

104TH CONGRESS
1ST SESSION

H. R. 2110

To provide leadership, improved efficiencies, and regulatory clarity for Department of Energy waste management and environmental restoration efforts at the Hanford Reservation and certain other Defense Nuclear Facilities.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1995

Mr. HASTINGS of Washington (for himself, Mr. DICKS, Mr. NETHERCUTT, Ms. DUNN of Washington, Mr. WHITE, Mr. BUNN of Oregon, Mr. TATE, Mr. METCALF, Mrs. SMITH of Washington, and Mr. COOLEY) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on National Security, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide leadership, improved efficiencies, and regulatory clarity for Department of Energy waste management and environmental restoration efforts at the Hanford Reservation and certain other Defense Nuclear Facilities.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Enhanced Environ-
3 mental Cleanup and Management Demonstration Act of
4 1995”.

5 **SEC. 2. FINDINGS AND PURPOSES.**

6 (a) FINDINGS.—Congress hereby finds that:

7 (1) Defense Nuclear Facilities were used to
8 produce nuclear weapons materials to defend the
9 United States in World War II and thereafter.
10 These facilities played a critical role in securing the
11 defense and overall welfare of the country.

12 (2) Defense Nuclear Facilities are now among
13 the most contaminated sites in the country. Many
14 are listed on the National Priorities List compiled
15 pursuant to the Comprehensive Environmental Re-
16 sponse, Compensation, and Liability Act of 1980.
17 Contamination and inadequate waste management
18 practices at Defense Nuclear Facilities pose threats
19 to workers, surrounding communities, and the envi-
20 ronment.

21 (3) Although the Department has begun to ad-
22 dress the contamination and manage its waste, it
23 has achieved too little progress for the significant
24 amount of money spent.

25 (4) Problems with environmental restoration
26 and waste management at Defense Nuclear Facili-

1 ties are attributable to a number of factors. Among
2 these is inefficient management by the Department
3 at headquarters and at the Defense Nuclear Facili-
4 ties, including outmoded contracting procedures,
5 lack of competition, cumbersome bureaucratic proc-
6 esses, and the lack of a clear chain of command. All
7 of these things have contributed to confusion and in-
8 efficiency at many Defense Nuclear Facilities.

9 (5) Internal orders issued by the Department of
10 Energy often hinder compliance with environmental
11 laws and add unnecessary cost to environmental res-
12 toration.

13 (6) Regulatory requirements applicable to De-
14 fense Nuclear Facilities can be complex and, at
15 times, redundant. Frequently, the Department is ac-
16 countable to several regulatory agencies.

17 (7) Cleanup decisions are often made without
18 consideration of the future land uses.

19 (b) PURPOSES.—The purposes of this Act are to re-
20 quire significant regulatory reform measures, and to re-
21 quire that Defense Nuclear Facilities be managed more
22 efficiently.

23 **SEC. 3. DEFINITIONS.**

24 For purposes of this Act:

1 (1) The term “adjoining State” means any
2 State other than a host State, the border of which
3 is located within 50 miles of a Defense Nuclear Fa-
4 cility.

5 (2) The term “Defense Nuclear Facility” means
6 a former or current Defense nuclear production fa-
7 cility now owned and managed by the Department of
8 Energy.

9 (3) The term “Department” means the Depart-
10 ment of Energy.

11 (4) The term “environmental agreement”
12 means an agreement, including an interagency
13 agreement, between the Department of Energy and/
14 or the Environmental Protection Agency that sets
15 forth requirements and schedules for achieving com-
16 pliance with Federal or State environmental laws.

17 (5) The term “Hanford Reservation” means the
18 Defense Nuclear Facility located in southeastern
19 Washington owned and managed by the Department
20 of Energy.

21 (6) The term “host State” means a State with
22 a Defense Nuclear Facility located within its bound-
23 aries that is subject to this Act.

24 (7) The term “interagency agreement” means
25 an agreement entered into pursuant to the provi-

1 sions of section 120(e) of the Comprehensive Envi-
2 ronmental, Response, Compensation, and Liability
3 Act of 1980 (42 U.S.C. 9620(e)).

4 (8) The term “Land Use Council” means, with
5 respect to a Defense Nuclear Facility, a congression-
6 ally chartered council with the authority to develop
7 a future land use plan at such facility.

8 (9) The term “Secretary” means the Secretary
9 of Energy.

10 (10) The term “Site Manager” means a Presi-
11 dentially appointed Department of Energy official
12 delegated with full authority from the Secretary to
13 oversee and direct all operations at a Defense Nu-
14 clear Facility.

15 (11) The terms “TPA” and “Tri-Party Agree-
16 ment” mean the Hanford Federal Facility Agree-
17 ment and Consent Order as amended among Wash-
18 ington State, the Department, and the Environ-
19 mental Protection Agency.

20 **SEC. 4. APPLICABILITY.**

21 (a) HANFORD RESERVATION.—The Department’s
22 Hanford Reservation in southeastern Washington shall be
23 subject to this Act.

24 (b) OTHER DEFENSE NUCLEAR FACILITIES.—A
25 Governor of a State hosting a Defense Nuclear Facility

1 the fiscal year 1995 environmental management budget
2 of which was \$500,000,000 or more may submit a request
3 to the President that the facility be covered by the terms
4 of this Act. Within 60 days after receipt of such a request,
5 the President shall, unless the President determines that
6 such application is not in the national interest, appoint
7 a Site Manager for the facility pursuant to section 5.
8 Thereafter, such Defense Nuclear Facility shall be subject
9 to this Act.

10 **SEC. 5. SITE MANAGER.**

11 (a) POLICY.—The President shall appoint, within 60
12 days after enactment of this Act, a Site Manager for the
13 Hanford Reservation. For other Defense Nuclear Facili-
14 ties, the President shall appoint a site manager, within
15 60 days of receipt of a request from the Governor of a
16 host State submitted pursuant to section 4(b). The Site
17 Manager shall be appointed from a list of 3 candidates
18 for such position to be provided by the Secretary.

19 (b) SCOPE.—In addition to other authorities provided
20 for in this Act, the Site Manager for a Defense Nuclear
21 Facility shall have full authority to oversee and direct all
22 operations at the facility including the authority to—

23 (1) enter into and modify contractual agree-
24 ments to enhance environmental cleanup and man-
25 agement at the Defense Nuclear Facility;

1 (2) manage congressionally appropriated envi-
2 ronmental management funds allocated to the De-
3 fense Nuclear Facility, with the ability to transfer
4 funds among accounts in order to facilitate the most
5 efficient and timely cleanup of the Facility;

6 (3) negotiate amendments to the Tri-Party
7 Agreement or other environmental agreements for
8 the Department;

9 (4) manage Department personnel at the Facil-
10 ity; and

11 (5) carry out recommendations of the Depart-
12 ment of Energy Office of Environmental Health and
13 Safety where the Site Manager determines that
14 those recommendations are consistent with the goals
15 set forth in this Act, except that if the Site Manager
16 elects not to carry out such recommendations, the
17 Site Manager shall provide to the Governor of the
18 host State and the Secretary a statement of the rea-
19 sons therefor.

20 Decisions by the Site Manager to disregard recommenda-
21 tions made by the Department of Energy's Office of Envi-
22 ronmental Health and Safety shall take effect unless the
23 President determines within 21 days of implementation of
24 the issuance of the decision that the particular decision
25 is not in the national interest and where the State concurs

1 with the President's opinion. In such cases, the President
2 and the host State shall certify within such 21-day period
3 that the recommendation does not add prohibitively to
4 costs at the site and that it meets important environ-
5 mental or human health or safety concerns.

6 (c) ADDITIONAL DUTIES.—The Site Manager for any
7 Defense Nuclear Facility subject to this Act shall prepare
8 the following for each remedy selected under the Com-
9 prehensive Environmental Response, Compensation, and
10 Liability Act of 1980 at such facility if the cost of the
11 remedy exceeds \$25,000,000:

12 (1) An analysis of the incremental costs and in-
13 cremental risk reduction or other benefits associated
14 with the selected remedy.

15 (2) An assessment of the costs and risk reduc-
16 tion or other benefits, including protection of human
17 health or the environment, or the fostering of eco-
18 nomic development, associated with implementation
19 of the selected remedy.

20 (3) A certification of each of the following:

21 (A) That the assessment under paragraph
22 (2) is based on an objective and unbiased sci-
23 entific and economic evaluation.

24 (B) That the remedy will substantially ad-
25 vance the purpose of protecting human health

1 or the environment against the risk addressed
2 by the remedy.

3 (C) That there is no alternative remedy
4 that is allowed by the statute that would
5 achieve an equivalent reduction in risk in a
6 more cost-effective manner.

7 The assessments and certifications required under
8 this paragraph may be set forth in several docu-
9 ments or a single document, as determined by the
10 Site Manager. Completion of such assessments and
11 certifications shall not delay selection or implemen-
12 tation of a remedy and shall be completed prior to
13 or concurrent with the selection of a remedy.

14 (d) CLEANUP STANDARDS.—The Site Manager shall
15 select remedial actions for a Defense Nuclear Facility in
16 accordance with the provisions of section 121(d) of the
17 Comprehensive Environmental Response, Compensation,
18 and Liability Act of 1980 (42 U.S.C. 9621(d)), except
19 that the remedial actions need not attain any relevant and
20 appropriate standard, requirement, criteria, or limitation.

21 (e) METRIC SYSTEM.—The Site Manager for any De-
22 fense Nuclear Facility subject to this Act may exempt the
23 facility from the requirements of the Metric System Con-
24 version Act of 1975 (15 U.S.C. 205a and following).

1 **SEC. 6. DEPARTMENT ORDERS.**

2 (a) EXISTING ORDERS.—The internal orders of the
3 Department of Energy, whether or not they have been
4 adopted as regulations, shall not apply at a Defense Nu-
5 clear Facility subject to this Act 60 days after the con-
6 firmation of the Site Manager except for those orders that
7 the Site Manager deems essential for the protection of
8 human health or the environment, or to the conduct of
9 critical administrative functions.

10 (b) NEW ORDERS.—The Site Manager of a Defense
11 Nuclear Facility subject to this Act may adopt a new order
12 only after finding that the order is essential to the protec-
13 tion of human health or the environment, or to the con-
14 duct of critical administrative functions, and, to the extent
15 possible, will not unduly interfere with efforts to bring the
16 Defense Nuclear Facility into compliance with environ-
17 mental laws, including the terms of any environmental
18 agreement.

19 **SEC. 7. STATE EXERCISE OF REGULATORY AUTHORITY.**

20 (a) STATE EXERCISE OF AUTHORITIES UNDER
21 CERCLA.—(1) Notwithstanding any other provision of
22 law, a host State may exercise the authorities vested in
23 the Administrator of the Environmental Protection Agen-
24 cy under the Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
26 et seq.) at any Defense Nuclear Facility subject to this

1 Act if the host State complies with the provisions of this
2 section.

3 (2) A host State that elects to exercise the authorities
4 vested in the Administrator of the Environmental Protec-
5 tion Agency under the Environmental Protection Agency
6 under the Comprehensive Environmental Response, Com-
7 pensation, and Liability Act of 1980 shall notify the Ad-
8 ministrator in writing. Within 60 days of the Administra-
9 tor's receipt of the State's notification, the Administrator
10 shall provide for the orderly transfer of her authorities at
11 the Defense Nuclear Facility to the host State. The host
12 State and the Department shall amend any existing inter-
13 agency agreement to reflect the transfer of authorities at
14 the Defense Nuclear Facility.

15 (3) A host State that elects to exercise the authorities
16 vested in the Administrator of the Environmental Protec-
17 tion Agency under the Comprehensive Environmental Re-
18 sponse, Compensation, and Liability Act of 1980 shall re-
19 tain its authority under section 310 of that Act (42 U.S.C.
20 9659) to enforce compliance with any requirement of an
21 interagency agreement with the Department, including the
22 authority to compel implementation of a remedy selected
23 by the State and shall have the authority granted under
24 section 109 of that Act (42 U.S.C. 9609(a)(1)).

1 (4)(A) At a Defense Nuclear Facility where the Ad-
2 ministrators' authorities under section 120(e)(4) of the
3 Comprehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9620(e)(4)) have
5 been transferred to the host State pursuant to this section,
6 and the host State does not concur in a remedy proposed
7 by the Site Manager, the parties shall enter into dispute
8 resolution as provided in their interagency agreement.

9 (B) The final level of such disputes shall be to the
10 Site Manager and the Governor of the host State, and if
11 the Site Manager and the Governor do not reach agree-
12 ment, the host State shall select the final remedy: *Pro-*
13 *vided, however,* That before reaching the final level of dis-
14 pute, the remedy selection dispute shall be reviewed by a
15 mediator selected by the host State and the Site Manager.
16 The mediator shall be experienced in contaminated site re-
17 mediation, and radionuclide exposure issues. The mediator
18 may consult with representatives of the National Academy
19 of Sciences, and other qualified experts as the mediator
20 deems necessary. If the mediation does not result in the
21 parties reaching agreement, the mediator shall recommend
22 the remedy he deems appropriate. The mediation process
23 shall be completed as quickly as possible, and in no event
24 shall take more than 90 days to complete. If the Governor
25 disagrees with the mediator's recommendation, the host

1 State shall issue the final determination on the dispute,
2 with a written rationale for such determination.

3 (C) In selecting a remedy, the Site Manager, the me-
4 diator, and the host State shall consider the remedy selec-
5 tion criteria in section 121 of the Comprehensive Environ-
6 mental Response, Compensation, and Liability Act of
7 1980 (42 U.S.C. 9621), and in the National Contingency
8 Plan, the provisions of this Act, and the assessment and
9 the certification prepared by the Site Manager under sec-
10 tion 5(c) of this Act.

11 (5) Remedial actions selected for Defense Nuclear
12 Facilities or portions thereof shall be consistent with the
13 Future Land Use plan developed by the Land Use Coun-
14 cil. Remedial actions, including cleanup standards, shall
15 be selected using reasonable maximum exposure scenarios
16 that are consistent with the future land uses set forth in
17 the Future Land Use plan. Appropriate institutional con-
18 trols shall be implemented whenever the concentration of
19 hazardous substances remaining after completion of the
20 remedial action would pose a threat or potential threat to
21 human health under a residential use exposure scenario.

22 (b) REDUNDANCIES.—The host State shall integrate,
23 to the maximum extent possible, the requirements of ap-
24 plicable laws over which it has jurisdiction, to eliminate

1 redundancies that do not contribute to the environmental
2 management program.

3 (c) ADJOINING STATES.—(1) The Site Manager shall
4 provide to any adjoining State those opportunities for re-
5 view and comment regarding any response action at a De-
6 fense Nuclear Facility that are provided pursuant to sec-
7 tion 121(f)(1) (D), (E), (G), and (H) by the Environ-
8 mental Protection Agency under the Comprehensive Envi-
9 ronmental Response, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9621(f)(1) (D), (E), (G), and (H)).

11 (2) A host State shall enter into negotiations with,
12 and is authorized to enter into a Memorandum of Under-
13 standing with, an adjoining State addressing issues of mu-
14 tual concern regarding a Defense Nuclear Facility. Noth-
15 ing in this paragraph shall delay implementation of this
16 section.

17 (3) If a host State brings an action to compel imple-
18 mentation of a remedial action pursuant to this section,
19 an adjoining State may intervene as a matter of right in
20 such action.

21 (d) PENALTIES.—All funds collected by the host
22 State from the Federal Government as penalties or fines
23 imposed for the violation of any environmental law at a
24 Defense Nuclear Facility shall be used by the host State
25 only for projects to protect the environment at or near

1 the facility from threats resulting from the facility or to
2 remedy contamination associated with the facility.

3 **SEC. 8. COMPLIANCE WITH NATIONAL ENVIRONMENTAL**
4 **POLICY ACT.**

5 The Site Manager shall integrate, to the maximum
6 extent possible, the requirements of the National Environ-
7 mental Policy Act (42 U.S.C. 4321) with other applicable
8 State and Federal regulatory requirements. Where an
9 analysis of environmental impacts and public comment
10 process has been completed under other applicable law, in-
11 cluding the Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
13 and following) or State environmental laws, for any deci-
14 sion, project, or action conducted at a Defense Nuclear
15 Facility, and the Site Manager determines that the analy-
16 sis and process are substantially equivalent to that re-
17 quired by the National Environmental Policy Act, the Site
18 Manager need not conduct another environmental analysis
19 or public comment process under the National Environ-
20 mental Policy Act.

21 **SEC. 9. LAND USE COUNCIL.**

22 (a) COUNCIL ESTABLISHED.—There is hereby estab-
23 lished a Land Use Council for each Defense Nuclear Facil-
24 ity for which a Site Manager has been appointed under
25 this Act. Each Land Use Council shall develop a future

1 land use plan for all lands within the Defense Nuclear Fa-
2 cility boundaries that are managed under the Comprehen-
3 sive Environmental Response, Compensation, and Liabil-
4 ity Act of 1980 and are listed on the National Priorities
5 List. The Council shall not specify future land use for
6 lands outside National Priority List site boundaries. At
7 the Hanford Reservation, the Council shall not specify fu-
8 ture land use for the Fitzner-Eberhardt Arid Lands Ecol-
9 ogy Reserve or the Wahluke Slope. The plan shall be given
10 full consideration in developing and selecting remedial ac-
11 tions for the Defense Nuclear Facility.

12 (b) MEMBERSHIP.—Each Land Use Council shall
13 make decisions by majority vote. The members of the
14 Council for a Defense Nuclear Facility shall include the
15 Site Manager for the Defense Nuclear Facility who shall
16 be a voting member and the following additional members
17 appointed by such Site Manager:

18 (1) One voting member nominated by the Gov-
19 ernor of the host State.

20 (2) One voting member nominated by the elect-
21 ed officials of counties and cities contiguous to or
22 within 15 miles of a Defense Nuclear Facility.

23 (3) One nonvoting member consisting of the
24 chair of the site advisory board, established by the

1 Department at the Defense Nuclear Facility or such
2 members designee.

3 (4) One nonvoting member appointed by the
4 national laboratory in closest proximity to the De-
5 fense Nuclear Facility.

6 (c) PLAN ADOPTION.—The Land Use Council shall
7 adopt, within 24 months after confirmation of the Site
8 Manager, a Future Land Use plan for the Defense Nu-
9 clear Facility. To support remedial action decisions, the
10 Council shall use a phased approach in developing a future
11 land use plan. Prior to completion of the full plan, but
12 no later than 9 months after the Site Manager’s confirma-
13 tion, the Council shall adopt land use plans for portions
14 of the Facility to support scheduled remedial action deci-
15 sions as requested by the Site Manager.

16 (d) CONTENT OF THE PLAN.—The Future Land Use
17 Plan for a Defense Nuclear Facility shall include—

18 (1) lands that should be retained by the De-
19 partment for its use or for the maintenance of insti-
20 tutional controls needed to protect the public or en-
21 vironment from hazardous substances or radioactive
22 materials;

23 (2) lands designated for industrial use;

24 (3) lands designated for commercial use;

25 (4) lands designated for residential use;

1 (5) lands designated for agricultural use;

2 (6) lands designated for recreational use; and

3 (7) lands designated for open space.

4 (e) PLAN CRITERIA.—In developing the Future Land
5 Use Plan, the Land Use Council shall consider informa-
6 tion it deems appropriate, including—

7 (1) the degree to which lands within the De-
8 fense Nuclear Facility could be reasonably remedi-
9 ated given technological considerations;

10 (2) the cost of remediation;

11 (3) the risks to human health and the environ-
12 ment;

13 (4) the land use history of the facility and sur-
14 rounding lands, current land uses of the facility and
15 surrounding lands, recent development patterns in
16 the proximity of the facility, and population projec-
17 tion for the area;

18 (5) land use plans prepared for adjacent lands
19 and for the facility, including for the Hanford res-
20 ervation, the report of the Future Site Working
21 Group;

22 (6) Federal or State land use designations, in-
23 cluding Federal facilities and national parks, State
24 groundwater or surface water recharge areas, rec-

1 reational areas, wildlife refuges, ecological areas, and
2 historic or cultural areas;

3 (7) the proximity of contamination to resi-
4 dences, sensitive populations or ecosystems, natural
5 resources, or areas of unique historic or cultural sig-
6 nificance;

7 (8) the potential for economic development; and

8 (9) recreation, open space, cultural, and other
9 noneconomic values.

10 (f) CONSULTATION.—In preparing the land use plan,
11 the Council shall consult with—

12 (1) adjoining States,

13 (2) affected Indian Tribes,

14 (3) affected local governments,

15 (4) appropriate State and Federal agencies, and

16 (5) the public.

17 All Council meetings shall be open to the public and shall
18 be scheduled and conducted to promote public participa-
19 tion. Adjoining States, affected Indian Tribes, affected
20 local governments, appropriate State and Federal agen-
21 cies, affected Indian Tribes, and the public shall be given
22 an opportunity to comment on the land use plans prior
23 to their adoption. The Council shall advise commentors of
24 the disposition of their comments.

1 **SEC. 10. TECHNOLOGY DEMONSTRATIONS.**

2 (a) IN GENERAL.—The Site Manager shall promote
3 the demonstration, certification, verification, and imple-
4 mentation of new environmental technologies at Defense
5 Nuclear Facilities.

6 (b) CRITERIA.—The Site Manager shall establish a
7 program at the Defense Nuclear Facility for testing envi-
8 ronmental, waste characterization and remediation tech-
9 nology at the site. In establishing such a program, the Site
10 Manager is authorized to—

11 (1) establish a simplified, standardized and
12 timely process for the testing and verification of new
13 technologies;

14 (2) solicit and accept applications to test envi-
15 ronmental technology suitable for waste management
16 and environmental restoration activities at Defense
17 Nuclear Facilities, including prevention, control,
18 characterization, treatment, and remediation of con-
19 tamination; and

20 (3) enter into cooperative agreements with
21 other public and private entities to test environ-
22 mental technologies at the Defense Nuclear Facility.

23 (c) SAFE HARBORS.—At the request of the Site Man-
24 ager, the Secretary shall seek to provide regulatory or con-
25 tractual “safe harbors” to limit liability of companies

1 using technology approved for use at a Defense Nuclear
2 Facility for use at other Department of Energy facilities.

3 (d) NUCLEAR MATERIAL.—When source, special nu-
4 clear, or by-product materials are involved, agreements
5 with private entities under section 9, subsection (b),
6 shall—

7 (1) provide indemnification pursuant to section
8 170d. of the Atomic Energy Act of 1954 (42 U.S.C.
9 2210(d));

10 (2) indemnify, protect, and hold harmless the
11 contractor from and against all liability, including li-
12 ability for legal costs, for any preexisting conditions
13 at any part of the Defense Nuclear Facility man-
14 aged under the agreement;

15 (3) indemnify, protect, and hold harmless the
16 contractor from and against all liability to third par-
17 ties (including liability for legal costs and for claims
18 for personal injury, illness, property damage, and
19 consequential damages) arising out of the contrac-
20 tor's performance under the contract, unless such li-
21 ability was caused by conduct of the contractor
22 which was grossly negligent or which constituted in-
23 tentional misconduct; and

24 (4) provide for indemnification of subcontractors
25 as described in subparagraphs (1), (2), and (3).

1 **SEC. 11. CONTRACT REFORM AND FEDERAL GOVERNMENT**
2 **OVERSIGHT.**

3 (a) CONTRACTING STRATEGIES.—The Site Manager,
4 in entering into and managing all contracts at Defense
5 Nuclear Facilities (including contracts for design, con-
6 struction, operation and maintenance of treatment, stor-
7 age and disposal facilities), may ensure effective, efficient
8 and consistent implementation of the Federal Acquisition
9 Regulation (hereinafter in this section referred to as
10 “FAR”) and the Federal Acquisition Streamlining Act
11 (hereinafter in this section referred to as “FASA”) re-
12 quirements and shall—

13 (1) encourage market-based management and
14 practices;

15 (2) maximize competition in new procurements;

16 (3) maintain an effective capability to
17 recompete existing contracts;

18 (4) maximize efficient and effective use of
19 multiyear contracting practices that enhance com-
20 mercialization and privatization;

21 (5) maximize use of incentives and performance
22 guarantees;

23 (6) assure coordination and integration of all
24 contractor-developed designs, plans, and schedules;

25 (7) maximize application of best commercial
26 standards and specifications in all contracts; and

1 (8) consult to maximum extent possible, the
2 host State regarding contracting strategies and over-
3 sight, including project plans, facility designs, and
4 schedules and cost estimates.

5 (b) MULTIYEAR CONTRACTING.—The Site Manager
6 is authorized to enter into and implement multiyear con-
7 tracts, in accordance with FAR and FASA requirements
8 and the provisions of this Act for the design, construction,
9 operation and maintenance of treatment, storage and dis-
10 posal facilities by private entities. The Site Manager shall
11 do so when the Site Manager determines that such a con-
12 tract will maximize public resources and result in efficient
13 and timely environmental improvements. In entering into
14 such a contract, the Site Manager shall not jeopardize the
15 funding of environmental agreement obligations. The Site
16 Manager may use Department of Defense FAR multiyear
17 funding and termination liability procedures in lieu of ci-
18 vilian agency FAR procedures if the Site Manager dem-
19 onstrates this to be beneficial to the United States.

20 (c) ASSISTANCE IN IMPROVING CONTRACTING
21 STRATEGIES AND GOVERNMENT OVERSIGHT.—The Site
22 Manager shall obtain the expertise necessary to implement
23 performance oriented incentive based contracting and pro-
24 curement practices. To accomplish this, the Site Manager

1 may obtain the involvement of qualified representatives
2 from other Federal agencies in—

3 (1) developing improved contracting strategies,
4 and participating in selection of contract sources;
5 and

6 (2) the oversight and administration of con-
7 tracts.

8 The Secretaries of involved agencies shall ensure selection
9 of qualified and knowledgeable representatives to assist
10 and advise the Site Manager. The Site Manager may also,
11 to the extent allowed by the FAR separately consult with
12 the private sector.

13 **SEC. 12. ENVIRONMENTAL AGREEMENTS NOT AFFECTED.**

14 Nothing in this Act shall impair the force or effect
15 of any environmental agreement, except to authorize re-
16 negotiation to incorporate the changes required to comply
17 with provisions of this Act.

18 **SEC. 13. REPORT TO CONGRESS.**

19 Two years after the effective date of this Act, and
20 every two years thereafter, the Site Manager for each De-
21 fense Nuclear Facility subject to this Act shall submit to
22 Congress a report evaluating progress or cleanup made
23 under the provisions of this Act. The report shall identify
24 efficiencies achieved and moneys saved through implemen-
25 tation of this Act and shall identify additional measures

1 that would increase the pace and lower the cost of environ-
2 mental management activities at the facility. The Site
3 Manager shall also report specific actions undertaken to
4 implement business and contracting strategies that maxi-
5 mize the use of fixed price and incentive based contracting
6 in lieu of cost reimbursement contract arrangements. The
7 Site Manager shall also specify in his report the utility
8 of commercial standards, specifications and practices, as
9 well as improvements in the effectiveness and efficiency
10 of Federal contract oversight and administration activities
11 within his purview.

12 **SEC. 14. NATIONAL HISTORIC PRESERVATION ACT.**

13 Federal structures at a Defense Nuclear Facility
14 smaller than 100,000 square feet shall be exempt from
15 the National Historic Preservation Act (16 U.S.C. 470
16 and following) unless the Site Manager deems these struc-
17 tures appropriate for National Historic Preservation Act
18 protection, and deems that such action will not delay
19 cleanup activities or increase cleanup costs at the facility.
20 National Historic Preservation Act review for structures
21 larger than 100,000 square feet shall be limited to no
22 more than 30 days.

1 **SEC. 15. ENVIRONMENTAL HEALTH AND SAFETY.**

2 The Department of Energy Office of Environmental
3 Health and Safety shall enforce safety and health activi-
4 ties at Defense Nuclear Facilities.

5 **SEC. 16. PRIVATIZATION OF WASTE CLEANUP AND MOD-**
6 **ERNIZATION ACTIVITIES OF DEFENSE NU-**
7 **CLEAR FACILITIES.**

8 (a) CONTRACT AUTHORITY.—Notwithstanding any
9 other law, the Site Manager may enter into 1 or more
10 long-term contracts, with a private entity located within
11 75 miles of a Defense Nuclear Facility, for the procure-
12 ment of products or services that are determined by the
13 Site Manager to be necessary to support environmental
14 management activities at such facilities, including the de-
15 sign, construction, and operation of treatment, storage,
16 and disposal facilities.

17 (b) CONTRACT PROVISIONS.—A contract under sub-
18 section (a)—

19 (1) shall be for a term of not more than 30
20 years;

21 (2) may include options for 2 extensions of not
22 more than 5 years each;

23 (3) when source, special nuclear, by-product,
24 hazardous materials are involved, shall include an
25 agreement to—

1 (A) provide indemnification pursuant to
2 section 170d. of the Atomic Energy Act of 1954
3 (42 U.S.C. 2210(d));

4 (B) indemnify, protect, and hold harmless
5 the contractor from and against all liability (in-
6 cluding liability to third parties for legal costs
7 and for claims for personal injury, illness, prop-
8 erty damage, and consequential damages) relat-
9 ing to pre-existing conditions at any part of the
10 Defense Nuclear Facility arising out of the con-
11 tractor's performance under the contract unless
12 such liability was caused by conduct of the con-
13 tractor which was negligent or grossly negligent
14 or which constituted intentional misconduct;
15 and

16 (C) provide for indemnification of sub-
17 contractors as described in subparagraphs (A)
18 and (B);

19 (4) shall permit the contractor to obtain a pat-
20 ent for and use for commercial purposes a tech-
21 nology developed by the contractor in the perform-
22 ance of the contract;

23 (5) shall provide for fixed or performance based
24 compensation; and

1 (6) shall include such other terms and condi-
2 tions as the Site Manager considers appropriate to
3 protect the interests of the United States.

4 (c) PREFERENCE FOR LOCAL RESIDENTS.—In enter-
5 ing into contracts under subsection (a), the Site Manager
6 shall give preference, consistent with Federal, State, and
7 local law, to entities that plan to hire, to the maximum
8 extent practicable, residents in the vicinity of the Defense
9 Nuclear Facility who are employed or who have previously
10 been employed by the Department of Energy or a private
11 contractor at the facility.

12 (d) PAYMENT OF BALANCE OF UNAMORTIZED
13 COSTS.—

14 (1) DEFINITION.—For purposes of this sub-
15 section, the term “special facility” means land, a de-
16 preciable building, structure, or utility, or depre-
17 ciable machinery, equipment, or material that is not
18 supplied to a contractor by the Department.

19 (2) CONTRACT TERM.—A contract under sub-
20 section (a) may provide that if the contract is termi-
21 nated for the convenience of the Government, the
22 Secretary shall pay the unamortized balance of the
23 cost of any special facility acquired or constructed
24 by the contractor for performance of the contract.

1 (3) SOURCE OF FUNDS.—The Secretary may
2 make a payment under a contract term described in
3 paragraph (2) and pay any other costs assumed by
4 the Secretary as a result of the termination out of
5 any appropriations that are available to the Depart-
6 ment of Energy for operating expenses, not includ-
7 ing funds allocated to environmental management
8 activities at the site, for the fiscal year in which the
9 termination occurs or for any subsequent fiscal year.

10 (e) LIMITATION.—Funds appropriated pursuant to
11 this or any other Act enacted after the date of enactment
12 of this Act may be obligated for a contract under this sec-
13 tion only—

14 (1) to the extent or in such amounts as are pro-
15 vided in advance in an appropriation Act, and

16 (2) if such contract contains each of the follow-
17 ing provisions:

18 (A) A statement that the obligation of the
19 United States to make payments under the con-
20 tract in any fiscal year is subject to appropria-
21 tions being provided specifically for that con-
22 tract.

23 (B) A commitment to obligate the nec-
24 essary amount for each fiscal year covered by
25 the contract when and to the extent that funds

1 are appropriated for such contract for such fis-
2 cal year.

3 (C) A statement that such a commitment
4 given under the authority of this section does
5 not constitute an obligation of the United
6 States.

7 (f) LEASE OF FEDERALLY OWNED LAND.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Site Manager may lease feder-
10 ally owned land at a Defense Nuclear Facility to a
11 contractor in order to provide for or to facilitate the
12 construction of a facility in connection with a con-
13 tract under subsection (a).

14 (2) TERM.—The term of a lease under this
15 paragraph may be either the expected useful life of
16 the facility to be constructed, or the term of the con-
17 tract.

18 (3) TERMS AND CONDITIONS.—A lease under
19 paragraph (1) shall—

20 (A) require the contractor to pay rent in
21 amounts that the Site Manager considers to be
22 appropriate; and

23 (B) include such other terms and condi-
24 tions as the Site Manager considers to be ap-
25 propriate.

1 (g) COMMERCIAL STANDARDS.—The Site Manager
2 shall, whenever practicable, apply commercial standards to
3 contractors used in the performance of a contract under
4 subsection (a).

5 **SEC. 17. PREFERENCE AND ECONOMIC DIVERSIFICATION**
6 **FOR COMMUNITIES AND LOCAL RESIDENTS.**

7 (a) PREFERENCE.—In entering into a contract or
8 subcontract with a private entity for products to be ac-
9 quired or services to be performed at a Defense Nuclear
10 Facility, the Site Manager and contractors under the Site
11 Manager’s supervision shall, to the maximum extent prac-
12 ticable, give preference to an entity that is otherwise quali-
13 fied and within the competitive range (as determined
14 under section 15.609 of title 48, Code of Federal Regula-
15 tions, or a successor regulation, as in effect on the date
16 of the determination) that plans will—

17 (1) provide products and services originating
18 from communities within 75 miles of the facility;

19 (2) avert, to the maximum extent practicable,
20 the dismissal of employees employed by the Depart-
21 ment or a private contractor at the facility, and pro-
22 tect, to the maximum extent possible, the continuity
23 of service and benefits of such employees;

24 (3) hire residents living in the vicinity of the fa-
25 cility, especially residents who have previously been

1 employed by the Department or its contractors at
2 the facility, to perform the contract; and

3 (4) invest in value-added activities in the vicin-
4 ity of the facility to mitigate adverse economic devel-
5 opment impacts resulting from closure or restructur-
6 ing of the facility.

7 (b) APPLICABILITY.—Preference shall be given under
8 subsection (b) only with respect to a contract for an envi-
9 ronmental management activity that is entered into after
10 the date of enactment of this Act.

11 **SEC. 18. JURISDICTION.**

12 The United States District Court for the district in
13 which a Defense Nuclear Facility is located shall have ex-
14 clusive jurisdiction over any claims arising under this Act
15 with respect to such facility.

16 **SEC. 19. STABLE FUNDING.**

17 It is the sense of the Congress that stable levels of
18 funding are essential to carry out this Act. The Site Man-
19 ager and the President are encouraged to seek funding
20 levels not lower than that allocated during fiscal year
21 1996.

22 **SEC. 20. EXPIRATION.**

23 The provisions of this Act shall expire 10 years after
24 its enactment, but Congress may review and revoke any
25 provisions of this Act after 5 years if Congress determines

- 1 that enactment of this Act has not accelerated cleanup or
- 2 reduced costs at the Defense Nuclear Facility.

○

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