



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

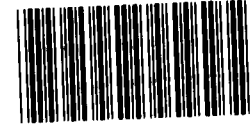
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RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

December 10, 1982

B-210145



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The Honorable Gordon J. Humphrey  
United States Senate

Dear Senator Humphrey:

Subject: Comments on the new "Nuclear Fuel Cycle  
Activities" Account Included in House  
Bill 7145 (GAO/RCED-83-79)

On November 18, 1982, you requested our views on aspects of the new "nuclear fuel cycle activities" appropriation account included in House Bill H.R. 7145, 97th Congress. The bill makes appropriations for energy and water development for fiscal year 1983. The bill would create a new appropriation account for current and potential revenue-producing Department of Energy (DOE) civilian nuclear fuel cycle activities. These activities include uranium supply and enrichment, nuclear waste management, reprocessing, and demonstration projects. The bill requires that DOE use the revenues it receives from each activity to offset its costs for that activity, to deposit any such revenues received in excess of such costs in the "nuclear fuel cycle activities" account, and to use these excess revenues to offset any other obligations against the account.

OBJECTIVE, SCOPE, AND METHODOLOGY

You requested our views on four statements listed in your letter:

- The account would have two revenue streams in fiscal year 1983. The first would be gross receipts raised from DOE's sale of uranium enrichment services and the second would be revenues from the nuclear waste disposal fee proposed in pending nuclear waste legislation.
- There would be outlays from the account to pay for three types of activities--enrichment, fuel cycle demonstration activities (Clinch River now and possibly commercial reprocessing later), and nuclear waste disposal activities.

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--Under the committee's proposed accounting procedure, user fees now paid by enrichment customers to cover enrichment activity costs could be spent on account activities unrelated to enrichment (Clinch River Breeder Reactor Project and nuclear waste disposal activities) and user fees proposed to pay the costs of nuclear waste disposal activities could be spent on account activities not listed under the "nuclear waste disposal activities" heading.

--Nearly \$173,604,000 will be available to the account after making all of the committee's projected account outlays for FY 1983 and this money could be used to cover part of the future costs of such account activities as the Clinch River Breeder Reactor Project.

In responding to your request, we reviewed H.R. 7145 and the accompanying House Report No. 97-850, the applicable provisions of DOE's authorizing legislation, and the respective differing nuclear waste policy bills passed by the Senate (S.1662) and the House (H.R. 3809). DOE officials declined to discuss this matter with us pending the Secretary of Energy's determination of DOE's position on the proposed new account. Our audit was performed in accordance with generally accepted government auditing standards.

Our views on the statements in your letter are discussed below.

THE ACCOUNT WOULD HAVE TWO REVENUE  
STREAMS IN FISCAL YEAR 1983

The statement in your letter is correct. The House Appropriations Committee report (Report No. 97-850) on H.R. 7145 states that the purpose of the new "nuclear fuel cycle activities" account is to bring together those parts of the nuclear fuel cycle from which revenues are currently or will in the future be derived. In so doing, not only does the bill appropriate funds for nuclear fuel cycle activities, but it requires DOE to retain the revenues generated by these activities to offset costs of the activities. Without this requirement the revenues would be deposited into miscellaneous receipts of the Treasury. In fiscal year 1983, according to the bill, only the uranium enrichment and nuclear waste management activities are expected to produce revenues.

Fiscal year 1983 revenues from DOE's uranium enrichment activities are expected to be slightly more than \$2 billion. Revenues from nuclear waste management activities are estimated to be \$300 million. At present, however, DOE is not authorized to collect revenues from utilities or others to offset DOE's cost of managing their nuclear wastes. Therefore, estimated revenues

from waste management activities are dependent on the Congress enacting the pending nuclear waste policy legislation. Separate versions of this proposed legislation have passed the Senate and the House. Both versions would permit DOE to begin collecting revenues for its civilian nuclear waste management activities.

THERE WOULD BE OUTLAYS FROM THE  
ACCOUNT TO PAY FOR THREE TYPES OF  
ACTIVITIES

There would be outlays from the "nuclear fuel cycle activities" account up to the amounts appropriated for three activities--uranium enrichment, Clinch River Breeder Reactor, and nuclear waste management. The total appropriation for these activities is slightly more than \$2.36 billion in fiscal year 1983. Revenues from these activities, estimated to be slightly less than \$2.31 billion, would be placed in the "nuclear fuel cycle activity" account. These estimated revenues, plus an additional estimated net appropriation of \$53,646,000, would be used as shown below.

<u>Activity</u>	<u>Appropriations</u>
Uranium supply and enrichment	\$1,949,096,000
Clinch River Breeder Reactor	227,250,000
Nuclear waste management	<u>185,000,000</u>
Total	<u>\$2,361,346,000</u>

The amounts that would be appropriated for nuclear fuel cycle activities and available for DOE's use in fiscal year 1983 under H.R. 7145 are not dependent upon the actual revenues realized in fiscal year 1983. Regardless of the revenues received from uranium enrichment and waste management activities, the bill makes definite appropriations in the amounts shown above for each of the three activities.

For example, as noted earlier, the estimated \$300 million in revenues from the waste management activity is contingent upon enactment of the pending nuclear waste policy legislation. If this proposed legislation is not enacted, revenues received into the account will decrease by \$300 million. However, the total appropriation for the "nuclear fuel cycle activities" account--and the amounts appropriated for each of the three activities--would remain as shown above. In this case, the net fiscal year 1983 appropriation for the account would be \$353,646,000 instead of \$53,646,000.

REVENUES FROM ANY ONE NUCLEAR FUEL  
CYCLE ACTIVITY COULD BE SPENT ON  
OTHER ACTIVITIES

As we interpret H.R. 7145, revenues from any one nuclear fuel cycle activity in excess of the appropriation for that

activity could be used to offset costs of other activities in the account for which funds have been appropriated. As such, the bill is inconsistent with both the existing uranium enrichment program authorization legislation and the pending bills on nuclear waste policy because the enrichment legislation and waste policy bills prohibit the use of revenues from these respective activities for any other purposes. This interpretation is compelled by the following language of the bill:

"\* \* \*(3) any revenues received in excess of fiscal year 1983 appropriations for uranium supply and enrichment activities or nuclear waste management activities shall be deposited to the credit of the nuclear fuel cycle activities account and used to offset any other fiscal year 1983 or future obligations against the account: Provided further, that the total sum herein appropriated shall be reduced as revenues are received during fiscal year 1983 so as to result in a final fiscal year 1983 appropriation estimated at not more than \$53,646,000." (under-scoring added)

Under the quoted last proviso, a final fiscal year 1983 appropriation estimate of not more than \$53,646,000 from the general funds of the Treasury cannot be achieved without using revenues in excess of appropriations for uranium enrichment and nuclear waste management activities to offset costs of the Clinch River Breeder Reactor. As long as the excess receipts over activity appropriations are retained in the individual uranium enrichment subaccount and the individual nuclear waste management subaccount, there will always be a final appropriation from the general funds of the Treasury for the "nuclear fuel cycle activities" account of at least the dollar amount of the appropriation for the Clinch River Breeder Reactor Project, since it does not yet generate any offsetting revenues. In fiscal year 1983, that would be \$227,250,000.

Moreover, subparagraph (3), quoted above, states that excess revenues from any activity over and above that activity's appropriation shall be used to offset any other fiscal year 1983 obligations against the "nuclear fuel cycle activities" account. Under the Antideficiency Act (31 U.S.C. Section 1341), the activity with the excess revenues could not legally incur any obligations for fiscal year 1983 over and above the dollar amount appropriated for that activity. Therefore, the language "any other fiscal year 1983. . . obligations against the account" in subparagraph (3) must be referring to obligations of other activities within the "nuclear fuel cycle activities" account. This constitutes specific authority to commingle receipts of any particular activity in excess of its appropriation with those of any other activity within the "nuclear fuel cycle activities" account for the purpose of offsetting obligations of the other activities.

As we interpret H.R. 7145, revenues received from DOE's uranium enrichment activity in excess of the approximately \$1.95 billion appropriation for this activity would be deposited in the "nuclear fuel cycle activities" account and would be used to offset other obligations against that account--such as the Clinch River Breeder Reactor Project and nuclear waste management activity. The bill estimates that revenues from DOE's uranium enrichment activity will exceed the appropriations for that activity by slightly less than \$59 million. We emphasize, however, that the total amount of funds which could be spent on any individual nuclear fuel cycle activity, such as the Clinch River Project, is limited to the amount appropriated for that activity in the bill.

H.R. 7145 is inconsistent with DOE's program statute with respect to the use of uranium enrichment receipts. Subsection (h) of section 111, Energy Reorganization Act of 1974, as amended (42 U.S.C. 5821 (h)), authorizes DOE, when so provided in an appropriation act, to retain revenues produced by its uranium enrichment activity, but only for the expressed purpose of offsetting operating expenses of that activity. The receipts are not available to DOE for any other purpose.

Similarly, according to H.R. 7145, revenues received from DOE's nuclear waste management activities in excess of the \$185 million appropriation for those activities would also be deposited in the "nuclear fuel cycle activities" account, and would be used for uranium enrichment activities and/or the Clinch River Breeder Reactor Project. The bill estimates that revenues from the nuclear waste management activity will exceed the appropriation for that activity by \$115 million.

Both the House and Senate versions of the pending nuclear waste policy legislation would establish a trust fund or similarly segregated fund for the deposit of nuclear waste management fees. However, both the House and Senate versions of this proposed legislation would permit DOE to use these monies only for specified waste management activities. Therefore, H.R. 7145 is inconsistent with these bills.

\$173,604,000 WILL BE AVAILABLE TO  
THE ACCOUNT AFTER MAKING PROJECTED  
ACCOUNT OUTLAYS

As shown below, revenues estimated in H.R. 7145 from uranium enrichment and nuclear waste management fees exceed the appropriations for these two activities by \$173,604,000.

<u>Activity</u>	<u>FY 1983 Estimated Revenues</u>	<u>FY 1983 Appropriation</u>	<u>Amount Available for "other" account uses</u>
Uranium enrichment	\$2,007,700,000	\$1,949,096,000	\$ 58,604,000
Nuclear Waste Management	<u>300,000,000</u>	<u>185,000,000</u>	<u>115,000,000</u>
Total	<u>\$2,307,700,000</u>	<u>\$2,134,096,000</u>	<u>\$173,604,000</u>

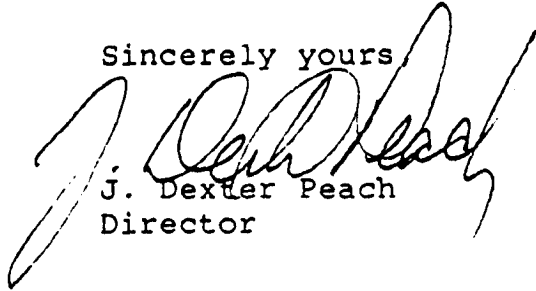
The bill, specifically the provision quoted above, provides that these revenues shall be used to offset any other obligations against the "nuclear fuel cycle activities" account in fiscal year 1983 or in future years. The only legally permissible fiscal year 1983 obligation against the "nuclear fuel cycle activities" account, besides the uranium enrichment and nuclear waste management activities, is the Clinch River Breeder Reactor Project. Therefore, all of the estimated \$173,604,000 of revenues in excess of appropriations would have to be used to cover the costs of the Clinch River Project. The \$173,604,000 of excess revenues, added to the \$53,646,000 estimated net appropriation shown in H.R. 7145, equals the \$227,250,000 appropriation for the Clinch River Project. This further confirms our interpretation that the bill provides for the use of revenues in excess of appropriation from any one nuclear fuel cycle activity to be used to offset the cost of other activities.

As noted earlier, however, the fiscal year 1983 appropriation for the Clinch River Breeder Reactor is not dependent upon DOE's receipt of revenues in the amounts estimated in H.R. 7145. The bill establishes a definite appropriation for that project of \$227,250,000 regardless of revenues received into the account. Conversely, an increase in revenues beyond estimates in H.R. 7145 would not allow additional expenditures in fiscal year 1983 beyond the specific amounts appropriated in the bill for the Clinch River Breeder Reactor Project or the other nuclear fuel cycle activities. The additional revenues would instead be used to decrease the estimated \$53,646,000 net fiscal year 1983 appropriation for the "nuclear fuel cycle activities" account.

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Copies of this report are being sent to the Subcommittee on Energy and Water Development, House Appropriations Committee; to the Director, Office of Management and Budget and the Secretary of Energy; and to other interested committees of the Congress. Copies of the report will also be made available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach". The signature is written in black ink and is positioned above the typed name and title.

J. Dexter Peach  
Director