

**SEC. 3116. DEFENSE SITE ACCELERATION COMPLETION**

**(a) IN GENERAL.**

Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974, and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term “high-level radioactive waste” does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the “Secretary”), in consultation with the Nuclear Regulatory Commission (in this section referred to as the “Commission”), determines:

- (1)** does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;
- (2)** has had highly radioactive radionuclides removed to the maximum extent practical; and
- (3)** **(A)** does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of:
  - (i)** in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and
  - (ii)** pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or**(B)** exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of:
  - (i)** in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;
  - (ii)** pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and
  - (iii)** pursuant to plans developed by the Secretary in consultation with the Commission.

**(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.**

(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended.

(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection. ]

**(c) INAPPLICABILITY TO CERTAIN MATERIALS.**

Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

**(d) COVERED STATES.**

For purposes of this section, the following States are covered States:

- (1) The State of South Carolina.
- (2) The State of Idaho.

**(e) CONSTRUCTION.**

- (1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.
- (2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.
- (3) Nothing in this section amends the definition of “transuranic waste” or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act or part 191 of title 40, Code of Federal Regulations.
- (4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).
- (5) Nothing in this section amends the West Valley Demonstration Act (42 U.S.C. 2121a note).

**(f) JUDICIAL REVIEW.**

Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

- (1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.
- (2) Any failure of the Commission to carry out its responsibilities under subsection (b).