

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1402

To amend the Waste Isolation Pilot Plant Land Withdrawal Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1995

Mr. CRAIG (for himself, Mr. JOHNSTON, and Mr. KEMPTHORNE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Waste Isolation Pilot Plant Land Withdrawal Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE AND REFERENCE.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Waste Isolation Pilot Plant Land Withdrawal Amend-  
6       ment Act”.

7       (b) **REFERENCE.**—Except as otherwise expressly pro-  
8       vided, whenever in this Act an amendment or repeal is  
9       expressed in terms of an amendment to, or repeal of, a  
10       section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the  
2 Waste Isolation Pilot Plant Land Withdrawal Act (Public  
3 Law 102–579).

4 **SEC. 2. DEFINITIONS.**

5 Section 2 is amended by striking paragraphs (11),  
6 (13), (18) and (19).

7 **SEC. 3. ACQUISITION OF EXISTING OIL AND GAS LEASES.**

8 Section 4(b)(5)(B) is amended by striking “the Ad-  
9 ministrator determines, after consultation with the Sec-  
10 retary and the Secretary of the Interior, that the acqui-  
11 sition of such leases by the Secretary is required to comply  
12 with the final disposal regulations or with the Solid Waste  
13 Disposal Act (42 U.S.C. 6901 et seq.)” and inserting “the  
14 Secretary determined that acquisition of such leases are  
15 necessary for the long-term protection of the WIPP”.

16 **SEC. 4. TEST PHASE AND RETRIEVAL PLANS.**

17 Section 5 is repealed.

18 **SEC. 5. TEST PHASE ACTIVITIES.**

19 Section 6 is amended—

20 (1) by striking subsections (a) and (b),

21 (2) in subsection (c) by striking “(c) LIMITA-  
22 TIONS.—” and all that follows through “(B)  
23 STUDY.—”, and redesignating subparagraphs (i),  
24 (ii), and (iii) as subsections (a), (b), and (c) respec-  
25 tively, and

1 (3) by striking subsection (d).

2 **SEC. 6. NON-DEFENSE WASTE.**

3 Section 7(a) is amended by redesignating paragraph  
4 (3) as paragraph (4) and by inserting after paragraph (2)  
5 the following:

6 “(3) NON-DEFENSE WASTE.—Within the capac-  
7 ity prescribed by paragraph (4) and subject to other  
8 applicable restrictions, WIPP may receive trans-  
9 uranic waste from the Secretary which did not result  
10 from a defense activity but that is under the control  
11 of the Secretary on the date of enactment of this  
12 Act.”.

13 **SEC. 7. REQUIREMENTS FOR COMMENCEMENT OF DIS-**  
14 **POSAL OPERATIONS.**

15 Section 7(b) is amended—

16 (1) by striking “REQUIREMENTS” and inserting  
17 “REQUIREMENT”,

18 (2) by striking “The Secretary” and all that  
19 follows and inserting: “The Secretary may begin the  
20 disposal phase after the completion of the Adminis-  
21 trator’s review and certification under section 8(d)  
22 that DOE’s application reasonably addresses the  
23 final disposal standards.”.

1 **SEC. 8. SURVEY AND RECOMMENDATIONS REGARDING DIS-**  
2 **POSAL.**

3 At the end of section 7, insert the following new sub-  
4 sections:

5 “(c) **RECOMMENDATIONS REGARDING DISPOSAL.**—  
6 Within 3 years of enactment of this Act, the Secretary  
7 shall submit to Congress comprehensive recommendations  
8 for the disposal of all transuranic waste under the control  
9 of the Secretary, including a timetable for the disposal of  
10 such waste. The recommendations shall provide for com-  
11 pliance with all agreements entered into by the Secretary  
12 regarding the disposal of transuranic waste stored at De-  
13 partment of Energy facilities. If the Secretary has com-  
14 pleted other reports or timetables which contain informa-  
15 tion required by this subsection, the Secretary may incor-  
16 porate the reports into the recommendations by reference.

17 “(d) **SURVEY.**—Within 3 years of enactment of this  
18 Act, the Secretary shall complete, with notice and an op-  
19 portunity for public comment, a survey identifying all  
20 transuranic waste types at all sites from which wastes are  
21 to be shipped to WIPP, and—

22 “(1) the results of such survey shall be made  
23 available to the public and be provided to the Ad-  
24 ministrator; and

25 “(2) such survey shall not be subject to rule-  
26 making or judicial review. If the Secretary has com-

1       pleted other reports or timetables which contain in-  
2       formation required by this subsection, the Secretary  
3       may incorporate the reports into the recommenda-  
4       tions by reference.”.

5       **SEC. 9. CERTIFICATION.**

6       (a) Section 8(c) is amended to read as follows:

7       “(c) CRITERIA FOR CERTIFICATION OF COMPLIANCE  
8       WITH DISPOSAL REGULATIONS.—The Administrator, in  
9       reviewing the Secretary’s application submitted under sub-  
10      paragraph (A) shall limit such review to consideration of  
11      the Secretary’s methods used in compiling information for  
12      the application. The Administrator shall disapprove the  
13      application only if the Administrator finds through a pre-  
14      ponderance of the evidence in the record that the Sec-  
15      retary has failed to adequately address long-term environ-  
16      mental and human-health related risks. The Adminis-  
17      trator shall not conduct an independent evaluation of the  
18      Secretary’s analyses used to evaluate long-term disposal  
19      system performance. The Administrator’s review of the  
20      application shall be limited to the following criteria for cer-  
21      tification of compliance with the final disposal regulations:

22               “(1) COMPLETENESS OF THE APPLICATION.—  
23               Whether or not the Secretary’s application addresses  
24               the topics mandated by the final disposal standards  
25               and listed in the certification criteria.

1           “(2) REASONABLENESS OF THE APPLICA-  
2           TION.—If the Secretary’s application provides a rea-  
3           sonable, scientifically sound approach to determining  
4           compliance with the final disposal standards.

5           “(3) QUALITY OF THE APPLICATION.—If the  
6           Secretary has provided in the application objective  
7           evidence of quality. The Administrator shall deter-  
8           mine that the Secretary prepared the application  
9           using a recognized national nuclear quality standard.

10           “(4) RESULT OF THE APPLICATION.—The Ad-  
11           ministrator shall determine if the bounding assump-  
12           tions made by the Secretary in assessing long-term  
13           performance of the WIPP disposal system are rea-  
14           sonable and that any conditions imposed are tech-  
15           nically feasible.”.

16           (b) Section 8(d) is amended by striking “DISPOSAL  
17           REGULATIONS.—” and inserting “CERTIFICATION.—”.

18           (c) Section 8(d)(1) is amended—

19           (1) in subparagraph (A) by striking “Within 7  
20           years of the date of the first receipt of transuranic  
21           waste at WIPP, the” and inserting “The”,

22           (2) by amending subparagraph (B) to read as  
23           follows:

24           “(B) CERTIFICATION BY ADMINIS-  
25           TRATOR.—Within 6 months of receipt of the

1 application under subparagraph (A) the Admin-  
2 istrator shall review the application for compli-  
3 ance with the final disposal regulations. The ap-  
4 plication shall be deemed certified 6 months  
5 after receipt of the application by the Adminis-  
6 trator unless the Administrator disapproves the  
7 application according to the criteria set forth in  
8 subsection (c). The Administrator shall issue  
9 any such disapproval by rule pursuant to sec-  
10 tion 553 of title 5, United States Code, and sec-  
11 tions 556 and 557 of such title shall not  
12 apply.”, and

13 (3) by striking subparagraph (D).

14 (d) Section 8(d)(2) is amended to read as follows:

15 “(2) INCREMENTAL SUBMISSION OF APPLICA-  
16 TION FOR COMPLIANCE.—Within 30 days after the  
17 passage of this bill, the Secretary shall provide to  
18 Congress a schedule for the incremental submission  
19 of the final version of chapters of the application to  
20 the Administrator. The Secretary shall notify Con-  
21 gress of the submission of such chapters. The Ad-  
22 ministrator shall review the submitted chapters ac-  
23 cording to the criteria in subsection (c) and provide  
24 requests for additional information for the Secretary  
25 only if the administrator makes a prima facie show-

1 ing that the information is needed to avoid a rejection of the application under the criteria. The Administrator shall provide comments within 45 days of receipt of each chapter, and the Administrator shall notify Congress when comments are provided to the Secretary under this subparagraph. The Administrator shall be prohibited from rejecting the final application submitted under paragraph (1)(A) upon grounds that the Administrator did not raise under this section if the Administrator knew or could have reasonably anticipated the grounds for the rejection. The comments or failure to comment of the Administrator under this subparagraph shall not be a final agency action for purposes of the Administrative procedures Act.”.

16 (e) Section 8(d)(3) is repealed.

17 **SEC. 10. ENGINEERED BARRIERS.**

18 Section 8(g) is amended to read as follows:

19 “(g) ENGINEERED AND NATURAL BARRIERS, ETC.—  
20 The Secretary shall determine whether or not engineered  
21 barriers, or both, will be required at WIPP to comply with  
22 regulations published as part 191 of 40 C.F.R.”.

23 **SEC. 11. COMPLIANCE WITH ENVIRONMENTAL LAWS AND**  
24 **REGULATIONS.**

25 Section 9 is amended—

1 (1) in subsection (a)(1)(C) by inserting after  
2 “et seq.)” the following: “, except that the Secretary  
3 shall not be required to comply with the require-  
4 ments of 42 U.S.C. 6924(d)”,

5 (2) in subsection (a) by striking “IN GEN-  
6 ERAL.—(1)” and renumbering subparagraphs (A)  
7 through (H) as paragraphs (1) through (8) respec-  
8 tively,

9 (3) in subsection (a) by striking paragraphs  
10 (2)(3),

11 (4) by striking subsections (b), and (c), and

12 (5) by redesignating subsection (d) as sub-  
13 section (b) and inserting after “7401 et seq.)” the  
14 following: “, except that the Secretary shall not be  
15 required to comply with the requirements of 42  
16 U.S.C. 6924(d).”.

17 **SEC. 12. RETRIEVABILITY.**

18 Section 10 is amended to read as follows:

19 **“SEC. 10. DISPOSAL OF TRANSURANIC WASTE.**

20 “It is the intent of Congress that, after the comple-  
21 tion of the administrator’s review and certification under  
22 section 8(d), the Secretary will begin the disposal phase  
23 no later than June 30, 1997.”.

24 **SEC. 13. DECOMMISSIONING OF WIPP.**

25 Section 13 is amended—

1 (1) by repealing subsection (a), and  
2 (2) in subsection (b), by striking “(b) MANAGE-  
3 MENT PLAN FOR THE WITHDRAWAL AFTER DECOM-  
4 MISSIONING.—Within 5 years after the date of the  
5 enactment of this Act, the” and inserting “The”.

6 **SEC. 14. SAVINGS PROVISIONS.**

7 Section 14 is amended in subsection (b)(2) by strik-  
8 ing “including all terms and conditions of the No-Migra-  
9 tion Determination” and inserting “except that the Ad-  
10 ministrator and the State shall not enforce, and the Sec-  
11 retary shall not be obligated to comply with, the require-  
12 ments of 42 U.S.C. 6924(d)”.

13 **SEC. 15. ECONOMIC ASSISTANCE AND MISCELLANEOUS**  
14 **PAYMENTS.**

15 Section 15(a) is amended—

16 (1) by striking “to the Secretary for payments  
17 to the State \$20,000,000 for each of the 15 fiscal  
18 years beginning with the fiscal year in which the  
19 transport of transuranic waste to WIPP is initiated”  
20 and inserting “to the State \$20,000,000 for each of  
21 the 15 fiscal years beginning with the date of the en-  
22 actment of the Waste Isolation Pilot Plant Land  
23 Withdrawal Amendment Act”, and

1           (2) by adding at the end the following: “An ap-  
2           propriation to the State shall be in addition to any  
3           appropriation for WIPP.”.

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