

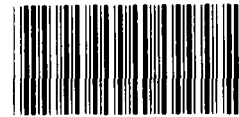
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**GAO**

April 1986

# NUCLEAR WASTE

## Department of Energy's Program for Financial Assistance



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**Resources, Community, and  
Economic Development Division**

B-202377

April 1, 1986

**The Honorable John S. Herrington  
The Secretary of Energy**

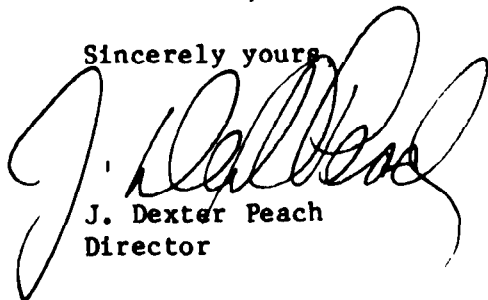
Dear Mr. Secretary:

This report presents the results of our evaluation of the Department of Energy's (DOE's) efforts to provide financial assistance to states, Indian tribes, and others under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

This report contains recommendations to you in chapters 2, 3, and 4. As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the grantees discussed herein, congressional committees with oversight of DOE's nuclear waste activities, and other interested parties.

Sincerely yours,

**J. Dexter Peach  
Director**

# Executive Summary

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The Nuclear Waste Policy Act of 1982 established federal responsibility and policy for the permanent disposal of highly radioactive waste materials. State and public participation in this federal program was a key element of the act. Through fiscal year 1985, the Department of Energy (DOE) had approved over \$23 million in grants to states, Indian tribes, and associations.

This report presents GAO's evaluation of DOE's program to provide grants under this act. Specifically, GAO focused on DOE's decisions and guidelines concerning who, what, and how much to fund, and DOE's enforcement of regulatory requirements.

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## Background

The act authorizes construction of one waste repository (a deep, underground rock formation suitable for permanent burial of waste) and the siting and testing of a second repository. The act also mandates that DOE provide grants to states or affected Indian tribes in any state where a potentially acceptable site for a waste repository is located. This funding is to be used to assist states and tribes in reviewing and understanding DOE's activities under the act. For the first repository program, DOE has approved \$15.4 million in grants to six states and three Indian tribes under this mandate.

The second repository program, however, has not progressed to the point where DOE has identified potentially acceptable sites. Thus, while DOE is not yet required to provide grants to the affected states and Indian tribes, it has given grants to (1) 16 states where DOE is initially investigating rock formations for a second repository, (2) two national associations, and (3) the state of Tennessee, which is the potential location for an above-ground, retrievable storage facility for nuclear waste. These grants have been made using the discretion provided to the Secretary in the act to pay for radioactive waste disposal activities. DOE has approved \$8.1 million in discretionary grants to these parties.

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## Results in Brief

GAO found that DOE's existing grant guidelines for financial assistance to first and second repository states do not clearly establish a basis for determining who is funded, what activities are funded, and how much funding is provided each activity. Because the guidelines do not cover all funding circumstances, DOE field staff have interpreted them differently when making both mandatory and discretionary grant decisions.

In addition, DOE has not considered state and Indian tribe needs in establishing its budget requests for grant awards. Instead, the requests are based on the amounts of grants awarded in prior years and DOE planned activities. Finally, both grantee compliance with certain reporting requirements of DOE's financial assistance regulations and DOE's enforcement of them has been inconsistent.

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## Principal Findings

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### Activities Funded

Because of differing field office interpretations of DOE's guidelines, some first repository states have received funding to conduct independent studies while other first repository states have not been funded for these activities. In addition, some first repository states believe they should be funded to conduct their own testing at sites. DOE does not believe such testing is appropriate because it does not see this as a state responsibility. One state has already sued DOE on this issue and the court has ruled that independent testing is fundable if it meets certain conditions. (See p. 24.)

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### Funding Levels

DOE budget estimates are based on field office judgments, prior funding levels, and future DOE activities planned in the states. DOE does not request information from states and Indian tribes to be used in establishing its grant award budgets. Consequently, the approved budgets do not necessarily represent a realistic assessment of grantees' needs. (See p. 35.)

Since passage of the act, DOE has approved almost \$9 million less in both mandatory and discretionary grant awards than what grantees have requested. While most of the states and all of the tribes stated that the level of funding provided has been sufficient for program participation, seven states noted that grant reductions have adversely affected their ability to participate in the program. (See p. 32.)

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### Grant Administration

Grantees have not consistently complied with the requirements of DOE's regulations concerning (1) filing financial and performance reports and (2) procurement procedures. According to program officials, DOE has not enforced these requirements, in some cases, because DOE staff consider them an administrative burden or do not use the required reports. GAO

believes that DOE should be prepared either to ensure compliance with regulatory requirements designed to provide assurance that funds are being properly expended, or seek a waiver from those requirements. Such a waiver is allowed under its regulations if DOE determines that the reporting and procurement procedures are not needed to achieve program objectives or conserve public funds. (See p. 40.)

## Grant Recipients

DOE has used its discretionary funding authority to award grants to second repository states, national associations, and the state of Tennessee. Also, DOE has recently provided Indian tribes associated with second repository states an opportunity to participate in the program. However, DOE limited their participation to reviewing one report which narrows the areas under consideration for the second repository. In addition, DOE has not agreed to provide funding directly to local communities in or states bordering the repository states. Rather, it believes these parties should be funded through grants to the repository states.

However, some communities and at least one bordering state believe that direct funding would provide them greater assurance of continued program participation. (See p. 18.)

## Recommendations

GAO recommends that the Secretary of Energy

- revise existing grant guidelines for the first and second repository programs to better define activities eligible for funding;
- survey grantees as to their projected grant needs and incorporate this assessment into more detailed presentation of budget data in annual appropriation requests to the Congress; and
- ensure compliance with the administrative requirements of DOE's financial assistance regulations or officially waive these requirements if DOE determines that the conditions for granting a waiver are present.

## Agency Comments

DOE did not specifically comment on the report's recommendations but expressed its general agreement with the factual information presented in the report. DOE suggested several changes and clarifications to the report, some of which have been incorporated where appropriate.



# Contents

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<b>Executive Summary</b>		<b>2</b>
<hr/>		
<b>Chapter 1</b>		<b>8</b>
<b>Introduction</b>	<b>Financial Assistance Provided Through Fiscal Year 1985</b>	<b>8</b>
	<b>Legislation, Regulations, and Internal Guidance</b>	<b>12</b>
	<b>Governing Financial Assistance Under the NWPA</b>	
	<b>Objectives, Scope, and Methodology</b>	<b>14</b>
<hr/>		
<b>Chapter 2</b>		<b>18</b>
<b>Better Guidance</b>	<b>Discretionary Funding Is Not Being Provided to All</b>	<b>18</b>
<b>Needed to Determine</b>	<b>Parties Potentially Affected by Waste Program</b>	
<b>Who and What Should</b>	<b>Guidance on What Activities Can Be Funded Has Not</b>	<b>24</b>
<b>Be Funded</b>	<b>Been Adequate</b>	
	<b>Conclusions</b>	<b>29</b>
	<b>Recommendation to the Secretary</b>	<b>30</b>
	<b>Agency Comments</b>	<b>30</b>
<hr/>		
<b>Chapter 3</b>		<b>32</b>
<b>Better Budget</b>	<b>Some States Have Expressed Concerns Over Level of</b>	<b>32</b>
<b>Information Could</b>	<b>Funding Provided by DOE</b>	
<b>Provide Basis for More</b>	<b>Some Grant Awards Dictated by Budgetary Constraints</b>	<b>35</b>
<b>Reasonable Grant</b>	<b>Rather Than Need</b>	
<b>Awards</b>	<b>Conclusions</b>	<b>37</b>
	<b>Recommendation to the Secretary</b>	<b>37</b>
	<b>Agency Comments</b>	<b>37</b>
<hr/>		
<b>Chapter 4</b>		<b>40</b>
<b>DOE's Grant</b>	<b>Grantees Have Not Consistently Complied With</b>	<b>40</b>
<b>Administration and</b>	<b>Regulatory Requirements</b>	
<b>Oversight Could Be</b>	<b>DOE Has Not Generally Enforced Regulatory</b>	<b>43</b>
<b>Improved</b>	<b>Requirements</b>	
	<b>Conclusions</b>	<b>44</b>
	<b>Recommendation to the Secretary</b>	<b>45</b>
	<b>Agency Comments</b>	<b>45</b>



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<b>Appendix I</b>		46
<b>Advance Comments</b>		
<b>From the Department of Energy</b>		

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<b>Tables</b>		
	Table 1.1: DOE Grant Funds Obligated Under the NWPA Through 1985	11
	Table 1.2: Grants Awarded by Various DOE Offices	16
	Table 2.1: Activities Funded in 1985 Under the NWPA	27
	Table 3.1: DOE's Decisions on Grant Requests From Inception Through 1985	34

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<b>Figures</b>		
	Figure 1.1: Locations Under Investigation for Nuclear Waste Repositories	10

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**Abbreviations**

CFR	Code of Federal Regulations
CPO	Crystalline Repository Project Office
DOE	Department of Energy
GAO	General Accounting Office
GLITC	Great Lakes Inter-tribal Council
MRS	monitored retrievable storage
NCAI	National Congress of American Indians
NCSL	National Conference of State Legislatures
NWF	Nuclear Waste Fund
NWPA	Nuclear Waste Policy Act
OCRWM	Office of Civilian Radioactive Waste Management
OMB	Office of Management and Budget
RCED	Resources, Community, and Economic Development Division

# Introduction

The Nuclear Waste Policy Act (NWPA) of 1982 requires the Department of Energy (DOE) to select sites, perform underground testing, and construct geologic repositories for the permanent, deep underground disposal of highly radioactive nuclear waste. Such waste, primarily spent nuclear fuel generated by nuclear reactors, can remain hazardous for hundreds to thousands of years. The Congress enacted the NWPA to ensure the permanent isolation and safe disposal of these materials.

In enacting this law, the Congress recognized that "State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel." The NWPA provides for state and Indian tribe participation in repository siting decisions and establishes a financial assistance program so that these parties can participate in DOE's program. DOE has approved over \$23 million in grants to states, Indian tribes, and associations since passage of the act. This report presents our evaluation of DOE's financial assistance program through fiscal year 1985.

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## Financial Assistance Provided Through Fiscal Year 1985

In 1982 the Congress found that federal efforts to permanently solve the problem of high-level radioactive waste had not been adequate and that this waste had become a major source of public concern. For example, state and local political opposition, as well as technical questions concerning the site's safety, had already halted the government's efforts to site a waste repository in Lyons, Kansas, in the early 1970's. To help overcome the public's concerns, the NWPA provides for extensive consultation with affected parties during the steps preceding the President's recommendation to the Congress of a final repository site. It also provides the selected state or Indian tribe on whose land a site is located the opportunity to disapprove the final repository site; the Congress, however, can override the disapproval. Thus, state, Indian tribe, and public participation in DOE's repository program is important to provide some assurance of the safety and fairness of DOE's siting decision.

Currently, DOE is investigating 23 states for potential repository sites, as discussed below. Of the \$23 million in grants approved through 1985, \$21 million went to 22 of the 23 states and 3 affected Indian tribes.

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## First Repository Program: Largest Part of Grants Funded

The NWPA authorizes the Secretary of Energy to construct one repository. DOE hopes to have this repository in operation by 1998. From six states under study for this repository's location (see fig. 1.1), DOE has proposed to recommend three sites in Nevada, Texas, and Washington to

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the President for detailed testing. This recommendation, initially proposed in December 1984, is scheduled for the spring of 1986.

DOE has obligated almost \$14 million to the six states under study for the first repository—Louisiana, Mississippi, Nevada, Texas, Utah, and Washington—and the three Indian tribes designated as “affected”<sup>1</sup> — the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Yakima Indian Nation.

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**Second Repository Program:  
Most Grant Recipients**

The NWPA also provided for siting and testing a second repository. DOE's site investigations for a second repository are in the initial stages; the target date for the President to request congressional approval of a specific construction site is 1997. DOE has been concentrating its initial study on 17 states in the Eastern United States with crystalline rock (granite) formations. (See fig. 1.1.)

All but 1 of the 17 states that DOE is currently investigating for a second waste repository have received financial assistance under the NWPA.<sup>2</sup> These grants range from a low of \$41,000 to Virginia to a high of \$590,000 to Wisconsin (see table 1.1).

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<sup>1</sup>An “affected” Indian tribe, as defined in section 2 of the act, is one within whose reservation a repository, a monitored retrievable storage facility, or a test and evaluation facility is proposed to be located or 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 such a facility, as determined by the Secretary of the Interior upon petition from the tribe's appropriate government official. For example, the Nez Perce Indian tribe of Idaho was designated as an affected Indian tribe because Interior found that the proposed site of a nuclear waste repository in Hanford, Washington, posed a potential threat to the tribe's off-reservation fishing rights in the Columbia River Basin. These rights arose out of a congressionally ratified treaty.

<sup>2</sup>Pennsylvania has not requested financial assistance. According to the Director of Pennsylvania's waste program, the state had already performed much of the work being proposed by other second repository states and did not see how it could benefit from a grant.

Figure 1.1: Locations Under Investigation for Nuclear Waste Repositories

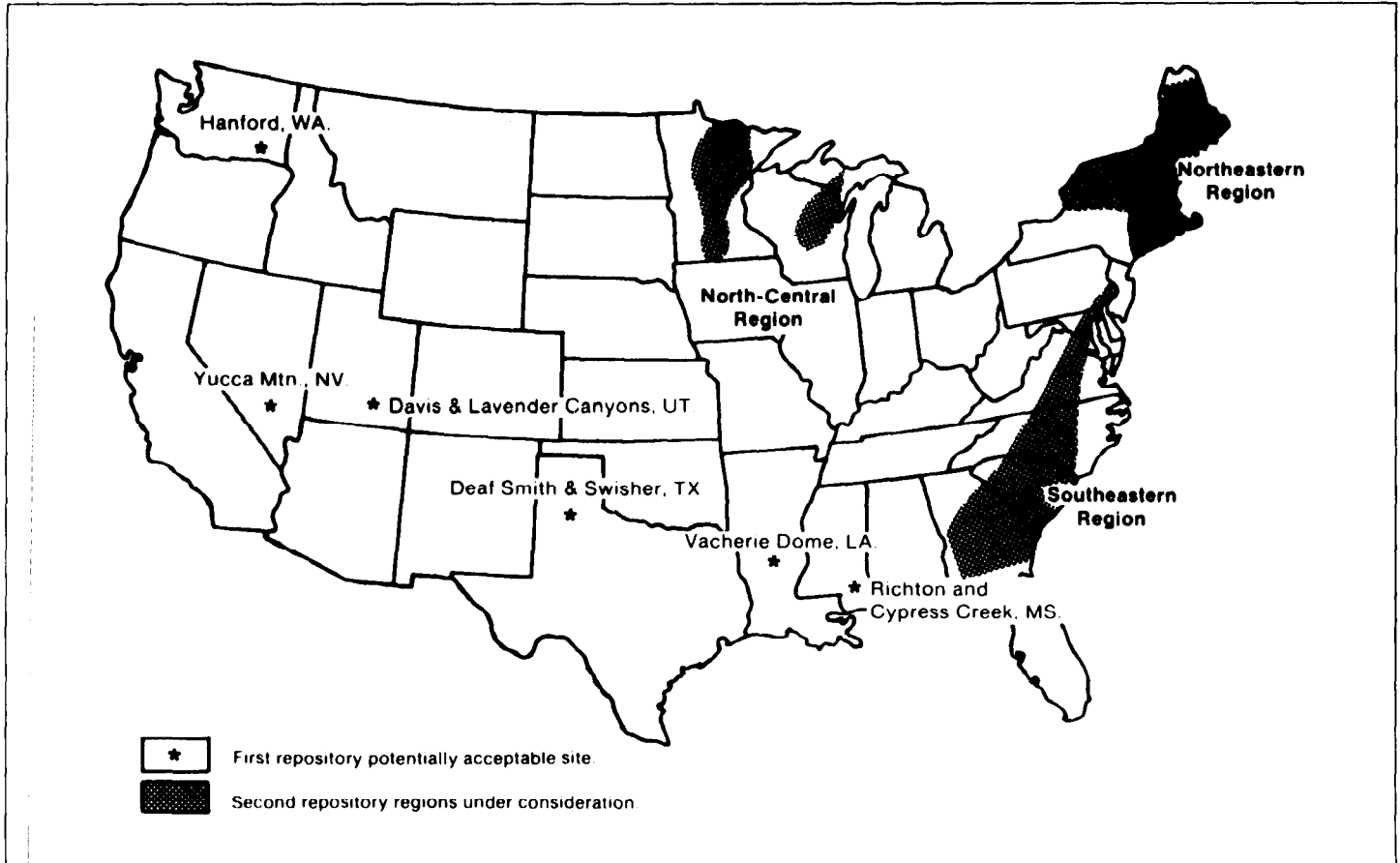


Table 1.1: DOE Grant Funds Obligated Under the NWSA Through 1985\*

Grantee	Dollars in millions	
	Inception through 1984	1985
<b>First Repository Program</b>		
Louisiana	\$533	\$300
Mississippi	675	1,116
Nevada	996	1,899
Texas	300	300
Utah	624	1,035
Washington (state)	1,036	1,434

**Chapter 1  
Introduction**

<b>Grantee</b>	<b>Year</b>	
	<b>Inception through 1984</b>	<b>1985</b>
Washington (legislature)	•	247
Nez Perce Tribe	18	508
Confederated Tribes of the Umatilla Indian Reservation	273	547
Yakima Indian Nation	1,154	993
<b>Total</b>	<b>\$5,609</b>	<b>\$8,380</b>

**Second Repository Program**

Connecticut	\$195	\$122
Georgia	112	135
Maine	69	157
Maryland	32	71
Massachusetts	169	240
Michigan	274	113
Minnesota	362	189
New Hampshire	90	175
New Jersey	162	63
New York	246	197
North Carolina	298	166
Rhode Island	100	108
South Carolina	252	160
Vermont	52	67
Virginia	41	•
Wisconsin	342	248
<b>Total</b>	<b>\$2,796</b>	<b>\$2,211</b>

**Monitored Retrievable Storage**

Tennessee	•	1,404
<b>Total</b>	<b>\$0</b>	<b>\$1,404</b>

**Associations**

National Conference of State Legislatures (NCSL)	217	222
National Congress of American Indians (NCAI)	205	211
<b>Total</b>	<b>422</b>	<b>433</b>
<b>Total all grants</b>	<b>\$8,827</b>	<b>\$12,426</b>

\*DOE first began issuing these grants around mid-1983. Budget periods for the first repository grants generally conformed to the fiscal year in 1984 and 1985. Budget periods for second repository grants generally conformed to the calendar year in 1984 and 1985.

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## Other Grants in Support of the Repository Program and Monitored Retrievable Storage

DOE has also provided grants totaling \$855,000 to two national associations—the National Conference of State Legislatures (NCSL) and the National Congress of American Indians (NCAI)—to support DOE's repository program.

Besides authorizing facilities for permanent waste disposal, the NWPA also requires DOE to submit a proposal to the Congress on monitored retrievable storage (MRS) facilities. The act provides that such facilities, if authorized by the Congress, be designed to provide temporary isolation and easy recovery of waste until its permanent disposal. In April 1985 DOE announced its plans to propose that an MRS be authorized in Tennessee. As a result, Tennessee has received a grant of \$1.4 million to evaluate DOE's MRS program.

In summary, through the end of 1984 DOE had obligated<sup>3</sup> approximately \$8.8 million in funds to 27 grant recipients. This amount increased by 41 percent to approximately \$12.4 million in funds obligated to 28 recipients through 1985. An additional \$2.3 million in funding has been approved but not yet provided to the grantees. Table 1.1 shows the level of funding obligated to each state, tribe, and association.

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## Legislation, Regulations, and Internal Guidance Governing Financial Assistance Under the NWPA

Sections 116 and 118 of the NWPA require DOE to make financial assistance grants from the Nuclear Waste Fund (NWF)<sup>4</sup> available to states and affected Indian tribes for a variety of specific activities and at specified times. Section 116 requires DOE to make grants available to each state notified—both the governor and the state legislature—that a “potentially acceptable site” for a waste repository is contained within its borders. In February 1983 the Secretary of Energy notified six states—Louisiana, Mississippi, Nevada, Texas, Utah, and Washington—that they contain such sites. Section 118 requires DOE to also make grants available to each affected Indian tribe notified of such sites. Three tribes have been designated “affected”: the Nez Perce, the Umatillas, and the Yakima Indians, in accordance with the act's provision. These tribes are located near the potential repository site at Hanford, Washington.

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<sup>3</sup>Funds “obligated” represent funds earmarked by DOE for the grantee during a particular period from the total funding approved for the grantee.

<sup>4</sup>The NWF, established by section 302 of the act, consists of fees paid by generators and owners of nuclear waste.

In addition to the grants required by NWPA Sections 116 and 118, DOE is awarding grants to the second repository states, associations, and the state of Tennessee. The purpose of these "discretionary grants," according to DOE, is to provide some "mutual benefit" to DOE and grantees. In addition, DOE believes these grants will foster state participation in the planning and development of the second repository (or, in the case of Tennessee, the MRS), and will further the spirit of consultation and cooperation, an important feature of the NWPA. The grants to the second repository states, associations, and the state of Tennessee have been made under this discretionary authority.

All DOE program offices, awarding offices, and grantees must comply with DOE's Financial Assistance Regulations (10 CFR 600), which establish policies and procedures for all DOE grant awards and administration. The regulations are the general administrative requirements for grantees and refer, in part, to the requirements for performance reports, financial reports, procurement methods, and audits. The regulations further state that eligibility for DOE financial assistance shall be determined based on applicable law or program rule.

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## **Internal Grant Guidelines**

DOE defined its policy on grants to repository states and tribes in September 1984 when the Office of Civilian Radioactive Waste Management (OCRWM) issued revised internal guidelines for implementing the act's provisions for financial assistance for repository programs. (OCRWM's initial guidelines, issued in June 1983, did not address grants to states with sites recommended for detailed site testing or provide detail on activities fundable for second repository states.) The revised guidelines are intended to

- assist DOE's field offices by establishing a framework for awarding the grants,
- ensure that states and Indian tribes are treated equitably, and
- ensure that activities funded by the grants are consistent with the act.

These are the only grant guidelines OCRWM has issued and they apply only to the first and second repository grant programs. The guidelines are not intended to address every funding situation; rather, they provide a policy "framework" for grant decisions. In commenting on our report, DOE noted that it has issued internal guidelines for interactions with communities and local governments which discuss financial assistance.

OCRWM (the DOE headquarters office responsible for carrying out the act), four field offices, and headquarters procurement officials are involved in the negotiation and award of NWPA grants. (Table 1.2 shows the grants each DOE office has awarded and administers under the NWPA.) In commenting on our report, DOE noted that the Director of Procurement and Assistance Management, under the Assistant Secretary, Management and Administration, makes policy with respect to overall grant administration, through DOE regulations and orders.

According to OCRWM's guidelines, DOE field offices are responsible for reviewing each grant application for the repository program and negotiating any necessary changes. Field offices are expected to consult with headquarters in making final judgments on appropriate funding levels and to provide copies of grant documents to headquarters for review and concurrence.

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## Objectives, Scope, and Methodology

The objective of our work was to determine how DOE was implementing the financial assistance program under the NWPA. Our review focused on three issues:

- Decisions on who received grants under the NWPA and for what activities (ch. 2).
- The level of financial assistance provided (ch. 3).
- DOE grant administration and oversight (ch. 4).

Our review included all grants awarded under the NWPA through fiscal year 1985. In examining DOE's decisions on who and what to fund and how much assistance to provide, we reviewed DOE's regulations, internal financial assistance manual and grant guidelines, 1984 and 1985 grant proposals and awards, cost analyses, and other internal documents supporting DOE's decisions. We interviewed DOE officials, both in OCRWM headquarters and at each of the four applicable DOE field offices, responsible for establishing NWPA grant policy and administering this grant program. We also interviewed officials from 24 states,<sup>5</sup> as well as the 3 Indian tribes and 2 national associations that have received grants. Our discussions with these grantees focused on their grant requests and any DOE modifications, activities undertaken with the grant funding, and any concerns they had with DOE's administration of the grant program.

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<sup>5</sup>Specifically, the 23 state grantees listed in table 1.1 and the state of Pennsylvania.



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In evaluating DOE's oversight of grantees' administrative requirements, we narrowed our review to the four requirements of DOE's Financial Assistance Regulations (10 CFR 600) that would apply to all grantees at this stage of the program: financial reports, performance reports, procurement procedures, and audit requirements.<sup>6</sup> We reviewed the terms of each grant's reporting requirements and obtained copies of grantees' reports filed with DOE. We then compared the due dates of the reports with actual filings, if submitted. Our analysis of compliance with procurement procedures was based on a review of grant files and discussions with DOE contracting officials responsible for the individual grants.

This report was distributed for comment to DOE and its response has been included as appendix I. Our work generally reflects the status of program activities through September 1985 and was performed in accordance with generally accepted government auditing standards.

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<sup>6</sup>Other parts of these regulations, such as patent and bonding requirements, are more applicable to technology development or construction projects and do not apply to this financial assistance program.

**Table 1.2: Grants Awarded by Various DOE Offices\***

**Chicago Operations Office:**

Salt Repository Project Office (Columbus, Ohio)  
Louisiana Texas  
Mississippi Utah

**Crystalline Repository Project Office (CPO)**

Connecticut	New Jersey
Georgia	New York
Maine	North Carolina
Maryland	Rhode Island
Massachusetts	South Carolina
Michigan	Vermont
Minnesota	Virginia
New Hampshire	Wisconsin

**Nevada Operations Office:**

Waste Management Project Office  
Nevada

**Oak Ridge Operations Office:**

Tennessee

**Richland (Washington) Operations Office:**

Basalt Waste Isolation Project Office	
Washington State	Nez Perce Indian Tribe
Washington State Legislature	Yakima Indian Nation
Confederated Tribes of the Umatilla Indian Reservation	

**DOE Headquarters:**

Office of Civilian Radioactive Waste Management  
National Conference of State Legislatures  
National Congress of American Indians

\*OCRWM and the project offices are the responsible program offices for these grants that were awarded by DOE procurement officials in each operations office and headquarters.



# Better Guidance Needed to Determine Who and What Should Be Funded

DOE has approved over \$23 million in grants to 23 states, 3 Indian tribes, and 2 associations since passage of the Nuclear Waste Policy Act. Nineteen of these grantees are being funded under DOE's general discretionary authority to spend money from the Nuclear Waste Fund, rather than under the specific grant provisions of the act. Thus, most of DOE's current grants are being awarded at the Secretary's discretion. In addition, OCRWM's grant guidelines do not address all grants awarded under the Secretary's discretionary authority.

In making discretionary grant awards, DOE has funded second repository states and only recently decided to fund Indian tribes. In addition, DOE has decided to fund associations, but it has not provided assistance directly to local communities in states under study for a repository or to states bordering those under study.

Some grantees and DOE disagree on what activities should be funded and on how to define various activities which both the act and OCRWM's grant guidelines stipulate are eligible for funding. In addition, one DOE field office has funded activities for second repository states but DOE has not allowed funding for similar activities in first repository states. We believe DOE needs to provide better guidance on what activities can be funded.

## Discretionary Funding Is Not Being Provided to All Parties Potentially Affected by Waste Program

DOE has provided discretionary grants to 16 second repository states. Not until November 1985, however, did DOE solicit grant applications from 28 Indian tribes associated with second repository states, and it has placed certain limitations on tribal grants which it did not place on state grants. Further, DOE has not extended discretionary funding directly to local communities in repository states or to neighboring states.

## Indian Tribes' Experiences in Obtaining Financial Assistance

DOE expanded its grant program and extended grants to states under investigation for a second repository, even though those states have not yet been formally notified of any potentially acceptable site within their boundaries. Recently, DOE decided to award grants to Indian tribes in these states also.

With regard to grants to second repository states and Indian tribes, DOE determined that the Secretary had the discretion under Section 302 of

NWPA<sup>1</sup> to award grants so long as the activities funded are consistent with the purposes of the NWPA. In February 1983 the Manager, CPO, concluded that state review of DOE's activities in siting a second repository are consistent with the NWPA. As is required by DOE's regulations whenever grants are solicited from "... less than all otherwise eligible applicants," CPO developed a statement to justify restricting the eligibility for such grants to the 17 second repository states. In March 1983, CPO solicited grant applications from these 17 states.

According to the Manager, CPO, for a grant to be made, there must be a significant mutual benefit to early state or Indian tribal involvement in the repository development process. CPO had not solicited proposals from or funded Indian tribes because, according to the project manager, (1) the Indian tribes do not have the resources and technical basis to perform activities of mutual benefit to the government and tribe (e.g., review and comment on DOE documents, plans, and reports), (2) without the designation of "affected" Indian tribe, DOE has no basis for determining which of the tribes in the second repository states should be awarded financial assistance, and (3) CPO lacks the resources to fund and administer grants to the tribes. Administering these grants would be burdensome, according to this official, because initially the grants to second repository states were being administered by only three people, and it was possible that 50 tribes could be involved.<sup>2</sup> This CPO official believes that administering grants for the 16 states (one state, Pennsylvania did not request a grant) as well as to these tribes would be impossible. Therefore, CPO decided to handle tribal requests on a case-by-case basis, but it has not funded any requests.

DOE has not applied the same rationale in considering grants to states and tribes in the second repository program. For example, CPO did not require that individual states demonstrate that their proposals provide some mutual benefit to DOE. Rather, CPO considered financial assistance important "... to initiate a good working relationship between DOE and the states so that states are involved in the project early on." CPO invited states' participation because they "... could provide DOE with comments representing the opinions and/or positions of the states ..." on DOE's program.

<sup>1</sup>Section 302 authorizes the Secretary to make expenditures from the Nuclear Waste Fund for purposes of radioactive waste disposal activities under the act.

<sup>2</sup>In July 1983 the Bureau of Indian Affairs narrowed this group by identifying 14 Indian tribes within the second repository states that could qualify as "affected" because they possessed off-reservation treaty rights arising out of congressionally ratified treaties.

With respect to CPO's position that Indian tribes lack technical expertise or are too numerous to be identified, we believe that grant funding would allow Indian tribes to obtain technical assistance, if needed, through contractors, as the three tribes funded under the first repository program have done. Moreover, as DOE narrows the areas of consideration for the second repository program, the number of potentially affected tribes will become more apparent. For example, in September 1985, NCAI testified before the House Interior and Insular Affairs Committee that 16 tribes were located in the regions being considered for a second repository.

On the issue of CPO's ability to administer an increased number of grants, CPO's plans to offer fiscal year 1986 funding to 28 tribes to review DOE's draft area recommendation report—which narrows the areas under consideration for the second repository— would indicate that CPO has the resources to administer additional grants. As has been stated in testimony from the Minnesota Indian Affairs Council:

“DOE set a precedent for funding crystalline repository states in advance of the identification of potentially acceptable sites. At the same time, DOE has argued that tribal funding is inappropriate because of the preliminary nature of the current crystalline program. The funding precedent cannot be applied selectively; it must be extended to interested and affected tribes as well. There is no reasonable or legal basis for establishing a different test or set of criteria for tribal funding, thereby depriving the tribes of the status that DOE has extended to the states.”

DOE's grant program has provided different funding opportunities for states and Indian tribes. Specifically, (1) CPO solicited grant proposals from Indian tribes in November 1985 (this was done for second repository states in March 1983) and (2) CPO has sent certain DOE documents and draft reports to the Indian tribes and states for their information. CPO requested the states but not the tribes to officially review and comment on these documents.

In October 1985 the Associate Director, OCRWM's Office of Geologic Repositories, advised CPO that it had decided to make grant funds available to second repository tribes (1) whose reservations are underlain by crystalline rock under study by DOE or (2) with federally recognized off-reservation rights within the 17 states under study. OCRWM provided a list of 28 tribes for solicitation. Headquarters also placed several restrictions on the grant solicitations. The grants are to be

- one-time funding,
- for a 3-month period,

- limited to \$30,000, and
- for purposes of review of one specific CPO report—the area recommendation report—and related documents.

Headquarters noted that these proposed awards will not constitute commitments for future funding. CPO sent letters of solicitation to the tribes on November 6, 1985. According to an OCRWM official, DOE limited tribal participation to the review of the one report in an attempt to expedite the solicitation process and provide grants to tribes as soon as possible.

In contrast to the limitations discussed above, CPO has offered funding up to \$190,000 to second repository states for a 1-year period for purposes of (1) reviewing documents issued by DOE pursuant to NWPA, (2) reviewing CPO reports and project-related data, (3) preparing for and participating in workshops, and (4) related activities proposed by individual states. In addition, CPO has advised states that they will be given an opportunity to submit revised requests for additional 1986 funding, if their state contains a candidate area for further study. In this regard, DOE tentatively identified narrower areas of consideration for the second repository in January 1986 and plans to finalize this decision in the spring of 1986.

DOE's approach to limiting the activities for which tribes can receive assistance will not provide them with an opportunity to participate in all aspects of the second repository program. During the act's development, two Senate committees reported that an underlying principle governing state and Indian participation in the waste program was that ". . . all affected states and Indian tribes should be treated equally, and that no single state or Indian tribe should enjoy advantage over another." In addition, OCRWM's internal grant guidelines were issued to ensure that states and Indian tribes are treated equitably. These guidelines do not distinguish between states' and Indian tribes' eligibility for grants.

#### DOE Actions on Tribal Requests for Funding

As of September 1985, CPO had received grant requests from the Oneida tribe of Wisconsin, the Great Lakes Inter-Tribal Council (GLITC) consisting of a group of tribes located in Wisconsin,<sup>3</sup> and the Minnesota Indian Affairs Council. In August 1983 the Oneida tribe requested funding from DOE. In November 1983 CPO notified the tribe that its request had been denied because DOE had determined that a grant would

<sup>3</sup>GLITC consists of the following Wisconsin tribes: Ojibway, Oneida, Potawatomi, Stockbridge-Munsee, and Winnebago.

not result in sufficient mutual benefit. CPO based this determination on (1) the tribe's distance from crystalline rock formations under study and (2) the assumption that data that the tribe proposed to provide would be too detailed for DOE's phase of screening studies. GLITC requested funding in February 1985, primarily for a communications project intended to advance the tribes' understanding of the nuclear waste repository program. According to GLITC and DOE officials, informal discussions have indicated that the request will not be funded because DOE believes the work involved in the proposal is duplicative of work being done by NCAI. The GLITC official said he did not believe the work duplicated others' efforts and that NCAI does not speak for the tribes of Wisconsin. On June 1, 1985, however, GLITC submitted a revised proposal to CPO, which has not yet made a formal decision on the proposal. On August 21, 1985, the Minnesota Indian Affairs Council submitted a proposal to CPO, which has not reached a decision on funding.

Officials from both Minnesota and Wisconsin, second repository states with the largest number of tribes, told us that their states had attempted to assist the Indian tribes in becoming involved in the repository program. Both officials believed, however, that the tribes should be funded since the states are funded. Tribes agree with this position since they do not believe that non-Indian state representatives can speak for or represent their best interests.

### **Parties Not Receiving Assistance**

In addition to grants for the second repository program, DOE has awarded discretionary grants to two national associations and the state of Tennessee, but it has not provided grants to other interested parties. Also, OCRWM has no guidelines for awarding grants to any party not under consideration as a host location for a permanent waste repository.

According to the Director, OCRWM's Office of Policy Integration and Outreach, DOE has funded national associations because they represent constituencies named in the act—state legislatures and Indian tribes—and because DOE finds the associations useful in holding neutral meetings, which allow DOE to interact with the associations' memberships. According to DOE's grant solicitation for Tennessee, the purpose of giving financial assistance at this time to Tennessee is to provide that state with sufficient ability to (1) understand the potential impacts of an MRS facility and (2) form an independent assessment of its acceptability.



On the other hand, DOE has not yet funded potentially affected parties, such as states neighboring a potential repository site and local communities. At least one other state—Oregon—that believes it could be affected by a potential repository in Washington has requested but not received direct financial assistance. DOE believes Oregon's present needs should be financed through Washington State's grant since Oregon is not a state under consideration for a repository. In September 1985 Washington State agreed to provide \$20,802 to Oregon from Washington's grant to help identify potential impacts from a repository. Once three sites are approved for characterization in early 1986,<sup>4</sup> DOE will review the appropriateness of providing financial assistance to neighboring states.

Local communities have also expressed interest in receiving DOE funds. DOE does not currently provide grants directly to local communities for their participation, and this is likely to become a greater concern as sites undergo characterization and DOE's activities in local communities increase. The act (sec. 116 (c)) requires DOE to provide direct financial assistance to local governments once a site is approved for characterization. Payments to local governments are to be equal to the amount they would have received were they able to tax DOE's site characterization activities, but are not for mitigation of the impacts of DOE's repository testing activities. In commenting on our report, DOE noted that grantees have the discretion to use these in-lieu-of-tax payments for impact mitigation.

In March 1985 OCRWM's Director testified before the House Interior Committee that DOE expects states to distribute any funds, other than payments in lieu of taxes, needed by local communities from each state's grants. For example, the state of Nevada received a grant in 1985 that included funds to be provided to three local communities to review DOE documents and participate in information meetings. However, according to Clark County, one of the communities funded through the Nevada grant, the community would not be assured of funds to participate if the state administration changed. With respect to local community funding for second repository states, the Manager of CPO believes that funding local communities is not yet appropriate because siting activities for a second repository are still at a regional level and specific areas within these states for investigation have not been identified. CPO plans to identify such areas, however, in 1986.

<sup>4</sup>Site characterization, which occurs after potentially acceptable sites have been identified and evaluated, refers to activities undertaken in either the laboratory or the field to study the geologic condition of a potential repository site. Such tests include borings, surface excavations, exploratory underground shafts, and in-situ tests to evaluate the suitability of a site for location of a repository.

DOE's June 1985 Mission Plan stated that it is the decision of a state grantee to determine whether to distribute part of its funds to local communities. In the grant award to Tennessee, DOE actively encouraged local communities to seek assistance from the state. DOE has not actively encouraged other local communities to seek financial assistance. However, in September 1985 OCRWM advised its field offices to encourage the states to provide assistance to local communities and to encourage local governments to seek such assistance. OCRWM's guidance to the field also states, however, that OCRWM will consider alternate means to fund local governments "only" if funding through the state cannot be provided.

The Congress stated in the NWPA that "State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel." Financial assistance is a way to enhance or ensure this participation. Providing opportunities for potentially affected parties, such as Indian tribes, border states, or local communities, to receive direct funding is also in keeping with DOE's commitment in the Mission Plan to "... provide frequent opportunities, both formal and informal, for the fullest possible participation [of affected parties] in the program."

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### Guidance on What Activities Can Be Funded Has Not Been Adequate

Both the NWPA and OCRWM's internal guidelines specify various activities eligible for funding. However, different interpretations have arisen over what this guidance means. OCRWM officials believe the field has the flexibility to fund activities other than those specifically listed in OCRWM's guidelines, because the guidelines are intentionally designed to be flexible enough to deal with changing program conditions.

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### Some Grantees and DOE Disagree on What Activities Should Be Funded

The NWPA does not define what was meant by the terms it uses to identify activities that are eligible for funding, such as "reviewing" or "evaluating" DOE's program. For example, section 116(c)(1)(B) of the act requires DOE to make grants to each state recommended for site characterization. The act specifies that those grants may be only for purposes of

- reviewing activities;
- developing an impact assistance request;
- engaging in monitoring, testing, or evaluating DOE's site characterization program;
- providing information to residents; and
- requesting information from or commenting on DOE's activities.

First repository states would like to independently verify DOE's conclusions and data about a particular site through their own testing programs. DOE believes that primary data gathering (for example, drilling boreholes) is not a state responsibility and that states can be funded only to monitor DOE's field work. However, this issue has already resulted in litigation against DOE. The state of Nevada sued DOE over a \$1.5 million denial of funding for proposed hydrologic and geologic studies.<sup>5</sup> DOE decided that these studies were beyond the scope of activities DOE is prepared to fund and duplicative of work already being conducted by the program. Nevada believes these activities are necessary and reasonable to allow the state the ability to adequately analyze DOE's studies. Nevada believes that DOE "... does not have the discretion to determine what state activities may be funded (so long as they are authorized by the statute or written agreement)." DOE, on the other hand, does not believe that the Congress intended mandatory funding of any activity a state feels is necessary to its participation.

On December 2, 1985, the Ninth Circuit Court of Appeals disagreed with DOE and found that the NWSA supports funding of the state's planned testing so long as it is (1) "... essential to an informed 'statement of reasons' for disapproving a site under sec. 116(b)..." and (2) "... reasonable—scientifically justifiable and performed by demonstrably competent contractors— and cannot unreasonably interfere with or delay DOE's own activities." The court also determined that certain sections of DOE's internal guidelines on nuclear waste repository program grants are unlawful because "... they undermine the independent oversight role that the Congress envisioned for the states."

### **Activities Funded Have Varied Between Grantees**

Generally, all states and affected Indian tribe grantees have received funding for activities associated with (1) reviewing and commenting on DOE documents, plans, and reports and (2) preparing for and participating in DOE-sponsored meetings and workshops. First repository grants have also been awarded for activities related to (1) monitoring and evaluating DOE's activities, (2) preparing to negotiate a consultation and cooperation agreement,<sup>6</sup> and (3) disseminating program information to state and tribal officials as well as the general public. In addition to

<sup>5</sup>State of Nevada v. John Herrington, No. 84-7846 (9th Cir. December 2, 1985).

<sup>6</sup>Section 117 of the act provides that states or affected Indian tribes that have been notified that they contain potentially acceptable sites for a repository may request the negotiation of a binding written agreement called a consultation and cooperation agreement. These agreements would specify the procedures by which DOE will consult and cooperate with the state or tribe in an effort to resolve its concerns regarding the repository program.

these activities, DOE funded nine second repository states for activities associated with compiling and coordinating technical data. (See table 2.1.)

The associations have generally received funding for activities associated with (1) disseminating program information to their constituencies and (2) liaison between DOE and the associations' membership.

OCRWM's policy is to fund activities depending primarily upon the phase of the repository program a state or tribe is in and also a requester's desired level of participation. As a result, more activities are fundable for first repository states and tribes (Phase II) than for second repository states (Phase I) since DOE's first repository program is more advanced. However, we found that states in the same phase of the repository program have received funding for different types of activities. This situation is not specifically addressed in OCRWM's guidelines. For example, in mid-1984 the Nevada and Richland Operations Offices funded Nevada and the Yakima Indians, respectively, to perform independent studies. DOE's Columbus, Ohio, office denied funding in September 1984 for Utah to do independent studies. According to Nevada Operations Office officials, independent studies were funded for Nevada and the Yakimas because DOE's activities at the Nevada and Washington sites had been more extensive than those at the salt sites.

A DOE Columbus official said that DOE has to address the question of whether states should be funded to review what DOE does or to perform their own tests. He said that Columbus sees Utah in only a "review mode" at this time and that the situation had been discussed with OCRWM's Director, particularly the question of what types of activities should be funded. In 1986 OCRWM plans to increase project activities at the salt site recommended for characterization and increase financial assistance to the affected state. As discussed on p. 29, we also found differences between activities funded for the second repository program but denied for the first repository program.

**Table 2.1: Activities Funded in 1985 Under the NWPA**

Grant recipient	Activity					
	Reviewing & commenting on DOE documents	Attending meetings & workshops	Negotiating a consultation & cooperation agreement	Disseminating program information to the public	Monitoring & evaluating DOE activities	Compiling & coordinating technical information
<b>First Repository Program</b>						
Mississippi, Utah, Washington (state), Nez Perce Tribe, Confederated Tribes of the Umatilla Reservation, Yakima Indian Nation	X	X	X	X	X	
Louisiana, Nevada, Texas	X	X		X		
Washington (legislature)		X		X		
<b>Second Repository Program</b>						
Maryland, Michigan, Minnesota, South Carolina, Wisconsin	X	X				
Rhode Island	X	X		X		
Connecticut, Georgia, Maine, New York, North Carolina, Vermont	X	X				X
Massachusetts, New Jersey, New Hampshire	X	X		X		X
<b>Associations</b>						
NCAI	X			X		
NCSL <sup>a</sup>	X			X		

<sup>a</sup>Although grant was awarded in July 1984, these activities have been funded through July 1985.

### Headquarters Has Not Ensured Consistency Among Grant Awards

OCRWM's grant guidelines state that individual project offices are expected to deal with funding requests on a case-by-case basis. One of the major changes DOE made in the September 1984 revised guidelines was to require all project offices to obtain OCRWM headquarters review and concurrence before approving grant awards. This review is intended to increase consistency in the types of activities funded through the financial assistance program. We found that in 4 of 16 instances for the second repository program, headquarters had concurred in grant awards but raised concerns about inconsistencies in the grant proposals which the field did not reconcile before funding the grants. OCRWM officials told us that while there had been some initial disagreement over these awards, headquarters had withdrawn its objections and agreed to fund these activities.

Some project offices are following OCRWM's direction in awarding grants. For example, in November 1984 the Nevada Operations Office requested guidance from DOE headquarters with respect to policy questions (e.g., allowable activities, appropriate levels of funding) raised by the state of

Nevada's fiscal year 1985 grant request. DOE headquarters supplied the operations office with the requested policy guidance, which in turn was used in the final decision to deny \$1.5 million of Nevada's fiscal year 1985 grant request.

Although MRS-related activities are not addressed in OCRWM's grant guidelines, headquarters has also advised the field that funding for such activities is not authorized under the act for either first or second repository states.<sup>7</sup> Likewise, DOE's policy was to deny funding to states for defense-waste related activities until April 1985, after the President decided that defense waste would be commingled with civilian waste in the repositories constructed under the NWPA. The field offices followed these policy positions in making grant awards.

We found other examples, however, where headquarters advice changed with respect to grant awards. For example, nine second repository states received funding in 1985 for activities associated with compiling and coordinating technical data to be submitted to DOE. OCRWM's grant guidelines do not provide for such funding. According to a CPO official, these activities improve the states' ability to review and comment on DOE documents. He told us that OCRWM headquarters agrees that CPO can fund such activities.

We found, however, that OCRWM had initially objected to funding these activities in four cases. OCRWM noted in evaluations of two states' proposals (Connecticut and Vermont) that

"... this type of activity is not provided for in DOE's financial assistance guidelines and is not consistent with first repository funding activities. It may be more appropriate, therefore, to fund this activity through a contract, as opposed to a grant."

In another example, OCRWM believed activities planned by two states (New Hampshire and Massachusetts) were more appropriate for a later phase of the program.

Despite these initial concerns raised by headquarters review, the Chicago Operations Office funded these activities in fiscal year 1985, after CPO discussions with headquarters and receiving their concurrence. According to OCRWM officials, headquarters withdrew its objections to funding these proposals as a result of additional information developed through discussions with the field.

<sup>7</sup>As noted earlier, DOE has funded Tennessee for MRS activities because it is the preferred location for an MRS facility. Tennessee is not a first or second repository state.

DOE actions are sending conflicting signals to first and second repository states. The above grant awards differ from grant decisions made for the first repository program, which did not allow funding for independent data collection. Specifically, Connecticut and Vermont were funded to compile and analyze existing geologic data for DOE's use. New Hampshire received funding in 1985 to conduct environmental data analysis, and Massachusetts received the entire amount of funds requested for contractors to perform research and independent data collection.

## **Conclusions**

The NWPA provides that state and public participation in the repository program is essential in promoting public confidence in the safety of disposal of radioactive waste. Financial assistance grants to affected parties are a way to enhance or ensure this participation. Moreover, state and Indian participation in the waste program is predicated upon the principle that all affected states and Indian tribes should be treated equitably.

In this respect, DOE has used its discretionary funding authority to award grants to second repository states, national associations, and the state of Tennessee. Also, DOE has recently provided Indian tribes in the second repository program an opportunity to participate in the planning and development of waste repositories. However, in soliciting proposals from Indian tribes, DOE will not provide for their participation in all aspects of the second repository program. DOE limited their participation to the review and comment on one specific siting report. This limitation was based on DOE's attempt to expedite the solicitation process and provide grants to tribes as soon as possible.

OCRWM's internal guidelines provide field offices general policy guidance for grant awards and administration under the NWPA. They were developed to help ensure consistency between activities funded and the act. However, these guidelines for the first and second repository programs have not ensured consistent decisions on who receives grants and what activities are funded. Inconsistent grant awards may not promote public confidence in DOE's administration of the program.

Better guidance supporting grant decisions would provide a basis for determining why activities are funded for some parties but not for others. DOE needs to better define what activities are eligible for funding, so that field staff will better understand whether activities not specified in the guidelines are fundable and so that grant awards between states

and between the first and second repository programs can be more consistent.

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## **Recommendation to the Secretary**

To help ensure consistent program execution, we recommend that the Secretary of Energy direct that the Director, OCRWM, better define what activities should be funded in OCRWM's internal grant guidelines for first and second repository states.

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## **Agency Comments**

In its comments on our report, DOE stated that the primary reason for funding second repository states "... was that the states were the source of the majority of the data to be utilized by DOE in the region-to-area screening process." DOE also stated that state review of DOE's data was crucial to DOE's region-to-area screening process.

While our report reflects DOE's interest in having states review and comment on documents, we note that neither our discussions with CPO officials nor the documents supporting the Department's 1983 decision to fund the states indicate that states were a source of needed technical data.

DOE also commented that by issuing internal guidelines on interactions with local governments it is encouraging them to seek financial assistance. We disagree. The guidelines DOE has issued are directives to field offices to do numerous things, including encourage states to provide assistance to local governments and to encourage such governments to seek funding from states. DOE has not provided any evidence to date that the field has complied with these guidelines and has approached states to provide assistance to local governments or to encourage these governments to seek funding from states.





# Better Budget Information Could Provide Basis for More Reasonable Grant Awards

Through 1985 DOE approved almost \$9 million less in grant awards than grantees requested. Most grantees believe their funding has been adequate, but several states have expressed concerns that reductions have affected their ability to participate in DOE's program.

We found that DOE's decisions on grant awards have, in several instances, been influenced more by budgetary considerations than a grantee's needs or the reasonableness of proposed work. Such funding constraints, moreover, have not been developed with input from affected grantees, which we believe should be an important factor in DOE's planning. We also believe DOE could provide more detailed and realistic information to the Congress on its plans for financial assistance.

## Some States Have Expressed Concerns Over Level of Funding Provided by DOE

The NWPA does not define how much financial assistance should be provided to states and Indian tribes. The act's legislative history shows that the Congress intended to retain control over the provision of grants through the appropriations process and instructed DOE to negotiate appropriate funding levels with grantees. In a November 1984 memo to the Nevada Project Office, OCRWM's Associate Director for Geologic Repositories articulated DOE's position:

"There is no dollar limit imposed by the Act on grant awards to states and Indian tribes. Each grant must be awarded on individual merits, and how well each activity is justified under the Act and by our informal grant guidelines."

Since passage of the act, DOE has approved \$23.3 million of \$32.2 million requested by the 28 grantees. DOE has generally reduced funding requests for (1) activities that are considered to be more advanced than activities DOE has planned at a site, (2) equipment purchases, and (3) travel it considers unnecessary. (See table 3.1.)

Most of the states and all of the Indian tribes and association grantees told us that the amount of funding provided by DOE has been sufficient for their participation in the nuclear waste program. Seven states, however, expressed concerns over DOE's funding reductions.

According to state officials, two states (Nevada and Utah) did not receive sufficient funding through 1984 to adequately participate in the first repository program. A Nevada official said that because DOE reduced Nevada's grant request, the state was unable to perform some

of the technical studies (for example, impact studies on endangered species and hydrologic studies) it considered necessary. In its comments on our report, DOE explained that Nevada's request had been reduced because it included fiscal year 1985 funding and DOE cannot obligate funding for more than 1 year.<sup>1</sup> According to a Utah official, the state received insufficient funding from DOE to hire necessary expertise, develop a data dictionary (an automated document monitoring and cataloguing system), and initiate support studies. For 1985, officials from two states (Nevada and Washington) indicated that their states have received insufficient funding. As discussed on p. 25, Nevada sued DOE over whether the state may receive grant funds for independent data collection activities. A Washington official told us that DOE's refusal to fund activities associated with MRS issues could adversely affect the state's involvement in the repository program.

Only 1 of the 16 states receiving second repository grants (Wisconsin) believes it did not receive sufficient funding in 1984. According to a Wisconsin official, the state had to supplement its grant with about \$43,000 from Wisconsin's general purpose revenues because DOE would not fund activities associated with transportation issues or educational programs. DOE had reduced Wisconsin's 1984 grant by \$161,000.

For 1985 second repository grants, officials from four states (Maryland, New York, South Carolina, and Wisconsin) said they did not receive sufficient funding. According to officials from New York and Wisconsin, these states had to curtail proposed activities to meet CPO's proposed \$200,000 funding limit. New York had to limit field work associated with collecting a modern set of data on the state's crystalline rock formations, and Wisconsin had to limit its proposed activities associated with in-state travel and educational programs. (Wisconsin used \$53,000 in general revenues to fund some activities.) Officials from both Maryland and South Carolina said that insufficient funding had resulted, in part, because DOE would not fund activities related to MRS.

<sup>1</sup>DOE also noted in its comments on our report that Nevada did not resubmit a request for this denied funding in fiscal year 1985. However, our subsequent discussions with OCRWM officials and the Director, Nevada Nuclear Waste Project Office, indicated that the state did incorporate this funding into its \$3.5 million 1985 request.

**Chapter 3  
Better Budget Information Could Provide  
Basis for More Reasonable Grant Awards**

**Table 3.1: DOE's Decisions on Grant Requests From Inception Through 1985**

<b>Grantee</b>	<b>Grant funds requested</b>	<b>Grant funds approved by DOE</b>	<b>Funding reduction (increase)</b>	<b>DOE's basis for reduction<sup>d</sup></b>
<b>First Repository Program</b>				
Louisiana	\$833,319	\$833,319	\$0	
Mississippi	3,686,743	1,699,444	1,987,299	B
Nevada	5,308,390	3,169,861	2,138,529 <sup>a</sup>	B
Texas	952,457	952,457	0	
Utah	4,188,487	1,658,533	2,529,954	B
Washington State	3,037,607	2,660,107	377,500	B
Washington Legislature	254,702	247,474	7,228	F
Nez Perce Tribe	526,768	526,568	200	A
Umatilla Indians	1,498,762	872,491	626,271	B
Yakima Indians	2,577,003	2,763,544	(186,541) <sup>b</sup>	
<b>Total</b>	<b>\$22,864,238</b>	<b>\$15,383,798</b>	<b>\$7,480,440</b>	
<b>Second Repository Program</b>				
Connecticut	336,574	329,167	7,407	A
Georgia	271,037	266,611	4,426	A,C
Maine	293,940	294,593	(653) <sup>c</sup>	A,E
Maryland	127,845	105,195	22,650	D
Massachusetts	447,695	422,860	24,835	A,B,C,F
Michigan	521,183	505,415	15,768	A,C,F
Minnesota	908,268	695,631	212,637	A,B,E,F
New Hampshire	306,585	297,876	8,709	A,F
New Jersey	361,748	360,056	1,692	A
New York	472,505	466,960	5,545	B,D
North Carolina	553,123	537,975	15,148	A,F
Rhode Island	245,605	244,406	1,199	B
South Carolina	525,546	475,313	50,233	A,E,F
Vermont	128,800	128,800	0	
Virginia	60,351	41,130	19,221	A,D
Wisconsin	885,964	724,524	161,440	A,B,C
<b>Total</b>	<b>\$6,446,769</b>	<b>\$5,896,512</b>	<b>\$550,257</b>	
<b>Monitored Retrievable Storage</b>				
Tennessee	2,035,182	1,404,533	630,649	B,F
<b>Total</b>	<b>\$2,035,182</b>	<b>\$1,404,533</b>	<b>\$630,649</b>	
<b>Associations</b>				
NCSL	439,339	439,339	0	
NCAI	494,853	416,150	78,703	D
<b>Total</b>	<b>934,192</b>	<b>855,489</b>	<b>78,703</b>	
<b>Total</b>	<b>\$32,280,381</b>	<b>\$23,540,332</b>	<b>\$8,740,049</b>	

<sup>a</sup>\$525,000 of the funding reduction represents funds requested for future years. DOE approved funds only for a 1-year budget cycle.

<sup>b</sup>This figure represents a net increase in funds approved by DOE over what the tribe requested. After negotiation, DOE added funds to the proposal for additional staff, travel, and technical efforts.

<sup>c</sup>After DOE's evaluation of the proposal, some funding was increased, and some was decreased. This figure represents a net increase in funds approved by DOE over what the state requested. This resulted from arithmetical errors in Maine's budget proposal, reductions in travel funds requested, and, after negotiation, an increase in funds for additional staff.

<sup>d</sup>The symbols in this column are defined as follows:

- A = Unallowed travel
- B = Beyond an appropriate scope of work
- C = Unallowed purchase of equipment
- D = Personnel costs reduced
- E = Miscalculations in the grantee's proposal
- F = Other (e.g., disallowed equipment rental)

## **Some Grant Awards Dictated by Budgetary Constraints Rather Than Need**

Some state funding requests have been reduced to meet DOE budgetary requirements rather than on the merits of the grantee's proposed activities. This has occurred because (1) project offices are expected to fund grants from funds budgeted prior to receiving grant proposals and (2) grant budgets are not based on grantees' projected needs.

CPO received \$3.4 million for the second repository's financial assistance program in fiscal year 1985. The project office then divided this funding among the 16 grant recipients with a targeted limit of \$200,000 per grant. The project office had to specifically negotiate reductions with two states to approach this limit, even though some states requested much less than \$200,000. Likewise DOE initially told Tennessee that its request for \$2 million exceeded Oak Ridge's budget of \$600,000 for a grant to the state.

We recognize that DOE must balance the competing needs of states and tribes with the need for fiscal constraint and cost control. However, we believe that since the act has no specific funding limits, an application should first be evaluated on the basis of activities requested, and not on whether it meets or exceeds a funding limit. Moreover, DOE has not requested input from all potential grantees to be used in its development of budget requests. Rather, budget estimates are developed from field office judgments based on prior funding experience and future DOE activities planned in states. Therefore, the funding approved by the Congress does not necessarily represent a realistic assessment of grantees' needs.

DOE receives annual lump sum appropriations from the Congress to spend money from the Nuclear Waste Fund. DOE's 1986 budget request to the Congress broke this appropriation request into nine categories but did not identify specific funds requested for financial assistance. Funds for the financial assistance program are no longer presented as a separate category, as they were in the 1984 and 1985 DOE budgets. To standardize DOE's budget presentation with OCRWM's financial information system, this funding is included in the category "Regulatory and Institutional," which also covers DOE's site characterization plans and coordination with federal agencies, states, Indian tribes, and others. In fiscal year 1986, DOE requested approximately \$42 million and \$6.5 million in this area for the first and second repository programs, respectively. According to OCRWM's Acting Director, Finance and Cost Analysis Division, the actual fiscal year 1986 budget for the financial assistance program is less than these amounts—about \$14 million and \$4 million for the first and second repository programs, respectively.

Given DOE's presentation of budget data, it would be difficult for the Congress to identify exactly how much assistance DOE anticipates providing and to exercise control over grant appropriations. The Congress must rely on information requested at hearings or provided directly by DOE. At hearings on DOE's 1986 budget, for example, Members of Congress questioned OCRWM's Director, whose response was later revised to correct information about grants to Indian tribes.<sup>2</sup>

In addition, two House committees have expressed the desire that grantees be given sufficient funding to participate in DOE's program. In April 1985 the House Committee on Science and Technology stated that "DOE must accord the states and affected tribes adequate time and resources to comment on the Department's recommendations."<sup>3</sup> In May 1983 the House Committee on Appropriations stated that "... the Committee is concerned that state and local governments receive the proper financial support to meet the requirements imposed by the act."<sup>4</sup>

<sup>2</sup>The Director, OCRWM, in response to a question from the House Interior and Insular Affairs Committee, stated he believed that four or five Indian tribes, rather than three, were being funded because they were in the transportation corridor for a possible repository, rather than because of possible impacts on the tribes' treaty rights.

<sup>3</sup>House Committee on Science and Technology, Department of Energy Civilian Energy Programs Authorization Act for Fiscal Years 1986, 1987, and 1988, Report 99-55, Part 1, April 22, 1985.

<sup>4</sup>House Committee on Appropriations, Energy and Water Development Appropriation Bill, 1984, Report 98-217, May 24, 1983.

We do not believe that DOE's current presentation of budget data provides sufficient detail for these or other committees to determine that adequate or proper funding is being provided.

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## **Conclusions**

Several states have expressed concern that the level of funding provided by DOE has not been adequate to review program activities. We found that some DOE grant decisions have been dictated more by a project office's budget than the merits of a grantee's application. We believe that DOE could more realistically anticipate grantees' needs and resolve some concerns by incorporating consideration of grantees' projected needs into the program's budget planning. To date, DOE has not sought input from grantees in preparing the waste program's grant budget but has relied on field office estimates of appropriate budget levels.

We also believe that congressional oversight of DOE's financial assistance program could be better facilitated if DOE presented specific budget estimates on the funding it anticipates providing to grantees for the first repository program, second repository program, and to other parties. With more specific budget data, the Congress would have the opportunity to provide additional guidance to DOE concerning appropriate funding levels.

Finally, we believe that, with more realistic budgets, DOE could focus on the merits of a grantee's application in making judgments on what should be funded. By judging applications on their merits and applying fair and consistent criteria (as discussed in ch. 2), we believe DOE could develop a more credible and equitable grant program.

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## **Recommendation to the Secretary**

We recommend that, to assist the Congress in its oversight of DOE's financial assistance program under the NWPA, the Secretary of Energy specify in future budget requests for the Nuclear Waste Fund, grant funding for the first repository program, second repository program, and other parties. We also recommend that the Secretary survey grantees as to their projected needs for the budget period, in order to make appropriate financial assistance estimates.

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## **Agency Comments**

DOE's comments on our report stated its disagreement that the target of \$200,000 per grant for the second repository program "... was a budgetary limit that restricted the states." To support its position, DOE also

cited tables in our report that showed states that had received more than \$200,000.

Our report does not state that CPO's target of \$200,000 per grant was a budgetary limit that restricted states. CPO's documents call this \$200,000 a "funding limit" or "maximum." This is the context in which we have described this figure. We also describe how DOE used such targets as a negotiating base. Elsewhere, our report notes that four second repository states have expressed dissatisfaction with their 1985 grants. They, rather than we, believe the funds awarded have restricted their activities.

We also note that the two states, Massachusetts and Wisconsin, that received 1985 grants in excess of \$200,000, as shown in table 1.1, did so only after being requested to submit revised proposals. According to CPO records, Wisconsin, for example, was advised that its original proposal was unreasonably high based on funding provided during previous budget periods and the amounts being requested by other states.





# DOE's Grant Administration and Oversight Could Be Improved

Sound management of DOE's financial assistance program dictates that DOE ensure that grantees comply with their grant terms. This is especially important since DOE has expanded the number of grantees eligible for funding under the act.

We found that both grantees' compliance with the requirements of DOE's Financial Assistance Regulations and DOE's enforcement of them has been a problem. Grantees have not consistently complied with the reporting requirements of these regulations and DOE has generally not enforced them by taking action against the grantees, such as withholding payment, as provided in the regulations. OCRWM needs to determine whether to seek a waiver from the regulations' reporting requirements in order to reduce the administrative workload of program staff, or to enforce these requirements.

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## Grantees Have Not Consistently Complied With Regulatory Requirements

All NWPA grants are subject to DOE's Financial Assistance Regulations (10 CFR 600) which describe, in part, grantees' reporting and procurement requirements. In addition, OCRWM's internal grant guidelines provide general policy guidance for awarding and administering financial assistance grants under the NWPA. According to the guidelines, these regulations constitute the minimum requirements applicable to grantees to report their progress and expenditures.

Our review focused on compliance with four of the regulations' requirements: (1) financial status reports, (2) performance reports, (3) procurement systems, and (4) audit requirements. Generally, we found that some grantees have not complied with either DOE's reporting requirements or procurement procedures and that audit coverage of NWPA grants should increase under new requirements.

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## Financial Status Reports Have Not Been Timely

DOE's Financial Assistance Regulations (10 CFR 600.116) require that a financial status report describing the status of grant funds be submitted at least annually. Each grant specifies the expected reporting requirement. For example, according to the terms of the grants awarded to the first repository states and affected Indian tribes, financial reports must be submitted on a quarterly basis (due within 30 days of the end of the quarter). Under the grants to the second repository states and associations, financial reports must be submitted within 90 days of the end of the grant period, which is usually 1 year.

Grantees have not consistently complied with this reporting requirement. As of July 1, 1985, we found that:

- Except for Mississippi, none of the first repository states and affected Indian tribes consistently submitted the required financial reports for 1984 within 30 days of the end of each quarter as required. For example, during 1984 Washington submitted its financial reports from a few days to a month late.
- With respect to second repository states, in December 1984 CPO reminded grantees that a financial report was due. Although CPO requested that financial reports be submitted by February 28, 1985, by mid-June 1985 four states had not submitted the reports. According to CPO, three states (South Carolina, Massachusetts, and New York) submitted their reports in late June and one state (Virginia) is still working on its report. According to CPO, since some grants involve multiple state agencies that have different fiscal periods and use different cost methods and overhead rates, reports have taken longer to be accurately compiled.

We also found that, although neither association had submitted a financial report, both associations were still within the 90-day filing period authorized by their grant terms.

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**Performance Reports Are**  
**Not Consistently Submitted**

DOE's Financial Assistance Regulations (10 CFR 600.115) require that the grantee assess and report to DOE, at least annually, on progress in meeting grant objectives. According to the grant terms, these performance reports are due at the same time as the financial reports.

We found that at the end of 1984 none of the first repository states or affected Indian tribes had consistently submitted all their progress reports within 30 days of the end of the quarter as required. Texas submitted only one progress report, and Utah had not submitted any at all. The associations also had not submitted progress reports on time during 1984. For the second repository states, we found that no states had submitted performance reports by March 31 as required by the grant terms. Following our field work, CPO reminded states of this requirement on March 15, 1985. However, as of July 1, 1985, five states still had not submitted the reports.

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## Procurement Procedures Are Not Being Followed

DOE's Financial Assistance Regulations (10 CFR 600.119) and Office of Management and Budget (OMB) Circular A-102 (Attachment O) describe the requirements of grantees with respect to procurement issues, including methods of procurement through competitive negotiations and sole-source contracts.

The Richland Operations Office found that the Yakima Indian Nation was not in compliance with regulations regarding a competitive negotiation procurement system. In August 1984 the Richland office notified the tribe concerning this issue. We discussed the requirements for a viable procurement system with DOE's Richland office and with Yakima tribal officials. These officials told us that at the end of 1984 the tribe was still not in compliance with the procurement regulations, although measures, such as preparing a procurement procedures manual for the Yakimas, have been taken to correct the situation.

For sole-source procurement actions exceeding \$10,000, DOE's regulations require grantees to obtain written DOE approval before entering into a sole-source contract with a private entity. The grantee must also submit to DOE a copy of the proposed contract and justification for the noncompetitive procurement.

In reviewing grant proposals from second repository states, we found possibly eight examples where states intended to award sole-source contracts. These proposals did not identify specific contractors or procurement methods for the work desired, but a contract specialist in CPO assumed that most were sole-source contracts due to the nature of the services required by the states. However, none of the states had identified expected contractors or requested DOE's approval as required by the regulations. Following our field work, in April 1985 CPO sent letters to all states receiving second repository grants requesting justification for any sole-source contracts the states awarded using grant funds.

As of July 1, 1985, DOE confirmed that three states were subject to these requirements and were in the process of obtaining DOE's approval for their contracts. CPO had not yet obtained responses from four other states.

## NWPA Grants Now Subject to the Requirements of the Single Audit Act of 1984

DOE's Financial Assistance Regulations (10 CFR 600) state that audits shall be conducted by grantees in accordance with OMB Circular A-128 and the requirements of the Single Audit Act of 1984 (Public Law 98-502). This act established uniform requirements for audits of federal financial assistance provided to state and local governments.

Generally, the act requires that state or local government recipients of federal financial assistance conduct independent audits on a state-wide or department-wide basis. In addition to an audit of financial statements, the act requires that internal control systems be studied and evaluated and transactions tested for compliance with laws and regulations on federal assistance programs. All major programs<sup>1</sup> must be tested and an audit opinion expressed for each major program regarding compliance with federal laws and regulations.

Guidelines being developed by the American Institute of Certified Public Accountants require that all programs—both major and non-major—be subject to a preliminary review of internal controls and that at least 50 percent of total federal financial assistance be included in a complete study of internal controls. Thus, even when a state receives only non-major assistance, it must still conduct a complete internal control study for at least 50 percent of this assistance. Because the level of NWPA financial assistance is generally less than the act's thresholds for major federal assistance programs, these grants are more likely to be audited on a non-major program basis.

The Single Audit Act of 1984 became effective for fiscal years beginning after December 31, 1984, and the extent of audit coverage on a national basis is not yet known. However, as the Single Audit Act is fully implemented, we expect that audit coverage of NWPA grants will be increased.

## DOE Has Not Generally Enforced Regulatory Requirements

As discussed above, grantees have not consistently complied with regulatory requirements, and in some cases DOE has reminded grantees of their obligations. However, DOE staff has not generally enforced these regulatory requirements by taking actions against grantees for noncompliance. In addition, no waivers from these requirements have been sought or granted.

<sup>1</sup>Under this act a major federal assistance program is defined by specific dollar limits ranging from \$300,000 to \$20 million, depending upon the total financial assistance provided to a state.

Our discussions with field offices indicate that (1) some staff members believe that the administrative requirements are a burden and (2) status reports are not consistently used. For example, a DOE Richland official told us that his office uses the status reports on performance to determine (1) what activities the grantees expended the grant funds for and (2) if these activities are consistent with the act. On the other hand, CPO staff believed that performance reports were not helpful or necessary.

We believe DOE has an obligation to ensure that grantees comply with their grant terms, to take actions against the grantees, or to get a waiver of these requirements. The DOE Richland official also said that DOE must take action to ensure that the grantees are aware of their reporting requirements. To increase knowledge of these requirements, the Richland Operations Office conducted a workshop for the Yakima tribe, the state of Washington, and the Umatilla tribe emphasizing DOE's financial assistance regulations. CPO staff told us that efforts to provide training to states on their reporting obligations had not been successful. According to DOE's Financial Assistance Procedures Manual:

"When reports are not received or are not received in a timely manner, or when reports are inadequate or incorrect as to the information provided, this should serve as a 'flag' . . . to seek further information concerning the grantee's management systems, to identify actual or potential problems, and to provide technical assistance or take other actions to protect DOE's interests."

The regulations provide a variety of actions to be taken after finding a grantee in noncompliance with the regulations, including suspending the grant, terminating it, or disapproving renewals or requests for extensions of time or funding. DOE has not taken any such actions against these grantees.

DOE's regulations (10 CFR 600.4) do provide an opportunity for program officials or grantees to request exemption from any requirements. Such exemptions can be granted only if a waiver of the requirements is determined necessary to achieve program objectives, conserve public funds, achieve equity, or protect the public interest. DOE can grant such waivers for either an individual application or class of applicants. Neither OCRWM nor the field offices or grantees have requested or received any waivers for NWPA grants.

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## Conclusions

DOE could ensure accountability and improve management of the grant program if the regulations applicable to grantees for reporting their

progress and expenditures were met. The regulations also provide an opportunity for DOE or grantees to request a waiver of the requirements under certain circumstances. Grantees have not consistently complied with nor requested waivers of the requirements. DOE officials have not enforced the requirements, in some cases, because they are considered an administrative burden. DOE should be prepared either to administer the grants and ensure compliance with regulatory requirements, such as financial status reports, designed to provide assurance that funds are being properly expended, or seek a waiver of those requirements.

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### **Recommendation to the Secretary**

To ensure management control over grant awards, we recommend that the Secretary of Energy ensure compliance with the requirements of DOE's financial assistance regulations. These requirements could, of course, be waived if DOE determines that the conditions for granting a waiver are present.

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### **Agency Comments**

In commenting on our report, DOE stated that our observation that audit coverage of NWPA grants would improve under the Single Audit Act of 1984 was not supported by a review of the auditing of NWPA grants. Since passage of the Single Audit Act in October 1984 superseded other auditing requirements and occurred during the course of our audit work, the report discusses only current applicable audit requirements and does not discuss past experiences in complying with audit requirements. It is our belief that the Congress passed the Single Audit Act to simplify and improve audits of federal financial assistance provided to state and local governments. As the act is implemented, we expect audit coverage of this program to be increased.

# Advance Comments From the Department of Energy



**Department of Energy**  
Washington, DC 20585

JAN 15 1988

Mr. J. Dexter Peach  
Director, Resources, Community  
and Economic Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

The Department of Energy (DOE) appreciates the opportunity to review and comment on the General Accounting Office (GAO) draft report entitled "Nuclear Waste: Department of Energy's Program for Financial Assistance" (GAO/RCED-86-4).

The Department is in general agreement with most of the factual information presented by GAO in this report. We are, however, submitting a number of substantive corrections and clarifications of material included in the draft report. Some of the more important corrections DOE recommends are listed below:

1. Page 8 - "Both OCRWM--the DOE headquarters office responsible for carrying out the act--and four field offices negotiate and award repository program grants."

Comment - "Here, and throughout the report, GAO has credited OCRWM with responsibility and authority it does not possess. Only warranted Contracting Officers of the Department are authorized to negotiate and award grants. OCRWM has authority and responsibility (through the Project Offices) for technical management; e.g., establishing the scope-of-work and technical performance standards, only. In addition, the Director of Procurement and Assistance Management under the Assistant Secretary, Management and Administration makes policy with respect to the nonprogrammatic aspects of financial assistance awards and administration through DOE regulations and orders. The draft report does not distinguish the responsibilities and authorities of persons contacted. This results in some confusion, and possible misconceptions throughout this report.

Now on p 14



- 2 -

Now on p. 19

2. Page 14 - "CRPO had not solicited proposals from or funded Indian Tribes because, according to the project manager,...."

Comment - The most important reason for funding the States, and not the Indian Tribes, at that time, is not included in the three items listed by GAO. The primary reason for funding the States was that the States were the source of the majority of the data to be utilized by DOE in the region-to-area screening process. The States' reviews of DOE's compilation and mapping of those data were crucial in preparing a technically defensible data base for this region-to-area screening.

See p. 30

3. Page 20 - "...DOE has not actively encouraged local communities to seek assistance from the states or advised the states to include local needs in their grant requests."

Comment - This is an inaccurate statement. In September 1985, OCRWM issued "Internal Guidelines for Interactions with Communities and Local Governments" (DOE/RW-0039). These guidelines, widely distributed to interested States, specifically call for encouraging States to channel financial assistance to local governments and to encourage local governments to seek financial assistance through the States. The guidelines further provide that alternative means for funding local governments and communities will be examined in the event that normal State channels cannot be used.

Now on p. 25

4. Page 21 - "On December 2, 1985, the Ninth Circuit Court of Appeals ruled against DOE and found that the NWPA supports funding of the state's planned testing so long as it is reasonable, conducted by competent contractors, and does not unreasonably interfere with DOE's own activities."

- 3 -

Comment - GAO's presentation of the decision of the Ninth Circuit Court of Appeals is incomplete. The Ninth Circuit established the following tests for funding of a State's relevant pre-site characterization activities under Section 116(c)(1)(a) of NHPA: (1) "The only pre-site characterization activities that may receive funding are those essential to an informed 'Statement of reasons' for disapproving a site under 116(b); and (2) such activities 'must be reasonable'-- scientifically justifiable and performed by demonstrably competent contractors--and cannot unreasonably interfere with or delay DOE's own activities." As noted in GAO's write-up, the court also found that certain provisions in DOE's internal grant guidelines are unduly restrictive. Thus, the Court established tests for evaluating a State's grant proposal rather than ruling that the State of Nevada's proposed testing should be funded. The effect of the Court's decision on the program is under study at the present time.

Now on p. 29

5. Page 26 - "Despite these concerns raised by headquarters review, the Chicago Operations Office funded these activities in fiscal year 1985, after discussions with headquarters."

Comment - This statement could have a misleading and incorrect implication and should be corrected. Although it recognizes, correctly, that the grants were made after discussion with headquarters, it implies the Chicago Operation Office proceeded with the grants despite headquarters objections. This is not correct. As a result of the additional information developed in these discussions, headquarters agreed and concurred in all grants extended, including the four cited by GAO.

Now on p. 32

6. Page 30 - "A Nevada official said that because DOE reduced Nevada's grant request by over \$400,000, the state was unable to perform..."

- 4 -

Comment - This should be corrected to show that the \$400,000 funding request referenced was for fiscal year 1985 and was submitted as part of the State's fiscal year 1984 budget request. DOE can obligate funds for only one year at a time. The State did not resubmit a request for this funding in fiscal year 1985.

7. Page 32 - "According to officials from New York and Wisconsin, these states had to curtail proposed activities to meet CRPO's proposed \$200,000 funding limit....The project office then divided this funding among the 16 grant recipients with a targeted limit of \$200,000 per grant."

Comment - While an initial target of \$200,000 per grant was established, it is incorrect to state this was a budgetary limit that restricted the States. As shown by GAO in Tables 1.1 (page 5) and 3.1 (page 31), States, including Wisconsin, received grants in excess of \$200,000.

8. Page 34 - "At hearings on DOE's 1986 budget, for example, Members of Congress requested data on the grant program from OCRWM's Director whose response, in at least one case, was somewhat misleading."

Comment - This statement is inaccurate and out of context. The transcript shows that the Director was responding to a remark by Mr. McCain "... that you not give the impression to the Indian tribes that they are going to be another repository for unwanted materials from non-Indian land"--it was not a request for "data on the grant program." The unedited transcript does show that Mr. Rusche referred to "I believe, four or five such tribes"--this was corrected to "three tribes" in the Department's editing of the transcript. To characterize this brief dialogue as "misleading" the Congress regarding grant funding is not an accurate representation of the facts.

9. Page 41 - "However, as the Single Audit Act is fully implemented, we expect that coverage of NWPA grants will be improved."

Now on pp 33 and 35

See p 36

See p 45

**Appendix I  
Advance Comments From the Department  
of Energy**

- 5 -

Comment - The report does not reflect a review of the auditing of NHPA grants and, therefore, provides no support for a need to improve audit coverage.

In addition to the above, a list of specific editorial comments is being transmitted separately to Mr. Sam Madonia of your staff. The comments provided to Mr. Madonia are generally in the nature of technical corrections. The Department hopes these comments will be of help to GAO in the preparation of the final report.

Sincerely,



Martha Hesse  
Assistant Secretary  
Management and Administration

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