2) DISPOSAL IN REPOSITORY.—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 the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

“(3) ASSIGNMENT.—The rights and duties of contract holders are assignable.

“(c) NUCLEAR WASTE FUND.—

“(1) IN GENERAL.—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

“(A) the existing balance in the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1997; and

“(B) all receipts, proceeds, and recoveries realized under subsections (a)(3), (a)(4), and (c)(3) subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997, which shall be deposited in the Nuclear Waste Fund immediately upon their realization.

“(2) PURPOSES OF THE NUCLEAR WASTE FUND AND THE NUCLEAR WASTE OFFSETTING COLLECTION.—Subject to subsections (d) and (e) of this section, the Secretary may make expenditures from the Nuclear Waste Fund or the Nuclear Waste Offsetting Collection in section 401(a)(2) only for—

“(A) identification, development, design, licensing, construction, acquisition, operation, modification, replacement, decommissioning, and post-decommissioning maintenance and monitoring of the integrated management system or parts thereof;

“(B) the administrative cost of the integrated management system, including the Office of Civilian Radioactive Waste Management under section 402, the Nuclear Waste Technical Review Board under section 602, and those offices under the Commission involved in regulation of the integrated management system or parts thereof; and

“(C) the provision of assistance and benefits to States, units of general local government, nonprofit organizations, joint labor-management organizations, and Indian tribes under title II of this Act.

“(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

“(A) IN GENERAL.—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

“(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear 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—

“(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund;

“(ii) 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; and

“(iii) interest earned on these obligations shall be credited to the Nuclear Waste Fund.

“(C) EXEMPTION.—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

“(d) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget annually 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 shall consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

“(e) APPROPRIATIONS.—The Secretary may make expenditures from the Nuclear Waste Fund and the Nuclear Waste Offsetting Collection, subject to appropriations, which shall remain available until expended.

“SEC. 402. 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.

“SEC. 403. FEDERAL CONTRIBUTION.

“(a) ALLOCATION.—No later than one year from the date of enactment of the Nuclear Waste Policy Act of 1997, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors shall include—

“(1) an appropriate portion of the costs associated with research and development activities with respect to development of an interim storage facility and repository; and

“(2) as appropriate, interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

“(b) APPROPRIATION REQUEST.—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

“(c) REPORT.—In conjunction with the annual report submitted to Congress under section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, requiring management in the integrated management system.

“(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

“TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

“SEC. 501. COMPLIANCE WITH OTHER LAWS.

“(a) CONFLICTING REQUIREMENTS.—Except as provided in subsection (b) of this section, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

“(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this Act or a regulation prescribed under this Act is not possible; or

“(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this Act or a regulation prescribed under this Act.

“(b) SUBJECTS EXPRESSLY PREEMPTED.—Except as otherwise provided in this Act, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this Act or a regulation prescribed under this Act, is preempted:

“(1) The designation, description, and classification of spent fuel or high-level radioactive waste.

“(2) The packing, repacking, handling, labeling, marking, and placarding of spent nuclear fuel or high-level radioactive waste.

“(3) The siting, design, or licensing of—

“(A) an interim storage facility;

“(B) a repository;

“(C) the capability to conduct intermodal transfer of spent nuclear fuel under section 201.

“(4) The withdrawal or transfer of the interim storage facility site, the intermodal transfer site, or the repository site to the Secretary of Energy.

“(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of packaging or a container represented, marked, certified, or sold as qualified for use in transporting or storing spent nuclear fuel or high-level radioactive waste.

“SEC. 502. JUDICIAL REVIEW OF AGENCY ACTIONS.

“(a) JURISDICTION OF THE UNITED STATES COURTS OF APPEALS.—

“(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, 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 Act;

“(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this Act;

“(C) challenging the constitutionality of any decision made, or action taken, under any provision of this Act; or

“(D) for review of any environmental impact statement prepared or environmental assessment pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

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

“(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days 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 no later than 180 days after the date such party acquired actual or constructive knowledge or such decision, action, or failure to act.

“(c) APPLICATION OF OTHER LAW.—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

“SEC. 503. LICENSING OF FACILITY EXPANSIONS AND TRANSHIPMENTS.

“(a) ORAL ARGUMENT.—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to

another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

“(b) ADJUDICATORY HEARING.—

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

“(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

“(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

“(2) DETERMINATION.—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 to 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) APPLICATION.—The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

“(4) CONSTRUCTION.—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.

“SEC. 504. 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.

“SEC. 505. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.

“(a) FINANCIAL ARRANGEMENTS.—

“(1) STANDARDS AND INSTRUCTIONS.—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

“(2) BONDING, SURETY, OR OTHER FINANCIAL ARRANGEMENTS.—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) AUTHORITY OF SECRETARY.—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) PROTECTION.—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

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

“SEC. 506. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

“The Commission is authorized and directed to promulgate regulations, or other appropriate 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 Commission 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.

“SEC. 507. EMPLACEMENT SCHEDULE.

“(a) The emplacement schedule shall be implemented in accordance with the following:

“(1) Emplacement priority ranking shall be determined by the Department's annual ‘Acceptance Priority Ranking’ report.

“(2) Subject to the conditions contained in the license for the interim storage facility, the Secretary's spent fuel and high-level radioactive waste emplacement rate shall be no less than the following: 1,200 MTU in fiscal year 2003 and 1,200 MTU in fiscal year 2004; 2,000 MTU in fiscal year 2005 and 2000 MTU in fiscal year 2006; 2,700 MTU in fiscal year 2007; and 3,000 MTU annually thereafter.

“(3) Subject to the conditions contained in the license for the interim storage facility, of the amounts provided for in paragraph (2) for each year, not less than one-sixth shall be—

“(A) spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors that have permanently ceased operation on or before the date of enactment of the Nuclear Waste Policy Act of 1997.

“(B) spent nuclear fuel from foreign research reactors, as necessary to promote nonproliferation activities; and

“(C) spent nuclear fuel, including spent nuclear fuel from naval reactors, and high-level radioactive waste from research or atomic energy defense activities: *Provided, however,* That the Secretary shall accept not less than five percent of the total quantity of fuel and high-level radioactive waste accepted in any year from the categories of radioactive materials described in subparagraphs (B) and (C).

“(b) If the Secretary is unable to begin emplacement by June 30, 2003 at the rates speci-

fied in subsection (a), or if the cumulative amount emplaced in any year thereafter is less than that which would have been accepted under the emplacement rate specified in subsection (a), the Secretary shall, as a mitigation measure, adjust the emplacement schedule upward such that within 5 years of the start of emplacement by the Secretary—

“(1) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had begun emplacement in fiscal year 2003, and

“(2) thereafter the emplacement rate is equivalent to the rate that would be in place pursuant to subsection (a) above if the Secretary had commenced emplacement in fiscal year 2003.

“SEC. 508. TRANSFER OF TITLE.

“(a) Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.

“(b) No later than 6 months following the date of enactment of the Nuclear Waste Policy Act of 1997, the Secretary is authorized to accept all spent nuclear fuel withdrawn from Dairyland Power Cooperative's La Crosse Reactor and, upon acceptance, shall provide Dairyland Power Cooperative with evidence of the title transfer. Immediately upon the Secretary's acceptance of such spent nuclear fuel, the Secretary shall assume all responsibility and liability for the interim storage and permanent disposal thereof and is authorized to compensate Dairyland Power Cooperative for any costs related to operating and maintaining facilities necessary for such storage from the date of acceptance until the Secretary removes the spent nuclear fuel from the La Crosse Reactor site.

“SEC. 509. DECOMMISSIONING PILOT PROGRAM.

“(a) AUTHORIZATION.—The Secretary is authorized to establish a Decommissioning Pilot Program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas.

“(b) FUNDING.—No funds from the Nuclear Waste Fund may be used for the Decommissioning Pilot Program.

“SEC. 510. WATER RIGHTS.

“(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

“(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands.

“(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

“SEC. 511. DRY STORAGE TECHNOLOGY.

“The Commission is authorized to establish, by rule, procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. Nothing in this Act shall affect any such procedures, or any licenses or approvals issued pursuant to such procedures in effect on the date of enactment of the Nuclear Waste Policy Act of 1997.

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"SEC. 601. DEFINITIONS.

"For purposes of this title—

"(1) CHAIRMAN.—The term 'Chairman' means the Chairman of the Nuclear Waste Technical Review Board.

"(2) BOARD.—The term 'Board' means the Nuclear Waste Technical Review Board continued under section 602.

"SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

"(a) CONTINUATION OF THE NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of the Nuclear Waste Policy Act of 1997, shall continue in effect subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997.

"(b) MEMBERS.—

"(1) NUMBER.—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

"(2) CHAIR.—The President shall designate a member of the Board to serve as Chairman.

"(3) NATIONAL ACADEMY OF SCIENCES.—

"(A) NOMINATIONS.—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) VACANCIES.—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) NOMINEES.—

"(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 representatives of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.

"(4) VACANCIES.—Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) TERMS.—Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.

"SEC. 603. FUNCTIONS.

"The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

"(1) site characterization activities; and

"(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

"SEC. 604. 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) RESPONSE TO INQUIRIES.—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) AVAILABILITY OF DRAFTS.—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.

"SEC. 605. 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.

"SEC. 606. STAFF.

"(a) CLERICAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—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) PROVISIONS OF TITLE 5.—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 3 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—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) NUMBER.—Not more than 10 professional staff members may be appointed under this subsection.

"(3) TITLE 5.—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 for GS-18 of the General Schedule.

"SEC. 607. 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 and the Librarian of Congress 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.

"SEC. 608. REPORT.

"The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations.

"SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

"Notwithstanding section 401(d), and subject to section 401(e), there are authorized to be appropriated for expenditures from amounts in the Nuclear Waste Fund under section 401(c) such sums as may be necessary to carry out the provisions of this title.

"SEC. 610. TERMINATION OF THE BOARD.

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

"TITLE VII—MANAGEMENT REFORM

"SEC. 701. MANAGEMENT REFORM INITIATIVES.

"(a) IN GENERAL.—The Secretary is directed to take actions as necessary to improve the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

"(b) AUDITS.—

"(1) STANDARD.—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

"(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the enactment of the Nuclear Waste Policy Act of 1997.

"(3) TIME.—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

"(4) PUBLIC DOCUMENTS.—All audit reports shall be public documents and available to any individual upon request.

"(c) VALUE ENGINEERING.—The Secretary shall create a value engineering function within the Office of Civilian Radioactive Waste Management that reports directly to the Director, which shall carry out value engineering functions in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects.

"(d) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining

site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

“SEC. 702. REPORTING.

“(a) INITIAL REPORT.—Within 180 days of enactment of this section, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

“(1) an analysis of the Secretary’s progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste in accordance with the emplacement schedule under section 507;

“(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary’s obligations under this Act and the contracts;

“(3) a detailed description of the Secretary’s contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and

“(4) an analysis by the Secretary of its funding needs for the five fiscal years beginning after the fiscal year in which the date of enactment of the Nuclear Waste Policy Act of 1997 occurs.

“(b) ANNUAL REPORTS.—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of—

“(1) any modifications to the Secretary’s schedule and timeline for meeting its obligations under this Act;

“(2) the reasons for such modifications, and the status of the implementation of any of the Secretary’s contingency plans; and

“(3) the Secretary’s analysis of its funding needs for the ensuing 5 fiscal years.

“TITLE VIII—MISCELLANEOUS

“SEC. 801. SENSE OF THE SENATE.

“It is the sense of the Senate that the Secretary and the petitioners in *Northern States Power (Minnesota), v. Department of Energy*, pending before the United States Court of Appeals for the District of Columbia Circuit (No. 97-1064), should enter into a settlement agreement to resolve the issues pending before the court in that case prior to the date of enactment of the Nuclear Waste Policy Act of 1997.

“SEC. 802. EFFECTIVE DATE.

“Except as otherwise provided in this Act, this Act shall become effective one day after enactment.”.

SEC. 2. SENSE OF THE SENATE REGARDING ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

It is the sense of the Senate that elderly and disabled legal immigrants who are unable to work should receive assistance essential to their well-being, and that the President, Congress, the States, and faith-based and other organizations should continue to work together toward that end.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I take this opportunity to thank those who have worked so hard on this piece of legislation, Karen and Gary and sev-

eral others, as well as my colleagues on the other side, professional staff, and the two Senators from Nevada. It has been a good debate, and I think we send a message to the administration relative to the reality of whether we are going to leave the waste on 80 sites in 41 States or do something about it. So we will look forward to the House action.

Again, I thank all my colleagues who participated.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I extend my appreciation to the manager of the bill, the Senator from Alaska, who has been a gentleman during these deliberations these past 9 days. It is a hotly contested issue. We hope there is the ability to use reason in this issue, to go ahead and site the permanent repository wherever it should be and use good science to judge. But I do extend my appreciation to Senator MURKOWSKI and his staff for the courtesies they have extended to the Senators from Nevada and look forward to working with him in the future on matters of importance.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I extend my thanks to the chairman of the Energy and Natural Resources Committee for the tremendous work he has done, very successful work on S. 104. We have picked up votes. Today we had the votes in the Senate to override a Presidential veto, and we saw that action going on right here in the well.

I appreciate the work my colleagues from Nevada have done. They have certainly maintained my respect for them and I hope likewise. But clearly this Nation needs a permanent repository, and S. 104 moves us in that direction. We will now move to the House. I think the value is that the administration now needs to clearly recognize that the Congress of the United States in a strong bipartisan way wants to resolve this issue and tell the American people it will honor its commitments and its contracts to resolve this major environmental issue.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, I say to the chairman, the floor manager, we have had a spirited and prolonged debate. That is in the best tradition of the Senate. I thank him for his personal courtesies in terms of procedure in the Chamber so that we were given an opportunity to fully express and develop our views.

Let me say to my colleagues who voted against this bill, I know that for a number of them it was particularly difficult. That vote was in the interest of good science. I appreciate their courage. I appreciate their support. Senator ROCKEFELLER could not be here this morning because he has another mat-

ter. We appreciate his support, and he reaffirmed his support to us in a message earlier today. Several of my colleagues indicated they would be with us to support us on the veto override if it reaches that point. So I think what we have done is to allow science and logic to proceed in the development of what is a responsible nuclear waste policy rather than to respond to the emotions of the occasion. I appreciate very much my colleagues who stayed with us on this important issue and the floor leader and the chairman for his courtesies in permitting us to proceed in an orderly fashion.

I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. I do not want to prolong this any further, but I must also join in congratulating the chairman of the Energy and Natural Resources Committee, the Senator from Alaska. He has done a great job. He spent a lot of time on this bill, both this year and last year. He has been patient. He has done a magnificent job.

I also commend the Senator from Idaho [Mr. CRAIG] for his work, and also again express my appreciation to the Senators from Nevada. I know it is a very difficult issue for them. They have been vigorous in their position on behalf of the people in their State to oppose this legislation but have also been gentlemen about it, and I extend my appreciation to them.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I also rise to commend my colleagues on both sides of the aisle who have participated in the debate that has just now been completed. This is really the way it ought to be. This was a very difficult, emotional, contentious issue, an issue that involved Republicans and Democrats on both sides of the aisle on either side of the issue. It is appropriate that at times like this we commend both sides, both leaders for their civility and for the way in which this issue was presented to this body. It was a good debate, a debate in my view that brought out the very complex nature of this legislation.

So on behalf of all of my colleagues on this side of the aisle, I commend Senator MURKOWSKI and the senior Senator from Idaho [Mr. CRAIG], and especially our colleagues from Nevada, Mr. REID and Mr. BRYAN. They all represented themselves well. They did the debate proud. I think it portends well for future debates on just as complex and controversial issues. I commend our Senators and appreciate very much the manner with which they conducted themselves in the last week.

I yield the floor.