



Department of Energy  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

0056055

02-RCA-041

NOV 19 2001

Mr. Michael A. Wilson, Program Manager  
Nuclear Waste Program  
State of Washington  
Department of Ecology  
1315 W. Fourth Avenue  
Kennewick, Washington 99336

RECEIVED  
JAN 03 2002

EDMC

Dear Mr. Wilson:

REFERENCE MATERIALS REQUESTED BY STATE OF WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY)

Per Ecology request, attached are the following reference materials related to M-91 negotiations:

**Reference Materials:**

- Calvert Cliff v. AEC, 449 F.2d 1109, at 1112.
- Vermont Yankee v. NRDC,
- Waste Isolation Pilot Plant Land Withdrawal Act, P.L. 104-201, section 3188 (note issue paper cites 3168 incorrectly).
- Senate Congressional Record, S6588, S6590, and S6591.
- 51 FR 40572, at 40577.
- 54 FR 41566, at 41566 and 41567.
- 55 FR 8666, at 8666 (page 6, Lexis print-out).
- 61 FR 60704, at 60704.
- 55 FR 8666, at 8666.

If you have any questions, please contact Ellen B. Dagan, of my staff, on (509) 376-3811.

Sincerely,

Joel Hebdon, Director  
Regulatory Compliance and Analysis Division

RCA:EBD

Attachment

cc: See Page 2

Mr. Michael A. Wilson  
02-RCA-041

-2-

NOV 19 2001

cc w/attach:

L. J. Cusack, Ecology

R. Gay, CTUIR

J. S. Hertzell, FHI

F. Jamison, Ecology

R. Jim, YN

O. S. Kramer, FHI

T. M. Martin, HAB

E. J. Murphy-Fitch, FHI

K. Niles, Oregon Energy

D. R. Sherwood, EPA

P. Sobotta, NPT

R. F. Stanley, Ecology

**Administrative Record**

fail to satisfy the rigor demanded by NEPA. The Commission, on the other hand, contends that the vagueness of the NEPA mandate and delegation leaves much room for discretion and that the rules challenged by petitioners fall well within the broad scope of the Act. We find the policies embodied in NEPA to be a good deal clearer and more demanding than does the Commission. We conclude that the Commission's procedural rules do not comply with the congressional policy. Hence we remand these cases for further rule making.

## I

We begin our analysis with an examination of NEPA's structure and approach and of the Atomic Energy Commission rules which are said to conflict with the requirements of the Act. The relevant portion of NEPA is Title I, consisting of five sections.<sup>3</sup> Section 101 sets forth the Act's basic substantive policy: that the federal government "use all practicable means and measures" to protect environmental values. Congress did not establish environmental protection as an exclusive goal; rather, it desired a reordering of priorities, so that environmental costs and benefits will assume their proper place along with other considerations. In Section 101(b), imposing an explicit duty on federal officials, the Act provides that "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy," to avoid environmental degradation, preserve "historic, cultural, and natural" resources, and promote "the widest range of beneficial uses of the environment without \* \* \*

undesirable and unintended consequences."

Thus the general substantive policy of the Act is a flexible one. It leaves room for a responsible exercise of discretion and may not require particular substantive results in particular problematic instances. However, the Act also contains very important "procedural" provisions—provisions which are designed to see that all federal agencies do in fact exercise the substantive discretion given them. These provisions are not highly flexible. Indeed, they establish a strict standard of compliance.

\* NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department. The Atomic Energy Commission, for example, had continually asserted, prior to NEPA, that it had no statutory authority to concern itself with the adverse environmental effects of its actions.<sup>4</sup> Now, however, its hands are no longer tied. It is not only permitted, but compelled, to take environmental values into account. Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to consider environmental issues just as they consider other matters within their mandates. This compulsion is most plainly stated in Section 102. There, "Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act \* \* \*." Congress also "authorizes and directs" that "(2) all agencies of the Federal Government shall" follow certain rigorous procedures in considering environmental values.<sup>5</sup> Senator Jackson,

3. The full text of Title I is printed as an appendix to this opinion.

4. Before the enactment of NEPA, the Commission did recognize its separate statutory mandate to consider the specific radiological hazards caused by its actions; but it argued that it could not consider broader environmental impacts. Its position was upheld in *State of New Hamp-*

*shire v. Atomic Energy Commission*, 1 Cir., 406 F.2d 170, cert. denied, 395 U.S. 962, 89 S.Ct. 2100, 23 L.Ed.2d 748 (1969).

5. Only once—in § 102(2) (B)—does the Act state, in terms, that federal agencies must give full "consideration" to environmental impact as part of their decision making processes. However, a require-

le in the Commis-  
sion. Indeed, all  
there. Further-  
hat shortly after  
al decision, ACRS  
ified its "generic  
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Consumers Pow-  
erment run riot."  
). 76-528, p. 37.

noting that we  
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court did here.  
might be able to  
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upport a court's  
o take that step  
airing the ACRS  
, understandable  
safety concern.

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The proceedings  
hearings them-  
hen nullify that  
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which problems  
sed at length in  
the public, bor-  
Nuclear energy  
safe source of

Cite as 98 S.Ct. 1219 (1978)

power or it may not. But Congress has  
made a choice to at least try nuclear en-  
ergy, establishing a reasonable review process  
in which courts are to play only a limited  
role. The fundamental policy questions ap-  
propriately resolved in Congress and in the  
state legislatures are not subject to reexa-  
mination in the federal courts under the  
guise of judicial review of agency action.  
Time may prove wrong the decision to de-  
velop nuclear energy, but it is Congress or  
the States within their appropriate agencies  
which must eventually make that judg-  
ment. In the meantime courts should per-  
form their appointed function. NEPA does  
set forth significant substantive goals for  
the Nation, but its mandate to the agencies  
is essentially procedural. See 42 U.S.C.  
§ 4332. See also *Aberdeen & Rockfish R.  
Co. v. SCRAP*, 422 U.S., at 319, 95 S.Ct., at  
2355. It is to insure a fully informed and  
well-considered decision, not necessarily a  
decision the judges of the Court of Appeals  
or of this Court would have reached had  
they been members of the decisionmaking  
unit of the agency. Administrative deci-  
sions should be set aside in this context, as  
in every other, only for substantial proced-  
ural or substantive reasons as mandated  
by statute, *Consolo v. FMC*, 383 U.S. 607,  
620, 86 S.Ct. 1018, 1026, 16 L.Ed.2d 131  
(1966), not simply because the court is un-  
happy with the result reached. And a sin-  
gle alleged oversight on a peripheral issue,  
urged by parties who never fully cooperated  
or indeed raised the issue below, must not  
be made the basis for overturning a decision  
properly made after an otherwise exhaus-  
tive proceeding.

*Reversed and remanded.*

Mr. Justice BLACKMUN and Mr. Justice  
POWELL took no part in the consideration  
or decision of these cases.

435 U.S. 1304, 55 L.Ed.2d 751

Richard VETTERLI et al., Applicants,

v.

UNITED STATES DISTRICT COURT  
FOR the CENTRAL DISTRICT OF  
CALIFORNIA et al.

No. A-830 (77-1395).

April 10, 1978.

Application was made by city board of  
education members to Mr. Justice Rehn-  
quist, as Circuit Justice, for stay of order  
issued by the United States District Court  
for the Central District of California claim-  
ing that portions of the District Court's  
order violated decision and judgment of the  
Supreme Court. Mr. Justice Rehnquist held  
that the District Court's order in a desegre-  
gation case did not conflict with the Su-  
preme Court's prior decision by placing  
board members under any obligation to an-  
nually reassign students so that there was  
no school "with a majority of any minority  
students."

Application denied.

Schools and School Districts ⇐ 154

Order of the district court, which  
should not be thought by later cryptic and  
off-handed remark to have reimposed obli-  
gation it specifically and unequivocally  
eliminated just a few months before pursu-  
ant to direction of the Supreme Court, re-  
quiring city board of education members to  
refrain from making any changes in method  
of student assignments in effect well after  
"no majority" requirement was eliminated  
did not conflict with previous decision of  
the Supreme Court by placing board mem-  
bers under any obligation to annually reas-  
sign students so that there was no school  
"with a majority of any minority students."  
(Per Mr. Justice Rehnquist as Circuit Jus-  
tice.)



constitute a defense with regard to any failure to comply with regulated Agreement activities (e.g., milestones).

**ARTICLE L. COMPLIANCE WITH APPLICABLE LAWS**

\*156. All actions required to be taken pursuant to this Agreement shall be taken in accordance with the requirements of all applicable federal and state laws and regulations. All Parties acknowledge that such compliance may impact schedules to be performed under this Agreement. Extensions of schedules shall be granted for good cause as provided in Article XL and in accordance with the procedures specified in Section 12.0 of the Action Plan.

157. In any judicial challenge arising under this Agreement the court shall apply the law in effect at the time of the challenge, including any amendments to RCRA or CERCLA enacted after entry of this agreement. Where the law governing this agreement has been amended or clarified, any provision of this agreement which is inconsistent with such amendment or clarification shall be modified to conform to such change or clarification.

**ARTICLE LI. EFFECTIVE DATE**

158. This Agreement is effective upon signature by all Parties.

**ARTICLE LII. ATTACHMENT 1**

Attachment 1 to this Agreement is a letter dated February 26, 1989, from Donald Carr, Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, to Christine Gregoire, Director, Department of Ecology. This letter sets forth the Department of Justice's position on the enforceability of this Agreement.

# 4

# NATIONAL ENVIRONMENTAL POLICY

## NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 [NEPA § \_\_\_\_\_]

(42 U.S.C.A. §§ 4321 to 4370f)

### CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

Sec. 4321. Congressional declaration of purpose.

#### SUBCHAPTER I—POLICIES AND GOALS

- 4331. Congressional declaration of national environmental policy.
- 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.
- 4333. Conformity of administrative procedures to national environmental policy.
- 4334. Other statutory obligations of agencies.
- 4335. Efforts supplemental to existing authorizations.

#### SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

- 4341. Reports to Congress; recommendations for legislation.
- 4342. Establishment; membership; Chairman; appointments.
- 4343. Employment of personnel, experts and consultants.
- 4344. Duties and functions.
- 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.
- 4346. Tenure and compensation of members.
- 4346a. Travel reimbursement by private organizations and Federal, State, and local governments.
- 4346b. Expenditures in support of international activities.
- 4347. Authorization of appropriations.

#### SUBCHAPTER III—MISCELLANEOUS PROVISIONS

- 4361. Repealed.
- 4361a. Repealed.
- 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.
- 4361c. Staff management.
- 4362. Task Force on Environmental Cancer and Heart and Lung Disease.
- 4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease.
- 4363. Continuing and long-term environmental research and development.
- 4363a. Pollution control technologies demonstrations.
- 4364. Expenditure of funds for research and development related to regulatory program activities.

Sec. SUBCHAPTER III—MISCELLANEOUS PROVISIONS—Cont'd

- 4365. Science Advisory Board.
- 4366. Identification and coordination of research, development, and demonstration activities.
- 4366a. Development of data base of environmental research articles indexed by geographic location.
- 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.
- 4368. Grants to qualified citizens groups.
- 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
- 4368b. General assistance program.
- 4369. Miscellaneous reports.
- 4369a. Reports on environmental research and development activities of the Agency.
- 4370. Reimbursement for use of facilities.
- 4370a. Assistant Administrators of Environmental Protection Agency.
- 4370b. Availability of fees and charges to carry out Agency programs.
- 4370c. Environmental Protection Agency fees.
- 4370d. Availability of funding for economically and socially disadvantaged individuals.
- 4370e. Working Capital Fund in the Treasury.
- 4370f. Availability of appropriations.

§ 4321. Congressional declaration of purpose

[NEPA § 2]

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.  
(Pub.L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)

#### HISTORICAL AND STATUTORY NOTES

**Transfer of Functions**  
Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other

official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System, abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub.L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

#### Short Title

1970 Acts. Section 1 of Pub.L. 91-190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

#### Necessity of Military Low-Level Flight Training to Protect National Security and Enhance Military Readiness.

Pub.L. 106-398, § 1 [Div. A, Title III, § 317], Oct. 30, 2000, 114 Stat. 1654, 1654—, provided that: "Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) [Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified principally to this chapter; see Tables for complete classification] or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights."

#### Emergency-Preparedness Functions

For assignment of certain emergency preparedness functions to the Administrator of the Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 2251 of Appendix to Title 50, War and National Defense.

#### Pollution Prosecution

Pub.L. 101-593, Title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

##### "Sec. 201. Short Title

"This title [this note] may be cited as the 'Pollution Prosecution Act of 1990'."

##### "Sec. 202. EPA Office of Criminal Investigation

"(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

"(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

"(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

"(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

"(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

"(5) beginning October 1, 1995, is not less than 200.

"(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

"(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined in 2102 of title 5 U.S.C. [section 2102 of Title 5, Government Organization and Employees] or a career reserve position as defined in 3132(A) of title 5 U.S.C. [section 3132(A) of Title 5] and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

##### "Sec. 203. Civil Investigators

"The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

##### "Sec. 204. National Training Institute

"The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

##### "Sec. 205. Authorization

"For the purposes of carrying out the provisions of this Act, there is authorized to be appropriated to the Environmental Protection Agency \$13,000,000 for fiscal year 1991, \$18,000,000 for fiscal year 1992, \$20,000,000 for fiscal year 1993, \$26,000,000 for fiscal year 1994, and \$33,000,000 for fiscal year 1995."

## SUBCHAPTER I—POLICIES AND GOALS

### § 4331. Congressional declaration of national environmental policy

#### [NEPA § 101]

(a) Creation and maintenance of conditions under which man and nature can exist in productive harmony

The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial

and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

**(b) Continuing responsibility of Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources**

In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

**(c) Responsibility of each person to contribute to preservation and enhancement of environment**

The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub.L. 91-190, Title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

**HISTORICAL AND STATUTORY NOTES**

**Commission on Population Growth and the American Future**

Pub.L. 91-213, §§ 1 to 9, Mar. 16, 1970, 84 Stat. 67-69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regard-

ing a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub.L. 91-213.

**§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

[NEPA § 102]

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action;
- (ii) the responsible Federal official furnishes guidance and participates in such preparation;
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption; and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.<sup>1</sup>

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub.L. 91-190, Title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub.L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

<sup>1</sup> So in original. The period probably should be a semicolon.

#### HISTORICAL AND STATUTORY NOTES

##### Certain Commercial Space Launch Activities

Pub.L. 104-88, Title IV, § 401, Dec. 29, 1995, 109 Stat. 955, provided that: "The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49, United States Code [section 70101 et seq. of Title 49, Transportation], shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

"(1) the Department of the Army has issued a permit for the activity; and

"(2) the Army Corps of Engineers has found that the activity has no significant impact."

[Section 401 of Pub.L. 104-88 effective Jan. 1, 1996, see section 2 of Pub.L. 104-88, set out as a note under section 701 of Title 49, Transportation.]

#### § 4333. Conformity of administrative procedures to national environmental policy

[NEPA § 103]

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity

with the intent, purposes, and procedures set forth in this chapter.

(Pub.L. 91-190, Title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

**§ 4334. Other statutory obligations of agencies**  
[NEPA § 104]

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub.L. 91-190, Title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

**§ 4335. Efforts supplemental to existing authorizations**

[NEPA § 105]

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub.L. 91-190, Title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL  
ON ENVIRONMENTAL  
QUALITY

**§ 4341. Reports to Congress; recommendations for legislation**

[NEPA § 201]

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs

and activities, together with recommendations for legislation.

(Pub.L. 91-190, Title II, § 201, Jan. 1, 1970, 83 Stat. 854.)

**§ 4342. Establishment; membership; Chairman; appointments**

[NEPA § 202]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub.L. 91-190, Title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

HISTORICAL AND STATUTORY NOTES

Council on Environmental Quality

Pub.L. 106-377, § 1(a)(1) [Title III], Oct. 27, 2000, 114 Stat. 1441, 1441A—, provided in part: "That notwithstanding section 202 of the National Environmental Policy Act of 1970 [sic; probably means section 202 of the National Environmental Policy Act of 1969, which enacted this section], the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council."

Similar provisions were contained in the following prior appropriations Acts:

Pub.L. 106-74, Title III, Oct. 20, 1999, 113 Stat. 1084.

Pub.L. 105-276, Title III, Oct. 21, 1998, 112 Stat. 2500.

Pub.L. 105-65, Title III, Oct. 27, 1997, 111 Stat. 1375.

**§ 4343. Employment of personnel, experts and consultants**

[NEPA § 203]

(a) Authority

The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof).

(b) Voluntary and uncompensated services

Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub.L. 91-190, Title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub.L. 94-52, § 2, July 3, 1975, 89 Stat. 258; Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067.)

HISTORICAL AND STATUTORY NOTES

Codifications

In subsec. (b), "section 1342 of Title 31" was substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 4344. Duties and functions  
[NEPA § 204]

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub.L. 91-190, Title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

So much of the functions of the Council on Environmental Quality under par. (4) of this section as pertains to ecological systems was transferred to the Administrator of the Environmental Protection Agency by 1970 Reorg. Plan No. 3, Section 2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out under section 4321 of this title.

§ 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives  
[NEPA § 205]

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub.L. 91-190, Title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

HISTORICAL AND STATUTORY NOTES

References in Text

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

Citizens' Advisory Committee on Environmental Quality

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in Appendix 2 to Title 5, Government Organization and Employees.

§ 4346. Tenure and compensation of members  
[NEPA § 206]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at

the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or<sup>1</sup> the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub.L. 91-190, Title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

<sup>1</sup> So in original. Probably should be "of".

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments

[NEPA § 207]

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

(Pub.L. 91-190, Title II, § 207, as added Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4346b. Expenditures in support of international activities

[NEPA § 208]

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

(Pub.L. 91-190, Title II, § 208, as added Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4347. Authorization of appropriations

[NEPA § 209]

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter. (Pub.L. 91-190, Title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856; renumbered § 209, Pub.L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

### SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 4361. Repealed. Pub.L. 104-66, Title II, § 2021(k)(1), Dec. 21, 1995, 109 Stat. 728

#### HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 94-475, § 5, Oct. 11, 1976, 90 Stat. 2071, related to a plan for research, development, and demonstration.

§ 4361a. Repealed. Pub.L. 104-66, Title II, § 2021(k)(2), Dec. 21, 1995, 109 Stat. 728

#### HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 95-155, § 4, Nov. 8, 1977, 91 Stat. 1258, related to budget projections in annual revisions of the plan for research, development, and demonstration.

§ 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency shall implement the recommendations of the report prepared for the House Committee on Science and Technology entitled "The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report", unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementation of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361 of this title.

(Pub.L. 95-155, § 10, Nov. 8, 1977, 91 Stat. 1262.)

#### HISTORICAL AND STATUTORY NOTES

##### Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

§ 4361c. Staff management

(a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency's research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may con-

tinue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

**(b) Post-doctoral research fellows**

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in accordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

**(c) Non-Government research associates**

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

**(d) Women and minority groups**

For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Pub.L. 95-477, § 6, Oct. 18, 1978, 92 Stat. 1510.)

**HISTORICAL AND STATUTORY NOTES**

**Codifications**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1969, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**§ 4362. Task Force on Environmental Cancer and Heart and Lung Disease**

**(a) Establishment**

Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the "Task Force"). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sci-

ences, and shall be chaired by the Administrator (or his delegate).

**(b) Functions**

The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually thereafter, on the problems and progress in carrying out this section.

(Pub.L. 95-95, Title IV, § 402, Aug. 7, 1977, 91 Stat. 791; Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

**HISTORICAL AND STATUTORY NOTES**

**Codifications**

Section was enacted as part of the Clean Air Act Amendments of 1977 and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**Effective and Applicability Provisions**

1977 Acts. Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub.L. 95-95, set out as a note under section 7401 of this title.

**Change of Name**

"Department of Health and Human Services" was substituted for "Department of Health, Education, and Welfare" in subsec. (b)(4), pursuant to section 509(b) of Pub.L. 96-88, which is classified to section 3508(b) of Title 20, Education.

**§ 4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease**

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Pub.L. 95-623, § 9, Nov. 9, 1978, 92 Stat. 3455.)

## HISTORICAL AND STATUTORY NOTES

## Codifications

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978 and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## Change of Name

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub.L. 102-531, Title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

**§ 4363.** Continuing and long-term environmental research and development

The Administrator of the Environmental Protection Agency shall establish a separately identified program of continuing, long-term environmental research and development for each activity listed in section 2(a) of this Act. Unless otherwise specified by law, at least 15 per centum of funds appropriated to the Administrator for environmental research and development for each activity listed in section 2(a) of this Act shall be obligated and expended for such long-term environmental research and development under this section. (Pub.L. 96-569, § 2(f), Dec. 22, 1980, 94 Stat. 3337.)

## HISTORICAL AND STATUTORY NOTES

## References in Text

Section 2(a) of this Act, referred to in text, is section 2(a) of Pub.L. 96-569, Dec. 22, 1980, 94 Stat. 3335, which was not classified to the Code.

## Codifications

Section was enacted as part of the Environmental Research, Development and Demonstration Authorization Act of 1981, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## Similar Provisions

Provisions similar to this section were contained in the following prior authorization acts:

Pub.L. 96-229, § 2(e), Apr. 7, 1980, 94 Stat. 327.

Pub.L. 95-155, § 6, Nov. 8, 1977, 91 Stat. 1259.

**§ 4363a.** Pollution control technologies demonstrations

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C.A. § 7401 et seq.], the Federal Water Pollution Control Act as amended [33 U.S.C.A. § 1251 et seq.], and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects authorized to be administered by the Environmental Protection Agency under this Act shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No

action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects. (Pub.L. 96-229, § 2(d), Apr. 7, 1980, 94 Stat. 327.)

## HISTORICAL AND STATUTORY NOTES

## References in Text

The Clean Air Act as amended, referred to in par. (1), is Act July 14, 1955, c. 360, as amended generally by Pub.L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub.L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (section 1857 et seq.) of this title. On enactment of Pub.L. 95-95, the Act was reclassified to chapter 85 (section 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act as amended, referred to in par. (1), is Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

This Act, referred to in par. (2), is Pub.L. 96-229, Apr. 7, 1980, 94 Stat. 325, known as the Environmental Research, Development, and Demonstration Authorization Act of 1980, which enacted sections 4363, 4363a, 4369a, and 4370 of this title. For complete classification of this Act to the Code, see Tables.

## Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## Similar Provisions

Provisions similar to this section were contained in the following prior authorization act:

Pub.L. 95-477, § 2(d), Oct. 18, 1978, 92 Stat. 1508.

**§ 4364.** Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage

For purposes of subsection (a) of this section, the appropriate program offices are—

- (1) the Office of Air and Waste Management, for air quality activities;
- (2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;
- (3) the Office of Pesticides, for environmental effects of pesticides;
- (4) the Office of Solid Waste, for solid waste activities;
- (5) the Office of Toxic Substances, for toxic substance activities;
- (6) the Office of Radiation Programs, for radiation activities; and
- (7) the Office of Noise Abatement and Control, for noise activities.

(c) Report to Congress; contents

The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978. (Pub.L. 95-155, § 7, Nov. 8, 1977, 91 Stat. 1259.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in subsec. (a), is the Environmental Research, Development, and Demonstration Authorization Act of 1978, Pub.L. 95-155, Nov. 8, 1977, 91 Stat. 1257. For distribution in the Code of such Act see Tables.

Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

§ 4365. Science Advisory Board

(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

(b) Membership; Chairman; meetings; qualifications of members

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman,

and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C.A. § 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.], the Resource, Conservation and Recovery Act of 1976 [42 U.S.C.A. § 6901 et seq.], the Noise Control Act [42 U.S.C.A. § 4901 et seq.], the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C.A. § 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) Member committees and investigative panels; establishment; chairmanship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(f) Appointment and compensation of secretary and other personnel; compensation of members

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(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of Title 5.

**(g) Consultation and coordination with Scientific Advisory Panel**

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of Title 7.

**(h), (i) Redesignated (f), (g)**

(Pub.L. 95-155, § 8, Nov. 8, 1977, 91 Stat. 1260; H.Res. 549, Mar. 25, 1980; Pub.L. 96-569, § 3, Dec. 22, 1980, 94 Stat. 3337; Pub.L. 103-437, § 15(o), Nov. 2, 1994, 108 Stat. 4593; Pub.L. 104-66, Title II, § 2021(k)(3), Dec. 21, 1995, 109 Stat. 728.)

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

The Clean Air Act, referred to in subsec. (c)(1), is Act July 14, 1955, c. 360, as amended generally by Pub.L. 83-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub.L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (section 1857 et seq.) of this title. On enactment of Pub.L. 95-95, the Act was reclassified to chapter 85 (section 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource, Conservation and Recovery Act of 1976, referred to in subsec. (c)(1), probably means the Resource Conservation and Recovery Act of 1976, Pub.L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (section 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Noise Control Act, referred to in subsec. (c)(1), probably means the Noise Control Act of 1972, Pub.L. 92-574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (section 4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(1), is Pub.L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (section 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(1), is Pub.L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (section 800f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

**Codifications**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

Amendment to subsec. (a) by section 15(o)(1) of Pub.L. 103-437, which directed the substitution of "Committee on Science, Space, and Technology, on Energy and Commerce, or on" for "Committees on Science and Technology, Interstate and Foreign Commerce, or" was executed by substituting "Committee on Science, Space, and Technology, on Energy and Commerce, or on" for "Committees on Science and Technology, Energy and Commerce, or", as the probable intent of Congress.

**Change of Name**

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Commerce of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Agriculture of the House of Representatives, in the case of a provision of law relating to inspection of seafood or seafood products, the Committee on Banking and Financial Services of the House of Representatives, in the case of a provision of law relating to bank capital markets activities generally or to depository institution securities activities generally, and the Committee on Transportation and Infrastructure of the House of Representatives, in the case of a provision of law relating to railroads, railway labor, or railroad retirement and unemployment (except revenue measures related thereto), see section 1(a)(4) and (c)(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Science, Space, and Technology of the House of Representatives treated as referring to the Committee on Science of the House of Representatives, see section 1(a)(10) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Public Works and Transportation of the House of Representatives treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives, see section 1(a)(9) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

**References in Other Laws to GS-16, 17, or 18 Pay Rates**

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [Title I, § 101(c)(1)] of Pub.L. 101-509, set out in a note under section 5376 of Title 5.

**Termination of Advisory Boards**

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in Appendix 2 to Title 5, Government Organization and Employees.

**§ 4366. Identification and coordination of research, development, and demonstration activities**

- (a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

- (b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

- (c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation. (Pub.L. 95-155, § 9, Nov. 8, 1977, 91 Stat. 1261.)

**HISTORICAL AND STATUTORY NOTES****References in Text**

Section 4361 of this title, referred to in subsec. (a), was repealed by Pub.L. 104-66, title II, § 2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

**Codifications**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**Coordination of Environmental Research, Development, and Demonstration Efforts; Study and Report**

Pub.L. 95-477, § 3(c), Oct. 18, 1978, 92 Stat. 1509, authorized to be appropriated to the Environmental Protection Agency for the fiscal year 1979, \$1,000,000, and for the fiscal year 1980, \$1,000,000, for a study and report, under a contract let by the Administrator, to be conducted outside the Federal Government, on coordination of the Federal Government's efforts in environmental research, development, and demonstration, and the application of the results of such efforts to environmental problems, with the report on the study submitted to the President, the Administrator, and the

Congress within two years after Oct. 18, 1978, accompanied by recommendations for action by the President, the Administrator, other agencies, or the Congress, as may be appropriate.

**§ 4366a. Development of data base of environmental research articles indexed by geographic location**

**(a) Research journals**

Within 6 months following November 16, 1990, and from time to time thereafter, the Environmental Protection Agency shall identify not less than 35 important environmental research journals, conference proceedings or other reference sources in which scientific research or engineering studies related to air, water, or soil quality or pollution or other environmental issues are routinely published. In carrying out the requirements of this subsection, at least 50 journals or proceedings shall be reviewed.

**(b) Index**

(1) Within 12 months following November 16, 1990, and annually thereafter, the Environmental Protection Agency shall review the journals and other materials identified in subsection (a) of this section and compile, maintain and publish an index of the articles contained therein during the preceding calendar year by geographic location. A copy of such index shall be made available to the Service for distribution to the public, and a copy shall be submitted to the Congress not less than 30 days prior to the date on which it is made available to the Service.

(2) Beginning 12 months after November 16, 1990, the Agency shall identify not less than 20 materials identified in subsection (a) of this section which were published during the time period from 1970 to the year preceding November 16, 1990, and shall compile and publish a series of indices of articles contained therein by geographic location. The time frame which each index contains should not exceed 5 years.

**(c) Purchase of information**

The Environmental Protection Agency is authorized to enter into contracts or other arrangements for the acquisition of data and other information necessary for purposes of this Act.

**(d) Revising list**

The Environmental Protection Agency shall review the list of references developed under this section at least biennially and shall revise the list of sources as appropriate.

**(e) Specific location of research projects**

Unless exempted by the Administrator of the Environmental Protection Agency, all reports resulting from research projects sponsored by the Environmen-

tal Protection Agency and initiated after the expiration of the 36-month period following November 16, 1990, shall indicate the specific location to which the research pertains.

(Pub.L. 101-617, § 4, Nov. 16, 1990, 104 Stat. 3287.)

**Termination of Section**

*Section expires 10 years after Nov. 16, 1990, pursuant to section 6 of Pub.L. 101-617, set out as a note under this section.*

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

This Act, referred to in subsec. (c), is Pub.L. 101-617, Nov. 16, 1990, 104 Stat. 3287, known as the Environmental Research Geographic Location Information Act, which enacted this section and provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note set out under this section and Tables.

**Codifications**

Section was enacted as part of the Environmental Research Geographic Location Information Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

**Termination Dates**

1990 Acts. Section 6 of Pub.L. 101-617 provided that: "This Act [enacting this section and notes set out under this section] shall expire 10 years after the date of its enactment [Nov. 16, 1990]."

**Short Title**

1990 Acts. Section 1 of Pub.L. 101-617 provided that: "This Act [enacting this section and notes set out under this section] may be cited as the 'Environmental Research Geographic Location Information Act'."

**Authorization of Appropriations**

Section 5 of Pub.L. 101-617 provided that: "There are authorized to be appropriated such sums as may be necessary to carry out this Act [enacting this section and notes set out under this section]."

**Congressional Findings**

Section 2 of Pub.L. 101-617 provided that: "The Congress finds that—

"(1) at present, there is no reliable method of locating private or Government research on environmental issues by geographic location; and

"(2) a means of identifying environmental research conducted at specific geographic locations is needed for purposes such as detecting trends in environmental quality, assisting the public in learning about the quality and issues of their local environment, and providing a data base for identifying areas of critical environmental concern."

**Purpose**

Section 3 of Pub.L. 101-617 provided that: "The purpose of this Act [enacting this section and notes set out under this section] is to develop a data base of environmental research articles indexed by geographic location."

**§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.**

**(a) Covered officers and employees**

Each officer or employee of the Environmental Protection Agency who—

- (1) performs any function or duty under this Act; and
- (2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act, shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

**(b) Implementation of requirements by Administrator**

The Administrator shall—

- (1) act within ninety days after November 8, 1977—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

- (2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

**(c) Exemption of positions by Administrator**

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

**(d) Violations; penalties**

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Pub.L. 95-155, § 12, Nov. 8, 1977, 91 Stat. 1263.)

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

This Act, referred to in subsec. (a)(1), (2), is Pub.L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the

Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

**Codifications**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**§ 4368. Grants to qualified citizens groups**

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bonafide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Pub.L. 95-477, § 3(d), Oct. 18, 1978, 92 Stat. 1509.)

#### HISTORICAL AND STATUTORY NOTES

##### References in Text

This section, referred to in par. (5), means section 3 of Pub.L. 95-477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were not classified to the Code, and subsec. (c) of which is set out as a note under section 4366 of this title.

##### Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

#### § 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

##### (a) Technical assistance to environmental agencies

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 [42 U.S.C.A. § 3056 et seq.] and subtitle D of title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2911 et seq.].

##### (b) Pre-award certifications

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

##### (c) Prior appropriation Acts

Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

(Pub.L. 98-313, § 2, June 12, 1983, 98 Stat. 235; Pub.L. 105-277, Div. A, § 101(f) [Title VIII, § 405(d)(35), (f)(27)], Oct. 21, 1998, 112 Stat. 2631-426, 2681-434.)

#### HISTORICAL AND STATUTORY NOTES

##### References in Text

Title V of the Older Americans Act of 1965, referred to in subsec. (a), is Title V of Pub.L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is known as the "Older Americans Community Service Employment Act" and which is classified to subchapter IX (section 3056 et seq.) of chapter 35 of this title. For complete classification of the Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Subtitle D of title I of the Workforce Investment Act of 1998, is Subtitle D (sections 166 to 174) of title I of Pub.L. 105-220, Aug. 7, 1998, 112 Stat. 1021, which is classified generally to subchapter IV (section 2911 et seq.) of chapter 30 of Title 29. For complete classification of this Act to the Code, see Tables.

##### Codifications

Section was enacted as part of the Environmental Programs Assistance Act of 1984, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

##### Effective and Applicability Provisions

1998 Acts. Amendment by section 101(f) [Title VIII, § 405(f)(27)] of Pub.L. 105-277 shall take effect July 1, 2000, see section 101(f) [Title VIII, § 405(g)(2)(B)] of Pub.L. 105-277, set out as a note under section 3502 of Title 5.

Amendment by section 101(f) [Title VIII, § 405(d)(35)] of Pub.L. 105-277 effective Oct. 21, 1998, see section 101(f) [Title VIII, § 405(g)(1)] of Pub.L. 105-277, set out as a note under section 3502 of Title 5.

##### Change of Name

Effective August 7, 1998, all references in any provision of law (other than 18 U.S.C.A. § 665) to the Comprehensive Employment and Training Act, or the Job Training Partnership Act, deemed to refer to the Workforce Investment Act of 1998 (Pub.L. 105-220, Aug. 7, 1998, 112 Stat. 936), see section 2940 of Title 29.

All references in any other provision of law to a provision of the Comprehensive Employment and Training Act, or of the Job Training Partnership Act, deemed to refer to the corresponding provision of Title I of the Workforce Investment Act of 1998 (Pub.L. 105-220, Title I, §§ 101 to 199A, Aug. 7, 1998, 112 Stat. 936 [29 U.S.C.A. § 2801 et seq.]), see section 199A(c) of Pub.L. 105-220, set out as a note under section 2940 of Title 29.

##### Short Title

1984 Acts. Section 1 of Pub.L. 98-313 provided that: "This Act [enacting this section] may be cited as the 'Environmental Programs Assistance Act of 1984.'"

**§ 4368b. General assistance program****(a) Short title**

This section may be cited as the "Indian Environmental General Assistance Program Act of 1992".

**(b) Purposes**

The purposes of this section are to—

(1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands; and

(2) provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

**(c) Definitions**

For purposes of this section:

(1) The term "Indian tribal government" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term "intertribal consortia" or "intertribal consortium" means a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance pursuant to this section.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

**(d) General assistance program**

(1) The Administrator of the Environmental Protection Agency shall establish an Indian Environmental General Assistance Program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

(2) Each grant awarded for general assistance under this subsection for a fiscal year shall be no less than \$75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated under subsection (h) of this section.

(3) The term of any general assistance award made under this subsection may exceed one year. Any awards made pursuant to this section shall remain

available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to four years in each specific media area.

**(e) No reduction in amounts**

In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of Environmental Protection Agency grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Environmental Protection Agency through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement other funds provided by the Environmental Protection Agency through individual media grants or cooperative agreements.

**(f) Expenditure of general assistance**

Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize such funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

**(g) Procedures**

(1) Within 12 months following October 24, 1992, the Administrator shall promulgate regulations establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) The Administrator shall publish regulations issued pursuant to this section in the Federal Register.

(3) The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this section.

**(h) Authorization**

There are authorized to be appropriated to carry out the provisions of this section, such sums as may be

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necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

**(i) Report to Congress**

The Administrator shall transmit an annual report to the appropriate Committees of the Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

(Pub.L. 95-134, Title V, § 502, as added Pub.L. 102-497, § 11, Oct. 24, 1992, 106 Stat. 3258, and amended Pub.L. 103-155, Nov. 24, 1993, 107 Stat. 1523; Pub.L. 104-233, § 1, Oct. 2, 1996, 110 Stat. 3057.)

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is Title II of Pub.L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (section 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

**Codifications**

Section was enacted as part of the Indian Environmental General Assistance Program Act of 1992 and as part of the Omnibus Territories Act of 1977, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**§ 4369. Miscellaneous reports**

**(a) Availability to Congressional committees**

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

**(b) Transmittal of jurisdictional information**

The Administrator shall keep the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

**(c) Comment by Government agencies and the public**

The reports provided for in section 5910 of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

**(d) Transmittal of research information to the Department of Energy**

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

(Pub.L. 95-477, § 5, Oct. 18, 1978, 92 Stat. 1510; Pub.L. 103-437, § 15(c)(6), Nov. 2, 1994, 108 Stat. 4592.)

**HISTORICAL AND STATUTORY NOTES**

**References in Text**

Section 5910 of this title, referred to in subsec. (c), was repealed by Pub.L. 104-66, title II, § 2021(i), Dec. 21, 1995, 109 Stat. 727.

**Codifications**

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**Change of Name**

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Science, Space, and Technology of the House of Representatives treated as referring to the Committee on Science of the House of Representatives, see section 1(a)(10) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

**§ 4369a. Reports on environmental research and development activities of the Agency**

**(a) Reports to keep Congressional committees fully and currently informed**

The Administrator shall keep the appropriate committees of the House and the Senate fully and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

**(b) Annual reports relating requested funds to activities to be carried out with those funds**

Each year, at the time of the submission of the President's annual budget request, the Administrator shall make available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental research and development activities to be carried out with these funds.

(Pub.L. 96-229, § 4, Apr. 7, 1980, 94 Stat. 328.)

## HISTORICAL AND STATUTORY NOTES

## Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## § 4370. Reimbursement for use of facilities

## (a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement

The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

## (b) Rules and regulations

The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

## (c) Waiver of reimbursement by Administrator

When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

(Pub.L. 96-229, § 5, Apr. 7, 1980, 94 Stat. 328.)

## HISTORICAL AND STATUTORY NOTES

## Codifications

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## § 4370a. Assistant Administrators of Environmental Protection Agency

## (a) Appointment

The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);

(2) the Assistant Administrator provided by section 2625(g) of Title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

## (b) Duties

Each Assistant Administrator appointed under subsection (a) of this section shall perform such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Pub.L. 98-80, § 1, Aug. 23, 1983, 97 Stat. 485.)

## HISTORICAL AND STATUTORY NOTES

## References in Text

Reorganization Plan Numbered 3 of 1970, referred to in subsec. (a)(1), is set out in Appendix 1 to Title 5, Government Organization and Employees, and also as a note under section 4321 of this title.

## Codifications

Section was not enacted as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## § 4370b. Availability of fees and charges to carry out Agency programs

Notwithstanding any other provision of law, after September 30, 1990, amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Environmental Protection Agency shall thereafter be available to carry out the Agency's activities in the programs for which the fees or charges are made.

(Pub.L. 101-144, Title III, Nov. 9, 1989, 103 Stat. 858.)

## HISTORICAL AND STATUTORY NOTES

## Codifications

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

## § 4370c. Environmental Protection Agency fees

## (a) Assessment and collection

The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

## (b) Amount of fees and charges

Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than \$28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than \$38,000,000.

**(c) Limitation on fees and charges**

(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to<sup>1</sup> the Federal Water Pollution Control Act [33 U.S.C.A. § 1251 et seq.] is \$10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of November 5, 1990, pursuant to sections 2625(b) and 2665(e)(2), of Title 15, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

**(d) Rule of construction**

Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of Title 31.

**(e) Uses of fees**

Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

(Pub.L. 101-508, Title VI, § 6501, Nov. 5, 1990, 104 Stat. 1388-320.)

<sup>1</sup> So in original. Probably should be "to".

**HISTORICAL AND STATUTORY NOTES****References in Text**

The Federal Water Pollution Control Act, referred to in subsec. (c)(1)(A), is Act June 30, 1948, c. 758, 62 Stat. 1155, as amended generally by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(1)(B), is Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, which is classified principally to chapter 85 (section 7401 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Section 2665(e)(2) of title 15, referred to in subsec. (c)(1)(B), was redesignated section 2655(d)(2) of title 15, by

Pub.L. 104-66, title II, § 2021(l)(2), Dec. 21, 1995, 109 Stat. 728.

**Codifications**

In subsec. (d), "section 9701 of Title 31" was in the original "the Independent Office Appropriations Act (31 U.S.C. 9701)" and substitution was made as if it read for "title V of the Independent Offices Appropriation Act of 1952" on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

**Change of Name**

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Commerce of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Agriculture of the House of Representatives, in the case of a provision of law relating to inspection of seafood or seafood products, the Committee on Banking and Financial Services of the House of Representatives, in the case of a provision of law relating to bank capital markets activities generally or to depository institution securities activities generally, and the Committee on Transportation and Infrastructure of the House of Representatives, in the case of a provision of law relating to railroads, railway labor, or railroad retirement and unemployment (except revenue measures related thereto), see section 1(a)(4) and (c)(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

**§ 4370d. Availability of funding for economically and socially disadvantaged individuals**

The Administrator of the Environmental Protection Agency shall, on and after October 6, 1992, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of Title 15), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

(Pub.L. 102-389, Title III, Oct. 6, 1992, 106 Stat. 1602.)

**HISTORICAL AND STATUTORY NOTES****Codifications**

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and not as part

of the National Environmental Policy Act of 1969, which comprises this chapter.

**§ 4370e. Working Capital Fund in the Treasury**

There is hereby established in the Treasury a "Working capital fund", to be available without fiscal limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance or reimbursed from funds available to the Agency and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of Agency financial management, ADP, and

other support systems: *Provided further*, That no later than thirty days after the end of each fiscal year amounts in excess of this reserve limitation shall be transferred to the Treasury:

(Pub.L. 104-204, Title III, Sept. 26, 1996, 110 Stat. 2912; Pub.L. 105-65, Title III, Oct. 27, 1997, 111 Stat. 1374; Pub.L. 105-276, Title III, Oct. 21, 1998, 112 Stat. 2499.)

<sup>1</sup> So in original. The colon should probably be a period.

**HISTORICAL AND STATUTORY NOTES**

**Codifications**

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Environmental Policy Act of 1969, which comprises this chapter.

Section was formerly set out as a note under section 501 of Title 31.

Pub.L. 105-276, Title III, Oct. 21, 1998, 112 Stat. 2499 instructed that "or reimbursed" be inserted after the phrase "that such fund shall be paid in advance". This instruction was executed by inserting the language after the phrase "That such fund shall be paid in advance" as the probable intent of Congress.

**§ 4370f. Availability of appropriations**

For fiscal year 2001 and thereafter, the obligated balances of sums available in multiple-year appropriations accounts shall remain available through the seventh fiscal year after their period of availability has expired for liquidating obligations made during the period of availability.

(Pub.L. 106-377, § 1(a)(1) [Title III], Oct. 27, 2000, 114 Stat. 1441, 1441A—.)

"(g) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers and any other measures (including waste form modifications) to the extent necessary at WIPP to comply with the final disposal regulations."

**SEC. 3188. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.**

\*  
# (a) SECTION 9(a)(1).—Section 9(a)(1) of the Waste Isolation Pilot Plant Land Withdrawal Act (106 Stat. 4788) is amended by adding after and below subparagraph (H) the following: "With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f), and (g) of the Solid Waste Disposal Act."

(b) SECTION 9(b).—Subsection (b) of section 9 of such Act is repealed.

(c) SECTION 9(c)(2).—Subsection (c)(2) of section 9 of such Act is repealed.

(d) SECTION 14.—Section 14 of such Act (106 Stat. 4791) is amended—

(1) in subsection (a), by striking "No provision" and inserting "Except for the exemption from the land disposal restrictions described in section 9(a)(1), no provision"; and

(2) in subsection (b)(2), by striking "including all terms and conditions of the No-Migration Determination" and inserting "except that the transuranic mixed waste designated by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1)".

**SEC. 3189. SENSE OF CONGRESS ON COMMENCEMENT OF EMPLACEMENT OF TRANSURANIC WASTE.**

(a) IN GENERAL.—Section 10 of the Waste Isolation Pilot Plant Land Withdrawal Act (106 Stat. 4789) is amended to read as follows:

**"SEC. 10. SENSE OF CONGRESS ON COMMENCEMENT OF EMPLACEMENT OF TRANSURANIC WASTE.**

"It is the sense of Congress that the Secretary should complete all actions required under section 7(b) to commence emplacement of transuranic waste underground for disposal at WIPP not later than November 30, 1997, provided that before that date all applicable health and safety standards have been met and all applicable laws have been complied with."

(b) CLERICAL AMENDMENT.—The item relating to section 10 in the table of contents in section 1 is amended to read as follows:

"Sec. 10. Sense of Congress on commencement of emplacement of transuranic waste."

**SEC. 3190. DECOMMISSIONING OF WIPP.**

Section 13 of the Waste Isolation Pilot Plant Land Withdrawal Act (106 Stat. 4791) is amended—

(1) by striking subsection (a); and

(2) by striking "(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the" and inserting "The".

amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102-579).

#### SEC. 2. DEFINITIONS.

Paragraphs (18) and (19) of section 2 are repealed.

#### SEC. 3. TEST PHASE AND RETRIEVAL PLANS.

Section 5 and the item relating to such section in the table of contents are repealed.

#### SEC. 4. MANAGEMENT PLAN.

Section 4(b)(5)(B) is amended by striking "or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)."

#### SEC. 5. TEST PHASE ACTIVITIES.

Section 6 is amended—

- (1) by repealing subsections (a) and (b),
- (2) by repealing paragraph (1) of subsection (c),
- (3) by redesignating subsection (c) as subsection (a) and in that subsection—

(A) by repealing subparagraph (A) of paragraph (2),

(B) by striking the subsection heading and the matter immediately following the subsection heading and inserting "STUDY.—The following study shall be conducted:"

(C) by striking "(2) REMOTE-HANDLED WASTE.—"

(D) by striking "(B) STUDY.—"

(E) by redesignating clauses (1), (1), and (11) as paragraphs (1), (2), and (3), respectively, and

(F) by realigning the margins of such clauses to be margins of paragraphs.

(5) in subsection (d), by striking "during the test phase, a biennial" and inserting "a" and by striking "consisting of a documented analysis of" and inserting "as necessary to demonstrate", and

(6) by redesignating subsection (d) as subsection (b).

#### SEC. 6. DISPOSAL OPERATIONS.

Section 7(b) is amended to read as follows:

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

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

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

"(3) the expiration of the 30-day period beginning on the date on which the Secretary notifies Congress that the requirements of section 9(a)(1) have been met."

#### SEC. 7. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.

(a) SECTION 8(d)(1).—Section 8(d)(1) is amended—

(i) by amended subparagraph (A) to read as follows:

"(A) APPLICATION FOR COMPLIANCE.—Within 30 days after the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, the Secretary shall provide to Congress a schedule for the incremental submission of chapters of the application to the Administrator beginning no later than 30 days after such date. The Administrator shall review the submitted chapters and provide requests for additional information from the Secretary as needed for completeness within 45 days of the receipt of each chapter. The Administrator shall notify Congress of such requests. The schedule shall

call for the Secretary to submit all chapters to the Administrator no later than October 31, 1996. The Administrator may at any time request additional information from the Secretary as needed to certify, pursuant to subparagraph (B), whether the WIPP facility will comply with the final disposal regulations." and

(2) in subparagraph (D), by striking "after the application is" and inserting "after the full application has been".

(b) SECTION 8(d)(2). (3).—Section 8(d) is amended by striking paragraphs (2) and (3), by striking "(1) COMPLIANCE WITH DISPOSAL REGULATIONS.—", and by redesignating subparagraphs (A), (B), (C), and (D) of paragraph (1) as paragraph (1), (2), (3), and (4), respectively.

(c) SECTION 8(g).—Section 8(g) is amended to read as follows:

"(G) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers and any other measures (including waste form modifications) to the extent necessary at WIPP to comply with the final disposal regulations."

#### SEC. 8. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.

(a) SECTION 9(a)(1).—Section 9(a)(1) is amended by adding after and below subparagraph (H) the following: "with respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. Sec. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f), and (g) of the Solid Waste Disposal Act."

(b) SECTION 9(b).—Subsection (b) of section 9 is repealed.

(c) SECTION 9(c)(2).—Subsection (c)(2) of section 9 is repealed.

(d) SECTION 14.—Section 14 is amended—

(1) in subsection (a), by striking "No provision" and inserting "Except for the exemption from the land disposal restrictions described in section 9(a)(1), no provision"; and

(2) in subsection (b)(2), by striking "including all terms and conditions of the No-Migration Determination" and inserting "except that the transuranic mixed waste designated by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1)".

#### SEC. 9. RETRIEVABILITY.

(a) SECTION 10.—Section 10 is amended to read as follows:

##### "SEC. 10. TRANSURANIC WASTE.

"It is the intent of Congress that the Secretary will complete all actions required under section 7(b) to commence emplacement of transuranic waste underground for disposal at WIPP no later than November 30, 1997."

(b) CONFORMING AMENDMENT.—the item relating to section 10 in the table of contents is amended to read as follows:

"Sec. 10. Transuranic waste."

#### SEC. 10. DECOMMISSIONING OF WIPP

Section 13 is amended—

(1) by repealing subsection (a), and

(2) in subsection (b), by striking "(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the" and inserting "The".

#### SEC. 11. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.

(a) Section 15(a) is amended by adding at the end the following: "An appropriation to the State shall be in addition to any appropriation for WIPP."

(b) \$20,000,000 is authorized to be appropriated in fiscal year 1997 to the Secretary for payment to the State of New Mexico for

road improvements in connection with the WIPP.

Mr. CRAIG, Mr. President, this is an amendment that has been offered by myself, Senator KEMPTHORNE, Senator DOMENICI, Senator BINGAMAN, Senator MURKOWSKI, and Senator JOHNSTON. It deals with a very important part of our nuclear waste management in this country, specifically the waste isolation pilot plant in Carlsbad, NM.

In working with all of our colleagues, our effort has been to remove the unnecessary delays and bureaucratic requirements to achieve the major environmental objectives that are so critical to the State of New Mexico, and to save taxpayers' money, while at the same time showing our country that we can move and act responsibly in the area of transuranic waste.

The amendment that we have before us, that will become a part of this pending legislation, will amend the Waste Isolation Pilot Plant Land Withdrawal Act of 1992 in several ways. It deletes obsolete language of the 1992 act. Particularly important is the reference and requirements for "test phase" activities.

Since the enactment of the 1992 act, the Department of Energy has abandoned the test phase that called for underground testing in favor of above ground laboratory test programs.

This amendment, Mr. President, is agreed to by the Department of Energy and by the Environmental Protection Agency. It allows the kind of phase necessary to test to completion to assure all of our citizens, and especially the citizens of New Mexico, that this is a safe and sound facility.

Most important, along with all of this, in streamlining the process, it would remove duplicative regulation and save the taxpayers' dollars. We hope that it will have that effect.

Mr. President, my amendment will clear up several unnecessary and delaying bureaucratic requirements that currently exist in the Waste Isolation Pilot Plant Land Withdrawal Act, Public Law 102-579, so the WIPP facility can be opened. It also meets a major environmental objective while saving the taxpayer money.

The purpose of the WIPP is to provide for the safe disposal of transuranic [TRU] radioactive and mixed wastes resulting from defense activities and programs of the United States. These materials are currently stored at temporary facilities, and until WIPP is opened, little can be done to clean up and close these temporary storage sites.

Idaho currently stores the largest amount of TRU waste of any State in the Union, but Idaho is not alone. Washington, Colorado, South Carolina, and New Mexico also temporarily store TRU waste.

The agreement recently negotiated between the State of Idaho, the DOE and the U.S. Navy states that the TRU currently located in Idaho will begin to be shipped to WIPP by April 30, 1999.

Withdrawal Act (Pub. L. 102-579). I appreciated hearing your views about the legislation and am pleased we had the opportunity to discuss these important issues. The Agency believes that the amended H.R. 1663 is a sound bill and makes critical improvements over its antecedent. As you are aware, the Skeen Bill, as originally proposed, severely limited EPA's regulatory oversight of WIPP and, we believe, did not provide adequate protection of human health and the environment. Mr. Schaefer's amendments retain EPA as the independent regulator of the WIPP, eliminates extraneous requirements, and leaves intact the provisions of the 1992 WIPP Land Withdrawal Act (LWA) that require EPA to certify whether the WIPP facility will comply with the disposal regulations in accordance with public rule-making procedures.

You specifically expressed concern about the impact of the proposed legislation on the WIPP certification process. In particular, that review of individual chapters of the Department of Energy's (DOE) compliance application by EPA would require the Agency to commit to a position on the sufficiency of each chapter without public input. While it is true that EPA will review individual chapters prior to receipt of the full application, the Agency will make no determination on the adequacy of any part of the application until: 1) EPA has received the full application from the department; and 2) public comments have been considered. In fact, the Agency has received the first of these chapters and placed it in the certification docket (No. A-93-02) on May 1, 1996. We will be providing written comments to DOE on these chapters. The written comments will also be placed in the public dockets.

You also raised concerns about the effect of the proposed legislation on the public's opportunity to provide comment on DOE's application. As in the past, EPA will continue to foster an open public process. As you will note in the final compliance criteria (40 CFR Part 194), EPA will hold two 120-day public comment periods after it receives DOE's full compliance application. The proposed legislation will not affect the process established in the compliance criteria. Furthermore, EPA never planned for or created any process for formal public comment on the completeness of the application. Therefore, since DOE is providing the Agency with individual chapters prior to submission of the full application, the public will have an additional opportunity to comment on, and additional time to review, the individual chapters, via EPA's public docket.

Additionally, you were concerned that the proposed H.R. 1663 removes the ability of the Administrator to enforce compliance of the WIPP with any law, regulation or permit requirement described in §9(a)(1) of the LWA. We feel that EPA's ability to ensure compliance with these environmental laws is not compromised by removal of this provision since: 1) the environmental laws described in the LWA contain their own enforcement provisions; and 2) 40 CFR Part 194 imposes requirements that DOE perform remedial actions if the Administrator determines WIPP to be in non-compliance with the transuranic waste disposal standards.

Further, with regard to H.R. 1663, you expressed concern about the WIPP being used as a repository for transuranic wastes that did not result from a defense activity. The proposed legislation does not alter the definition of exposure or capacity limits of either remote- or contract-handled wastes set forth in the LWA. If EPA were to certify the WIPP, this provision would allow for disposal of a relatively small amount of waste from a site in West Valley, NY. If WIPP were capable of accepting this waste within the

capacity limits of the LWA, it would be imprudent to needlessly spend taxpayer money for a site similar to WIPP for such a small amount of transuranic waste simply because the process which generated the waste was not defense related.

Lastly, I am disappointed that you have elected to bring a legal challenge against EPA's WIPP compliance criteria published on February 9, 1996. The EPA considered the views of all interested parties, including the comments and suggestions made by your office. In deciding the contents of the final criteria. As you know, EPA held two public comment periods totaling 135 days, and conducted a series of public hearings in New Mexico. Ultimately, the Administrator of EPA, exercising her independent judgment, determined the contents of the final criteria. We believe EPA's criteria are sound and will effectively protect public health and the environment.

I want to assure you that EPA will keep communication lines open as it undertakes the public rulemaking proceeding to certify whether the WIPP facility will comply with the final disposal regulations. We recognize the importance of this matter to you and all of the residents of New Mexico.

If you have questions regarding this letter or any other concerns, please contact Frank Marciniowski of my staff at (202) 233-9310.

Sincerely,

MARY D. NICHOLS,  
Assistant Administrator  
for Air and Radiation.

Mr. DOMENICI. This letter is written to the attorney general of New Mexico in response to inquiries. "The Agency believes that the amended H.R. 1663"—I will state here, for all intents and purposes, is the Craig amendment—"is a sound bill and makes critical improvements over its antecedent. As you are aware, the Skeen bill, as originally proposed, severely limited EPA's regulatory oversight of WIPP and, we believe, did not provide adequate protection of human health and the environment. Mr. Schaefer's amendments retain EPA as the independent regulator of the WIPP, eliminates extraneous requirements, and leaves intact the provisions of the 1992 WIPP Land Withdrawal Act (LWA) that require EPA to certify whether the WIPP facility will comply with the disposal regulations in accordance with public rule-making procedures."

I do not think it can be any clearer that the EPA wholeheartedly supports this amendment.

In summary, the amendment is almost identical to language agreed to by DOE and EPA. That agreed-upon language was reported by the House Commerce Committee on April 25 and was recently reported by the House National Security Committee.

The legislation would:

Delete the authorization included in the WIPP Land Withdrawal Act to conduct tests underground at WIPP using transuranic waste.

The DOE decided in 1992 not to conduct such tests.

Require the Secretary of Energy to acquire the oil and gas leases on the WIPP site unless the EPA determines the acquisition is not necessary.

Create an incremental licensing process under which DOE will submit chap-

ters of the license application one at a time, and EPA would comment one at a time. The EPA would make a final, encompassing decision. The EPA could request additional information from the DOE at any time.

At the suggestion of the EPA and DOE, provides that the final disposal regulations for WIPP will be the radiation protection standards at 40 C.F.R. 191, and not the Solid Waste Disposal Act.

The WIPP Land Withdrawal Act required that DOE certify compliance with both, a step DOE and EPA agreed would be redundant.

The legislation allows the DOE to use engineered barriers, natural barriers, or any other measures—this last provision being a new provision—to ensure WIPP complies with the final disposal regulations.

This allows DOE to use waste treatment, such as vitrification, to ensure WIPP's compliance.

Deletes the section of the WIPP Land Withdrawal Act dealing with retrieval of the waste emplaced during the test phase since no waste will be emplaced during a test phase.

States that it is the intent of Congress that the Secretary of Energy make a final decision with respect to the disposal of transuranic waste at WIPP by November 30, 1997.

Provides \$20 million per year to New Mexico for impact assistance beginning upon enactment of this legislation.

The waste isolation pilot plant is a permanent disposal facility in a salt bed 2,000 feet below New Mexico for transuranic waste generated in DOE's nuclear weapons complex.

Transuranic waste means waste that includes both radioactive material and solvents, metals, and other refuse from manufacturing.

The WIPP Land Withdrawal Act enacted on October 30, 1992, authorized a 5- to 8-year test phase at WIPP during which transuranic waste could be placed in WIPP and monitored.

Because of the nature of the waste intended for WIPP, the act also made WIPP subject to two sets of regulations: radiation protection standards and the Solid Waste Disposal Act.

In 1993, DOE decided it was not necessary to conduct underground tests at WIPP using transuranic waste.

At the suggestion of DOE and EPA, this amendment makes the WIPP Land Withdrawal Act consistent with the current test phase at WIPP and removes the redundancy of two sets of regulatory standards.

First, the amendment deletes those sections of the WIPP Land Withdrawal Act dealing with tests using transuranic waste.

Second, the amendment, at the suggestion of the EPA, subjects WIPP to the radiation protection standards and removes the application of the Solid Waste Disposal Act. This is necessary to remove the confusion that occurs by imposing two different sets of regulations.

Frankly, it is clear that WIPP can meet with Solid Waste Disposal Act, its 10,000-year radiation protection standards are going to be the real challenge and the relevant regulations.

There are two centers of controversy in that law. First, what hurdles did DOE have to overcome to use transuranic waste for tests in WIPP. And second, what information had to be revealed by those tests for a final disposal decision to be made.

DOE subsequently decided that tests with transuranic waste were not needed.

These changes primarily deal with taking out those provisions of the law dealing with tests using transuranic waste.

The law also required WIPP to meet two different standards for the disposal of waste at WIPP: radiation release standards and solid waste standards.

DOE and EPA now agree that demonstrating compliance with both standards is redundant—they agree compliance is best proven by meeting the radiation release standards.

The original law also provided New Mexico \$20 million per year beginning in the first year transuranic waste was shipped to WIPP. The money was to be used for roads and other improvements.

Because no transuranic waste has been brought to WIPP for the tests, New Mexico has lost out on \$160 million that would have otherwise been provided. This law starts the flow of that money immediately so New Mexico can make the necessary road upgrades.

I indicate to the Senate that it is clear this waste isolation pilot project, one of a kind, the first ever, can meet the requirements of the Solid Waste Disposal Act. It is not that act that is cumbersome and difficult to achieve, but rather the 10,000-year radiation protection standards. Let me repeat: 10,000-year radiation protection standards. These are the standards that are going to be in effect after this amendment is adopted and becomes law. They are in effect now.

All we are suggesting is the EPA and the Department of Energy thinks this is the only set of standards that we need follow and that those that are found under the Solid Waste Disposal Act are redundant and not needed in this case.

I thank all who have cooperated in getting us this far. It is time to get this done. This amendment has been reported out on April 25 from a House committee and was reported recently by the National Security Committee in the House. It has had hearings and been looked at over and over by the regulatory agencies. I believe it is time to adopt it.

I yield the floor.

Mr. THURMOND. Mr. President, I rise in favor of this amendment. It is very similar to WIPP legislation introduced last year in the House. That legislation was agreed to by the Department of Energy and Environmental

Protection Agency and goes a long way toward breaking down the regulatory log jams that are holding up this much needed facility.

The story of WIPP is a story of false starts and needless delays. The delays in opening WIPP have created a massive backlog of materials that are currently being stored at DOE sites throughout the country—often in drums and boxes—at a very high cost to the taxpayers. These wastes need to be stabilized and prepared for shipment to a permanent and safe repository. The WIPP facility provides a safe and permanent disposal option and we should move forward as rapidly as possible with its opening.

Mr. President, we need this facility. We need it now. This amendment will help move this facility forward and I wholeheartedly support its passage.

Mr. KEMPTHORNE. Mr. President, I am pleased to introduce and support the Craig-Kemphthorne-Domenici-Bingaman amendment relating to the WIPP land withdrawal. The proposed amendment will simplify the land withdrawal process in a number of important ways. For example, the amendment will reduce the waiting period between the final certification and opening of WIPP from 180 days to 30 days, improve interaction between the Department of Energy and the Environmental Protection Agency, remove duplicative regulatory requirements, save the taxpayers money, expedite the opening of WIPP, and protect the environment, health, and safety of the citizens of New Mexico. In addition, the amendment is similar to a legislation in the other body which is supported by the Department of Energy and the Environmental Protection Agency. This is a good bipartisan amendment, supported by the administration, and I am pleased to be a cosponsor of this important piece of legislation.

The WIPP facility plays an important role in our Nation's effort to show its citizens that we can deal responsibly with the nuclear waste left over from our victory in the cold war. The WIPP facility will serve as a permanent repository for transuranic waste. The waste will be entombed in a salt cavern that slowly seals itself over time. I have visited the WIPP facility and I met with numerous local and State officials from New Mexico who strongly support this project.

The WIPP facility will also allow the Federal Government to meet its court-enforceable commitment to the State of Idaho to ship transuranic waste from Idaho by 1999. The proposed amendment will help ensure the opening of this important facility in time to meet this commitment. WIPP will serve as a symbol of our ability to dispose of nuclear material in a safe and rational way.

I want to thank the two able Senators from New Mexico, Senator DOMENICI and Senator BINGAMAN, for their help in drafting this bipartisan amendment. I also want to thank Senators

MURKOWSKI and JOHNSTON, chairman and ranking member of the Energy Committee, for their support for this important amendment.

Mr. CRAIG. Mr. President, let me close by thanking all of my colleagues for the cooperation and their participation in getting this amendment to the floor. Without the help of Senator DOMENICI and Senator BINGAMAN, this amendment would not be here today. They are the host States, but they have also been extremely diligent in assuring the citizens of their State that once this is in place, it is environmentally sound and certainly protects, in all ways, their citizens.

In my State of Idaho, the Governors' agreement is now negotiated and completed by a Federal court order. It could not go forward without this amendment. Now we have this amendment in place, protecting all of the environmental concerns involved, solving many of the environmental problems we have in our State.

Let me thank my colleagues for their participation. I ask that the amendment be adopted.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 4085, offered by the Senators from Idaho and New Mexico.

The amendment (No. 4085) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Arkansas is now recognized.

CONFORMING AMENDMENT TO GATT  
LEGISLATION

Mr. PRYOR. Mr. President, I will take a very few moments this afternoon to refresh my colleagues' memories as to why we are here again to act on the GATT issue.

When the Congress passed the GATT legislation, we made two changes to U.S. patent law. First, all patents were extended from 17 to 20 years in length. That is the law today for all patents in every industry in this country.

Second, we adopted a grandfather provision which permitted generic competitors in all industries to go to the market on the original 17-year date if they had made a substantial investment and if they paid a royalty to the patent holder.

But according to the U.S. Trade Representative, the Food and Drug Administration, the Department of Health and Human Services, and the Patent and Trademark Office, the Congress accidentally—and I underline "accidentally"—omitted a conforming amendment in the GATT legislation. The CONGRESSIONAL RECORD also documents our very clear intent to apply the GATT treaty universally without any special exceptions.

Mr. President, as a result of our error and this missing amendment, a single

LEXSEE

ENVIRONMENTAL PROTECTION AGENCY

AGENCY: Environmental Protection Agency (EPA).

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

Hazardous Waste Management  
System; Land Disposal Restrictions

[SWH-FRL 3089-5]

51 FR 40572

November 7, 1986

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating its approach to implementing the congressionally mandated prohibitions on the land disposal of hazardous waste. This action is responsive to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice establishes procedures for setting treatment standards for hazardous wastes, for granting nationwide variances from statutory effective dates, for granting extensions of effective dates on a case-by-case basis, for evaluating petitions for a variance from the treatment standard, and for evaluating petitions demonstrating that continued land disposal of hazardous wastes is protective of human health and the environment.

In addition, EPA is promulgating specific treatment standards and effective dates for hazardous wastes included in the first phase of the land disposal prohibitions: certain dioxin and solvent-containing hazardous wastes. EPA also is promulgating the Toxicity Characteristic Leaching Procedure (TCLP) for use in determining whether these wastes meet the applicable treatment standards. Extensions of the effective date for certain categories of these wastes are also promulgated in today's rule.

Prohibitions on underground injection of these wastes are on a different schedule and are being addressed in a different rulemaking. The treatment standards, however, will apply when the restrictions are effective.

DATE: This final rule is effective November 8, 1986, except for the provisions in §§ 268.30(b) and 268.31(a), which will become effective on November 8, 1988.

ADDRESSES: The official record for this rulemaking under Docket Number LDR-3 is located in the RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public

in land disposal units unless a petition has been granted by the Administrator under § 268.6 demonstrating that continued management of specific hazardous wastes in land disposal units is protective of human health and the environment for as long as the waste remains hazardous. EPA may provide an extension of the statutory effective date under § 268.5.

BILLING CODE 6560-50-M

51 Fed. Reg. 40577

[See Material in Original]

## B. Applicability

### 1. Scope of Land Disposal Restrictions

The definition of land disposal is not being limited to placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave as specifically identified in RCRA section 3004(k). The Agency also considers placement in concrete vaults or bunkers intended for disposal purposes as methods of waste management subject to the land disposal restrictions, as proposed. The Agency, however, is departing from the proposed rule with respect to open detonation. For purposes of clarification, the final rule notes that the Agency interprets any reference to open detonation to include open burning (see Unit III.A.). The Agency has concluded that these methods do not constitute land disposal, except in cases where the residuals from open detonation and open burning of explosives continue to exhibit one or more of the characteristics of hazardous waste.

#3 \* The Agency interprets the land disposal restriction adopted in today's final rule as applying prospectively to the affected hazardous wastes. In other words, hazardous wastes placed into land disposal units after the effective date are subject to the prohibitions, but wastes land disposed prior to the applicable effective date do not have to be removed or exhumed for treatment. Similarly, the Agency interprets the restrictions on storage of prohibited wastes to apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to land disposal restrictions are removed from either a storage or land disposal unit after the effective date, subsequent placement of such wastes in or on the land would be subject to the restrictions and treatment provisions.

The provisions of today's final rule also apply to wastes produced by generators of 100 to 1000 kilograms of hazardous waste in a calendar month.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions, regardless of existing permit conditions, because the provisions of RCRA require compliance by all facilities even though the requirements are not specifically referenced in the permit conditions. The land disposal restrictions supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C.

### 2. CERCLA Response Action and RCRA Corrective Action Wastes

Under section 3004(e)(3) Congress provided a 48-month exemption (until November 1988) from the land disposal restriction provisions for disposal of contaminated soil and debris from CERCLA 104 and 106 response actions and RCRA corrective actions. Because of this statutory exemption, today's final rule is not applicable to these wastes. The exemption covers the disposal of any soil

**ENVIRONMENTAL PROTECTION  
AGENCY**

[Docket No. 121RA-LDR; FRL-3625-9]

**National Oil and Hazardous Substance  
Pollution Contingency Plan:  
Applicability of RCRA Land Disposal  
Restrictions to CERCLA Response  
Actions**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Supplemental notice and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) today is soliciting comment on certain issues concerning the application of the Resource Conservation and Recovery Act (RCRA) land disposal restrictions to response actions conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), and the Resource Conservation and Recovery Act (RCRA). In particular, the Agency is soliciting comment on the interpretation of the RCRA term "land disposal" as it applies to certain actions involving the excavation, treatment, and redeposition of hazardous wastes. Although the recent proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (53 FR 51394, December 21 1988) discussed this subject, EPA is soliciting additional comment on this issue for consideration in finalizing the NCP. This interpretation will apply to waste management at RCRA facilities, as well as CERCLA and RCRA remedial actions, and CERCLA removal actions.

**DATES:** Comments on this supplemental notice must be submitted on or before November 9, 1989.

**ADDRESSES:** Written comments on today's supplemental notice should be submitted, in triplicate, to the Superfund Docket, located in Room 2427 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Specific questions about the issues discussed in this supplemental notice should be directed to David M. Fagan, Office of Solid Waste and Emergency Response (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel. (202) 382-4497.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The preamble to the proposed National Contingency Plan (NCP) (53 FR 51435) explains that CERCLA remedial and response actions must comply with

Federal and State environmental requirements that are legally applicable or relevant and appropriate requirements (ARARs). These ARARs are identified on a site-specific basis. The preamble discussion included an explanation of certain ARARs which are of particular significance in evaluating and selecting remedies at CERCLA sites. Specifically, the Agency explained at 53 FR 51443-45 its proposed interpretation of when Resource Conservation and Recovery Act (RCRA) requirements will be potential ARARs, and of particular significance, when land disposal restrictions (LDRs) under RCRA may be applicable or relevant and appropriate to CERCLA remedies. EPA explained that placement of hazardous waste into a land based unit constitutes land disposal, making the waste subject to applicable LDRs. The discussion further proposed that land disposal would also be considered to occur in situations where wastes, such as contaminated soil and debris, are excavated, treated in another unit, and subsequently redeposited in the land-based unit.

The Agency received a substantial number of comments on this interpretation of "land disposal." Many commenters expressed strong concerns regarding this particular interpretation and its implications for the CERCLA program, as well as for RCRA Subtitle C corrective actions, State remedial programs and RCRA Subtitle C closures. In essence, commenters argued that under this interpretation, options for treating and managing wastes (such as contaminated soil and debris) with technologies that do not meet the standard of BDAT, but which are effective, protective and less costly, would not be available to remedial decision makers. Similar concerns have also been raised by EPA Regional staff involved with implementation of the CERCLA and RCRA programs. In addition, a recent comprehensive management review of the Superfund program, conducted by a special Agency Task Group, identified as an important policy issue for the Agency the effects of the RCRA LDRs on CERCLA remedies.

In light of this, the Agency has concluded that this issue—the interpretation of "land disposal" as related to removal, treatment and redeposition of hazardous wastes—is in fact a very substantial issue for the CERCLA program, one which may potentially have significant impacts on a large number of remedial actions. The Agency is also aware that similar impacts are being experienced within the RCRA program, in the context of land disposal units undergoing closure, as well as corrective action remedies.

In enacting the RCRA LDRs, it appears that Congress considered their applicability to remediation activities under CERCLA and RCRA; sections 3004 (d) and (e) of RCRA specifically provide a four-year exemption from the LDRs for soil and debris from RCRA and CERCLA cleanups. However, it is not clear that the LDR statutory provisions, and the definition of "land disposal", were intended to create these particular effects on these programs. The following discussion describes these effects, and some of their implications. In any case, in view of the many Superfund RODs and other actions that are now proceeding to final decisions and which may involve redeposition-type scenarios, EPA believes that there is an urgent need to resolve this issue as soon as possible. This supplemental notice therefore is intended to provide a more thorough discussion of the issue, and solicit comment on possible alternative interpretations of land disposal that were not identified in the proposed NCP. The Agency will consider the comments received on this supplemental notice in finalizing the NCP.

It should be noted that although this is an important and immediate issue for CERCLA and other programs, in EPA's view it is only a part of what is a much broader issue; that is, how should RCRA Subtitle C requirements differentiate between ongoing management of newly generated process wastes, and standards for cleanup of contaminated media. In order to provide for a thorough and focused discussion of this more fundamental question, EPA plans to convene a series of informal "forum" meetings with a range of interested parties in the near future.

**II. Discussion**

The criteria for remedy selection under CERCLA are in Section 121, which requires that Superfund remedial actions: (1) Be protective of human health and the environment, (2) comply with applicable or relevant and appropriate requirements (ARARs), (3) be cost effective, and (4) use permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable.

The RCRA land disposal restrictions (LDRs) are potential ARARs at many CERCLA sites. The RCRA LDRs prohibit, with certain exceptions, the land disposal of hazardous wastes, unless the wastes are first treated to standards established by EPA (RCRA section 3004(d)). Exceptions to these standards may be available if the wastes are disposed of in units

satisfying the statutory "no migration" criteria (RCRA section 3004 (d), (e), and (g)), or if a "capacity extension" (i.e., an extension to the effective date of the LDRs) has been given for the wastes (RCRA section 3004(h)). For some wastes, whose physical or chemical characteristics differ significantly from the wastes analyzed in developing the treatment standard, a variance mechanism ("treatability variance") may be available in setting LDR treatment standards for those specific wastes.

EPA has promulgated regulations for implementing the LDRs in 40 CFR part 268. These regulations specify the standards to which wastes that are subject to the restrictions ("restricted waste") must be treated before being land disposed. The standards are based on what can be achieved using best demonstrated available technology (BDAT). The BDAT standards typically are expressed as concentrations of waste constituents that may remain after the waste has been treated, but in some cases are expressed as a specific technology. In establishing the BDAT standards, technologies are considered "demonstrated" for a specific waste by studying available data on the type of treatment (including recycling methods) currently used to treat a representative sample of wastes falling within a waste treatability group. Technologies are considered "available" if they meet the following criteria: (1) The technology does not present a greater total risk than land disposal; (2) if the technology is a proprietary or patented process it can be purchased from the proprietor; and (3) the technology provides substantial treatment.

At the present time, BDAT for contaminated soil and debris is typically established on a site-specific basis through a treatability variance mechanism (40 CFR 268.44). However, the Agency is developing regulations that will establish a more tailored set of LDR standards for contaminated soil and debris. For this rulemaking, EPA will be examining alternative ways of setting LDR standards for soil and debris, recognizing that the characteristics of soils, as well as the contaminants that may be present in them, are highly variable.

The basis for establishing BDAT as the treatment standard for the LDR program was discussed in detail in the preamble to the LDR "framework" regulations (51 FR 40578, November 7, 1986). As explained therein, a primary reason for adopting BDAT as the LDR standard was the effect such a stringent standard would have in creating

economic incentives to minimize the generation of wastes by regulated industries. Waste minimization is a key objective of the 1984 Hazardous and Solid Waste Amendments to RCRA. It should be noted, however, that for most CERCLA or RCRA remedies, this incentive does not operate in the same way, since such remedies typically address existing contamination problems, rather than ongoing waste generation.

One of the key issues associated with the RCRA LDRs centers on when "land disposal" of hazardous waste occurs, thus triggering the applicability of BDAT treatment standards to the wastes. RCRA section 3004(k) defines "land disposal" for the purposes of the land disposal restrictions to include ". . . any placement of . . . hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." As stated in the preamble to the proposed NCP (53 FR 51444), land disposal occurs when a RCRA hazardous waste is placed into one of these land-based units, which are defined under the RCRA regulations.

However, as the preamble also noted, movement of wastes entirely within a unit would not be considered placement . . . in a land-based unit for purposes of the land disposal restrictions. The LDRs would thus not be applicable to such wastes. As mentioned in the preamble, this is of particular significance at many CERCLA sites which contain broad areas of contamination. These broad areas may constitute units (usually landfill units) under RCRA.

The preamble further identified several scenarios involving movement of hazardous wastes into and out of units at a site, in terms of whether such actions would be considered land disposal. (Note that the terms "placement . . . in" a land-based unit and "land disposal" are synonymous for purposes of this discussion.) Activities that were identified as constituting "land disposal" included 1) consolidation of wastes from several different units into one land-based unit; 2) waste removal and treatment in a unit located outside the land-based unit, with the wastes redeposited into the same or another unit; and 3) excavation of waste from a land-based unit, treatment of the waste in another unit such as an incinerator, surface impoundment, or tank that is located within the unit or area of contamination, and subsequent redeposition into the unit.

The particular issue that generated a significant number of comments, and which is the focus of this supplemental notice, concerns EPA's proposed interpretation of the term "land disposal" in the proposed revisions to the NCP, i.e., that land disposal includes the re-depositing of treated hazardous waste into the same land-based unit from which it was removed for purposes of treatment in a separate unit. Even though the statute defines land disposal to include "placement" of hazardous wastes in a land-based unit, the statutory language does not state whether the re-depositing of hazardous waste after treatment in a separate unit constitutes "placement". In reevaluating the interpretation of "placement," the Agency believes that the initial interpretation presented in the proposed NCP may have been unnecessarily restrictive.

The resolution of this issue has important implications at a number of CERCLA sites, as well as at many facilities undergoing RCRA closure or corrective action, and sites being addressed under State cleanup authorities. In effect, the initial interpretation as proposed in the NCP would require that whenever restricted wastes, including soils or debris contaminated with restricted wastes, were excavated and treated in another unit at the site, such treatment would have to meet the standard of best demonstrated available technology for each restricted waste.

It should be understood that in many cases, particularly when dealing with highly toxic or highly mobile wastes, treatment of wastes using the same technologies that were used to establish BDAT (and treatment to BDAT-equivalent levels), may be selected by the Agency for CERCLA remedies, since maximum treatment may be the best means of achieving site-specific remedial objectives. However, EPA's experience with the CERCLA program has shown that for some wastes in some remedial situations, treatment of the wastes using best demonstrated available technology may provide only marginal environmental benefits over other treatment measures, at a very high cost.

At a given Superfund site, a variety of technical options will typically be assessed, often involving a variety of different treatment technologies in combination with different containment systems or other engineering controls for the waste residuals. Often, a combination of alternative treatment (that does not meet BDAT) and containment may be the preferred

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ENVIRONMENTAL PROTECTION AGENCY  
AGENCY: Environmental Agency.

40 CFR Part 300  
National Oil and Hazardous Substances Pollution Contingency  
Plan

[FRL-3644-1]  
RIN 2050-AA75

55 FR 8666

March 8, 1990 [PART III OF IV]

ACTION: Final rule.

TEXT:

n 21 No commenters objected to the position in the preamble to the proposed rule that CERCLA remedial actions should attain ARARs identified at the initiation -- versus completion -- of the action.

As EPA discusses elsewhere in this preamble, one variation to this policy occurs when a component of the remedy was not identified when the ROD is signed. In that situation, EPA will comply with ARARs in effect when that component is identified (e.g., during remedial design), which could include requirements promulgated both before and after the ROD was signed. EPA notes that newly promulgated or modified requirements may directly apply or be more relevant and appropriate to certain locations, actions or contaminants than existing standards and, thus, may be potential ARARs for future responses.

It is important to note that a policy of freezing ARARs at the time of the ROD signing will not sacrifice protection of human health and the environment, because the remedy will be reviewed for protectiveness every five years, considering new or modified requirements at that point, or more frequently, if there is reason to believe that the remedy is no longer protective of health and environment.

In response to the specific comments received, EPA notes that under this policy, EPA does not intend that a remedy must be modified solely to attain a newly promulgated or modified requirement. Rather, a remedy must be modified if necessary to protect human health and the environment; newly promulgated or modified requirements contribute to that evaluation of protectiveness. For example, a new requirement for a chemical at a site may indicate that the cleanup level selected for the chemical corresponds to a cancer risk of  $10^{-2}$  rather than  $10^{-5}$ , as originally thought. The original remedy would then have to be modified because it would result in exposures outside the acceptable risk range that generally defines what is protective.

This policy that newly promulgated or modified requirements should be considered during protectiveness reviews of the remedy, but should not require a

eliminating RCRA applicability, but included suggestions for creating treatability groups for CERCLA-type waste and seeking legislative waivers from LDRs, e.g., a waiver from LDRs for Superfund actions at NPL sites.

One commenter believed that the concept of "unit" is not readily transferable to CERCLA sites due to the age and former uses of many of the sites undergoing remediation. Given the ramifications of LDRs, the commenter argued, it may be more reasonable to create a presumption of treating the entire site as one "unit," even if remediation includes a series of operable units.

Some comments were received on EPA's statements on consolidating waste. One stated that consolidation of small amounts of waste across units should not be considered placement, because that will lead to less environmentally sound and less cost-effective solutions, particularly if LDRs are triggered. Another recommended that EPA should allow consolidation of small volumes of waste anywhere on-site, for purposes of storage or treatment, without triggering otherwise applicable RCRA standards. Another commenter requested clarification that consolidation within a unit included normal earthmoving and grading operations.

1. Actions constituting land disposal. EPA disagrees with commenters who considered EPA's interpretation of the definition of "land disposal" under RCRA section 3004(k) to be too narrow. These commenters argued that any movement of waste should be considered "placement" of waste, and thus "land disposal" under RCRA section 3004(k).

The definition of "land disposal" is central to determining whether the RCRA LDRs are applicable to a hazardous waste which is being managed as part of a CERCLA response action, or RCRA closure or corrective action. The term "land disposal" is defined under RCRA section 3004(k) as including, but not limited to, "any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." The terms "landfill", "surface impoundment," and the others, refer to specific types of units defined under RCRA regulations. Thus, Congress generally defined the scope of the LDR program as the placement of hazardous waste in a land disposal unit, as those units are defined under RCRA regulations.

#5  
EPA has consistently interpreted the phrase "placement \* \* \* in" one of these land disposal units to mean the placement of hazardous wastes into one of these units, not the movement of waste within a unit. See e.g., 51 FR 40577 (Nov. 7, 1986) and 54 FR 41566-67 (October 10, 1989) (supplemental proposal of possible alternative interpretations of "land disposal"). EPA believes that its interpretation that the "placement \* \* \* in" language refers to a transfer of waste into a unit (rather than simply any movement of waste) is not only consistent with a straightforward reading of section 3004(k), but also with the Congressional purpose behind the LDRs. The central concern of Congress in establishing the LDR program was to reduce or eliminate the practice of disposing of untreated hazardous waste at RCRA hazardous waste facilities. The primary aim of Congress was prospective rather than directed at already-disposed waste within a land disposal unit. See 51 FR 40577 (Nov. 7, 1986). Moreover, interpreting section 3004(k) to require application of the LDRs to any movement of waste could be difficult to implement and could interfere with necessary operations at an operating RCRA facility. For instance, when hazardous waste is

**SUPPLEMENTARY INFORMATION:** The proposed administrative settlement concerns the Pipe and Piling Nebraska Superfund Site located in Omaha and Avoca, Nebraska. In November 1992, EPA Region VII issued a CERCLA Section 106 unilateral administrative order (UAO) to Pipe & Piling Supplies requiring it to remove asbestos-containing materials from two locations in Nebraska. EPA treated the two locations, one in Omaha and one in Avoca, as one site. Pipe & Piling conducted the removal action as required by the UAO.

Pipe & Piling did not agree to reimburse EPA's costs of overseeing the removal action at the time EPA issued the UAO. By letter dated February 29, 1996, EPA sent Pipe & Piling a cost reimbursement bill for \$34,684.15. Pipe & Piling responded by questioning the appropriateness of some charges included within the bill. In the proposed settlement, Pipe & Piling has agreed to reimburse EPA \$20,000.

Dated: November 15, 1996

Dennis Grams,

Regional Administrator.

[FR Doc. 96-30480 Filed 11-27-96; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5657-2]

**Termination of Review of Department of Energy Petition to EPA for a No-Migration Determination for the Waste Isolation Pilot Plant (WIPP) Under the Resource Conservation and Recovery Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency announces that the Office of Solid Waste has terminated its review of the final no-migration petition for the Department of Energy's (DOE) Waste Isolation Pilot Plant (WIPP). The WIPP is a geological repository intended for the disposal of mixed hazardous and radioactive wastes. The hazardous portion of the waste was originally subject to EPA's land disposal restrictions of the Resource Conservation and Recovery Act (RCRA). On September 23, 1996 the President signed Public Law 104-201 that, among other things, exempts WIPP from the provisions of the land disposal restrictions. Consequently, EPA has terminated its review of DOE's no-migration petition, effective October 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA

Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

For more detailed information on specific aspects of the issues discussed in this notice, contact Reid Rosnick (703-308-8758), (rosnick.reid@epamail.epa.gov), or Chris Rhyne (703-308-8658), (rhyne.chris@epamail.epa.gov), Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** Wastes proposed for disposal at WIPP are mixed wastes, and are defined as a mixture of hazardous waste regulated under Subtitle C of RCRA, and radioactive materials regulated under the Atomic Energy Act. Consequently, these wastes have been regulated by EPA and the State of New Mexico as a hazardous waste, and by EPA (the Office of Radiation and Indoor Air) as a radioactive material.

Prior to the National Defense Authorization Act for Fiscal Year 1997, the hazardous portion of the wastes were subject to the land disposal restrictions found in section 3004 (m) of RCRA, and codified in the Code of Federal Regulations at 40 CFR part 268. The regulations require that hazardous wastes be treated to specific standards prior to any land disposal, unless a "no-migration" demonstration can be made in accordance with 40 CFR 268.6. Persons seeking a no-migration determination must submit a petition to the EPA Administrator " \* \* \* demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous waste, or hazardous waste constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

In June 1996, DOE submitted a no-migration petition to the Agency. This petition was designed to demonstrate that there would be no migration of the hazardous wastes disposed of at the WIPP for at least 10,000 years. The Agency announced the availability of the petition in the Federal Register on August 19, 1996 (see 61 FR 42899), and provided 60 days of public comment on the petition. EPA then began a completeness check and technical review of the petition.

In September 1996, the President signed the National Defense Authorization Act for Fiscal Year 1997. Included as a subsection of the Act was the Waste Isolation Pilot Plant Land Withdrawal Amendments Act, which prescribed significant changes to the way that RCRA applies to WIPP. The

Act states that transuranic mixed waste designated by the Secretary of DOE for disposal at WIPP is exempt from the treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act and is not subject to the land disposal restrictions in sections 3004 (d), (e), (f), and (g) of the Solid Waste Disposal Act (the land disposal restrictions). Consequently, EPA terminated review of the no-migration petition for the WIPP when the bill was signed into law. It was the sense of the Congress that the land disposal restrictions, which restrict the land disposal of the hazardous portion of the mixed waste, were redundant with EPA's radioactive waste compliance certification standards at 40 CFR 191 and 194 (Congressional Record, June 20, 1996, page S6591). The 191 and 194 standards must be met by DOE prior to shipment of waste to WIPP, and in essence require that the transuranic waste be contained within the prescribed boundaries for at least 10,000 years.

In addition to EPA's role in regulation of the WIPP through the radiation protection standards, the hazardous portion of the mixed transuranic waste will continue to be regulated by the State of New Mexico through the RCRA hazardous waste permitting program. DOE must obtain a permit from the State that shows that the hazardous portion of the waste will be safely handled during the operating life of the facility, the closure period (when the facility shafts are sealed and permanent markers are installed), and for a period of time after closure known as the post-closure period. The State's RCRA permit, along with the compliance certification issued by EPA, will ensure that there is adequate protection of human health and the environment during and after disposal operations at WIPP.

EPA will continue to participate in the regulation of the WIPP under RCRA by offering assistance to the State of New Mexico in the preparation of the RCRA permit for the facility.

Dated: November 22, 1996.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 96-30481 Filed 11-27-96; 8:45 am]

BILLING CODE 6560-50-P

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ENVIRONMENTAL PROTECTION AGENCY  
AGENCY: Environmental Agency.

40 CFR Part 300  
National Oil and Hazardous Substances Pollution Contingency  
Plan

[FRL-3644-1]  
RIN 2050-AA75

55 FR 8666

March 8, 1990 [PART III OF IV]

ACTION: Final rule.

TEXT:

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Some comments were received on EPA's statements on consolidating waste. One stated that consolidation of small amounts of waste across units should not be considered placement, because that will lead to less environmentally sound and less cost-effective solutions, particularly if LDRs are triggered. Another recommended that EPA should allow consolidation of small volumes of waste anywhere on-site, for purposes of storage or treatment, without triggering otherwise applicable RCRA standards. Another commenter requested clarification that consolidation within a unit included normal earthmoving and grading operations.

1. Actions constituting land disposal. EPA disagrees with commenters who considered EPA's interpretation of the definition of "land disposal" under RCRA section 3004(k) to be too narrow. These commenters argued that any movement of waste should be considered "placement" of waste, and thus "land disposal" under RCRA section 3004(k).

The definition of "land disposal" is central to determining whether the RCRA LDRs are applicable to a hazardous waste which is being managed as part of a CERCLA response action, or RCRA closure or corrective action. The term "land disposal" is defined under RCRA section 3004(k) as including, but not limited to, "any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." The terms "landfill", "surface impoundment," and the others, refer to specific types of units defined under RCRA regulations. Thus, Congress generally defined the scope of the LDR program as the placement of hazardous waste in a land disposal unit, as those units are defined under RCRA regulations.

#1 \*  
EPA has consistently interpreted the phrase "placement \* \* \* in" one of these land disposal units to mean the placement of hazardous wastes into one of these units, not the movement of waste within a unit. See e.g., 51 FR 40577 (Nov. 7, 1986) and 54 FR 41566-67 (October 10, 1989) (supplemental proposal of possible alternative interpretations of "land disposal"). EPA believes that its interpretation that the "placement \* \* \* in" language refers to a transfer of waste into a unit (rather than simply any movement of waste) is not only consistent with a straightforward reading of section 3004(k), but also with the Congressional purpose behind the LDRs. The central concern of Congress in establishing the LDR program was to reduce or eliminate the practice of disposing of untreated hazardous waste at RCRA hazardous waste facilities. The primary aim of Congress was prospective rather than directed at already-disposed waste within a land disposal unit. See 51 FR 40577 (Nov. 7, 1986). Moreover, interpreting section 3004(k) to require application of the LDRs to any movement of waste could be difficult to implement and could interfere with necessary operations at an operating RCRA facility. For instance, when hazardous waste is