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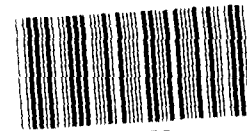
GAO

Fact Sheet for Congressional Requesters

February 1988

# NUCLEAR WASTE

## Quarterly Report on DOE's Nuclear Waste Program as of December 31, 1987



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United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-202377

February 18, 1988

The Honorable J. Bennett Johnston  
Chairman, Committee on Energy  
and Natural Resources  
United States Senate

The Honorable James A. McClure  
Ranking Minority Member  
Committee on Energy and Natural Resources  
United States Senate

On March 26, 1984, you requested that we provide quarterly status reports on the Department of Energy's (DOE) implementation of its nuclear waste program. The Nuclear Waste Policy Act of 1982 (Public Law 97-425) established a national program and policy for safely storing, transporting, and disposing of nuclear waste. As part of this program, the act required DOE to develop, schedule, site, and construct a geologic repository for the permanent disposal of high-level radioactive nuclear waste. In May 1986 DOE recommended, and the President approved, three candidate repository sites for detailed testing (site characterization)--Yucca Mountain, Nevada; Deaf Smith County, Texas; and Hanford, Washington. However, December 1987 legislation eliminated the Deaf Smith and Hanford sites from further consideration.

This fact sheet provides the status of DOE's nuclear waste program activities for the quarter ending December 31, 1987, with some discussion of related activities that occurred in January 1988.

At the end of this quarter DOE began to adjust the nuclear waste program in accordance with the Nuclear Waste Policy Amendments Act of 1987 (contained in the Budget Reconciliation Act for Fiscal Year 1988, Public Law 100-203). The amendments, effective on December 22, 1987, substantially changed the 1982 act. A major change requiring DOE's immediate attention involves the termination of all site-specific activities--except reclamation

activities--at the Deaf Smith and Hanford sites within 90 days. Subject to existing licensing requirements, the amendments also authorized siting and construction of a nuclear waste repository only at the Yucca Mountain site. Accordingly, DOE will continue to investigate the suitability of the Yucca Mountain site as a repository.

DOE project offices in Texas and Washington have begun planning to close out site-specific activities at the Deaf Smith and Hanford sites. Closeout plans, submitted to DOE headquarters in early February 1988, address activities such as termination of contracts, disposition of equipment, and site reclamation. In addition, the project offices have been directed to close out existing financial assistance commitments (grants) to the states of Louisiana, Mississippi, Texas, Utah, and Washington and to the affected Indian tribes.<sup>1</sup> After an orderly closeout, any remaining grant funds are to be returned to DOE. Because \$2.5 million available to Oregon--for research related to nuclear activities at the Hanford site--was authorized in the Energy and Water Development Appropriation Act of 1987 (Public Law 99-591), and not under the financial assistance provisions of the 1982 act, DOE has not yet determined whether it should close out the Oregon grant.

On January 8, 1988, DOE issued its consultation draft of the site characterization plan for the Yucca Mountain site. DOE expects to consult with the state of Nevada and the Nuclear Regulatory Commission regarding the contents of this draft to identify any issues that should be addressed before the plan is formally issued for public review and comment. The objective of this plan is to detail the steps DOE would take to obtain geologic and environmental data for the site. DOE also released environmental and socioeconomic monitoring and mitigation plans concurrently with the draft site characterization plan so that a total picture of detailed

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<sup>1</sup>Prior to the President's May 1986 approval of the three candidate sites in Nevada, Texas, and Washington, other potentially acceptable first repository sites were located in Louisiana, Mississippi, and Utah. These states had also been authorized financial assistance under the Nuclear Waste Policy Act of 1982.

testing activities will be available. Although DOE originally intended to simultaneously release the Yucca Mountain, Deaf Smith, and Hanford plans, it will not release the plans for the Hanford and Deaf Smith sites because the recent legislative amendments preclude characterization activities at these sites.

DOE plans to hold a series of technical workshops with the state of Nevada, local government officials, and the Nuclear Regulatory Commission to discuss the organization and content of the consultation draft; receive and address major technical questions; and identify any significant technical issues with respect to site characterization. A general session to explain and discuss the plans with the state and the Commission was held in late January 1988 in Nevada with the planned workshops to follow. After the technical workshops DOE intends to revise the plans on a schedule to be determined by the results of the consultation workshops. Subsequently, a 90-day period for public review of the revised plans will be allowed, as well as a 6-month period for the Commission's review and preparation of a site characterization analysis.

The 1982 act established the Nuclear Waste Fund to finance the waste program. The fund received about \$181 million in fees and investment income during this quarter, and DOE obligated about \$63 million for program activities. The fund balance as of December 31, 1987, was about \$1.6 billion.

Section 1 of this fact sheet discusses in more detail DOE's actions in response to the December 1987 legislative amendments. The status of the Nuclear Waste Fund is detailed in section 2. Developments in litigation relating to the program are highlighted in section 3.

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To determine the status of the activities discussed in this fact sheet, we interviewed officials in DOE's Office of Civilian Radioactive Waste Management who are responsible for planning and managing the waste program, responding to litigation, and managing the program's financial activities.

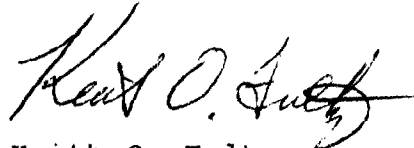
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We also discussed the status of litigation with an official in DOE's Office of General Counsel. In addition, we reviewed DOE program documents, correspondence, studies, related legal documents, and financial data. We did not verify DOE's financial system data because this verification could not be accomplished within the time frame of this review and because this information is audited annually by a private certified public accounting firm.

We discussed the facts presented with cognizant DOE officials and incorporated their views where appropriate. DOE officials told us that the fact sheet accurately reflects the program's status for the quarter ending December 31, 1987.

We are sending copies of the fact sheet to the Chairmen of the Senate Committee on Governmental Affairs, the House Committee on Government Operations, and the House Committee on Energy and Commerce; the Secretary of Energy; the Chairman, Nuclear Regulatory Commission; and other interested parties. If you have further questions, please contact me at (202) 275-1441.

Major contributors are listed in appendix II.



Keith O. Fultz  
Senior Associate Director

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ABBREVIATIONS

BLM	Bureau of Land Management
DOE	Department of Energy
EI	Edison Electric Institute
EPA	Environmental Protection Agency
GAO	General Accounting Office
MRS	monitored retrievable storage
NARUC	National Association of Regulatory Utility Commissioners
NRC	Nuclear Regulatory Commission
NRDC	Natural Resources Defense Council
NWPA	Nuclear Waste Policy Act
OCRWM	Office of Civilian Radioactive Waste Management



## SECTION 1

### OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

#### ACTIVITIES DIRECTED TOWARD LEGISLATIVE

#### REQUIREMENTS DURING THE OCTOBER-DECEMBER 1987 QUARTER

##### BACKGROUND

The Nuclear Waste Policy Act of 1982 (NWPAs) established a federal program and policy for high-level radioactive nuclear waste management. NWPAs's ultimate objective is the safe and permanent disposal of nuclear waste in geologic repositories. NWPAs required, under a detailed process and schedule, that DOE develop, site, construct, and operate one repository and select a site for a second repository. In addition, NWPAs stipulates that DOE is to consult and cooperate with states and Indian tribes to promote their confidence in the program's safety. DOE has contracted with utilities to accept waste for disposal by January 31, 1998. To finance the program, NWPAs established the Nuclear Waste Fund, which receives fees from waste owners and generators. Under various assumptions, the estimated cost of the program is between \$28 billion and \$38 billion (constant 1986 dollars).<sup>1</sup>

As required by NWPAs, in May 1986 DOE recommended to the President three candidate first repository sites for further geologic testing (site characterization). On May 28, 1986, the President approved the three sites--Yucca Mountain, Nevada; Deaf Smith County, Texas; and Hanford, Washington. DOE estimated that the site characterization phase would last from about 5 to 7 years. On the basis of the results of site characterization, DOE planned to select one of the three sites for a nuclear waste repository. In September 1987 we reported that when the effect of future inflation was considered, site characterization costs were estimated to be about \$5.8 billion for the three sites.<sup>2</sup>

NWPAs also required DOE to recommend to the President by July 1, 1989, three sites for second-repository site characterization. On May 28, 1986, DOE postponed its second

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<sup>1</sup>During the first quarter of fiscal year 1988, the Congress passed legislation--discussed later in this section--that substantially changed NWPAs. As a result of the new legislation, future estimates of total program costs should be lower.

<sup>2</sup>Nuclear Waste: Information on Cost Growth in Site Characterization Cost Estimates (GAO/RCED-87-200FS, Sept. 10, 1987).

repository site-specific work because of progress with the first repository program and questions as to when a second repository would be needed. However, because the Congress did not explicitly approve the Secretary of Energy's decision to postpone work on the second repository, on October 1, 1987, the Secretary advised the governors of 17 states, previously identified by DOE through a draft area recommendation report as having potential candidate sites, that DOE had resumed site-specific activities for a second repository.

In addition, NWPA required DOE to study the need for and feasibility of, and to submit a proposal for, a monitored retrievable storage (MRS) facility where nuclear waste could be stored, monitored, and subsequently retrieved for permanent disposal in a repository. On March 31, 1987, DOE submitted its MRS proposal to the Congress, recommending that an MRS facility be built at the former Clinch River Breeder Reactor site in Oak Ridge, Tennessee. DOE believes that the proposed MRS facility should be an integral part of the nuclear waste management system. However, as discussed below in this section, the Congress disapproved the proposal as submitted.

#### NUCLEAR WASTE AMENDMENTS OF 1987

On December 22, 1987, the President signed into law the "Nuclear Waste Policy Amendments Act of 1987" (amendments). The amendments, which were contained within the Budget Reconciliation Act for Fiscal Year 1988 (Public Law 100-203), make substantial changes to NWPA and the manner in which DOE conducts its nuclear waste disposal program. Only a few of these changes are addressed in this fact sheet. One of the most significant changes was that DOE is directed to terminate all site-specific activities, except reclamation, at the Hanford and Deaf Smith sites within 90 days after enactment of the amendments and to characterize only the Yucca Mountain site. Only reclamation activities are permitted at Hanford and Deaf Smith after the 90-day period. Further, subject to existing licensing requirements, a nuclear waste repository is authorized to be sited and constructed only at Yucca Mountain.

The amendments also postponed action to identify a second repository. DOE must now report to the President and the Congress between 2007 and 2010 on the need for a second repository. Meanwhile, site-specific activities directed toward a second site are prohibited unless funds are specifically authorized and appropriated for that purpose. The amendments did not, however, alter the existing requirement contained in the 1982 act that the Nuclear Regulatory Commission (NRC) prohibit emplacement of more than 70,000 metric tons of spent fuel in the first repository until a second repository is in operation.

Further, the 1987 amendments annulled and revoked DOE's proposal to locate an MRS facility at Oak Ridge, Tennessee. Although the amendments authorize DOE to site, construct, and operate one MRS facility, several events must first take place. For example, the 1987 amendments establish an MRS Review Commission, which is to prepare a report on the need for an MRS facility as a part of a national nuclear waste management system. After the MRS Commission report is transmitted to the Congress on June 1, 1989, DOE may then conduct a survey and evaluation of potentially suitable sites for an MRS. In making a new selection, DOE may consider the preferred and alternative sites recommended in its March 1987 proposal but may not give those sites preference because of their previous selection. The 1987 act provides that DOE may select a site that it determines on the basis of available information to be the most suitable for an MRS facility. However, the MRS site may not be selected until the Secretary recommends that the President approve development of a repository site.

Finally, the 1987 amendments provide for terminating financial assistance to states--except Nevada--and Indian tribes.<sup>3</sup> Specifically, section 5032 of the amendments stipulate that "No State, other than the State of Nevada, may receive financial assistance" after the date of the enactment of the amendments. Further, section 5033 specifies that affected Indian tribes may not receive any grant after December 22, 1988.

#### STATUS OF DOE ACTIONS TO IMPLEMENT THE 1987 AMENDMENTS

Early DOE actions to implement the 1987 amendments include directing its project offices in the states of Texas and Washington to prepare draft plans for closeout activities at the Deaf Smith and Hanford sites. The project office closeout plans, submitted to DOE headquarters in early February 1988, address activities such as (1) site reclamation, (2) cancellation of quality assurance audits, (3) closing of information offices, (4) termination of contracts, (5) disposition of equipment, and (6) recommendations for disposition of work in progress. Previously purchased equipment and supplies, such as mining and drilling equipment, shaft casing, and raw materials and components, will be inventoried and a determination made as to which items can be used at the Yucca Mountain site and which items can be sold or otherwise disposed of.

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<sup>3</sup>Section 116 of NWPA authorized financial assistance for states identified as having potentially acceptable repository sites. Six states--Louisiana, Mississippi, Nevada, Texas, Utah, and Washington--were initially identified as having potentially acceptable first repository sites.

As required by the amendments, DOE expects to close out all activities except reclamation within the 90-day period. Project offices have been directed to provide DOE headquarters, on March 4, 1988, with a status report of closeout activities clearly justifying any activities that may not be completed at the end of the 90-day period. Although we obtained an early detailed outline of the planned termination of project activities at Hanford, similar data on Deaf Smith were not available at the time of our review.

The Hanford project office has indicated that, since little site characterization work was underway at the time of cancellation, closing out the project will "be relatively simple." However, DOE expects to incur considerable termination costs for closing out its contracts for work at the Deaf Smith and Hanford sites. While contracts may contain termination clauses, DOE may need to review each individual contract to determine the cost of closeout. Negotiations with some contractors are likely, in order to reach agreement as to the costs for closing out, including any penalties for early closeout.

A preliminary estimate of closeout costs for the Hanford project is about \$83 million. This figure includes about \$19 million of expenses already incurred for the first quarter of fiscal year 1988. Of the \$83 million, about \$30 million is for fiscal years 1988 and 1989 reclamation costs. Major reclamation activities at Hanford include backfilling and sealing the near-surface test facility, sealing about 60 boreholes, and cleaning up the surface areas around the boreholes.

One of DOE's primary concerns in closing out the two projects is the effect the closeouts will have on employees and local communities. Preparation for the pending reduction-in-force and placement of staff will also be one of the largest tasks in closing out the projects. DOE repository program staff total about 35 at Deaf Smith and about 40 at Hanford. In addition, according to DOE, about 700 contractor staff associated with the Deaf Smith site and about 1,300 contractor staff working on the Hanford site will likely be displaced. At the Hanford site, the first layoff in early February will affect about 400 people. DOE will attempt to find other positions, either in headquarters or in its Nevada Operations Office, for DOE staff displaced by the termination of work at the two sites. An outplacement center will also be established and personnel placement services will be maintained for as long as they continue to be useful.

The DOE Deaf Smith and Hanford project offices are also expected to outline appropriate closeout activities for the states and Indian tribes under their present grants. In this connection, DOE advised the project offices, by letter dated December 24, 1987,

that no further financial assistance under NWPA may be provided to the states of Louisiana, Mississippi, Texas, Utah, and Washington.

The state of Oregon, however, is also receiving financial assistance from the Nuclear Waste Fund. Because the \$2.5 million made available to Oregon was not authorized under the financial assistance provisions of NWPA (Section 116 (c)) but was included in the Energy and Water Development Appropriation Act of 1987 (Public Law 99-591), DOE has not determined whether it should close out the Oregon grant. In addition, according to DOE, the language in the appropriation act, raises question as to whether the primary purpose of the Oregon grant relates to the Hanford candidate repository site or to other national defense-related nuclear waste management activities at the reservation. The act appropriated funds to be

"provided to the State of Oregon for the purpose of researching, with respect to nuclear activities carried out at the Hanford Federal Reservation in Richland, Washington, the effects of such nuclear activities on the health of the people of Oregon and on the environment of Oregon."

At the time of our review, DOE was reviewing the Oregon grant to determine if it should be closed out.

SITE CHARACTERIZATION DRAFT PLAN  
ISSUED FOR YUCCA MOUNTAIN

On January 8, 1988, DOE issued its "consultation" draft of the site characterization plan for the Yucca Mountain site. The objective of this plan is to detail the steps DOE would take to obtain geologic and environmental data for the site. DOE also released environmental and socioeconomic monitoring and mitigation plans concurrently with the draft site characterization plan so as to make available a total picture of detailed testing activities at Yucca Mountain. DOE expects that the consultation process will enable the state of Nevada and NRC to become familiar with the contents of the site characterization plan and the other plans and will help identify any issues that should be addressed before the site characterization plan is issued for public review and comment. Although DOE had intended to simultaneously release the Yucca Mountain, Deaf Smith, and Hanford plans, the plans for the Hanford and Deaf Smith sites will not be released because the NWPA amendments preclude characterization at these sites.

DOE plans to hold a series of technical workshops with the state of Nevada, with local government officials, and with the NRC to discuss the organization and contents of the consultation draft, receive and address major technical questions, and identify any significant technical issues with respect to site characterization.

A general session to explain and discuss the plans with the state and NRC took place in late January 1988, in Nevada, with the planned technical workshops to follow.

The objectives of DOE's general session in January were to (1) provide general information on the consultation drafts, (2) provide the state of Nevada and NRC with an introduction to specific aspects of the plans, (3) finalize agreements on topics and schedules for the technical workshops to follow, and (4) provide general information on the monitoring and mitigation plans and the environmental regulatory compliance plan associated with site characterization activities.

After the technical workshops, DOE intends to revise these plans on a schedule to be determined by the results of the consultation workshops. Subsequently, it will provide a 90-day period for public review of the revised plans, hold public hearings, and provide a 6-month period for review and preparation of a site characterization analysis by NRC.

Drilling of an exploratory shaft at the Yucca Mountain site may begin upon completion of the site characterization plan and public hearings. According to DOE, exploratory shaft construction is now expected to start in the summer of 1989. A complete schedule for the first repository program will be included in an amendment to DOE's nuclear waste program mission plan scheduled for issuance in the spring of 1988.

#### OTHER ACTIVITIES

-- On October 5, 1987, DOE asked for proposals on a systems engineering, development, and management contract. The contractor would be responsible for developing the design and analysis of the nuclear waste management system. Initially, the proposals were due to DOE on January 15, 1988. However, on December 22, 1987, DOE extended the due date for proposals to February 16, 1988. DOE also advised prospective bidders that a future amendment modifying the initial request for proposal would be issued to reflect changes brought about by the Nuclear Waste Policy Amendments Act of 1987.

-- In addition, DOE, its contractors, and the Bureau of Land Management (BLM) met to discuss land acquisition issues related to the Yucca Mountain, Nevada, site. Issues discussed included the method to be used in obtaining access to the land (right-of-way application to be filed in Nevada), BLM's plans for its independent review of DOE's environmental assessment, and the Air Force's concurrence needed for access to Nellis Air Force Base, located north of the Yucca Mountain site.

SECTION 2

STATUS OF THE NUCLEAR WASTE FUND,

DECEMBER 31, 1987

The Nuclear Waste Fund, a separate fund maintained by the Department of the Treasury, finances the nuclear waste management program activities. The fund receives fees paid by the owners and generators of high-level radioactive waste. (Previous quarterly reports listed in app. I explain how the fund receives fees and makes disbursements.) As of December 31, 1987, the fund had a balance of about \$1.6 billion. (See table 2.1.)

Table 2.1: The Nuclear Waste Fund, December 31, 1987

Beginning fund balance (October 1, 1987)	\$1,506,787,890
Fees from waste owners (Oct.-Dec. 1987)	124,798,191
Investment income collected (Oct.-Dec. 1987)	<u>56,575,009<sup>a</sup></u>
Total funds available	<u>1,688,161,090</u>
Disbursements	( 99,245,726) <sup>b</sup>
Change in cost and face value of long-term investments	<u>( 8,456,188)<sup>c</sup></u>
Fund balance, December 1987	<u>\$1,580,459,176</u>
Cash balance, December 31, 1987	\$ 233,176
Funds invested, December 31, 1987	\$1,580,226,000
Unpaid obligations, December 31, 1987	\$ 180,064,827 <sup>d</sup>

<sup>a</sup>This figure does not include prepaid interest.

<sup>b</sup>These figures include amounts disbursed in October-December that had been obligated in current and prior years.

<sup>c</sup>Actions such as early redemptions of Treasury notes cause the face value to be reduced at that point. It does not, however, denote a loss to the fund.

<sup>d</sup>This figure includes amounts of undisbursed obligations remaining from current and prior years.

Note: All fiscal year 1988 dollar figures for section 3 are based on preliminary figures from DOE's financial information system. Final figures will not be available until after this report is issued.

NUCLEAR WASTE FUND  
RECEIPTS AND COSTS

DOE has contracted with 66 owners and generators of spent fuel for a 1-mill-per-kilowatt-hour fee to be paid quarterly into the fund to finance the waste program. No new contracts were signed this quarter. The fund began receiving these ongoing fees, paid quarterly, late in fiscal year 1983 and, as of December 31, 1987, had collected a total of about \$1.7 billion, of which about \$123 million was collected this quarter.

Owners of spent fuel generated before April 7, 1983, must pay a one-time fee into the Nuclear Waste Fund for the disposal of their spent fuel. This fee must be paid before delivery of spent fuel to the federal government. About \$1.5 million was collected during this quarter.

NWPA provides that when the amount of the Nuclear Waste Fund exceeds current needs, DOE may request the Secretary of the Treasury to invest these excess funds in Treasury financial instruments in amounts as the Secretary of Energy determines appropriate. In the quarter ending December 31, 1987, DOE collected daily overnight investments interest of about \$416,091 and long-term investments interest (90 days or more) of about \$58 million (this figure includes prepaid interest).

The Office of Civilian Radioactive Waste Management (OCRWM) can obligate amounts from the Nuclear Waste Fund only as appropriated, regardless of the balance in the fund. (See table 2.2.) OCRWM's appropriations for fiscal year 1987 were \$499 million. The conference report, accompanying the appropriations, stipulated that expenditure of \$79 million of the \$499 million was subject to prior approval by the Subcommittees on Energy and Water Development, House and Senate Committees on Appropriations. The \$79 million appropriation was dependent on the certification by the Secretary of Energy that DOE has made a good faith effort to comply with the requirements of consultation with states selected for site characterization. Although the Secretary submitted the required certification report on August 4, 1987, the Senate Committee had taken no action to approve the release of the \$79 million as of January 28, 1988. OCRWM's appropriation for fiscal year 1988 totaled \$360 million.



Table 2.2: Nuclear Waste Program Appropriations

Carryover from prior years, as of September 1987	\$ 25,448,093
Fiscal year 1988 appropriation	<u>360,000,000</u>
Total for fiscal year 1988	<u>\$385,448,093</u>
Total amount obligated as of December 31, 1987	\$ <u>62,711,675</u>

Note: All fiscal year 1988 dollar figures for section 2 are based on preliminary figures from DOE's financial information system. Final figures will not be available until after this report is issued.

OCRWM obligates funds by awarding contracts and grants and disburses funds for its civil service payroll and other program needs. Actual costs are recorded when invoices are received, and disbursements are recorded when payments are made. Obligations, costs, and disbursements are recorded in DOE's financial information system by the field finance offices that receive allocations from the fund. During the quarter, expenses totaled about \$85 million for the five major cost activities. (See table 2.3.)

Table 2.3: Nuclear Waste Fund Costs, December 31, 1987a

<u>Funding category</u>	<u>First quarter FY88 costs</u>	<u>Second quarter FY88 costs</u>	<u>Third quarter FY88 costs</u>	<u>Fourth quarter FY88 costs</u>	<u>Cumulative FY88 costs</u>
<u>First repository:</u>					
Development, construction, operations	\$62,561,829	\$	\$	\$	\$
Capital equipment	1,847,610				
Plant acquisition and construction	-	-	-	-	-
Total	<u>64,409,439</u>				
<u>Second repository:</u>					
Development, construction, operations	7,135,865				
Capital equipment	57,031				
Plant acquisition and construction	-	-	-	-	-
Total	<u>7,192,896</u>				
<u>Monitored retrievable storage:</u>					
Development, construction, operations	288,732				
Capital equipment	-	-	-	-	-
Plant acquisition and construction	-	-	-	-	-
Total	<u>288,732</u>				
<u>Program management and technical support:</u>					
Management and support	6,204,514				
Capital equipment	31,426				
Plant acquisition and construction	-	-	-	-	-
Total	<u>6,235,940</u>				
<u>Transportation and system integration:</u>					
Design, development, and testing	7,317,755				
Capital equipment	48				
Total	<u>7,317,803</u>				
Total	<u>\$85,444,809</u>	\$	\$	\$	\$

<sup>a</sup>Totals may not add due to rounding.

Source: DOE's financial information system.

Most waste disposal activities have been and are being carried out by contractors. Of the \$85 million spent this quarter for program cost activities, DOE spent about \$77 million for contractor services. About \$56 million obligated was for contractors. Since inception of the fund, OCRWM has obligated about \$1.6 billion for over 200 contracts.

SECTION 3  
LITIGATION RELATING TO  
THE NUCLEAR WASTE PROGRAM

During the quarter ending December 31, 1987, one of the pending court cases involving the use of grant funds for litigation was resolved (see previous quarterly reports for more detailed information on the individual cases). One new action was filed this quarter.

Because of the recent NWPA amendments, it may no longer be necessary to address many of the issues now in litigation. According to DOE, it is likely that courts will be asked to dismiss many of the cases involving the NWPA.

SETTLED CASE

Nevada, et al. v. Herrington

On May 28, 1986, the state of Nevada petitioned the U.S. Court of Appeals for the Ninth Circuit for review of the Secretary's denial of the state's grant request. Nevada asked for funds that would enable the state to seek judicial review of actions taken by the Secretary under the NWPA. The petition asked the court to prohibit site characterization until DOE awards the state its grant request. The state of Washington, its Department of Ecology, and the Nuclear Waste Board also petitioned the Circuit Court on July 31, 1986. This case was consolidated with the Nevada petition.

Oral arguments were heard by the U.S. Court of Appeals on February 12, 1987. On September 17, 1987, the Ninth Circuit Court of Appeals held in favor of DOE. In denying the petition, the court said "that judicial review is not an activity which Congress intended the Nuclear Waste Fund to finance."

On September 30, 1987, the state of Nevada petitioned the Ninth Circuit Court of Appeals for a rehearing by the full court, of that court's September 17 decision. The states of Mississippi, Utah, and Wisconsin are intervenors in this petition. The petitioners believe that inconsistencies exist with an earlier ruling by the same court on eligibility for grant funds, justifying a rehearing by the full court. On November 16, 1987, the court denied the petition for rehearing.

## PENDING LITIGATION

### Second Repository Cases

On March 4, 1987, the U.S. Court of Appeals for the Ninth Circuit granted the state of Washington's motion for expedited briefing of the motion by the state of Washington for a judgment declaring that the Secretary of Energy has no authority to postpone second repository siting activities. Petitioners' (states and others) briefs were due by May 22, 1987. The state of Washington, the Environmental Defense Fund, and People Against Nuclear Dumping at Hanford filed briefs. Joint briefs were also filed by the states of Oregon, Idaho, and Nebraska; the state of Texas and the Nuclear Waste Task Force; and the Yakima Indian Nation and the Clark County Public Utility District.

DOE's response was filed June 29, 1987, and the petitioners filed a single joint reply brief on July 16, 1987. DOE argued in part that the petitioners could not "establish a concrete and immediate injury or threat of such injury, that is fairly traceable to the conduct of the Secretary" and therefore "cannot establish standing to challenge the decision to postpone site-specific activities in the second repository program." DOE also argued that the petitioners "base their claim of injury on the wholly unwarranted assumption that the effect of the Secretary's decision is that the second repository has been cancelled and there will be only one repository."

On September 30, 1987, DOE filed a motion to dismiss for mootness before the Ninth Circuit Court of Appeals. The Secretary reaffirmed his previous commitment to resume site-specific activities by October 1, 1987, unless the Congress took legislative action to modify that schedule. As of that date, the Congress had made no modification to the second repository program schedule. OCRWM had resumed the site-specific activities of the second repository program, and DOE believed that no continuing, present, or adverse effects existed to justify the continuation of this litigation. Oral arguments were heard October 9, 1987.

During this quarter, the state of Maine filed a motion with the Ninth Circuit Court asking that the declaratory judgment action challenging the 1986 DOE second site deferral be dismissed as moot, intervening on behalf of DOE. DOE followed suit, filing a supplemental memorandum on mootness January 5, 1988. The Maine motion to dismiss makes reference to the 1987 amendments to the Nuclear Waste Policy Act and states that the abandonment by the amendments of the second repository means that claims asserted in the challenge "are no longer justiciable."

## Guidelines and Environmental Assessment Cases

On March 4, 1987, the U.S. Court of Appeals denied motions filed by petitioners for discovery, without prejudice for refileing, that would have allowed them to serve DOE with requests to produce program documents relating to DOE's guidelines and first and second repository decisions. However, DOE has made a voluntary effort to make its information files accessible. According to DOE's Office of General Counsel, approximately 20 attorneys representing the petitioners will be examining DOE's records.

DOE and the Department of Justice met with the petitioners' attorneys on September 22, 1987, in San Francisco, California, to work out a schedule of dates for document access. They prepared a schedule for the guidelines cases; however, they were able to agree only upon a protective order to shield proprietary information that may be in the nonadministrative record for the siting/environmental assessment cases.

The parties' agreed decisions provided that in the guideline cases, DOE would provide the balance of the nonadministrative record on microfilm and an index to the petitioners by October 6, 1987. The petitioners had until October 13, 1987, to furnish DOE with their lists of questions on guidelines document access; DOE agreed to answer those questions by November 13, 1987.

On January 8, 1988, because of the 1987 NWPA amendments, DOE, Justice, and the petitioners' attorneys conferred to establish a briefing schedule for filing motions for dismissals. The parties agreed to suspend the present discovery schedule pending resolution of the upcoming motions for dismissals. A new schedule for discovery would be agreed upon at a later date.

### State of Nevada v. Herrington

The state of Nevada filed a motion with the Ninth Circuit on July 13, 1987. This motion asks the court to enjoin the Secretary of Energy from proceeding with any site-specific activity at the Yucca Mountain site until the Environmental Protection Agency (EPA) has issued new high-level waste standards in compliance with a July 1987 decision of the First Circuit in NRDC v. EPA. The First Circuit invalidated EPA's high-level waste standards because EPA had not adequately explained why these standards were less stringent than required by the Safe Drinking Water Act.

On August 23, 1987, DOE filed its response to Nevada's motion. DOE contended that Nevada's motion must be denied because it rests on a fundamental misconception of the role that EPA high-level waste standards will play in implementing the NWPA. Moreover, DOE believes Nevada's request for injunction relief should be denied because the state had not demonstrated how it would be irreparably

injured if this relief were not granted. In conclusion, according to DOE, EPA's standards were not found illegal in NRDC v. EPA but were remanded to EPA for better justification and additional public comment. DOE argues that it is not clear whether the standards will change and if they do not, the stay would have achieved nothing but a delay. At the end of this quarter, this case was still pending.

State of Washington v. Herrington

The state of Washington filed a request for injunction with the Ninth Circuit on September 29, 1987. This motion asks the court to enjoin DOE from further site-specific activity at Hanford until EPA promulgates standards for disposal of high-level radioactive waste in accordance with the mandate of the First Circuit Court of Appeals. DOE filed its response on October 16, 1987. At the end of this quarter, this case was pending.

National Association of Regulatory  
Utility Commissioners v. Department  
of Energy

On September 9, 1987, the National Association of Regulatory Utility Commissioners (NARUC) petitioned the U.S. Court of Appeals for the District of Columbia for its review of DOE's order of August 14, 1987, denying NARUC's Petition for Rulemaking entitled "In the Matter of 10 C.F.R. Part 961--Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste."

NEW LITIGATION THIS QUARTER

According to DOE's Office of General Counsel, one new action was filed during this quarter. It is as follows:

Arkansas Power and Light Company,  
et al. v. Department of Energy

On October 8, 1987, Arkansas Power and Light Company and 20 other utilities of the Edison Electric Institute (EEI) petitioned the U.S. Court of Appeals for the District of Columbia. The petition requested a review of DOE's denial of petition for rulemaking filed by EEI, DOE's adoption of the cost allocation methodology for defense waste, and DOE's refusal to address other issues raised by their comments.

On November 30, 1987, the D.C. Circuit granted DOE's motion to consolidate the NARUC and EEI suits and also granted a motion by NARUC to intervene in the EEI suit, which means both petitioners are now challenging denial of rulemaking as well as DOE's cost

allocation methodology for defense wastes. The petitioners have until February 3, 1988, to file their briefs; DOE must file its response by March 7, 1988; and the petitioners must file their reply by April 12, 1988. Oral arguments are set for May 13, 1988.



GAO PRODUCTS ON THE NUCLEAR WASTE PROGRAMANNUAL REPORTS TO THE CONGRESS

Department of Energy's Initial Efforts to Implement the Nuclear Waste Policy Act of 1982 (GAO/RCED-85-27, Jan. 10, 1985).

Nuclear Waste Policy Act: 1984 Implementation Status, Progress, and Problems (GAO/RCED-85-100, Sept. 30, 1985).

Nuclear Waste: Status of DOE's Implementation of the Nuclear Waste Policy Act (GAO/RCED-87-17, Apr. 15, 1987).

QUARTERLY REPORTS TO THE  
SENATE COMMITTEE ON ENERGY  
AND NATURAL RESOURCES

Status of the Department of Energy's Implementation of the Nuclear Waste Policy Act of 1982 as of September 30, 1984 (GAO/RCED-85-42, Oct. 19, 1984).

Status of the Department of Energy's Implementation of the Nuclear Waste Policy Act of 1982 as of December 31, 1984 (GAO/RCED-85-65, Jan. 31, 1985).

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Nuclear Waste: Quarterly Report on DOE's Nuclear Waste Program as of September 30, 1985 (GAO/RCED-86-42, Oct. 30, 1985).

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#### OTHER CONGRESSIONAL REPORTS

Nuclear Waste: Monitored Retrievable Storage of Spent Nuclear Fuel (GAO/RCED-86-104FS, May 8, 1986).

Nuclear Waste: Impact of Savannah River Plant's Radioactive Waste Management Practices (GAO/RCED-86-143, July 29, 1986).

Nuclear Waste: Issues Concerning DOE's Postponement of Second Repository Siting Activities (GAO/RCED-86-200FS, July 30, 1986).

Nuclear Waste: Cost of DOE's Proposed Monitored Retrievable Storage Facility (GAO/RCED-86-198FS, Aug. 15, 1986).

Nuclear Waste: Institutional Relations Under the Nuclear Waste Policy Act of 1982 (GAO/RCED-87-14, Feb. 9, 1987).

Nuclear Waste: Status of DOE's Nuclear Waste Site Characterization Activities (GAO/RCED-87-103FS, Mar. 20, 1987).

Nuclear Waste: DOE Should Provide More Information on Monitored Retrievable Storage (GAO/RCED-87-92, June 1, 1987).

Nuclear Waste: A Look At Current Use of Funds and Cost Estimates for the Future (GAO/RCED-87-121, Aug. 31, 1987).

Nuclear Waste: Information on Cost Growth in Site Characterization Cost Estimates (GAO/RCED-87-200FS, Sept. 10, 1987).

#### REPORTS TO AGENCY OFFICIALS

Department of Energy's Program for Financial Assistance (GAO/RCED-86-4, Apr. 1, 1986).

#### TESTIMONY

Nuclear Waste: DOE Should Provide More Information on Monitored Retrievable Storage (GAO/T-RCED-87-30, June 11, 1987).

Nuclear Waste: DOE Should Provide More Information on Monitored Retrievable Storage (GAO/T-RCED-87-35, June 18, 1987).

OTHER DOCUMENTS

NUS Corp. et al., B-221863, June 20, 1986 (Decision).

Letter Response on GAO's MRS Fact Sheet, B-202377, Aug. 21, 1986.

Study of Legal Issues Concerning Postponement of the Second Repository Program, B-223315, B-223370, Sept. 12, 1986.

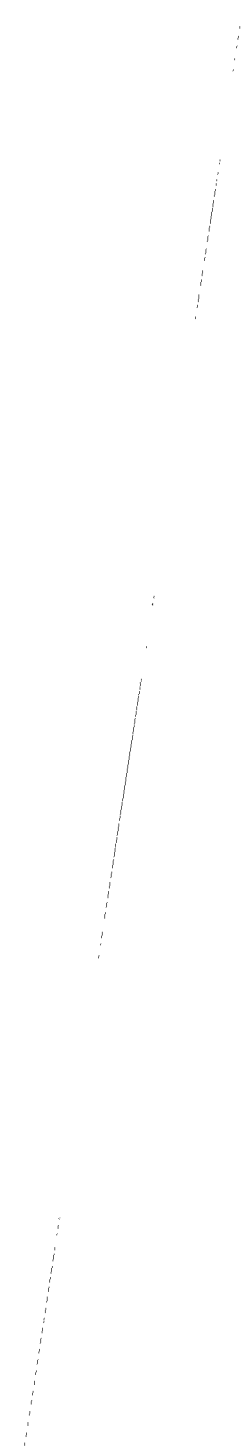
MAJOR CONTRIBUTORS TO THIS FACT SHEET

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION,  
WASHINGTON, D.C.

Keith O. Fultz, Senior Associate Director (202) 275-1441  
Dwayne E. Weigel, Group Director  
Raymond M. Ridgeway, Evaluator-in-Charge  
Sherry Gilmore Taylor, Advisor  
M. Jane Hunt, Reports Analyst  
Theresa P. Himbrick, Typist

OFFICE OF THE GENERAL COUNSEL,  
WASHINGTON, D.C.

Thomas Armstrong, Senior Attorney



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