PROVIDING FOR THE ADJOURNMENT OF BOTH HOUSES

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Congressional Resolution 203, the adjournment resolution, which was received from the House; further, that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 203) was considered and agreed to, as follows:

H. CON. RES. 203

Resolved by the House of Representatives (the Senate concurring), That, in consonance with section 132(a) of the Legislative Reorganization Act of 1946, when the House adjourns on the legislative day of Thursday, August 1, 1996, Friday, August 2, 1996, or Saturday, August 3, 1996, pursuant to a motion made by the Majority Leader or his designee, it stand adjourned until noon on Wednesday, September 4, 1996, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, August 1, 1996, Friday, August 2, 1996, Saturday, August 3, 1996, or Sunday, August 4, 1996, pursuant to a motion made by the Majority Leader or his designee in accordance with this resolution, it stand recessed or adjourned until noon on Tuesday, September 3, 1996, or until such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. LOTT. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NUCLEAR WASTE POLICY ACT OF 1996

The Senate continued with the consideration of the bill.

Mr. REID. Mr. President, I yield such time as the Senator from Minnesota, Senator WELLSTONE, may use up to one-half hour.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for up to one-half hour.

AMENDMENT NO. 5037

(Purpose: To protect the taxpayer by ensuring that the Secretary of Energy does not accept title to high-level nuclear waste and spent nuclear fuel unless protection of public safety or health or the environment so require)

Mr. WELLSTONE. Mr. President, I call up amendment 5037.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota (Mr. WELLSTONE) proposes an amendment numbered 5037.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 85 of the bill, strike lines 13 through 15 and insert in lieu thereof the following:

''(a) Notwithstanding any other provision of this Act (except subsection (b) of this section) or contract as defined in section 2 of this Act, the Secretary shall not accept title to spent nuclear fuel or high-level nuclear waste generated by a commercial nuclear power reactor unless the Secretary determines that accepting title to the fuel or waste is necessary to enable the Secretary to protect adequately the public health or safety, or the environment. To the extent that the federal government is responsible for personal or property damages arising from such fuel or waste while in the federal government's possession, such liability shall be borne by the federal government.''

Mr. WELLSTONE. Mr. President, most of the time that I am on the floor I do not really use notes, or at least I do not use notes extensively. I think today what I want to try to do is read what I think is a kind of brief that I want to argue for this amendment.

Most of the debate on S. 1936 will be about the environmental policy ramifications of the bill. I know we will learn a great deal about that today. While these are important points—I view them as very important points—there is another very significant part of this debate. I am referring to the implications of this bill for the taxpayers, particularly future taxpayers.

I hope that if my colleagues are not able to listen to the statement, that their staffs will and that these words will be given serious consideration.

As you will soon see, this bill would perpetuate a flawed policy that has set up the future taxpayers of America, I fear, for a potentially infinite liability.

Mr. President, section 302 of the Nuclear Waste Policy Act of 1982, subsection (a), paragraph 4, states what has long been accepted as nuclear waste policy, that nuclear utilities shall pay a fee into a fund to ''ensure full cost recovery'' for costs associated with the nuclear waste program. Indeed, an earlier version of this very bill, introduced as S. 1271, recited in its findings section the same basic premise: ''While the Federal Government has the responsibility to provide for the centralized interim storage and permanent disposal of spent nuclear fuel and high-level radioactive waste to protect the public health and safety and the environment''—I agree with that—''the cost of such storage and disposal should be the responsibility of the generators and owners of such waste and spent fuels.''

Mr. President, once you understand that simple basic and longstanding premise, you cannot help but be confused by the policy we have been pursuing for years and which is strengthened in the bill before us. That policy is to provide for the transfer of title to high-level nuclear waste from the utility to the taxpayer.

Mr. President, could I have order in the Chamber? I would appreciate it if you would ask the discussion to be off the floor.

The PRESIDING OFFICER. All discussions will be taken into the cloakroom.

Mr. WELLSTONE. Mr. President, let me explain. As I have already described, the full cost of the waste disposal program is to be borne by the generators of that waste. To implement this idea, Congress created the nuclear waste fund in the Treasury. The nuclear waste fund is supplied by a fee paid by the nuclear utilities, which is really the ratepayer. That fee is specified in the 1982 act to be equal to ''one mill,'' which is one-tenth of one cent per kilowatt-hour of electricity generated.

The 1982 act further gave the Secretary of Energy the authority to adjust the fee if she or he found it necessary to ''ensure full cost recovery.'' As you can readily see, when a commercial nuclear powerplant ceases to generate electricity, it ceases to pay into the nuclear waste fund. In the next 15 to 20 years, as our current nuclear plants age, more and more of these plants will stop generating power, and the flow of money into the nuclear waste fund will begin to dry up. When no more money is flowing into the fund in the form of fees, we will know how much money we will have to pay for the full cost of the disposal program.

Now, we must ask the question: Will we have enough money? Will all those fees aggregated in the nuclear waste fund, plus interest paid out as necessary to meet the actual progress of the program, be sufficient to cover all the actual costs of storing high-level nuclear waste until it is no longer a threat to public health and safety and the environment, perhaps as long as 10,000 years? Are we going to be able to cover the cost?

I will share with you the opinions of the experts on that question in a moment, but first let me tell you who is stuck with the tab if the nuclear waste fund is not sufficient. Because our nuclear waste policy provides for title to the waste to transfer from the utility to the Federal Government, which translates into taxpayers—it is you and me, or at least our families in the future—who are going to be stuck with

the bill. You see, it is the transfer of the tab which the nuclear utilities are really working for.

Moving the waste in Nevada is important to them, but I am not sure that is the real prize. What they really want is to be free and clear of the stuff because they know that there is a fair chance that disposal costs will be greater than what they are currently saying it will be. When their plants are shut down and they no longer pay the fee into the fund, they want to make sure that the taxpayer cannot come back to them to pony up some more. If the Department of Energy holds title, the waste is no longer the utility's problem, but it is the taxpayers' problem, and it is a potentially huge one.

Let us see if this is a real problem. After all, Mr. President, if everybody agrees that the fund will be adequate, then there will not be any taxpayer liability to worry about.

Mr. President, could I have order, please, on the floor, and could I ask my colleagues to please cease discussion?

The PRESIDING OFFICER. The Senate will be in order.

Mr. WELLSTONE. Mr. President, the question then becomes whether there will be a real problem. After all, if everybody agrees that the fund will be adequate, the question is whether there is going to be any taxpayer liability to worry about. The Nuclear Waste Technical Review Board in its March 1996 report to the Congress states:

> In a discussion of costs, however, the board believes a more important question is whether the nuclear waste fund is adequate to pay the cost of disposal as well as previously unanticipated long-term storage. Although the Department of Energy has not yet made a new formal determination of the fund's adequacy, in a presentation before this board, analysts who conducted an independent function and management review of the Yucca Mountain project suggested that the nuclear waste fund as currently projected would be deficient by $3 to $5 billion.

In a June 1990 report, the General Accounting Office estimated, depending on varying inflation rates and numbers of repositories needed, a potentially huge shortfall—up to $77 billion. The report states:

> Unless careful attention is given to its financial condition, the nuclear waste program is susceptible to future budget shortfalls. Without a fee increase, the civilian waste part of the program may already be underfunded by at least $2.4 billion in discounted 1998 dollars.

That is the GAO report of 1990.

Now, Mr. President, in fairness—and I am trying to present a rigorous analysis for my colleagues—there is no consensus on whether the fund will be adequate. The Department of Energy believes that it will be. The nuclear industry likewise is quite adamant that the fund will be sufficient. But, of course, estimating fund adequacy is a very complicated matter, and reasonable people can have different views.

There are two basic elements to determine if the fund will be adequate. First, there is a total lifetime cost estimate for the disposal program. Depending on how far out you wish to run it, this could require making estimates for thousands of years. DOE's latest life cycle cost estimate—this is September 1995 —estimates costs for only 88 years, from the beginning of the program in 1983 through the expected end year of the program, which is 2071, when the repository is decommissioned. This, of course, assumes that the repository is built, loaded, and closed on schedule, I might add, a very questionable assumption.

Cost estimates also depend on the elements of the program, including whether there will be both an interim facility and a permanent repository. In the Department of Energy's 1995 estimate, it is assumed that the program will only include a permanent repository. They were not even talking about the interim storage facility.

The second element to determine fund sufficiency has to do with the supply side of the question: how much money will be put into the fund through fees. Because the fees are based on generation of electricity, this estimate is inextricably tied up with the life expectancies of existent nuclear powerplants and their level of electricity generation. What if the plants do not get relicensed? What if they shut down prematurely because of economic considerations or safety issues associated with aging reactors? So far, no plant has lasted to the end of its license. That is a point worth emphasizing. What if the plants have long outages and thus generate less power? The Department of Energy assumes all plants operate for their full 40-year license with no renewal and that their generating efficiency improves over time.

In the end, Mr. President, I think we all have to realize that any estimate of fund adequacy is tentative at best. As Daniel Dreyfus, Director of the Office of Civilian Radioactive Waste Management of DOE, put it last April, addressing the adequacy of the fee to ensure a sufficient fund:

> Any such fee adequacy analysis must, of course, be based upon a number of assumptions about the near and long term future. Some of the most important are the projected rate of expenditure from the fund which in turn impacts the interest credits accruing from the unspent balance, the assumed future rates of interest and inflation, and the assumed number of kilowatts of nuclear power still to be generated and sold. Significant deviations from these could result in errors in either direction that would warrant changes in the fee.

Mr. President, what my amendment would do—we now have established that the fund, which is the utility companies' fund, may not be sufficient, and some believe we are headed for a significant shortfall. The evidence is irrefutable on that point.

Here is where we get to the crux of my amendment. If there is a shortfall, who is going to pay for it? The answer is that the owner of the waste, the title holder, will pay for the shortfall. If title transfers to the Department of Energy, the taxpayers in this country are going to be on the hook. It is the taxpayers who are going to end up having to pay the costs.

The amendment I offer today would protect the taxpayer from such an uncertain fate. My amendment would simply prevent the Department of Energy from accepting title to the waste unless accepting title was necessary to protect the public health and safety and the environment. For people concerned about liability for damage from an accident caused by DOE once the waste is in the Government's possession, my amendment would ensure that the DOE is, indeed, liable for such damages.

All this amendment does is protect taxpayers from shouldering the burden of waste disposal costs after the fund runs out. That burden should remain with the utilities. That was the intention and that is the way it ought to be. We do not know the cost over 10,000 years, and this transfer of title through the sleight of hand transfers a huge potential unfunded liability to taxpayers in this country.

I have heard my colleagues argue that ratepayers and taxpayers are indistinguishable. That is not true. In other words, some folks seem to believe that changing the law to make sure that the utilities pay for the out-year liability is pretty much the same as if the taxpayer is directly on the hook for it as current law and this bill would have it.

That is simply not so. Ratepayers are people who currently use nuclear-generated power. Taxpayers are everybody. All ratepayers are taxpayers but not all taxpayers currently use nuclear-generated power. Ratepayers are a subset of taxpayers. Ask people in northern Minnesota whether they ought to be held as liable for a fund shortfall as, for example, somebody in the Twin Cities. Ask somebody in Montana if they feel they should pay as much for waste disposal as somebody in a more heavily nuclear State.

Mr. President, this bill, as I have stated already, would provide for title to transfer to the taxpayer. That is what this bill is about. I think that is a very flawed premise in this bill. While that is also part of the current law, the bill throws in a new twist. Under S. 1936, title transfers even sooner than under current law. Current law has title transferring when DOE accepts the waste for permanent disposal. In other words, title does not transfer until we actually have a permanent place to put it. S. 1936, however, does not wait. This bill puts the taxpayer on the hook as soon as the Department of Energy takes it off the utility's hands for interim storage.

That is what this is about. As I have already indicated, the level of the fee is integral to any estimate of fund sufficiency. Current law allows the Secretary of Energy to adjust that fee, if necessary, to ensure fund sufficiency.

Despite the General Accounting Office and other estimates, this bill would remove that authority, effectively freezing the one-mill fee, which has never been changed or pegged to inflation in statutory language. Thus, even if the Department of Energy does ultimately estimate that the fund will experience a shortfall, the Secretary cannot even act to prevent it to protect taxpayers from accepting the liability.

Finally, Mr. President, this bill would require a significant up-front expenditure from the fund to pay for construction of an interim storage facility, something that was not considered by the DOE in its latest assessments of fund sufficiency. As has already been explained, interest buildup from the unspent fund balances is a key component ensuring fund sufficiency. With large early expenditures, there will obviously be less interest accumulated and the fund will be less able to cover long-term costs.

This amendment is all about responsibility. It is all about making sure that costs are allocated to those who should bear them. It is all about deciding who should be on the hook when shaky estimates of costs well into the next century and beyond prove, as they invariably do, to be off the mark. We do not know what the costs are going to be. The estimates are very shaky. Yet what we are doing through this bill is essentially transferring all of the liability to taxpayers in this country.

Less than a month ago, in discussing this issue on the floor of the Senate, one of the chief sponsors of the bill, the Senator from Idaho, said, ''It is irresponsible to shirk our responsibility to protect the environment and the future for our children and grandchildren.'' I could not agree with him more. But protecting our children and grandchildren also means protecting their wallets, as I am sure he would agree. We have spent an enormous amount of time and effort in the past few years cutting the deficit and moving toward a balanced budget, in large part to protect future generations. Let us have some consistency. Let us keep that goal in mind. Let us not stick future generations of taxpayers with a potentially enormous liability. Let the title to nuclear waste stay with those who generate it. That is what this amendment says.

It is simple. It is straightforward.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 12 minutes and 11 seconds.

AMENDMENT NO. 5037, AS MODIFIED

Mr. WELLSTONE. Mr. President, I may reserve the remainder of my time but, before I do, if I could, I ask my amendment be modified to effect the changes in page and line at the desk, necessary because of the adoption of the amendment of Senator MURKOWSKI.

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

The amendment (No. 5037), as modified, as follows:

On page 52 of the bill, as amended by Murkowski amendment No. 5055, strike lines 15 through 16 and insert in lieu thereof the following:

''(a) Notwithstanding any other provision of this Act (except subsection (b) of this section) or contract as defined in section 2 of this Act, the Secretary shall not accept title to spent nuclear fuel or high-level nuclear waste generated by a commercial nuclear power reactor unless the Secretary determines that accepting title to the fuel or waste is necessary to enable the Secretary to protect adequately the public health or safety, or the environment. To the extent that the Federal Government is responsible for personal or property damages arising from such fuel or waste while in the Federal Government's possession, such liability shall be borne by the Federal Government.''

Mr. MURKOWSKI. I believe we have a half hour on our side, Mr. President?

The PRESIDING OFFICER. That is correct.

Mr. MURKOWSKI. It is my intention to yield to the distinguished Senator from Louisiana 15 minutes and the Senator from Minnesota 5, the Senator from Idaho 5, and I will use the other 5 at the conclusion. And that takes care of our side.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, the amendment of the Senator from Minnesota is based upon two profoundly wrong assumptions. The first assumption is that the Federal Government, acting through this Congress, has the right to take away vested rights of American citizens or American corporations. It is such an item of Hornbook law—and I might add fundamental fairness—that vested rights are enforceable in the courts, that it hardly seems worthwhile to argue that. Nevertheless, having said it is not worthwhile to argue it, let me just quote from the Winstar decision of the U.S. Supreme Court, decided July 1, 1996, in which it says:

The Federal Government, as sovereign, has the power to enter contracts that confer vested rights, and the concomitant duty to honor those rights. . ..

If we allowed the government to break its contractual promises without having to pay compensation, such a policy would come at a high cost in terms of increased default premiums in future government contracts and increased disenchantment with the government generally.

I could quote other equally persuasive language from this decision.

Mr. WELLSTONE. Will the Senator yield just for a moment?

Mr. JOHNSTON. Yes.

Mr. WELLSTONE. First of all, if the industry and DOE are correct, and the fund is sufficient, there would be no shortfall and there would be no damages; is that correct? The estimates of the industry is that the fund is sufficient, and if that is the case, there would be no shortfall and therefore there would be no damages.

If, in fact, there were damages—let me just ask the Senator to respond to the first question.

Mr. JOHNSTON. No, the Senator is wrong. First of all, damages would not be paid from the nuclear waste fund. Damages would have to be paid from the judgment fund, provided elsewhere.

Mr. WELLSTONE. But Senator, by the very estimates you have made, by the very estimates that the utility companies have made, there would be no damages because you have said that the fund is sufficient. So there would be no damages.

Mr. JOHNSTON. I have not said the fund is sufficient. DOE has said the fund is sufficient. And many nuclear utilities do not believe it is sufficient. But the sufficiency of the fund has nothing to do with the damages to which a utility would be entitled. The fund could be more than sufficient and a utility would be entitled to damages based upon whether the Government had violated a vested right.

Mr. WELLSTONE. I thank the Senator.

Mr. JOHNSTON. Would the Senator agree with me, first of all, the Government has no right to violate a vested right of the utilities?

Mr. WELLSTONE. My response would be, if it was decided by the courts that this amendment improperly breaches preexisting contracts, then presumably the utilities would be able to recover damages from the Government. However, I want to point out one more time that if the industry and the DOE are correct, that the fund is sufficient, there would be no shortfall and therefore there would be no damages. That would be up to the courts to decide.

Mr. JOHNSTON. Let us take this one at a time. You agree with me the Government has no right to take away vested rights, and would be liable for the violation?

Mr. WELLSTONE. I have said, unless they pay damages. But I have also made it clear the courts would decide that and I have also made it clear that by the very estimates of the utility industry, this is the very question that is in doubt, that there would be no damages because there would be no shortfall.

Mr. JOHNSTON. Mr. President, the Senator has answered my first question, which I think there is only one answer to, and that is the Government cannot violate contractual rights.

The second question is what is the duty of the Federal Government with respect to nuclear waste? It so happens that the Court of Appeals for the District of Columbia has decided that very question definitively and clearly on July 23, 1996. Here is what they have said. I hope the Senator from Minnesota will not leave. What the decision said, and it is very clear:

Thus we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of spent nuclear fuel no later than January 31, 1998.

Let me repeat that:

. . . we hold that the Nuclear Waste Policy Act creates an obligation in DOE . . . to start disposing of the spent nuclear fuel no later than January 31, 1998.

What the decision does is delineates between the duty of the Federal Government to accept title, which the court clearly says is dependent upon the completion of a nuclear repository, and the duty to dispose of the spent nuclear fuel on January 31, 1998, which is an absolute duty.

So, come January 31, 1998, the Federal Government must dispose of this nuclear waste, whether or not the facility is complete. And, if the amendment of the Senator from Minnesota were agreed to, it would have nothing to do with the obligation of the Federal Government to pay damages. The obligation of the Federal Government to pay damages and the sufficiency of the nuclear waste fund are two separate things. If, on January 31, 1998, the repository is not complete, and it will not be complete, and there are utilities which must build their own dry cask storage at their own expense, I believe it is clear, based on this decision of the court of appeals, that the Federal Government would have to pay damages. Where they would pay the damages from—I believe it would have to come from the damage fund and not from this, the nuclear waste fund, but that would be a separate item for the court to decide.

But the point is, it is very clear that this amendment cannot succeed in doing what the Senator from Minnesota says. The Senator from Minnesota says that this amendment takes the burden off the taxpayers—off the ratepayers, and puts it on the utilities.

Mr. President, that cannot be. The utilities have vested rights, recognized by the Supreme Court as late as July of this year. This very month, the Supreme Court has reiterated a very longstanding principle of law, which is that vested rights cannot be taken away by this Congress or by the courts. The utilities have a vested right to have the Federal Government dispose of their waste by January 31, 1998. You simply cannot take away that duty.

I ask the distinguished Senator from Minnesota if he agrees with my interpretation of the court of appeals' decision rendered last week in that the Federal Government has an unqualified duty ''to start disposing of the spent nuclear fuel no later than January 31, 1998''? Does the Senator agree with that?

Mr. WELLSTONE. The court decision only deals with the statute, and we are changing law. I was out during part of the Senator's presentation, and I think the part of the finding of the court that you did not read I will read when I have time. So I will come back to it.

Mr. JOHNSTON. I am reading right here:

> Thus, we hold that the Nuclear Waste Policy Act creates an obligation in DOE to start disposing of the spent nuclear fuel no later than January 31, 1998.

Is there any disagreement with what I read in the decision?

Mr. WELLSTONE. I don't disagree with that.

Mr. JOHNSTON. And the Senator would not disagree you can't take away that right legislatively, can you?

Mr. WELLSTONE. This doesn't take away this right legislatively.

Mr. JOHNSTON. Then how in the world can the Senator say they are transferring the duty of disposing of nuclear waste from the Federal Government or the taxpayers and giving that to the utilities?

Mr. WELLSTONE. There is a basic distinction. You are talking about possession, and I am talking about title. I did not say there wasn't a commitment to change this in terms of possession. I read the findings of the original legislation, and I am telling you that when we had the original findings, the original bill, it was made very clear that, in fact, when it comes to title and when it comes to the actual liability of paying for this, this should be paid for by people who benefit from nuclear power, not by taxpayers across the country. Period.

Mr. JOHNSTON. The decision of the court of appeals makes clear that they have a vested right to the title passing as of the time that the nuclear repository is built and not until that time, but they have the duty to dispose of the waste January 31, 1998.

Is the Senator saying that their duty to dispose of the waste does not involve any responsibility, any duty to pay damages?

Mr. WELLSTONE. Let me just read from the decision to put this to rest and the part you did not read:

> In addition, contrary to DOE's assertions, it is not illogical for DOE to begin to dispose of SNF by the 1998 deadline and, yet, not take title to the SNF until a later date.

Mr. JOHNSTON. What is the difference in liability between having the duty to dispose of and in taking title?

Mr. WELLSTONE. Dispose of has to do with possession, and title has to do with who pays for it. As a matter of fact, let me read for you, as long as this is on your time and not on my time, let me read for you—

Mr. JOHNSTON. Well, I don't want—

Mr. WELLSTONE. The original findings of the bill that you wrote.

Mr. JOHNSTON. I have limited time remaining. Mr. President, what the Senator is saying is so illogical. We have established that the Federal Government has the duty to dispose of spent nuclear fuel, and the Senator is saying that that duty carries with it no responsibility to pay damages, no financial responsibility; that that somehow stays with the title.

Mr. President, that is just not so. What the court said in the court of appeals' decision is that they are withholding the remedy until January 31, 1998, because the Federal Government would not have defaulted until that time. That is when the duty of the Federal Government to dispose of the waste ripens, January 31, 1998.

We cannot come in here and say, ''Well, we're going to pass that duty on to the utilities because they are somehow at fault.'' Mr. President, that is just so clearly not the law. I believe that it is simply not an argument that bears any weight at all.

Mr. WELLSTONE. Will the Senator yield 1 minute?

Mr. JOHNSTON. I will yield on your time.

Mr. WELLSTONE. I appreciate it.

Mr. JOHNSTON. On your time?

Mr. WELLSTONE. That is right, for 1 minute. This does not say the Federal Government does not have the responsibility to take the waste. That is not this amendment. The Senator mischaracterizes this amendment. That is a straw-man or straw-person argument. This amendment deals with the whole question of liability.

Mr. JOHNSTON. No; it does not——

Mr. WELLSTONE. In the very court decision the Senator cited, the court did not find this to be illogical; they made that distinction. I am not arguing the Federal Government should not take responsibility. I believe we should live up to that responsibility. This is a question of whether or not taxpayers should have to pay for the liability of it.

Mr. JOHNSTON. First of all, the Senator's amendment does not mention liability.

Mr. WELLSTONE. This is not on my time.

Mr. JOHNSTON. Or the taxpayers. It simply says who has title and the fact that title and responsibility are not the same thing. I reserve the remainder of my time.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Alaska.

Mr. MURKOWSKI. I yield 5 minutes to Senator GRAMS from Minnesota.

Mr. GRAMS. Mr. President, I want to follow up on what the Senator from Louisiana was saying.

Just last week, the courts reaffirmed what the Congress and also the Nation's taxpayers have known since 1982 when this contract, this agreement was worked out, and that is, the Department of Energy has the legal obligation to begin accepting nuclear waste by January 31, 1998.

This ruling by the D.C. Circuit Court of Appeals, the second highest court in the land, marked a historic transformation in the nuclear waste debate. We are no longer discussing whether or not DOE has a responsibility to accept the waste, but how quickly we can move toward the final disposal solution.

As my colleagues know, the roadblocks have not been environmental or technological, only political. After nearly 15 years, and at a cost to the Nation's electric consumers of $12 billion, the courts appear to have finally cleared that path.

So why are some of our colleagues still trying to raise new obstacles? Is it because they are opposed to finding a real resolution to this environmental crisis?

I cannot believe anyone would want to see nuclear waste continue to pile up in some 35 States, 41 if you include waste produced by the Government. Many of those States' utility commissioners argue that the ratepayer had paid for the waste to be removed and stored at a single permanent site. It was the DOE's failure to live up to its end of the bargain that led to the highly publicized lawsuit against DOE.

The three circuit court judges concurred with the States' opinion and rejected the DOE's attempt to ''rewrite the law.'' Even so, some of our colleagues want to rewrite that law today. Such amendments reject the mandatory obligation of the DOE to take title to the spent fuel in 1998. They are merely an attempt to rewrite the law under the guise that somehow ratepayers are different than taxpayers.

By vilifying those customers who are served by nuclear power facilities, the opponents of nuclear power hope to refocus the debate. Hiding behind the cloak of so-called taxpayer protection, they refuse to acknowledge the fact that moving forward with a permanent disposable program is the best way to avoid a taxpayer bailout.

In fact, entities as diverse as the National Association of Regulatory Utility Commissioners and the utilities themselves have calculated that enactment of S. 1936 would save $5 billion to $10 billion to the U.S. taxpayers/ratepayers.

What I find most disturbing is this false differentiation of electric customers served by nuclear utilities from the rest of the public. The idea that somehow these Americans reaped the benefit of low-cost power for years and are now somehow trying to get out of their obligation to pay for the waste is an affront to the citizens of this country.

Over the last decade and a half, Minnesotans have paid nearly $250 million in exchange for the unmet promises that the DOE would permanently store our State's nuclear waste. Again, the Nation has paid $12 billion, nationwide, into the nuclear waste trust fund. I believe the ratepayers have now lived up to their end of the bargain and met their financial obligation. It is the DOE that has not.

But what about those who have benefited indirectly from nuclear power? I am referring to the customers served by utilities that themselves do not own nuclear generating stations but that from time to time do purchase the low-cost nuclear power. Aren't these the same taxpayers that opponents of this bill are seeking to protect? Yet don't these individuals share some of the responsibility? This issue is clearly explained in the letter that I received from Minnesota Department of Public Service Commissioner Kris Sanda. Commissioner Sanda wrote:

For reliability reasons, our Nation's electrical grid is divided into several regional power pools. The Mid-Continent Power Pool serves our home state [of Minnesota, as well as] North and South Dakota, Nebraska, Iowa, portions of Montana and Wisconsin . . .

In addition to ensuring the reliable delivery of electrical energy, MAPP [as it is called] serves as a clearinghouse for spot and intermediate term market for energy and capacity transactions . . .

There are certain times of day and seasons of the year when energy from those plants is sold by [a nuclear generating facility] to other utilities in MAPP . . .

So in other words, other areas of the country receive this power.

It is without question . . . that all Minnesotans benefit from [NSP's] nuclear facilities, regardless of which utility provides their power . . .

The same is true for virtually all consumers across the country, even those whose primary utility does not use nuclear fuel to generate electricity.

Therefore, responsibility for funding a permanent storage site is clearly shared by all of the Nation's power consumers. And Congress has the responsibility for ensuring that DOE builds an environmentally sound facility.

Finally, Mr. President, I think it is important that our vote to reject this amendment will send a clear message that we reject these attempts by the antinuclear forces to portray as villains the electric consumers served by nuclear generating stations. I urge my colleagues to support final passage of S. 1936.

Mr. MURKOWSKI. How much time do we have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. MURKOWSKI. Does the Senator from Minnesota wish to——

Mr. WELLSTONE. A quick response to the Senator from Minnesota.

Mr. MURKOWSKI. This is on the time of the Senator from Minnesota.

Mr. WELLSTONE. That is correct. I will take my 11 minutes now, if it is all right.

First, a quick response. This amendment has nothing to do with the Federal Government living up to its commitment to take the waste. I am in favor of that. This amendment has to do with who pays the cost over 10,000 years; it has to do with tax liability. You cannot mix apples and oranges.

Let me just yield to the Senator from Nevada for 1 minute, please.

Mr. BRYAN. I thank the Senator.

I call my colleagues' attention to this. Under the Nuclear Waste Policy Act, the Department of Energy and the utilities entered into a contract. It is the contractual liability that becomes the issue as a result of the court's decision that the senior Senator from Louisiana referenced.

Under the contract provision, the remedy is spelled out. If the delays are unavoidable, there is no liability in a financial sense. The schedule for receiving shipment is adjusted accordingly. If it is determined that the Department of Energy has been responsible for the delay, an adjustment is made with respect to the fees that are paid into the nuclear waste trust fund. So those are the remedies that are provided. I thank the Senator from Minnesota for yielding me time.

Mr. WELLSTONE. How much time is remaining for this Senator?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. MURKOWSKI. I yield 5 minutes to the Senator from Idaho, Senator CRAIG.

Mr. CRAIG. Mr. President, I thank my chairman for yielding, and let me thank him for the work he has done on this legislation and the effort that has been put forth by the senior Senator from the State of Louisiana, to bring us to where we are at this moment.

I do not oftentimes do this, but I think it is time to speak to the citizens of Minnesota, because their Senator has produced an amendment that in my opinion reverses a longstanding Government policy. This amendment purports to release the Government from its obligation to take the waste.

The Senator from Minnesota calls this a taxpayers' protection amendment. What he does not tell us is that it would nail the ratepayer, the ratepayers of his State. For instance, it would force the people of Minnesota who have already paid over $229 million into the waste fund to pay millions more to build more storage sites at their reactors. Minnesotans have already paid twice. I believe the Wellstone amendment, if the courts upheld it, would force Minnesotans, who get 31 percent of their electricity from nuclear power, to pay again and again and again.

Last week, the U.S. Court of Appeals ruled that DOE has an obligation, and that has been thoroughly debated by the Senator from Minnesota and the Senator from Louisiana. It is very clear what the court said. The obligation exists. We will decide when the time comes that you have the responsibility to take it how you will take it.

This amendment, in my opinion, is unfair and it changes the rules in the middle of the game. It damages tremendously the citizens of the State of Minnesota who have already invested heavily in what they believed was the Government's role in taking care of this waste issue. In fact, the courts held that the Congress cannot change the contractual obligations of the Government, precisely because it would not be fair. If we were to be able to do something like this, no one would ever sign a contract with the Federal Government. Let me repeat: No one would ever sign a contract with the Federal Government if the Congress could come along, willy-nilly after the fact, and change the rules.

This amendment is little more than an effort to kill the bill—I do not think there is any doubt about it—that is the source of 22 percent of our Nation's electrical power and 31 percent of the electrical power for the State of Minnesota. That would be, in my opinion, one of the worst environmental votes we could make.

Minnesota nuclear power plants have reduced Minnesota's carbon dioxide emissions by 3 million metric tons in 1995, and by 55 million metric tons from 1973 to today. Last year, nuclear power in Minnesota displaced 118,000 tons of sulfur dioxide and 53,000 tons of nitrogen oxide.

Following Senator WELLSTONE's prescription, if that is what the Congress chooses to do and what becomes law, could result in more emissions of acid rain and more carbon emissions than the climate could tolerate.

Somehow we have to also talk about the tremendous advantage the citizens of Minnesota have received from the clean source of power, 31 percent of their power, the electrical power. Now, today, we are insisting by this legislation, a process that allows us to adhere to what the courts have said is our contractual relationship with the ratepayers of our country who receive the benefits of nuclear power, and to do something positive for the environment, to do something that will say this country is going to be responsible in the management of high-level nuclear waste in a way that is optimum science, in a way that maximizes our pledge and our responsibility to the citizens of this country.

I hope my colleagues will vote with me in tabling the Wellstone amendment. We need not kill the process. We need not stick the citizens of Minnesota with additional millions and millions of dollars where they are going to be forced to either build additional storage facilities or turn their lights out.

I yield back the balance of my time.

Mr. WELLSTONE. Mr. President, I speak, too, to the people of Minnesota, but will speak first of all to the Senator from Idaho.

Mr. MURKOWSKI. How much time is left on the other side?

The PRESIDING OFFICER. The Senator from Minnesota has 2 minutes, the Senator from Alaska has 6½ minutes.

Mr. WELLSTONE. I will take 1 minute to respond.

The Senator wants it both ways. First he says the utility companies are absolutely right, the fund is sufficient to cover the costs. Now he is saying the ratepayers of Minnesota will have to pay all this additional money with his scare stories.

First the utility companies say this fund is sufficient to pay the cost. So, if that is the case, Senator, there will be no additional cost. But if the fund is not sufficient, over 10,000 years, then, Mr. President, the question is, who pays the costs? People in Minnesota believe that, as a matter of fact, the people who benefit pay the cost.

I come from a State with a standard of fairness. Nobody wants to see an unfunded liability transferred by sleight of hand to taxpayers everywhere all across this country, period.

As far as the environment is concerned, Senator, since you were a bit personal and I will not be too personal, I would be pleased to match my environmental record with your environmental record for the citizens of Minnesota to look at any day.

I reserve the balance of my time.

Mr. JOHNSTON. Will the Senator yield 1 minute?

Mr. MURKOWSKI. I yield 1 minute to the Senator from Louisiana and 1 minute to the Senator from Idaho.

Mr. JOHNSTON. Mr. President, I think the Senator from Minnesota has another fundamental misconception and that is the question of the sufficiency of the fund.

DOE has said they believe the fund is sufficient to build the repository. To quote them, ''The preliminary assessment which is still under management review, indicates the fee is adequate to ensure total cost recovery.'' That means for building the repository. That is what DOE says. I, frankly, think it is probably not going to be sufficient, in my own view, but that is what they say.

No one has said that the fund is sufficient to cover both the cost of damages to Northern States of power and other utilities all around the country and to also build the repository. That is paying twice—paying to the utilities for their own, what we call dry cask storage, and also building the repository at Yucca Mountain or wherever in the country they decide to build it.

That is the fundamental misconception, Mr. President. If you have these damages caused by the delay that Congress puts in, then clearly the fund will not be sufficient to pay for that.

Mr. MURKOWSKI. I yield to the Senator from Idaho.

How much time is remaining?

The PRESIDING OFFICER. Five minutes remains.

Mr. MURKOWSKI. I yield 2 minutes.

Mr. CRAIG. I thank my chairman for yielding.

This is not a question of whether the fund is sufficient. I agree with the Senator from Louisiana. I have spent an awful lot of time studying, and when push comes to shove, obviously the amendment that the Senator from Minnesota would inject into it, the question becomes, is it sufficient or not?

What I am talking about are utilities in Minnesota who no longer have storage facilities and had relied on the Government to take the high-level waste that they were paying for. My guess is that if this Senator's amendment passes, that comes into question.

Do you turn the power off or do you build additional storage facility?

Mr. WELLSTONE. Will the Senator yield?

Mr. CRAIG. No, I will not yield. The Senator has his own time.

My point is simply this: If you have changed the contractual relationship, then you have changed the obligations. If you do that, somebody else has to pay. Who has been paying in Minnesota? The ratepayers. Who would pay under the amendment of the Senator from Minnesota? The ratepayers. That is what I believe thorough study of this amendment would cause if it were to become law.

Mr. MURKOWSKI. Mr. President, I think it is important to recognize we had a very clear understanding. A deal was made, the ratepayers would pay a fee and the Government would take title of the waste, period. That was the arrangement.

We cannot and we should not at this time revisit this decision in an attempt to retroactively change the deal. That is basically the basis for the amendment from my friend from Minnesota.

Mr. President, the decision that the Government would undertake the obligation to take title was made in a previous Nuclear Waste Policy Act and is part of the contract. The utility ratepayers have paid the fees under the contract, and again the Government simply has to live up to its end of the bargain.

The Government already has title to large amounts, large amounts of spent fuel and waste that will be stored in these facilities. As a practical matter, the Government will be the deep pocket for liability for these facilities, even if did not take title to civilian fuel.

We have competition and the realization that competition brings increased uncertainty to the electrical industry. That is just a fact of business. The utilities are the corporate entities and they cease to exist. That is the reason why the Government agreed, wanted and felt compelled to take title to spent fuel in the first place. The Government will own and operate these facilities. It is unfair now for the utility ratepayers to be on the hook for a liability for facilities that they have simply no control over.

So I, again, suggest to the Senator from Minnesota that the Minnesota ratepayers have already paid twice. The Wellstone amendment, if the Court upheld it, would force Minnesotans who get, I might add, 31 percent of their electric energy from nuclear power, to pay again and again and again.

If Minnesota were to lose its dependence on nuclear energy, what would be the alternative? I think the Senator from Idaho indicated that, last year, nuclear power in Minnesota displaced 118,000 tons of sulfur dioxide, 53,000 tons of nitrogen oxide, and there is simply no other alternative, if Minnesota were to lose its dependence on nuclear energy, other than to generate power from fossil fuel.

It is fair to say that, again, Minnesota nuclear power plants have reduced Minnesota's carbon dioxide emissions by 3 million metric tons by 1995 and, I think, 55 million metric tons since 1973. What is the alternative to this if we don't have the nuclear capability that so many—roughly a third—Minnesota residents depend on?

Mr. President, has all time expired on the amendment?

The PRESIDING OFFICER. The Senator's time has expired. The Senator

from Minnesota has 1 minute remaining.

Mr. WELLSTONE. Has the Senator completed his remarks?

The PRESIDING OFFICER. Yes.

Mr. WELLSTONE. Mr. President, this amendment has nothing to do with the Government's obligation to take possession of the waste. I think the Government should. But if the fund is insufficient, somebody will have to pay for that shortfall, and that somebody is the person who holds title to the waste. DOE will have possession under my amendment, but the utilities will retain the title.

My colleagues have confused this. Of course, DOE will have possession. But the utilities will pay the title. This is not, Minnesotans and all the people across the country, about turning the lights off. That is not what this amendment is about, and my colleagues know it. It is about making sure that taxpayers don't get stuck with this unfunded liability.

The PRESIDING OFFICER. All time has expired.

Mr. DOMENICI. Mr. President, I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Minnesota [Mr. WELLSTONE].

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 83, nays 17, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—83

Abraham	Frist	Lott
Ashcroft	Glenn	Lugar
Bennett	Gorton	Mack
Biden	Graham	McCain
Bingaman	Gramm	McConnell
Bond	Grams	Mikulski
Bradley	Grassley	Moseley-Braun
Breaux	Gregg	Murkowski
Brown	Hatch	Nickles
Bumpers	Hatfield	Nunn
Burns	Heflin	Pressler
Campbell	Helms	Pryor
Chafee	Hollings	Robb
Coats	Hutchison	Roth
Cochran	Inhofe	Santorum
Cohen	Inouye	Sarbanes
Conrad	Jeffords	Shelby
Coverdell	Johnston	Simon
Craig	Kassebaum	Simpson
D'Amato	Kempthorne	Smith
DeWine	Kennedy	Snowe
Dodd	Kerrey	Specter
Domenici	Kerry	Stevens
Dorgan	Kohl	Thomas
Faircloth	Kyl	Thompson
Feinstein	Lautenberg	Thurmond
Ford	Levin	Warner
Frahm	Lieberman	

NAYS—17

Akaka	Byrd	Harkin
Baucus	Daschle	Leahy
Boxer	Exon	Moynihan
Bryan	Feingold	
Murray	Reid	Wellstone
Pell	Rockefeller	Wyden

The motion to lay on the table the amendment (No. 5037) was agreed to.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 5051

Mr. MURKOWSKI. Mr. President, I call up an amendment, No. 5051, which is at the desk. I ask it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 5051.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike section 501 and insert in lieu thereof the following:

"SEC. 501. COMPLIANCE WITH OTHER LAWS.

"If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act in implementing the integrated management system.".

Mr. MURKOWSKI. Mr. President, this amendment contains the language previously filed by Senator CHAFEE as amendment No. 4834. This amendment originally suggested by Senator CHAFEE would soften the existing preemption language in the bill to clarify that only when another Federal, State, or local law is inconsistent, that is, when another Federal, State, or local law is inconsistent or duplicative with this act, then this act will govern. Otherwise, all previous applications of both State and Federal environmental or safety statutes continue to apply.

What we have attempted to do here is craft an amendment to ensure that there will be adequate oversight of all Federal and State and local laws, unless they are an obstacle to carrying out the act, because the act itself stipulates that there shall be an interim storage site at Yucca Mountain under specific conditions. Some have expressed concern that this language could be interpreted to provide preemption of other laws in cases where complying with those laws were simply inconvenient or impractical. That is not the case, and it does, I think, strain the interpretation of the bill.

However, in order to address these questions, we are offering this amendment that was suggested by Senator CHAFEE. This language provides the Department of Energy must comply—they must comply—again, with all Federal, State, and local laws unless those laws are inconsistent with or duplicative of the requirements of S. 1936. There is an effort to, if you will, disguise by generalities the intent of this bill. But it mandates compliance, again, with all Federal, State, and local laws unless they are inconsistent or duplicative, duplicate the requirements.

The Nuclear Waste Policy Act of 1996 contains a carefully crafted regulatory scheme that applies to this one unique nuclear waste storage facility. Think about that: This is consistent because there is no other such facility in the country. So the policy act contains words crafted relative to the regulatory proposal that applies to only this one, unique, nuclear waste storage facility. Since we have no other, this is designed specifically for this facility. So there is no applicability to any other facility.

Our general Federal, State and local laws are intended to apply to every situation generically. So it is only appropriate that we clarify that where those general laws conflict with this very specific law that we are designing for this interim storage site, that we have carefully drafted, with the input of many concerned people, the provisions of this law, of this act, will control the process.

The vast majority of other laws will certainly not be subject to being superseded and will be complied with. A suggestion that the Department of Energy should be forced to attempt to comply with laws that conflict with this act will simply open it up to spending years of litigation on which provisions apply and is simply a recipe, Mr. President, for unnecessary delays at the ratepayers' and taxpayers' expense and I think would provide full employment for a significant number of lawyers in this country.

So I think as we attempt to address the merits of this amendment, we recognize that this is designed to address concerns that somehow this legislation, as crafted, will not cover adequately all Federal, State and local laws of an environmental nature that are, obviously, designed for the protection of the public.

Mr. President, I retain the remainder of my time and ask if my good friends from Nevada would like to have some time running. If there is any other Senator here who would like to be heard on this amendment, I would appreciate it if they will advise the staff, and we will attempt to accommodate them on time.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I yield myself 15 minutes.

Mr. President, I believe it will be helpful for our colleagues and staffs listening in, because these two amendments have been described in the abstract. I acknowledge and confess that it has been a number of years since I attended law school, but I must say,

not even a flyspeck lawyer could make a meaningful distinction between these two provisions.

Let me read them, because they are quite simple. Under the language of the amendment that was offered earlier today and was approved by the body, section 501 deals with compliance with other laws. So here is the present state of the legislation as we debate it. It is only a couple of paragraphs, so I think it important it be understood:

If the requirements of any law are inconsistent with or duplicative of the requirements of the Atomic Energy Act and this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act and this Act in implementing the integrated management system.

Any requirement of a State or political subdivision of a State is preempted (1) if complying with such requirement and a requirement of this Act is impossible; (2) that such requirement, as applied or enforced, is an obstacle to accomplishing or carrying out this Act or regulation under this Act.

So, in effect, what the bill currently does is it bifurcates, it makes reference to Federal laws and then it talks about State preemption. But the operative language with respect to Federal law under the current state of the bill is that if any requirement of any law is inconsistent with the provisions of this act, it shall not apply.

By any plain reading of the language that is contained, any reasonable interpretation, that is, in point of fact, a Federal preemption.

The second part of the existing bill deals specifically with State preemption and has those two provisions. If it is impossible, then you don't have to comply with it and, second, if it is an obstacle to accomplishing or carrying out the act, you don't have to comply with it.

Here is the so-called amendment that changes all of that, that solves it that deals with the issue. Section 501, which is the amendment offered by our friend from Alaska, says as follows:

If the requirement of any Federal, State or local law, including a requirement imposed by regulation or by any other means under such law, are inconsistent with or duplicative to the requirements of the Atomic Energy Act or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and this Act in implementing the integrated management system.

Mr. President, I say to my colleagues, it could not be clearer. One does not have to go to law school to understand that if any other provision of the law is inconsistent with this bill, it does not apply.

What provisions are we talking about? We are talking about the entire framework of the environmental laws in America that have been enacted since the early 1970's. And lest this debate be deemed to be of a partisan nature—and I assure my colleagues it is not—many of those provisions were enacted under the Presidency of Richard Nixon.

Here is what we wipe out: If, for example, the Clean Air Act is inconsistent with the bill that we are going to be asked to vote on for final passage later on today, the entire Clean Air Act does not apply.

If the Clean Water Act has any provision that is inconsistent with the provisions of this act, it does not apply.

If the Superfund law has any provision inconsistent with the provisions of the bill that we are being asked to vote on, it does not apply.

If the National Environmental Policy Act contains any provision that is inconsistent with the provisions of the bill that we are going to be asked to vote on, it does not apply.

If FLPMA, the Federal Land Policy and Management Act, has any provision inconsistent with this bill, it does not apply.

Think about that for a moment. This is truly a nuclear utility's dream. In effect, these provisions that are the framework of our environmental policy in America, most of which have been enacted over the past two decades, that none of these, not a one, not one has any force of law whatsoever if it is deemed to be in conflict with the provisions of this act.

I know that a number of my colleagues have been persuaded, and I regret that fact, that there is a great urgency and imperative to move nuclear waste. This is all, in my opinion, part of a fabricated, as the Washington Post concluded, contrived argument. They have been at this now for 16 years.

If we were looking at the CONGRESSIONAL RECORD of this very week in 1980, my colleagues, I think, would be surprised, because the thrust of the argument is identical: ''Hey, we've got to have this, we've got to have it right away. Waive the acts, waive the laws, we have to get this going.''

In point of fact, I call this to my colleagues' attention. CONGRESSIONAL RECORD, July 28, 1980, 16 years ago:

Mr. President, this bill deals comprehensively with the problem of civilian nuclear waste.

That sounds familiar.

It is an urgent problem—

That kind of sounds familiar, too, doesn't it?

Mr. President, for this Nation. It is urgent, first, because we are running out of reactor space at reactors for storage of the fuel, and if we do not build what we call away-from-reactor storage—

That is a little different. We call it interim storage now, but away-from-reactor storage is the same basic concept—

and begin that soon, we could begin shutting down civilian nuclear reactors in this country as soon as 1983, those predictions coming from the Nuclear Regulatory Commission and the Department of Energy.

That is 1980.

As of 1983, 13 years ago, not a single nuclear utility in America has shut down because it has run out of space. So when we use ''contrived'' and ''fabricated,'' that is precisely the language to describe it.

That is why every environmental organization in America that I am aware of has examined the preemption sections and have concluded that it would be bad, bad public policy. From the Sierra Club to public-interest groups to Citizen Awareness to the League of Conservation Voters, and many, many more.

So I hear my colleagues often talk about this, the proponents of this bill, that this is an important piece of environmental legislation. Let me be clear. This is an important piece of environmental legislation, yes, because it would be a disaster repealing, by implication and by expressed language, all of the provisions that have been enacted for more than a quarter of a century as it relates to this process.

So that is why in a letter that has been sent to the Democratic leader, the administrator of the Environmental Protection Agency, Ms. Browner, has specifically referenced the fact that this would be a preemption.

I quote her letter when she indicates:

EPA is also concerned with provisions of S. 1936 and the substitute amendments—

The one that we are addressing right now—

which preempt the environmental protections provided by other environmental statutes. Section 501 in the bill and amendment preempts all Federal, state, and local environmental laws applicable to the Yucca Mountain facility if they are inconsistent with or duplicative of the [specific piece of legislation we are talking about].

So I think that the colleagues who want to say to themselves, well, in this debate who has more credibility with respect to whether or not this is preemption? The agency under the law, the Environmental Protection Agency's Administrator has been very clear. It is clearly a preemption. The environmental organizations in America who have looked at this all have concluded that it is a preemption and, for that reason, would be an environmental disaster.

But may I say, just plain ordinary English, just read it. It could not be clearer. ''If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act * * * or of this Act, the Secretary shall comply only''—only—''with the requirements of the Atomic Energy Act * * * and of this Act * * *.''

So, Mr. President, I think it is beyond refutation, beyond argument. Why is that important? My colleague from Nevada, in a moment, will expand upon one aspect of that, and that is the transportation issue.

Let me just say, to give a little flavor of this, that it is contemplated, under this piece of legislation that would create an interim storage facility, that 85,000 metric tons of fuel would be shipped from existing commercial reactors and transported to the Nevada test site in Nevada. That is about 6,200 shipments by truck, about 9,400 by rail. Some have indicated those numbers understate the amount.

Each truck cask weighs 25 tons, each rail cask up to 125 tons. Each rail cask—that is the one that is 125 tons—contains the radiological equivalent, in terms of long-life radiation, of 200 Hiroshima bombs. So when we refer to this as a ''mobile Chernobyl,'' this nuclear waste is rolling through your community. My colleague will address that in more detail. Fifty-one million Americans live within 1 mile of one of the rail or highway transportation routes that would be involved in the transshipment of these 85,000 metric tons.

I may say that my friend from a previous life—the distinguished occupant of the chair—his State knows well the circumstance because his predecessors, in the aftermath of Three Mile Island, were very much involved in a debate because much of that waste would have gone through the St. Louis metropolitan area.

I just say that the transportation route which I know my friend fully understands contemplates 6,000 shipments that will move through St. Louis, just to cite one particular State and a large metropolitan area that would be exposed to this risk. Let me just repeat, before yielding to my colleague, that each one of those rail casks, 125 tons, with the radioactive equivalent of 200 Hiroshima-sized bombs—now, admittedly, the truck casks are slightly different; they are 25 tons—so let us say that each one of those shipments roughly would contain the equivalent of 40 Hiroshima-sized bombs in terms of the amount of long-lived nuclear radiation that would be involved.

So when we are talking about preempting all of these laws, this is not just a law school or academic or esoteric issue. This is something that has been designed by Democrats and Republicans alike over a quarter of a century and is designed to protect Americans everywhere—everywhere. We are talking about 43 States that would be involved in this transportation route. So I know that many of our colleagues have heard our arguments and are perhaps weary of them.

But let me urge them to look at these preemption provisions. They are antienvironment. They are opposed by every environmental organization in America. We are not just talking about some technical, abstract proposition. We are talking about the full panoply of environmental laws designed to protect all Americans. Very clearly, what the amendment offered by the Senator from Alaska would do, it would do the same, in my view, as the language in the present bill and simply say that, if any of these provisions conflict in any way with the provisions of this act, they simply are to be ignored and set aside.

I reserve the remainder of my time, and yield the floor.

Mr. MURKOWSKI. We have one-half hour remaining. Senator JOHNSTON has indicated that he would like to respond very briefly for 2 minutes, and then I intend to recognize the Senator from North Carolina for approximately 5 minutes.

The PRESIDING OFFICER. The Senator has 24 minutes remaining.

Mr. JOHNSTON. I thank my colleague for yielding.

I want to briefly reply to a statement that was made a little earlier by the Senator from Nevada, quoting me a few years back saying that nuclear powerplants were running out of space. The fact of the matter is, that statement was true.

What has happened since that time is two things. First, there has been a regulatory and technological change in allowing what is called reracking or a greater density of nuclear rods in the swimming pools, using more boron and a change in licensing.

The change in licensing, obviously, was not under the control of the utilities, and they have allowed that. I might say that is now at its maximum. Some would say that the NRC is flirting with the safety question by allowing such density of reracking.

But, in addition to that, Mr. President, some utilities have been forced to buy their own dry cask storage at great expense. The Surry VA nuclear plant has been required to do so, the Calvert Cliffs plant in Maryland has been required to do so, and Northern States Power in Minnesota has been required to do so.

As mentioned earlier, according to the decision just rendered by the D.C. Court of Appeals, that will become, on January 31, 1998, the responsibility of the Federal Government to pay for. That is really what is at issue here in the interim storage. That is, if we do not build interim storage, then the Federal Government is going to have to pay for the dry cask storage on site for a host of utilities, not just the three which have it now, but for a host of utilities all around the country.

So, ratepayers and taxpayers will be paying twice, first, with the nuclear waste fee, and, second, with the damages which will be assessed to the Federal Government to pay for the dry cask storage. That $5 billion additional fee for damages to the Federal Government can and should be avoided. That is what we seek to do in this legislation. I thank my colleague.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, if ever we have had a commonsense solution to a complex problem come through the Senate, it is S. 1936. It is a sensible way to deal with the high-level radioactive waste that has been accumulating in 110 commercial nuclear units throughout the country.

Regrettably, Mr. President, this bill has been met with wave after wave of opposition based on emotion and ulterior motives rather than the true scientific facts of what we are dealing with.

It is now time for this Senate to stand up and make workable decisions using the facts, those facts that we know and have been proven, and ignoring the conflicting rhetoric, no matter how loudly it is expressed.

As chairman of the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, I am fully confident S. 1936 is a proper approach that will ensure the storage, disposal, and transportation of spent nuclear fuel and will be accomplished under all necessary safety requirements.

Mr. President, it has been brought up that safety is not really the issue here. Opponents wish to use safety as a stalking horse, because by keeping spent fuel in a state of uncertainty, they can argue that no more nuclear plants should be built and current plants should be closed.

The strategy is very simple: Confuse the debate when you do not have a legitimate argument. This is really not about disposal of spent fuel. What we are really talking about here is the future of nuclear energy as a generator of power in this Nation. The Federal Government has a legal responsibility to take the utilities' spent fuel. This is a legal responsibility.

Last week, the U.S. Court of Appeals for the District of Columbia cited the Department of Energy must begin accepting this waste by January 1, 1998, an obvious ruling considering the clear requirements of the Nuclear Waste Policy Act of 1982. It seems that just about everybody understands this except the Department of Energy.

Taxpayers are not paying for spent fuel disposal. Fulfilling their part of the bargain, electric utility customers have contributed $12 billion into the nuclear waste fund, $344 million from North Carolina alone. Now, it is time for the Federal Government to live up to its part of the bargain.

Utilities do not have enough onsite spent fuel storage space to permit electrical production to continue for the entire life of their plants, which is 40 years, and possibly many, many more. The Federal Government has to fulfill its responsibility and start taking the spent fuel.

If we continue to accept delays, inexcusable delays that have plagued this program, the same utility customers will be forced to pay twice and finance the expansion of new construction at existing plants to store spent fuel. Those who advocate delaying centralized storage believe it is better, instead, to store spent fuel at 110 nuclear units around the country than in one area. If ever there was a false idea as to the safety of storing it, it is to have it in 110 different locations.

Mr. President, let me address the concern that has been raised about the transportation of nuclear fuel. The Federal Government currently transports spent fuel from foreign research reactors in the name of reducing the risk of proliferation. We do it very well. The Navy moves spent fuel for temporary storage in Idaho, and utilities transport fuel between stations. Transporting and storing fuel is one of the few things we do very well.

There is absolutely no reason for any further delay, and there are many compelling reasons to move forward. There is absolutely no reason to delay any further. There are many compelling reasons we need to move forward. We must pass S. 1936 to demonstrate fiscal responsibility and to fulfill the promises made by the U.S. Government on which, in good faith, the Nation's electrical utility customers have relied.

Once again, let me repeat, this is not about the waste. It is not about the disposal of nuclear waste. It is about the future of nuclear energy in this country. That is what the opposition is fighting.

The PRESIDING OFFICER. The Senator from Idaho controls 15 minutes and 45 seconds, and the other side has 15 minutes.

Mr. REID. Mr. President, if anyone has any question about where the money is on this issue, where the big lobbyists stand, all we need to do is walk out this set of doors to my right prior to the next vote being called and you will find a sea of lobbyists. This is one of the heaviest lobbying jobs we have ever seen.

There are always promises about this bill, through the various incarnations of the legislation, that it is going to get better. Mr. President, 1271 was introduced. They said it was not quite good enough and tried to make it better. Thereafter, 1936 was introduced and they said it was a better bill. Now we have a number of substitutes that allegedly will make it better. None of them make it better.

I have been a member of the Environment and Public Works Committee my entire time in the Senate. I love working on that committee. I have served as chairman of the subcommittee that dealt with chemicals and pesticides. We held significant hearings on a drug called Alar, put on apples, grapes, cherries, to prolong their lifetime. It was poisonous. It made people sick, we believed, and is no longer used. We had hearings on lawn chemicals, fungicides.

Mr. President, I am, almost for lack of a better word, offended by someone saying that this amendment will ease the environmental laws. The environmental laws are preempted. They take away all the Federal laws, laws we have worked on. I cannot imagine, for example, the chairman of the full committee thinking that legislation like this is good, legislation that I know he has fought for on a bipartisan basis, including the Clean Water Act, Clean Air Act, Safe Drinking Water Act, Superfund—these laws are all preempted by S.1936.

My colleague, the Senator from Nevada, did a good job of explaining why this does not answer the problems. It is as bad with this amendment as without the amendment.

We have talked about this legislation being unnecessary, and it is unnecessary. The Nuclear Waste Technical Review Board is not biased toward either side. A group of 12 scientists, eminent scientists, said that transportation of nuclear waste at this time is unnecessary and wrong. Their conclusions were driven by careful and objective examinations of all the issues. They concluded that centralization of spent nuclear fuel, high-level nuclear waste, makes no technical sense, no safety sense, or financial sense.

They found that there is no need for off-site interim storage. They also decided that transportation under this bill is extremely risky. Why do they say that? They say it because it doesn't permit what is absolutely necessary—that is, planning and preparation to make sure that the public health and safety is protected during this massive undertaking.

Mr. President, we are not talking only about the people of Nevada, we are talking about the residents of 43 States. Nobody ever responds to the transportation issue. People are concerned in this Chamber about garbage being hauled across State lines. I don't know how many sponsors there are on the legislation, but I am one of those that think there should be some rules about transporting garbage. Well, this is real garbage. This is real garbage. This is worse than any plastics, or paper, or hazardous waste that you might throw in the garbage. This is real garbage.

In the past, we have had roughly 100 shipments per year of nuclear waste, but they have gone short distances, and most of these were between various places in the eastern part of the United States in reprocessing facilities.

Mr. President, this legislation is a concern to people all over the country. I received in my office a letter from someone in St. Louis, MO. I did not ask for the letter. I got it in the mail. A resident of St. Louis, MO, sent to me in the mail a newspaper from St. Louis. It is dated the middle of June. This newspaper is the Riverfront Times. One of the lead stories in this publication is ''Gateway to the Waste, Not to the West.''

This article says a number of things. One of the things it says is this:

> No matter how slim the odds of an accident, the potential consequences of such a move are cataclysmic. Under the plan, tons of radioactive materials would likely pass through the St. Louis area by either truck or rail a few times a week for the next 30 years.

We guess about 6,000 truck and train loads would pass through this site.

The article goes on to say:

> Each cask would contain the radiological equivalent of 200 Hiroshima bombs. Altogether, the nuclear dunnage would be enough to kill everybody on earth.

That is why people all over the country are concerned about this nuclear poison. ''Safety last'' is the hallmark of this legislation. This is not a Nevada issue; it is a national issue. Why? It is a national issue because we have train wrecks that have occurred all over the United States.

Look at these pictures. Here is one in Ledger, MT. If you want to talk about a wreck, this is a real wreck. This is a mutilated train outside Ledger, MT. We also had one thousands of miles away, a recent train wreck that occurred in Corona, CA. This closed down I–15 for about 4 days, off and on, which is the main road between Los Angeles, CA, and Las Vegas, NV. Fire burned for a long period of time.

Also, Mr. President, we had a train wreck that occurred in Alabama a little over a year ago. Some of the people watching this will remember. A barge, in effect, nicked this train trestle, and the next time the train went through, it did not go all the way through. It dumped people in the river, killed people.

People are concerned about transportation, and they should be concerned about transportation, because we have been told by those who know that we should not be transporting nuclear waste. There is no need to do it. The Nuclear Technical Review Board said there is no reason to do it. They are 12 nonpartisan scientists who are trying to do the best thing for the country.

Mr. President, this spent nuclear fuel—we talk about Nevada, but it originates someplace. We have here a chart that we will talk about later. It shows the funnel effect of transportation. Thousands, tens of thousands of loads of spent nuclear fuel will be shipped and eventually wind up in a tiny spot in Nevada. But in the process of getting there, these thousands of shipments will go into 43 different States.

Mr. President, these shipments start somewhere. They don't start in Nevada. We don't have nuclear fuel. This is a risk to all States of the United States, not just Nevada. The industry and the sponsors of this bill would like you to believe that transportation is risk free. Well, it isn't. There have been truck and train accidents involving all kinds of things, including nuclear waste. We have been fortunate that there has not been a great dispersion of this nuclear poison. There will be more accidents because there will be tens of thousands of more loads of this.

The industry will tell you that the probability of an accident is not great. Well, probabilities have an inevitable result, and if you push them long enough, the adverse will occur. The day before Chernobyl, the probability of such an accident was extremely low. The accident happened and the consequences were enormous. Now, the probability of another one is much more significant than it was. The same potential exists here.

Mr. President, under this legislation, as the Nuclear Technical Review Board said, we have not made the necessary investments to assure capable responses to accidents. I talked about a few of these train wrecks. We know that if they are moved, they are subject to terrible violation. We know that the casks have been developed to be protective of fire. Yes, fire for 30 minutes.

We know that recently—in fact, last year—we had a train that burned for 4 days. What will a cask do that is safe for 30 minutes of exposure to fire at temperatures of 1475 degrees? Well, it is pretty tough to understand that when we know that diesel fuel burns at an average temperature of 1800 degrees.

Most of the trucks and trains use diesel fuel. Diesel fuel has had occurrences where the heat was 3200 degrees Fahrenheit. So why only 30 minutes? Why 1475 degrees? It simply will not protect us, Mr. President. They also say, well, you can get in a wreck—they have a little film in the industry, which they will show you. You will see this truck firing down and the cask shoots off of it. Well, the casks are safe if the accident occurs if you are only going 30 miles an hour. If you are going faster, you have big problems. The cask will break, and you are in trouble.

I don't know how many would think that this train accident here occurred when the train was going 30 miles an hour. The damage to this vehicle had to have occurred at more than 30 miles an hour. We all know—because we have watched trains go by—that trains do go 30 miles an hour once in a while, but not very often. So having protection at 30 miles an hour simply doesn't do the trick.

We have residents, Mr. President, along this route—over 50 million of them—within a mile of where this poison is going to be carried. The term ''mobile Chernobyl'' has been coined for this legislation, and rightfully so. A trainload of waste may not contain the potential that Chernobyl provided—with death and destruction in its wake, and people are still dying from that—but the risk is still there.

People know the risk of this poison. This is something that we have talked about early on, about people waiting after one of these accidents to find out what dreaded disease they are going to get. The odds are that they will get something. We have had that experience in Nevada. We know that the above-ground nuclear tests made a lot of people sick, Mr. President. Most of the downwinders were in east-central Nevada and southern Utah. They got real sick. So transportation is something that has not been answered, it has not been responded to, and it should, because transportation of nuclear waste is something that we simply do not know how to do yet.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho, [Mr. CRAIG] is recognized. The Senator from Idaho has 15 minutes 16 seconds.

Mr. CRAIG. What remains on the other side?

The PRESIDING OFFICER. The Senator from Nevada has 2 minutes 11 seconds remaining.

Mr. CRAIG. Mr. President, will you signal me when I have spoken for 10 minutes?

Mr. President, we have heard a series of statements by my colleague from Nevada that I think the least you could say about is that they were subtly inflammatory. The worst you can say about them is that they are shocking; alarming. The only problem is, if they were true, they might be that. But they are not true. Science argues it, the law argues it, and the facts argue it. There is nothing worse than a picture of a train wreck which my colleague from Nevada has put forth; very dramatic.

If there had been a cask of spent nuclear fuel in the middle of that train wreck, it would still be there and it would be whole and it would be unbreached. That is the evidence. While my colleague from Nevada would argue that these tests are at 30 miles an hour, what it shows is that, in speeds in excess of 150 miles an hour, there might be a potential of breach. My colleague from Nevada is right. You rarely see a train that moves less than 30, although I have never seen one moving at 150.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. CRAIG. I am happy to yield for a question; a question, not a statement, or I will take my time back. Thank you.

Mr. REID. Will the Senator inform me and the rest of the Senate where the 150 miles an hour information comes from?

Mr. CRAIG. The 150 miles an hour we talk about in relation to the science that was developed to an ''unyielding surface.'' I believe that is the term that is used in the test. That was the result of the calculation which was a product of Sandia National Laboratory, so, I guess I could say, from the best engineers in the country who know how to look at the science and the engineering involved and come up with those calculations.

The most I can say—and I think my colleagues deserve to hear this—is that the language that has been offered and the statements that have been offered this afternoon by my colleague from Nevada as it relates to transportation are simply misleading.

By the way, when you talk of Chernobyl or you talk of Hiroshima and you talk of explosions, casks do not explode, period. There is no one in the scientific field today who would make that argument. If they were breached, they would release radioactivity, but they do not explode, and it is unfair to in any way paint the verbal picture that that kind of risk would be involved.

What the paper from Missouri did not say was that waste now traffics through St. Louis, MO, and it has for a good number of years in its route across the country to the State of Idaho, or to other States where the waste ultimately finds a temporary storage destination.

So for this to be something new in the city of St. Louis is not true. What is important to say about it is that in all the years that it has been trafficked by our Federal Government, there have been no accidents that resulted in any radioactive spill. That is what is important to understand here. I think that is the issue that is so critical as we debate this.

The amendment we have before us is very clear. It says that DOE must comply with all Federal, State, and local laws unless they are inconsistent, or duplicative with the requirements of S. 1936.

My colleagues from Nevada could list all of the Federal laws in the country; every one of them. You can just pick and pull. The point is that, if they are duplicative, then we have already met the test. Why ask somebody to repeat and repeat again only for the exercise, the futility, if you have already made the determination? Would we list all of the defense laws in the country? Pick any law you want. That is not the issue.

The issue is the question of compliance being responsible, being environmentally safe, and humanly safe. I must say that, based on the record that we have already demonstrated in this country by the transporting of the high-level waste of the Defense Department, we have a spotless record.

So it is impossible to argue unless you really wish to only characterize this for the purposes of a motion.

Mr. BRYAN. Will the Senator yield?

Mr. CRAIG. I have no more time to yield. Thank you.

In this issue, emotion sometimes works and scare sometimes works, and I understand that. I have no concern about that. The citizens of my State are very frustrated, as I know the citizens of the State of Nevada are. But what the citizens of Idaho have to admit is that in the years that nuclear waste has been transported to Idaho or through Idaho there has never been a spill. It has been transported safely. Idaho has been concerned about it and has repeatedly checked on it, and as a result of all of that, it has been done in a very safe way.

The Hazardous Materials Transportation Act that S. 1936 complies to, the responsibility that States and authorities have under that act and that the local communities have under that act to assure the safest of transportation, is exactly what we are achieving here. It is my intent, and it is the intent of the Senator from Alaska and the Senator from Louisiana, to assure this Senate that within the capacity of the law and in the capacity of science and engineering today, this is safe. History proves it to be safe. There is no way to argue an example where it has failed or has been unsafe.

At this time, I would like to yield 1 minute to my colleague from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. I thank my colleague for yielding, Mr. President.

I simply wanted to quote from the Nuclear Waste Technical Review Board

of March 1996 on the question of transportation risk. The Technical Review Board has been quoted by both sides here today, but this bears directly on the question. It says:

The Nation has more than three decades of experience transporting both civilian and DOE-owned spent fuel. In 1997, 471 shipments were made, 444 of which were by truck. In the 1980's, 100 to 200 such shipments were typically made each year. Numerous analyses have been performed in recent years concerning the transportation risks associated with shipping spent fuel. The result of these analyses all show very low levels of risk under both normal and accident conditions. The safety record has been very good and corroborates the low risks estimated analytically. In fact, during the decades that spent fuel has been shipped, no accident has caused a radioactive release.

Again, from the Nuclear Waste Technical Review Board of March 1996.

Mr. MURKOWSKI. How much time is remaining?

The PRESIDING OFFICER. The Senator from Alaska has 6 minutes, and the other side has 1 minute left.

Mr. MURKOWSKI. I will make a relatively short statement.

Mr. President, again I would like to refer specifically to what this amendment does and what it does not do.

The amendment simply states that if there are provisions of law that are inconsistent with specific terms of this bill, then this bill is applicable. This bill will govern.

Now, the Senators from Nevada would ask that the Department of Energy attempt to comply with inconsistent laws.

I can only assume that they ask this because they know it is impossible to do. That is a catch-22. That is simply a recipe for delay, a recipe for additional expense, a recipe for additional litigation and full employment for a lot of lawyers. Instead, we offer a responsible provision which clarifies that while the Department of Energy will comply with this act, if any Federal, State, or local law is not in conflict with this act, those laws will be complied with.

I reiterate—this is a unique, one-of-a-kind facility. That is why we are here today. We are designing laws to fit this facility. That is why we are debating this legislation. It is not designed to do anything more than address this facility. Other laws are designed for a broad breadth of activities. This is unique. It contains a carefully crafted regulatory program, as I have said, governing this facility only. The position of the Senators from Nevada, I think, results in confusion and attempts to thwart the will of Congress as expressed in this very unique piece of legislation designed for one thing.

Let me just mention the transportation aspect because I have had an opportunity to observe transportation of high-level nuclear waste in Great Britain, in France, and Sweden. To suggest that American technology cannot safely develop a system and casks necessary to transport this waste is simply unrealistic. It is moving by rail in France. One can go into a nuclear plant and see cars on the sidings that were designed to carry the casks. It is moved in Scandinavia by special ships that have been built that traverse the shores of Sweden unescorted. They are in casks. They are specially crewed from the standpoint of the training, but it is not Government employees, it is a shipping line, and they have a proven record of safety.

We have seen this high-level nuclear waste moved in Europe by highway in casks with appropriate measures. If Members will recall, there was a thought given a few years ago to the utilization of a Boeing 747–400 to move high-level waste from the Orient to Europe, primarily because the Japanese were interested in bringing their waste back to France for reprocessing. So you would be basically moving waste that contains plutonium. The question quite legitimately came up, can you design a cask to withstand a free fall at 30,000 feet? And the answer was, yes, it can be done. It will cost a good deal of money.

What we are talking about here is a realization that we have moved this material for an extended period of time throughout Europe. We have moved it in the United States to a lesser degree. But if we adopt this legislation and if Yucca is the interim site for a repository, to suggest that we cannot move it safely defies realism, defies the experience that other countries have had, and I think it sells American technology short.

I see no other Senator at this time who desires to speak, and I reserve the remainder of my time pending the disposition of the pending amendment.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from Nevada [Mr. BRYAN] is recognized.

Mr. BRYAN. I thank the Senator.

Let me respond briefly. The Senator from Idaho was unable to respond to my question because of time limitations, but he was going on at some length as to why the Senators from Nevada would insist that there, in effect, be a duplicative experience when the law already covered it.

A point I want to make very emphatically is the Senator from Idaho is quoting from only a part of the preemption language. The preemption language, in effect, says that if the requirements of any Federal, State, or local law are inconsistent with—inconsistent with—or duplicative. So the point I made, I think, is a telling one and one that is irrefutable, in my opinion, namely that all of these environmental laws that we talked about, if there is a conflict, do not apply.

I must say that in terms of public policy, putting aside one's view for the moment of how you feel about nuclear waste and any urgency that may or may not be present, what a disastrous public policy it is to wipe out the environmental laws, and that is why every environmental organization has opposed this language and that is why the Environmental Protection Agency has strongly resisted it.

Let me talk a moment about the casks, and we will talk a lot more about transportation later on in this debate. The senior Senator from Louisiana cites the numbers that have been shipped around the country. I am sure he is absolutely accurate. But we are talking about something of a scale and dimension unprecedented anywhere in the world—85,000 metric tons, 16,000 shipments. We are not talking about 100. We are talking about 16,000 shipments. The Nuclear Regulatory Commission claims that the cask design will fail in 6 of every 1,000 rail accidents. Built into this, the laws of probability tell us that with the heightened and elevated volume, you are going to have an accident and a failure.

Finally, I would just like to say with respect to the casks, what has driven this entire debate about nuclear waste over the years is how to do it cheaper, how to do it faster. That is where the nuclear utilities are coming from. And so the new casks that are going to be used to store this have not yet been designed and they will be less expensive and subject to less rigorous standards.

The PRESIDING OFFICER. The Senators' time has expired.

The Senator from Alaska has 1 minute and 6 seconds.

Mr. MURKOWSKI. Has all time expired?

The PRESIDING OFFICER. All time of the Senators from Nevada has expired.

Mr. MURKOWSKI. I say to my friend relative to his reference to an unprecedented scale which he suggests will occur, that factually is just not so. As a matter of fact, the French alone have moved 30,000 metric tons of spent fuel—that is spent nuclear fuel. This is the same amount we currently have, or approximately the same amount we have in the United States today.

I remind my colleagues of one other thing. While it is true we do not have support from the environmental movement in this country, the reality is that most of those groups are opposed to the generation of power by nuclear energy. What they do not do is recognize the obligation that since we are nearly 22 percent dependent on nuclear energy, we are going to have to meet the demand with something else. Nuclear power opponents want to terminate the industry, by not allowing the States to have the availability of storage under State licenses. So when one looks at the environmental concern, you have to recognize the environmentalists are not really meeting their obligation, and that is to come up with an alternative.

The PRESIDING OFFICER. The Senator's time has expired.

All time has expired.

Mr. MURKOWSKI. Mr. President, it would be my intention to ask for a voice vote on this amendment unless there is an objection.

The PRESIDING OFFICER. Is there an objection? If not, the question occurs on agreeing to Murkowski amendment No. 5051.

The amendment (No. 5051) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 5048

Mr. MURKOWSKI. Mr. President, I call up amendment numbered 5048 which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 5048.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike subsections (h) through (i) of section 201 and insert in lieu thereof the following—

''(h) BENEFITS AGREEMENT.—

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

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

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

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

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

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

''(i) CONTENT OF AGREEMENT.—

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

BENEFITS SCHEDULE

[Amounts in millions]

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

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

''(A) 'spent fuel' means high-level radioactive waste or spent nuclear fuel; and

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

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

''(4) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to 1/12 of such annual payment under paragraph (1)(A) for each full month less than 6 that has not elapsed since the last annual payment under paragraph (1)(A).

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

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

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

Mr. MURKOWSKI. Mr. President, this amendment is an effort to clarify the issue of consideration to be provided to Lincoln County, NV. Specifically, it clarifies that assistance money provided to Lincoln County, NV, may be provided to the city of Caliente, NV. Caliente is within Lincoln County and is the actual site of the intermodal transfer facility authorized by the bill. The intermodal transfer facility is where the cask containing spent nuclear fuel would be offloaded from the trains and placed upon the heavy-haul trucks for the final leg of transport to the interim storage facility at the Nevada site. These can be the off highway type, heavy rigs that operate on very, very large tires and make virtually no footprint. That technology is well known. That equipment, off highway, is used in large mineral excavations and various other large commercial earth moving activities that are of an off-highway nature.

Caliente is northeast of the Nevada test site. The reason for it being selected as the intermodal transfer is that point avoids the transportation of casks through the Las Vegas area.

The elected officials of the city of Caliente, in Lincoln County, have taken what I consider to be a very reasonable, very practical approach, a conservative approach to the storage of this nuclear waste in Nevada. I think they recognize the inevitability. In spite of the difficulty with our concerns of our friends from Nevada, this waste has to go somewhere. You just cannot throw it up in the air and expect it to stay there. Nevada is the preferred site, it is a site where we have had over 50 years of nuclear testing of various types, where it has been expressed on this floor we have had test nuclear explosions that have taken place actually below the water table. So clearly, as we look at the alternative, the Nevada test site is the logical site for the interim repository.

So I think what we see here is that Lincoln County, the city of Caliente, has recognized the inevitability of this and they have simply attempted to ensure that the interests of their citizens are protected, and I think that is an obligation that we have. They have maintained, throughout the process, that disposition, despite a series of legal attacks, some rather harsh, on their right to represent their citizens and their freedom of speech by the State of Nevada.

I ask unanimous consent the text of a petition, signed by 286 citizens of the city of Caliente, Lincoln County, supporting this position be printed in the RECORD.

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

We the undersigned, support recommendations for maximizing benefits and minimizing risks as outlined in the City of Caliente/Lincoln County Nevada Joint Resolution 1–95. As residents of the State of Nevada, the United States Constitution provides that if the Nuclear Waste Policy Act is going to be amended to allow transportation of spent fuel rods through Lincoln County and the City of Caliente, we are entitled to provide input to any such proposals. Such input would request oversight of safety issues and receipt of benefits that may be associated to any transportation and/or storage facilities located within Lincoln County.

Mr. MURKOWSKI. I was going to read, ''We the undersigned support recommendations'' and the rest of the statement, but it is cut off by the Xerox machine, so we will try to get that and enter it into the RECORD. I appreciate the President's willingness to have that printed in the RECORD.

In conclusion, I certainly commend the citizens of Caliente and Lincoln County as a whole. I urge the pending amendment be adopted. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Nevada [Mr. BRYAN] is recognized.

Mr. BRYAN. Mr. President, I yield myself 2 minutes.

Mr. President, let me respond. It is true some citizens of Caliente embraced this. From the time of the Old Testament, there are some who are prepared to forfeit their birthright for a pottage of lentils. I must say, I believe my friends and neighbors in Caliente, those who have advocated this project, are misled and misadvised.

I simply point out if 286 becomes the standard, I am sure we could get 286 Alaskans or Louisianians or others to embrace this. It is part of the nuclear energy industry's attempt to, in effect, buy it. Caliente is a wonderful community. It has endured tremendous hardship in recent years. When I was Governor they wanted to have an incinerator and import hazardous wastes to be incinerated. These are folks who are

absolutely desperate. I vetoed that legislation. The present Governor has done similarly.

I understand and sympathize with the economic plight of my fellow Nevadans who live in Caliente, but I must say they have been used and badly used by the nuclear industry with this promise about putting a little money out. For my senior colleague and I, this is not about money, this is about public health and safety of 1.8 million people, and there can be no compromise on that issue. That represents the broad public view in Nevada.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada [Mr. REID] is recognized.

Mr. REID. Mr. President, the Nuclear Waste Technical Review Board, in March 1996, recognized the problems with transportation. They recognized, as the senior Senator from Louisiana indicated, that there have been small loads of nuclear waste that traveled very short distances. But they go on to say—and that is the whole point, that they are in effect legislated out of business, because they said, ''the Board sees no technical or safety reason to move spent fuel to a centralized storage facility.''

Caliente of course means hot. It is not because it is hot weather. It is because they have hot water in the ground there. That is how this town got its name. The city of Caliente represents 0.05 percent of the people of the State of Nevada, 0.05 percent. They are desperate. We have 17 counties in Nevada. There is no county that is in more desperate economic condition.

Their mineral abilities are gone. Their agricultural interests are very sparse. A lot of land is owned by the Federal Government. And they have really struggled. Caliente was a railroad town. The railroad, in effect, has moved out on them. It does not stop there anymore. People who used to work for the railroads do not work there anymore. It is in deep, deep economic depression.

Senator BRYAN talked about one thing they wanted. They also wanted to start a cyanide plant there. They will take anything, I am sorry to say, they are so desperate for money.

Caliente represents, I think, a subject we want to talk about here. Caliente is remote. It is about 150 miles from Las Vegas. Nevada is, surprisingly, the most urban State in America. Mr. President, 90 percent of the people, approximately, live in urban areas, the Reno-Las Vegas areas. Only about 10 percent of the people live in rural Nevada, as we remember it. We have a lot of areas in Nevada that are lonely.

We have the loneliest road in America in Nevada. But Nevada is not the only place that has remote areas. Utah, eastern Utah is extremely remote. I have driven through parts of Colorado that are as remote as any place in Nevada ever was, as are parts of Arizona and New Mexico. The reason I mention that is we need to understand that not only is transportation a problem for the safety of carrying these canisters—and I say to my friend from Idaho, the 150 mile an hour—they may have run a test at 150 miles an hour, I do not know about that. But I do know the canisters have been certified by the Nuclear Regulatory Commission to this point for 30 miles an hour and for burning for 30 minutes. That is fact. So the 150 miles an hour, I do not know where that came from. They may have run some tests. But certification is for burning at 1,475 degrees for 30 minutes and speeds of 30 miles an hour.

We are concerned about unforeseeable accidents. We have pictures of train wrecks, Ledger, MT, Vernon, CA, Alabama. All over the country they have about 600 train wrecks a year. Most of them, thank Heavens, are not bad, but some are disastrous, like the one that burned for 4 days last year, like the one that closed the freeway between Las Vegas and Los Angeles for 4 days. So we have bad train wrecks.

I am not talking about what I am going to say in just a few minutes, because of what took place with TWA, and what took place in Atlanta with the bomb.

I talked about this 3 weeks ago prior to these horrible incidents. I want the RECORD to show I spoke earlier about these and other threats before these tragic event at the Olympics and TWA incident off the coast of New York.

No one wants to exploit the pain, the suffering, and the anguish of those people. Those of us who serve in the Congress, especially serve the western part of the United States, we seemingly live on airplanes. So, when these accidents happen, we all look inward.

But I must speak to the threat of terrorism, because the nationwide transport of spent nuclear fuel will provide targets of inconceivable attraction to terrorists, both foreign and, I am sorry to say, domestic; we have people who are terrorists within our own country, as indicated in the Oklahoma City bombing and probably in the Atlanta Olympic bombing.

We have enemies and they are not all outside the boundaries of this country. For whatever reason, though, these enemies detest parts of our country, and the foreign operations detest what our country stands for and its values. Our very freedoms are threatened. They dwell on hitting points of interest to the American public. That is why the White House is such a target. That is why this building is such a target. That is why we have a police force of almost 2,000 men and women who protect the people who work in these buildings and the tourists who come to this Capitol complex. That is why the Capitol Police have animals that sniff out explosives, animals that are around at all times looking at cars that come in and out, sniffing to find out if there are explosives. We have bomb detection units. We have bomb disassembly units. All over this Capitol complex, there are plainclothes officers protecting the people who come into this building.

There are people who would do anything to cause terror to this country. So, Mr. President, we have to eliminate whatever we can that allows them targets.

There are many clandestine foreign interests. We know that. Some are led by leaders of countries. They want to publicize their existence and promote their goals through outrageous acts of blatant terror and destruction. What better stage could be set for any of these enemies of our country than a trainload or a truckload of the most hazardous substance known to man, clearly and predictably moving through our free and open society?

You cannot move a 125-ton object on a train that is full of nuclear waste without having it marked and without notifying people it is coming through. These shipments, of necessity, must pass through our most populated centers, which provides opportunity for a successful attack for a terrorist to strike terror and public confidence in our form of Government.

Earlier today, I talked about something I received in the mail from St. Louis. It is a newspaper called Gateway to the Waste. It talks about how in St. Louis they are afraid of nuclear shipments there.

Each cask would contain a radiological equivalent of 200 Hiroshima bombs. All together the nuclear tonnage would be enough to kill everybody on Earth. These shipments would not only pass through populated centers but through remote and inaccessible territory. Remember, I say to my colleagues of the Senate, that the accident that occurred in Arizona occurred in a very remote area. A person went out there undetected and simply took some tools and took the track apart. When the train came over, the tracks spread and death and destruction was in its wake.

The opportunity to inflict widespread contamination to engender real health risk to millions of Americans is apparent. And people say, ''Oh, no one would do that.''

What happened in Japan? Sarin gas was collected and dispersed. They did not do a very good job. They only wound up killing dozens of people and causing respiratory problems and other forms of illness to hundreds and hundreds of people. That was a failure, even though they caused death and destruction to that many people. If they had done it right, it would have killed thousands.

We must prepare for the realities accompanying a massive transportation campaign that would be required to consolidate nuclear waste at a repository site. We must deter our enemies through readiness and competent response before we undertake this dangerous program.

One of the things the Nuclear Waste Technical Review Board said is we are

not ready for this. The Governors' Association hired some people to conduct a test to see how the State of Nevada—this was not done by the State of Nevada, but the Governors' Association did it to find out how Nevada is prepared—now remember, Nevada has dealt with things nuclear before with aboveground and underground nuclear testing—how we would deal with nuclear waste transportation through Nevada if something went wrong. We are not ready, not even close. If we are not ready, you can imagine how other States are. We must assure our citizens we only have to undertake this dangerous venture once. It is paramount we do it right the first time.

There is a growing danger in this country from both domestic and international terrorism. Exposure of this substance can lead to immediate sickness. It is much worse than sarin gas. Early death, and for less acute exposure, to years of anxiety and uncertainty as the exposed populations wait helplessly for the first onset of thyroid cancer, bone cancer, leukemia, liver and kidney cancer, and on and on.

We know that we must be prepared, and we are not prepared. The comprehensive assessment of its capacity to respond and manage a radiological incident in Nevada did not work out well. That is the way it is all over the country.

Mr. President, why are we concerned about terrorist incidents? We have weapons that are almost unbelievable. Most of us in this Chamber have gone shooting with a shotgun. We know how big a shotgun shell is.

Here we have a shell not even double the size of a shotgun shell, and this is a shaped charge warhead terrorist tool. it is 1½ inches in diameter and 4 inches long and, as described by scientists, it kind of works like a watermelon. When you squeeze the seed of a watermelon it squeezes the liner material and squirts out. This will pierce 5 inches of steel. That is what this chart shows.

Mr. President, if the Presiding Officer wanted to buy a weapon to spread terrorism around the United States, he could do it. It might take you a week, 2 weeks, but if you have money, you can buy from an arms dealer. I have pictured one weapon. We have lots of other weapons we can show, but this one weapon is a Russian version of a portable antitank weapon. This weapon is pretty accurate. At 330 yards, you can hit a target the size of my fingers here. It weighs 15 pounds. That is all it weighs. This weapon is a little more powerful than the one I just showed you, because this will fire 330 yards. It will go through 16 inches of steel.

The typical rail canister of nuclear waste is about 4 inches of steel plus some lead and some water. A piece of cake for this weapon that I just showed you.

But, Mr. President, weapons are all over, easy to pick up and purchase, weapons weighing 16 pounds, 22 pounds, penetrating up to 3 feet of steel.

You might say, no one could afford this. These weapons you can buy for $5,000, $10,000. That is all they cost. Buy a few shells with them. These are antiarmor weapons.

The reason, Mr. President, we should be concerned about this is that all nuclear waste is funneled into one small part of our country. It starts out this big with tens of thousands of shipments, but the more it goes, by the time it gets to Colorado, the circle is that big, and all through these parts of the country, Mr. President, you keep narrowing the scope. It is becoming easier and easier the farther west you go, the more remote it becomes, and the more concentrated volume of nuclear waste will be shipped there.

If I were a terrorist organization, this would be a piece of cake. These weapons will fire up to 300 to 400 yards. They are in very remote areas. You can go places in Nevada, Arizona, and Colorado where people do not go for days. Along those railroad tracks, you can be out there, camp, and all you are going to be interrupted by are the trains coming by. That is why they have been unable to catch the person in Arizona because he could have been gone for a day before the tracks separated, or longer.

So what are we going to do? I think what we should do is do what the Nuclear Waste Technical Review Board did and say, let us not subject the world and the country to the spread of this nuclear poison. We have not invested in the transportation planning. And the preparations are absolutely necessary for the safe transportation of this dangerous material through our heartland.

We have not addressed the spectrum of threats to safe transportation and not developed a transportation process that guards against these threats and are not ready to meet the emergencies that could develop because of a nuclear accident or a terrorist act. The Nuclear Waste Technical Review Board recognizes our lack of readiness. That is one of the reasons they argued against the transportation program proposed by this legislation. The lack of readiness, preparedness and careful planning is one of the main reasons I urge my colleagues to vote against this ill-conceived, unnecessary and premature approach to managing nuclear waste for our country.

Mr. President, we are talking about a substance that is the most poisonous substance known to man. We have been told by preeminent scientists, Dr. John E. Cantlon, Michigan State University; Dr. Clarence R. Allen, California Institute of Technology; John Arendt, of Arendt Associates; Dr. Gary Brewer, University of Michigan; Dr. Jared Cohon, Yale University; Dr. Edward Cording, University of Illinois, and on and on.

These people, 12 in number, are eminent scientists with no political agenda, scientists saying we are not ready to move this stuff. It is safe to leave it where it is. Leave it where it is. So we should leave it where it is.

This legislation is unnecessary. It is being pushed by the nuclear lobby. That is why it is being done, to save the nuclear industry money and pass the expense off to American taxpayers.

They are always in a rush—always in a rush. It took us many years before the permanent repository. We got it where science would control what went on. Lawsuits had to be filed. Legislation had to be passed. But that is not fast enough for them. Now they do not want to wait for science, which will come back and tell us in 1998 how the Yucca site is going to be. They are unwilling to wait for that because they want to save a buck.

They want to save a buck by passing the responsibility off to the Federal Government way ahead of time and, in the process, making this country vulnerable to accident by rail or car, and opening our country to more terrorist acts. The terror we have known in the past pales any time we think about what could happen if a terrorist was able to penetrate one of these nuclear shipments.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank the Chair.

I would like to comment about the remarks made by my good friend from Nevada relative to the concern we all have, the legitimate concern we have over terrorism. He makes the case that, you know, there is a terrorist threat and therefore we ought to leave it where it is.

Let us look at where it is, Mr. President. The chart behind me shows it is in 41 States. There are 81 sites out there. Is it logical to assume that we are better off to leave it there where it is exposed in 41 States at 81 sites or put it in one place—one place—out in the Nevada desert, where we have had over a period of some 50 years extensive nuclear tests, time and time again, an area where it is concentrated and can be supervised and guarded, namely, the one site in Nevada?

It just does not make sense if you are going to argue the merits of terrorism to have it all over the country, as I have indicated on this chart—41 States, 81 sites—or put it in one place where you can monitor, you can control it, you can guard it. You can take the necessary steps to ensure that the threat from terrorism is at a minimum.

I do not know an awful lot about ballistics, Mr. President, but I know something about a shotgun because I hunt ducks. I cannot comprehend a type of a shotgun that can go 300 yards and pierce through 5 inches of steel. What I do know is what the Department of Energy has supplied us with. They have done eight sabotage studies.

One of those included a 4,000-pound ammonium nitrate bomb that was

similar in size, same makeup of what was used in the Oklahoma Federal building. They placed it in a container to see if they could pierce the cask. It was not breached, Mr. President.

Another test—unfortunately, they are not able to disclose this type of technology because it is a black program, but they stated that this device was 30 times larger than an antitank weapon. Although this weapon made a small hole in the container, there was no significant release of radioactivity. Make no mistake about it, if there is a puncture, it is not going to blow up.

The suggestion was made, you are going to have the equivalent of so many times of Hiroshima; if you are going to penetrate that cask, the radioactive material can come out. But it is very, very heavy. As a consequence, its tendency is to remain in the immediate area. But the point is, these casks are designed to withstand, if you will, the exposures associated with an accident, whether it be a railroad, whether it be a ship, or whether it be a highway.

I would like to turn a little bit to attitudes prevailing in Nevada. As I indicated earlier, we have some 268 signatures from Caliente. I have been able to obtain the completed Xerox of the one that I started on earlier, Mr. President, and was cut off. I think it is important to read what these people said, and that has been inserted in the RECORD.

We the undersigned, support recommendations for maximizing benefits and minimizing risks as outlined in the city of Caliente/Lincoln County Nevada joint resolution 1–95. As residents of the State of Nevada, the United States Constitution provides that, if the Nuclear Waste Policy Act is going to be amended to allow transportation of spent fuel rods through Lincoln County and the city of Caliente, we are entitled to provide input to any such proposals. Such input would request oversight of safety issues and receipt of benefits that may be associated to any transportation and/or storage facility located within Lincoln County.

That is the point of this amendment, Mr. President, to provide that assistance.

Mr. President, I ask unanimous consent that a letter from the International Association of Fire Chiefs, dated July 26, be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF FIRE CHIEFS,
Fairfax, VA, July 26, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: The International Association of Fire Chiefs (IAFC) fully supports S. 1936 and urges its prompt passage.

Nuclear fuel has been accumulating and temporarily stockpiled since 1982 at numerous staging locations throughout the United States. The stockpiling of nuclear waste in so many removed locales renders them most vulnerable to potential sabotage and terrorist attacks. A plan to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative.

S. 1936 offers a plan to remove this spent fuel and coordinate its transport to a single secure interim storage facility. With proper planning, training and preparation, this spent fuel can be transported safely and efficiently over the nation's railways and highways.

We appreciate your leadership on this difficult but important issue.

Very truly yours,

ALAN CALDWELL,
Director, Government Relations.

Mr. MURKOWSKI. It states:.

DEAR CHAIRMAN MURKOWSKI: The International Association of Fire Chiefs (IAFC) fully supports S. 1936 and urges its prompt passage.

Nuclear fuel has been accumulating and temporarily stockpiled since 1982 at numerous staging locations throughout the United States. The stockpiling of nuclear waste in so many removed locales renders them most vulnerable to potential sabotage and terrorist attacks.

That is what I said before. Do you want it over here in the 41 States in over 80 sites? The fire chiefs say, no, put it in one site.

A plan [they further say] to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative. Senate bill 1936 offers a plan to remove this spent fuel, coordinate its transport to a single secure interim storage facility. With proper planning, training and preparation, this spent fuel can be transported safely and efficiently over the Nation's railways and highways.

It is signed by Alan Caldwell, director, government relations, from the International Association of Fire Chiefs.

Here is a petition, Mr. President, to the President of the United States, signed by 600 workers associated with the Nevada test site. I previously entered the specific petition and narrative in the RECORD, but let me read what it says. This is signed by over 600 workers at the Nevada test site.

We who have signed this petition live in the State of Nevada. Many of us work at the Nevada Test Site. Some of us work on the Yucca Mountain project.

The [Nevada Test Site], an area larger than the State of Rhode Island, was chosen as a nuclear weapons testing site by President Truman. Its dry climate and remote location made it ideal for weapons testing 45 years ago. Those same factors make the NTS ideal for storing high level nuclear waste and spent nuclear fuel. There is now, in southern Nevada, a resident work force that is well trained and experienced in dealing with nuclear materials. We, who are part of that work force, believe the NTS presents a solution for the United States for the temporary and permanent storage of high level nuclear waste and spent nuclear fuel. It is a well secured site, it is remote, it has already been utilized for nuclear purposes, it has an experienced and well-trained work force and we as Nevada workers, want it.

We urge you to work with Congress to make the NTS the solution to this Nation's nuclear waste dilemma.

There you have it, Mr. President.

How much time is remaining?

The PRESIDING OFFICER. The Senator from Alaska has 17 minutes 8 seconds.

Mr. MURKOWSKI. I read the following letter from the Southern Nevada Building & Construction Trade Council, dated July 23, a letter to Senator CARL LEVIN.

DEAR SENATOR LEVIN: I am writing to thank you for your support of Senate Bill 1936 and I urge you to continue that support.

I am a representative of the many working men and women of Nevada who strongly support the passage of S. 1936.

Although we more often than not support the positions of Senator Harry Reid and Senator Richard Bryan, our views on this particular issue differ significantly from theirs. On behalf of my members I urge you to continue your support of S. 1936, as reflected by your recent vote in favor of cloture. We sincerely thank you for your position.

As way of introduction, I am President of the Southern Nevada Building and Construction Trades Council, Vice President of the Nevada AFL–CIO, and serve as an appointee of Nevada Governor Bob Miller to the Nevada Commission on Nuclear Projects. I have followed the nuclear waste issue in Nevada for many years. My years of experience at the Nevada Test Site goes back to a time when Nevada elected officials actually sought the opportunity to store high-level waste at the Test Site.

The 18,000 craftsmen that I represent, as well as over 100,000 members of the Nevada AFL–CIO, feel strongly that the Yucca Mountain Project is safe and can be good for Nevada. We recognize, perhaps better than most, the importance of health and safety in dealing with high-level waste and nuclear materials. We have dealt with it for many years and as the workers handling this material we have the most to lose if this program is not safely run. Based upon our past experience in Nevada, we have a great deal of confidence that this facility will be safe.

Nevadans are pragmatic people and I believe that, contrary to statements made by some Nevada officials, many if not most Nevadans would not contest the location of this facility in Nevada. Remember that we have tested over 900 nuclear devices in the Nevada desert with little local opposition. Like the nuclear weapons testing program the nuclear waste program is essentially a non-issue among rank and file Nevadans. We find it extremely difficult to imagine that you could possibly find a more willing political climate anywhere else in the United States for this type of facility.

We understand that you may have been asked, by members of the Nevada delegation, to oppose legislative efforts to move the nuclear material storage program forward. An immense amount of scientific study has been conducted at Yucca Mountain and it has conclusively found the location to be a superior one for this type of facility. Some officials from Nevada have made a concerted effort, using every conceivable means, to thwart this scientific and environmental program.

Enclosed you will find petitions signed by many Nevadans who support passage of this legislation. We intend to meet with the White House shortly to express our position and to transmit the petitions. Our message to the President will be: Move this program forward—do not allow partisan politics to stand in the way of a solution to this problem. Any other approach would be both bad politics and bad public policy.

As a fellow American, a fellow Democrat, and as a representative of the working men and women of Nevada, I urge your continued support of S. 1936.

It is signed by Frank Caine, president of the Southern Nevada Building Construction & Trade Council.

Mr. CONRAD. Will the Senator yield?

Mr. MURKOWSKI. I do not attempt to speak, obviously, for the people in Nevada. That is the job of the Senators from Nevada. I do think it represents a significant voice to be heard and to be brought to the floor.

I yield on the Senator's time.

The PRESIDING OFFICER. The Senator from North Dakota has no time.

Mr. MURKOWSKI. I yield very briefly for a question if it is on my time because we are running short.

Mr. CONRAD. I have been increasingly concerned about the notion of the terrorist threat, and I am very interested in the answer of the Senator from Alaska.

It strikes this Senator, when you are talking about 100 different locations in the shipment of nuclear fuel from around the country to a single spot, that the risk of a terrorist threat increases dramatically; I just ask the Senator from Alaska, in talking to security people—in fact, I talked to Secret Service people about when the President is most vulnerable, and they told me they believe the President or anybody that they are guarding is most vulnerable when they are in transit. In fact, they feel they are most vulnerable when they are getting in or out of the vehicle.

I was thinking how that relates to the circumstances we face here. We saw that with President Reagan and the assassination attempt when he was getting into a vehicle. Rabin was assassinated when he was getting into a limousine, because you know where a person is, you know where they will be, that is when they are most vulnerable.

It strikes me that the same thing may be the case with respect to the transporting of these materials, and I am interested in the reaction of the Senator from Alaska to that.

Mr. MURKOWSKI. If I may respond to the Senator from North Dakota, that is the very point we are talking about. Terrorism is a threat, but we have this currently in 41 States at 81 sites, and the ability to secure those sites from terrorism in its current form is much more difficult than having it in one central spot, because that is where it will be permanently stored, either until Yucca Mountain has a permanent repository or, during the interim, until the permanent repository is set.

What we are looking at here is one site, one storage capability, one set of experienced personnel to guard against terrorist activity, as opposed to the chart, which I will again leave for the Senator to view, 41 States and 81 sites.

It just simply makes sense. The Senator from North Dakota was not here when I entered into the RECORD a letter from the International Association of Fire Chiefs which simply says:

> . . . so many removed locales renders them most vulnerable to potential sabotage and terrorists attacks. A plan to remove this nuclear fuel and coordinate its transport to a single secure designated interim storage facility at Yucca Flat, NV, in accordance with prudent planning, training, and preparation can be a safe, logical and acceptable alternative.

So this is the very concern we are talking about. Obviously, you are not going to store in these sites forever. That is a given. You have to take it out of these sites at some point in time. The Federal Government has collected almost $12 billion from the ratepayers. It has entered into a contractual agreement. We are talking about reneging on the agreement, basically, if we don't go ahead with it, and leaving it where it is for an undetermined period of time until then you decide to move it. It is inevitable that you are going to move it. We are talking about here—once you move it, the threat of terrorist activities associated with it are much reduced because you don't have that number of sites in that exposure in the 41 States.

So the logic, I think, speaks for itself. I think, from the standpoint of terrorism, exposure is less dramatic if you have it at one site where it is easier to secure.

I think my time has about expired.

The PRESIDING OFFICER (Ms. SNOWE). The Senator has 8 minutes remaining.

Mr. CONRAD. Might I ask my colleague to yield me some time so I might pursue this?

Mr. BRYAN. How much time does my friend require?

Mr. CONRAD. A couple of minutes.

Mr. MURKOWSKI. How much time remains on the other side?

The PRESIDING OFFICER. There are 9 minutes 50 seconds remaining.

Mr. BRYAN. I yield 3 minutes to the Senator from North Dakota.

Mr. CONRAD. Madam President, I can understand, with respect to a terrorist threat, that if you had it at one site, it is easier to guard and secure than at 81 sites. What really raises questions, at least in my mind, is when this material is in transit, because now you are not talking about 81 sites, you are talking about an infinite number of places where you are vulnerable to some kind of terrorist threat. So, to me, it is not a question of 81 sites versus 1 site, it is a question of being in transit from 81 sites to 1 known place. If I were trying to put myself in the position of a terrorist, and I knew that all this material has to go through a series of locations to arrive at one destination, that makes it very vulnerable to a terrorist attack. So the question I really have is, aren't you most vulnerable when this material is in transit?

Mr. MURKOWSKI. I respond by asking my friend from North Dakota, is it not inevitable that at some point in time, in order to meet the contractual commitment, you are going to have to move this anyway?

Mr. CONRAD. Yes.

Mr. MURKOWSKI. So it is still going to be vulnerable to terrorist attacks.

Mr. CONRAD. I think, without question, my own view is that, obviously, this material is going to have to be moved at some point. But, on the other hand, perhaps the technology will be developed that would allow you to deal with this material at those locations and not have to be transporting it to a single site in one place in the country, where you are vulnerable. It would seem that it would be easy for a terrorist to look at the map and say, ''Here are the sites it is coming from, and here is the one place on the map it is going to.'' You could draw a series of sequential rings and, with a high degree of confidence, know this material is going to pass through there, and you are, in that way, highly vulnerable to a terrorist threat.

Mr. MURKOWSKI. Madam President, the Senator from——

Mr. BRYAN. On whose time is the Senator from Alaska responding?

Mr. MURKOWSKI. On my own time. First of all, the Senator from North Dakota is suggesting that we dispose of it on-site somehow through advanced technology. That suggests reprocessing, which we don't allow. So that is basically a nonalternative. Some people suggest that is somewhat unfortunate because, in France, they do reprocess, reinject. They don't bury the plutonium like we do. They put it back in the reactors and burn it.

Now, the inevitability of the question of whether or not you leave it where it is and subject yourself to the potential terrorist exposure in 41 States and 81 sites—that suggests that you are not going to have the same degree of security and experience in all these sites because you cannot possibly cover that many sites. So you put it at the one site in Nevada where you can provide the security. So the terrorism exposure in Nevada is, for all practical purposes, eliminated. Your exposure is shipping them, granted. That is why the casks are designed as they are designed.

As I said in an earlier statement, the Army has tested a device 30 times larger than an antitank weapon, and although it made a small hole in the cask, there was no release of radioactivity. So you can't eliminate the entire risk, but you can eliminate, to a large degree, the technical design—this is a heavy thing; the terrorists are not going to run off with it. They have to do something very significant. Obviously, there is going to be security associated with the movement. I think we are talking about 10,000 casks. I defer to the Senator from Louisiana who, I think, wants to address the Senate.

Mr. JOHNSTON. Madam President, I appreciate my colleague yielding to me. They have done studies on these shippings, and what they have found is that upward of 10,000 to 20,000 shipments have already been made. They say numerous analyses have been performed in recent years concerning transportation risks associated with shipping spent fuel. The results of

these analyses all show very little risk under both normal and accident conditions. The safety record has been very good in corroboration of the low-risk estimate analytically. In fact, during the decades that spent fuel has been shipped, no accident has caused a radioactive release. What they have done is they have made models both on the computer and they have done actual tests. For example, there was a chart up there that showed that they hit a cask at 80 miles an hour with a train, and they dropped them from buildings and all that. In none of these was there a risk.

I might add that we ship nuclear warheads all the time. We don't ship those actually in these kind of casks. Frankly, I don't know how they ship them, but they are not sealed off as these casks are. They have gone to the extent—in one instance, they said a shipping cask has been subjected to attack by explosives to evaluate the cask and spent fuel response to a device 30 times larger than an antitank weapon. They attacked one of these with a weapon 30 times larger than an antitank weapon. The device would carve approximately a 3-inch diameter hole through the cask wall that contained spent fuel, and it was estimated to cause a release of about one-third of an ounce. ''No transportation''—this is a quote—''can be identified that would impose anywhere near the energy per unit volume caused by this explosive attack.''

So even if you get a weapon 30 times larger than an antitank weapon and attack the cask with it, all it does is have a release of about one-third of an ounce. So I submit to my colleague that, I guess you can postulate some accident where some meteorite might come down and happen to hit a railroad train in just the right way and somehow that could harm somebody. But they have postulated about every conceivable risk, including a weapon 30 times larger than an antitank weapon, and they postulate only one-third of an ounce of release—that, plus the fact that there has never been a release of radioactivity in 4 decades of these transportations, from 10,000 to 20,000 shipments in this country alone, not to mention those around the world.

I would say there are things to worry about. But I honestly do not believe that transportation is one of them.

Mr. CONRAD. Let me ask my colleague.

Mr. REID. Madam President, I would be happy to yield to my friend, but I want to respond directly to the statements made by the Senator from Louisiana.

This is pure doubletalk. The fact of the matter is that the weapon that they used to test was a device designed to destroy reinforced concrete pillars and piers. The weapon was not designed to destroy a structure like a nuclear waste canister. In fact, the weapon used for testing performed its military mission so poorly that our military forces abandoned this device for a better design. The weapon used, even though it was not much good, did perforate the canister. The hole is small, and there was leakage, but it was not a great deal of leakage.

But everyone looking at this knows that the weapon that has been used—any of the weapons that I have on this chart are manufactured all over the world—would perforate this thing like that—16 inches of steel, 36 inches of steel, 28 inches of steel.

This is, in all due respect to the Senator from Louisiana, who is a tremendous advocate for the nuclear industry, part of their doubletalk. They have not been willing to test these canisters the way they should be tested, and the Nuclear Regulatory Commission has said to this point that all they have to do is to be able to withstand a maximum of 30 miles an hour and a fire for 30 minutes. That is totally inadequate not only for accidents, but for terrorist activities.

I yield now to my friend from North Dakota.

Mr. CONRAD. Madam President, I thank my friend from Nevada.

I just go back to this question. It does strike me, given the rise of terrorist activity not only in this country but around the world, that when you put in motion from 80 different sites around the country, from 41 States, thousands of these casks headed for one location, that if you were a terrorist organization—it would take very little calculation to figure out where this is most vulnerable—you would have the potential here for a terrorist organization when this stuff is most vulnerable, when it is in motion, when it is in transit, to attack either a train or a truck and get possession of this material and thereby be able to threaten dozens of cities in America.

I must say, when I have talked to security people—again, I talked to a person who was in the Secret Service—with respect to when they think something that they are guarding is most vulnerable, they said without question it is when it is in transit, when it is on the move. That is when it is the most vulnerable.

Mr. JOHNSTON. Madam President, will the Senator yield?

Mr. CONRAD. Yes.

Mr. JOHNSTON. Is the Senator suggesting that we leave it permanently at the 70-plus sites around the country?

Mr. CONRAD. No. This Senator is suggesting that maybe we ought to revisit the question of reprocessing in this country. That is an alternative. Maybe we ought to consider various other technological alternatives that may present themselves. I am just raising the question. With what is going on in terms of terrorist threats abroad and in this country, are we doing a wise thing by setting up a circumstance in which this material starts to move from 80 sites around the country to one defined location in America? That troubles me.

I really am struggling myself with the question of how to respond to that. I must say it has made me rethink the whole question of reprocessing. I wonder sometimes if we have made wise choices in this country.

Mr. JOHNSTON. If I may answer that, because the Senator is a very thoughtful Senator and it is a fair question.

First of all, let me say, on the issue of reprocessing, you would need a central facility for reprocessing anyway. So that does not solve the transportation problem.

Second, I would say to my friend that the studies that have been done—and you have four decades of experience with transportation of this fuel with never a radioactive release, plus you have a lot of postulated accidents. For example, they have taken actual accidents and made the studies of what that would have done to nuclear waste had it been involved. In one, in April 1982, there was a three-vehicle collision involving a gasoline truck trailer, a bus, and an automobile which occurred in a tunnel in which 88,000 gallons of gasoline caught fire and burned for 2 hours and 42 minutes. For 40 minutes the fire was at 1,900 degrees Fahrenheit. If a nuclear waste canister had been involved in this accident, it would have suffered no significant impact damage, and the fire would not have breached the canister. There would have been no radiological hazard. The spent fuel in the canister would not have reached temperatures high enough to cause fuel cladding to fail.

We go on here to other postulated accidents. A train containing both vinyl chloride and petroleum—the tanker cars derailed and caught fire. The fire burned for several days and moved over a large area. There were two explosions. Had nuclear waste canisters been on the train, they would not have sustained any damage from the explosion. They might have been exposed to the petroleum fire for a period ranging from 82 hours to 4 days. Even so, the canisters themselves would not have been breached.

Mr. CONRAD. Will the Senator yield?

Mr. BRYAN. Madam President, we have just a little time left.

Mr. CONRAD. I would like to conclude with this question.

My understanding is that those are accident scenarios. What concerns this Senator is a terrorist scenario when terrorists launch an attack on these materials when they are in transit and most vulnerable. I must say that I think it is something that we have to be concerned about.

Mr. JOHNSTON. The point is this, though: They have tested it with weapons 30 times bigger than antitank weapons with direct hits. That caused a breach. Only a third of an ounce comes out. There are many, many much more lucrative targets, by orders of magnitude more lucrative for terrorists, everything from chemicals that travel throughout the country every day, from LP gas to others which are many, many times easier to breach and

would cause a much bigger problem. The essential thing is that nuclear waste is not a volatile matter.

Mr. BRYAN. Madam President, I say to my colleague that this is on my time.

How much time is left?

The PRESIDING OFFICER. Approximately 2 minutes.

Mr. BRYAN. If the Senator uses his own time, I have no problem with it. But I am not prepared to yield any more time.

Mr. JOHNSTON. I would be finished in just a moment.

Mr. MURKOWSKI. Madam President, I ask unanimous consent that the other side have 2 more minutes total and that we may have 1 minute on this side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JOHNSTON. Madam President, nuclear waste traveling the country is, first of all, solid in form. It is sealed in a cask that, as I say, if you get a direct hit by something 30 times more powerful than an antitank weapon, what do you get? You get a third of an ounce of release. What does that do? It does not explode. It is not gaseous. It does not get down to the water supply. It is, as these matters go, relatively benign. And, even so, you cannot imagine a situation other than a terrorist attack where there is any release at all.

So I submit that there are a lot of things to worry about, but transportation is not one of them.

Mr. MURKOWSKI. If I may, Madam President, take the last 30 seconds in response to the Senator from North Dakota, we have seen in Europe the movement of over 30,000 tons of high-level nuclear waste in countries that are exposed to terrorism at a far greater theoretical sense than the United States. There has never been one instance of a terrorist activity associated with movement by rail, highway, or ship. Terrorists are not going to necessarily look at terrorizing a shipment when they can move into nerve gas and weapons disposals that are moving across this country—all types of material that are associated with weapons—where they can create an incident of tremendous annihilation on a population.

This is very difficult because it is secure, in a cask; it is guarded; and it has been proven it has moved through other countries, particularly Great Britain, France, in Scandinavia, and to some extent starting in Japan. So there is a risk associated with everything. But we have not had terrorist activity in this area because there are other more suitable sites.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, I appreciate the statement of the senior Senator from North Dakota, his expression of concern about the vulnerability that we have to terrorism. It is a fact of life in 20th century America. All of us apprehend, lament, and regret it, but it is a very real fact. I must say, just as the bad guys in the Old West always knew where the stagecoach was most vulnerable—it was not when it was at the office; it was not when it was being unloaded at the bank—it was out on the road, so too when we are talking about thousands and thousands of miles of rail and highway shipments. There are so many places that a terrorist could find a point of vulnerability. The concerns that my colleague from North Dakota mentioned I believe are very real and very genuine, so I thank him very much for his explanation.

Let me just make one other point here. It is something we constantly hear about, that this bill will result automatically in not 109 sites but 1 site. Mr. President, that is just absolutely false, absolutely false. Each of the nuclear reactors that are currently generating power have spent fuel rods contained in the pools. They remain there at least for 5 years. If we assume that every reactor in the country is going to close, which is certainly not the predicate of the Nuclear Regulatory Commission, under the current existing licenses some nuclear utilities would remain open at least until the year 2033. So all this bill would do in terms of concentrating storage would add not 109 but you would have 110 sites, namely the new facility that they have proposed to construct at the Nevada test site for interim storage.

So this ad, I know, the nuclear utilities love. They spend millions of dollars in advertisements in magazines and publications that give one the impression, wow, if we just opened up this facility at the Nevada test site there will not be nuclear waste stored any place in the country.

That is wrong.

May I inquire as to how much more time the Senator from Nevada has?

The PRESIDING OFFICER (Mr. HELMS). All time has expired.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I ask for a voice vote on the amendment.

The PRESIDING OFFICER. The question occurs on agreeing to amendment No. 5048 offered by the Senator from Alaska.

The amendment (No. 5048) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to the bill?

Mr. REID. Mr. President, if I could just confer for a few minutes with my friend from Alaska and inform the rest of the Senate, what we are trying to work out now—and we do not know we can do it, but we are trying to—on this side we have three amendments. We want to vote on one of those amendments, a recorded vote. We would like that, if it is OK—we have a Democratic conference that is starting at 4. We would like to do that at 3:30 and then have final passage at approximately 5 o'clock and dispose of the other amendments in the interim by voice vote.

I have spoken to the Senator from Alaska. I know he has to confer with others to see if that can be worked out. Otherwise, we can do something else. In the meantime, we will go ahead and offer an amendment.

Mr. MURKOWSKI. Mr. President, I conferred with the Senator from Nevada and my colleague, Senator JOHNSTON, and I want to check with our leadership.

It is my understanding the next amendment will be offered by the Senators from Nevada, and they would want a rollcall vote on that amendment?

Mr. REID. No, the next amendment, we will offer and talk about it a little bit and have a voice vote.

Mr. MURKOWSKI. Voice vote. The one after that you would like—

Mr. REID. The one after that we would—

Mr. MURKOWSKI. Might I ask whether the Senators intend to use their full 30 minutes?

Mr. REID. We would be willing to work out something after this so the time is equally balanced.

Mr. MURKOWSKI. I will entertain then the amendment that is about to be offered that would require simply a voice vote, and that will give me an opportunity to check with the leadership on this side and then respond to the Senators concerning their proposal.

I thank the Chair and yield to my colleague from Nevada.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BRYAN. I thank the Chair.

AMENDMENT NO. 5075

(Purpose: To specify contractual obligations between DOE and waste generators)

Mr. BRYAN. I send an amendment numbered 5075 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. MURKOWSKI. If I may interrupt, I assume there is acknowledgement that the Senators contemplate a voice vote prevailing on our side?

Mr. BRYAN. That is correct. We are not requesting that a rollcall vote occur with respect to amendment 5075.

Mr. MURKOWSKI. The voice vote that the Senators are proposing, they are assuming we would prevail?

Mr. REID. I would say to my friend from Alaska, he has not heard the argument yet. He may be persuaded.

Mr. MURKOWSKI. I will take my chances.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes an amendment numbered 5075.

Mr. BRYAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

"SEC. . CONTRACT DELAYS.

"(a) UNAVOIDABLE DELAYS BY CONTRACT HOLDER OR DEPARTMENT.—Notwithstanding any other provision of this Act, neither the Department nor the contract holder shall be liable under a contract executed under Section 302(a) of the Nuclear Waste Policy Act of 1982 for damages caused by failure to perform its obligations thereunder, if such failure arises out of causes beyond the control and without the fault or negligence of the party failing to perform. In the event circumstances beyond the reasonable control of the contract holder or the Department—such as acts of God, or of the public enemy, acts of Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather—cause delay in scheduled delivery, acceptance or transport of spent nuclear fuel and/or high-level radioactive waste, the party experiencing the delay will notify the other party as soon as possible after such delay is ascertained and the parties will readjust their schedules, as appropriate, to accommodate such delay.

"(b) AVOIDABLE DELAYS BY CONTRACT HOLDER OR DEPARTMENT.—Notwithstanding any other provision of this Act, in the event of any delay in the delivery, acceptance or transport of spent nuclear fuel and/or high-level nuclear waste to or by the Department under contracts executed under Section 302(a) of the Nuclear Waste Policy Act of 1982 caused by circumstances within the reasonable control of either the contract holder or the Department or their respective contractors or suppliers, the charges and schedules specified by this contract will be equitably adjusted to reflect any estimated additional costs incurred by the party not responsible for or contributing to the delay.

"(c) REMEDY.—Notwithstanding any other provision of this Act, the provisions of subsections (a) and (b) of this Section shall constitute the only remedy available to contract holders or the Department for failure to perform under a contract executed under Section 302(a) of the Nuclear Waste Policy Act of 1982.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

Mr. President, let me just take a moment because this deals with a provision that we believe clarifies the situation in light of the court decision over which most comment has been had.

What this amendment does is simply incorporate into the bill provisions that exist in the contract. My colleagues will recall that under the Nuclear Waste Policy Act of 1982, the Department of Energy was directed to enter into contracts with the various utilities that were involved in generating high-level nuclear waste, and so what we have done, my colleague and I from Nevada, is to have incorporated verbatim other than perhaps in the context there may be some grammatical changes, but verbatim the remedies that are provided in those contracts. They are found in article 9 of the contract, and the contract provides what occurs if a delay, referring to the delay of the opening of the repository, is unavoidable delay, and subparagraph (b) deals with avoidable delays.

So there has been talk that somehow this court case now casts a different light on everything, and as the Secretary of Energy indicated in her letter to each of us, that case absolutely has no impact on the debate. It is true that the court indicated there was an obligation on the Department of Energy but refrained from determining what the remedy was, and it is our view that the remedy is contained in the contract that the parties entered into. So we offer the amendment in that spirit.

I must say that I believe one of the biggest scams being perpetrated upon us in this bill is the provision which deals with the shifting of liability from the utilities to the general taxpayer. Mr. President, 1982 is the genesis of our current nuclear waste policy. It was absolutely clear at the time that law was enacted that the financial responsibility for the disposal of nuclear waste rested upon the utilities, those that generated it. "Generators, owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for and the responsibility to pay the costs of interim storage of such waste and spent fuel until such time as the fuel is accepted by the Secretary of Energy." And then it goes on to talk about a number of instances throughout this particular act that it is the primary responsibility of the industry, the utilities.

Mr. President, this bill that has been introduced turns that concept upside down, totally upside down. Here is what is done under section 501 of the amendment that we are debating currently. It says that until the year 2002—I beg your pardon. I misquoted. I cited 501. It is section 401. It says until the year 2002, the maximum that can be assessed against the utilities, which is done on the basis of kilowatt-hours generated —one mill currently is the assessment for each kilowatt-hour. It says under this bill by statute now the maximum that can be levied against utilities is one mill. The General Accounting Office and others have concluded that even if no interim storage is added to the agenda or the responsibility of the Department of Energy, we are currently underfunded to the extent of about $4 billion a year.

In plain and simple terms, that means the American taxpayer is going to pick up that liability, that responsibility, and that is fundamentally wrong. However you feel about nuclear energy, however you feel about how nuclear waste ought to be disposed of, it ought not to be cast upon the American taxpayer. These utilities are private sector utilities. They make a substantial amount of money. That is their right. But it ought not to be shifted on us. So I think that needs to be pointed out, No. 1.

No. 2, it gets even more clever. After the year 2002, the only amount that can be assessed against each utility is whatever their proportionate cost is, to the total amount of money that is appropriated by the Congress for nuclear waste. If we use the current year, for example, we would be talking about a third of a mill. That is something that is just, in my view, unconscionable. Not only has the General Accounting Office concluded there is a shortfall, but in a recent study that was commissioned by the Department called A Special Management and Financial Review, a report that came out in 1995, they point out that there is a shortfall, depending on whether you take a conservative or more expansive view, of anywhere from $4 to $15 billion.

So what is being done here is changing fundamentally who pays for this disposal of nuclear waste. Is it the utilities? That was the original premise of the law in 1982. These are private utilities, generating profits for their investors and shareholders. Or is that liability now to be shifted to the general taxpayer? That is what this bill does, it shifts that liability because it is clear, even if you take the length of time without renewal at all, these utilities will ultimately, by the year 2033, if the licenses are not extended, those utilities will cease generating electrical power. Therefore they will cease contributing into the fund. But the problem of the storage of high-level nuclear waste continues.

It is, to some extent, a crude analogy to the situation we have with our Social Security fund. Currently, more money is coming into that fund than is necessary to pay the recipients of Social Security. We all know sometime after the turn of the century, because of changing demographics, that changes rather dramatically. So, too, with this nuclear waste fund because, as these utilities go off line, some of them are scheduled, if they do not get an extension of their license, to cease operation in the year 2000, others in the year 2006 and, intermediately to the year 2033—but the waste just does not disappear. It becomes a financial responsibility for someone and that is why it is necessary to generate surpluses in the nuclear waste fund in order to deal with the storage problem later on. So I think my colleagues need to look at the budget implications of this. Because, in effect, we create an unfunded liability for the Federal taxpayers the way this bill is currently drafted.

Let me return to the specifics of the amendment just one more time before reserving my time and yielding whatever time my colleague may take to comment on this issue. That is to say, what we are saying amplifies the decision of the court, simply specifying what the remedy is. The remedy is that the delay is unavoidable. They simply have to reschedule the shipments. If

the delay is deemed avoidable, that is if there is some culpability, then there is readjustment on the amount of fees the nuclear utilities pay into the trust fund. I must say I believe that is fair.

My colleague and I, from Nevada, have long recognized that, indeed, if the high-level nuclear waste repository is not available by the year 1998, if additional on-site storage is necessitated, then, indeed, the utilities would be entitled to a credit against any additional costs for interim storage that they would incur, and that is the thrust of this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, on behalf of Senator MURKOWSKI I yield myself 5 minutes.

This is sort of a version 2 of the Wellstone amendment, in that it seeks to take the rights of utilities and, secondarily, the rights of ratepayers of utilities, and abolish those by legislative fiat—which simply cannot be done. The rights of utilities and, indeed, the rights of the ratepayers of those utilities, have been fixed by the Nuclear Waste Policy Act of 1982 as amended by amendments in 1987 and by contracts between the utilities and the Department of Energy. The contracts between the utilities and the Department of Energy contain two provisions in article IX which relate to delays: A, involve unavoidable delay by purchaser or DOE, and, B, involve avoidable delays by purchaser or DOE. And those sections, A, and B, are part of the contracts between the utilities and DOE, set out, in part, the relative rights in the event of those delays.

What the Senator from Nevada would attempt to do is take those two existing provisions of contracts and state that those are the exclusive remedies, thereby leaving out another provision of those same contracts. Another provision of those same contracts in article XI says:

> Nothing in this contract shall be construed to preclude either party from asserting its rights and remedies under the contract or at law.

In other words, the present contracts in article XI state that nothing precludes the assertion of the rights both under the contract and at law. What they would do is take that provision out and say that those sections, A and B, that I just read, are the exclusive remedies.

Mr. President, that is clever, but what the court has said last week is that ''We hold that the Nuclear Waste Policy Act creates an obligation in DOE to start disposing of the spent nuclear fuel no later than January 31, 1998.''

That is the law, decided only last week. And what the Senator from Nevada would say, that notwithstanding what the court has said we are going to write that out of this, and the exclusive remedy is that which he has just stated in his amendment, which is only part of what the contract says, I repeat—it is absolutely settled law that this Congress, under our Constitution, may not take away vested rights. When someone has a right under the law, the Congress cannot come in and take it away without subjecting themselves to damages.

Again, quoting from the Winstar case, and this is from July 1996, this very month, the Supreme Court says:

> Congress may not simply abrogate a statutory provision obligating performance without breaching the contract and rendering itself liable for damages. Damages are always the default remedy for breach of contract.

They go on to quote in a footnote:

> Every breach of contract gives the injured party a right to damages against the party in breach unless the parties by agreement vary the rules. The award of damages is the common form of relief for breach of contract. Virtually any breach gives the injured party a claim for damages.

Mr. President, this is not a surprising new precedent of the Court. It is a principle of law as old as John Marshall and the Supreme Court and the Constitution. So for my friends from Nevada to come along and say the exclusive remedy is subsections (A) and (B) of his amendment, I will not say it is ludicrous, Mr. President, out of respect for my colleagues, but let's say that the argument does not have any weight and is totally contrary to that which is settled law of the U.S. Supreme Court.

Mr. President, at this time, I yield 5 minutes, or such time as the Senator from Washington requires.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, there are some occasions in this body in which a bit of institutional memory is truly of value. And, in my case, I have a memory which has been reinforced by reading the CONGRESSIONAL RECORD of the creation of the Nuclear Waste Policy Act of 1982.

Interestingly enough, the managers on both sides of the party aisle here were Members of that Congress. But the distinguished Senator from Louisiana, I believe, was perhaps the most knowledgeable Member of the body at that time, as he is today, on this particular subject.

More than 14 years ago, in April 1982 when this bill was being debated, this is what the Senator from Louisiana said:

> The bill before the Senate today requires the Federal Government to undertake definitive and specific actions to assume the responsibility for nuclear waste disposal which existing law reserves to it. We can attempt to avoid this responsibility in the context of this particular Congress, but we will never finally escape the necessity of enacting legislation very similar to this bill. It is a task that no one but Congress can perform.

The Senator from Louisiana went on to say:

> The aim of this bill is to provide congressional support which will force the executive branch to place before Congress and the public real solutions to our nuclear waste management problems. A schedule for Federal actions which could lead to a site specific application for a license for the disposition of nuclear waste in deep geologic formations is established in title IV.

The Senator from Louisiana was, obviously, an optimist at that point, as were all of those who overwhelmingly supported him in passing that bill, this Senator included.

I cannot imagine that the Senator from Louisiana, whose bill included this deadline referred to by the District of Columbia Circuit Court of Appeals last week ''beginning not later than January 31, 1998, the Federal Government will dispose of the high-level radioactive waste or spent nuclear fuel involved,'' I cannot imagine the Senator from Louisiana anticipated that we would have made so little progress by the date upon which we are debating this bill. He was convinced, and we were convinced, that by this year, we would certainly know what we were going to do with this nuclear waste on a temporary basis and be much further along the road to finding a long-term solution for the problem.

As a consequence of an overoptimistic view of what might happen then, we have collected from utilities of the United States some $12 billion. We have spent close to $6 billion of that attempting to characterize a permanent nuclear waste repository in Nevada, but we are certainly nowhere near as close to reaching a conclusion to this challenge as we expected to be in 1982 when we passed this bill, and we spent more money on it, money that comes out of the pockets of American citizens in their utility bills.

Given that degree of frustration, given the almost infinite ability of those who oppose any major decision of this nature to delay that decision through bureaucratic requirements, through court tests and the like, we now have been faced with the necessity of finding at least a temporary repository for this nuclear waste to meet the very requirements that we laid down in 1982. That, obviously, is what this bill is designed to do.

In fact, by saying that we ought to begin by December 31 of 1998, even the sponsors of the bill already have let some time slip by. But, Mr. President, at this point, with the failure to meet the schedule that we wanted to meet in 1982, with the expenditure of literally billions of dollars, with this nuclear waste piling up in various plants in 34 States, with the real challenge of what to do with our defense nuclear waste, it is simply time to reach at least an interim decision.

I expect that the Senators from Nevada, and many other Senators as well, are firm in the belief that wherever the temporary storage site is located will end up being the permanent storage site. I suspect that may very well be true, but I do believe that we are far enough along this road that it is appropriate for the Congress to make that decision and to make that decision now.

The waste is there, the environmental threat is there, the physical dangers are there, the necessity to gather it together in one place is there. We know enough now about the policy to be able to make that decision to be there. We are simply carrying out under the leadership of the Senator from Alaska and the Senator from Louisiana the very policies that this Congress and a former President of the United States felt to be appropriate policies in 1982, and in doing so, we will save the taxpayers money, we will help the environment, we will help our overall safety, and we will, one hopes, allow the Senator from Louisiana to retire, as he has regrettably chosen to do, from the Senate knowing that he has completed the job that he started in 1982 or earlier.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Alaska has control of 17 minutes; the Senators from Nevada have control of 20 minutes, 39 seconds.

Mr. REID. I am wondering if we could have a vote on this amendment and go to something else?

Mr. MURKOWSKI. I would be very pleased to. Is that the wish of the Senator from Nevada?

Mr. REID. Yes.

Mr. MURKOWSKI. I yield back the remainder of our time.

Mr. REID. That is, on this amendment that is true.

Mr. MURKOWSKI. Both sides are willing to yield back the remainder of their time and ask for a voice vote.

The PRESIDING OFFICER. With all time being yielded back on the amendment, the question now is on agreeing to the amendment.

The amendment (No. 5075) was rejected.

Mr. JOHNSTON. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, I wonder if the Senator from Alaska has the unanimous consent agreement that was being typed up for our submission?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska.

Mr. MURKOWSKI. On behalf of the leader, I ask unanimous consent that the vote occur on or in relation to the amendment number 5073 at 3:30 p.m. today, and notwithstanding the agreement of July 24, the vote occur on final passage of S. 1936 at 4:55, and that paragraph 4 of rule XII be waived.

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

Mr. MURKOWSKI. I thank my colleagues from Nevada for expediting the process.

Mr. REID. I say to my friend from Alaska, I think it would be appropriate the time would be equally divided between now and 3:30 on the amendment offered by the Senators from Nevada. I ask unanimous consent that that be the case.

Mr. MURKOWSKI. That is agreeable.

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

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the Chair.

AMENDMENT NO. 5073

(Purpose: To specify contractual obligations between DOE and waste generators)

Mr. BRYAN. Mr. President, I send amendment No. 5073 to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes amendment numbered 5073.

Mr. BRYAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new provisions:

"SEC. . COMPLIANCE WITH OTHER LAWS.

''Notwithstanding any other provision of this Act, the Secretary shall comply with all Federal laws and regulations in developing and implementing the integrated management system.

"SEC. . COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT.

''(a) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—Notwithstanding any other provision of this Act, the Secretary shall comply with all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in developing and implementing the integrated management system.

''(b) JUDICIAL REVIEW.—Notwithstanding any other provision of this Act, any agency action relating to the development or implementation of the integrated management system shall be subject to judicial review.''

Mr. BRYAN. Mr. President, much has been said over the past few hours today and earlier during the course of our discussion of S. 1936 about what I consider one of the most serious defects of this piece of legislation in that it emasculates the environmental protections that have been drafted for more than a quarter of a century, most of which with bipartisan support and in effect says with respect to this particular issue they shall not apply.

So what we are doing is we are giving people an opportunity, our colleagues an opportunity, to express themselves on the environmental issue, very, very simple.

The first part of this amendment says:

Notwithstanding any other provision of this Act, the Secretary shall comply with all Federal laws and regulations in developing and implementing the integrated management system.

My colleagues will recall the section 501 under the current provisions, as amended, is very convoluted and says:

If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act . . . or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act. . . .

This Mr. President, makes it very, very clear. If you do not want all of these environmental laws preempted, this is the way to correct it. Straightforward, no ifs, ands, or buts: Notwithstanding any other provision of this act, the Secretary shall comply with all Federal laws and regulations in developing and implementing the integrated management system.

I note for my colleagues, because the two Senators from Nevada have been involved in this issue now for the last 14 years, we made a policy judgment not to include State law so it could not be asserted that this was an indirect effort to allow the Nevada legislature to implement some type of barrier that would make this impossible.

So this is straightforward. It does not get any cleaner, it does not get any clearer, and does not get any easier to understand. If you are truly opposed to preempting all of these laws, this is the amendment that does it.

If you also believe that there is a purpose in America for the National Environmental Policy Act, this amendment provides for the full application and judicial review. Under the current bill the provisions say on the one hand that the Environmental Policy Act will apply, and then go on to say at some considerable length, but it shall not apply to the various citing alternatives. I will provide that.

Section 204, subsection (f) says the National Environmental Policy Act shall apply. Then you get down into subsection (B).

Such Environmental Impact Statement shall not consider —

(i) the need for interim storage. . .

(ii) the time of the initial availability of the interim storage. . .

(iii) any alternatives to the storage of [nuclear waste].

* * * * *

(v) any alternatives to the design criteria. . .

(vi) the environmental impacts of the storage [beyond the period of initial licensure].

You will recall the National Academy of Sciences said those should consider 10,000 years and beyond.

This bill would limit it to just the period of time of the initial licensure. And so, Mr. President, this is a clean, straightforward attempt to say that the full array of provisions under the National Environmental Policy Act shall apply.

Let me just say that the Council on Environmental Quality—that is the council that was established when Congress passed the National Environmental Policy Act in 1969— went on to say—and I quote from the letter. ''S. 1936''—that is essentially what we are dealing with:

S. 1936 renders the NEPA process meaningless by precluding the incorporation of NEPA's core values which are necessary for making informed and timely decisions essential for protecting public health, safety and environmental quality. Consequently, the bill all but locks into place both interim and permanent storage sites by giving decision-makers no reasonable options * * *

It is that same rationale that has caused the Administrator of the Environmental Protection Agency, to point out that in effect we do not have the provisions of the National Environmental Policy Act under the provisions of the bill as now constituted.

So, Mr. President, I think we can make this very clear and very simple. If Senators want these environmental laws to apply, if they believe that the Environmental Policy Act ought to be applicable to this very critical decision, in which we all agree that we are dealing with material that is not just kind of messy, kind of unpleasant, to be a little bit difficult and inconvenient to clean up, we are talking about stuff that is deadly for tens of thousands of years, the highest kind of risk to public health and safety. Yet, the nuclear industry, and its supporters, have the audacity to emasculate the application of the environmental laws and in effect try to reduce the impact of the National Environmental Policy Act to a hollow and pale facsimile of what the law provides in terms of protections for various policy initiatives, et cetera. Mr. President, I reserve the remainder of my time and yield the floor.

Mr. MURKOWSKI. Mr. President, we now have how much time?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Mr. MURKOWSKI. It is my intention to speak for about 4 minutes and give the Senator from Louisiana about 8 minutes, and then reserve the balance of my time.

Mr. President, this is another innocuous-sounding amendment which, in reality, is a bonanza for lawyers, and there are a lot of lawyers in this country. We have general laws in this country to cover situations that Congress did not specifically consider. The courts understand that. So when there is a conflict between a general law and a specific law enacted with a particular facility or purpose in mind, the court follows the specific law.

With this act we are considering, the specific conditions to apply to specific nuclear waste repositories—an interim repository and a permanent repository. What the amendment of the Senator from Nevada attempts to do is to provide broadly written, general laws with the same standing as the specific directions we are providing in this bill. Theirs is an amendment, Mr. President, carefully crafted to confuse the courts, confound the legal process, and enrich the lawyers.

This amendment is going to delay the process leading to a responsible solution to the nuclear waste problem. I implore my colleagues to avoid this trap. That is what it is. This is an antienvironmental amendment.

Let me repeat that, Mr. President. This is an antienvironmental amendment. It does not address, obviously, the problem we have with the nuclear waste. If you want to solve a huge environmental problem in this country, you want to oppose this amendment.

If this amendment prevails, Mr. President, the Department of Energy is going to be mired in litigation. It will be mired in red tape. It will be mired in delay. We are simply not going to be able to get there from here with a responsible answer to this problem. Taxpayer dollars are going to be squandered in litigation if this amendment is adopted. The problem of nuclear waste will continue to persist, and, as a consequence, we will be right back to zero.

I retain the balance of my time and yield 7 or 8 minutes to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I thank my colleague for yielding. Mr. President, if you want to frustrate any ability to have a nuclear waste repository, vote for this amendment, because, to be sure, this would make it impossible to build.

Now, Mr. President, this has been advertised as an attempt only to make this subject to the same environmental laws that every other process has. Not so, Mr. President. Under the present Administrative Procedures Act, there is an appeal to the courts only for a final agency action. That is section 704 of the Administrative Procedures Act.

What this amendment would do is to say that any agency action related to the development or implementation of the management system shall be subject to judicial review—any agency action.

So, Mr. President, I guess anything that the agency does, whether it is a major Federal action or not, whether it is a final agency action, would be subject to judicial review. They would be able to go to court. If you wake up in the morning and purchase a cup of coffee, I guess that is some kind of agency action, not final, but subject to judicial review. It would mean it would be impossible to do anything under this system.

Mr. President, much has been made of the fact that environmental impact statements have been waived here. The fact of the matter is, Mr. President, existing legislation presently calls for a waiver of virtually every provision already contained herein. For example, Mr. President, we state that such environmental impact statement shall not consider any alternatives to the storage of spent nuclear fuel at the interim storage facility.

Now, why did we put that in the initial legislation back in 1982? Why did we bring it forward in 1987? And why do we have it here? Because, Mr. President, there are endless alternatives to storage of spent nuclear fuel.

You can shoot it into space and into the sun. That has been seriously suggested. You can send it down to the ocean bottom and bury it in the deep mud down there. You can have detonation underground in caverns. You can reprocess in light-water reactors, you can reprocess in liquid light-water reactors, you can have other space launches, deep bore holes in the Earth. Mr. President, all of these alternatives. But this language would have to be evaluated under the National Environmental Policy Act, notwithstanding the fact that Congress has spoken very clearly on the need for a nuclear waste repository.

Mr. President, this would endlessly delay this matter by having to do very expensive studies on matters which have already been rejected by the Congress. Another provision on which the law already provides no need for a NEPA statement is an alternative to the site of the facility as designated by the Secretary. The site here is Yucca Mountain.

Now, the Congress has clearly spoken in naming Yucca Mountain. That is why we have said in previous legislation that you did not need to do an alternative NEPA statement to examine, for example, the granite in Maine or the different kind of geologic formations in Washington, for example, or the salt domes in Mississippi. There are potential sites all over this country and, but for the waiver of a NEPA statement, you would have to go and revisit each of these facilities all over the country, each of these locations. That is, in each of these cases, the law already provides for a waiver of the NEPA statement to consider these various alternatives.

The same is true for the alternatives to the design. The same is true for the need for the interim storage facility.

Mr. President, rather than bring forward some new series of waivers, we are really bringing forward what existing law provides and has already been waived as part of the Nuclear Waste Policy Act.

Mr. President, it is not too much to say that if we adopted this amendment you would never be able to build a repository in the United States or an interim facility because you would put on endless requirements for NEPA statements on matters to examine sites all over the United States, to examine alternatives to repository disposal and interim disposal, on matters that would be very expensive to investigate and very difficult to prove, and would take many, many years to determine.

Most especially, Mr. President, by providing that there would be appeal from any agency action as opposed to

final agency action, final agency action appeals are provided in this legislation, but interim agency actions are not. If you made all agency actions appealable, it would simply be impossible to have a repository.

The PRESIDING OFFICER (Mr. COVERDELL). The time of the Senator has expired.

Mr. REID. Would the Chair advise the Senator from Nevada how much time we have.

The PRESIDING OFFICER. The Senator's side has 12 minutes, and the other side has 8 minutes.

Mr. REID. I want to yield to my friend from California, but prior to that, I want to discuss a number of things.

First, this is a good deal for the proponents of this bill. They want to waive all the environmental laws, and they are saying the reason is because people might want to appeal, they might be protecting their rights, which is what you can do in this country.

That is why we have NEPA. That is why we have all the laws set forth in the chart behind us.

I also want to drop back a few minutes, Mr. President. The senior Senator from North Dakota was here. He was concerned about terrorism, but because we were running out of time on an amendment, we could not respond to his concern. I want to take a few minutes to respond to him. I hope if the Senator is not listening, his staff is, because this is, I think, extremely important to the question he asked.

We have here a letter from the Blue Ridge Environmental Defense League. Among other things, they say in this letter, dated July 29, 1996—what they are basically explaining is that nuclear waste is dangerous and terrorists will get to the nuclear shipments, and they proved it.

Two shipments arrived at the Military Ocean Terminal at Sunny Point in North Carolina, were loaded onto rail cars, and then transported overland to SRS. We were able to track both of these shipments from their ports of origin in Denmark, Greece, France, and Sweden across the Atlantic to North Carolina to SRS.

These shipments cannot be kept secret so long as we live in a free society.

Our actions were peaceful, but we proved that determined individuals, on a shoestring budget, can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta, the dangers posed by domestic or international terrorists armed with explosives makes the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

I ask unanimous consent that the letter dated July 29 from the Blue Ridge Environmental Defense League be printed in the RECORD.

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

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,
Marshall, NC, July 29, 1996.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The Nuclear Waste Policy Act of 1996 (S. 1936) would place in jeopardy the lives of millions of American citizens by transporting 15,638 casks of highly radioactive material over railways and highways of this nation. This attempt at a quick-fix for the nuclear waste dilemma would cause more problems than it attempts to solve. The people who would bear the greatest burden would be the 172 million Americans who live nearest the transportation corridors. S. 1936 is a legislative short-circuit that will make us less secure as a nation and which will dump the costs of emergency response on the states and local governments.

The Blue Ridge Environmental Defense League began in 1984: our work takes us throughout the southeast. Since 1994 we have observed the international shipments of spent nuclear fuel (SNF) from foreign research reactors (FRR) to a disposal site at the Savannah River Site (SRS) in South Carolina. Two shipments arrived at the Military Ocean Terminal at Sunny Point (MOTSU) in North Carolina, were loaded onto rail cars, and then transported overland to SRS. We were able to track both of these shipments from their ports of origin in Denmark, Greece, France, and Sweden across the Atlantic to North Carolina to SRS. We observed the fuel shipment when they arrived at MOTSU. We watched the SNF transfer from ship to train and followed it through the countryside of coastal North and South Carolina. Our reason for doing this was to alert people along the transport route about the shipments through their communities. We rented a light plane and flew out over the SNF ships when they reached the three-mile limit. Television news cameras accompanied us and transmitted pictures for broadcast on the evening news. If we can track such shipments, anyone can. These shipments cannot be kept secret so long as we live in a free society. Our actions were peaceful but we proved that determined individuals on a shoestring budget can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

Our work in North Carolina, Tennessee, and Virginia takes us to many rural communities. Emergency management personnel in these areas are dedicated volunteers, but they are unprepared for nuclear waste. Volunteer fire departments in rural counties are very good at putting out house fires and brush fires. While serving as a volunteer fire fighter in Madison County, NC, I had the privilege of working with these men and women. We took special training to handle propane tank emergencies utilizing locally-built water pumper trucks. More sophisticated training or equipment was prohibitively expensive and beyond our financial means. Traffic control is a consideration at an emergency scene. Any fire or accident tends to draw a crowd. Onlookers arrive as soon as the fire department—sometimes sooner in remote areas. There are always traffic jams reducing traffic flow to a one-lane crawl day or night, fair weather or foul. The remote river valleys and steep grades of Appalachia are legendary. At Saluda, NC the steepest standard gauge mainline railroad grade in the United States drops 253 feet/mile (4.8% grade). The CSX and Norfolk Southern lines trace the French Broad River Valley and the Nolichucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern RR crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high level nuclear waste transport as soon as 1998 according to S. 1936.

County emergency management personnel are entrusted with early response to hazards to the public in western North Carolina communities. When we asked about their readiness to respond to a nuclear transport accident, they answered professionally saying, ''We'll just go out there and keep people away until state or federal officials arrive.'' This may be the best that can be done while a fire burns or radiation leaks from a damaged cask. In a recent interview, one western NC emergency coordinator said, ''There is no response team anywhere in this part of the state and, for the foreseeable future, there is no money in local budgets to equip us with any first response to radioactive spills.''

The concerns of local officials reflect their on-the-scene responsibility while state officials, faced with limited budgets and staff, make plans based on current bureaucratic realities. The Nuclear Waste Policy Act and Amendments of 1982 and 1987 place large-scale nuclear transportation scenarios decades in the future. This fact and the limited resources of existing emergency planning departments make the timeline for preparation for nuclear accident response completely inadequate for shipments beginning as soon as 1998. In North Carolina's Division of Emergency Management, the lead REP planner has four staffers and a whole state to cover. It is not possible under these circumstances, to be ready with credible emergency response plans, training, and equipment in two years.

I am asking you to oppose this expensive and dangerous legislation which would place an unfair and unnecessary financial burden on communities and which would place at risk the health and safety of millions of American citizens.

Respectfully,

LOUIS ZELLER.

Mr. REID. Mr. President, we also know that they are running roughshod over environmental laws in this country—''they'' being the proponents of this legislation. We have here a statement from Public Citizen, which says, ''If you believe in environmental standards, don't vote for S. 1936. S. 1936 severely weakens environmental standards by carving loopholes in the National Environmental Policy Act''—that is what we call NEPA—''eliminating licensing standards, forbidding the EPA from raising radiation release standards.''

Mr. President, we received from the President of the United States office late last night a reiteration of why he believes this legislation is bad and why it should be voted down. Among other things said in this letter from John Hilly, assistant to the President of the United States, it says:

The bill undermines environmental laws and processes. Americans deserve full public health protection. Yet, this bill renders the National Environmental Policy Act meaningless, undermines EPA and the Nuclear Regulatory Commission regulatory process for public protection from radiation exposure.

It is a good deal the proponents have—just wipe out the environmental laws and say we have to get rid of nuclear waste. The powerful nuclear lobby has been willing to run roughshod over the lives of Americans for too many years. It is time we stopped it. There is a permanent repository being characterized in Nevada. The only reason they want to go with the interim storage is to save money. It is not going fast enough for them. They don't care about environmental laws. They care about the bottom line, the dollar amount. They are making tons of money.

Mr. President, on this chart are the companies pushing this. Look, Mr. President, at the percent of net income relative to revenue: 20 percent of their revenues come from nuclear power. Here is 17.25 percent, 17.7 percent, 20.5 percent, 22.75 percent, and 25 percent. They are raking in the money. But it is not enough. They want to make more. They don't care about the rights and liberties of Americans that are protected with the laws called Clean Air, Clean Water, Superfund, and other such laws.

I understand my friend from California has a question.

Mrs. BOXER. I do. I would like to address a couple of questions. First, I want to thank both of you for your courage. I think Senator REID has shown us that there is a lot of power behind this particular bill—economic power—and it is always difficult to stand up against that. So my thanks to you for doing that. That is why we need people like you in the U.S. Senate. Your team leadership has been noticed by many throughout this great country.

I want to also thank Senator CONRAD and Senator REID for talking about the issue of terrorism, because having to close our eyes to the terrorist threat after what we have been through is—I can't even fathom it. I think Senator CONRAD was correct to bring this up. The answer from Senator REID, I found, to be very illuminating.

This is my basic question: Did we not have in this Senate, over many years, a lot of struggles and fights to win passage of the very legislation that would be waived in this act, and wasn't that struggle and that fight a bipartisan one, where we came together, from different parties sometimes, and sometimes with different viewpoints, to pass the Clean Air Act and the Clean Water Act?

Mr. REID. I respond to my friend from California that most of this legislation began during the period of Richard Nixon.

Mrs. BOXER. That is correct.

Mr. REID. Take clean water. The reason the Clean Water Act was initiated is because the Cuyahoga River in Ohio caught fire, not once, but three times. After the third fire, people around the country started saying, ''Maybe we should do something about this.'' I respond to my friend from California that when the Clean Water Act was initiated, 80 percent of the rivers and streams in America were polluted. Now, some 25 years later, those numbers have almost reversed. Approximately 80 percent of the streams and rivers in America—you can swim in them and drink out of them. They are in pretty good shape. It is not perfect. We have a long way to go, but we have done pretty well.

Mrs. BOXER. Let me say that I have the honor and privilege of serving with my friend, Senator REID, on the Environment Committee, and that is what brought me to the floor today.

I ask Senator BRYAN this question: Is it not true that the waste that will be moved throughout this country and placed in this repository is dangerous waste that could last between thousands of years to even a million years or millions of years?

Mr. BRYAN. The Senator from California is correct. This is among the most dangerous material on the face of the Earth. We are talking not about something that would be a problem for 5, 10, 15, 20 years, even 2 or 3 lifetimes. The whole thrust of the bill that is before us is to cut corners, try to save a few bucks here, to impose artificial deadlines that can never be met, all to the disadvantage of public health and safety.

Very seldom do you hear the nuclear utilities talk about doing something to protect public health and safety. It is always, ''This costs too much,'' ''Delay this a little bit,'' ''It would be inconvenient or difficult.'' The whole thrust of these laws is a balancing of public health and safety, and the fact that it may take a little longer, it may be a little more difficult, was a bipartisan consensus, as my senior colleague pointed out, during the term of Richard Nixon. NEPA was enacted in 1969, the first year he served as President. It was a bipartisan consensus in America. This legislation would shatter that and subject those who would be affected by this decision—at least 51 million people along the transportation routes—to a lower standard of protection for public health and safety.

Mrs. BOXER. The point of my question is that here we have the most dangerous elements known to humankind. And of all the things we should be doing, it seems to me, when we decide on a repository, is to make sure that every one of those acts is complied with—Clean Air, Clean Water, National Environmental Policy Act, Community Right to Know, Safe Drinking Water Act—and that is why I am so strongly supportive of the Senators' amendment.

All of the response about being duplicative and inconsistent—I respect my friends on the other side of the debate, but we have a difference in the way we view the public interest. I have nothing but respect for those who hold a different view. But I say this: If it is duplicative and there is even one question about it, why not vote for this amendment and be doubly sure, if you will, that our people are protected from the most harmful elements known to humankind? I thank my colleague for yielding, and I yield back my time to him.

The PRESIDING OFFICER. The Chair advises that all the time of the Senator from Nevada has expired. There are 8 minutes remaining on the other side.

The Chair recognizes the Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair. I observe, for the benefit of my friend from California, for whom I have the utmost and fondest regard, that accepting this amendment means her State gets considered as a possible alternative for interim storage. The State of California currently has approximately 1,319 metric tons of high-level nuclear waste that is stored in California. It is estimated that, by the year 2010, there will be 2,639 metric tons.

So the point is, if we leave it where it is, which is what we will do with the amendment offered by my friends from Nevada, waste is simply going to stay where it is. As a consequence, at some point in time somebody will have to do something with it. To do something with it implies you have to move it. We have heard fear, fear, fear. We move money in armored cars. We used to move it in stagecoaches. We protected it. We protect it in armored cars. We will protect waste, if you will, in casks. This movement is not just helter-skelter.

They have moved, in Europe, 30,000 metric tons of high-level nuclear waste. They moved it safely. That does not mean an accident could not happen or that a terrorist activity could not happen. But they have moved it. It has not been designed, if you will, to be easily lifted. It is very, very heavy and very difficult. The containers are built to maintain a degree of security unknown in any other type of engineering device.

So while there is a risk associated with all aspects of this, there is also a reality of inconsistency in this amendment because the Senator from Nevada indicated that by permitting one repository in Nevada as a permanent repository, he has acknowledged that the material has to get there somehow.

So you have the potential risk, if you will, if you simply say we are going for a permanent repository and we are not going to consider an interim repository. The stuff has to move anyhow. There is a risk associated with movement.

Mrs. BOXER. Will the Senator yield?

Mr. MURKOWSKI. I am sorry. I have a limited time, in all due respect to my friend from California.

Adopting a NEPA process open to alternatives opens up new areas for consideration.

There is behind us the map showing all of the places other than a Nevada test site that could be used for an interim central storage facility. You can

see them. They are all over the country.

If you say yes to this amendment, you may be saying yes to nuclear waste storage in your State or near your State. The possibilities include New York, Hawaii, Connecticut, Washington, Maine, Iowa, California, Montana, North Dakota, South Dakota, Arkansas, Wisconsin, Oregon, and others. There are potential locations in 40 other States of about 605,000 square miles; 20 percent of the continental United States. You have to put it somewhere.

So what we have here is an effort by the Senators from Nevada that may sound reasonable at first glance but it sets this whole process back 15 or 20 years. It allows all the decisions we are making today to be reconsidered. It allows them all to be challenged in the courts. It guarantees further delay, further gridlock, further stalemate, and it will, therefore, force the ratepayers in all of these States not to pay once but to pay twice, to continue to pay into the nuclear waste fund and to build new interim reactor storage sites because some of them are full at this time.

This is a giant loophole for the Government to use in avoiding its promise to store and handle waste. It is an effort to derail the process.

Senate bill 1936 does not—and I emphasize ''does not''—exempt the establishment of an interim or final repository for NEPA. Instead, it requires an EIS for both the interim and permanent repository. We require it.

Furthermore, S. 1936 is consistent with NEPA and the Executive Order 12114 which implements NEPA. NEPA and the Executive order clearly anticipates the situation we have here. There are some decisions of policy that are within the agency's power to affect. There are others that are not. Congress may properly reserve some decisions for itself and allow other decisions to be considered in the NEPA process. Otherwise, we would never get anything done around here.

Senate bill 1936 identifies six decisions that are appropriate for congressional consideration only. These six decisions involve whether we need a repository, when we need a repository, and where the repository should be built. So it is whether, when, and where. These are fundamental decisions of policy.

I say to my colleagues that there are some things that we have the responsibility to decide and decisions that we are paid to make. These are some policies that we alone must determine, and that is our job.

If we adopt this amendment, we are being irresponsible because it will simply put off the process, put into the courts and delay beyond this administration to sometime in the future, and we will never address it.

What this amendment would do is to throw all of the cards back up in the air again as if to say Congress has made the tough decisions and cast the tough votes, but we are going to ignore all of that and revisit all of these decisions that we have already made.

Mr. President, if we are going to allow the agencies to revisit all of the decisions of Congress, either through NEPA or some other means, then there is no need for us to be here. We might as well go home because there is nothing for us to do.

So do not be fooled by this amendment. This is an amendment designed to derail responsible action to address nuclear waste in a repository. It looks reasonable at first glance, but it merely is a means to upset the applecart and put us back to where we were in 1980.

Mr. President, I yield all of my remaining time.

I move to table the pending amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska to lay on the table the amendment of the Senator from Nevada. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 73, nays 27, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—73

Abraham	Gorton	Mack
Ashcroft	Graham	McCain
Bennett	Gramm	McConnell
Biden	Grams	Mikulski
Bingaman	Grassley	Moseley-Braun
Bond	Gregg	Murkowski
Brown	Hatch	Nickles
Burns	Hatfield	Nunn
Byrd	Heflin	Pressler
Campbell	Helms	Robb
Coats	Hollings	Roth
Cochran	Hutchison	Santorum
Cohen	Inhofe	Shelby
Conrad	Inouye	Simon
Coverdell	Jeffords	Simpson
Craig	Johnston	Smith
D'Amato	Kassebaum	Snowe
DeWine	Kempthorne	Specter
Dodd	Kerrey	Stevens
Domenici	Kerry	Thomas
Dorgan	Kyl	Thompson
Exon	Leahy	Thurmond
Faircloth	Levin	Warner
Frahm	Lott	
Frist	Lugar	

NAYS—27

Akaka	Feingold	Moynihan
Baucus	Feinstein	Murray
Boxer	Ford	Pell
Bradley	Glenn	Pryor
Breaux	Harkin	Reid
Bryan	Kennedy	Rockefeller
Bumpers	Kohl	Sarbanes
Chafee	Lautenberg	Wellstone
Daschle	Lieberman	Wyden

The motion to lay on the table the amendment (No. 5073) was agreed to.

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

Mr. JOHNSTON. I move to lay that motion on the table. The motion to lay on the table was agreed to.

Mr. KERRY. Mr. President, I supported the motion to table the Bryan amendment to S. 1936 not because it included a requirement that the Department of Energy comply with the National Environmental Policy Act [NEPA] in the establishment of an interim storage facility at the Nevada nuclear test site—language which I support—but because it also included unjustifiably sweeping judicial review language. While I support judicial review of all final agency actions, this provision goes well beyond final rulemakings and would be unnecessarily burdensome and costly to both the Federal Government and the private sector. In my judgment, should this bill become law over my objections, this judicial review could cause the entire process of establishing the repository to grind to a halt.

Congress passed NEPA in 1969 to ensure that Federal agencies integrate environmental values—as well as social, economic, and technical factors—in the decisionmaking process. Section 102 of NEPA requires environmental impact statements [EIS] for proposed major Federal actions which would significantly affect the quality of the human environment. The EIS process includes alternatives analysis in which reasonable alternatives to the proposed action are explored in an effort to present clear choices to decisionmakers and the public, and to ensure that the most environmentally sound course of action is taken.

S. 1936 limits or eliminates the application of a number of NEPA's health and environmental standards with respect to the establishment of a temporary waste repository. For example, in order to expedite the interim repository's opening it waives any regulations for the protection of public health and the environment if the regulations would delay or affect the development, licensing, construction or operation of the interim storage facility.

I strongly believe that any facility in the United States designed to store spent nuclear fuel should be required to comply with NEPA. Therefore, I wholeheartedly support the first half of the Bryan amendment which instructs the Secretary of Energy to comply with all NEPA requirements.

My concern with the Bryan amendment stems from its language which would add sweeping judicial review provisions to this bill. It would subject to judicial review any agency action relating to the development or implementation of the integrated management system. I firmly support judicial review for all final agency actions. However, I am concerned that including any and all agency actions, not just final actions, may produce innumerable interlocutory judgments.

The cost to taxpayers likely would be very high, and the repository to be established under the terms of this bill likely would be drowned in a sea of redtape. That is not in our Nation's best interests despite the capable efforts of the Senators from Nevada to do everything in their power to prevent or

delay the establishment and operation of a repository in their State. Once our Government makes a decision to establish a repository for nuclear wastes which is badly needed—although I do not believe we are ready to make that decision with the confidence we should have for a step of this consequence—we should not deliberately set up the effort to fail by tying it in legal and procedural knots.

It appears unlikely that any additional amendments to this bill will be offered or approved that would restore the applicability of NEPA provisions. Therefore, because the legislation exempts the repository establishment process from the application of NEPA and other environmental statutes, I will oppose final passage of S. 1936. I am hopeful this bill in its current form will not be enacted. The President has said he will veto it in this form, and I would urge him to do so.

But, Mr. President, I wish to emphasize that I do not take this stance with enthusiasm. Our Nation needs a repository for nuclear waste. We should not continue ad infinitum to store it temporarily at the sites where it has been produced. That is neither safe nor prudent. Our Government needs to redouble its efforts to reach a conclusion about the establishment of a permanent repository, and it needs to do that with alacrity.

Unfortunately, this legislation to create a temporary repository is not the answer. Establishing a temporary facility necessarily brings difficult problems that would not be present with a permanent facility. Exempting the facility and the process of establishing it from environmental laws and safeguards is unacceptable.

It is not inconceivable, even if quite unlikely, that these problems can be remedied this year in a way that would permit me to support this legislation. The first requirement is that the process be subjected to compliance with environmental laws and regulations. This could be accomplished in a conference committee. If it is not, I will continue to oppose it.

But if its flaws are not adequately repaired, and the bill either is not finally passed by the Congress or is vetoed by the President, the 105th Congress needs to begin grappling early and seriously with this matter. I hope when it does so, Mr. President, that it will take a different and more responsible course than has been taken in the current Congress.

SECTION 101(g)

Mr. LEVIN. Mr. President, at page 9, lines 20–23 of the manager's substitute amendment, section 101(g) provides that ''subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste. * * *'' Is it the manager's intention that this language prevent contract holders from recovering damages or other financial relief from the Government on account of DOE's failure to comply with the 1998 deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit in any way the rights of contract holders, their ratepayers, or those agencies of the State governments that represent ratepayers, from enforcing any right they might have, including the right to hold the Federal Government liable financially, under the 1982 act and the contracts executed pursuant thereto. Section 101(g) is expressly subject to section 101(f), which makes clear that rights conferred by section 302(a) of the Nuclear Waste Policy Act of 1982 or by the contracts executed thereunder are not affected by this bill, including section 101(g). To the extent that act or the contracts established a 1998 deadline and the DOE fails to meet that deadline, it is not the manager's intent that the substitute amendment in any way restrict the relief available to those damaged by the failure to meet the deadline.

Mr. LEVIN. Is it correct then that the manager does not intend that the amendment would restrict the scope of remedies available to the plaintiffs in the litigation in which the Court of Appeals of the District of Columbia has recently held that the 1998 deadline is a binding obligation of the Federal Government?

Mr. MURKOWSKI. That is correct. It is not the manager's intent that the language of section 101(g) proscribe the court of appeals or any other court from awarding monetary relief or other financial remedies to those who have paid fees to the Government under the 1982 act and the contracts, or those who will incur additional expense on account of the DOE's failure to comply with any right conferred by 1982 act or the contracts.

Mr. LEVIN. If a deadline were imposed by the Nuclear Waste Policy Act of 1996, as reflected by the substitute amendment, as well as by the Nuclear Waste Policy of 1982 or the contracts executed thereunder, is it the manager's intention that section 101(g) would proscribe financial liability for failure to meet the deadline to the extent it is imposed by the 1982 act? For instance, if DOE were to fail to commence the acceptance and emplacement of spent nuclear fuel and high level radioactive waste by November 30, 1999 or thereafter, would the amendment proscribe a court from imposing financial liability on DOE if a court ruled that DOE's inaction constituted a failure to comply with the deadline established in section 302(a) of the Nuclear Waste Policy Act of 1982 and the contracts?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the rights or remedies available under the Nuclear Waste Policy Act of 1982 or the contracts executed thereunder. If a failure by DOE to comply with any deadline established in the amendment also constituted a failure to comply with a deadline established by the 1982 act or a contract under that act, it is not the manager's intent that section 101(g) modify the right of any contract holder to seek any and all remedies otherwise available for the violation of the 1982 act or for breach of the contract. It is the manager's intention that section 101(f) preserve all of those rights, regardless of whether the same or a similar obligation is expressed in the Nuclear Waste Policy Act of 1996.

Mr. LEVIN. With respect to a deadline imposed for the first time in the Nuclear Waste Policy Act of 1996, is it the manager's intention that section 101(g) proscribe a court order that the Secretary of Energy comply with such deadline, or granting relief other than money damages to contract holders?

Mr. MURKOWSKI. It is not the manager's intent that section 101(g) proscribe anything other than financial liability for failure to meet a deadline imposed by the Nuclear Waste Policy Act of 1996. To the extent other forms of relief are available for the government's failure to comply with a deadline imposed by the amendment, the manager does not intend that such a remedy be prohibited.

Mr. LEVIN. Is it the manager's intention that section 101(g) limit the liability of the United States for anything other than a failure to meet a deadline? For instance, if the Nuclear Waste Policy Act of 1996 imposes an obligation which is not a deadline, such as the requirement to reimburse contract holders for transportable storage systems if DOE uses such systems as part of the integrated management system, is it the manager's intention that that obligation not constitute a financial liability of the United States?

Mr. MURKOWSKI. It is not the manager's intention that section 101(g) limit the liability of the Federal Government for anything other than a deadline. The manager does not intend that any other obligation imposed by the Nuclear Waste Policy Act of 1996 be affected by section 101(g).

Mr. GLENN. Mr. President, when I first saw the Nuclear Waste Policy Act, S. 1271, I was very surprised at its apparent disregard to the rights of citizens and the protection of the environment. It appeared to me that proponents of that bill wanted to ignore those issues, all in the name of removing a burden from the nuclear industry. I can understand the desire to make the Federal Government live up to its promises, but not at the expense of the environment or citizen's rights.

The bill, as originally written, contained provisions for prohibiting the Environmental Protection Agency from performing its legislatively mandated function of defining standards for radiation releases from the permanent or interim radioactive waste repository. Congress established what appeared to be a limit which disregarded

scientific and public input on appropriate limits. Particularly galling was the prohibition of public input and EPA involvement in standard setting.

Other issues of concern included: First, opening the door to reprocessing, called conditioning in the original bill; second, running rough-shod over the citizens of States through which the radioactive waste would be transported; and third, gutting Civil Service laws for a particular DOE office.

I filed several amendments, in an attempt to correct provisions of the bill that in my view would result in unfair treatment or inadequate protection of citizens and the environment. Several of those provisions have been corrected, or at least modified. I am pleased to see that, in the latest version of the bill, the EPA and the NRC have been brought back into the process, albeit somewhat awkwardly. These two agencies are charged with responsibilities for setting standards for protection of the public, workers, and the environment from produced radioactive materials, which includes those found in nuclear reactors or radioactive waste repositories.

I am very disturbed, however, with the legislatively imposed standard of 100 mrem per year to the average person in the vicinity of Yucca Mountain. I understood that EPA and NRC have the responsibility and authority to establish radiation dose limits and standards. I certainly would not substitute my limited knowledge on the effects of exposure to radioactive materials, for that of the EPA and NRC. I doubt if there are any others in this Chamber who would be qualified to do that, either. We should leave it to the experts, at EPA and NRC, as well as to the public, instead of imposing an arbitrary standard of our own. It is claimed that EPA and NRC have veto rights in this bill. However, the bill's wording is such, that instead of giving the agencies the responsibility for establishing a standard, they are required to adhere to our standard, unless they determine that our standard constitutes an ''unreasonable risk to health and safety.'' What constitutes ''unreasonable risk''? How will EPA or NRC determine what is ''reasonable'' and what isn't in terms of risk? That is a subjective judgment, and it is an invitation to extensive litigation on that judgment. At the same time, the bill limits judicial review of rulemaking based on the 100 mrem standard.

I am also concerned that our limit is significantly higher than limits imposed for other nuclear activities. Why is this so? Is it because someone has been told that we can't design a repository to tougher standards? Is this what health and safety regulation has come to? Don't set a standard that the National Academy of Sciences suggests you should set—their report suggests a much lower number than 100 mrem/yr. for exposure—instead let's pick one that the engineers say they can easily meet today—despite the fact that the repository will be around, maybe, for thousands of years.

I understand that there is disagreement among scientists about the effects of low-level radiation. The EPA sets a limit of 25 mrem, and the NRC has historically set 25 mrem around nuclear power plants. International standards setting bodies have also allowed dose limits for waste storage of 15 to 25 percent of the 100 mrem total limit.

The EPA has also opposed the legislatively mandated limit, in letters to Senate Committees and individual Senators. I have also been informed that EPA is going to issue their dose limits in the very near future. [Draft within a month.] I want to know what they say in this regard before I set a congressionally imposed limit, which may or may not meet our best scientific judgment.

Beyond this, Mr. President, the philosophy behind this bill is one that is seriously questionable. The bill presumes that a permanent deep geologic burial site of nuclear waste is the most suitable solution to the waste problem and then sets up a structure that will inevitably lead to pressures to make the interim site the site of the permanent facility, and with legislated safety standards for the permanent repository.

I simply do not believe that we now have the technology or engineering knowledge to credibly design and construct a permanent repository that can meet acceptable safety standards for tens of thousands of years. If we did have this ability and understanding, then it would not be necessary to contort our environmental laws and regulatory oversight as this bill does. Until we get closer to being able to design and construct a repository with appropriate safety standards, there is no reason why we cannot continue to have monitored retrievable surface storage of these dangerous materials. The level of risk is not greater than that posed by the construction of a central interim facility requiring continuing transportation of radioactive materials from all over the country. Accordingly, Mr. President, I am opposed to the passage of this bill.

Mr. KERREY. Mr. President, I would like to take this opportunity to explain my opposition to S. 1936. We can, and we must, seek a responsible and permanent solution to the important problem of high-level nuclear waste storage. In that light, I have supported, and will continue to support, a permanent geologic repository. What I do not support is designating the location of an interim storage site before we have determined the viability of the Yucca Mountain permanent repository. I have three major objections to that policy.

First, it exerts a growing pressure to name Yucca Mountain as a permanent repository. The pressure to move nuclear waste to Yucca Mountain continues to increase. The premature decision to authorize the storage of tens of thousands of metric tons of nuclear waste at the site only adds to the pressure to push blindly down this course. The American people need to be confident that the final decisions regarding the permanent repository are based on sound science and not political expediency. The American people deserve a credible, deliberative policymaking process. They must have faith that the location of the permanent repository is based on a fair and balanced consideration of environmental, health and safety issues. Mandating the location of a interim site at this time undermines the public confidence in this process.

My second concern is that the interim site may become the de facto permanent site. If for either scientific or political reasons, the work on the construction of the permanent repository stops, who will be motivated to move the waste from temporary storage in Nevada to a permanent repository in another State? The nuclear waste at the interim site will, at that point, be of concern to very few. Those who were responsible for generating that waste will have no moral, legal, or financial responsibility for that waste. I submit that the policy options available at that time will be rather limited.

This brings me to my third, and most important, concern. If, despite the inertia at work, another site for a permanent repository were named, it would set up an unacceptable situation. We would have moved the waste from Yucca Mountain to another, yet to be named, location. Nebraska is a major corridor to Yucca Mountain. Under no circumstances will I vote for a bill that sets up the possibility of the Nation's nuclear waste passing though my State twice. Simply stated, it is unnecessary to subject the public to the risk and expense of transporting this waste twice.

That summarizes the irony of S. 1936, regardless of what the final deposition of the permanent repository at Yucca Mountain, we have errored. If Yucca Mountain is found to be a viable location, we have unnecessarily undermined the credibility of the scientific studies. If Yucca Mountain is not a viable site, we are given a no-win situation. We either allow the interim site to become the de facto permanent site or we once again move high-level nuclear waste to another location.

Why does the Senate chose this road with no winning outcomes? Are we reacting to a crisis that does not exist? For years the operators of commercial nuclear power plants have stated that on-site storage was safe. All evidence supports this position, and I believe them. Current on-site storage is not a permanent solution, but by the same token, it does not present a crisis.

The alternative to the no-win course outlined in S. 1936 is quite simple. We wait until the completion of the viability study at Yucca Mountain in 1998. At that time we can consider the policy options available based on sound

science and hard evidence. We will not have locked ourselves into narrow policy options or have undermined the credibility of the process through premature decision making. The geologic repository will be designed to store high-level nuclear waste for 10,000 years. Yet, this body can not wait 2 years to base public policy decisions on sound science and a credible process.

Mrs. MURRAY. Mr. President, I intend to support S. 1936, as amended. However, I would also like to express my reservations about portions of this bill.

I supported cloture and I appreciate my colleagues from Nevada agreeing to allow this bill to move forward. It is critical that we proceed with the business we have to complete prior to adjournment; namely, 13 appropriations bills. I hold no grudges against my sincere colleagues from Nevada for their use of Senate rules to delay this bill. Were I in their shoes, I too would likely use every parliamentary device available to me to prevent enactment of this bill.

It is because I do not want to be in their shoes that I support this bill. I, and many of my constituents, are concerned that there may be a renewed effort to place either an interim or a permanent nuclear waste repository in Washington, at Hanford, adjacent to the Columbia River. As many who have dealt with this issue over the years know, Hanford, a Texas site, and Yucca Mountain were the winners in the permanent repository selection process. So, for the health of my constituents, I support development of Yucca Mountain.

Conversely, it is also that fear for my constituents that makes me most nervous about S. 1936. While I appreciate the improvements made about Environmental Protection Agency authority regarding radiation release and exposure standards, I am worried about the bill's easing of some environmental and health standards. It is not unlikely that someday we in Washington may have the rest of the Nation decide that Hanford radiation standards could be lessened in order to foist some new batch of nuclear waste upon us. So, I am leery of such provisions in this bill and am pleased that the authors continue to make improvements.

I also am frustrated that the U.S. Government has made a commitment to some of its citizens, to ratepayers, to the nuclear industry, to store nuclear waste by 1998. Maybe we should not have made such a commitment or collected fees to follow through on that commitment. But we did. It is time to act on that commitment—even if it means so doing with this imperfect vehicle.

Mr. President, this is a very difficult issue for me. I care about my State, I care about the ratepayers' money being spent on this never-ending project to get nuclear waste in a permanent geologic repository, I care about the health of all people, including Nevadans, and I care about fairness. I agree with many of the arguments made by my colleagues, Senators BRYAN and REID. Therefore, I will support any amendments that address my concerns. In the end though, I will support S. 1936 in its final form.

Ms. MOSELEY-BRAUN. Mr. President, on balance, I support S. 1936. It is not a perfect bill, but it is a reasonable bill, and I do not believe that the United States can afford further, indefinite delays.

The decision before the Senate is, in part, about the suitability of Yucca Mountain, the risks associated with the transportation of spent nuclear fuel, and the legacy of spent nuclear fuel created by our nuclear industry.

The issues that flow from a decision to open an interim facility near Yucca Mountain, however, are as important as the site decision itself. My own State of Illinois, with 13 reactors, has more nuclear plants than any other State. For 36 years, waste has been building up, and the volume continues to grow. With our excellent network of highways and railways, Illinois also faces issues associated with interstate shipments of spent fuel destined for a permanent repository.

There will never be a perfect disposal site for spent nuclear fuel. The fuel is dangerously radioactive, and remains so for hundreds of thousands of years. Whether it is placed in deep geologic storage, sunk beneath the ocean, drilled far into the earth, or shot it into space, every approach poses risks to humans and the environment, and none will ever completely eliminate the dangers of this substance.

Without a perfect solution, however, we are forced to choose the next best option: A location where the waste will have the least potential adverse impact on human health. Ideally, such a site is in an unpopulated area, away from threats to underground water, away from animal habitats, and in a place where it poses the least environmental risk and where we are assured of maximum security protection.

Illinois, home to over 11 million people, is not such a site. Yet, over 5,000 tons of spent fuel are housed at temporary locations scattered throughout my State. Most of these locations are in northern Illinois, near great concentrations of people. The fuel rods are stored in underwater pools, a method never meant to be permanent. While the pools pose no imminent risk, and will likely remain safe for the foreseeable future, they do not ensure complete safety, maximum security, or long-term protection of the environment. And the volume of waste at these sites will continue to accumulate as spent fuel is removed from nuclear plants.

For Illinois, there are no perfect answers, there are only options, and each option has its problems. If a Western waste disposal site is opened, Illinois, because of its key role in our national transportation system, faces a future of literally thousands of shipments of nuclear waste across the State. The other alternative is even less palatable—keeping large amounts of deadly waste at Illinois nuclear power plans for perhaps 100 years and beyond, in facilities never designed for long-term safety and security, located too close to people, too close to groundwater, and quite frankly, too close for comfort.

My conclusion is that spent nuclear fuel cannot remain in Illinois. Illinois is not suitable for the medium and long-term storage of nuclear waste, and should not have to risk inadvertently becoming a de facto permanent site because Congress fails to act.

Congress has debated this issue for 14 years. Illinois ratepayers have paid more than $1.5 billion to help finance the construction of a permanent disposal site in Yucca Mountain. Despite the billions received, the Federal Government has made little progress, and Yucca Mountain is not expected to open until 2010 or later. Meanwhile, space runs out in Illinois beginning in 2001. If Congress fails to act, utilities will be required to build additional storage space at reactor sites, and ratepayers will foot the bill, essentially paying twice for the storage of this waste.

I am concerned about transportation. While I have been assured by the city of Chicago and the Illinois Department of Nuclear Safety, both of which have excellent hazardous waste transportation programs, that spent fuel shipments pose no risk to the general public, we must remain as vigilant as possible on this issue.

These fuel shipments must be handled in a manner that meets the highest safety standards and does not put Illinoisans or other Americans at risk. That's why I offered an amendment to this bill that would hold the Department of Energy and the Department of Transportation accountable for these shipments, and directs the Department of Energy to select routes that avoid heavily populated areas and environmentally sensitive areas. I thank the chairman and ranking member of the committee for accepting these amendments. I do believe, however, that more should be done to further improve transportation safety, and I hope Congress will revisit this issue in the very near future.

It is worth remembering that if this bill is enacted this year, there will be no immediate cross-country exodus of spent fuel. The Nuclear Waste Technical Review Board recognizes that ''even if passed into law now, none of the proposals before Congress would enable the operations of a centralized facility before 2002.'' Additionally, the process of licensing and developing a large interim facility, and the transportation infrastrucutre that goes with it, has been estimated to take 5 to 7 years. Furthermore, it is not expected that the Department of Energy will meet several deadlines in this bill.

Even if S. 1936 is promptly enacted, spent fuel will remain where it is for quite some time. Each decade of delay, however, adds 20,000 metric tons to storage capacity. Beyond 2020, nearly 85,000 metric tons of spent fuel will have been generated. And that is exactly why the Nuclear Waste Techical Review Board recommends that action must begin now on a Federal facility, so that full scale operations can begin by 2010 when reactors begin shutting down in large numbers.

Mr. President, this debate is not about whether nuclear power should ever have been pursued as an energy option. That has long since been decided. We cannot wave the magic wand, nor turn back the clock. Nuclear power is here, and nuclear waste must be dealt with.

Our decision on dealing with nuclear waste will never be perfect, because it cannot be perfect. But, it is a decision that must be made. If we fail to act, Congress will send a message to the American people that the nuclear waste problems created by our generation are best resolved, and best financed, by our children and our grandchildren. That is neither right, nor fair, and that is why I am voting in favor of S 1936. I urge my colleagues to do likewise.

NUCLEAR WASTE AND THE BUDGET

Mr. DOMENICI. Mr. President, I want to take a moment to congratulate the senior senator from Idaho, the chairman and ranking minority member of the Senate Energy and Natural Resources Committee and the majority leader on this bill. All of these Senators deserve a great deal of credit for getting this controversial bill pulled together and scheduled for Senate action in a year when the calendar is working against us. I also want to congratulate the Senators from Nevada. This is a difficult issue. I may disagree with them, but I respect the effort and vigor they have put into their opposition to this bill.

The Nuclear Waste Policy Act required electric utilities to contract with the Department of Energy to take title and ultimately dispose of nuclear waste generated by these utilities in exchange for a fee on nuclear-generated electricity. The Department of Energy's view is that they do not have obligation to take this waste until the development of an operational interim storage facility or a permanent repository.

The Clinton administration has shown incredible bad faith on its part to honor these contracts. While the administration has argued that there is no obligation to take the waste in 1998, it continues to collect fees from electric utilities pursuant to its contracts with these utilities. The Clinton administration has threatened to veto legislation, last year during consideration of the Energy and Water Development Appropriations bill and this year during consideration of this legislation, providing an interim storage facility that would provide DOE with the means to meets its contractual responsibilities while a permanent repository is being developed. Although the administration has professed support for development of a permanent repository, the President has not provided the leadership necessary to gain the funding or the changes in the law that will be necessary to ensure an operational disposal facility will be developed. For example, in his most recent budget request, the President proposed to reduce spending for the nuclear waste program over the next 6 years.

When DOE indicated it would not accept responsibility for the utilities' nuclear waste in 1998, the electric utility industry took them to court. The United States Federal Court of Appeals for the D.C. Circuit recently sided with the utilities on the question of the Federal Government's obligation and concluded that the Federal Government has an obligation to accept title for this waste in 1998 that is reciprocal to the utilities' obligation to pay. The court clearly rejected DOE's argument that its obligation was contingent on the development of an interim or permanent repository.

S. 1936 will allow the Federal Government to honor that commitment. It provides for an interim storage facility to meet the Federal Government's commitment to take this waste and sets forth a process that will allow the Federal Government to study, evaluate, and develop a safe and environmentally-sound permanent repository for nuclear waste.

Earlier versions of this legislation included provisions that would have violated the Budget Act. Senators CRAIG, MURKOWSKI, and JOHNSTON have written a bill that does not violate the Budget Act. It is fully paid for over the 10-year period as required by the Act. The bill, however, will result in a $600 million annual increase in direct spending and the deficit beginning in 2003. This direct spending would be available to fund program management, interim storage, transportation, and development of a permanent repository. It pays for this increased spending over the 10-year period by accelerating the payment of fees by electric utilities. Although the bill does not technically violate the pay-as-you-go rule over the 10-year period, it meets this requirement by shifting future payments by utilities into the 10-year budget window.

This bill provides direct spending authority that will be available to fund all aspects of the nuclear waste disposal program. I understand the very strong arguments for this spending authority, but as Budget Committee chairman I am constantly confronted with very compelling arguments on why we should increase spending for numerous programs.

In this instance, particularly considering the Appeals Court's decision, clearly the Federal Government has an obligation to take title to this waste in 1998. DOE's argument was that it had no obligation because no disposal facility was available. The Court discarded this view and interpreted disposal to be a very broad term that included temporary storage of nuclear waste.

Viewing the tremendous effort that went into getting an agreement for consideration of this bill, I decided not to pursue an amendment that would have limited the increase in direct spending to what is needed to develop an interim storage facility. If this legislation is not enacted, I intend to pursue modifications to this legislation to limit the increase in direct spending to what is necessary to provide for the interim storage of this waste. I think a very strong case can be made that the Government has a binding contractual obligation to provide for the interim storage of this waste and that is clearly supported by the court's opinion.

Mr. ROCKEFELLER. Mr. President, I oppose the Nuclear Waste Policy Act, and I would like to share some of my reasons with my colleagues.

First, the Senate should not be ramming through a bill to designate an interim storage site just when a comprehensive, sophisticated process is well underway to come up with a permanent site or solution. This legislation basically says the Senate knows better—it says the Senate should take the place of scientists and experts, choosing Nevada as the so-called interim site and presumably paving the way for the same location to be used forever.

I do not think this is the time whatsoever for the Senate to make this decision—it's a misuse of power, it contradicts other policies that Congress has put on the books, and it could trigger all kinds of unfortunate consequences, including the possibility of a very serious accident.

This bill, S. 1936, violates current law, the 1987 Nuclear Waste Policy Act amendments. Under the 1987 law, DOE is not allowed to begin construction of an interim storage facility until the NRC has granted a construction license for the permanent site. Also, that law stated that no more than 10,000 metric tons of waste could be stored at the interim site before the permanent site began operating, and no more than 15,000 metric tons after that. But S. 1936 authorizes an interim site storage capacity far greater than either of these levels—40,000 metric tons after phase two, which will be increased to 60,000 metric tons if Yucca Mountain falls behind schedule.

In 1987, Congress was saying that it would be unwise to ship nuclear waste across the country to a temporary above-ground storage site until a permanent site gets built. The same is true now. It still isn't smart. But, under this bill, the waste would be shipped to the Nevada interim storage site anyway, before the studies have been completed to certify whether or not Yucca Mountain is the place to be a permanent repository of nuclear waste.

Some say this isn't true, that there is a safeguard in the bill. But, while the bill requires DOE to stop construction on the interim site if the President determines that Yucca Mountain is unsuitable as the permanent repository, there's a catch. If Yucca Mountain isn't found suitable, the bill will require that the interim site be built in Nevada anyway unless the President picks an alternative site within 18 months. This alternate site must then also be approved by Congress within 2 years after that. Leaving aside the idea that we should designate nuclear waste sites on objective criteria rather than strict timetables, does anybody believe another site will be found in 18 months? Or that Congress will approve another site 2 years after that? I'm not betting on it.

Why all this pressure to act on the bill before us, S. 1936? From everything I have seen, there is no overwhelming case, for safety or related reasons, to force the transportation and placement of this waste into an interim site. The nonpartisan Nuclear Waste Technical Review Board issued a report saying that there is no compelling technical or safety reason to move spent fuel to a centralized facility for the next few years. And the Nuclear Regulatory Commission has said that the waste could safely remain at the current sites for far longer than that in dry cask storage facilities. In short, this waste doesn't have to be moved now.

In fact, it is even conceivable that science may ultimately lead to the rejection of a single repository, because of the dangers of transporting waste and progress being made in developing alternatives. The Senate should not be intervening, singling out Nevada, and short-circuiting what could be a safer, sounder, and less costly solution.

And there are a number of safety concerns that argue against this bill. Experts have raised concerns about the radiation exposure standard in this bill, and I think we should question the preemption of several key environmental laws, such as the Clean Water Act and the National Environmental Policy Act.

Transportation of this waste also is a major concern, and reason enough to reject this legislation. If the plan in this bill goes forward, we will see the transport of up to 60,000 tons of nuclear waste by road and rail from nuclear facilities around the Nation to this interim storage site. These mobile nuclear waste sites will travel through West Virginia and 42 other States. I have been told that 50 million people live within 1 mile of the proposed transportation routes that would be used.

In West Virginia, we have no nuclear facilities. We have no spent fuel. We have no nuclear waste. And we have no storage problem. But, under this bill, West Virginians will have nuclear waste being shipped through the State. I do not want to be alarmist, but I do have concerns that West Virginia and the other 42 States have not had adequate time to develop the necessary transportation safety plans, and are not ready to handle the possible accidents that may occur. I don't know how many of my colleagues have spent time in southern West Virginia, but the mountains and roads there will not be friendly to rescue efforts if one of these trains goes off the tracks. Under this bill, the zeal of some to force this premature interim storage facility into Nevada may raise risks for protecting the people and the environment in places like West Virginia.

Mr. President, this is an unnecessary bill that forces Nevada to prematurely take the Nation's nuclear waste and become America's so-called interim storage site. It looks like a set-up to becoming the permanent storage facility, not as a result of the promised objective and scientific process, but as a result of political pressure and an eagerness to dump a problem onto a lone State. It uses a radiation exposure standard that looks questionable and undermines environmental laws in ways that could be dangerous. It threatens to expose millions of Americans to the risks of transporting and storing this waste.

The Senate has no business passing this bill. The President has made it clear he will veto the bill, wisely insisting on the completion of the kind of process that should be used to make decisions as monumental as where, when, and how to transport and locate nuclear waste. The Senate should defer to that process as well, and resist this idea of singling out one State in such an insensitive and heavy-handed manner.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I wonder if my colleague from Alaska and my colleagues from Nevada will listen to a question, which is, as I understand it, the plan now is to go to third reading immediately and vote on final passage at 4:55?

Mr. MURKOWSKI. Mr. President, in response to my colleague from Louisiana, that is the plan that has been agreed to.

Mr. REID. It is my understanding there will be general debate until that time, that we each have an amendment left, and it is my understanding neither the proponents of the legislation nor the opponents of the legislation are going to offer the last amendments they have in order, and that the time will be evenly divided between now and 4:55 for general debate on the legislation.

Mr. MURKOWSKI. That is my understanding, Mr. President.

Mr. JOHNSTON. I wonder if we can advance that by unanimous consent.

Mr. President, if it is in order and agreeable with my colleague from Alaska, I ask unanimous consent that we move immediately to third reading, and that the time between now and 4:55 for final passage be equally divided between the Senator from Alaska and the senior Senator from Nevada.

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

Mr. MURKOWSKI. I thank the Chair.

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

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

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I wonder if I may have the Chair identify the time that will be divided on either side.

The PRESIDING OFFICER. The Senator from Alaska has 30 minutes; the Senator from Nevada 31 minutes.

Mr. BRYAN. Mr. President, the Senate is not in order. I did not hear the inquiry of the Senator from Alaska.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order. I ask that all audible conversations be removed to the Cloakroom.

The Chair recognizes the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, as I understand it—I was distracted as well—we have about 30 minutes.

The PRESIDING OFFICER. The Senator from Alaska has just over 30 minutes.

Mr. MURKOWSKI. I thank the Chair. I inquire among Senators on this side as to how much time they need. I think the Senator from Wyoming requests time. How much time does he need?

Mr. SIMPSON. Mr. President, I think 5 to 7 minutes will be quite adequate.

Mr. MURKOWSKI. The Senator from Idaho, I know, is going to request time, 10 or 15. The Senator from Louisiana. I am going to yield myself 5 minutes at this time, and I will attempt to accommodate—why don't I just go ahead with the Senator from Wyoming now and allot him 5 minutes. I yield 5 minutes to my good friend, the Senator from Wyoming, who, unfortunately, will be departing this body at some point in time.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I do richly commend my friend, Senator MURKOWSKI. I have watched him doggedly work in this area. There are many who have done so much in this area over the years: Senator JOHNSTON from Louisiana; I was involved with it as chairman of the Subcommittee on Nuclear Regulations; Senator Gary Hart, and back through the years.

The problem with nuclear waste storage is a most serious and complex one. I cannot tell you how tired I am of the people on both sides who are extremists in the area; those who are the ''Hell, no, we won't glow'' group and the ''nobody's ever been killed'' group.

Somewhere between those two groups is sanity.

I think we are finally on the track of doing something sensible. The mere mention of nuclear waste sends shivers up the spine of many people. I discovered that when I came to the Senate and joined the Nuclear Regulatory Subcommittee. That is what happens when one utters, ''All right, I'll take an assignment no one else wants.'' I did that a couple of times, and I got Immigration and Nuclear Regulations and Veterans Affairs, so cursed with business three times in some ways. I have enjoyed those issues, but they are filled with emotion, fear, guilt and racism, all three of them.

So here we have this entire issue that has been a continuing victim of gross misinformation, reprehensible scare tactics, particularly in the 17 years since Three Mile Island, and certainly people deserve to know more of exactly what we are dealing with.

The waste products resulting from many good and beneficial uses of nuclear elements are not just going to go away. It is a little late for protesters just to run around the streets with signs saying, ''Don't put it here, don't put it there.''

Wastes of varying levels of activities are piling up at thousands of sites across this country from sources like universities, nuclear powerplants, vital medical procedures conducted at hospitals and even dismantled Soviet missiles. Much of this waste is sitting—sitting—in or near highly populated areas which face potential threats with regard to earthquake, tornado, and hurricanes.

The specific problem the bill addresses is the disposal of high-level nuclear waste from powerplants, the spent-fuel rods that are left over after years of generating electricity. Back in 1982—incidentally, the same year Cal Ripken's playing streak started—Congress passed the law. I was involved in that. In essence, it said we will make a deal with the nuclear power consumers in this country. We said the Federal Government would provide a place for storing the spent-fuel rods, but the consumers had to pay for it.

Since that law has passed, those fees, plus interest, have provided $11 billion; $6 billion has already been spent, some of it for unrelated purposes, and still construction of the disposal site has not even started.

We are running out of time. No more time for placards, no more time for running through the streets, no more time for standing out on the highway, because here is where we are: There are 109 active commercial powerplants in 35 States providing 20 percent of the country's electricity. For the most part, the spent-fuel rods produced in those facilities are there on site in pools under 30 feet of demineralized water. If the water were to drain away for any reason because of some structural defect from natural disaster, the rods would reheat and eventually melt down. These pools were never designed for long-term storage. Yet, because of the strength of the political opposition to a permanent site—I can understand all the reasons—we run the risk of jeopardizing the health of millions of Americans. A typical nuclear powerplant produces 30 tons of spent fuel.

The PRESIDING OFFICER. The Chair advises the Senator that his 5 minutes have expired.

Mr. SIMPSON. I ask for an additional 2 minutes.

The PRESIDING OFFICER. The Senator will proceed.

Mr. SIMPSON. A typical nuclear powerplant produces 30 tons of spent fuel every year. Right now more than 30,000 metric tons of spent fuel are being stored at 75 sites across this country. And 23 reactors will run out of room in their storage pools by 1998. By 2010, a total of 78 reactors will be out of storage space for their spent fuel and have about 45,000 tons of metric tons of spent fuel.

It is very important we get the waste out of these inappropriate and unsafe locations into a technologically sound, permanent storage site. It is also very important for every person in this country to realize that it is perfectly possible and technically feasible to transport and store this waste with very little risk to human health or the environment.

I point out the Department of Energy has been transporting nuclear waste from the weapons facilities under its jurisdictions for 30 years without a single incident of environmental or human harm.

It is crucial to get on with the business and get on with the work of an efficient and safe system for civilian nuclear waste before the risks we have been dodging with our current haphazard setups catch up with us.

I applaud the work of Senators MURKOWSKI and CRAIG and JOHNSTON, their bipartisan effort through the years. They have a realistic piece of legislation which finally allows the Federal Government to live up to its commitment to provide a safe, secure, and centralized location for the storage of the most radioactive of the nuclear waste. It also provides the money and Federal assistance for training State and local personnel in safety and emergency procedures. It is a very important bill and a good compromise, and good work all around. I am very pleased to support it and encourage my colleagues to do the same. I thank very much the Senator from Alaska.

Mr. MURKOWSKI. Madam President, I believe the other side wants to speak. I retain the remainder of our time.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER (Mrs. FRAHM). The Senator from Nevada.

Mr. BRYAN. Madam President, how much time remains under the control of the Senator from Nevada?

The PRESIDING OFFICER. The Senator from Nevada has 30 minutes.

Mr. BRYAN. I thank the Chair. I, at this point, will allocate myself 10 minutes of that time and ask the Chair to inform me when I have used that.

Madam President, it has been a number of weeks we have been discussing the high-level nuclear waste issue. And I think it is time to put this into some perspective.

In 1980, some 16 years ago, debate on the floor of the Senate indicated that there was a great urgency and immediacy to take action, that there was a crisis, that indeed, if nothing were done, if we did not get the interim storage, what was called MRS storage, nuclear reactors around the country would have to shut down by 1983.

I offer that interesting piece of history as a footnote because the debate today is in almost identical respect the same debate that occurred this very week on July 28, 1980. This is a contrived and fabricated crisis.

Let me begin by pointing out what the Nuclear Waste Technical Review Board—this is a board that was created by act of Congress in 1987. And the Nuclear Waste Technical Review Board has concluded that there is no need for interim storage at this time. And that is a conclusion which they have endorsed. Anyone who has any question about it, this is the document. So all of this debate is at best premature and in our view totally unnecessary.

When you look at the substance of the legislation, what is occurring is an absolute travesty. The major environmental provisions that protected Americans with bipartisan support for more than 2 decades are simply wiped out, simply wiped out. We have just had a debate. The National Environmental Policy Act, designed to apply to circumstances such as this, for all intents and purposes, has been eviscerated by the nuclear utilities in their zeal to get interim storage.

Let me just cite two specific references. Among the things that the Environmental Policy Act would ordinarily consider would be the environmental impacts of the storage of spent fuel and high-level radioactive waste for the period of foreseeable danger—thousands of years. This piece of legislation would restrict the application of NEPA, the Environmental Policy Act, to the initial term of licensure of about 30 years.

Nothing has occurred to date that would establish a design criteria for such facility. Ordinarily the Environmental Policy Act would consider the alternatives to the design criteria. That is now wiped out. NEPA cannot consider design criteria, cannot consider the application for longer periods of time of health hazards. So we have a major piece of environmental legislation wiped out.

Preemption. The amendment offered by our friends from the other side has put us in the situation in which all Federal laws that are inconsistent with this act are wiped out. And we have gone through a whole litany of them.

We have the National Environmental Policy Act, FLPMA, clean air, clean

water, all of those, if they are inconsistent, they do not apply. So forget environmental laws when it comes to siting an interim storage. That is simply an outrage, Madam President, no matter how one feels about nuclear energy or whether one believes there ought to be some type of interim storage.

With respect to standards, nowhere in the world—nowhere —is a radioactive standard of 100 millirems established by statute—nowhere. And 100 millirems would be at least 24 times the standard for the safe drinking water, would be at least six times-plus the standard set for the WIPP facility. I must say, this is all laid out right here. So, 100 millirems.

Why in God's name, for the most dangerous stuff on the face of the Earth, would we mandate by statute a 100-millirem standard, and then say to the EPA, well, you know, if you can prove that that is unsafe, then you can change it. We do not do that. I mean, if this were a straight-up deal, if this were not some contrived wish list by the nuclear utilities, the EPA would be designated as finding a standard and establishing it. No other place in the world.

The National Academy of Sciences was asked in a piece of legislation approved in 1992—the energy bill—was asked to come back and make a report with respect to a standard. And what they said is that the safety standard, in terms of radioactive exposure—this is the ''Technical Bases For Yucca Mountain Standards.'' This is the product of the National Academy of Sciences. And what they said is, it should be somewhere between 10 and 30 millirems.

How can you justify it? How can you justify that? And indeed when you look at the Environmental Protection Agency, here is what our Administrator tells us.

> S. 1936 and the substitute amendments establish a Congressionally set overall performance standard of 100 millirems a year to the average person in the general vicinity of Yucca Mountain nuclear waste repository for 1000 years. Although the substitute amendments allow EPA to challenge the 100 millirem a year standard, EPA believes the standard is inappropriate because it is less protective than other U.S. standards and international advisory board recommendations for a single source. Furthermore . . . the actual risk to public health and the environment will occur well after 1,000 years. . . .

And the limitation that is imposed in this legislation applies only to 1,000 years.

So again, public health and safety be dammed. Anything that helps the nuclear utilities, that is what we are going to buy into.

Madam President, that is just an absolutely indefensible matter of public policy. I must say that no other place in the world establishes such a standard. We are frequently cited to the international sanctioning bodies. And although 100 millirems is referenced in those standards, never is it referenced for single source.

It indicates here that most other countries have endorsed the principle of apportionment of the total allowed radiation dose. So no—no—standards that exist in the world, to the best of our knowledge, would propose 100 millirems from a single source.

Finally, on the standards issue, I must say, clearly what drives that decision, as well as every provision in this bill, is to make it easier to lower public health and safety standards, to make it less costly. And the public health, and the consequences of those persons, would be effectively by and large ignored.

My colleague is going to talk a good bit about transportation, but we are talking about 85,000 metric tons. We are talking about 16,000 shipments or more, traveling across the rail corridors in America, as well as our highway system, and 51 million Americans live within 1 mile of that. Each of those railroad casks weigh 125 tons, and the consequence of the hazardous cargo in terms of radioactivity would be the equivalent of 200 bombs dropped at Hiroshima. We are not just talking about Nevadans at risk. If you ship it by way of cask and highway cargo, you are talking about the equivalent of 40 bombs.

Finally, and we have tried to make this point albeit it is a difficult thing to explain, in effect this is a financial bailout of the nuclear power industry. Since the very enactment of the Nuclear Waste Policy Act of 1982, its fundamental premise has been that the utilities are the ones that get the profit, they are the ones that generate the waste, they have the financial responsibility. Through a series of significant changes, albeit somewhat subtle, a cap or a ceiling or a limitation is placed on the amount that the utilities will be required to contribute.

Now, to the year 2002, it is 1 mill based upon each kilowatt of power generated. After the year 2002, it will become no more than the amount of the appropriation each year. In 2003, we would be talking one-third of a mill, the balance all left to the taxpayer to pick up.

Madam President, I simply say, No. 1, this debate is unnecessary, this bill is unnecessary, and that comes from a body of eminent scientists impaneled as a result of legislation enacted by this body. The National Environmental Policy Act is, in effect, gutted as a consequence of the restrictions placed upon it. All other Federal environmental laws are preempted. The standards that are set are so high as to constitute a clear and present danger to public health and safety. The Environmental Protection Agency agrees, as do others.

Ultimately the taxpayer, not the utility, will pick up the bill if this bill becomes law.

I reserve the remainder of my time.

Mr. MURKOWSKI. I yield 6 minutes to my friend from Louisiana.

Mr. JOHNSTON. Mr. President, in the original form of our bill, we provided for 100 millirem radioactivity limit from the repository. However, because our friends from Nevada stated the EPA should have a role here, we amended that. The present bill now on third reading provides, if EPA finds that the 100 millirem would not be consistent with health or safety, they may set it at another level and, indeed, whatever they would set under the Administrative Procedure Act would be final unless that level is arbitrary and capricious.

Madam President, we have provided here for the role of EPA to make the health and safety determination. Why did we set it at 100 millirems to begin with? Because that is the level set by the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the U.S. Nuclear Regulatory Commission, and indeed the EPA in its radiation protection guidance for exposure of the general public, 1994, as well as the International Atomic Agency.

Beyond that, the 100 millirems is a commonsense level because there is more than 100 millirems difference in the natural exposure of someone in Washington, DC, which is about 345 millirems, and Montana, Wyoming, or Colorado, where the average exposure exceeds 450 millirems, so that if you live in an average place in the United States or if you live in Washington, DC, you would get a higher exposure by flying to Denver, CO, or Butte, MT, Cody, WY, or you name it, and living there than living here.

I remind my colleagues, Madam President, there has never been the slightest warning of EPA or of any nuclear radiation body to say it is dangerous to live in one of those mountain States where the millirem activity per year exceeds what we provide in this bill. If EPA should so decide, they may set the standard elsewhere.

Madam President, Nevada is the right choice. Nevada is one of the most remote places on Earth, Yucca Mountain. It is one of the driest places on Earth, and, Madam President, that area has been polluted by over 500 nuclear tests which have been not sealed off from the environment. Those nuclear tests have provided all of the radiation byproducts that are contained in nuclear waste, including cesium 137, iodine 131, strontium 90, americium 243, technicium 99, plutonium 241. You name it, if it is in nuclear waste, it is contained already in the Nevada test site.

Need I remind my colleagues that our two colleagues from Nevada have been steadfast in wanting not less tests but more tests at the Nevada test site. Those tests have not been sealed off from the environment. Indeed, some of those tests have been right in the water table.

What is the defense of my colleague from Nevada when we say, how could you on the one hand want nuclear bomb tests and on the other hand not want these rods which are in canisters,

and those canisters are nonleak canisters that I believe would be valid and provide protection for 10,000 years? The answer is, well, they are only 1 ton. I guess that is somewhere between 2,000 and, if you use a long ton, 2,200 pounds of nuclear material.

Now, Madam President, a ton of radioactive material not sealed off from the environment is many thousands of times what you would expect in any leakage which might occur thousands of years from now from one of these containers. The containers designed to hold these nuclear waste rods are designed to last hundreds and thousands of years. We would imagine they would last, frankly, 10,000 years. That has not been proved. I do not state that as a fact. That is what we speculate. But, certainly, hundreds of years without any leakage whatever. Yet the Nevada test site now already has 1 ton of all these radioactive products which are not sealed off from the water supply, not sealed off from the ground around it, but where unprotected blasts took place in the ground.

Madam President, if there is ever a place in the country to store the nuclear waste, it is adjacent to that Nevada test site. That is why, Madam President, the Congress chose in 1987 Yucca Mountain. That is why it is the right place to store this waste today.

Mr. MURKOWSKI. Madam President, how much time is remaining on this side?

The PRESIDING OFFICER. The Senator has 16 minutes, and the other side has 19 minutes.

Mr. REID. Madam President, the Senator from Louisiana is a brilliant man. He knows all the procedures here. He certainly knows basic mathematics. Basic mathematics indicates that 1 ton in the ground, spread out over a significant distance under the ground, is certainly much different than 70,000 tons stacked on top of the ground—significantly different. So we need to hear no more, I believe, about the Nevada test site.

Madam President, S. 1936 guts the existing law of its environmental safety provisions and forces the Federal Government to take responsibility for the waste and liabilities of the nuclear power industry. The nuclear power industry has been extremely clever in spending their money to generate this argument, because they recognize that the nuclear power facilities don't last forever. In fact, most are being phased out right now. They want no responsibility for the garbage they have generated. They want to shift the ball to the Federal Government. That is what this legislation is about. It is also about corporate welfare at its very, very worst. It will needlessly expose people across America to the risk of nuclear accidents.

S. 1936 is proposed because the nuclear industry wants to transfer the risk and responsibilities and their legitimate business expenses to the American taxpayer. The interim storage facility is not needed. In accordance with the charter of the Nuclear Waste Technical Review Board, in March of this year, I repeat, it found no compelling safety or technical reason to accelerate the centralization of spent nuclear fuel. Implementation of dry cask storage at generator sites is feasible, cheap, and relatively safe.

We have talked at great length, and will talk some more, about how unsafe it is to transport this product around the country. There is no need to do that; it is safe where it is. It will be even safer with dry cask storage. If it is properly implemented—and that is fairly easy to do—the investment will double its return by storing the material in certified multipurpose canisters so the material is ready for shipment at some later time.

Operating costs for onsite dry cask storage, according to Mr. Dreyfuss' office, amounts to only about $1 million per year per site. Capital costs for onsite storage include preparation of placement site and canisterization of spent fuel. Storing spent fuel in multipurpose canisters means that the marginal onsite capitalization costs are only a few million dollars. Implementing onsite storage at all sites needing some additional storage space, would require less than $60 million for capitalization and less than $30 million per year for their operation. This is compared to the multibillions of dollars they are talking about for interim storage. So onsite storage could be maintained for about 40 years before equalling the construction cost of interim storage at the test site, as estimated by the sponsors of this bill. There is simply no compelling need to rush into centralized interim storage. It is simply wrong.

Madam President, we have talked about terrorism. We talked about it because it is something we should talk about. I referred, briefly, at the end of the last amendment that was offered, to a statement that we received, without solicitation, from the Blue Ridge Environmental Defense League, located in North Carolina. The letter says a number of things. We have admitted it into the RECORD. Let me refer specifically to some of the things contained in this extremely important communication.

These shipments of nuclear waste cannot be kept secret so long as we live in a free society. And we do.

Our actions were peaceful—

Peaceful following around these nuclear waste shipments.

—but we proved that determined individuals on a shoestring budget—

Not paid for by terrorists with huge amounts of money, because some terrorist groups are supported by foreign governments.

—can precisely track international and domestic shipments of strategic materials. In the wake of Oklahoma City and Atlanta, the dangers posed by domestic or international terrorists armed with explosives make the transport of highly radioactive spent nuclear fuel too dangerous to contemplate for the foreseeable future.

They go on to say that their work is in North Carolina, Tennessee, and Virginia. They have determined that the emergency management personnel in these areas are dedicated volunteers, but they are unprepared for nuclear waste.

Volunteer fire departments in rural counties are very good at putting out house fires and brush fires—

And the person writing this letter knows that because he has worked in these volunteer fire departments. They say, among other things:

The remote river valleys and steep grades of Appalachia are legendary. In Saluda, North Carolina, the steepest standard gauge mainline railroad grade in the United States drops 253 feet per mile, 4.8 percent grade. The CSX and Norfolk Southern Lines trace the French Broad River Valley and the Nolchucky Gorge west through the Appalachian Mountains along remote stretches of rivers famous among whitewater rafters for their steep drops and their distance from civilization. The Norfolk Southern Railroad crosses the French Broad River at Deep Water Bridge where the mountains rise 2,200 feet above the river. These are the transport routes through western North Carolina that will be used for high-level nuclear waste as soon as 1998 according to S. 1936.

They say:

When we asked [the emergency response teams in North Carolina about their readiness to respond to a nuclear transport accident, they answered professionally, saying, ''We'll just go out there and keep people away until State or Federal officials arrive.''

Well, another western North Carolina coordinator said:

There is no response team anywhere in this part of the State, and, for the foreseeable future, there is no money in local budgets to equip us with any first response to radioactive spills.

In closing, Louis Zeller tells us:

I am asking you to oppose this expensive and dangerous legislation which would place an unfair and unnecessary financial burden on communities and which would place at risk the health and safety of millions of American citizens.

Madam President, this legislation is unnecessary. It opens the doors to added terrorism, and it only further frightens our communities. Madam President, the President of the United States and others in the Federal Government have stated they oppose this legislation. We have a letter from the Director of the Department of Energy, a Cabinet-level officer. She should know about nuclear waste; she worked in the nuclear industry previously. She says, without equivocation, that this is bad legislation. ''The bill does not solve,'' she says, ''a fundamental problem posed by the Indiana-Michigan Power Company case, namely, that the Department must begin to dispose of nuclear waste. Instead, the bill threatens to repeat the same mistakes made in the past.'' She goes on to say other things, but basically that this is bad legislation.

Hazel O'Leary and I have not always been on the same side of the debates.

She is someone who is head of the Department of Energy, a Cabinet-level officer, formerly in the nuclear industry, and she says this is bad legislation. Also, our head of the department that oversees environmental laws, Carol BROWNer, has written a letter dated last night saying, ''I am writing to inform you that the Environmental Protection Agency opposes this legislation, S. 1936, and all the amendments. S. 1936 and the substitute amendment are a concern to the EPA because they limit consideration of public health and environmental standards in order to expedite the repository's opening. EPA is also concerned about the preemption. It takes away Federal laws.''

Madam President, this legislation is a travesty. It has big bucks behind it. We have not had the opportunity to have people in chauffeur-driven limousines come and lobby Members of the Senate. We have not had the opportunity to have people stand in the halls and lobby against this legislation. We have a grassroots organization, like the people from the Blue Ridge Environmental Defense League, who stand up for what is right in this country.

What is right in this country is to oppose this legislation. It would curtail a broad range of health and safety laws, it would quadruple the allowable radiation standards for waste storage, and it would exacerbate the risk of transporting nuclear waste throughout the country. For these and many other reasons, I call upon my colleagues—I beg my colleagues—to vote against this legislation. It is the most antienvironmental legislation in this Congress, and to say that, you say it all.

I reserve the remainder of our time.

Mr. MURKOWSKI. It is our understanding that we have 16 minutes.

Mr. PRESSLER. Mr. President, I rise today to express my support for S. 1936, the Nuclear Waste Policy Act, and to congratulate my colleagues Senator FRANK MURKOWSKI, chairman of the Committee on Energy and Natural Resources, and Senator LARRY CRAIG, vice-chairman of the Subcommittee on Energy Research and Development, for all their hard work on this bill. I am proud to be a cosponsor of this legislation.

As chairman of the Committee on Commerce, Science, and Transportation, I have a particular interest in the transportation aspect of this legislation. Clearly, we will need a special transportation system to safely transfer nuclear waste to a centralized storage facility as mandated by S. 1936.

Already, there are some tough laws in place. Shipments of spent nuclear fuel and other commercial or defense-related high level radioactive waste must adhere to very strict standards before the waste can move on America's highways or railroads. S. 1936 will strengthen these standards.

It's important to point out that under the current regulation monitoring process, the Federal Government and the nuclear industry have transported thousands of shipments of nuclear waste without any release of radioactive material. That's an impeccable safety record. This legislation takes additional steps to maintain an already safe environment for the transportation and storage of spent nuclear fuel.

Let me set the record straight even further. As part of the Nuclear Waste Policy Act, the Department of Energy promised to begin transporting commercial spent fuel to a Federal management facility in 1998. To solidify this promise, contracts were signed between the Federal Government and utilities that own the Nation's nuclear power plants. S. 1936 reaffirms that commitment.

S. 1936 would not weaken current law—it improves it. Spent fuel shipments would still be regulated by the Hazardous Materials Transportation Act and other transportation regulations that have protected us for the past 30 years.

To ensure safety in every step of the transportation network, the Nuclear Regulatory Commission [NRC] already has established demanding regulations on the packaging and transportation of radioactive materials.

Spent nuclear fuel rods are transported in heavy steel containers. Before these can be approved by the NRC, manufacturers must demonstrate that each container design can withstand a number of hypothetical accident conditions, including being dropped from 30 feet onto a flat, unyielding surface; falling onto a vertical steel spike; being engulfed in a 1,475 degree Fahrenheit fire for 30 minutes; and being submerged under 3 feet of water for 8 hours. The same container also must withstand a separate immersion test in 50 feet of water for 8 hours.

Mr. President, I challenge any other transportation container to measure up to these rigorous tests. Again, these are the tests required under existing law. The containers that meet these tests are some of the most rugged on Earth, and rightfully so.

The Department of Transportation also has responsibility for regulating many aspects of radioactive waste shipments. Shippers are required to file a written route plan that includes the origin and destination of each shipment, preapproved routes to be used, estimated arrival times and emergency telephone numbers in each State a shipment will enter. The principal intent of DOT routing guidelines is to reduce the time in transit.

The agency requires tractor-trailer shipments to use preferred highway routes, such as interstate highways and bypasses that divert them away from highly populated areas. States also may propose alternate routes to the interstate highway system. In fact, at least 10 States already have established alternate routes. Potentially affected States and localities must be consulted in the process of designating alternate routes.

The Transportation Department also requires that shippers notify the Governor 7 days in advance of material being transported through the State. To ensure the safety of these shipments, the Department of Energy has developed a satellite-based system that allows continuous tracking and communications with all DOE shipments.

Mr. President, recent shipments of foreign research reactor fuel from Sunny Point, NC to the Savannah River site in South Carolina provide a perfect example of the safeguards which are in place for spent fuel transportation. In moving this fuel, the Energy Department worked closely with State and local officials on training and planning. They practiced everything—from preparing routine shipping procedures to testing emergency response systems. The Nuclear Waste Policy Act would require DOE to provide similar funding and technical assistance for State, tribal and local training and planning activities in advance of any actual commercial spent fuel shipments.

Mr. President, there is no disputing that transportation is one of the most important issues in our consideration of S. 1936. It is an essential component of an integrated nuclear waste management program.

Clearly, as I have outlined today, nuclear waste can be transported safely and efficiently. A comprehensive plan already is in place to ensure this. To maximize safety, the plan directs shipments away from metropolitan areas whenever possible. It allows for the selection of the most direct and safest routes. It provides training to national, State and local officials so that they are ready to respond in the event of an emergency.

We know that accidents happen, Mr. President. That is why S. 1936 builds on the existing regulatory framework that, to date, has protected this Nation during more than 2,400 shipments of commercial spent nuclear fuel.

I urge my colleagues to take a close look at this program. Many of my constituents have expressed their interest in nuclear waste transportation. Fortunately, there is good news to report to them. We have a safe, well-coordinated system. It ensures the safety of nuclear waste transportation by relying on the expertise of the Nuclear Regulatory Commission, the Department of Transportation and the Department of Energy, as well as the State and local governments. S. 1936 builds on the system to enhance protection of our citizens and our environment.

I urge my colleagues to support this legislation. By passing S. 1936, we can take the final steps towards ensuring that nuclear waste is managed in the safest possible manner.

SECTION 203

Mr. President, I see the distinguished chairman of the Energy and Natural Resources Committee on the floor. My colleague has been very helpful in addressing a concern I had with certain

provisions in Section 203 of S. 1936. I appreciate Chairman MURKOWSKI's attention to this matter.

Mr. MURKOWSKI. I thank the Senator from South Dakota. The Senator has raised some understandable concerns regarding requirements for the transportation of spent nuclear fuel.

Mr. PRESSLER. I would like to further question my colleague regarding the transportation training standards addressed in this bill. In particular, section 203 (g) would require the Secretary of Transportation to issue regulations establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. New language, as proposed by the chairman on my behalf, would also require that an employer possess evidence of satisfaction of these training standards before an individual could be employed in such activity. As chairman of the Senate Committee on Commerce, Science, and Transportation, I believe this provision is consistent with existing law, as set forth in Section 5107 of title 49 of the United States Code (49 U.S.C. 5107), which details requirements for the training of employees engaged in hazardous materials transportation. I would ask the chairman if this interpretation is correct?

Mr. MURKOWSKI. The Senator from South Dakota is correct. I defer to my colleague's judgement and expertise, as chairman of the committee with jurisdiction over the transportation of hazardous materials. I might also add that this provision is not meant to prejudice in any way the means by which the training requirements are satisfied.

Mr. PRESSLER. I thank the Senator from Alaska for clarifying this matter for me. Again, I greatly appreciate his willingness to work with me to resolve this matter. I urge my colleagues to support final passage of S. 1936.

Mr. MURKOWSKI. Mr. President, when the Senate debated the motion to proceed. I suggested that S. 1936 was the answer to nuclear waste and that the editorial page of the Washington Post was the answer to parakeet waste.

I would not insult parakeets by suggesting that would be a good use of the letter from the Administrator of the EPA or the Chair of the CEQ.

The statements made in these letters are inaccurate and simply the shrill hysteria of those who believe that if you repeat a lie often enough, someone might believe you.

The administration, sadly, has demonstrated that they are incapable or unwilling to address this issue, and have now resorted to misstatement, mischaracterization, and distortion to prevent Congress from exercising the leadership the administration has abandoned.

Far from being an assault on our environmental laws, this legislation reaffirms our commitment to the environment, and the health and safety of the American people.

Now, turning specifically to the letters—EPA says we preempt laws in S. 1936:

> The substitute the Senate just overwhelmingly adopted does not preempt environmental statutes. EIS requirements are consolidated, but a full EIS is required.

EPA says section 204(i) of our bill prevents the NRC from issuing regulations to protect public health under certain circumstances. This is inflammatory and misleading:

> Section 204(i) simply says that the storage of commercial spent fuel, that the NRC will regulate under our bill, does not need to wait while the NRC writes regulations for other forms of nuclear wastes including naval reactor and defense wastes.

EPA says section 205(d)(3)(C) prevents NRC from making important determinations:

> All our bill says is that the NRC is not required to assume that the records of waste disposal, security measures, and the natural and engineered barriers will be insufficient to prevent future human intrusion. Without this provision, DOE would have to prove a negative.

Turning now to the letter from CEQ:

The CEQ's letter asserts S. 1936 ''Dismantles the EIS process under NEPA,'' by removing the requirement that DOE conduct an ''alternatives analysis'' on the selection of an interim storage site.

The CEQ's letter entirely misses the point:

> This legislation requires an EIS to be prepared by the NRC as part of its licensing process because Congress is today rendering its judgment about the need for interim storage and the location of the site, we say that these decisions need not be duplicated in the NRO process.
>
> I would add that our legislation does not preclude the President from performing an alternatives analysis in selecting an interim storage site other than Nevada, if he determines that the permanent repository at Yucca Mountain is not viable.
>
> There is an EIS. It can be challenged in court, and public safety and the environment is protected.

The EPA letter says the 100 millirem standard is inappropriate:

> EPA is given the authority to change the 100 millirem standard if it determines it constitutes an unreasonable risk to public health/saftey. What are they complaining about?
>
> There are no valid scientific studies which suggest a release of 100 millirem per year poses any health risk. The probability of adverse health consequences has not been shown to be any less from a zero dose than from a 100 millirem dose.
>
> There is at least a 100 millirem difference between a person living on the east coast and Western States. If you move from Washington to Denver, you would receive 100 or more additional millirem from natural sources. EPA doesn't have a problem with that.
>
> You get 100 extra millirem by living in the White House, a stone building with natural radiation. Is EPA saying the White House is unsafe for the President?

Madam President, I think it is appropriate to note that these letters simply represent an action by the administration to delay what has been delayed for 15 years. There are no positive recommendations in spite of the fact that the committee and myself personally have requested in three letters to the President that if he opposes specific portions of this legislation, he come up with alternatives. Those letters, for all practical purposes, have been ignored. Clearly, this administration simply wishes to put this off to somebody else's watch, and that is irresponsible for the administration. It is irresponsible to duck the issue at this time.

I yield 5 minutes to my friend from Idaho and retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, let me thank the chairman for the time and thank my colleague, the senior Senator from Louisiana, who has worked so closely with us in the last year to produce and bring to the floor this legislation.

I first introduced this legislation in September of 1995 as S. 1271. We worked our way through the process with hearings held, of course, before the Energy and Natural Resources Committee in December with additional hearings in March and in May.

Finally, we have been able to craft and bring to the floor what I believe and what I call—because I think it is fair to call it that—probably one of the most comprehensive environmental bills that has come before the Congress this year.

Our Nation's high-level nuclear waste has an answer now that is responsible, fair, and environmentally friendly and is supported by a very large majority of this body and the U.S. House of Representatives.

Today, high-level nuclear waste and highly radioactive used nuclear fuel is accumulating in over 80 sites in 41 States. You have heard our colleagues come to the floor and talk about their concern and the seriousness that this accumulation brings to these individual States.

Today, we stand before you responsible to our country and to our Government in assuring that we will be able to comply with the Nuclear Waste Policy Act of 1982 to meet the court examinations and to be able to do what our country expected us to do to facilitate this legislation. We have all worked closely together in a strong bipartisan way to assure that we could produce the ultimate legislation that would pass. However, in doing all of this, S. 1936 contains many important clarifications and changes that deal with concerns raised regarding the details of the legislation amongst most of our Members. As a result of that, I think we can hopefully today produce a vote and a work product that the U.S. House of Representatives will take as we reconvene in September.

The issue is clear, and the proposal we have before you is direct. It does not violate any environmental laws, and yet directs our country to move responsibly and decisively to resolve an issue that has plagued our country for well over two decades. I hope that

today our colleagues in a final vote on this issue will vote in very large numbers to assure that we move forward on this issue.

Let me cover one other detailed topic. It is frustrating to me as the two Senators from Nevada have come to the floor on several occasions over the last week and a half to talk about the reality of a 100-millirem test and how, for some reason, this in some way questioned the integrity of a site and the development of a deep geological repository at Yucca Mountain. Let me quote from the Nevada Administrative Code, section 459.335. This is the code that governs 153 facilities in the State of Nevada. It says this: ''The total effective dose equivalent to any member of the public from its licensed and registered operation does not exceed 100 millirems per year, not including contribution from the disposal by the licensee of radioactive material in sanitary sewage,'' and so on and so forth.

The point I am making here—and this chart clearly spells it out—is that the standards that we have established, the standards that come from the GAO audit, the standards that the State of Nevada, the very State the two Senators are from and arguing today, argues this. It argues right here that 153 facilities in the State of Nevada that use radioactive material cannot exceed the very standard that we are saying Yucca Mountain cannot exceed.

I hope, once and for all, that we do not shake the scare tree, that we look at the facts and we look at the statistics, and they are very clear. Whether it is proposed EPA guidance of 1995, whether it is the Nuclear Regulatory Commission limit, whether it is the proposed DOE limit, whether it is the State of Nevada, or whether it is Yucca Mountain, what we are talking about here is an international standard well accepted by all of the professionals in the field and accepted by the State of Nevada, by the State government of Nevada and, obviously, by State politicians in Nevada.

Why do they arrive at that standard? Because that is the national standard. That is the international standard that clearly says this is an acceptable level.

Madam President, I recognize my time is up.

Mr. MURKOWSKI. Let me yield time to the Senator from Idaho to conclude his remarks.

Mr. CRAIG. I thank my chairman for yielding to me.

Let me close with this thought. It has been a long, hard effort. It took an awful lot of very talented people involved.

Let me thank Karen Hunsicker, David Garman, Gary Ellsworth, and Jim Beirne of the Energy and Natural Resources staff for the tremendous work that they have done and for the expertise they themselves have developed, the cooperative effort they have had in working with all of the staffs in a bipartisan manner.

Let me thank once again our chairman, FRANK MURKOWSKI, and also the senior Senator from the State of Louisiana, BENNETT JOHNSTON, for his dedicated effort over several decades to assure that there would be a safe and responsible solution to the management of high-level nuclear waste, and we are clearly on the threshold of allowing that to happen.

I hope in the end once this makes it to our President's desk that he will read the bill—read the bill—and look at the changes we have made. I think in doing so this President will say that we have been responsible to our country and to the State of Nevada in promulgating legislation that can deal with a very important national issue.

Mr. JOHNSTON. Madam President, will the Senator yield to me for a quick comment to endorse what he has said about the good staff work.

Let me add to that great staff work SAM FOWLER, BOB SIMON, and BEN COOPER on our side, who have really done an outstanding job as well.

Mr. MURKOWSKI. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. Eight minutes.

Mr. MURKOWSKI. I yield to the Senator from Wyoming 3 minutes that he requested.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Thank you very much.

Madam President, I wanted to rise in support of this bill before it is voted on. I have been involved in it for some time not only here but in Wyoming, and I just wanted to kind of generally share some thoughts that I have. We have talked about it a great deal. We probably have talked about it more than we really needed to.

Nevertheless, there has been a great deal of detail naturally, as there should be. But it seems to me that there are some basic things that most of us do understand and most of us accept, and I think that is where we are.

First, we have nuclear waste. We have to do something about it. It is there. It is stored all over the country in a number of sites—I think 80. Clearly, it is more difficult to ensure safety that way than it is if we put it in a place that we can ensure safety. We are going to have more. We need to be prepared for that.

The ratepayers have paid to do something about it. They have paid, I think, somewhere near $12 billion. We spent $5 billion already in preparing this spot. There is not much to show for that. Yet, we need to make sure that there is. It makes sense, it seems to me, to move to the permanent site with an intermediate site that we have for storage. We have been through that intermediate storage thing for several years. We have been unsuccessful in doing it.

Transportation is, in fact, something that is the highest of scientific study and I think as safe as anything can be. There are always risks.

I have been disappointed this whole time of dealing with the storage of nuclear waste. Opponents in the press talk about nuclear waste dumps. They are not dumps. They are high-tech storage, as high tech as we can be.

It is also true that the Government has agreed to storage in 1998. Let us do it.

So even though that is very nontechnical, Madam President, I think those are about the basic ideas we have to understand. Most of us know we have to do something about it. This bill gives us the opportunity to live up to the challenges we have and to do the things we have to do.

I thank the Senator for the time.

Mr. MURKOWSKI. Madam President, how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. MURKOWSKI. I thank the Chair.

Mr. BRYAN. May I inquire of the Chair how much time we have on our side?

The PRESIDING OFFICER. The Senator from Nevada has 9 minutes.

Mr. BRYAN. Madam President, I yield myself 4 minutes.

I have tried purposely to keep the focus on the issues, but I must say that my friend from Idaho has spoken and my friend from Wyoming has just spoken, and they obviously reach a different conclusion as to the urgency of the need than does the scientific community, which has specifically rejected the need.

Let me say with great respect to them, if they disagree, they have the right under the law to volunteer their States as sites for interim storage. That is permissible.

I find some irony in the fact they are eager to have it come to us in Nevada and yet suggest that their own State would not be available.

There is another irony. Late last week, another letter was circulated that raised some concerns about the interstate shipment of trash, and this letter goes on to say, in part:

> It is important that Congress pass interstate legislation this year. Cities and towns all across the Nation are being forced to take trash from other States. Many States have tried to restrict the shipments.

The letter goes on to say:

> But every time they do, they have been challenged in court and their laws have been overturned as a violation of the commerce clause of the Constitution. It is clear that States cannot protect themselves, their residents or their land from being spoiled by out-of-State waste. We need Federal legislation to empower States and communities with the authority to manage solid waste within their borders. Without legislation, they will have to continue to accept unwanted trash.

Does anybody see a disconnect or an inconsistency? Here they are talking about trash, and many of my colleagues who have ventured forth in the Chamber and who have expressed support for this legislation have gotten greatly exercised about the trash issue. You cannot have it both ways. My colleague and I have signed on to this letter because we understand the concerns. You can be concerned about

trash but not the most dangerous, lethal trash known to mankind, high-level nuclear waste.

Finally, let me just say that we have talked about the standards ad nauseam. I think it just one more time needs to be pointed out that the National Academy of Sciences—these are the scientists which this body asked to make recommendations about standards—reported and concluded that the standards in terms of radioactive exposure should be from 10 to 30 millirems.

That is their view. They are scientists. Nobody—I repeat, nobody—in the world has set a 100-millirem standard, and to point out that those who are charged under our law with the responsibility of enforcing and administering the environmental laws, the Environmental Protection Agency, through Carol Browner, the Council on Environmental Quality, the President of the United States, the Department of Energy, all have urged a no vote on this piece of legislation.

Now, I guess what they do not have in common with some of the advocates is that they are not supporting the view of the nuclear industry. This is special interest legislation at its worst. There is no groundswell for this legislation. The nuclear industry and its phalanx of lobbyists who ply these halls every day with enormous amounts of money and power and influence, they are the ones who are driving this debate by creating a contrived and fabricated crisis that purports to call out for a legislative response.

That is simply not the case. There is no need. The damage that we do to our Nation's environmental laws and to people across America that can be affected by this is unconscionable—unconscionable. No environmental organization in America—none—supports this legislation. All oppose the irreparable damage it would do to our environmental laws. And no agency charged by law at the Federal level to enforce the environmental standards supports this legislation. All have concluded that to do so would be irreparable, do irreversible damage to our environment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Alaska.

Mr. CRAIG addressed the Chair.

Mr. MURKOWSKI. I would ask at the conclusion of the debate time for the yeas and nays on final passage.

Mr. CRAIG. Will the Senator yield to me one moment?

Mr. MURKOWSKI. I yield to my friend from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I thank my chairman for yielding.

I apologize. Some of the people who work the most closely with us we often forget. I want the RECORD to show that Nils Johnson on my staff, who has worked on this issue for a good number of years with me and the staff of the committee, was a tremendous asset through all of this debate.

I thank the Senator very much.

Mr. MURKOWSKI. Again, Madam President, may I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. MURKOWSKI. I thank the Chair.

Madam President, as we approach the final minutes prior to voting, I would like to very briefly refute some of the specific claims that have been made in the Chamber in the debate. These claims, of course, have had to do with transportation, safety, cask integrity, radiation, the application of environmental laws, and, of course, finally, the issue of just who benefits from this legislation.

The issue of transportation and safety and cask integrity is important, and there has been every effort to describe that the transportation of used fuel is something that has a risk. But the opponents of this legislation talk about it as if it represents some novel and untested approach, and these statements are not true.

We have been moving spent fuel both in the United States and around the world for decades. There have been over 20,000 movements of spent fuel around the world over the last 40 years; 30,000 tons have been moved in France alone. That is equal to what we have in storage. So it can be moved, and it can be moved safely because it is designed to be moved safely.

This bill, S. 1936, includes new measures, new training and new assistance to make the movement even safer. The fact is nuclear materials will be transported with or without the passage of this bill. Spent fuel, foreign research reactor fuel, naval fuel, and other radioactive materials are being transported every day in the United States.

Another example is we build submarines on the east coast in Connecticut, but when the sub has served its useful life, the fuel is removed and taken to Idaho. The sub is cut up. The reactor compartment is buried in Hanford, WA. So we all have an interest in this, and we must address responsibly a solution.

Another claim I want to refute has to do with the generalization that has been made on the floor of the Senate that somehow we are waiving the application of environmental laws that are needed to protect the public health and safety. S. 1936 requires the NRC to prepare environmental impact statements, or EIS's, as part of a decision to license a central interim storage facility, and the EIS's must include the impact of transporting the used fuel to the interim storage facility.

There is also judicial review. S. 1936 requires the DOE to submit an EIS on construction and operation of the repository.

It is clear, Madam President, S. 1936 does not trample environmental laws as has been charged on this floor. This is a unique facility. None like it has ever been developed anywhere in the world.

So the regulatory licensing program for a permanent facility contained in S. 1936 is designed to protect public health and safety without reliance upon other laws.

With respect to NEPA, we recognize Congress has decided that we will build an interim site in Nevada, and we do not let the NEPA process revisit the decision that Congress has already made. That is what we are saying. NEPA applies. We are simply saying NEPA does not have to revisit the decision of policy that we are making here today.

The last claim I am compelled to refute is on the issue of timing. Opponents say S. 1936 claims that there is no need to tackle the issue now, that it is a waste of time.

That does not sound like anything other than Washington bureaucracy: Let's defer the decision. Let's not take action. Let's keep spending money without results. Let's maintain the status quo. Let's promote the stalemate. Let's maintain the gridlock.''

For 15 years we have collected billions of dollars. We have expended $6 billion and we go nowhere. We have a chance to go somewhere today.

But the Washington bureaucracy wants to say: ''Let's keep taking the consumers' money, but not provide them with nuclear waste removal services we promised them in return. Let's ignore the recent court cases and let us stick it to the taxpayers who will have to pay the damages.''

Our opponents would have you believe the Government has no responsibility. But the recent court decision has blown our opponents' arguments out of the water. The Federal Government has a responsibility. Failure to live up to that responsibility will have significant consequences, so said the court. And it said so unanimously.

Finally, the fifth issue I must refute is the issue of just who benefits from the legislation. The other side has tried to paint this bill as one of exclusively benefiting the nuclear power lobby. But I have letters from 23 States, written by Governors and attorneys general, urging the Congress to pass and the President to sign the bill. We have letters from Governors, Governor Lawton Chiles of Florida and others, relative to that matter.

We have broad support for this bill across the political spectrum. Ours is a bipartisan effort, Democrats, Republicans, liberals, conservatives. We are supported by unions as well, the Electrical Workers Union, Utility Workers, AFL–CIO, Joiners and Carpenters. The fire chiefs in Nevada have indicated support of this. As have many Nevadans—I have already entered that in the RECORD.

Our constituents should not have to pay twice for nuclear waste services. We do not have to create 80 waste

dumps, including some in populated areas or sitting just outside national parks, when one will do. We do not have to settle for further delay, further stalemate and further gridlock. We can avoid multibillion-dollar damages against the taxpayer for the Government's failure to address a problem that a recent court case says is Government's responsibility. We can do that. It is the right thing to do for the consumers and electric ratepayers, for the environment, for public health and safety, and I urge we pass Senate bill 1936.

Madam President, at this time I would like to thank my dear friend and colleague, Senator JOHNSTON, who has been involved in this much longer than I, for his steadfast commitment to what is responsible and what is right for the country, to finally address our responsibility. I thank my friend, LARRY CRAIG, who introduced this legislation initially, and Senator DOMENICI, Senator GRAMM, Senator THURMOND, Senator SIMPSON, Senator FAIRCLOTH, Senator GORTON. I recognize Senator THOMAS, as well as my two colleagues, Senator BRYAN and Senator REID. I know what a tough thing this is for your State.

Mr. REID addressed the Chair.

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

Mr. MURKOWSKI. Let me thank the staff as well. I would like to thank the Energy Committee staff, including Gregg Renkes, Gary Ellsworth, Jim Beirne, Karen Hunsicker, David Garman, David Fish and Betty Nevitt, as well as Nils Johnson from Senator CRAIG's office, and the minority staff, Ben Cooper, Sam Fowler and Bob Simon.

I yield the floor.

Mr. REID. Madam President, I apologize for being rude but we have a Member who needs to vote and that is why we need to stick with the program.

If anyone believes in environmental standards, you must vote against this bill. This bill will ultimately open the door for the greatest nuclear waste transportation project in human history, sending thousands and thousands of tons of the Nation's radioactive waste onto the roads and rails. Last year we had 2,500 accidents on rail that only involved trains, and 6,000 accidents at railroad crossings over the last year.

Madam President, in the last 10 years, 26,354 accidents occurred with damage to track, structure or equipment in excess of $6,300 dollars. There were 60,553 accidents at railroad crossings.

This bill is bad, bad, bad, if you support environmental standards. If you oppose corporate welfare, vote against this. The court decision helps our cause. That is why we offered an amendment to that effect. They keep coming back saying it was a unanimous opinion. We agree. Three judges said they have to follow the contract they entered into. We agree with that.

Hazel O'Leary is not only the Secretary of the Department of Energy, she is also a corporate lawyer. She said that decision does not affect what the DOE is going to do. In fact, she says, if this bill passes it will, again, harm what the decision did.

So, Madam President, if you believe in returning authority to the States, vote against this bill. If you oppose Government taking private property, vote against this bill. Homeowners along transportation routes may well find their property values reduced as a result of nuclear waste trains and trucks passing by, and that is an understatement. No mechanism exists in S. 1936 to compensate homeowners in such a circumstance. If you believe in public participation in regulatory proceedings, vote against this bill. If you believe in a rational nuclear waste policy, vote against this bill.

If you believe that the nuclear industry is entitled to lavish taxpayer-financed benefits from the Federal Government at the expense of public health and safety, then you should vote for this legislation.

We ask Senators to vote against this legislation. This is the most anti-environmental legislation of this Congress and that says a great deal because this is known as the most anti-environmental Congress in the history of this country.

Mr. MURKOWSKI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MURKOWSKI. I ask we proceed with the vote. The yeas and nays have been ordered.

I ask for the regular order.

The PRESIDING OFFICER. The Senators from Nevada yield back their time?

Mr. REID. We will. We have. We do.

The PRESIDING OFFICER. All time having been yielded back, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. ABRAHAM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 259 Leg.]

YEAS—63

Abraham	D'Amato	Grassley
Ashcroft	DeWine	Gregg
Bennett	Domenici	Harkin
Bond	Faircloth	Hatch
Brown	Frahm	Hatfield
Burns	Frist	Heflin
Cochran	Gorton	Helms
Cohen	Graham	Hollings
Coverdell	Gramm	Hutchison
Craig	Grams	Inhofe
Jeffords	McCain	Shelby
Johnston	McConnell	Simon
Kassebaum	Moseley-Braun	Simpson
Kempthorne	Murkowski	Smith
Kohl	Murray	Snowe
Kyl	Nickles	Specter
Leahy	Nunn	Stevens
Levin	Pressler	Thomas
Lott	Robb	Thompson
Lugar	Roth	Thurmond
Mack	Santorum	Warner

NAYS—37

Akaka	Conrad	Lautenberg
Baucus	Daschle	Lieberman
Biden	Dodd	Mikulski
Bingaman	Dorgan	Moynihan
Boxer	Exon	Pell
Bradley	Feingold	Pryor
Breaux	Feinstein	Reid
Bryan	Ford	Rockefeller
Bumpers	Glenn	Sarbanes
Byrd	Inouye	Wellstone
Campbell	Kennedy	Wyden
Chafee	Kerrey	
Coats	Kerry	

The bill (S. 1936), as amended, was passed, as follows:

S. 1936

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

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Nuclear Waste Policy Act of 1996'.

"(b) TABLE OF CONTENTS.—

"Sec. 1. Short title and table of contents.
"Sec. 2. Definitions.

"TITLE I—OBLIGATIONS

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

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

"Sec. 201. Intermodal transfer.
"Sec. 202. Transportation planning.
"Sec. 203. Transportation requirements.
"Sec. 204. Interim storage.
"Sec. 205. Permanent repository.
"Sec. 206. Land withdrawal.

"TITLE III—LOCAL RELATIONS

"Sec. 301. Financial assistance.
"Sec. 302. On-site representative.
"Sec. 303. Acceptance of benefits.
"Sec. 304. Restrictions on use of funds.
"Sec. 305. Land conveyances.

"TITLE IV—FUNDING AND ORGANIZATION

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

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

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

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"Sec. 601. Definitions.
"Sec. 602. Nuclear Waste Technical Review Board.
"Sec. 603. Functions.

''Sec. 604. Investigatory powers.
''Sec. 605. Compensation of members.
''Sec. 606. Staff.
''Sec. 607. Support services.
''Sec. 608. Report.
''Sec. 609. Authorization of appropriations.
''Sec. 610. Termination of the board.

''TITLE VII—MANAGEMENT REFORM

''Sec. 701. Management reform initiatives.
''Sec. 702. Reporting.
''Sec. 703. Effective date.

''SEC. 2. DEFINITIONS.

''For purposes of this Act:

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

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

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

''(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of an interim storage facility or a repository if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

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

''(4) ATOMIC ENERGY DEFENSE ACTIVITY.—The term 'atomic energy defense activity' means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

''(A) Naval reactors development.

''(B) Weapons activities including defense inertial confinement fusion.

''(C) Verification and control technology.

''(D) Defense nuclear materials production.

''(E) Defense nuclear waste and materials byproducts management.

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

''(G) Defense research and development.

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

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

''(7) CONTRACTS.—The term 'contracts' means the contracts, executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, under section 302(a) of the Nuclear Waste Policy Act of 1982, by the Secretary and any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for acceptance of such waste or fuel by the Secretary and the payment of fees to offset the Secretary's expenditures, and any subsequent contracts executed by the Secretary pursuant to section 401(a) of this Act.

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

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

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

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

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

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

''(14) HIGH-LEVEL RADIOACTIVE WASTE.—The term 'high-level radioactive waste' means—

''(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

''(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation, which includes any low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

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

''(16) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

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

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

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

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

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

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

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

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

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

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

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

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

''(27) SITE CHARACTERIZATION.—The term 'site characterization' means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

''(28) SPENT NUCLEAR FUEL.—The term 'spent nuclear fuel' means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

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

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

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

''TITLE I—OBLIGATIONS

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

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

''(b) INTERIM STORAGE.—The Secretary shall store spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders at an interim storage facility pursuant to section 204 in accordance with the emplacement schedule, beginning not later than November 30, 1999.

''(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste

accepted by the Secretary. The Secretary shall procure all systems and components necessary to transport spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders to and among facilities comprising the Integrated Management System. Consistent with the Buy American Act (41 U.S.C. 10a–10c), unless the Secretary shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, all such systems and components procured by the Secretary shall be manufactured in the United States, with the exception of any transportable storage systems purchased by contract holders prior to the effective date of the Nuclear Waste Policy Act of 1996 and procured by the Secretary from such contract holders for use in the integrated management system.

''(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

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

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

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

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

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

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

"SEC. 201. INTERMODAL TRANSFER.

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

''(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than November 30, 1999. Intermodal transfer and related activities are incidental to the interstate transportation of spent nuclear fuel and high-level radioactive waste.

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

''(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and right-of-way within Lincoln County, Nevada, as required to facilitate replacement of land and city wastewater disposal facilities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than November 30, 1999.

''(e) NOTICE AND MAP.—Within 6 months of the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

''(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this subsection; and

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

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

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

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

''(h) BENEFITS AGREEMENT.—

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

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

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

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

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

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

''(i) CONTENT OF AGREEMENT.—

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

''BENEFITS SCHEDULE

''(Amounts in millions)

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

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

''(A) 'spent fuel' means high-level radioactive waste or spent nuclear fuel; and

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

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

''(4) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to 1/12 of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

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

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

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

''(j) INITIAL LAND CONVEYANCES.—

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

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

Map 10; Lincoln County, parcel M, industrial park site.

Map 11; Lincoln County, parcel F, mixed use industrial site.

Map 13; Lincoln County, parcel J, mixed use, Alamo Community Expansion Area.

Map 14; Lincoln County, parcel E, mixed use, Pioche Community Expansion Area.

Map 15; Lincoln County, parcel B, landfill expansion site.

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

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

''SEC. 202. TRANSPORTATION PLANNING.

''(a) TRANSPORTATION READINESS.—The Secretary shall take those actions that are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas, beginning not later than November 30, 1999, and, by that date, shall, in consultation with the Secretary of Transportation, develop and implement a comprehensive management plan that ensures that safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site beginning not later than November 30, 1999.

''(b) TRANSPORTATION PLANNING.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility no later than November 30, 1999. Among other things, such planning shall provide a schedule and process for addressing and implementing as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with section 203, and public education regarding transportation of spent nuclear fuel and high-level radioactive waste, and transportation tracking programs.

''SEC. 203. TRANSPORTATION REQUIREMENTS.

''(a) PACKAGE CERTIFICATION.—No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

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

''(c) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and funds to States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste for training for public safety officials of appropriate units of local government. The Secretary shall also provide technical assistance and funds for training directly to national nonprofit employee organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations, and shall be consistent with any training standards established by the Secretary of Transportation in accordance with subsection (g). The Secretary's duty to provide technical and financial assistance under this subsection shall be limited to amounts specified in annual appropriations.

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

''(e) COMPLIANCE WITH TRANSPORTATION REGULATIONS.—Any person that transports spent nuclear fuel or high-level radioactive waste under the Nuclear Waste Policy Act of 1986, pursuant to a contract with the Secretary, shall comply with all requirements governing such transportation issued by the Federal, State and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation that is in or affects interstate commerce must comply with such requirements, as required by section 5126 of title 49, United States Code.

''(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of 49 United States Code 20109 and 49 United States Code 31105.

''(g) TRAINING STANDARD.—(1) No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

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

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

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

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

''(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

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

''SEC. 204. INTERIM STORAGE.

''(a) AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations, which regulations shall be amended by the Commission as necessary to implement the provisions of this Act. The interim storage facility shall commence operation in phases in accordance with subsection (b).

''(b) SCHEDULE.—(1) The Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at the interim storage facility at the interim storage facility site by November 30, 1999, except that:

''(A) The Secretary shall not begin any construction activities at the interim storage facility site before December 31, 1998.

''(B) The Secretary shall cease all activities (except necessary termination activities) at the Yucca Mountain site if the President determines, in his discretion, on or before December 31, 1998, based on a preponderance of the information available at such time, that the Yucca Mountain site is unsuitable for development as a repository, including geologic and engineered barriers, because of a substantial likelihood that a repository of useful size, cannot be designed, licensed, and constructed at the Yucca Mountain site.

''(C) No later than June 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include—

''(i) the preliminary design concept for the critical elements of the repository and waste package,

''(ii) a total system performance assessment, based upon the design concept and the scientific data and analysis available by June 30, 1998, describing the probable behavior of the respository in the Yucca Mountain geologic setting relative to the overall system performance standard set forth in section 205(d) of this Act,

''(iii) a plan and cost estimate for the remaining work required to complete a license application, and

''(iv) an estimate of the costs to construct and operate the repository in accordance with the design concept.

''(D) Within 18 months of a determination by the President that the Yucca Mountain site is unsuitable for development as a repository under subparagraph (B), the President shall designate a site for the construction of an interim storage facility. If the President does not designate a site for the construction of an interim storage facility, or the construction of an interim storage facility at the designated site is not approved by law within 24 months of the President's determination that the Yucca Mountain site is not suitable for development as a repository, the Secretary shall begin construction of an interim storage facility at the interim storage facility site as defined in section 2(19) of this Act. The interim storage facility site as defined in section 2(19) of this Act shall be deemed to be approved by law for purposes of this section.

''(2) Upon the designation of an interim storage facility site by the President under

paragraph (1)(D), the Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at an interim storage facility at the designated site, except that the Secretary shall not begin any construction activities at the designated interim storage facility site before the designated interim storage facility site is approved by law.

''(c) DESIGN.—

''(1) The interim storage facility shall be designed in two phases in order to commence operations no later than November 30, 1999. The design of the interim storage facility shall provide for the use of storage technologies, licensed, approved, or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

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

''(d) LICENSING.—

''(1) PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than November 30, 1999.

''(2) FIRST PHASE.—No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The Environmental Report and Safety Analysis Report submitted in support of such license application shall be consistent with the scope of authority requested in the license application. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more than 15,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 16 months from the date of the submittal of the application for such license.

''(3) SECOND PHASE.—No later than 30 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. If the Secretary does not submit the license application for construction of a respository by February 1, 2002, or does not begin full spent nuclear fuel receipt operations at a repository by January 17, 2010, the license shall authorize a storage capacity of 60,000 MTU. The license application shall be submitted such that the license can be issued to permit the second phase facility to begin full spent nuclear fuel receipt operations no later than December 31, 2002. The license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.

''(e) ADDITIONAL AUTHORITY.—

''(1) CONSTRUCTION.—For purposes of complying with this section, the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of the Nuclear Waste Policy Act of 1996 and shall commence construction of each phase of the interim storage facility subsequent to submittal of the license application for such phase except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

''(2) FACILITY USE.—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of the Nuclear Waste Policy Act of 1996 within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

''(3) EMPLACEMENT OF FUEL AND WASTE.—Subject to subsection (i), once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, as set forth in the Secretary's annual capacity report dated March, 1995 (DOE/RW–0457), the Secretary shall accept, in an amount not less than 25 percent of the difference between the contractual acceptance rate and the annual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 507(a), the following radioactive materials—

''(A) spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors that have permanently ceased operation on or before the date of enactment of the Nuclear Waste Policy Act of 1996;

''(B) spent nuclear fuel from foreign research reactors, as necessary to promote non-proliferation objectives; and

''(C) spent nuclear fuel, including spent nuclear fuel from naval reactors, and high-level radioactive waste from atomic energy defense activities.

''(f) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

''(1) PRELIMINARY DECISIONMAKING ACTIVITIES.—The Secretary's and President's activities under this section, including, but not limited to, the selection of a site for the interim storage facility, assessments, determinations and designations made under section 204(b), the preparation and submittal of a license application and supporting documentation, the construction of a facility under paragraph (e)(1) of this section, and facility use pursuant to paragraph (e)(2) of this section shall be considered preliminary decisionmaking activities for purposes of judicial review. The Secretary shall not prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of such Act before conducting these activities.

''(2) ENVIRONMENTAL IMPACT STATEMENT.—

''(A) FINAL DECISION.—A final decision by the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—

''(i) shall ensure that the scope of the Environmental Impact Statement is consistent with the scope of the licensing action; and

''(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

''(B) CONSIDERATIONS.—Such Environmental Impact Statement shall not consider—

''(i) the need for the interim storage facility, including any individual component thereof;

''(ii) the time of the initial availability of the interim storage facility;

''(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

''(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

''(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

''(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

''(g) JUDICIAL REVIEW.—Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.

''(h) WASTE CONFIDENCE.—The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Commission of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

''(i) STORAGE OF OTHER SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.—No later than 18 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Commission shall, by rule, establish criteria for the storage in the interim storage facility of fuel and waste listed in subparagraph (e)(3) (A) through (C), to the extent such criteria are not included in regulations issued by the Commission and existing on the date of enactment of the Nuclear Waste Policy Act of 1996. Following establishment of such criteria, the Secretary shall seek authority, as necessary, to store fuel and waste listed in subparagraph (e)(3) (A) through (C) at the interim storage facility. None of the activities carried out pursuant to this subsection shall delay, or otherwise affect, the development, construction, licensing, or operation of the interim storage facility.

''(j) SAVINGS CLAUSE.—The Commission shall, by rule, establish procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. Nothing in this Act shall affect any such procedures, or any licenses or approvals issued pursuant to such procedures in effect on the date of enactment.

"SEC. 205. PERMANENT REPOSITORY.

''(a) REPOSITORY CHARACTERIZATION.—

''(1) GUIDELINES.—The guidelines promulgated by the Secretary and published at part 960 of title 10, Code of Federal Regulations are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.

''(2) SITE CHARACTERIZATION ACTIVITIES.—The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization. The Secretary shall modify or eliminate those site characterization activities designed only to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).

''(3) SCHEDULE DATE.—Consistent with the schedule set forth in the program approach, as modified to be consistent with the Nuclear Waste Policy Act of 1996, no later than February 1, 2002, the Secretary shall apply to the Commission for authorization to construct a repository. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination, further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.

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

''(b) REPOSITORY LICENSING.—Upon the completion of any licensing proceeding for the first phase of the interim storage facility, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

''(1) CONSTRUCTION AUTHORIZATION.—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the repository—

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

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

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

''(2) LICENSE.—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

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

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

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

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

''(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

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

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

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

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

''(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

''(c) MODIFICATION OF REPOSITORY LICENSING PROCEDURE.—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of spent nuclear fuel or high-level radioactive waste as is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

''(d) REPOSITORY LICENSING STANDARDS.—The Administrator of the Environmental Protection Agency shall, pursuant to authority under other provisions of law, issue generally applicable standards for the protection of the public from releases of radioactive materials or radioactivity from the repository. Such standards shall be consistent with the overall system performance standard established by this subsection unless the Administrator determines by rule that the overall system performance standard would constitute an unreasonable risk to health and safety. The Commission's repository licensing determinations for the protection of the public shall be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1), applied in accordance with the provisions of paragraph (2), and the Administrator's radiation protection standards. The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards:

''(1) ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirems unless the Commission determines by rule that such standard would constitute an unreasonable risk to health and safety and establishes by rule another standard which will protect health and safety. Such standard shall constitute an overall system performance standard.

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

''(3) FACTORS.—For purposes of making the finding in paragraph (2)—

''(A) the Commission shall not consider catastrophic events where the health consequences of individual events themselves can be reasonably assumed to exceed the health consequences due to the impact of the events on repository performance;

''(B) for the purpose of this section, an average member of the general population in the vicinity of the Yucca Mountain site means a person whose physiology, age, general health, agricultural practices, eating habits, and social behavior represent the average for persons living in the vicinity of the site. Extremes in social behavior, eating habits, or other relevant practices or characteristics shall not be considered; and

''(C) the Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(4), shall be sufficient to—

''(i) prevent any human activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

''(ii) prevent any increase in the exposure of individual members of the public to radiation beyond the allowable limits specified in paragraph (1).

''(4) ADDITIONAL ANALYSIS.—The Commission shall analyze the overall system performance through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository.

''(e) NATIONAL ENVIRONMENTAL POLICY ACT.—

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

''(2) CONSIDERATIONS.—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, or alternative sites or designs for the repository.

''(3) ADOPTION BY COMMISSION.—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing

in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954. In any such statement or supplement prepared with respect to the repository, the Commission shall not consider the need for a repository, or alternate sites or designs for the repository.

''(f) JUDICIAL REVIEW.—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

"SEC. 206. LAND WITHDRAWAL.

''(a) WITHDRAWAL AND RESERVATION.—

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

''(2) JURISDICTION.—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

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

''(b) LAND DESCRIPTION.—

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

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

''(3) NOTICE AND MAPS.—Within 6 months of the date of the enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

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

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

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

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

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

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

"TITLE III—LOCAL RELATIONS

"SEC. 301. FINANCIAL ASSISTANCE.

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

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

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

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

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

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

''(b) SALARY AND TRAVEL EXPENSES.—Any salary or travel expense that would ordinarily be incurred by any affected Indian tribe or affected unit of local government may not be considered eligible for funding under this section.

''(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

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

''(2) REPORT.—Any affected Indian tribe or affected unit of local government may request assistance under this section by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from activities of the integrated management system.

''(d) OTHER ASSISTANCE.—

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

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

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

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

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

"SEC. 302. ON-SITE REPRESENTATIVE.

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

"SEC. 303. ACCEPTANCE OF BENEFITS.

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

''(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State to oppose the siting in Nevada of an interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

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

"SEC. 304. RESTRICTIONS ON USE OF FUNDS.

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

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

''(2) for litigation purposes; and

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

"SEC. 305. LAND CONVEYANCES.

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

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

Map 1: Proposed Pahrump industrial park site.

Map 2: Proposed Lathrop Wells (gate 510) industrial park site.

Map 3: Pahrump landfill sites.

Map 4: Amargosa Valley Regional Landfill site.

Map 5: Amargosa Valley Municipal Landfill site.

Map 6: Beatty Landfill/Transfer Station site.

Map 7: Round Mountain Landfill site.

Map 8: Tonopah Landfill site.

Map 9: Gabbs Landfill site.

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

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

"TITLE IV—FUNDING AND ORGANIZATION

"SEC. 401. PROGRAM FUNDING.

''(a) CONTRACTS.—

''(1) AUTHORITY OF SECRETARY.—In the performance of the Secretary's functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such waste or spent fuel. Such contracts shall provide for payment of annual fees to the Secretary in the amounts set by the Secretary pursuant to paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended. Subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act: *Provided,* That the Secretary shall consent to an amendment to such contracts as necessary to implement the provisions of this Act.

''(2) ANNUAL FEES.—

''(A) for electricity generated by civilian nuclear power reactors and sold between January 7, 1983, and September 30, 2002, the fee under paragraph (1) shall be equal to 1.0 mill per kilowatt-hour generated and sold. For electricity generated by civilian nuclear power reactors and sold on or after October 1, 2002, the aggregate amount of fees collected during each fiscal year shall be no greater than the annual level of appropriations for expenditures on those activities consistent with subsection (d) for that fiscal year, minus—

''(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

''(ii) the percentage of such appropriation required to be funded by the Federal Government pursuant to section 403,

The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that the annual fee collected under this subparagraph shall not exceed 1.0 mill per kilowatt-hour generated and sold.

''(B) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 2002, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

''(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

''(ii) the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403,

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of the fees assessed.

''(C) RULES.—The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

''(3) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1996 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996 pursuant to the contracts, including any interest due pursuant to such contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph on or before September 30, 2002, and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

''(4) ADJUSTMENTS TO FEE.—The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3), together with the existing balance of the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996, to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (c)(2). In the event the Secretary determines that the revenues being collected are either insufficient or excessive to recover the costs incurred by the Federal Government that are specified in subsection (c)(2), the Secretary shall propose an adjustment to the fee in subsection (c)(2) to ensure full cost recovery. The Secretary shall immediately transmit the proposal for such an adjustment to both houses of Congress.

''(b) ADVANCE CONTRACTING REQUIREMENT.—

''(1) IN GENERAL.—

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

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

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

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

''(2) DISPOSAL IN REPOSITORY.—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

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

''(c) NUCLEAR WASTE FUND.—

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

''(A) the existing balance in the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996; and

''(B) all receipts, proceeds, and recoveries realized under subsections (a), and (c)(3) subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996, which shall be deposited in the Nuclear Waste Fund immediately upon their realization.

''(2) USE.—The Secretary may make expenditures from the Nuclear Waste Fund, subject to subsections (d) and (e), only for purposes of the integrated management system.

''(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

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

''(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

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

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

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

''(d) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget annually along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

''(e) APPROPRIATIONS.—The Secretary may make expenditures from the Nuclear Waste

Fund, subject to appropriations, which shall remain available until expended.

"SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

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

''(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

"SEC. 403. FEDERAL CONTRIBUTION.

''(a) ALLOCATION.—No later than one year from the date of enactment of the Nuclear Waste Policy Act of 1996, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors shall include—

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

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

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

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

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

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

"SEC. 501. COMPLIANCE WITH OTHER LAWS.

''If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 and of this Act in implementing the integrated management system.

"SEC. 502. JUDICIAL REVIEW OF AGENCY ACTIONS.

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

''(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

''(A) for review of any final decision or action of the Secretary, the President, or the Commission under this Act;

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

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

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

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

(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge or such decision, action, or failure to act.

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

"SEC. 503. LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS.

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

''(b) ADJUDICATORY HEARING.—

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

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

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

''(2) DETERMINATION.—In making a determination under this subsection, the Commission—

''(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

''(B) shall not consider—

''(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor to which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

''(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless—

''(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

''(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

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

''(4) CONSTRUCTION.—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

''(c) JUDICIAL REVIEW.—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

''(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

''(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

"SEC. 504. SITING A SECOND REPOSITORY.

''(a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

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

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

''(a) FINANCIAL ARRANGEMENTS.—

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

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

''(b) TITLE AND CUSTODY.—

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

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

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

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

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

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

"SEC. 506. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

''The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant licensee personnel training programs.

"SEC. 507. EMPLACEMENT SCHEDULE.

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

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

''(2) The Secretary's spent fuel emplacement rate shall be no less than the following: 1,200 MTU in fiscal year 2000 and 1,200 MTU in fiscal year 2001; 2,000 MTU in fiscal year 2002 and 2,000 MTU in fiscal year 2003; 2,700 MTU in fiscal year 2004; and 3,000 MTU annually thereafter.

''(b) If the Secretary is unable to begin emplacement by November 30, 1999 at the rates specified in subsection (a), or if the cumulative amount emplaced in any year thereafter is less than that which would have been accepted under the emplacement rate specified in subsection (a), the Secretary shall, as a mitigation measure, adjust the emplacement schedule upward such that within 5 years of the start of emplacement by the Secretary,

''(1) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had began emplacement in fiscal year 2000, and

''(2) thereafter the emplacement rate is equivalent to the rate that would be in place pursuant to subsection (a) above if the Secretary had commenced emplacement in fiscal year 2000.

"SEC. 508. TRANSFER OF TITLE.

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

''(b) No later than 6 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary is authorized to accept all spent nuclear fuel withdrawn from Dairyland Power Cooperative's La Crosse Reactor and, upon acceptance, shall provide Dairyland Power Cooperative with evidence of the title transfer. Immediately upon the Secretary's acceptance of such spent nuclear fuel, the Secretary shall assume all responsibility and liability for the interim storage and permanent disposal thereof and is authorized to compensate Dairyland Power Cooperative for any costs related to operating and maintaining facilities necessary for such storage from the date of acceptance until the Secretary removes the spent nuclear fuel from the La Crosse Reactor site.

"SEC. 509. DECOMMISSIONING PILOT PROGRAM.

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

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

"SEC. 510. WATER RIGHTS.

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

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

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

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"SEC. 601. DEFINITIONS.

''For purposes of this title—

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

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

"SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

''(a) CONTINUATION OF THE NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of the Nuclear Waste Policy Act of 1996, shall continue in effect subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996.

''(b) MEMBERS.—

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

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

''(3) NATIONAL ACADEMY OF SCIENCES.—

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

''(B) VACANCIES.—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

''(C) NOMINEES.—

''(i) Each person nominated for appointment to the Board shall be—

''(I) eminent in a field of science or engineering, including environmental sciences; and

''(II) selected solely on the basis of established records of distinguished service.

''(ii) The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.

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

''(I) the Department of Energy;

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

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

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

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

''SEC. 603. FUNCTIONS.

''The Board shall limit its evaluations to the technical and scientific validity solely of the following activities undertaken directly by the Secretary after December 22, 1987—

''(1) site characterization activities; and

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

''SEC. 604. INVESTIGATORY POWERS.

''(a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. The Secretary or the Secretary's designee or designees shall not be required to appear before the Board or any element of the Board for more than twelve working days per calendar year.

''(b) PRODUCTION OF DOCUMENTS.—

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

''(2) EXTENT.—Subject to existing law, information obtainable under paragraph (1) may include drafts of products and documentation of work in progress.

''SEC. 605. COMPENSATION OF MEMBERS.

''(a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

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

''SEC. 606. STAFF.

''(a) CLERICAL STAFF.—

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

''(2) PROVISIONS OF TITLE 5.—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

''(b) PROFESSIONAL STAFF.—

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

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

''(3) TITLE 5.—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

''SEC. 607. SUPPORT SERVICES.

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

''(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General and the Librarian of Congress shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

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

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

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

''SEC. 608. REPORT.

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

''SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated for expenditures such sums as may be necessary to carry out the provisions of this title.

''SEC. 610. TERMINATION OF THE BOARD.

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

''TITLE VII—MANAGEMENT REFORM

''SEC. 701. MANAGEMENT REFORM INITIATIVES.

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

''(b) AUDITS.—

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

''(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations, engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the enactment of the Nuclear Waste Policy Act of 1996.

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

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

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

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

''(d) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

''SEC. 702. REPORTING.

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

''(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than November 30, 1999, and in accordance with the acceptance schedule;

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

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

''(4) an analysis by the Secretary of its funding needs for fiscal years 1996 through 2001.

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

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

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

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

"SEC. 703. EFFECTIVE DATE.

''This Act shall become effective one day after enactment.''.

Mr. MURKOWSKI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VISIT TO THE SENATE BY THE HONORABLE HOSNI MUBARAK, PRESIDENT OF EGYPT

Mr. HELMS. Mr. President, I present to the Senate of the United States, the distinguished and honorable President of Egypt, Hosni Mubarak.

[Applause.]

RECESS

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate stand in recess in honor of President Hosni Mubarak, so Members might meet our friend from Egypt.

There being no objection, the Senate, at 5:21 p.m., recessed until 5:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR

Mr. HATFIELD. Mr. President, I ask unanimous consent that Dr. Jonelle Rowe, a fellow on Senator FRIST's staff, be granted floor privileges today, July 31, 1996, during the consideration of the fiscal year 1997 Transportation appropriations.

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

Mr. HATFIELD. I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3675) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1997, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DORGAN. Mr. President, I had given notice that I would offer one additional amendment. I say to the ranking member and the manager that I will not offer that amendment, but I do want to speak for just a couple of minutes while we are waiting for another Senator to come to offer an amendment. I think that will probably be good news to them because they want to move the bill along, and they do not want me to offer another amendment.

I want to describe, as you are waiting for Senator BAUCUS and others, what I was going to offer the amendment on. I want Members of the Senate to understand that we are going to be dealing with this issue in a day or so.

Here is the issue. It is very simple. It is something most Senators have not heard of, but it is something that went on late last night here in the Senate in a deal between the Senate and the House, I am told. There is a bill that is traveling with the minimum wage that is called the Small Business Job Protection Act that gives some benefits to small business. Of course, it is not just benefits for small business. Included in that bill was a provision repealing something called section 956A of the Internal Revenue Code.

What is 956A? It is a provision of the law that was passed in 1993 to close a corporate tax loophole by which corporations move investments and U.S. jobs overseas, and avoid paying taxes here at home. In 1993, that loophole was closed by something that was proposed by President Clinton and supported by the Congress: 956A. It says that you cannot start a manufacturing plant overseas, earn a lot of money, and pay no taxes back home.

My point is that in 1993 a tax loophole was closed. It had benefited some of the largest corporations in the country. It said to them, if you move your investments and jobs overseas, we will give you a special tax break that is not available to small businesses operating in this country. And they moved their jobs overseas. They earn income overseas and pay no taxes in this country on income. They invest it in passive assets abroad in foreign countries, and pay no income tax here.

We closed that tax loophole. Guess what? There are some folks in this Chamber and the House that have been working late at night to reopen that loophole. I know it is only a few hundred million dollars, but it is a few hundred million dollars in favors to some of the largest corporations in this country.

I have worked for couple of years trying to get some money to deal with Indian child abuse—a million dollars, two million dollars. I have told my colleagues before that I have been in an office where there is a stack of papers that high on the floor of complaints of sexual abuse and violence against children that have not even been investigated because there is not enough money. We do not have enough money to do things like that. We are simply short of money.

But when it comes to late night in this place, in the conference, there is enough money to give a $235 million tax break to corporations and say, if you want a tax break to move your jobs overseas, we will sweeten it up; we will give you a big, juicy tax loophole.

That is going to be put in the bill in conference. I am told the deal was struck last night between the chairmen of the two committees working late last night.

I venture to say that there is not another Member of the Senate who knows about it, and it probably does not mean a lot to some. It will mean something to those people who are going to lose their jobs in this country because we make it juicier for corporations to move jobs overseas. We decide to give a huge tax break to firms which move jobs overseas. And it will mean that some people in this country are going to lose their good-paying jobs. It is going to mean that we are out several hundred million dollars because we now have a new tax break that we thought we had closed in 1993. It is going to mean that small businesses that operate in this country are going to be forced to compete with large multinational firms at a greater disadvantage.

This is coming to the Senate, and it is stuck in a bill called the Small Business Job Protection Act. It ought to be against the law to use a title like that when it includes provisions like this.

You are going to hear more from me if it is true that the conference has accepted this and is going to bring it to the floor of the Senate. I am told a deal was made last night.

I could name some large corporations on the floor—but I will not at this moment—that have been moving around this town saying, ''Reopen, please, for us this tax loophole. We want to benefit from it. We want to move our jobs overseas. We want to invest our money overseas. Reopen this loophole.''

We have folks jumping for joy to see if they cannot accommodate those who want another tax loophole done in the dead of night without the knowledge of people in this Chamber and the other Chamber. Most of them do not know much about 956A—and done with hundreds of millions of dollars at a time when we cannot get $0.5 million or $1 million to deal with critical issues of child abuse on Indian reservations. They cannot even get them investigated. But there is plenty of money to do this.

I will tell you, if I sound upset about this stuff, I am, because this sort of thing should not go on in this town. If you want to debate restoring a tax loophole, then let us debate it on the floor of the Senate. We repealed it 3 years ago. Now the folks want to go out and open it up again. Let us debate that on the floor of the Senate and see if you get one vote.

How many want to stand up in the Senate and say, ''Yes, we would like to restore a new tax loophole. Count us in. We want to go home and brag about creating a new tax loophole which benefits some of the biggest corporations