TRANSITION REPORT

A REPORT TO THE PRESIDENT-ELECT

Volume II

UNITED STATES DEPARTMENT OF ENERGY
November 1988

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MASTER

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Key Issues
&
Upcoming Decisions

Office of Congressional,
Intergovernmental and Public Affairs

November 1988

Possible Major Energy Issues For The 101st Congress

The following issues may be considered by the 101st Congress, either as legislation or general oversight.

Issue	Description
Power Administrations	Submission of legislation to authorize sale.
Biotechnology/Human Genome	Definition of the Federal Government's role in research and implementation.
Clean Air Act Amendments/Acid Rain	Proposals to further reduce sulfur dioxide emissions.
Clean Coal Technology Program	Out-year funding still required in Interior Appropriations bills. P.L. 100-446 requires DOE to issue another solicitation in May 1989.
Coal Slurry Pipeline	Conferring eminent domain on coal slurry pipeline developers to secure rights-of-way across private lands.
Environmental Oversight	Clean-up at Federally owned facilities and enforcement of the Resource Conservation Recovery Act and state hazardous waste laws.
Global Warming	Reduction of global warming through conservation measures, including renewable technology and alternative fuels. (Process attached as separate
Nuclear Licensing Reform	Streamlining of the licensing process for commercial nuclear power plants.
Nuclear Power Plant Standardization	Standardization of Nuclear power plants to facilitate their timely and economical development and environmental acceptability.

Nuclear Safety Oversight	Health and safety oversight of the Department's nuclear facilities.
Nuclear Testing	Restrictions on DOE nuclear testing.
Nuclear Waste Management	Amendments on Monitored Retrievable Storage and possible confirmation of a Nuclear Waste Negotiator.
Oil and Gas Initiatives	Production incentives: Tax treatment, decontrol, etc.
Oil Pipeline Deregulation	Deregulation of most pipelines.
Radiation Litigation	Whether to allow civil suits against DOE contractors arising out of the the nuclear weapons testing program.
Renewable Technologies	Encourage commercialization and Cooperative R&D of renewable and conservation technologies.
Strategic Petroleum Reserve	Extension of Energy Policy and Conservation Act Authority that expires on June 30, 1989.
Superconducting Super Collider	Authorization of construction funding.
Technology Transfer	Utilizing DOE National Laboratories to further commercialization.
Uranium Enrichment	Revitalization of the uranium enrichment industry.
Waste Isolation Pilot Plant	Withdrawal of land near Carlsbad, New Mexico from public domain for a pilot waste isolation plant and high level waste experimentation.

Key Issues
&
Upcoming Decisions

Office of Conservation
and Renewable Energy

November 1988

Appliance Standards

Issue/Concern

Should the Department of Energy revise energy conservation standards for refrigerators, refrigerator-freezers, and freezers, and establish standards for television sets? What should be the standard for small gas furnaces?

Background

The *National Appliance Energy Conservation Act of 1987* established energy conservation standards for 11 types of appliances and requires DOE to consider amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers. It also required DOE to establish standards for small gas furnaces within a legislatively prescribed range and to consider establishing energy conservation standards for television sets. The Act requires DOE to publish in the *Federal Register* a final rule concerning refrigerators, refrigerator-freezers, and freezers by July 1, 1989.

Organization & Coordination

The Assistant Secretary for Conservation and Renewable Energy administers the appliance standards program. The Secretary of Energy and the Office of Management and Budget review the proposed decision prior to *Federal Register* publication.

Sensitivities

If DOE does not publish a final rule for refrigerators, refrigerator-freezers, and freezers by January 1, 1990, (a date mandated by Congress) the standards prescribed by the California Energy Commission will go into effect in California on January 1, 1993 and will not be subject to preemption by Federal regulations. Refrigerator manufacturers have urged strongly that DOE publish a final rule before July 1, 1989.

Environmental organizations, e.g., Natural Resources Defense Council, won a judgement against DOE over earlier appliance standards rulemaking and expect DOE to meet the legislated schedule and increase standards to the maximum level justified.

Manufacturers, environmental groups, and Members of Congress are concerned over the impact of refrigerator standards and the Environmental Protection Agency's rule on the production of chlorofluorocarbons (CFCs). Manufacturers are concerned that any standard, including the legislated levels, will be difficult and expensive to meet in light of the EPA limits on CFCs.

Status, Deadlines, Next Steps, and Milestones

Proposed Rule - A Notice of Proposed Rulemaking (NPR) is expected to be published in November 1988, followed by a 60-day comment period and a public hearing.

Final Rule - The final rule is scheduled to be published by July 1, 1989 and will be based on a review of comments received on the NPR. Analysis in support of a final rule is expected to be completed during April 1989, after which a decision needs to be made on what standards are justified for each product.

Voluntary & Mandatory Conservation Performance Standards

Issue/Concern

What will be the voluntary energy conservation standards for new non-Federal buildings and the mandatory standards for Federal residential buildings?

Background

Under the *Energy Conservation and Production Act*, DOE is developing energy conservation performance standards for new buildings—voluntary for non-Federal buildings and mandatory for Federal buildings.

There are four major steps in the process of issuing standards. First the Department issues a Notice of Proposed Rulemaking (NOPR). After public comments have been considered, an Interim Standard is issued and demonstrated for at least a year in at least two areas in the country. After the demonstration is completed, a report to the Congress is issued. The final step is to issue a Final Standard.

Proposed standards have been developed with the assistance of numerous private sector professionals and trade organizations and are being reviewed by DOE. A NOPR for voluntary residential standards is expected to be issued in February 1989. The proposed mandatory Federal residential standard was issued on August 25, 1988, a small demonstration has begun, and an interim standard is expected to be issued in the second quarter of 1989.

There are also interim standards for all new commercial buildings which are expected to be issued in December 1988. A demonstration will follow.

Organization & Coordination

The project to develop building energy conservation standards is administered by the Assistant Secretary for Conservation and Renewable Energy. All standards are reviewed by the Office of Management and Budget and the Environmental Protection Agency, as required by the legislation.

Sensitivities

Congressional. An early notice of proposed rulemaking in 1979 produced voluminous comments and rethinking the approach to work more closely with the building industry. Although the original 1984 legislated date for a report to Congress was not met, the fact that development was being done with significant building industry input and that an interim standard has been issued has muted most criticism.

Outside interest groups. There has been an ongoing disagreement between insulation manufacturers and brick, block, and concrete producers on credits for the energy conservation benefits of using brick, block, and concrete to store heat during the day and release it later when interior temperatures cool off. The National Association of Homebuilders (NAHB) opposes any regulation of the housing industry and expects that States will use the standards to update current building codes. NAHB members participated in developing the basis for this standard.

Status, Deadlines, Next Steps, and Milestones

November 23, 1988	Close of comment period on the proposed modification to the Interim Federal Residential Standard.
December 1988	Issuance of Interim Standards for new Commercial Buildings.
March 17, 1989	Issuance of NOPR for the Voluntary non-Federal Residential Standards
May 8-12, 1989	Public hearings on Voluntary non-Federal Residential Standards NOPR (approximate)
May 1989	Rulemaking for the Voluntary Residential Standards. (Washington, DC; Florida; and California)
May 1989	Draft Modification to Interim Standard (tentative, depending on comments)
June 15, 1989	Close of comment period on voluntary non-Federal Residential Standards

Federal Energy Management

Issue/Concern

How should the Department of Energy implement the mandatory goals and incentive programs in the Federal Energy Management Improvement Act of 1988?

Background

The Federal Government, as the single largest consumer of energy in the U.S. (approximately 1.9 quads costing \$8-10 billion annually) represents a target of opportunity for realizing significant cost and energy savings through conservation efforts. Due to the significant level of Federal energy consumption and its associated Federal expenditures, Congressional oversight has historically provided legislative mandates to encourage conservation efforts in Federal buildings and operations. Combined with implementing Executive Orders, Federal agencies had structured goals for the period 1975-1985 and certain retrofit target for 1990.

The *Federal Energy Management Improvement Act of 1988* (S. 1382) contains several provisions including establishment of incentive programs, implementation of Federal energy shared saving contracting, and establishment of goals for Federal agencies. These activities are required to be implemented within 3-6 months. and will require an Executive Order and implementing guidelines.

Organization & Coordination

To assure consistent interpretation of and implementation of the legislation across the Federal government, the DOE Federal Energy Management (FEMP) office within the Office of Conservation and Renewable Energy will coordinate the guidance to Federal agencies on provisions of the legislation.

Coordination using the Federal Interagency Energy Policy Committee will require Under Secretary participation.

Sensitivities

Congressional oversight will continue to track the implementation of the legislation.

Status, Deadlines, Next Steps, and Milestones

The President signed the *Federal Energy Management Improvement Act of 1988* (S. 1382) on November 5, 1988.

High Temperature Superconductivity Pilot Centers

Issue/Concern

How should the Department of Energy establish its three High Temperature Superconductivity Pilot Centers?

Background

In April 1988 the Secretary of Energy announced the concept of three Pilot Centers for High Temperature Superconductivity. Their purpose is to enhance the U.S. ability to move this important technology from the laboratory to the marketplace in the shortest possible time.

The three centers, at Los Alamos, Argonne, and Oak Ridge National Laboratories, along with the Albuquerque, Chicago, and Oak Ridge Operations offices were charged with developing a plan to interest industry in working in partnership with the National Laboratories and carry out this research, development, and commercialization.

This plan is now approved and was inaugurated in FY 1989. The key elements of the plan include a streamlined contracting instrument, and new, more flexible ways to negotiate intellectual and data rights. These will be tried during this experimental phase to determine if this is the appropriate means by which industry will cost-share and work more closely with the Department.

Organization & Coordination

The decision on the plan, policy, contractual and intellectual/data rights changes were approved by the Under Secretary. The Pilot Centers will report through the Operations Offices to the Deputy Assistant Secretary for Renewable Energy for all management and technical matters.

Sensitivities

There is great interest by the congressional community, especially those from New Mexico, Illinois, and Tennessee. Others, representing other laboratory groups are watching with interest to judge success. The Ritter/McCurdy bill addresses some of the same areas covered by the Pilot Centers, and has developed interest by its sponsors in this activity.

Status, Deadlines, Next Steps, and Milestones

Implementation by the Operations Offices and the Pilot Centers will be in FY 1989. Evaluation of the process will begin at the end of the fiscal year.

Committee on Renewable Energy Commerce and Trade (CORECT)

Issue/Concern

What is the role of the Committee of Renewable Energy Commerce and Trade (CORECT) in 1989?

Background

CORECT was created by the Renewable Energy Industries Act of 1983. to serve as an advisory committee for the Federal agencies regarding policies and activities designed to enhance the commerce of the U.S. renewable energy industry's products and services.

CORECT has brought together developing country officials, donor agencies and U.S. renewable energy firms to identify and exploit high return trade opportunities. By assisting decision makers to consider and incorporate renewable energy technologies in their planning processes, CORECT provides the U.S. and developing countries with energy alternatives that are environmentally acceptable, conducive to local manufacture, and contribute to economic development, industrial growth, and energy supply security objectives.

Efforts by CORECT are directed towards the identification of "bankable projects" or projects already financed. Targeted training for projects already approved, in-country and underway will be given greater emphasis.

The challenge for the future will be training of the technology buyers, engineers, trainers and end-users. Training would focus on educating those who make purchasing and project implementation decisions and would be comprised of practical guidance in identifying when and how to procure renewable energy technologies, as well as how to install and maintain the technology. The training emphasis for 1989 should be more on how the technology may benefit the end user and less on the inherent attributes of the technology. An effort will also be made to participate in training at regional training centers around the world.

Organization & Coordination

CORECT is chaired by the Secretary of Energy; the Assistant Secretary for Conservation and Renewables serves as primary spokesperson. The following 13 Federal agencies participate in CORECT:

AID	Agency for Int'l. Development	DOT	Department of Treasury
DOC	Department of Commerce	EXIM	Export-Import Bank
DOD	Department of Defense	USTR	U.S. Trade Representative
DOE	Department of Energy	OPIC	Overseas Private Investment Corp.
DOI	Department of the Interior	SBA	Small Business Administration
DOS	Department of State	TDP	Trade and Development Program
		USIA	U.S. Information Agency

Sensitivities

CORECT is widely regarded as highly successful by participating Agencies, industry, and the Congress.

There were several bills considered in the 100th Congress to increase the scope of the CORECT activities including S. 2667 (Senator Wirth), and HR. 1554 (Representative Fowler)).

Status, Deadlines, Next Steps, and Milestones

The Departments of Energy and Commerce are cosponsoring a Caribbean Energy Conference and Trade Show—end of May 1989 in Miami—to focus more on energy end-users than technologies.

Residential Conservation Service

Issue/Concerns

The statutory requirement for utilities to perform Residential Conservation Service audits is scheduled to expire on June 30, 1989.

Background

The Residential Conservation Service (RCS) program was established by the *National Energy Conservation Policy Act* in 1978 and revised and extended by the *Conservation Service Reform Act of 1986*. The program requires large electric and natural gas utilities to inform residential customers of the benefits of certain energy conservation and renewable resource measures and to offer their customers home energy audits. Utilities which have completed audit offers to their residential customers as of June 30, 1989, have no further obligations under the revised statute.

Organization & Coordination

The Assistant Secretary, Conservation and Renewable Energy has programmatic lead for RCS program.

Sensitivities

Many utilities have opposed the RCS as restrictive, costly, and ineffective. DOE proposed eliminating the program, but Congress extended it to June 30, 1989. The principal *outside* interest group has been the Small Business Administration. At present there are no other Federal requirements for utilities to offer their customers conservation services of any kind.

Status, Deadlines, Next Steps, and Milestones

- Determine steps needed to end the program.
- Provide guidance to States and utilities on maintaining audit records and determine which States and utilities may be required to continue their RCS programs past June 30, 1989, because they have not fulfilled all requirements.

Alcohol Fuels Loan Guarantee—Agrifuels Refining Corporation

Issue/Concern

The Department of Energy is foreclosing the Agrifuels Refining Corporation of New Iberia, Louisiana.

Background

The 90-percent loan guarantee of \$87.7 million was approved September 27, 1985. As the facility was nearing completion, the owners of Agrifuels (Edgington Oil Corporation and Triad Energy) refused to furnish required working capital since parent companies New Edge, Triad Energy, and Triad America filed for bankruptcy. The Secretary ordered all disbursements to stop. The loan went into default and DOE paid its 90 percent guarantee to the syndicate of banks providing the construction financing. The Department of Justice filed for foreclosure on December 15, 1987. A countersuit was filed by Agrifuels halting foreclosure. The Department threatened to sue Agrifuels, Edgington Oil, and the Triad companies for breach of contract. The bankruptcy trustee offered a compromise settlement for release of liability. The facility is shut down and undergoing protective lay up. The Department is funding monthly maintenance expenses of \$150,000.

Organization & Coordination

The Office of Alcohol Fuels has the programmatic lead and coordinates with the Office of General Counsel and the Procurement Office.

Sensitivities

The Triad companies were controlled by Adnan Khashoggi.

Status, Deadlines, Next Steps, and Milestones

December 30, 1988	Negotiate and finalize compromise settlement Proceed with foreclosure and possession of facility.
By June 1989	Conduct foreclosure sale Establish minimum acceptable bid for sale.

Note: If sold at foreclosure, Department receives cash recovery and shares ratably with banks.

Alcohol Fuels Loan Guarantee—New Energy Company of Indiana

Issue

How will the Department of Energy ensure the repayment of New Energy Company of Indiana's restructured loan?

Background

The Department approved loan guarantee of 90 percent of \$142 million in October 1982. The facility was constructed on schedule and began operations in 1985. The withdrawal of subsidy funds by the State of Indiana and the precipitous drop in oil and gasoline prices in 1986-1987 led to serious financial difficulties for New Energy culminating in loan default and payment to the First National Bank of Chicago by the Department of its guarantee in 1987. The Department took over responsibility for loan administration and successfully negotiated a loan from the State of Indiana to New Energy for \$8.5 million.

The loan with New Energy has been restructured extending its term and reducing payments. The Department collected \$15 million of \$16 million in assumption agreements from New Energy's limited partners and applied them to the debt. New Energy now owes the Department \$105 million down from \$126 million owed when the Department paid its guarantee. High corn prices following the 1988 drought have again brought financial difficulties to New Energy. They have requested payment deferment for the next year.

Organization & Coordination

The Office of Alcohol Fuels has the programmatic lead and coordinates with the Office of General Counsel and the Procurement Office.

Sensitivities

Status, Deadlines, Next Steps, and Milestones

December 30, 1988 Negotiate payment plan with New Energy

Alcohol Fuels Loan Guarantee—Tennol, Inc.

Issue

How will the Department of Energy foreclose and liquidate the assets of Tennol, Inc. of Jasper, Tennessee?

Background

The loan guarantee of 90 percent of \$72 million approved August 1984. The facility started up took place in December 1985. Over the next two years, Tennol, Inc. went through extensive redesign, reengineering facility costs in excess of \$30 million. The original design was novel and did not perform to projections, necessitating redesign to standard process. In exchange for a release of further liability, Combustion Engineering, Inc. (designer and 40 percent limited partner) agreed to spend additional funds to complete modifications. Combustion Engineering and Harbert International (constructor and 40 percent limited partner) have reviewed economics of starting up and operating the facility and concluded the financial risk was too high and therefore refused to furnish any funds for operation. The general partner, Tennol, has no funds. The loan was in default and Bankers Trust company, on instructions of the Department, accelerated the loan and caused nonjudicial foreclosure process to be instituted in Tennessee. On October 27, 1988, the Department took title through foreclosure. A protective bid was entered based on an outside appraisal. The Department is paying \$300,000 monthly for care and preservation of collateral, winterizing, and shut-down expenses.

Organization & Coordination

The Office of Alcohol Fuels has the programmatic lead and coordinates with the Office of General Counsel and the Procurement Office.

Sensitivities

Status, Deadlines, Next Steps, and Milestones

February 28, 1989	Disposal strategy
June 30, 1989	Sale of facility

Key Issues
&
Upcoming Decisions

Office of
Contract Appeals

November 1988

The Board of Contract Appeals

No Issues

Key Issues
&
Upcoming Decisions

Office of
Defense Programs

November 1988

Modernizing the Nuclear Weapons Complex

Secretarial Issue/Concern

Select options on the appropriate size and productive capacity of the nuclear weapons complex for the next century.

Background

The nuclear weapons complex is between 40 and 50 years old. Many facilities are at the end of their useful life and the fragility of those remaining is increasing. Substantial upgrades of facilities are necessary to assure that capabilities and capacities remain responsive to national security policy objectives.

Congress directed the President to conduct a study and develop a plan that would provide options for modernization. The report is due to the Congress in December 1988. The underlying assumptions for the study are:

- 1) Nuclear deterrence will continue to be a national policy goal;
- 2) U.S. nuclear weapons technology should remain *second to none*;
- 3) National security needs, not nuclear materials availability, shall determine the nuclear weapons stockpile; and
- 4) New production reactor capacity will be built and operating as soon as possible, with tritium production the first priority.

The report will provide a range of actions and recommendations on the most appropriate structure for the nuclear weapons complex. Decision options include a full modernization of the nuclear weapons complex, including consolidation, closure, and relocations of sites and facilities.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; Environment, Safety, and Health; and Management and Administration; Field Offices;

Sensitivities

House and Senate Armed Services, Appropriations, and Government Operations Committees; most states and Members of Congress; National Security Council, Department of Defense, Nuclear Weapons Council, OMB, operating contractors, environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

The December report will be but the first step in making long-term decisions on the composition of the future nuclear weapons complex. Implementing the recommendations or other decisions resulting from the report will be a significant management challenge. Significant budget investments will be necessary, as well as ensuring the continued operations of the facilities to meet national security requirements.

Production Reactor Restart

Secretarial Issue/Concern

Restart of defense reactors at the Savannah River Plant.

Background

Three reactors at Savannah River produce tritium and plutonium for nuclear weapons. Tritium is a key component in the effectiveness of nuclear weapons and, because of its short half-life, must be replaced periodically in stockpiled nuclear weapons.

No tritium is currently being produced. The L Reactor was shut down in June for annual maintenance and seismic review; the K Reactor was shut down in April for modification of the emergency core cooling system and seismic review; and the P Reactor was shut down in August for seismic upgrades. Problems during the restart of the P Reactor indicated the need for improvements in procedures, management controls, and training prior to continued operations. These improvements are underway and will be subject to review, both within and outside DOE and with the Congress prior to restart.

Throughout these actions, DuPont (the current contractor) is working with Westinghouse (the new contractor) on all matters of operations and procedures to assure a smooth transition in contract changeover effective April 1989.

A recent complicating factor has been introduced by the stated intent of the Natural Resource Defense Council to file a lawsuit restraining the Department from restarting those reactors until an Environmental Impact Statement is prepared. Their position is that restart constitutes a major Federal action significantly affecting the quality of the environment.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Environment, Safety & Health; General Counsel; Advisory Committee (Ahearne) on Nuclear Facility Safety; Savannah River Operations Office.

Sensitivities

House and Senate Government Operations, Armed Services, and Appropriation Committees; Department of Defense; OMB; EPA; host States and Congressman; operating contractors, environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

- Prior to restart, DOE plans to tighten the formal procedures and technical operations used by the contractor, and strengthen the Department's on-site technical expertise and safety oversight.
- The current target for a phased restart of the reactor is: K Reactor in December 1988; L Reactor in first quarter of 1989; and P Reactor in third quarter of 1989.

Nuclear Material Availability

Secretarial Issue/Concern

Provide necessary nuclear materials to support national security requirements.

Background

The President has stated that availability of nuclear materials shall not be a limiting factor in national security decisions. Maintaining the existing nuclear weapons stockpile and future weapon system modernization requires the capability and capacity to continue producing tritium, plutonium, and highly enriched uranium.

Tritium is produced by the reactors at Savannah River. Plutonium has been produced by reactors at Savannah River and Hanford, and by reprocessing plutonium scrap and residues from retired weapons at Rocky Flats. Highly enriched uranium is produced by the gaseous diffusion plant in Portsmouth, Ohio.

All reactors are currently not operating, and no new tritium or plutonium is being produced. Reprocessing of plutonium at Rocky Flats is also shut down, pending resolution of safety and management concerns. Normal production is limited by aging facilities.

In the near term, the availability of tritium is contingent upon the timely restart of the Savannah River reactors. The availability of plutonium rests largely on reprocessing production scrap or residues. In the longer term, upgrades are planned at Rocky Flats and a *special isotope separation* (SIS) process is being developed for Idaho to provide a reactor-independent source of plutonium.

DOE Structure

Deputy Secretary; Under Secretary; New Production Reactors Office; Assistant Secretaries for Defense Programs; Congressional Affairs; Management and Administration; and Environment, Safety and Health.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; National Security Council; Nuclear Weapons Council; OMB; host states and Members of Congress.

Status, Deadlines, Next Steps, and Milestones

- For tritium, a FY1989 Budget Supplemental is needed to support Savannah River reactor restart.
- *New Production Reactor* acquisition is underway.
- For plutonium, completion of the *special isotope separation* facility is planned for 1995 and the Rocky Flats Plant upgrade is planned for completion in 1997.

Environmental Cleanup

Secretarial Issue/Concern

Determine the pace of cleanup of environmental contamination at inactive waste sites and achievement of compliance with environment, safety, and health requirements.

Background

Environmental cleanup and compliance activities are driven by various statutes such as the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA), the *Resource Conservation and Recovery Act* (RCRA), *Superfund*, *Clean Air Act*, *Clean Water Act*, *Safe Drinking Water Act*, *Toxic Substances Control Act*, and the *Hazardous Solid Waste Management Act*. Statutes allow the EPA and/or the states to withdraw operating permits as a result of noncompliance. This could lead to shut down of production facilities. Regulatory agencies and interest groups are placing increasing pressure to bring facilities into compliance and on cleaning up contamination as soon as possible.

Recent estimates for remedial actions to clean up environmental contamination range from \$35-\$65 billion. At current spending rates (\$150-\$200 million per year) clean up would require over 200 years, whereas a 20-year cleanup campaign would involve an expenditure of \$1.7-\$3.0 billion annually. Achieving compliance with current environment, safety, and health criteria at current spending rates (\$600 million per year) will require between 10 and 15 years. An additional \$500-\$700 million per year is required just to maintain compliance, independent of cleanup activities.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Environment, Safety and Health; Defense Programs; Management and Administration; and Congressional Affairs; Field Offices.

Sensitivities

House and Senate Armed Services, Appropriations, and Government Operations Committees; host states and Members of Congress; EPA; OMB; environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

Following submission to Congress in December of a Department-wide environment, safety, and health needs assessment, a strong dialogue will be needed with OMB and the relevant Congressional Committees to develop jointly a funding strategy for environmental cleanup and safety upgrades. Today's funding levels must be increased substantially to cleanup environmental contamination within any meaningful time. It will be a major management challenge to balance these needs with modernization of the nuclear weapons complex and meeting current national security requirements, all within budget targets.

Safety and Management

Secretarial Issue/Concern

Maintain capability to operate facilities in accord with safety criteria and in a manner acceptable to external review.

Background

In recent years, DOE's facilities have come under increasing scrutiny in connection with their management and operation in accord with established safety standards. The tenor of Congressional hearings, General Accounting Office (GAO) audits, and public perceptions has been that DOE has polluted its environment and conducts unsafe operations due to a lack of accountability and outside oversight.

Several actions have been taken since 1985 to strengthen internal oversight of environment, safety, and health activities. Reviews by the National Academy of Sciences and the *Roddis* panel have resulted in many recommendations that are being implemented. Further, the Advisory Committee on Nuclear Facility Safety, which reports directly to the Secretary, has been established. The National Academy of Sciences also is conducting technical reviews of nuclear materials processing facilities and making recommendations to Congress.

In addition, Congress recently established a permanent board consisting of a five-member panel of experts to form the Defense Nuclear Facilities Safety Oversight Board. The Board will begin operating next year subsequent to Senate approval of nominated members.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Environment, Safety and Health; Field Offices; Advisory Committee (Ahearne) on Nuclear Facility Safety; National Academy of Sciences Interim Oversight Committee.

Sensitivities

Defense Nuclear Facilities Safety Oversight Board; House and Senate Government Operations, Armed Services, and Appropriation Committees; host states and Members of Congress; environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

- Safety of the Department's operations is a continuing issue with the Congress and the public.
- Restart of the Savannah River reactors and reopening Building 771 at Rocky Flats are awaiting internal DOE resolution of management and operating concerns. Reporting and consultation with various Congressional Committees will be required before reactor restart.

Public Health Perceptions

Secretarial Issue/Concern

Address the allegations of health problems of the public living near nuclear weapons complex sites.

Background

During the last 10 years, there have been increasing litigation for and accusations of increased cancer and other health problems among persons living near DOE defense sites. A dose reconstruction effort has begun at Hanford to determine the levels of exposure of the local population to radioactive iodine. People living near the Savannah River plant reactors are concerned about exposures to toxic chemicals and tritium. Rocky Flats area residents are concerned about plutonium contamination in the soil and water, especially the Bloomfield Reservoir. Fernald Plant area residents are claiming cancer deaths and other health problems associated with exposure to uranium. Other defense related sites are experiencing similar public concerns.

The DOE has conducted numerous epidemiology studies of workers in its production plants and is about to launch a beryllium exposure study of former workers. Due to the transient nature of people living around the defense sites, the cost of a major epidemiology study to determine if these allegations are true would be very expensive and take many years to complete.

Legislation was passed last year compensating veterans who participated in atmospheric nuclear tests. Compensation bills have been submitted in Congress for the Utah, Nevada, and Arizona residents exposed to atmospheric nuclear tests debris, but no omnibus legislation has been submitted.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Environment, Safety and Health; Field Offices; General Counsel.

Sensitivities

House and Senate Government Operations; Armed Services, and Appropriation Committees; Department of Justice; Department of Health and Human Services; OMB; host states and Members of Congress; environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

There has been significant press attention to the health problems alleged to be caused by DOE defense related sites. The 101st Congress will in all likelihood hold hearings, initiate GAO audits, and require additional epidemiological studies.

Radioactive Waste Disposal & WIPP

Secretarial Issue/Concern

Assure the safe management and disposal of radioactive and mixed wastes.

Background

Mixed waste containing both radioactive and hazardous components, is categorized as low-level (LLW), transuranic (TRU), and high-level (HLW) waste. Indefinite storage of high-level and transuranic wastes is prohibited.

Transuranic waste has been stored at various sites pending disposal in a permanent Defense geologic repository. DOE has constructed the Waste Isolation Pilot Plant (WIPP) in New Mexico as a demonstration facility for the disposal of transuranic waste. Wastes will be stored at WIPP, while research continues on determining the long-term suitability of this facility for permanent disposal. At the end of the demonstration period, a decision will be made to begin permanent disposal or to retrieve the waste and move it to another facility.

Construction of WIPP is complete but unresolved issues related to land withdrawal and restrictions on storage, transportation, or burial of radioactive waste are delaying operation of the facility. Idaho is planned to be the first state to ship stored transuranic waste to the WIPP. Most of the waste originated at the Rocky Flats Plant. Shipments of waste into Idaho recently were turned back, forcing the continued interim storage of waste at the site where it is generated. This situation has the potential in the very near term for site shutdown due to environmental restrictions.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Environment, Safety, and Health; General Counsel; Field Offices.

Sensitivities

House and Senate Armed Services and Appropriation Committees; Department of Defense; OMB; States and Members of Congress where waste is transported; Environmental Protection Agency; environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

- The Department has been unsuccessful in negotiating an acceptable *legislative* land withdrawal for WIPP. An *administrative* land withdrawal is being considered pending legislative relief. Environmental and institutional issues will be resolved before the facility is allowed to operate.
- Rocky Flats faces a potential shutdown in early 1989 if WIPP is not opened or if other measures are not acceptable to New Mexico, or other states and environmental regulators.
- Facilities for immobilizing high-level waste in canisters are nearly completed at Savannah River and are planned for construction at Hanford and Idaho. Disposal will be in a civilian geologic repository under development by DOE's Office of Civilian Radioactive Waste Management.

Program Balance and Resource Allocation

Issue/Concern

Determine the appropriate levels of activity considering the inability to support all mission objectives of Defense Programs within severe budget limitations.

Background

Deficit reductions under *Gramm-Rudman-Hollings* legislation and the Budget Summit Agreement have severely impacted the ability of Defense Programs to meet all the demands placed on its resources to address production, facilities, and technology necessary to support national security objectives. Moreover, significant growth in environmental problems, safety, and compliance activities are squeezing funding available to support other necessary program efforts. With projected growth of no more than 3 percent, there is an actual reduction in real purchasing power for programmatic needs.

Resolution of this problem is complicated by the Department of Defense requirements for more nuclear weapons and technology without adjustments in the national security function account; OMB's desire to keep each agency within deficit targets; and Congressional pressures to pursue modernization, cleanup, and oversight recommendations.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Management and Administration; Defense Programs; and Environment, Safety, and Health.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; National Security Council; Nuclear Weapons Council; operating contractors; OMB; environmental and other special interest groups.

Status, Deadlines, Next Steps, and Milestones

Decisions on priorities, alternative funding approaches, and negotiated adjustments to the national security function account will be necessary. Some ongoing activities may need to be reviewed for continued support. A number of hearings on modernization, cleanup, safety and health, and mission program are expected early in the 101st Congress.

Contractor Management

Issue/Concern

Assure an effective and responsive management system for operating mission related facilities.

Background

Since the Manhattan Project, the Department has employed the *government-owned, contractor-operated* (GOCO) concept for management and operation of sites and facilities. This approach draws upon private sector expertise rather than relying on in-house capability. The DOE exercises overall program management and project direction and assumes virtually all financial risk, while the operating contractor is responsible for day-to-day management of the work.

The Department has been criticized for ineffective management of contractor operations and for shielding the contractors from liability. Concerns over the potential for large corporate liabilities have influenced some major contractors to withdraw from their involvement with DOE operations. Union Carbide stockholders voted to end a 30-year association with the Oak Ridge complex; Monsanto did not renew its contract at the Mound Plant; and DuPont is ending its 40-year relationship at the Savannah River Plant in April 1989. Recent Justice Department rulings have further raised the potential that civil or criminal penalties or remedies may be sought directly from the contractors.

A related financial issue is the determination by DuPont to pay contract severance to its employees when its contract expires in April. This cost will be billed to DOE, even though the majority of DuPont's workers will continue under the new contractor. The current DOE position is not to accept this charge.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Management and Administration; and Defense Programs; General Counsel; Field Offices.

Sensitivities

House and Senate Armed Services, Appropriations, and Government Operations Committees; OMB; environmental and other special interest groups; operating contractors.

Status, Deadlines, Next Steps, and Milestones

- At the time of the contractor changeover at Savannah River, a court may need to determine whether Dupont contract severance pay is an allowable reimbursement.
- Decentralized management and indemnification of liabilities have been critical to the successful accomplishment of mission objectives in the past. Changes in those policies could impair DOE's ability to retain the best firms to operate its facilities.

Transportation of Weapons and Materials

Issue/Concern

Assure the public of an effective, safe, and secure program for transporting weapons and materials.

Background

Because DOE's nuclear weapons facilities are widely dispersed across the United States, interplant shipments of materials, waste, and finished weapons are required. Many of those materials are radioactive, toxic, or require extraordinary security measures.

The public and the Congress are concerned about the volume and nature of these shipments through populated areas. Department operations are critically linked by its transportation system and materials must be moved without interruption. The public has demonstrated against weapons shipments, especially rail shipments to the Pacific Northwest and shipments of spent fuel through their states, notably New York. New Mexico has raised concern about future shipments of transuranic waste to the Waste Isolation Pilot Plant.

The DOE transportation system is regulated by the Department of Transportation, Nuclear Regulatory Commission, Environmental Protection Agency, and the Postal Service, as well as through internal independent reviews and certifications. All packagings used for DOE radioactive materials shipments are Federally approved. The Department uses rail and highway for most shipments and is prohibited from airborne transportation of plutonium, except under special conditions for national security. Weapons shipments are managed and controlled by the Albuquerque Operations Office, using DOE-owned and engineered carriers and vehicles with state-of-the-art protection systems. Drivers and escorts are thoroughly trained and equipped to handle safety and security matters.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Environment, Safety, and Health; Management and Administration; and Defense Programs; General Counsel; Field Offices.

Sensitivities

House and Senate Government Operations, Armed Services, and Appropriations Committees; Department of Transportation; Environmental Protection Agency; Nuclear Regulatory Commission; environmental and other special interest groups; states and Members of Congress whose districts are traversed.

Status, Deadlines, Next Steps, and Milestones

- Congressional hearings are expected to address a recently released GAO report critical of the DOE packaging certification process and other interstate transportation matters.
- Increased and vocal public concern is expected.

Foreign Visits to Classified Facilities

Issue/Concern

Control of visits by foreign nationals to DOE weapons facilities.

Background

The *Atomic Energy Act* provides for "...a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit." Other legislation encourages active international collaboration in energy research. Virtually every DOE program has an element of international cooperation which often results in exchange of scientific staff and visits of foreign officials to DOE facilities.

The DOE has approximately 20,000 foreign national visits to all of its facilities each year. The vast majority involve foreign nationals from non-sensitive countries at non-weapon laboratories working on unclassified energy-related subjects. Approximately 600 visits per year are from sensitive countries (Communist Bloc, advocates of terrorism, or non-signatories of the Nuclear Nonproliferation Treaty) to the three DOE multiprogram weapons laboratories, Sandia National Laboratory, Los Alamos National Laboratory, and the Lawrence Livermore National Laboratory.

The DOE has been sharply criticized by the GAO and Congress because of several instances during 1986 in which the DOE did not prevent foreign nationals from sensitive countries from visiting weapons laboratories, and thus possibly obtaining classified or sensitive information about nuclear weapons-related matters from these multiprogram facilities.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; International Affairs and Energy Emergencies; and Nuclear Energy; Director of Energy Research; Field Offices.

Sensitivities

House and Senate Armed Services; Intelligence; and Government Operations Committees; Department of Defense; Central Intelligence Agency; National Security Council; National Laboratories.

Status, Deadlines, Next Steps, and Milestones

DOE already has taken steps to give more authority, responsibility, and accountability to Field Office Managers and Laboratory Directors and to strengthen the oversight role of Headquarters. DOE Order 1240.2 on *Visits and Assignments* is being revised to strengthen procedures and justification requirements.

Technology Transfer

Issue/Concern

Control of sensitive technology and transfer of commercially valuable technology to U.S. industry.

Background

The Department has developed substantial capabilities in a broad range of advanced technologies that traditionally have not been transferred to U.S. industry, primarily because much of it was classified or sensitive.

The President and Congress have encouraged the transfer of Federally-funded technology to the private sector to enhance U.S. worldwide competitiveness. In the 100th Congress, a variety of bills was introduced and considered that could dictate data rights, dissemination of data, control of release, and other critical information. There is a continuing need to balance national security concerns while ensuring the transfer of technology from the weapons program to U.S. industry.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Nuclear Energy; Director of Energy Research; General Counsel; Field Offices.

Sensitivities

House Energy and Commerce, and Science, Space and Technology Committees; Senate Energy and Natural Resources, and Commerce, Science and Transportation Committees; Department of Commerce; operating contractors; Federal Laboratories Coordinating Consortium; U.S. Chamber of Commerce; National Association of Manufacturers; special interest groups.

Status, Deadlines, Next Steps, and Milestones

While no legislation was enacted in the 100th Congress due to the lateness of consideration, enactment of legislative programs is expected in the 101st Congress. The precise point beyond which technology must be controlled must still be determined at the policy level.

Strategic Defense Initiative

Issue/Concern

Determine DOE role in supporting Department of Defense (DoD) development of the Strategic Defense Initiative (SDI).

Background

DOE currently supports SDI by: (1) providing timely assessments of potential nuclear weapon threats to strategic defensive systems; (2) supporting space nuclear power research programs; and (3) providing non-nuclear technology research in areas of unique expertise.

DOE directly funds and conducts research programs to determine the technical feasibility of nuclear-driven, directed-energy system concepts. These concepts are pursued to understand the strategic implications that an adversary might achieve by their deployment. The DOE also conducts research on nuclear space power systems for long-term survivability and reliability as power supplies in a space environment. Moreover, DOE is conducting research, funded by DoD, for several non-nuclear technologies in which DOE's laboratories have unique capability, e.g., the free electron laser, neutral particle beams, kinetic energy concepts, and sensors.

Funding pressures over the past several years have stretched out progress in each of these research areas. Threat assessment efforts, for example, has been extended approximately a decade with serious implications for DoD's ability to develop an effective strategic defense system.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; Management and Administration; and Nuclear Energy; Director of Energy Research; and Field Offices.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; Nuclear Weapons Council; OMB; National Laboratories; special interest groups.

Status, Deadlines, Next Steps, and Milestones

Remaining technical issues need to be resolved so that informed decisions for SDI and survivability of our current deterrent can be made in a timely manner. Further, the ability of the nuclear weapons laboratories to continue mission-related research to support national security policy decisions has been severely restrained in recent years.

Work for Others at DOE Laboratories

Issue/Concerns

Determine DOE role in supporting non-nuclear weapons related work at DOE nuclear weapons laboratories.

Background

The President's Blue Ribbon Task Group recommended broadening the mission of the DOE nuclear weapons laboratories to encompass priority national defense technical problems that may not be directly related to historical nuclear weapons missions.

The primary mission of the DOE nuclear weapons laboratories is nuclear weapons R&D. Non-DOE work has been accommodated on a *non-interference* basis to take advantage of unique research, development, and technical capabilities in other defense areas, e.g., advanced conventional munitions and strategic defense systems. In time of severe budget restraints, however, having the laboratory infrastructure devoted to both DOE and Department of Defense work may impose an unacceptable impact on the laboratories' primary mission, particularly on maintaining the scientific and engineering excellence necessary for continued safety and reliability.

Although the DOE views these research efforts to be complementary and beneficial to the nuclear weapons program, the *work for others* effort—currently more than 30 percent—must be managed to maintain the integrity of the laboratories' primary missions.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Management and Administration; Director of Energy Research; Field Offices.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; Nuclear Weapons Council; OMB; Office of Science and Technology Policy; National Laboratories.

Status, Deadlines, Next Steps, and Milestones

The Department of Defense and other Federal agencies have been increasing their work at the DOE nuclear weapons laboratories, while DOE-funded work is declining. This has potential management and control impacts and can detract from DOE's ability to maintain the historical missions of the laboratories.

Arms Control

Issue/Concern

Determine DOE role and expertise to support Arms Control activities.

Background

The Department has unique expertise for nuclear-related and other verification technology research and development. DOE Headquarters and national laboratory experts participate in the development of treaty proposals and often as technical advisors in bilateral and multilateral arms control treaty negotiating delegations.

It is DOE's responsibility to remain actively involved in interagency, intergovernmental, and international arms control deliberations because of the potential impacts on nuclear weapons R&D, production, and testing, as well as management of the national laboratory resources.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretary for Defense Programs; Nevada Operations Office.

Sensitivities

House and Senate Armed Service; and Intelligence Committees; National Security Council; Department of Defense; Joint Chiefs of Staff; Department of State; Arms Control and Disarmament Agency; Central Intelligence Agency; Nuclear Weapons Council; National Laboratories; special interest groups.

Status, Deadlines, Next Steps, and Milestones

Several changes are being considered that could have significant impact on DOE's mission, including the possible centralization of verification R&D in a single agency; further limitations on nuclear testing; and other arms control treaty force reductions and weapon system limitations.

An interagency study report from the President to Congress is due in June 1989, with recommendations on the conduct and coordination of arms control policymaking and verification technology research and development.

Nuclear Testing

Issue/Concern

Continue an effective nuclear testing program to assure a reliable nuclear deterrent.

Background

For the past 40 years, the policy of all Administrations has been that a strong nuclear deterrent is necessary to ensure the security of the United States. As long as the Nation depends on nuclear weapons to assure its security, testing is needed to ensure that those weapons are safe, secure, reliable, survivable, and militarily effective. Congressional, public, and international pressures exist to limit or eliminate nuclear testing by the United States.

Congressional concerns manifest themselves in the yearly introduction of legislation in both Houses to severely limit nuclear testing. From today's limitation of a maximum 150 kiloton yield, the proposals currently reflect a maximum of zero, one, ten, or fifteen kiloton yield. Public concerns take the form of protest activities at Defense and DOE sites. The Soviets have continued to press for a comprehensive test ban treaty and an immediate test moratorium. They unilaterally ceased nuclear testing in 1985 and did not resume until February 1987. Joint verification experiments are being conducted with the Soviets to establish the technical means to assure compliance with proposed treaties that would limit or reduce nuclear testing.

The U.S. is committed to seeking effective and verifiable agreements with the Soviet Union on nuclear testing limitations. Current efforts are focused on verification problems with the two existing, but unratified treaties: the Threshold Test Ban and Peaceful Nuclear Explosives Treaties. Testing limitations below today's maximum yield of 150 kilotons could have significant impacts on DOE's ability to carry out its national security responsibilities. The impacts could be mitigated, but only with considerable preparation, technology development, and budgetary expense beyond that currently required for the ongoing testing program.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretary for Defense Programs; Nevada Operations Office.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; National Security Council; Nuclear Weapons Council; Department of State; Arms Control and Disarmament Agency; Central Intelligence Agency; Joint Chiefs of Staff; National laboratories; special interest groups.

Status, Deadlines, Next Steps, and Milestones

Hearings can be expected early in the 101st Congress on the feasibility of making the U.S. nuclear deterrent less reliant on underground nuclear testing.

Safeguards & Security

Issue/Concern

Provide adequate protective measures against threats.

Background

In late 1972, following terrorist actions in Munich and elsewhere, the Department embarked on a decade of change in its traditional approach to safeguards and security for its critical facilities. Safeguards and physical protection systems were reexamined and deemed inadequate to protect against the evolving threat. In addition to DOE's emphasis, Congress focused on the protection posture at the Department's nuclear facilities to assure adequate protection against theft and sabotage that could impact national security and/or the health and safety of the American public.

The Department's efforts have resulted in the mitigation of the potential outsider threat to an acceptable level. This accomplishment is due, in part, to sustained management attention to upgrading safeguards and security and by strengthening DOE's protective forces, with such enhancements as improved security force equipment, armament, weapons, and response equipment, e.g., helicopters. Contractor protective forces now number approximately 6,000 and are the best trained, motivated, and equipped in the Federal government. The Department also has added state-of-the-art vehicle barriers, perimeter intrusion detection systems with multiple detection sensors, computer-based alarm systems, and storage vaults.

The Department's attention is now turned to the potential insider threat and several programs are underway to develop necessary policies and procedures.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Management and Administration; Field Offices.

Sensitivities

House and Senate Government Operations; Armed Services, and Appropriation Committees; operating contractors.

Status, Deadlines, Next Steps, and Milestones

Implementing human reliability and drug screening programs, enhanced material control and accountability, and other initiatives designed to provide protect against the potential insider threat.

Foreign & Domestic Intelligence & Counterintelligence

Issue/Concern

Support DOE statutory role for intelligence efforts.

Background

The Department requires intelligence information to support the development of nuclear weapons, to protect the nuclear weapons complex, and in determining and formulating U.S. energy policies. DOE has also been tasked by Executive Orders to make its technical expertise available to the U. S. Intelligence Community in all areas of foreign and domestic intelligence, as well as counterintelligence.

During the past year, an independent assessment found significant weaknesses in the overall ability of the Department's intelligence function to meet both its statutory requirements and support the U.S. Intelligence Community.

DOE Structure

Deputy Secretary; Under Secretary; Assistant Secretaries for Defense Programs; and Management and Administration.

Sensitivities

House and Senate Armed Services, and Appropriations Committees; Department of Defense; Central Intelligence Agency; Defense Intelligence Agency; Department of State; Federal Bureau of Investigation; National laboratories; special interest groups.

Status, Deadlines, Next Steps, and Milestones

Without additional manpower, the program cannot meet all statutorily directed efforts, provide the full payoff from Federal intelligence efforts, and provide critical knowledge on advance threats to U.S. nuclear weapons and the security posture of the weapons complex in a timely manner.

Key Issues
&
Upcoming Decisions

Office of
New Production Reactors

November 1988

Funding New Production Reactors

Secretarial Issue/Concern

Providing the \$9 billion required to acquire two new production reactor plants needed to assure the continued production of tritium on an urgent schedule within constrained budgets.

Background

A continued supply of tritium is essential for maintaining our national nuclear deterrent capability. Nuclear reactors are the only proven, practical means of producing tritium.

Future requirements for tritium cannot be met dependably with existing facilities. At present, no tritium is being produced in Savannah River reactors, which are more than 30 years old and are shut down for safety upgrade. These are currently our only source for tritium. Their timely restart is the issue of another paper (Defense Programs), but the operational reliability of these reactors will be difficult to maintain during the approximately 10 years required to add new production capacity. In view of the critical importance of tritium, the Department is proceeding on an urgent schedule to acquire new materials reactor capacity capable of producing at least goal quantities of tritium in an assured, sustained, safe, environmentally sound, and institutionally acceptable manner.

The Department's strategy for providing a highly assured supply of tritium is to acquire two new plants of diverse reactor technologies—a heavy water reactor at Savannah River and high-temperature gas-cooled reactor at the Idaho National Engineering Laboratory. The strategy proposed is to proceed on an urgent schedule with the construction of the heavy water reactor and to proceed concurrently with preparations leading to the construction of the high-temperature gas-cooled reactor plant. As a contingency, development work will continue on a tritium target for a light water reactor and, on resolving the institutional issues associated with acquisition of WNP-1, a partly completed commercial light water reactor located adjacent to the Department's Richland, Washington site.

The selection of these preferred technologies and sites is based on: (1) an assessment of candidate technologies made by the Energy Research Advisory Board; (2) an evaluation of candidate Department of Energy sites made by the Site Evaluation Team; and (3) consultations made with key agencies within the Government. A final decision on new production reactor capacity technologies and sites will be made after completion of an Environmental Impact Statement, as required by the National Environmental Policy Act.

The required baseline funding for these two reactor plants (\$9.182 billion in escalated year-of-expenditure dollars) must be provided during a period in which the Department is committed to modernizing the nuclear weapons production complex, while complying with increasingly stringent security, safety, and environmental remedial action requirements.

Organization & Coordination

Secretary, Chief Operating Officer, Office of New Production Reactors.

National Security Council (NSC), Defense Department, Office of Management & Budget, (OMB) Office of Science & Technology Policy (OSTP).

Sensitivities

Funding requirements for the concurrent activities to acquire two new production reactor plants is of great interest to OMB, DOD, NSC, OSTP, and the Congress.

Status, Deadlines, Next Steps, and Milestones

FY 1990 budget mark from OMB in November 1988. The failure to obtain funding in accordance with the baseline funding profile and schedule has historically been a major contributor to schedule delays and associated increases in total project cost.

Staffing New Production Reactors Office

Secretarial Issue/Concern

Obtaining qualified personnel for the New Production Reactors Program Office at DOE Headquarters and the two New Production Reactors Project Offices at Idaho and Savannah River—without undue impact on personnel resources needed to maintain and modernize the Defense Programs complex and manage other DOE programs and projects.

Background

On October 3, 1988, an Office of New Production Reactors (ONPR) was established, reporting directly to the Chief Operating officer of the Department. This office is responsible for managing and directing a program for the acquisition and construction of new production capacity to meet national security needs.

Activation of the ONPR organization required an initial staffing complement of approximately 28 professional and clerical personnel with a projected FY 1989 end-of-year on-board strength of about 80. Initial staffing was accomplished by transferring or detailing personnel from various DOE organizations. At peak, additional resources of 75-100 *full-time equivalent* (FTE) staff will be needed in each of the cognizant field offices, i.e., Savannah River and Idaho Operations Offices.

The provision of approximately 150-180 additional DOE personnel to staff the New Production Reactors Program and Project Offices, will have an impact on other DOE programs and projects, most of which already are constrained by personnel resources. Although the Department is hiring some staff from outside the Department to reduce the overall impact, the need for "Q" cleared personnel to fill certain sensitive positions will restrict the assignment of new hires.

Organization & Coordination

Secretary, Chief Operating Officer, Office of New Production Reactors, Assistant Secretary for Management & Administration.

Office of Management & Budget.

Sensitivities

House and Senate Armed Services Committees have expressed concern for strong DOE management of the New Production Reactors Program, which is reinforced by the report of the Energy Research Advisory Board (ERAB) containing a strong position on the need for an effective New Reactors Program Office.

Status, Deadlines, Next Steps, and Milestones

- Appoint a permanent director for the New Production Reactors Office at DOE Headquarters.
- Establish new field office staff at Savannah River and Idaho.
- Build staff at New Production Reactors Program Office to 80 FTE level (including 12 Senior Executive Service positions) by September 30, 1989.

Safety Review & NEPA Processes

Secretarial Issue/Concern

Establish and implement a comprehensive safety review process and the NEPA (*National Environmental Policy Act*) process for the New Production Reactors (NPR).

Background

Safety is a paramount consideration in the Department's New Production Reactors program. The program's goal is to provide a level of safety that meets or exceeds that afforded to the public by the best modern licensed commercial nuclear power plants. To this end, a process is being developed that reinforces the authority and responsibility of line management to incorporate safety as an integral part of their program activities and establish an active safety culture in all activities associated with the New Production Reactors.

Within the Office of New Production Reactors, an Office of Safety and Quality has been established to interface with safety oversight and advisory organizations, including the Defense Nuclear Facilities Safety Board and the Secretary's Advisory Committee on Nuclear Facility Safety; and to provide safety and quality certification data; safety and quality requirements and criteria; a Quality Assurance strategy and program; and a reliability, availability, maintainability, and inspectability program. A rigorous safety review process is being designed and implemented with provisions for an independent safety review.

A critical component of an expedited acquisition process is the timely completion of all National Environmental Policy Act requirements. This will almost certainly control the overall NPR schedule for the first two years. All reasonable alternatives for the replacement of existing reactor capacity must be examined in an environmental impact statement (EIS) before a final decision can be made to proceed with construction and operation. Completion of this process in a timely and defensible manner is essential to the successful acquisition of New Production Reactor capacity on schedule and within cost.

The *National Environmental Policy Act* (NEPA) process has been initiated with the publication of a Notice of Intent (NOI) in the Federal Register on September 16, 1988. A series of 12 public hearings will be held in November and December 1988, at several sites in the vicinity of the Savannah River, Idaho, and Hanford sites. In addition, preliminary work on accident analysis for the three concepts has been initiated.

Organization & Coordination

Assistant Secretaries for Defense Programs; Nuclear Energy; and Environment, Safety & Health; the General Counsel; and the Office of New Production Reactors.

Department of Defense (DoD), National Security Council, OMB, OSTP, Nuclear Regulatory Commission (NRC), Defense Nuclear Facilities Safety Board; and the Secretary's Advisory Committee on Nuclear Safety.

Sensitivities

Safety provisions for the New Production Reactors are of strong interest to the Congress and public.

Status, Deadlines, Next Steps, and Milestones

- Designate the Director for the New Production Reactors Office of Safety and Quality.

- Safety criteria and requirements for the New Production Reactors Procurement Technical Requirements Document to be completed *as soon as possible*.
- Conduct 12 public *scoping* hearings on the environmental impact statement in November and December 1988.

Report to Congress

Secretarial Issue/Concern

The FY 1989 Budget Authorization Bill requires the Department to submit a report to Congress (with the FY 1990 budget.) on the administrative and legislative changes needed to accelerate the new production reactor program.

Background

Congress, in the FY 1989 Defense Authorization bill, established a requirement that DOE *... submit to the Committees of Armed Services of the Senate and the House of Representatives in the FY 1990 budget request, a report containing: (1) administrative and legislative changes necessary to accelerate the initial operational date of a new production reactor, and (2) recommendations for such additional action that the Secretary considers appropriate.*

The Office of New Production Reactors is undertaking a review of *lessons learned* studies of large projects, various laws, regulations, orders, and related documents that have a bearing on the schedule for procurement, design, construction, and start-up operations of a new production reactor. It is preparing a report detailing suggested approaches to accelerating this process, while not compromising the need for safety, reliability, economy, environmental quality, and public hearings.

Organization & Coordination

Secretary of Energy; Deputy Secretary of Energy; Director, Office of New Production Reactors; Assistant Secretary for Defense Programs; and Assistant Secretary for Environment, Safety and Health.

Coordination, consultation and concurrence on the report to Congress required with DoD, OMB and National Security Council.

Sensitivities

House and Senate Armed Services and Appropriations Committees, Senate Committee on Environment and Public Works, Defense Nuclear Facilities Safety Board, Environmental Protection Agency, Office of Management and Budget, States where facilities will be located.

Status, Deadlines, Next Steps, and Milestones

January 15, 1989 Deadline for submitting Report to Congress.

Key Issues
&
Upcoming Decisions

Economic Regulatory Administration

November 1988

ERA Enforcement Field Organization

Issue/Concern

Should the two remaining ERA field offices be reduced or closed.

Background

The ERA enforcement program, after completing over 20,000 cases and collecting over \$6.2 billion, has almost fulfilled its legislative mandate of auditing and litigating actions on petroleum firms covered by various pricing and allocation controls. While over 200 cases remain, they can be completed by the headquarters staff and a decision, therefore, needs to be made on the continued existence of the two remaining field offices in Dallas and Houston, Texas. The audit work, which was the primary function of the field offices is virtually completed.

Organization & Coordination

The ERA senior official is the Deputy Administrator, Chandler L. van Orman. The decision to close these offices would be under the auspices of the Deputy Secretary.

If DOE does decide to conduct a reduction-in-force, other agencies would be contacted as part of the Department's effort to seek placement for the affected personnel.

Sensitivities

The ERA enforcement program has been under the close scrutiny of the House Committee on Energy and Commerce. The Committee has continually accused the Department of trying to thwart the enforcement of the pricing regulations and would surely see any movement to consolidate this function as just another attempt. The last reduction-in-force conducted in these offices in 1987, took over seven months to complete because of congressional intervention plus an additional year to resolve the vigorous appeals.

Status, Deadlines, Next Steps, and Milestones

Presently, there is minimal, if sufficient, work for the field offices. A decision should be made soon regarding the future reduction or closing of these offices.

American Petrofina

Issue/Concern

Should ERA take action against American Petrofina for alleged overcharges if recommended by a General Accounting Office (GAO) investigation.

Background

In April 1982, American Petrofina entered into a *global* Consent Order with DOE, settling all claims known and unknown, *unless* American Petrofina misrepresented or *knowingly concealed* material facts from DOE. By 1986, based upon information from third parties, ERA developed a draft Proposed Remedial Order alleging that American Petrofina had overcharged more than \$800 million on certain crude oil transactions and had knowingly concealed material facts from the Department during the audit which preceded the 1982 Consent Order.

American Petrofina argued that it had not concealed material facts, and, therefore, ERA was barred by the 1982 Consent Order from initiating any enforcement action. In March 1987, the ERA Administrator decided that there was insufficient evidence of concealment to warrant an enforcement action.

In July 1987, The House Committee on Energy and Commerce asked GAO to review the case. In August 1988, GAO requested all relevant documents preceding the April 1987 decision to close the case. In September 1988, GAO indicated that its report might conclude that while the Administrator had the legal authority to make that decision, such decision was inappropriate in view of the facts and circumstances. Accordingly, GAO inferred, it might recommend that action now be taken against American Petrofina.

Organization & Coordination

The former Administrator, Marshall Staunton, left DOE in December 1987; the Deputy Administrator, Chandler L. van Orman, was not with DOE when the Administrator made the decision to close out the American Petrofina matter. Milt Lorenz, Chief Counsel for Litigation, is the current senior ERA staff member who was involved with the issues.

If DOE takes action coordination will be required with the Federal Programs, Civil Division, of the Department of Justice.

Sensitivities

The House Committee on Energy and Commerce has been critical of ERA's actions in oil overcharge cases. Representatives of the 56 States and Territories, and other potential refund claimants, can be expected to advocate prosecution of American Petrofina.

Status, Deadlines, Next Steps, and Milestones

A GAO report and accompanying letter from the House Committee on Energy and Commerce is expected soon. That letter will likely demand that action be taken against American Petrofina or at least request that the matter be reviewed in light of GAO's conclusions that the Administrator's actions were ill-advised.

Cities Service Company

Issue/Concern

ERA charges that Cities Service Company (now OXY USA Inc.), in 91 *tie-in* crude oil re-sale transactions between October 1979 and January 1981, received unlawful excess consideration in sales of 13 million barrels of price-controlled domestic crude oil. Including interest, ERA seeks approximately \$666 million in restitution from Cities Service.

Background

ERA commenced this action in March 1985 and DOE's Office of Hearings and Appeals (OHA) issued a Remedial Order decision on September 30, 1988, affirming ERA's charges. The order directed restitution of \$263.9 million, plus interest, and remanded to ERA for further enforcement action the issue of Cities Service's alleged fraud on DOE's Entitlements Program. A major issue is the effect and meaning of a formal *Interpretation* issued to Cities Service in 1980 by DOE's General Counsel. The Interpretation declined to rule on the lawfulness of the type of transaction currently at issue in the litigation unless additional facts concerning the transactions, beyond those volunteered by Cities Service in its Request for Interpretation, were known.

Also pending before the Temporary Emergency Court of Appeals is a decision on the appeal of Consolidated Edison and five other electric utilities from OHA's denial of their request to participate in the case. The utilities were denied participation on grounds of the untimeliness of their request and because they sought to argue a theory of liability which OHA previously ruled was not presented by ERA for adjudication.

Fifteen states that will receive a portion of the restitutionary award if DOE is successful in the litigation, have participated in the litigation from its commencement.

Settlement negotiations, while ongoing, have been unsuccessful.

Organization & Coordination

ERA's Office of Enforcement Litigation is responsible for litigating of the case before the Federal Energy Regulatory Commission (FERC). OHA is an independent adjudicatory body within DOE. The Office of Enforcement Litigation represented ERA before OHA and will represent the Secretary of Energy in the appeal of that decision by Cities Service to the FERC. FERC is an independent agency within the DOE which has statutory authority to issue final remedial order decisions in DOE administrative enforcement proceedings.

Coordination will be required with the Federal Programs Branch, Civil Division, Department of Justice if FERC affirms the Remedial Order and Cities Service seeks judicial review. Otherwise, no interagency coordination will be necessary.

Sensitivities

Occidental Petroleum Corporation (Cities Service' parent company), has corresponded with the House Committee on Energy and Commerce concerning possible settlement of the litigation, and the Committee has asked DOE to advise them of the status of settle-

ment negotiations. In addition, the various States and territories and large potential refund claimants can be expected to be vocal.

Status, Deadlines, Next Steps, and Milestones

Cities Service plans to appeal the Remedial Order decision to the FERC. (There is no time limit for completion of the FERC review proceeding.) If the Remedial Order is upheld, Cities Service will have the opportunity thereafter to seek judicial review in the federal courts.

Multi District Litigation-378

Issue/Concern

The Department of Energy has primary responsibility for litigation needed to complete 27 Multi District Litigation cases (MDL-378) initiated more than 10 years ago.

Background

The Department was named as a defendant in more than forty separate lawsuits initiated in the 1970s, all of which were consolidated for trial before the Federal District Court in Kansas. Pending final determination on the substantive legal issue, the plaintiffs were required to place money into escrow pending a final decision, such money representing the difference between the price for crude oil the plaintiffs contended was proper and the price DOE said was lawful. Over \$1 billion was deposited into the escrow before the case was decided in DOE's favor. With regard to 27 of the plaintiffs, DOE contends that plaintiffs have not deposited into escrow the total amount of money required by the court's orders. Since the case was decided in the government's favor, DOE has conducted an investigation to determine the precise amount of money each plaintiff owes. It is estimated that in excess of \$200 million is at stake.

DOE's position is that the firms owe the deficient deposits, plus interest at DOE's policy rates, generally average prime rates. The Department of Justice (DOJ) disagrees with DOE's approach of accepting 100% of deficiency principal plus interest at the rate earned by the escrow—instead of the prime rate interest sought in the litigation. DOE was admonished to obtain DOJ approval before arriving at even tentative agreements.

Organization & Coordination

Since January 1988, ERA Chief Counsel Milton Lorenz has overseen the completion of this work. Because this work involves litigation, it is ultimately overseen by the Department of Justice. ERA and the Department of Justice have been engaged in discussions since November 1987 on the efficacy of a proposed DOE settlement/litigation policy which, in ERA's view, would expedite the completion of these cases through reasonable settlement.

Sensitivities

Oversight of the collection phase by Congress, the GAO, and by DOE's Inspector General has occurred in the past two years. The House Committee on Energy and Commerce has inquired frequently about the status of the collection effort. Moreover, each fiscal year DOE is required to report to Congress on progress in collecting these funds. Any monies collected in this case are, pursuant to a 1986 agreement, to be shared by the 56 States and Territories.

Status, Deadlines, Next Steps, and Milestones

Some acceptable settlement terms for the case must be agreed upon by DOJ and DOE.

Salomon Inc.

Issue/Concern

Litigation of the crude oil reselling case against Salomon Inc. and six related major international commodities traders.

Background

The ERA began its audit in 1979 and issued subpoenas in 1980 and 1986. The sheer volume of sales, the complexity of the international operations, and difficulties in obtaining information from the company have hindered progress. In 1988, the ERA and Salomon resolved the enforcement case relating to the audit period 1973-77 for \$16.25 million. The present case covers the remainder of the period of controls, 1978-81, which are governed by a different subpart of the pricing regulations than the earlier period.

After Salomon certified the completion of its subpoena production at the end of 1987, the ERA reviewed the massive collection of documents and renewed its attempt to match sales of crude oil with acquisition costs, but with limited success. Using the company's own matches, however, the ERA determined that there were alleged violations of the pricing and layering requirements. The ERA's computer data base and tentative audit findings were shared with Salomon on July 20, 1988, and a revised report on September 9, 1988. The parties conducted unsuccessful settlement negotiations during the week of September 19, 1988. On September 23, 1988, the ERA issued its *Proposed Remedial Order*, in the amount of \$312 million (including interest), to Salomon Inc. and six related entities.

Organization & Coordination

The ERA Administrator has responsibility for this case. Since September 1986, Bob Heiss, ERA Deputy Chief Counsel, has directed the legal aspects of the audit work, conducted settlement negotiations, and supervised the preparation of the *Proposed Remedial Order*.

Sensitivities

Until now, Salomon has never interjected Congressional or other political interests into the compliance process. Because of the size and financial resources of Salomon Inc, and its prominence in the field of investment banking, however, the case will surely be visible in the business press.

Status, Deadlines, Next Steps, and Milestones

After publication of the *Proposed Remedial Order* in early November, the case will be litigated in the Office of Hearings and Appeals.

Central Maine Power Co. Application for Presidential Permit to Construct Electrical Interconnection

Issue/Concern

Should a Presidential permit be granted to Central Maine Power Company to construct transmission facilities for importing up to 1000 megawatts (MW) of firm capacity from Hydro-Quebec?

Background

An application for a Presidential permit was filed by Central Maine Power on June 8, 1987 to construct a 450 kilovolt (kV) direct current (dc) transmission line; construct a 345 kV alternating current (ac) transmission line; construct a dc-to-ac converter terminal; expand an existing 345 kV substation; and construct a ground electrode.

There are numerous intervenors in this proceeding representing both the Northeast U.S. and the Canadians:

- The National Coal Association (NCA) proposes that it is more economical to build a coal-fired powerplant in the U.S. rather than import electricity from Canada. NCA also alleges that the electric reliability criteria used by DOE are too narrow and do not consider the national security implications of growing dependence on a foreign energy source.
- The Ad Hoc Coalition on International Electric Power Trade claims that DOE's environmental review should assess possible environmental impacts on Canada created by the additional electricity sold to the U.S. The Coalition also is concerned with the national security issue.
- Other intervenors include:
New England Power Pool; Nova Scotia Power Corporation; Boston Edison Company; Pennsylvania-New Jersey-Maryland Interconnection; Connecticut Light and Power Company and Western Massachusetts Hydro-Electric Company; New England Power Company; the Natural Resources Counsel of Maine; No Thank Q Hydro-Quebec; Town of Dixfield, Maine; Town of Roxbury, Maine; John and Kathleen Sutton; and Sonja Hodgkins.
- On December 1-3, 1987, scoping environmental meetings were held in Mexico, Rangley, Augusta, and Lewiston, Maine.

Organization & Coordination

ERA has jurisdiction within DOE and, with concurrences from the Departments of State and Defense, has authority to grant or deny Presidential Permit requests.

Sensitivities

Much local citizen opposition can be expected. Members of Congress from the Northeast are very interested in this project.

Status, Deadlines, Next Steps, and Milestones

A Draft Environmental Impact Statement will be published and distributed by May 1989. An analysis of the electricity reliability impacts of the project will be completed by the third quarter of 1989. ERA will render a decision on this permit application by the end of 1989.

Proposed Canadian Gas Imports to the U.S. Northeast

Issue/Concern

Should proposals to import annually 144 billion cubic feet (Bcf) of Canadian natural gas over a 15-year period be approved?

Background

The proposals would require the expansion and construction of gas pipelines in both the U.S. and Canada.

Four joint import applications were filed on August 1, 1986, and a fifth was filed on January 14, 1987. The ERA has consolidated the applications and refers to the proceeding as "Brooklyn Union, *et al.*," after the lead applicant in each case. The gas would be purchased from Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation formed by the applicants, and the majority of it would be transported in the U.S. by the proposed Iroquois Gas Transmission System (Iroquois).

Several protests have been filed in the Brooklyn Union dockets and the ERA has issued two procedural orders allowing opportunities for further comments. Intervenors raising concerns regarding the applications include groups in competition with ANE, state governmental agencies, and environmentalists.

The Federal Energy Regulatory Commission (FERC) is currently reviewing proposals to increase natural gas transmission capacity to the Northeastern United States. The Iroquois project is one of those proposals.

Organization & Coordination

The ERA Administrator has the programmatic lead and responsibility for making a decision on the application.

DOE is required to consult with the Department of State on these import applications. ERA works closely with FERC on the environmental impact review of this project.

Sensitivities

The Northeast Gas Congressional Caucus, a non-partisan group of U.S. Representatives, has been formed to encourage quick action on the proposals.

Environmental groups have expressed concerns about the new Northeast pipeline proposal and about Iroquois in particular.

Canadian suppliers are anxious to have their firm supply commitments approved by the necessary governmental agencies.

Status, Deadlines, Next Steps, and Milestones

A conditional order, pending completion of environmental review of the Iroquois project by the FERC, should be ready for the Administrator's review well before June 1989; possibly before January 1989. Final FERC action on Iroquois is not imminent.

Proposed Liquefied Natural Gas (LNG) Export Project of Yukon Pacific Corporation

Issue/Concern

Should a proposal to export Alaskan North Slope gas to Japan, South Korea, and Taiwan under a 25-year authorization be approved?

Background

The proposed project would require the construction of an 800-mile pipeline from Prudhoe Bay to Port Valdez, a liquefied natural gas plant, and a marine terminal.

An export application was filed by Yukon Pacific Corporation on December 3, 1987. The major intervenors were:

- The sponsors of the Alaska Natural Gas Transportation System (ANGTS) project, which oppose the application. ANGTS was designated to develop Alaska's North Slope gas to supplement declining domestic reserves.
- The State of Alaska, which supports the proposal.
- Exxon, a North Slope gas producer, asserts that an export authorization should not favor a single project to develop Alaskan resources to the exclusion of other potential projects (such as ANGTS).

On June 28, 1988, the Final Environmental Impact Statement (FEIS) for the proposed export project was released by the Bureau of Land Management and will be used by the ERA for the review of the export application.

A procedural order was issued on July 25, 1988, establishing a schedule for written comments and reply comments from all parties on issues relevant to whether the export is in the public interest.

Organization & Coordination

The ERA Administrator has sole DOE responsibility for granting authorization to export the Alaskan LNG. DOE is required to consult with the State Department on this export. During the environmental impact review process ERA worked closely with the Bureau of Land Management and Army Corps of Engineers.

Sensitivities

The Government of Canada, not an intervenor, filed comments that the U.S. should ensure the availability of adequate reserves to maintain the commercial viability of ANGTS.

The Chairman of the Energy and Natural Resources Committee, a supporter of ANGTS, has requested substantial amounts of information on the proposed project.

Status, Deadlines, Next Steps, and Milestones

Providing that no additional procedures are held, a decision on the proposed project can be made after October 1988.

Washington Water Power Co. Request for Presidential Permit To Construct International Electrical Interconnection

Issue/Concern

Should ERA grant a request for a Presidential Permit by Washington Water Power Company (WWP) to construct a double- circuit alternating current (ac) transmission line with a design voltage of 230 kilovolts (kV) from the U.S.-Canadian border to a planned substation to be located in the vicinity of Spokane, Washington.

Background

An application for a Presidential permit was filed by WWP on October 15, 1987. On April 12, 1988, a notice of intent to prepare an environmental impact statement was published in the *Federal Register*. Scoping meetings were held on May 3-5, 1988, in Spokane, Colville, and Newport, Washington.

Organization & Coordination

ERA has jurisdiction within DOE.

The ERA Administrator, with concurrences from the Department of State and the Department of Defense, has the authority to grant or deny a Presidential Permit request.

Sensitivities

Increasing opposition to the proposed project from private citizens with concerns for the environment and potential health effects.

Status, Deadlines, Next Steps, and Milestones

A Draft Environmental Impact Statement will be published and distributed by May 1989.

Key Issues
&
Upcoming Decisions

Energy Information
Administration

November 1988

Legislation Concerning Data Confidentiality

Issue

The Energy Information Administration (EIA) has proposed legislation to assure the confidential treatment of certain individually identifiable data made available to EIA, specifically, information obtained from other Federal agencies or collected through end use energy consumption surveys.

Background

The Department of Energy Organization Act of 1977 contains provisions that require EIA to make available to any other part of the Department any information in its possession. These provisions were intended to accommodate the regulatory environment which existed at that time. However, this lack of control over data in its possession has made it impossible for EIA to directly collect certain data or to have data sharing arrangements with other Federal agencies.

EIA's energy consumption surveys collect information on private homes and commercial buildings on a voluntary basis. In return for their cooperation, respondents are promised that their responses will be kept confidential. To honor this pledge, the EIA must contract for the collection of these data. The contractor is prohibited from giving the data to EIA in an individually identifiable form. A similar arrangement exists with the Bureau of the Census—EIA's collection agency for the Congressionally-mandated survey of energy consumption in the manufacturing sector.

Currently, other Federal agencies deny certain data to EIA because of EIA's inability to protect the confidentiality of the information. This legislation would ensure data confidentiality and increase data sharing activities between other Federal statistical agencies and EIA, but would not affect EIA's role as the central point within the Department for gathering, analyzing, and disseminating energy information.

Similar legislative proposals were submitted to Congress in 1979 and 1981, but were not acted upon due to Congressional priorities during those periods.

Sensitivities

The increased confidentiality would generate a more cooperative relationship between data respondents and Government, and among the Government's statistical agencies.

Status, Deadlines, Next Steps, and Milestones

Following concurrences from Departmental elements, the Office of General Counsel (GC) expects to forward the proposal to the Office of Management and Budget (OMB) by the end of November. OMB will obtain concurrences from other departments and then return the proposal to DOE. GC will locate a sponsor to introduce the bill in the next session of Congress.

Key Issues
&
Upcoming Decisions

Office of
Energy Research

November 1988

Superconducting Super Collider

Secretarial Issue/Concern

Continued support for construction of the world's largest and most advanced particle accelerator, the Superconducting Super Collider (SSC).

Background

For 50 years the United States has been the leader in high-energy physics research, thanks to successive commitments to more powerful and sophisticated particle accelerators. Continued support for the SSC is essential if our Nation is to maintain this leadership role into the 21st century.

The SSC will be a racetrack-shape accelerator in a tunnel 53 miles in circumference and is expected to provide answers to fundamental questions about matter and energy. President Reagan called for construction of the SSC in January 1987. The total SSC project cost is estimated to be \$4.4 billion (in FY 1988 dollars). The FY 1989 budget provides \$98.6 million for R&D, preliminary engineering and design, and site selection activities. Initial construction funding is being requested in FY 1990.

In April 1987, a competitive site selection process was initiated. Forty-three proposals were received initially, of which seven were selected for final consideration—Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee, and Texas. On November 10, 1988, Secretary Herrington announced that the site proposed by the State of Texas was selected as the preferred site. DOE must complete an environmental review process before it can make a final site selection.

Over the past year, high-level delegations representing the Secretary visited Italy, Germany, France, the United Kingdom, Canada, and Japan to brief these countries on the status of the SSC, to reemphasize the Administration's commitment to the project, and to discuss opportunities for foreign participation.

Other key activities in 1988 included: initiation of a program to establish an industrial capability to produce superconducting magnets; issuance of a request for proposals which will lead to a contract with a private sector organization to manage the R&D, design, construction, operation, and maintenance of the SSC laboratory; and issuance of a request to receive Standard Forms from firms interested in competing for the Architect-Engineering, Construction Management of the SSC laboratory.

Organization & Coordination

The Director of the Office of Energy Research has line responsibility for the SSC, with support from the Assistant Secretaries for Congressional, Intergovernmental and Public Affairs; International Affairs and Energy Emergencies; Environment, Safety and Health; Management and Administration; the General Counsel; and the Chicago Operations Office.

Sensitivities

A Government Accounting Office report on SSC site selection procedures is expected to be forwarded to DOE for comment in November 1988. No significant adverse findings are anticipated, although the report may contain some minor comments and recommendations. The site selection process, including preparation of an Environmental Impact Statement, has been the subject of considerable interest and publicity across the country.

The Congressional Budget Office issued a report October 28, 1988, on the risks and benefits related to the SSC. The Office of Energy Research has serious problems with its conclusions and is preparing a response.

There is concern in Congress about committing to a large project in the face of large budget deficits. Congress also is very interested in international participation in the SSC. Some members support such participation as a means of reducing the cost of the SSC to the U.S. taxpayers, while others are less favorable because of the potential competition from foreign industry. There is considerable interest in and support for the SSC by the international community, U.S. industry, educational institutions, scientific community, and labor organizations. Congress and segments of the scientific community are concerned about the possible impact of the SSC on other sciences.

Status, Deadlines, Next Steps, and Milestones

December 1988	Final EIS will be issued
December 1988	Management and Operating Contractor (M&O) will be selected
January 1989	EIS Record of Decision will be published and announcement of the final site selection will be made.
January 1989	The FY 1990 budget will be submitted to Congress
January 1989	DOE will be receiving the Standard Forms by early January 1989 and will hold them in trust until the M&O contractor is on-board and can initiate the competitive selection of the Architect-Engineering, Construction Management subcontractor.
Feb-March 1989	Budget hearings begin

Restart of the High Flux Isotope Reactor

Issue/Concern

Can the High Flux Isotope Reactor (HFIR) be restarted and operated safely and economically?

Background

There are two Class A (over 20 megawatts of power) research reactors operated by the Office of Energy Research. One of these is the High Flux Isotope Reactor (HFIR), located at the Oak Ridge National Laboratory (ORNL). It produces unique isotopes and neutrons important for neutron scattering and radiation effects research. HFIR has been in a standdown condition for almost two years due to concerns about the neutron-induced embrittlement of the pressure vessel. The general safety and quality assurance of the overall reactor operation and the reactor management have been reviewed and improvements initiated. An action plan for restart has been formulated and largely completed. The Office of Environment, Safety and Health and the Office of Energy Research will evaluate the readiness of HFIR for restart and the adequacy of the ORNL management. Consideration must also be given to the importance of the broad-based program at HFIR to the DOE mission, the standing of U.S. science in the international community, the national and international need for isotopes, and planning for the new Advanced Neutron Source also at ORNL—a research reactor of advanced design and state-of-the-art capabilities, which will replace HFIR.

Organization & Coordination

Programmatic lead for restart is in the Office of Energy Research's Office of Basic Energy Sciences (BES). Concurrence of the Office of Environment, Safety and Health is required. Responsibility for program oversight and management includes the Manager, Oak Ridge Operations Office; the Associate Director for Basic Energy Sciences, Office of Energy Research; and the Director, Office of Energy Research. For HFIR restart, a Task Force involving Energy Research and Oak Ridge Operations Office personnel directed the changes, management, and oversight. BES is now assisted by an expert nuclear facility safety group from the Los Alamos National Laboratory.

Sensitivities

Public, Congressional, and DOE concern for the safe operation of nuclear facilities, prompted by events at Three-Mile Island, Chernobyl, and the Savannah River Plant, have resulted in a very conservative approach to managing and operating these facilities.

Status, Deadlines, Next Steps, and Milestones

By the last quarter of 1988: (1) Reviews and assessments by the DOE Office of Environment, Safety and Health and the Office of Energy Research will be completed. (2) Obtain approval for restart from the Director of Energy Research with the recommendation of the Manager, Oak Ridge Operators office and the concurrence of the Assistant Secretary for Environment, Safety and Health.

Carbon Dioxide and Global Change

Issue/Concern

Carbon dioxide and the greenhouse effect have become major national and international science and energy policy issues. One of the major concerns is that carbon dioxide, which is an unavoidable consequence of burning fossil fuels, will lead to an overall warming of the earth's atmosphere through the greenhouse effect.

Background

The concentration of carbon dioxide in the atmosphere has increased approximately 25% in the last 100 years as a direct result of increases in global use of fossil fuels and deforestation. The average global temperature has increased approximately 0.5 degrees Celsius over the same period. The current base of scientific knowledge is inadequate to establish a cause and effect relationship between these two facts. It is understood that increased levels of carbon dioxide, and other greenhouse gases, such as methane and chlorofluorocarbons (CFC's), will change the earth's climate, but the degree of change and regional variations is extremely uncertain.

In 1950, North America accounted for nearly 43% of the world's carbon dioxide emissions (1.6 billion tons of carbon). In 1986, North America accounted for only 24% (5.4 billion tons of carbon world-wide). Developing countries, especially China, are projected to have a major impact on future carbon dioxide emissions.

The DOE has funded a carbon dioxide research program since 1978. FY 1989 funding is about \$18 million. Including FY 1989, the total funding to date is \$130 million. In 1986, the status of knowledge was summarized in a series of "State of the Art" technical reports. Congressional interest in this area has been increasing.

Organization & Coordination

The carbon dioxide research program is managed within the Office of Energy Research.

The DOE was identified as the lead agency for the carbon dioxide program by the Administration in the 1980 5-year program mandated by the National Climate Act. The Office of Science and Technology Policy (OSTP) coordinates government-wide activities through the Federal Coordinating Committee on Science Engineering and Technology (FCCSET) Committee on Earth Sciences.

Sensitivities

Congressional interest in this issue has picked up considerably since the hot summer and drought of 1988. Senators Wirth, Stafford, and Hollings have each introduced legislation. Since fossil fuels are the major source of carbon dioxide, emphasis on alternatives such as nuclear power, conservation, renewable, and fusion energy could be part of a solution. Any effective remedy would have to be implemented internationally.

Status, Deadlines, Next Steps, and Milestones

- Funding level for the President's FY 1990 budget.
- It is expected that Congressional interest will remain high and legislation introduced late in the 100th Congress by Senator Wirth and others will be reintroduced in the 101st Congress.
- Major international scientific conferences have been scheduled that will highlight the greenhouse effect.

Acid Rain

Issue/Concern

Man-made emissions of sulfur-dioxide and nitrogen oxides, mainly from the combustion of fossil fuels, lead to the formation of acid rain and associated atmospheric pollutants, especially ozone. The issue is whether these emissions should be further controlled at great cost (billions of dollars per year) in the near-term to reduce their adverse effects, or whether we can reasonably wait until early in the 21st century for new, clean, cost-effective combustion technologies to be adopted in response to existing regulations and market forces.

Background

Atmospheric concentrations of sulfur-dioxide, nitrogen oxides and ozone and, hence, acid rain are regulated under the 1970 Clean Air Act and its subsequent Amendments.

National emissions of sulfur-dioxide have declined by 27 percent since the early 1970s and emissions of nitrogen oxides have remained fairly steady. A key issue influencing the decision on whether additional controls of sulfur-dioxide and nitrogen oxides are needed is the extent and rate of environmental and health damage caused by acid rain and ozone. There are conflicting views on this issue. The U.S. agreed to an international protocol in October 1988 to limit nitrogen oxides emissions so that the peak historical levels are never exceeded. The protocol calls for nitrogen oxides limits to be reexamined by 1995.

Established as a 10-year research and assessment program in 1980, the multiagency National Acid Precipitation Assessment Program (NAPAP) produced an Interim Assessment on the causes and effects of acid rain and ozone in September 1987. The Assessment concluded that acid rain does contribute to the acidification of some lakes, to reduction in visibility, and to materials degradation, but that there is no strong evidence that acid rain causes crop loss, forest decline, or damage to human health. Some of the conclusions were challenged by environmental scientists and Canadian officials. The Assessment and many other reports conclude that ozone, as opposed to acid rain, does cause extensive crop, forest, and human health damage. NAPAP will produce its final Integrated Assessment and State of Science Papers in 1990. A detailed Plan for this effort was issued in October 1988. Public comment on the Plan and public review of draft reports will be solicited at periodic meetings.

DOE is a member of NAPAP, which will produce its final Integrated Assessment and State of Science Papers in 1990. DOE's role in NAPAP is to fund research (\$10 million per year out of a total of \$85 million) and to help ensure the high quality of all scientific research and assessment activities conducted under NAPAP. There are numerous proposals in Congress to revise the *Clean Air Act* to control acid rain. Most proposals emphasize sulfur control. None have been sent to the President.

Organization & Coordination

The Under Secretary is a member of the NAPAP Joint Chairs Council, the governing body of NAPAP. Energy Research supplies the member of Interagency Scientific Committee of NAPAP--the key Federal science advisor on acid rain--and coordinates DOE Acid Rain Crosscut Budget. Environment, Safety and Health supplies the member of Interagency Policy Committee of NAPAP--the key Federal policy advisor on acid rain. Fossil Energy supplies the leader of NAPAP Task Group on Emissions and Controls.

Five Federal agencies coordinate their research through NAPAP: The Environmental Protection Administration, the National Oceanic and Atmospheric Administration, and the Departments of Agriculture, Energy, and the Interior. Decisions in NAPAP are generally made by consensus among these agencies. NAPAP will conclude in 1990 upon completion of its final assessment report. That report is intended to be a major technical input for decisions by the Executive Branch and Congress on the need for additional controls on sulfur dioxide and other emissions. Each of the agencies plans to continue some acid rain research beyond the conclusion of NAPAP.

Sensitivities

International: Canada claims that pollutants from the United States cause widespread and severe damage in eastern Canada. The extent and magnitude of the damage is questioned by many U.S. scientists. Canada has implemented plans to reduce its own emissions and wants the United States to do more.

Congressional: Some members of Congress who urge protection of the environment at any cost view NAPAP as stalling on recommending further emissions controls. Other members of Congress are strongly against further near-term emissions controls. In between, other members await the 1990 NAPAP Assessment and recommendations.

Outside Interest Groups: Environmental groups support additional near-term emissions controls. Electric utilities, coal producers and many pro-economic growth groups like the Chamber of Commerce and engineering societies would like to rely on the market penetration of new clean-coal combustion technologies.

Status, Deadlines, Next Steps, and Milestones

Early January 1989: Revised plan for producing NAPAP's final Integrated Assessment and State of Science papers in 1990 to be approved by the Joint Chairs Council (currently the DOE Under Secretary and counterparts in five other Agencies) and published.

January 1989: Release of NAPAP Annual Report for 1988 to Congress and the President.

Indoor Radon

Issue/Concern

In light of existing scientific uncertainties, are the following Environmental Protection Administration (EPA) recommendations advisable?

- 1) the maximum acceptable exposure to indoor radon should be 4 picocuries per liter (pCi/l) of air; and
- 2) every household in the country should have a 2-day test to measure indoor radon levels.

Background

Indoor radon has become a major national public health concern. EPA's recommendations which could ultimately cost billions of dollars in measurement and mitigation costs, as well as lost home equity, are the subject of considerable scientific controversy. The Federal Government, including the Department of Energy, has scientific research programs underway to reduce existing uncertainties in our understanding and ability to predict the health risk related to exposure to radon (i.e., lung cancer). Building on an extensive background of radiation effects research, the Department expanded its radon research program in 1988 from \$2.8 million to \$11.0 million. The FY 1989 budget includes \$13.4 million for radon research aimed at determining exposure to radon more accurately and better defining health risk estimates. The scientific concerns related to the EPA recommendations include the following: (1) health risk estimates are still uncertain; (2) the effect of radon exposure in combination with smoking, a dominant factor in lung cancer, is not addressed in the recommendations; and (3) the 2-day measurements proposed by EPA do not accurately reflect annual exposure, the measurement of interest. It should also be noted that no other country recommends exposure limits as low as EPA's for current housing.

Organization & Coordination

The Office of Energy Research's Office of Health and Environmental Research has the lead for the Department on basic radon research.

The Office of Health and Environmental Research also represents the Department on the Radon Task Group of the Committee on Indoor Air Quality (EPA and DOE cochair) and the Science Panel of the Committee on Interagency Radiation Research and Policy Coordination.

Sensitivities

There is legislation pending in Congress on indoor air quality, including radon, and hearings are likely. In addition, environmental groups actively favor standards that prohibit any level of radiation exposure. The concerns of the National Association of Realtors, Homebuilders and Mortgage Bankers focus on liability issues.

Status, Deadlines, Next Steps, and Milestones

Although no decision points are anticipated within the next year, ongoing research funded by the Office of Energy Research is expected to provide improved data that will form the basis for reassessment of acceptable exposure levels of radon.

Scientific Facilities Upgrade

Issue/Concern

Many of the scientific facilities in the DOE laboratories are old or are becoming old and their scientific productivity will soon become marginal. In order to make further progress in certain fields, new, more powerful facilities are required. In the FY 1987 budget, DOE addressed this issue and included funds for a "scientific facilities upgrade" to begin to meet the need for forefront facilities.

Background

The U.S. has been the world leader in science and technology and has derived many economic benefits from this leadership. The Department of Energy and its multiprogram laboratories play an important role in the nation's scientific enterprise that is essential for our preeminence. A central feature of this role has been the construction and operation of large, specialized scientific facilities that are used by scientists from universities and industry as well as the national laboratories. As stated above, many of these facilities are becoming outdated.

New scientific facilities are required to accomplish the main mission of the laboratories, i.e., to be preeminent in certain key fields of research and to make progress at the forefront of science. The Scientific Facilities Upgrade is directed at this need. It includes four facilities that have been identified by the scientific community and the Office of Energy Research as being the most critical to the future needs of the Department's basic research programs. The four facilities are:

- 1-2 GeV Synchrotron Radiation Source—Lawrence Berkeley Laboratory (LBL). Construction was begun in FY 1987; total estimated cost is \$98.7 million.
- Relativistic Heavy Ion Collider (RHIC)—Brookhaven National Laboratory (BNL). Initiation of construction is proposed in the FY 1990 budget, with a total estimated cost of \$373.0 million.
- 6-7 GeV Synchrotron Radiation Source—Argonne National Laboratory (ANL). Design was initiated in FY 1989. Total estimated cost is \$456.0 million.
- Advanced Neutron Source, (ANS)—Oak Ridge National Laboratory (ORNL). Research and development prerequisite to initiation of design and construction was started in FY 1987. Design could begin in FY 1991. The project is expected to cost in excess of \$500 million.

Organization & Coordination

The Office of Energy Research is responsible for the "scientific facilities upgrade" projects.

Sensitivities

The OMB and the Congress have keen interest in these projects, since they are essential to the advancement of science, and represent significant Federal investments. The views of the scientific community vary by discipline. There may be some opposition from the scientific community as a whole to the extent that funding for these upgrades affects other scientific areas or major projects.

Status, Deadlines, Next Steps, and Milestones

Determine what should be included in the FY 1990 budget to Congress.

- DOE's FY 1990 budget request to OMB includes funds for a logical transition from design in FY 1989 to construction in FY 1990 of the 6-7 GeV ANL project.
- DOE's FY 1990 budget request to OMB proposes initiation of RHIC construction following several years of research and development and conceptual design.

Key Issues
&
Upcoming Decisions

Office of Environment,
Safety and Health

November 1988

DOE's Safety Oversight Program

Secretarial Issue/Concern

Ensuring that DOE's responsibility to meet national security needs for nuclear materials is met in a manner that satisfies our safety and health responsibilities.

Background

Many of the Department's facilities, particularly defense production reactors, are nearing the end of their useful lives. In May 1986, at the request of Secretary Herrington, the National Academies of Sciences and Engineering (NAS) undertook an independent assessment of the implications of the April 1986 Chernobyl nuclear reactor accident for the Department's reactors. In two reports submitted to the Secretary in October 1987 and August 1988, the NAS addressed pertinent management and technical safety issues at DOE's reactors, including the need for safety upgrades.

Over the last three and a half years, the Department's safety oversight program has been significantly improved, including the following measures:

- Consolidating the environment, safety, and health functions under an Assistant Secretary for Environment, Safety and Health and providing large staff and funding increases.
- Issuing a Safety and Health Policy Statement making safety and health protection of DOE employees, contractors, and the public a precondition of operations.
- Initiating comprehensive multidisciplinary technical inspections and safety appraisals at DOE nuclear production and processing facilities.
- Enhancing independent oversight of DOE nuclear facilities through the establishment of the Advisory Committee on Nuclear Facility Safety.
- Placing on-site inspectors from the Office of Environment, Safety and Health at two DOE facilities—Savannah River and Rocky Flats—with plans to staff additional sites in the near future.
- Establishing more stringent requirements for notifying Headquarters of environment, safety, and health problems at our facilities.
- Establishing a streamlined process for issuance of environment, safety, and health orders.
- Initiating a DOE-wide contractor self-improvement program.

Moreover, DOE has undertaken a modernization study, in response to Congressional requests, that will develop recommendations concerning the appropriate size and production capacity of the nuclear weapons complex. The scope of the study includes new production reactor capacity; construction of the Special Isotope Separation (SIS) facility; and facility consolidations, relocations, and necessary upgrades. DOE's commitment is to provide the Congress with the final study December 15, 1988.

In the meantime, the Department must continue evaluating facility safety and making improvements to assure acceptable margins of safety. This will involve upgrades to many of our facilities.

Organization & Coordination

Responsibility for the safe operation of DOE facilities rests with the Operations Office Managers and Program Assistant Secretaries. The Assistant Secretary for Environment, Safety and Health, in his oversight role, provides policy guidance and objectives, and independent assessments to determine safety requirements and upgrades

Sensitivities

There has been unprecedented media interest in environment, safety, and health issues at DOE's defense production facilities. In addition, many Members of Congress, Congressional committees, and members of the Executive Branch are concerned about DOE's ability to continue meeting its national security objectives.

It is important to note that many of the problems that have come to light in recent weeks were identified as the direct result of the intense scrutiny which DOE itself has focused on the environment, safety, and health issues at our facilities.

Status, Deadlines, Next Steps, and Milestones

- DOE will provide Congress with a modernization study and plan by December 15, 1988.
- A Congressional request dated October 19, 1988 calls for a report from the Secretary within 90 days on how the DOE management and environment, safety, and health oversight system can be strengthened.

Environmental Cleanup at DOE Facilities

Secretarial Issue/Concern

The pace of environmental cleanup.

Background

The Department is coming to grips with a legacy of environmental problems including radioactive and chemical contamination. Each site has unique problems and unique solutions associated with cleanup and compliance. Key DOE activities include:

- **The Environmental Survey:** In 1985, as part of several initiatives to strengthen the environment, safety, and health oversight program, Secretary Herrington directed that an environmental survey be conducted to establish a baseline of existing and potential environmental problems at all DOE sites. In November 1988, DOE issued a preliminary assessment of the 16 sites that support the Defense Programs mission.
- **Environment, Safety, and Health Report for the Department of Energy Defense Complex:** Issued in July 1988, this report contained an estimate for environmental restoration or cleanup of the order of \$35–\$65 billion for the defense complex alone.

Ultimately, the pace of environmental cleanup will be determined within the Federal budget process and will be reviewed and balanced with other National objectives.

In FY 1987, an Environmental Restoration program was established in Defense Programs to manage an effort to characterize, assess and conduct needed remedial actions at inactive waste sites and spill sites at DOE defense facilities. The program, derived primarily from legislation, conducts activities on a priority basis to assure that potential risks to the environment and human health and safety are eliminated or reduced to acceptable levels. The scope and schedule for these activities are negotiated with the Environmental Protection Agency and the States and are the subject of various permits, consent orders, and compliance agreements. Funding for this program was \$98 million in FY 1988 and \$159 million has been appropriated for FY 1989.

In FY 1988, DOE decided to establish an Environmental Remedial Action program within three other major program offices—Nuclear Energy, Fossil Energy, and Energy Research—to facilitate management and budgeting of environmental remedial actions at all DOE facilities and operations.

Organization & Coordination

The responsibility for environmental compliance and cleanup rests with the Operations Office Managers and Program Assistant Secretaries. The Assistant Secretary for Environment, Safety and Health, in his oversight role, participates in budget prioritization of cleanup activities.

Sensitivities

This is an issue of widespread, bipartisan concern in the Congress and State governments.

Status, Deadlines, Next Steps, and Milestones

- **ES&H Report for DOE Defense Complex.** A DOE-wide Environment, Safety, and Health Report for the Department of Energy Defense Complex will be issued in December 1988.
- **The Environmental Survey.** A final Environmental Survey Summary Report will be issued during the end of FY 1989 and will include a DOE-wide prioritization of environmental problems and areas of environmental risk.

DOE Defense Nuclear Facilities Safety Oversight Board

Secretarial Issue/Concern

External nuclear safety oversight.

Background

The DOE Defense Nuclear Facilities Safety Oversight Board was authorized by the *National Defense Authorization Act of FY 1989.*, which calls for the immediate establishment of the Board and the submission of nominations for Board membership to the Senate by the President within 180 days. The five-member Board will be empowered to review and evaluate DOE nuclear safety standards, perform investigations of safety events, analyze design and operational data, review facility design and construction, and provide recommendations to the Secretary of Energy with respect to DOE's defense nuclear facilities. The Board will have the authority to issue subpoenas and hold public hearings. The Board will have broad access to DOE defense facilities and information, and may assign on-site resident staff. Accountability to Board recommendations is provided through timetables for response and Federal Register publication of responses. The Secretary, to the extent provided in appropriations acts, will transfer necessary budgetary resources to the Board. The Board has authorization to hire 100 staff and the ability to hire consultants. An annual report will be due to Congress from both DOE and the Board in conjunction with the DOE budget submission on respective activities related to the Board.

Organization & Coordination

The responsibility for safety rests with Operations Office Managers and Program Assistant Secretaries. The Assistant Secretary for Environment, Safety and Health, provides independent. The Advisory Committee on Nuclear Facility Safety was established by the Secretary in December 1987 to provide independent technical advice on nuclear safety. Resolution of interfaces between these existing organizations and the Board will be needed.

Sensitivities

The issue of outside oversight for DOE's nuclear facilities remains a critical concern of Members of Congress, the National Academies of Sciences and Engineering, the media, and the public. Several Members of Congress have stated that further legislative efforts will be made to broaden both the scope of the oversight board and its authorities. Of particular concern is the Department's accountability to the Board's recommendations.

Status, Deadlines, Next Steps, and Milestones

- Submission of Board nominees to the Senate by April 1989.
- Establishment of Board staffing and budget resources during FY 1989.

Reimbursement of State Environmental Costs

Issue/Concern

Should DOE agree to pay costs states incur in DOE environmental cleanups or should DOE pay such costs only when a state successfully sues for them?

Background

Both the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA) and the *Resource Conservation and Recovery Act* (RCRA) provide the Environmental Protection Agency (EPA) and the states with authority to oversee environmental cleanup activities including those at Federal facilities. For a DOE site on the National Priorities List (NPL), CERCLA requires an Interagency Agreement between DOE and EPA for the cleanup. For non-NPL DOE sites, CERCLA specifies that state cleanup laws apply to Federal facilities. For most DOE NPL and non-NPL sites, states also have or will have authority under RCRA to require and oversee DOE cleanup activities.

The Department has reached a consensus that agreeing to pay states for reasonable costs incurred under CERCLA Interagency Agreements is in the Department's best interests. DOE, along with other Federal agencies, believes that the best way to avoid potentially conflicting requirements between CERCLA and RCRA, or potentially conflicting directions and decisions from EPA and the states, is:

- a) to enter into 3-party (DOE, EPA, and the state) CERCLA Interagency Agreements for NPL sites, and
- b) to enter into 2-party (DOE and the state) CERCLA Interagency Agreements for non-NPL sites.

The Department has been actively negotiating 3-party Interagency Agreements for several DOE sites, however the issue of state costs has become a "show stopper."

Organization & Coordination

The Office of Environment, Safety and Health, in cooperation with the Offices of General Counsel and Management and Administration, the Program Offices, and the Operations Offices, will establish criteria for determining what constitutes reasonable costs as well as guidance on methods of payment. Pending the development of this criteria and guidance, Interagency Agreements with provisions for paying state costs will be subject to early case-by-case review and approval by the Assistant Secretary for Management and Administration with respect to costs.

Sensitivities

There were several Interagency Agreements pending resolution of this issue that will now likely be executed. Involved states include California, Utah and Washington.

Status, Deadlines, Next Steps, and Milestones

Development of guidance and criteria for determining "reasonable costs".

Clean Air Act Reauthorization

Issue/Concern

The implications of reauthorization of the *Clean Air Act* in the 101st Congress.

Background

Reauthorization of the *Clean Air Act* has been under consideration by Congress since 1982, but progress has been stalled by lack of consensus on whether a large and costly new program to reduce acid rain-related pollutants should be added to the Act. Because extensive urban areas are not meeting required air concentration standards for ozone and (secondarily) carbon monoxide, early action on the Act's reauthorization including potential expansions of regulatory programs is expected in the 101st Congress.

The reauthorization process will include major adjustments to a number of programs plus it is likely to add new authorities for acid rain and other regional pollutants, toxic air pollutants and, possibly, for limiting emissions associated with global climate change.

For the past seven years, the primary impediment to the Act's reauthorization has been lack of agreement on what to do about acid rain emissions, principally sulfur dioxide emissions from the older (pre-1975) coal-fired power plants. The Administration has opposed *further* action on reducing associated emissions until a need is demonstrated, and has supported the National Acid Precipitation Assessment Program (NAPAP) to develop an interagency report to Congress on acid rain causes, effects and extent by 1990, and the DOE Clean Coal Demonstration Program to accelerate commercialization of innovative technologies that would reduce emissions in new and modernized power plants and industries. Many interests believe that the Congress will develop a program to dramatically reduce older plants emissions of sulfur dioxide and nitrogen oxides.

Congress is also expected to dramatically change the present programs for dealing with elevated ozone levels and specialized controls on toxic air emissions. Actions in both areas will have some impact on energy use and energy industries, especially vehicle standards and petroleum industry regulations.

Organization & Coordination

- **Acid rain.** The Office of Fossil Energy and the Office of Environment, Safety and Health carry out principal policy analysis activities and the Office of Energy Research plays a major role in NAPAP research and assessments.
- **Ozone.** The Offices of Environment, Safety and Health; Policy, Planning and Analysis; and Conservation and Renewable Energy participate in analyses associated with transportation issues. A major consideration here is use of alternatives fuels to reduce petroleum consumption.
- **Toxic emissions.** The Office of Environment, Safety and Health and Operations Offices have major interests due to potential impacts on DOE facilities as well as energy industries.

Sensitivities

- The Congressional Committees noted above are under increasing pressure because of the ozone nonattainment issue to effect early reauthorization of the *Clean Air Act*.
- Canada presses for further action by the U.S. on lowering acid rain emissions. European countries generally have moved for increased controls on sulfur and nitrogen oxides.

Status, Deadlines, Next Steps, and Milestones

Early initiation of action by Congress is expected. Due to the complexity of the Act and the difference in views among Members on what to do about acid rain emissions, the first six to nine months of 1989 are likely to include a significant number of hearings, markup sessions, and amendment proposals. It is likely that the new Administration, soon after January 1989, will be asked for detailed views and analysis on all elements of the Act, including proposals for new authorities for ozone, acid rain, toxic emissions, and climate change-related emissions.

Key Issues
&
Upcoming Decisions

Office of the
Assistant Secretary for Fossil Energy

November 1988

National Acid Precipitation Assessment Program Plan

Secretarial Issue/Concern

Should the National Acid Precipitation Assessment Program (NAPAP) assessment plan be issued as planned in January 1989?

Background

Interagency approval of publication of the NAPAP Assessment Plan is scheduled for January 1989. Issues include whether all relevant technical and scientific data is being considered, whether the plan demonstrates open and unbiased treatment of the subject, and whether the integration and decision making process will provide adequate and unbiased answers to all relevant questions. The Assessment Plan describes the content of the final NAPAP Science and Technology Reports and Integrated Assessment Activities which will conclude the 10-year Congressionally-mandated effort. A draft version of the Plan was released in October 1988 and a public meeting will be held in November 1988.

Organization & Coordination

- Under Secretary Donna Fitzpatrick, represents DOE on the Joint Chairs Council;
- Mr. E. Williams of Environmental, Safety and Health (EH), represents DOE on the Interagency Policy Committee;
- Dr. George Jordy, represents DOE on the Interagency Science Committee; and
- Ms. Denise Swink of Fossil Energy (FE), Leader of the Emissions and Controls Task Group.

Final approval of the Plan will be accomplished by the interagency Joint Chairs Council after review and comment by the Interagency Science Committee, the Interagency Policy Committee, and the leaders of the seven NAPAP Task Groups.

Sensitivities

Organizations, institutions, governments, and political figures interested in promoting, opposing, or influencing acid deposition legislation will want to see their interests favorably treated in the assessment effort. These parties include many Members of Congress, the Canadian Government, industries in general, and the utility industry, in particular.

Status, Deadlines, Next Steps, and Milestones

The key upcoming milestone is interagency approval of the release of the Assessment Plan in January 1989.

Strategic Petroleum Reserve—Fill Rate, Size & Alternative Financing

Secretarial Issue/Concern

Should the Strategic Petroleum Reserve (SPR) be expanded beyond 750 million barrels to the authorized level of 1 billion barrels? How fast should the SPR be filled? What policy position should DOE take on new alternative SPR financing concepts being proposed?

Background

Size. The 1975 legislation that created the SPR authorized an ultimate volume of up to one billion barrels. Since then Congress has authorized and funded the construction of a 750-million barrel reserve. Storage facilities for 750 million barrels will be completed in 1991; the SPR presently contains more than 550 million barrels of crude oil.

The 1989 Department of Interior and Related Agencies Appropriations Act requires DOE to submit to Congress by April 1, 1989, a report addressing the steps necessary to develop sites and facilities to expand the reserve to one billion barrels, if authorized. Although not statutorily required, the Administration and Congress have discussed the size of the SPR as that which would be equivalent to 90 days of crude and product imports. New projections of imports indicate that 750 million barrels would not cover 90 days of imports in the late 1990s.

Fill rate. There has been a continuous debate between Congress and the Administration about whether the SPR should be filled at a faster rate to achieve its currently planned size. This debate centers on setting budget priorities consistent with deficit reduction goals. The Administration's policy objective is to fill at 100,000 barrels/day, but only if the budget can accommodate that rate. Neither the Administration nor the Congress has found an affordable budget strategy to achieve that objective. The SPR was filled at a rate of approximately 57,000 barrels/day during FY 1988. The FY 1989 appropriation assumes a fill rate of approximately 50,000 barrels/day which would be exceeded if oil prices remain low and if the Department is not restricted by OMB or Congress to limit outlays.

Alternative financing. A number of alternative financing schemes have emerged, from Government and the private sector, claiming to reduce the Government's near-term outlays for oil purchases, facilities acquisition, or interest payments on Treasury debt financing. The Office of Petroleum Reserves is evaluating the most recent proposals to separate financial characteristics from budgetary impacts and evaluate the marketability of the proposals.

Organization & Coordination

The Assistant Secretary for Fossil Energy has the programmatic lead; Policy, Planning & Analysis, International Affairs & Energy Emergencies, Management & Administration, and the General Counsel provide advice and support.

Sensitivities

- The SPR program enjoys nearly universal support for faster fill and substantial support for filling beyond 750 million barrels. The States of Texas and Louisiana would benefit from facilities construction. The East Coast, and especially New England, feels vulnerable to energy emergencies and would like more insurance against them. There is some similar interest in Hawaii and on the West Coast.
- Approximately 50 percent of the oil going into the SPR travels in U.S. ships and benefits the maritime industry.

- Oil for the SPR currently is purchased from Mexico and this trade is favored by the State and Treasury Departments.
- The International Energy Agency would view a larger reserve favorably.
- Investment houses that would handle alternative SPR financing would obviously profit from such transactions and, therefore, are supportive.
- The Office of Management and Budget historically has opposed a larger reserve and has advocated lower fill rates.

Status, Deadlines, Next Steps, and Milestones

Legislative authority for the SPR expires June 30, 1989.

Petroleum Reserves staff completed an initial evaluation of five alternative proposals in October 1988. In November, a report from the Energy Futures Group will provide a qualitative analysis of a large number of categories of alternative financing schemes.

Decision by Office of Management and Budget on FY 1990 budget submission to Congress and subsequent hearings to focus on a fill rate of 65,000 barrels/day.

April 1, 1989: Submit required report to Congress on expansion of the size of the SPR.

California Claim on Elk Hills Land

Secretarial Issue/Concern

Litigation of State of California against U.S. Government concerning school land grants.

Background

For several years, the State of California and the Federal Government have been at odds over California's claim under a nineteenth century land grant to entitlement to lands within the Elk Hills Naval Petroleum Reserve. Public school land grants were passed by Congress for most of the Western States including California, upon their admission into the Union. California's land grant was for Sections 16 and 36 in every township throughout the State.

California is suing the United States in federal district court, seeking title to the two Elk Hills "school lands," and also 50% of the Government's revenues generated from Elk Hills since 1976, an amount estimated by the press at \$12-\$15 billion. However, California's grant of the Elk Hills sections always has been subject to certain Congressionally-imposed exceptions which have prevented title to these sections from ever vesting in the State, and the claim for 50% of the Government's revenues from Elk Hills is not supported by the federal statute on which it is premised.

The Government's lawyers consider California's lawsuit to be without legal merit, and the Government's court filings reflect this view. However, the Conference Report to the Concurrent Resolution on the Budget - FY '89 urged the Administration to recognize and provide appropriate compensation for the State's claims of ownership.

Organization & Coordination

General Counsel lead on behalf of DOE; Assistant Secretary for Fossil Energy has programmatic responsibility. Actual litigation is by the Justice Department.

Sensitivities

Bills have been introduced in both Houses of the Congress to transfer the two Elk Hills "school lands" to California, and to allow California to share in the revenues generated by Elk Hills, which presently serve to offset the Federal budget deficit.

Status, Deadlines, Next Steps, and Milestones

Initial discovery is underway, and to be completed by Dec. 15, 1988; all pre-trial motions to be filed by Jan. 2, 1989. Trial date set for June 5, 1990.

Third Solicitation for Clean Coal Technology Projects

Secretarial Issue/Concern

Implementation of a third competitive solicitation for Clean Coal Technology projects.

Background

The Department of Energy initially was appropriated \$397.6 million to fund cost-shared demonstrations of clean coal technologies capable of retrofitting or repowering existing facilities. A solicitation was issued by DOE in February 1986 and 11 proposals were selected for negotiation. Congress later provided an additional \$575 million to support a second round of projects and a second solicitation was issued in February 1988. Fifty-five proposals were received and 16 were selected for negotiation in September 1988.

The pending FY 1989 Appropriations Bill provides \$575 million of advanced appropriations for a third round of projects and requires that DOE issue the solicitation by May 1, 1989. Public meetings are planned for early in 1989 to obtain private sector views on the scope and content of the third-round solicitation document. Fossil Energy is currently forming the team which will be tasked with developing the solicitation and evaluating the proposals submitted to DOE. Proposals are due 120 days after DOE issues the solicitation, and project selections are required 120 days after receipt of proposals.

Organization & Coordination

Assistant Secretary for Fossil Energy has lead responsibility for implementation. Source Selection Official and primary members of the Source Evaluation Board will be from the Fossil Energy Headquarters and Field organizations. Support will be provided by the DOE Headquarter's Offices of Procurement and General Counsel.

Sensitivities

- There has been a high level of Congressional interest and support in this activity, however, since only a few of the selections made in CCT I and II were from the West, a concentrated effort must be made to encourage projects from the West in subsequent rounds.
- Significant public interest is anticipated from various special interest groups representing environmental concerns, coal policy issues, and utility interests, as well as organizations who become direct participants in the program.
- There will be continuing interest from Canada focused on assuring that the U.S. fulfills its commitments to resolving the trans boundary acid rain emission problem.
- An Advisory Panel of high-level industrial representatives (i.e. the Innovative Clean Coal Technology Advisory Panel - ICTAP) is charged with providing guidance to the program.
- \$600 million was requested in each of fiscal years 91 and 92 for future rounds of proposals.

Status, Deadlines, Next Steps, and Milestones

Jan/Feb 1989	Public Meetings (at least 3)
March 1989	Report results of Public Meetings
April 1989	Draft solicitation issued for Public Comment
April 1989	Public Comment period closes
May 1, 1989	DOE issues solicitation document
August 28, 1989	Proposals due to DOE
December 26, 1989	Project Selections completed

Promoting U.S. Coal & Coal Technologies in Developing Countries

Issue/Concern

What should DOE's commitment and approach be for stimulating private initiative in promotion of U.S. fossil fuel technologies and U.S. coal in developing countries?

Background

This program was initiated by the Office of Fossil Energy in 1987 and aimed at U.S. Agency for International Development (AID) assisted countries. Countries selected for initial consideration were: Costa Rica, Dominican Republic, Thailand, and Indonesia. Country packets for Costa Rica and Thailand were released at public at meeting July 21, 1988. Private sector indicated strong support for continuation of program with DOE serving as coordinating organization for intergovernmental assistance programs.

Organization & Coordination

- DOE officials in decision process: Assistant Secretary for Fossil Energy, Principal Deputy Assistant Secretary. Programmatic lead: Denise F. Swink, Acting Director, Office of Planning and Environment.
- U.S. Agency for International Development and the U.S. Trade and Development Program are cooperating in this initiative.

Sensitivities

- **Congress:** Conference Committee approved FY 1989 funding at \$300,000 level for analyses of the use of specific coal based technologies in developing countries. In addition, \$750,000 was made available for coal export related activities.
- **Others:** Participating industry trade associations include: National Coal Association, Western Coal Transport Associations, Western Coal Council, Congress of Industrial Boiler Owners, American Society of Mechanical Engineers, and the Mississippi Valley Coal Exporters Council.

Status, Deadlines, Next Steps, and Milestones

Phase II program has been initiated.

Reducing Carbon Dioxide Emissions With Clean Coal Technologies

Issue/Concern

The emissions of the greenhouse gases generated through the combustion of fossil fuels can be greatly reduced through the development of more efficient clean coal technologies.

Background

Carbon dioxide emissions generated from the combustion of fossil fuels in the U.S. account for roughly a quarter of the amount generated in the world. Fifty percent of the carbon dioxide emissions generated in the U.S. are from the combustion of oil and oil products, while 24 percent of these emissions come from the combustion of coal. The massive national investment in fossil fuels and the critical role they must play in the Nation's future economic growth and energy security require that special attention be paid to options that can reduce carbon dioxide emissions from existing and future fossil fueled facilities. Advanced clean coal technologies now being developed improve the overall efficiency of using coal to generate power and as a result will significantly reduce carbon dioxide emissions by using less coal to produce the same amount of power.

Organization & Coordination

The assistant Secretary, Fossil Energy has lead responsibility for the Clean Coal Technology Program. Coordination with the Department of State and the Environmental Protection Administration will help keep them apprised of the status of the clean coal technology program and be responsive to global warming concerns.

Sensitivities

- The potentially beneficial role of clean coal technologies in reducing carbon dioxide emissions has been discussed in Congressional hearings.
- The Electric Power Research Institute and electric utilities support role for clean coal technologies in addressing issue.
- Large international interest (especially Canada) exists in progress and future of these technologies.

Status, Deadlines, Next Steps, and Milestones

November 1988: Guidance for the third clean coal technology solicitation will be generated in meetings of the Innovative Clean Coal Technology Advisory Panel in November 1988 and Public Meetings to be held in January 1989.

By May 1, 1989: Third clean coal technology solicitation, also funded at a level of \$575 million, will be implemented in response to Congressional direction

Protection of Natural Gas Resources on NOSR-1 & NOSR-2

Issue/Concern

Should the Department revisit its strategy and current procedures for the protection of the government's natural gas resources on the Naval Oil Shale Reserves No. 1 (NOSR-1) and No. 3 (NOSR-3)?

Background

Portions of NOSR's 1 and 3 and the surrounding area contain gas producing sands which can be exploited by low volume, marginally profitable wells. The Office of Naval Petroleum and Oil Shale Reserves monitors drilling on these adjacent lands in order to evaluate the potential for drainage of their mineral resources. It was determined in 1983 that the potential existed for drainage of natural gas by commercial development in the Rulison Field at the southeast boundary of NOSR-3. Therefore, a protection plan utilizing communitization agreements and offset wells was prepared and initiated to protect NOSR-3 gas. Since that time, additional gas wells have been drilled in the other areas near NOSR-3, requiring protection beyond the scope of the 1983 plan, and therefore, a second protection plan was prepared in October 1987. It was authorized for implementation in July 1988.

Organization & Coordination

The Assistant Secretary for Fossil Energy is responsible for NOSR programmatic issues; the Office of Procurement Operations under the Assistant Secretary of Management and Administration, with input from Fossil Energy and General Counsel, conducts the sales process for the products.

Sensitivities

The Office of Management and Budget, which since July 1988 has been considering the reprogramming of \$3.67 million for the protection plan's implementation, has proposed that DOE consider seeking legislative authority to fully develop the natural gas on the NOSR's and lease out the Reserves for commercial development. The Congress could be critical if we do not alleviate the uncompensated drainage situation.

Status, Deadlines, Next Steps, and Milestones

Execution of eight communitization agreements for parcels of land on which privately-owned wells were drilled in 1987 is scheduled for November 1988. The drilling of offset wells, required in addition to the communitization units, is dependent upon the reprogramming of funds submitted to OMB in July 1988. The FY 1990 budget includes \$11.1 million for drilling an additional 16 offset wells and installing gas gathering systems.

Utility Incentives for Deploying Low-Emission Technologies

Issue/Concern

DOE is proposing an electric rate regulation to provide incentives for accelerated deployment of innovative, low emission technologies by electric utilities.

Background

President Reagan accepted the recommendations of the Task Force on Regulatory Relief, chaired by Vice President Bush, including an initiative requiring DOE to propose certain electric rate regulations. The purpose of these regulations was to remove institutional disincentives to deployment of innovative low emission technologies. Emissions of concern were SO₂ and NO_x, due to their contributions to acid rain effects. These regulations were to include:

- Rapid depreciation
- An incentive rate of return on equity
- Inclusion in the rate base of all construction work in progress (CWIP) prior to startup
- Limitations on the scope of the rate program.

Organization & Coordination

The lead for this effort is the Assistant Secretary for Fossil Energy. It has been coordinated with DOE Policy, Planning & Evaluation, General Counsel, and the Office of Environment, Safety and Health.

The regulatory package prepared by DOE is being reviewed by OMB.

Sensitivities

This issue is apt to be very controversial, with various interest groups viewing it as: (a) an inadequate incentive, and (b) an excessive subsidy. There will likely be strong Congressional and coal industry/utility support due to its expected beneficial impact on the deployment of advanced coal technologies (note that the program is open to any fuel form). Strong opposition will likely come from EPA, environmental groups, pro-acid rain Congressmen, and organized electricity consumers (ELCON) who will oppose the use of the Clean Coal Program as a substitute for direct regulation of acid rain precursors and who will oppose its potential near term impacts on electricity price. Both the National Coal Council and the Innovative Control Technology Advisory Panel are near completion of reports on Clean Coal Technology deployment incentives.

Status, Deadlines, Next Steps, and Milestones

The proposed regulations are scheduled to be transmitted to the Federal Energy Regulatory Commission (FERC) at the end of November 1988. It is expected that FERC will be requested to propose the regulations immediately and promulgate them within 4-6 months.

Cooperative Agreements—Innovative Clean Coal Technology

Issue/Concern

Negotiation and award of Cooperative Agreements for Innovative Clean Coal Technology projects selected in September 1988 under the Innovative Clean Coal Technology Demonstration Solicitation (Clean Coal Round #2).

Background

Based on DOE's experience in negotiating Cooperative Agreements for the first round of Clean Coal Demonstration projects, it is anticipated that an extensive effort will again be necessary to conduct successful negotiations and award Cooperative Agreements for Round #2. Fossil Energy's goal is to complete the negotiation/award process for these projects in 1989.

Organization & Coordination

Assistant Secretary for Fossil Energy has lead responsibility for this activity. Within Fossil Energy, the Morgantown and Pittsburgh Energy Technology Centers (METC/PETC) have lead responsibility for conducting negotiations with the project proposers. DOE Headquarters (Fossil, General Counsel, and Procurement) provide assistance to the field negotiating teams, and provide final review and clearance prior to award.

Congress requires that DOE submit a special report for each project proposed for award at least 30 days prior to making the award. Senior DOE officials may become involved in this activity, depending on the sensitivity of the specific project.

Coordination with the Department of State and the Environmental Protection Administration will keep them informed on the status of the program after the cooperative agreements are signed.

Sensitivities

- Individual industrial participants will be following the progress of the DOE concurrence and approval process.
- Congress must review a comprehensive report for each project prior to execution of the cooperative agreement by DOE.

Status, Deadlines, Next Steps, and Milestones

September 1988	Round #2 projects selected
October 1988	Begin negotiations
December 1989	All Cooperative Agreements Awarded

Environmental Initiatives Affecting Domestic Oil & Gas Production

Issue/Concern

To what extent will new initiatives to protect the environment affect domestic oil and gas production, the economy and energy security?

Background

The Environmental Protection Agency (EPA) is developing new Federal standards and considering changes to an array of existing regulations, guidelines and policies applicable to oil and gas drilling and production operations, e.g.:

- Federal standards for the management of oil and gas drilling and production wastes under Subtitle D of the *Resource Conservation and Recovery Act*;
- National effluent limitations for onshore and offshore oil and gas operations, and oil spill prevention, control and countermeasure requirements, under the *Clean Water Act*; and
- Underground injection control requirements for injection wells associated with oil and gas operations under the *Safe Drinking Water Act*.

With low oil prices, domestic oil and gas production operations are very sensitive to added costs. Small independent oil companies, stripper wells, and high cost operations such as enhanced oil recovery projects are particularly vulnerable. New environmental requirements will add to the costs of domestic oil and gas production. This will increase the likelihood of well abandonments, fewer oil and gas reserve additions, and greater reliance on oil imports. A reduction in domestic production can lower federal and state revenues and put substantial stress on job markets and local economies. A deteriorated industry infrastructure cannot be rebuilt quickly and, once abandoned, some energy resources may be economically irretrievable.

EPA typically analyzes separately the potential economic and energy impacts of each new set of compliance requirements. Such analyses may not take into account additional requirements being considered under other regulatory authorities. Thus, these analyses may underestimate the cumulative impacts of new requirements on domestic oil and gas production. In addition, the total environmental benefit of multiple, often overlapping compliance requirements may be significantly less than the sum of the benefits calculated for each separate initiative.

It is anticipated that the 101st Congress will act on groundwater protection and waste management legislation that could further increase compliance costs for energy facilities.

Organization & Coordination

Databases and models developed for the Office of Fossil Energy and the Office of Policy, Planning and Analysis have been used to estimate potential impacts on oil and gas exploration and production associated with selected EPA regulatory proposals. Staff of the Office of Fossil Energy and the Office of Environment, Safety and Health participate in several interagency work groups providing advice to EPA on specific initiatives. This work is coordinated with the Office of Policy, Planning and Analysis.

Sensitivities

A number of organizations have demonstrated their interest in or concern about EPA initiatives applicable to oil and gas drilling and production, e.g., the American Petroleum Institute, the Independent Petroleum Association of America, the Appalachian regional producers, individual state oil and gas associations, the Interstate Oil Compact Commission, and the Underground Injection Practices Council.

The producing states have traditionally taken the lead in regulating oil and gas facilities and are very sensitive to interference from the Federal Government. Administration policy on Federalism has been to discourage regulation at the national level unless there is an overriding national need.

Status, Deadlines, Next Steps, and Milestones

Preliminary efforts by EPA to revise regulations or take other actions (in several of the areas listed above) are underway. Proposed rulemakings in some areas are scheduled to be issued as early as mid-1989.

Expansion of Strategic Petroleum Reserve Marine Distribution Facilities

Issue/Concern

Should the Strategic Petroleum Reserve (SPR) secure the budget and regulatory authorities needed to acquire marine distribution services necessary to meet SPR distribution objectives.

Background

In order for the SPR to achieve a 4.5 million-barrel per day distribution capability, up to 800,000 barrels per day of additional marine distribution capability must be secured. The approach is to maximize use of existing commercial marine facilities rather than construct Government-owned facilities. This could be done cost effectively by making only minor modifications to commercial facilities to accommodate SPR drawdown and distribution needs. This would alleviate a regulatory requirement to secure real property rights to such modifications for the Government. Industry is not willing to give real property rights to portions of their facilities to the Government. In responses to two recent competitive solicitations by DOE for marine distribution services, commercial terminals proposed major expansions or enhancements to their facilities to accommodate SPR requirements. These proposals exceeded current SPR budget authority and the authority to make such improvements without securing real property rights. To achieve the SPR's target distribution capability of 4.5 million barrels per day by FY 1992, DOE will need to revise its strategy and secure additional budget authority and authority to expand commercial facilities for SPR distribution without securing real property rights.

Organization & Coordination

The Secretary, Assistant Secretaries for Fossil Energy (programmatic lead), Management and Administration, and General Counsel.

Sensitivities

In light of rising U.S. oil imports and growing U.S. vulnerability to supply shortfalls, it is critical that the SPR achieve its distribution capability objectives as soon as possible. Failure to acquire the planned capability could be criticized by Congress, academia, and the International Energy Agency, particularly since plans and objectives for additional distribution capability have been widely publicized.

Acquiring real property rights will be opposed by the terminalling industry. Paying for major modifications to marine terminal facilities for the oil industry without securing real property rights to the Government investment could be contentious with the public and some members of Congress. OMB and Congress are both likely to have difficulties with increasing the budget for SPR facilities in view of *Gramm-Rudman-Hollings* budget targets.

Status, Deadlines, Next Steps, and Milestones

The SPR plans additional solicitations for marine terminal services during 1989. FY 1989 supplemental appropriations and authority regarding real property rights will be needed to achieve a 4.5 million-barrel per day SPR distribution capability by 1992.

Key Issues
&
Upcoming Decisions

Office of the
General Counsel

November 1988

Implementation of Price-Anderson Civil Penalty Authority

Issue/Concern

Should the Department of Energy issue a rule automatically exempting nonprofit educational institutions from civil penalties if they violate DOE safety standards?

Background

The newly enacted *Price-Anderson Amendments Act of 1988* authorizes the Secretary of Energy to assess civil penalties against certain Department of Energy contractors and their subcontractors and suppliers if they violate DOE safety standards. The Department must determine by rule whether nonprofit educational institutions should receive automatic remission of civil penalties. The Secretary has stated that we will not issue a rule on the nonprofit institutions before the Spring of 1989.

The Department opposed passage of this particular provision. It was a compromise, reluctantly accepted by the Department and minimally acceptable to most contractors. Most existing nonprofit educational institutions currently operating the Department's laboratories are exempt.

Organization & Coordination

Various offices will be involved including the offices of Nuclear Energy; Environment, Safety & Health; General Counsel; Defense Programs; Energy Research; and Management and Administration.

Sensitivities

The Department's current and potential contractors are concerned about how much financial risk they are assuming.

Status, Deadlines, Next Steps, and Milestones

Drug Testing Program

Issue/Concern

Can the Department of Energy implement a Drug Testing Program? (See also description of DOE program under Office of the Assistant Secretary for Management and Administration.)

Background

Executive Order 12564 requires all Federal agencies to implement a drug testing program for employees in sensitive positions. Title V of the *Supplemental Appropriations Act of 1987* provided that each agency must develop a plan prior to the implementation of government-wide testing. Moreover, it provided that the Department of Health and Human Services (HHS) must develop technical protocols for the conduct of the testing, and certify laboratories to conduct the specimen analysis. In addition, §503 of the Act permits the Department to initiate drug testing for employees who are "specifically involved in the handling of nuclear weapons or nuclear materials" without regard to the other requirements of the Act.

Organization & Coordination

While the Office of Management and Administration has the lead on implementing this program the Office of General Counsel has the lead on the legality of implementing such a program. The office of Environment, Safety and Health and Defense Programs are also deeply involved.

Sensitivities

Drug Testing has been extremely controversial at all levels, with the Department of Justice and the White House taking active, lead roles within the Administration.

Status, Deadlines, Next Steps, and Milestones

The Department of Energy has prepared, and the Department of Justice has approved, a plan for testing those employees in sensitive positions. Specific DOE "testing designated" positions have been identified. In addition, HHS has published guidelines for conducting drug testing. After publication of a "60-day notice" letter, generally advising employees of initiation of a drug testing program, and specific "30-day notice" to employees in testing-designated positions, the program may begin at any time.

In addition, the Department is formulating a drug testing policy with respect to employees of DOE contractors. The *Treasury, Postal and General Government Appropriations Act* for FY 1989 requires contractors and grantees of Federal agencies to have in place, by January 16, 1989, a drug policy that will ensure a drug free workplace.

Several suits have been brought to stop the various agencies from conducting drug testing. The primary Constitutional concerns raised by opponents of drug testing involve Fourth Amendment search and seizure and right to privacy issues. Due to a split in the circuits on the issues, the Supreme Court has heard arguments on November 2, 1988 in

two cases dealing with drug testing,. These cases involve post accident drug testing and drug testing for promotion to "sensitive" positions. During the arguments the Solicitor General, on behalf of the U.S. Government, requested that the Court address only the issues presented, and not the issue of random drug tests by Federal agencies. While a ruling on the Constitutionality of drug testing in these cases may be issued by the end of the year, it is extremely unlikely that the guidance provided by the Court will be definitive as to the Department's proposed random drug testing program.

Environmental Compliance Legal Issues

Issue/Concern

To what extent should government-owned facilities be treated differently from private facilities for purposes of environmental compliance and enforcement?

Background

Congress has by statute required federal agencies to comply with most federal, state and local environmental requirements. Where violations have occurred at federal facilities, the courts have generally held that these congressional waivers of sovereign immunity must be strictly construed, and that some means of enforcement, such as civil penalties, that are applicable to privately-owned facilities are not applicable to federal facilities. There are a number of legal and policy reasons for distinguishing between federal and private facilities for enforcement purposes. Nevertheless, there is a perception that federal facilities are not being held adequately accountable for environmental compliance.

Organization & Coordination

This issue raises environmental, programmatic and legal concerns, and consequently requires the attention of the Office of Environment, Safety and Health, the Office of Defense Programs and other program offices, and the Office of General Counsel. Although DOE is one of the agencies most directly affected, the issue is important to EPA and the Department of Justice, as well as other program agencies such as the Department of Defense.

Sensitivities

Congressional interest in federal agencies' environmental compliance activities is significant, and state and local regulatory authorities have been increasingly aggressive in their oversight of federal facilities. A number of private environmental groups have previously shown great interest in DOE's environmental activities, and are authorized to bring citizen suits to force compliance with applicable requirements.

Status, Deadlines, Next Steps, and Milestones

Several bills are currently pending that would result in federal facilities being treated more like private facilities for purposes of environmental enforcement. These bills are expected to be re-introduced in the next Congress. In addition, as the new Congress takes up the reauthorization of major environmental statutes such as the Resource Conservation and Recovery Act, additional proposals are likely to emerge.

Key Issues
&
Upcoming Decisions

Office of
Hearings and Appeals

November 1988

States Spending of Overcharge Funds

Issue

Should DOE give the States more freedom in formulating plans for spending Stripper Well and other oil overcharge funds?

Background

In 1986, the U.S. District Court in Kansas approved a final settlement in the DOE Stripper Well Exemption Litigation. Under that agreement, 40% of crude oil overcharges are paid to the States for indirect restitution to injured consumers of petroleum products. About \$2 billion will eventually go to the States under this arrangement.

The settlement gives the States some latitude in making restitutionary plans, and expressly sanctions any program approved by the Office of Hearings and Appeals (OHA). A State must inform DOE's Assistant Secretary for Conservation and Renewable Energy of its plan before spending any funds. The State may appeal the initial decision of the Assistant Secretary for Conservation to the OHA. Some 36 appeals have been considered between November 1986 and September 1988. OHA's decisions stress the restitutionary goals of the Stripper Well settlement. To date, DOE has granted 13 appeals and turned down 20.

Organization & Coordination

OHA drafts the decision and circulates the appeal for interagency coordination to a review committee including representatives from the Office of General Counsel, Assistant Secretary for Conservation and Renewable Energy, the Economic Regulatory Administration and OHA. Agreement by the committee is required before the OHA Director issues the decision. If the committee were unable to agree, the matter would be resolved by the Deputy Secretary.

Sensitivities

State proposals to expend oil overcharge funds are often controversial within the State and can generate political pressure from congress and governors. Some States view these as "slush funds." A Subcommittee of the House Energy and Commerce Committee exercises vigorous oversight of DOE actions in the oil overcharge area, and GAO has scrutinized State plans and DOE's handling of these matters.

Status, Deadlines, Next Steps, and Milestones

The matter is ongoing in nature; several State Stripper Well appeals are pending before OHA at any given time.

Key Issues
&
Upcoming Decisions

Office of
the Inspector General

November 1988

Implementation of the New Inspector General Act

Issue/Concern

Implementation of Public Law 100-504, "Inspector General Act Amendments of 1988."

Background

The DOE Organization Act, (Public Law 95-91) as amended by 42 U.S.C. 7138 has been the authority for the Office of the Inspector General (IG). However, the legislation enacted October 18, 1988 places the Office of the DOE Inspector General under the authority of the Inspector General Act of 1988 as amended by 5 U.S.C. App.3. The new legislation establishes a separate appropriations account for the Office; provides independent authority for the selection, appointment and employment of personnel, including SES staff; authorizes the hiring of experts and consultants; and gives authority to enter into contracts with private persons. The legislation also imposes additional requirements in reporting to the Secretary and the mandate to review DOE legislation and regulations with recommendation in the Semiannual Report. Additionally, Public Law 100-504 establishes new procedures and requirements for audit resolution. The law goes into effect April 16, 1989.

The IG has initiated a study comparing PL 100-504 and PL 95-91 as amended by 42 U.S.C. 7138 to determine the differences in these two laws and the changes necessary in IG policies and procedures to implement the new law.

Organization & Coordination

The issue raises programmatic, administrative and legal concerns and consequently requires the attention of the Secretary, DOE Management and Administration and General Counsel.

Sensitivities

Congressional interest in this issue is significant along with continued involvement of the President's Council on Integrity and Efficiency.

Status, Deadlines, Next Steps, and Milestones

The development of the policies and procedures will need to be coordinated with the appropriate persons/activities. Critical decisions will need to be made in the determination of options for independent personnel and procurement activities

**Key Issues
&
Upcoming Decisions**

**Office of International Affairs
and Energy Emergencies**

November 1988

IEA Ministerial Meeting

Secretarial Issue/Concern

Should the Secretary of Energy agree to participate in an International Energy Agency Ministerial meeting in May 1989?

Background

The IEA is a semi-autonomous subsidiary of the Organization for Economic Cooperation and Development (OECD). Twenty-one countries are members of the IEA, which was formed in 1974 to give oil *consuming* countries a vehicle for coordinated policy response to the actions of oil *producing* countries. The IEA's policymaking group, the Governing Board, last met at the Ministerial level in May 1987. Such meetings have been held about every two years—more frequently during energy crises. IEA Executive Director, Helga Steeg, has suggested that Ministers next meet in May 1989.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies, or his designate, represents DOE at IEA Governing Boards at *official* level; the Office of International Affairs has the programmatic lead for preparing and clearing position papers for a Ministerial meeting of the Governing Board.

The State Department shares responsibility for representation at Governing Board and lower level meetings. The Secretary of Energy heads the U.S. Government delegation to IEA Governing Board Meetings at Ministerial level.

Sensitivities

Traditionally, the Senate Energy Committee has requested a briefing on U.S. positions at IEA Ministerials.

Status, Deadlines, Next Steps, and Milestones

Planning for the Ministerial meeting will proceed, but formal notification will not occur until the Secretary of Energy has given his assent. This decision should be made not later than March 1, 1989. Decisions on the meeting agenda will be taken by delegates at meetings of the Governing Board at *official* level during the next several months. Policy and position papers will be prepared by member governments in response to papers prepared by the IEA Secretariat.

Nuclear Nonproliferation

Secretarial Issue/Concern

What should be the extent of Administration and Congressional policy and financial support to continue long-standing U.S. efforts to deter the spread of nuclear weapons?

Background

The *Atomic Energy Act of 1954* and the *Nuclear Nonproliferation Act of 1978* (NNPA) comprise the statutory foundation for U.S. civil exports of nuclear material and equipment for peaceful applications, e.g., fuel for nuclear power reactors. The NNPA also serves to buttress the goals of the Nuclear Non-Proliferation Treaty (NPT), adopted by over 125 countries. U.S. civil nuclear exports also are subject to the nuclear materials safeguards of the International Atomic Energy Agency (IAEA).

Section 404 of the NNPA requires that all *Agreements for Cooperation in the Peaceful Uses of Atomic Energy* be renegotiated to incorporate stricter nonproliferation provisions that are described in the law. The major negotiations not completed are with the European Atomic Energy Community, South Korea, and Switzerland. Only the latter negotiation may be completed in 1989.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies (ASIE) is responsible for developing, negotiating, implementing, and assessing U.S. international nonproliferation policies. The ASIE coordinates U.S. technical support for the IAEA, cooperating with the Assistant Secretary for Defense Programs, who has responsibilities concerning the Department's support for IAEA nuclear material safeguards.

This issue involves U.S. strategic security interests and continuing interagency coordination is essential, particularly with the Departments of State and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission. Some implementing activities require formal submissions to the White House and the Congress.

Sensitivities

Section 308 of the NNPA addresses Congressional review procedures. The key committees are Senate Foreign Relations, House Foreign Affairs, and Armed Services of both bodies. In addition to NNPA requirements, Congress may also establish special review requirements, e.g., for Presidential certifications under an Agreement for Cooperation (see separate paper on China).

Status, Deadlines, Next Steps, and Milestones

Renegotiations of *Agreements for Cooperation in the Peaceful Uses of Atomic Energy* continue. In September 1989 DOE will lead the U.S. Delegation to the IAEA annual General Conference, the policy making body of the Agency.

U.S.-U.S.S.R. Agreement on Peaceful Uses of Atomic Energy

Secretarial Issue/Concern

What energy technology and intellectual property provisions should be included in the renewal of the U.S.-U.S.S.R. Agreement on Peaceful Uses of Atomic Energy?

Background

The Agreement was first executed in 1973, renewed in 1983, and extended at the May, 1988 Moscow Summit for one year. Renewal for an extended period is sought pending negotiation of provisions for intellectual property rights and agreement on other alterations. Current areas of cooperation include: fusion energy, fundamental properties of matter, and civilian nuclear reactor safety. A fourth, breeder reactors, has been dormant but has been proposed for reactivation by the Soviets. Activities include workshops, exchanges of scientists, and joint experiments. The Department of Defense and the Office of Science and Technology Policy have proposed that the renewed agreement narrow the focus of cooperation in fusion energy and fundamental properties and eliminate altogether any joint activities in breeder reactors. Interagency negotiations on these issues are moving slowly.

Organization & Coordination

The DOE Office of International Affairs acts as Executive Secretariat for the U.S. Participating DOE offices include the Office of Nuclear Energy on nuclear safety, and the Office for Energy Research on fusion energy and fundamental properties of matter.

Other parties participating under the Agreement include the Nuclear Regulatory Commission and all related activities are coordinated through the Department of State. U.S. Government interagency review and approval of each initiative, as well as intelligence community guidance, are sought by DOE and Department of State prior to negotiation with the Soviets.

Sensitivities

To preserve maximum flexibility in the future, DOE advocates retention of the breeder provision in the basic agreement. If the interagency negotiations are unable to develop a consensus on this issue, it will be referred to the National Security Council for resolution.

Status, Deadlines, Next Steps, and Milestones

The Secretary of Energy will approve the proposed U.S. negotiating position in February 1989. The Eighth U.S.-U.S.S.R. Joint Committee Meeting is scheduled for April or May 1989. The Joint Committee is responsible for overseeing the Peaceful Uses Agreement. The agenda is expected to include: discussion of 1989-90 programs in the three active areas; negotiation of proposed changes to the basic Agreement; and renewal of the basic Agreement for a period of 5 or 10 years, effective June 21, 1989.

Report to Congress on Western Hemisphere Energy Cooperation

Secretarial Issue/Concern

What should be the policy content and timing for completion of the Congressionally-mandated report on Western Hemisphere energy cooperation?

Background

In 1988 legislation, Congress levied a requirement that DOE, in cooperation with the Departments of State and Commerce, report on ways to improve energy cooperation in the Western Hemisphere. The report must consider the distribution of energy resources, international joint ventures, and the security of capital investments in the region. The report also is required to examine current mechanisms for cooperation and make recommendations on how cooperation in energy could be improved to enhance overall U.S. energy security.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies will have overall responsibility for the report. Other DOE offices, such as the Energy Information Administration, the Office of Fossil Energy, and the Office of Policy, Planning and Analysis, will assist.

The report must be coordinated with the Departments of State and Commerce.

Sensitivities

Several Congressmen have expressed strong interest in developing an international energy policy focused on the Western Hemisphere. Countries in the region, led by Venezuela, have expressed a desire for closer ties on energy issues.

Status, Deadlines, Next Steps, and Milestones

The legislation does not specify a completion date. The Committee report accompanying the legislation indicates that the report "*would be submitted during the next year by the new Administration.*" A preliminary outline and scope of work have been prepared.

China Nuclear Agreement

Secretarial Issue/Concern

Should the Secretary concur on certifications by the President to Congress before nuclear material, facilities, or components can be exported to China?

Background

In July 1985, Secretary Herrington signed an *Agreement for Cooperation Concerning the Peaceful Uses of Nuclear Energy* between the U.S. and the People's Republic of China. Congress passed a Joint Resolution favoring the Agreement on December 16, 1985. This resolution also required certain certifications by the President and the submittal of a report on the nonproliferation policies and practices of China before nuclear material, facilities, or components are exported. The agreement went into effect December 30, 1985.

The required certifications are that:

- Consultations ensure that nuclear material exported under the Agreement is used only for peaceful purposes. These "consultations" are in lieu of safeguards.
- China has not assisted a non-nuclear weapon state in sensitive nuclear technology or explosive devices. Such action would require termination of nuclear exports.
- Consent rights are sufficient to give the U.S. required control of the retransfer, reprocessing, or alteration of nuclear material supplied.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies is responsible for carrying out the Department's statutory functions involving negotiation of civil nuclear agreements for cooperations in the peaceful uses of nuclear energy, under the *Nuclear Nonproliferation Act of 1978*. The Assistant Secretary coordinates with the Assistant Secretaries for Defense Programs, Nuclear Energy, and General Counsel.

DOE coordinates with the Department of State in negotiations of agreements for cooperation.

Sensitivities

A key Senator has opposed the Agreement, authored the conditions for certification, and monitors the Administration's progress on this issue.

Status, Deadlines, Next Steps, and Milestones

The date at which a recommendation can be sent to the President is indefinite.

Defense Production Act Amendments

Secretarial Issue/Concern

Should the Administration seek amendments to the *Defense Production Act* to facilitate industry assistance in dealing with energy emergencies or continuity-of-government situations?

Background

The *Defense Production Act of 1950*, which expires September 30, 1989, authorizes two kinds of industry mechanisms for dealing with emergencies that affect national security: (1) §708 grants an antitrust defense to companies that participate in "*voluntary agreements*" and "*plans of action*" to advise or assist in preparedness programs and in producing and supplying needed goods. From the Korean War through the 1973 Arab oil embargo, U.S. oil companies have collectively worked with the Federal Government using such vehicles. (2) §710 permits the employment within the Federal Government—on a *without compensation* basis or as fully paid Federal employees—of highly-qualified *Executive Reserve* members from industry. DOE's energy emergency preparedness and continuity of government plans provide for the use of such individuals from the electric power, solid fuel, and oil and gas industries.

However, both sections have deficiencies which hamper their use in energy industries. For example, because of changes made in §708 in 1975, in conjunction with enactment of the *Energy Policy and Conservation Act* antitrust defense for oil company participation in International Energy Agency programs, §708 *no longer can be used for U.S. oil company co-operation in the NATO oil sharing program*. Similarly, as a result of a 1963 recodification, *Executive Reservists* lost the benefit of a preexisting §710 waiver of the Federal *conflict-of-interest* laws. Consequently, oil and gas *Executive Reserves* declined to be activated during the 1973 oil embargo, citing conflict-of-interest and antitrust risks as the reason.

Organization & Coordination

Programmatic responsibility is with the Assistant Secretary for International Affairs and Energy Emergencies.

Both the Department of Defense and the Federal Emergency Management Agency (FEMA) have been considering legislative initiatives to amend these sections of the DPA.

Sensitivities

Heretofore, the Justice Department has opposed DOE's suggested changes in the conflict-of-interest laws.

Status, Deadlines, Next Steps, and Milestones

DOE will assist DOD and FEMA in moving the proposals to amend the law through the legislative process. No deadlines other than the September 30, 1989 expiration date have been set at this time.

Nuclear Submarine Technology for Canada

Secretarial Issue/Concern

Should the Secretary of Energy agree to send an amendment to the *U.S.-Canada Mutual Defense Agreement* to the President for his statutory determinations and approval, which will authorize the transfer of nuclear submarine technology, material, and equipment to Canada?

Background

In 1987, Canada announced its intention to acquire 10 to 12 submarines from either the United Kingdom (U.K.) or France. Purchase of *Trafalgar* class submarines from the U.K. would require U.S. agreement to the transfer of the nuclear propulsion technology to Canada because it is derived from U.S. technology. The U.S. agreement with the U.K. requires that before any transfer of this technology to a third country occurs the U.K. must obtain U.S. approval. The *Atomic Energy Act* and the U.S.-U.K. Agreement also require that before the U.K. could transfer any such technology, an agreement between the U.S. and Canada that would allow direct transfer must be in force.

The required amendment has been reviewed and approved by the relevant Departments and Agencies. Under the *Atomic Energy Act* it must be submitted to the President by the Secretaries of Energy and Defense. If the President makes the required statutory determinations, approves the amendment, and authorizes its execution, the amendment must then be submitted to the Congress where it must lie for 90 days.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies (ASIE), together with the Office of Naval Reactors and the General Counsel, is responsible for agreement negotiations. ASIE is responsible for coordination within DOE and for addressing associated nuclear nonproliferation aspects.

ASIE is responsible for coordination with the Department of State.

Sensitivities

While the Administration's policy is to hinder the spread of nuclear propulsion to non-nuclear weapons states, because of Canada's close alliance, the Administration has agreed to a single exception to this policy, even though DOE had serious reservations about the technical capabilities and infrastructure in Canada to support the submarine technology. Congress is very interested in the transfer of U.S. submarine technology. Hearings can be expected. Senate and House Armed Services Committees have expressed preliminary objections to the technology transfer.

Status, Deadlines, Next Steps, and Milestones

The Action Memorandum for the Secretary recommending submittal of the proposed Amendment to the President has not been forwarded, pending Canada's decision to choose the U.K. *Trafalgar* class submarine. Current assessment is that the decision will be deferred until after the Canadian elections.

Intergovernmental Liaison

Issue/Concern

To what extent should the energy emergency outreach to state and local governments be strengthened?

Background

During the 1970s states were heavily involved in energy conservation and petroleum product supply programs. As the Federal Government deregulated energy supply and stopped funding state energy programs, many states closed or cut back such activities. Settlement of certain stripper well and Exxon price regulation court cases has resulted in a renewed funding of state energy conservation activities. In 1988, the Supreme Court held that in the absence of Federal emergency petroleum allocation plans, states were permitted to establish their own allocation plans. Allocation at the state level could negate benefits obtained from a free market Federal policy. Close cooperation with the States can result in the development of emergency plans which are mutually reinforcing at the State and Federal levels.

Renewed emphasis on planning for national security emergencies and other contingencies which may involve the substantial mobilization of the Nation's resources, including energy, entails the involvement and close cooperation of the entire energy infrastructure as well as the Federal, State, and local government structures. It is critical that the States fully understand what their roles will be in an emergency. During FY 1988 four regional seminars were held, focusing on Federal/state/industry cooperation in energy emergencies.

Organization and Coordination

International Affairs and Energy Emergencies develops programs to assure effective emergency management of energy resources to meet national security requirements.

Extensive coordination with FEMA and other resource agencies (e.g., DOT, DOC, and USDA) may be expected.

Sensitivities

States would have the lead in assuring energy supply for essential civilian services. Coordination of Federal and state programs and their interface with the energy industries would be a critical need in a national security emergency. These roles must be clearly understood prior to an actual emergency.

Status, Deadlines, Next Steps, and Milestones

Programs to continue strengthening the outreach to the states in FY 1989 include:

- Regional seminars with emergency simulations.
- Speaking engagements with state energy meetings by DOE officials.
- Involvement of state energy officials in DOE emergency tests and exercises.
- Improved communications with state energy offices.

- Increased involvement of States in emergency management systems development for mobilization and continuity of government program.

U.S.-Germany R&D Agreement

Issue/Concern

Should the U.S. initiate a bilateral agreement with the Federal Republic of Germany (FRG) on enhanced research and development (R&D) collaboration on energy and related environmental impacts?

Background

Current concerns about acid rain, nuclear energy, global climate change, and other issues have focused attention on the environmental considerations of energy policy. The similarity of U.S. and FRG concerns provides the impetus for a bilateral arrangement to explore enhanced collaboration in these areas.

In the summer of 1988, a DOE team led by the Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies met with officials from the FRG's Federal Ministry for Research and Technology (BMFT). The latter reaffirmed the desirability of addressing common environmental issues in some joint fashion. The DOE agreed to develop a framework for exploring the initiative. From the U.S. side, dialogue would include the roles of fossil and nuclear energy, clean coal technology, nuclear safety, and the importance of a mixed and balanced energy supply.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies would assume the lead in coordination with the program managers.

If approved, this initiative would be closely coordinated with Department of State.

Sensitivities

A bilateral meeting may promote multilateral interest and impact the International Energy Agency, which is increasing its emphasis on environmental aspects of energy production.

Status, Deadlines, Next Steps, and Milestones

A workshop might be scheduled for April 1989 in the FRG to review major technical and policy issues related to the energy-environment debate and map out areas of enhanced R&D collaboration to support mutual interest.

NATO Single Fuel Concept

Issue/Concern

Is there sufficient refining capability in Europe to meet the additional civilian and military product demand during wartime?

Background

The *Single Fuel Concept* is a highly visible issue in NATO. The U.S. Department of Defense (DOD) has been the leader in convincing NATO to convert from F-40 (JP-4) to F-34 (JP-8) in aircraft. Similarly, NATO endorsed a goal in May 1987, "*To achieve equipment interoperability through a single fuel for use on the battlefield and for land based air operations...*"

NATO's Petroleum Planning Committee (PPC) agreed in April 1988 to study the European refining capability to meet the forecasted increase in demand for military specification kerosene-based jet fuels (F-34/35) and the essential civilian demand for commercial grade kerosene-based jet fuel during wartime. It also agreed to evaluate when to convert from single fuel to multifuel operation during hostilities.

A PPC Study Group on Jet A-1 (SGJA) was established to study this issue. There have been several meetings of the group at which the DOE and DOD's European Command were represented.

Organization & Coordination

The Office of Energy Emergencies has lead responsibility for U.S. participation in the SGJA. The U.S. DOD provides input and a U.S. representative participates in all meetings. DOE has chaired interagency meetings to discuss the issue. Other relevant agencies include DOD and FEMA.

EIA provides essential data support.

Sensitivities

The U.S. DOD has a keen interest in the outcome of the Study Group on Jet A-1.

Status, Deadlines, Next Steps, and Milestones

In May 1989, the PPC is expecting a preliminary report from the Study Group on Jet A-1, which is expected to meet in January 1989.

Enhanced R&D Collaboration Initiative

Issue/Concern

Should we expand the enhanced international collaboration research and development initiative to include additional technologies at the forthcoming International Energy Agency Ministerial meeting?

Background

In 1984, the U.S. initiated discussions with countries to begin a new process of enhanced collaboration in energy R&D through early consultation, joint program planning, and research task sharing. This U.S. initiative was fundamental in focusing international attention on the role of R&D in long-term energy security, and enabling more in-depth and rapid access to foreign technology.

The initiative was endorsed by IEA Ministers in July 1985, and reaffirmed and supplemented in May 1987. Related activities include the stimulation of increased industry involvement in R&D activities, convocation of workshops in specific technology areas, and formal organization of two new analytical centers: the Energy Technology Data Exchange at Oak Ridge National Laboratory and the Center for the Analysis and Dissemination of Demonstrated Energy Technologies (CADET) in the Netherlands.

Implementation of this initiative has begun with the completion under IEA sponsorship of technology workshops in clean coal, heavy oil, and energy conservation.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies, in coordination with technical program managers, is the lead in promoting enhanced R&D collaboration.

All R&D positions and initiatives are coordinated with the Department of State.

Sensitivities

None

Status, Deadlines, Next Steps, and Milestones

The proposed IEA Ministerial meeting in May 1989 will address energy and environmental issues and will consider proposals to encourage enhanced collaboration, particularly in this area of growing international sensitivity.

Transfer Superconducting Magnet from U.S.S.R. to Yugoslavia

Issue/Concern

Should the Secretary approve the transfer of a U.S.-owned superconducting magnet from the Soviet Union to Yugoslavia?

Background

The Government of Yugoslavia has requested that DOE lend its superconducting magnet, now in storage in the USSR, to a Yugoslav institute, *Energoinvest*, for research in magnetohydrodynamic (MHD) conversion of energy. Since 1985 the *Energoinvest* group has been working with Montana State University, under the U.S.-Yugoslav Agreement for Scientific and Technological Cooperation, on a joint project for dynamic modeling and control of MHD power plants. The magnet was built at Argonne National Laboratory, transferred to the Soviet Institute for High Temperature in Moscow under the 1973 U.S.-USSR Energy Agreement, and successfully used in a joint research project until 1980 when all U.S.-USSR cooperative activities under the Energy Agreement were indefinitely postponed. Information provided by the State Department indicates that the USSR supports the proposed transfer.

The Department of State has strongly supported the transfer for political reasons and DOE's Office of Fossil Energy has agreed to the transfer provided that DOE incurs no costs. DOE, however, has indicated its readiness to provide, on a reimbursable basis, limited technical consultation and assistance in the transfer, assembly, and operation of the magnet.

Organization & Coordination

The final agreement for the transfer would have to be approved by the Assistant Secretary for Fossil Energy (ASFE). The formal agreement for the transfer will be developed and negotiated by the Assistant Secretary for International Affairs and Energy Emergencies, with the concurrence of the General Counsel and the ASFE.

The final decision rendered by DOE will be coordinated with Department of Defense, Department of State, and the Office of Management and Budget.

Sensitivities

While Fossil Energy sees no direct benefit from the transfer, DOE was compelled by the State Department to support the arrangement. OMB has expressed some initial reservations about the transfer, particularly with respect to funding and technology transfer.

Status, Deadlines, Next Steps, and Milestones

Assuming that the Government of Yugoslavia agrees to DOE's conditions, it is anticipated that the actual transfer would take place around June 1989.

IEA Emergency Preparedness

Issue/Concern

What kind of U.S. Actions are required to establish coordinated oil stockdraw as the principal IEA emergency response mechanism?

Background

The 1984 IEA Governing Board "Decision on Stocks and Supply Disruptions" provided a framework for internationally coordinated stockdraw in response to a significant oil supply disruption. Following extensive negotiations, the IEA in 1988 adopted an Operations Manual on Coordinated Emergency Response Measures (CERM) to implement the decision. The first test of the CERM was conducted successfully in early 1988. To establish coordinated stockdraw as the principal IEA emergency response mechanism, the U.S. will continue exerting pressure on other IEA members: to expand their government owned and controlled emergency stocks that are also above minimum operating inventory requirements; to have stockdraw procedures in place; and to develop reliable and consistent estimates of the effectiveness of demand restraint measures, which are the principal response measures of many IEA members.

Organization & Coordination

Office of Energy Emergencies has programmatic lead, with EIA and the Office of Policy, Planning and Analysis providing support.

DOE has the lead in developing energy emergency policy. DOE and the State Department share responsibility for implementation of IEA Governing Board and the IEA's Standing Group on Emergency Questions. meetings.

Sensitivities

It is anticipated that many IEA members will expect the U.S. to defend its stocks policy, especially, the administrative procedures for drawing down the SPR in emergencies.

Status, Deadlines, Next Steps, and Milestones

The IEA is planning to hold a conference on emergency stocks in early 1989 and the U.S. is expected to take a leading role in the design of the conference. Its main purpose is to examine a number of legal, institutional, and technical issues related to members' stocks and coordinated use of the stocks. A technical issue likely to be debated is the definition of *minimum operating inventory requirement* (MOR), which is critical in determining how much of the oil stockpile would actually be available in an emergency.

Oil Movement Through Panama

Issue/Concern

What should DOE's posture be in the interagency discussions relating to Panama?

Background

The continued flow of crude oil and petroleum products through Panama is vital to U.S. energy security. Of particular concern is the continued flow of Alaskan North Slope (ANS) oil through the Trans Panama Pipeline (TPP). The current political situation in Panama puts the continued operations of the TPP and the Canal in jeopardy.

Recent shipments of crude and petroleum products have averaged 250,000 barrels/day each way through the Canal, while shipments of ANS crude oil through the TPP to U.S. Gulf and East Coast destinations have averaged in excess of 500,000 barrels/day. The TPP is dedicated to the movement of ANS crude oil which is legislatively prohibited from being exported. Following the indictment of Noriega and the ensuing sanctions imposed on Panama earlier this year, the continued operation of the canal and particularly TPP became a matter of paramount concern for the DOE. As an active member of the White House Panamanian Task Force, DOE drafted the position paper which assessed the impacts and options available if TPP or Canal operations, or both, were interrupted. Though the intensity of concern regarding Panama has abated somewhat, the sanctions remain and the situation in Panama continues to deteriorate with the concomitant greater risk of interruption of Canal and/or TPP operations.

Organization & Coordination

The Assistant Secretary for International Affairs and Energy Emergencies has responsibility within DOE for assessing and managing any international energy emergencies of concern to the U.S.

The Cabinet agencies most concerned with Panama are the Department of State (DOS) because of international policy implications, the Department of Defense (DoD) because of extensive military bases in Panama and Panama's strategic importance, and DOE because of implications for U.S. energy security.

Sensitivities

At the height of the activity vis-a-vis Panama earlier this year, there were significant differences of opinion, most notably between DOS and DOD, as to whether a hard or soft line toward Panama should be postured. Uncharacteristically, the traditional roles were reversed with DOD taking a decidedly *dovish* stance in contrast to DOS militant *hawkish* posture. DOE's posture in that debate was neutral.

Status, Deadlines, Next Steps, and Milestones

Further decline of the Panamanian economy, coupled with Noriega's continued entrenchment, could precipitate civil unrest and/or retaliatory actions against TPP and/or the Canal.

Analysis of Projected Electric Power Supply and Demand

Issue/Concern

Continued evaluation of the adequacy and reliability of projected U.S. electric power supply, through analysis of the annual "Coordinated Regional Bulk Power Supply Program" reports of the Regional Electric Reliability Councils. (short name "The IE-411 Program").

Background

DOE has continued the analysis of the annual North American Electric Reliability Council (NERC) "Coordinated Regional Bulk Power Supply Program" reports (Form IE-411) that was initiated by the Federal Power Commission in 1970 by FPC Order 383-2. The Council reports provide a 10-year projection of regional and utility-specific information, in comprehensive compact form, regarding electric utility projected peak demand, energy requirements and planned installations of generating capacity. It is vital to continued operation of defense production (all aspects of weapons and material) that electric power supply be adequate and reliable. The IE-411 Program enables OEE to evaluate projected adequacy and reliability and determine where improvements are necessary, on a regional basis. In addition, data from these reports are frequently used in responses by DOE's Office of Energy Emergencies (OEE) to queries related to electric reliability, simulations of emergencies, responses to Congress, and other matters.

Organization & Coordination

The Form IE-411 reports are received, processed and analyzed by OEE.

Various State agencies request our analyses of IE-411 data.

Sensitivities

The North American Electric Reliability Council agrees that we should continue the IE-411 program, as it assists them in their own evaluation of electric power system adequacy.

Status, Deadlines, Next Steps, and Milestones

OMB authorization for the use of Form IE-411 will expire July 31, 1990. Renewal of the authorization procedure must start no later than summer 1989 in order to accomplish the necessary procedural steps. These steps are: preparation of a statement justifying the need for the form, conferences regarding modification of the form, Federal Register publication of the proposed new form, time for comments, revision to embody comments, final Federal Register notice, OMB approval.

Continued evaluation of the adequacy and reliability of projected U.S. electric power supply, through analysis of the annual "Coordination Regional Bulk Power Supply Program" reports of the Regional Electric Reliability Councils. (short name "The IE-411 Program")

National Defense Executive Reserves

Issue/Concern

What priority should be placed on reducing or eliminating impediments to recruiting qualified industry executives for the Department's NDER units?

Background

The vast majority of the Nation's energy assets are owned and operated by private industry. Exceptions exist in the production and sale of hydroelectric power, municipal utilities, and the Strategic Petroleum Reserve for example. The normal, non-emergency activities of the Department of Energy do not require or utilize the services of energy technical management. In a national security emergency, however, such managers would be vitally needed to assure maximum energy support of industrial and military mobilization to meet both national security and essential civilian energy needs. Energy expertise was brought into government in World War II and in the Korean conflict and made vital contributions to their success. Such services may also be needed during catastrophic disasters, such as a major earthquake.

The National Defense Executive Reserve is a program to help the Government be ready to apply industry expertise to the management of industrial mobilization if it should ever be needed again. DOE has four NDER Units for electric power, coal, natural gas and petroleum. Industry support is essential for these programs to be successful. Electric power and coal reserve units are progressing well, and natural gas is moving rapidly toward readiness. Industry concerns about conflict-of-interest and antitrust laws have been holding up development of the oil unit. This problem is discussed further in the issue paper on the Defense Production Act.

Organization & Coordination

The energy NDER programs of the Department are managed in close coordination with FEMA, the agency charged with oversight of all such programs for the Federal government.

Sensitivities

Conflict-of-interest and antitrust laws intended to protect the public from misuse of economic power also hamper the use of those with the greatest expertise to help in a national emergency. Limited exemption from these laws for actions taken at Government request during such emergencies is needed.

Status, Deadlines, Next Steps, and Milestones

October 12 and November 2 meetings with major oil company representatives have generated some possibility of an interim working relationship until legislative relief could be obtained. A January 18, 1989 follow-up meeting could open the door to begin building an effective oil Executive Reserve.

Other FY 1989 program activities include: Continued recruitment and training of Reservists and participation by Executive Reservists in DOE emergency simulations, tests and exercises.

Mobilization Preparedness Planning

Issue/Concern

What is the extent of emergency planning and preparedness activities that the Department should engage in to ensure that essential defense and civil requirements for energy can reliably be met during major national security crises?

Background

The Office of Energy Emergencies is charged with the responsibility of coordinating planning for the full spectrum of energy emergencies. Included in this spectrum are severe and extended crises, such as those involved with war or catastrophic disasters, which require the substantial mobilization of the nation's resources, including energy. Such crises could involve significant involvement of the Government in the management of critical resources to ensure that essential requirements are met on a priority basis. The primary authorities available to DOE for energy resource management in such contingencies are contained in the Defense Production Act of 1950 (DPA), as amended.

Organization & Coordination

The Office of Energy Emergencies is charged with lead planning responsibility. Significant planning contributions will also be necessary from Energy Information Administration, Management and Administration, Defense Programs, Fossil, Policy and Conservation and Renewable Energy.

Extensive coordination is required with the NSC staff, FEMA, the Departments of Defense, Commerce, Treasury, Justice and others.

Sensitivities

The current Administration has stressed mobilization preparedness planning through the issuance of directives such as NSDD's 47 and 188 and a new Executive Order 11490. A Senior Interagency Group for National Security Emergency Preparedness was created by NSDD 188 and charged with coordinating a high-priority interagency planning effort for national security emergencies.

Despite this apparent high-level emphasis, there has been considerable hesitancy in this Department, and others, to develop the analytical tools and engage in comprehensive and in-depth policy analysis of the adequacy of critical energy capabilities during national security crises. There has also been considerable sensitivity toward the development of detailed plans and programs for Department's energy emergency authorities under DPA Title I.

Status, Deadlines, Next Steps, and Milestones

Develop a framework which characterizes the problem, enables a clear understanding of key issues, and provides a scope for mobilization preparedness planning within the Department by 2/1/89.

Vulnerabilities of Major Domestic Energy Systems

Issue

What role should DOE play to ensure that vulnerabilities which exist in domestic energy systems do not jeopardize national security policies and objectives?

Background

The vast majority of U.S. energy systems are owned and operated by the private sector which, typically, does not include national security considerations in their planning. These owners/operators base most acquisition/operational decisions on cost-effectiveness, including decisions on security and protection of their facilities. During the past two years, particularly since the establishment of the Interagency Group on Energy Vulnerability, increased Federal attention has been placed on ensuring that energy systems are prepared to meet national security requirements. The objective of these initiatives is to put in place a partnership between the Federal government and the various energy industries whereby:

- The Federal government identifies national security energy requirements;
- The energy industries design and operate their systems according to good commercial practices and identify any residual vulnerabilities; and
- The Federal government determines whether these residual vulnerabilities constitute unacceptable risks to national security and, if so, considers measures to reduce them.

Organization & Coordination

This program is conducted under the Office of Energy Emergency Operations, Deputy Assistant Secretary for Energy Emergencies. The Interagency Group on Energy Vulnerability is building a consensus on energy/national security linkages by identifying essential functions as required by Executive Order 11490. Later in the process, this Group will be asked to make judgements concerning tolerable levels of energy vulnerability.

Sensitivities

Energy systems owners/operators acknowledge that existing security is usually for safety purposes rather than to protect equipment. Owners also have expressed reservations about identifying specific facilities as being critical to national security for fear of creating a "road map" for terrorists.

Status, Deadlines, Next Steps, and Milestones

The Chairman and the President of the North American Electric Reliability Council are due to brief the Secretary and the NSC on November 15 on their assessment of vulnerabilities in the bulk electric power system.

Key Issues
&
Upcoming Decisions

Office of
Management and Administration

November 1988

FY 1990 & FY 1991 Budgets

Secretarial Issue/Concern

Preparation of the new Administration's budget.

Background

The Reagan budget for FY 1990 will have been submitted to the Congress prior to January 20, 1989. Previous changes in Administrations have had major impact on the National energy agenda. These changes have caused significant fluctuation in funding for DOE's programs, resulting in a virtually new budget through supplemental appropriations, rescissions, deferrals, and budget amendments.

Organization & Coordination

The Chief Operating Officer (COO) of the Department, thru the Assistant Secretary, Management and Administration (ASMA), issues policy and funding guidance to the Assistant Secretaries (AS) and Office Directors (OD). The ASMA provides budget guidance (formats, schedules, etc.) to the AS/ODs, who submit their budget requests to ASMA for review. ASMA reviews budget requests and budget appeals for compliance with policy and for proper pricing and makes recommendations on funding and program levels to the COO for decision. The AS/ODs develop budget narrative justifications to support the funding and policy guidance or may appeal to the COO for changes in the guidance. Upon resolution of any appeals, the AS/ODs prepare final budget narrative justifications and submit them to ASMA. ASMA will coordinate budget narratives with the Office of Management and Budget (OMB).

Sensitivities

The OMB approves revised budgets and reviews in advance all budget narrative justifications supporting the President's budget prior to their submission to the Congress. The Congress will want the revised budgets as quickly as possible so that they can keep pace with their legislative schedule of budget resolutions, and authorization and appropriations legislation.

Status, Deadlines, Next Steps, and Milestones

The energy policy of the new Administration will possibly require changes to FY 1989 budgets (already appropriated) and FY 1990 proposed budgets of the Reagan Administration. This probably will occur in February or March. The FY 1991 budget process will commence in mid-June when the submit their FY 1991 budgets to the Secretary for approval. Decisions will be made on these budgets in the late-July to early-August, incorporated into the Assistant Secretaries' budgets and the Departmental Budget for FY 1991, and submitted to OMB in early September.

FY 1990 Budget Hearings

Secretarial Issue/Concern

Preparing the Secretary of Energy for Congressional hearings on the FY 1990 Budget.

Background

The Assistant Secretary for Management and Administration (ASMA) has the responsibility for preparing the Secretary for Congressional *budget* hearings. The Assistant Secretary for Congressional, Intergovernmental and Public Affairs prepares the Secretary for all other Congressional hearings. The Department's budget is complex and the interval between finalizing it and the Secretary presenting it to Congress is very brief, leaving little time for the Secretary to prepare.

Organization & Coordination

The ASMA develops budget briefing materials for the Secretary and provides primary support to the Secretary at the budget hearings. The program Assistant Secretaries attend the briefings and the budget hearings to provide additional support to the Secretary.

The Office of Management and Budget (OMB) reserves the right to review and comment on all prepared testimony before Congress by Administration witnesses in advance of the hearing.

Sensitivities

Status, Deadlines, Next Steps, and Milestones

The FY 1990 budget is scheduled to be submitted to Congress on January 9, 1989. However, this budget is expected to be revised, perhaps significantly, by the new President. The Secretary can expect to testify on the overall DOE budget before two or three *Authorization* Committees and three or four *Appropriation* Committees. This normally occurs during February and March each year. Since it is likely that the new President will modify the Reagan Administration budget, the Committees are expected to postpone budget hearings until the revised budget is submitted. Hearings, therefore, will probably be in March or April.

The Secretary's preparations usually begin with an overview briefing conducted by the ASMA, in which the Secretary is given general background on what to expect, how the hearing process works, and a general description of key items in the budget. Approximately two days prior to his scheduled testimony a more focused briefing is conducted by ASMA. At that briefing the Secretary is informed of any specific concerns the Committee has expressed to the Department, particularly in those areas where the budget significantly differs from previous appropriation levels.

Federal Staffing

Secretarial Issue/Concern

Additional Federal staff is required for several high priority Departmental initiatives.

Background

These programs and initiatives include: Environment, Safety & Health Programs (ES&H); New Production Reactors (NPR); Superconducting Super Collider (SSC); Special Isotope Separation (SIS); Inspector General's Audit Program.

Administrative adjustments of staffing levels are also required to recover resource reductions associated with delayed initiatives: divestiture of the Alaska Power Administration; divestiture of the Naval Petroleum Reserves; accommodation of Congressionally-imposed minimum staffing levels; and increased use of private sector contractors under Office of Management and Budget (OMB) Circular A-76.

Between January 1981 and September 1988, the Department reduced its staffing by 24 percent, from 21,459 to 16,255. This trend is consistent with the Administration policy to decrease Federal staffing levels. After thorough management consideration of the above requirements, the Department's FY 1990 budget to OMB requested the following adjustments for FY 1989 and FY 1990:

	<u>FY 1989</u>	<u>FY 1990</u>
OMB Target	15,804	15,404
Programmatic Requirements	+297	+615
Administrative Adjustments	+400	+464
Total Staffing Requirements	16,501	16,483

Organization & Coordination

Federal staffing is the responsibility of the Deputy Assistant for Human Resources Management, who coordinates closely with Departmental program officials.

Sensitivities

It is likely that OMB will continue to impose strict staffing controls on the Department. Increasingly focused Congressional concern on whether DOE has adequate resources to perform key functions, such as environment, safety, and health; safeguards & security; and general contractual oversight.

Status, Deadlines, Next Steps, and Milestones

Late Nov 1988	OMB decision on the Department's staffing request and appropriate DOE response.
Early Dec 1988	Internal Departmental allocation of available FY 1989 staff to address priority program requirements.
Late Dec 1988	The President's FY 1990 budget is finalized.
Feb-March 1989	Revisit FY 1990 budget.
March-April 1989	Congressional hearings on the FY 1990 budget begin.

Extend/Compete Decisions

Secretarial Issue/Concern

Secretarial action (Secretary, Deputy Secretary, Under Secretary) must authorize a renewal or compete decision for the Department's management and operating contracts, which are those contracts providing for the operation and management of DOE facilities.

Background

To carry out its mission, the DOE maintains and operates laboratories, production plants, test sites, other research and development facilities, the Strategic Petroleum Reserve, and the Naval Petroleum and Oil Shale Reserves. Most of these facilities are managed, operated, and maintained by industrial companies, universities, or non-profit organizations performing under management and operating contracts. All such contracts are written with five-year terms at which time a decision is made to renew with the incumbent operator or to seek, through competition, a new operator. The basic DOE policy governing the relationship with its operators (contractors) is to renew with the incumbent unless there are governing reasons to do otherwise. Recommendations are made to the appropriate Secretarial officer on what actions should be taken, but the decision to renew must be made at the Secretary's level and cannot be redelegated to lower levels.

Organization & Coordination

The DOE decision process governing the renewal or compete process for management and operating contractors consists of three key elements, as follows:

- 1) The manager of the cognizant DOE Operations Office forwards a recommendation and support package reflecting the renewal or compete action.
- 2) A formal Headquarters Extend/Compete Board is established to review the manager's recommendation, assess the particular contractor and its operation, and any other facts and circumstances relating to the decision. The Board consists of senior representatives from the cognizant program office, selected program staff, personnel from Headquarters Management and Administration, and the cognizant field manager's office. The Board submits its recommendation to the Secretary.
- 3) If the recommendation is to extend the contract, the Office of the Secretary makes the determination and executes the authorizing documents.

Sensitivities

From time to time certain Congressional committees or State delegations may be interested in DOE's actions regarding its facilities. From time to time outside interest groups follow DOE renewal/compete actions. Currently, interest may be high in the Waste Isolation Pilot Plant.

Status, Deadlines, Next Steps, and Milestones

The following management and operating contracts will require an Extend/Compete determination in the calendar year 1989:

- 1) Boeing Petroleum Services — Strategic Petroleum Reserve.
- 2) General Electric Company — Knolls Atomic Power Laboratory.
- 3) University of Georgia Research Foundation — Savannah River Ecology Laboratory.
- 4) Westinghouse Electric Corporation — Waste Isolation Pilot Plant.

Dupont Contract Closeout

Secretarial Issue/Concern

DuPont Savannah River contract termination issues—severance pay, pension benefits, non-pension benefits.

Background

DuPont's management and operating contract at the Savannah River Plant expires March 31, 1989, and Dupont has decided not to seek renewal. Although DuPont's employees will be offered equivalent employment with the successor contractor, DuPont has taken the position that, based on the history of the contract, these employees are entitled to severance pay as a reimbursable expense under the DOE contract, at an estimated cost of \$75 million.

DuPont's pension trust fund has a surplus of as much as \$500 million. DOE is party to an agreement which provides for any surplus to be returned to the Government. We must work with the parties to determine the exact amount of the surplus.

Funds for retiree benefits (medical, life and dental) have not been accumulated (advance funded). DOE has financial obligations for these benefits which arose out of contract work and will continue beyond the contract termination. Cost of these benefits is currently estimated at \$240 million.

Organization & Coordination

The Deputy Secretary is chairing closeout task force which includes the Inspector General, General Counsel and the Manager of the Savannah River Operations Office. The Deputy Assistant Secretary for Human Resource Management has responsibility for advising task force on pension and non-pension benefits.

Sensitivities

Major Congressional and public concern has been that payment of severance under these conditions is a "raid on the Treasury." DOE must assure that Government funds for employee benefits are recovered and expended in accordance with contractual terms and the intent of such benefit programs. Concerns may be expressed by Congress, Unions, the General Accounting Office and other DOE Contractors' management.

Status, Deadlines, Next Steps, and Milestones

The critical event is a final disposition on severance pay. The Secretary has concluded that severance pay for the workforce in general should not be reimbursable. DuPont has pledged to challenge that decision. Data is needed from DuPont to identify the magnitude of the pension trust surplus and the non-pension (retiree) benefits. DuPont does not maintain this data in a system that lends itself to easy analysis. Optimistic objective is to complete computation and agreement on pension trust surplus and non-pension liabilities by March 31, 1989.

General Accounting Office Activities

Secretarial Issue/Concern

The General Accounting Office (GAO) has over one hundred audits underway within the Department, most of which have been requested by members of Congress.

Background

GAO notifies the Department's Controller of its intention to audit work at the Department. Upon completion of the audit, GAO may transmit a formal draft to the Secretary for comment. GAO will always transmit the final report to the Secretary, and if the report contains recommendations, a response must be made to Congress within 60 days. The Department must maintain a comprehensive and coordinated process for responding to and implementing necessary corrective actions for GAO findings as a result of these audits.

Frequently, DOE staff contacted by the GAO auditor have an early indication of potential findings through questions raised by the auditor, the exit interview conducted by the auditor, or a statement of facts (a draft report without findings or recommendations) prepared by the auditor and provided for quick review for accuracy. In the past, senior management has not always been made aware of these potential findings and recommendations prior to receipt of a formal draft or final audit report.

Organization & Coordination

Sensitivities

GAO's primary objective is to be responsive to the Congress. In the course of its work, GAO is increasingly providing interim briefings to Congressional members and committees, and the Congressional requestor who "owns" the resulting report is directing GAO not to provide the Department with draft reports for review and comment. Often the member refuses to permit the release of the report to the Department for 30 days or more in order to maximize media attention through a news conference or by releasing the report at a hearing.

Status, Deadlines, Next Steps, and Milestones

It is important to ensure that senior program officials are apprised of GAO audits and reports and that review of and responses to draft reports and statements of facts are fully coordinated in the Department and are approved by senior program officials. Furthermore, it is critical that when problems are identified in the course of GAO audits, that corrective actions are initiated quickly to resolve them, and that the Secretary is promptly apprised of major issues and problems identified by GAO.

This guidance has been provided to Departmental elements by the Deputy Secretary.

Drug Free Workplace Plan for Federal Employees

Issue/Concern

Implementation of the Department's Drug-Free Workplace plan for Federal employees.

Background

Executive Order 12564 delineated the concepts and requirements for the Drug-Free Workplace program. Section 503 of the *Supplemental Appropriations Act of 1987* prescribed Government wide standards for testing Federal employees for use of illegal drugs. The Department's Drug-Free Workplace Plan was certified to the Congress in April 1988 and DOE's policy on testing implementation was issued in July 1988. The testing component of the Department's program for Federal employees is being implemented in two phases:

Phase I. Approximately 350 employees involved in the handling of nuclear weapons and special nuclear materials are included. Contractual support for specimen collection has been obtained from the Department of Transportation under an Interagency Agreement and the Department of Navy has agreed to handle analysis of the specimens.

- 60-day advance notices of random testing were issued in June 1988.
- 30-day notices that random testing will begin were issued in November 1988.
- The first random selections for testing will begin in December 1988.

Phase II. Approximately 1,000 additional employees in sensitive positions that affect public health, public safety, or the national security, and incumbents of positions included in the proposed Personnel Security Assurance Program are included. All employees will be subject to testing when there is reasonable suspicion of drug use, accident/incident, or they are applicants for sensitive positions. Volunteers for random testing also will be accepted.

Organization & Coordination

Staff of the Assistant Secretary for Management and Administration have the lead in implementing Phase I and Phase II of the testing program. Contractor selection for specimen collection for Phase II is the only decision required.

Sensitivities

Affected employees included in Phase I and Phase II may seek relief through their respective Congressional delegations, the courts, unions or other employee organizations that may petition the Congress or the courts in their behalf.

If the Supreme Court issues an expedited decision in the case of the *National Treasury Employees Union v. U. S. Customs Service* in December 1988, as anticipated, Phase I and Phase II could either be affirmed or both could require modification.

Status, Deadlines, Next Steps, and Milestones

- Testing of employees included in Phase II is pending completion of the competitive procurement process for the selection of a contractor to do the specimen collection at DOE work sites throughout the United States. This is likely to be completed by March 1989.
- 60-day notices will be issued to all employees in December 1988.
- 30-day notices of the beginning of random testing will be issued to employees in sensitive positions after the execution of specimen collection and laboratory analysis contracts.
- The first selection of employees for random testing from the expanded group of employees in testing-designated positions will be made upon expiration of the 30-day notice period.

Drug Free Workplace Policy for Contractors

Issue/Concern

Establishment of DOE Drug-Free Workplace policy to support existing or planned security and safety fitness-for-duty programs for management and operating contractors and certain other on-site contractors.

Background

A DOE Order entitled *Drug Free Workplace Program for DOE Contractors* has been circulated for comment. There is disagreement within DOE over the need and desirability of issuing guidance to contractors on drug testing because this would subject contractors to the standards being applied by the courts to government actions, which are more stringent than those being applied to actions of private employers. There is agreement that the policy must be published as a regulation, with opportunity for public comment and hearing.

Organization & Coordination

The office of Industrial Relations, within Management and Administration, has the lead in drafting the Departmental policy statement. Support will be required from the Drug Free Workplace Task Force, and particularly from the office of general counsel.

Sensitivities

Labor unions will oppose drug testing.

Status, Deadlines, Next Steps, and Milestones.

A proposed rule will be drafted by December 31, 1988 for publication in the *Federal Register*.

Privatization, Divestiture , & OMB Circular A-76

Issue/Concern

Status of privatization initiatives and related activities.

Background

The concept of privatization/asset divestiture originated in President's 1982 Economic Program Report and was continued in Grace Commission Report of January 1984 and the President's Budget Requests since FY 1985. Specifically, OMB directed the Department to undertake several asset divestiture initiatives beginning in FY 1987. DOE has been focusing on four areas:

- **Power Marketing Administrations**

Alaska Power Marketing Administration: Sale is proceeding and should be completed during FY 1989;

Bonneville, Southeastern, Southwestern, and Western Area Power Marketing Administrations: Through legislation, Congress has prohibited DOE from studying divestiture. DOE has sought unsuccessfully to obtain approval to study divestiture of Southeastern.

- **Naval Petroleum Reserves No. 1 and No. 3**

No Congressional support; DOE did not propose divestiture in FY 1990 budget request.

- **Great Plains Coal Gasification Plant**

Negotiations with Basin Electric Power Cooperative on the asset purchase agreement have been concluded. Transfer of ownership was completed on October 31, 1988.

- **Uranium Enrichment Enterprise**

Legislation to create a Government-owned uranium enrichment corporation. It was considered but not acted upon by the 100th Congress.

In addition, in accordance with OMB Circular A-76, DOE has been *defederalizing* commercial activities and where more economical, assigning performance to the private sector.

Organization & Coordination

Mary Bourke, Special Assistant to the Office of the Secretary, is DOE coordinator for asset divestiture, with appropriate Assistant Secretaries and program officials playing key roles. The Assistant Secretary for Management and Administration is the A-76 Program Manager.

Sensitivities

For the most part, Congress has not supported the asset divestiture initiatives proposed by the Department. Many Congressmen have expressed concern over the A-76 Program and whether there are any real savings resulting from conversion to private sector performance.

Status, Deadlines, Next Steps, and Milestones

The OMB FY 1990 budget passback and passage of DOE appropriation bills will provide the Department with policy direction from the Administration and the Congress with regard to asset divestiture initiatives.

The House Committee Report on FY 1988 Energy and Water Appropriations states, in part, that DOE is to submit and obtain Congressional agreement on a budget change (through a *reprogramming* request) prior to undertaking any new A-76 studies.

Environmental Activities Reporting System

Issue/Concern

Development and utilization of the Environmental Activities Reporting System (EARS).

Background

The General Accounting Office issued a report in December, 1987, criticizing the Department's inability to effectively identify, through the Financial Information System, funding for hazardous waste compliance activities. After lengthy discussions with Congressional Committee staff, it was agreed that an *off-line* system, which could collect budget data as well as track on-going activities during budget execution, would be acceptable. The Environmental Activities Reporting System (EARS) was developed and became operational on October 1, 1988.

EARS is an automated tracking system that collects data for environment, safety, and health activities for a current year baseline, allows for quarterly reporting of activities against that baseline, and includes proposed funding for the budget year and four outyears beyond the budget year. The budget year and outyears are updated by budget decisions made throughout the budget cycle which includes the Field Budget, the Internal Review Budget, the OMB Budget, the President's Budget, and the Congressional Appropriation (which ultimately becomes the benchmark for the new baseline). EARS reports will have to be sent to interested Congressional Committees.

Organization & Coordination

The EARS requires interaction at the staff level among the program Assistant Secretaries/Office Directors (AS/ODs), Operations Offices, the Office of the Controller (CR) and the Assistant Secretary for Environment, Safety and Health (EH).

- AS/ODs provide program and funding guidance to the Operations Offices for environment, safety and health (ES&H) activities.
- Operations Offices develop the required data in conjunction with their contractors and provide it to the automated EARS.
- The Controller maintains the EARS data base, produces EARS reports, and reviews and analyzes data for conformance with budget policy.
- The Assistant Secretary for Environment, Safety and Health (ES&H) provides policy guidance to the AS/ODs on ES&H matters and reviews and analyzes EARS reports for compliance with ES&H policy.

Sensitivities

EARS data will be of significant interest to various Congressional Committees (particularly Energy and Commerce), the Environmental Protection Agency, States' environmental agencies, and environmentalist groups.

Status, Deadlines, Next Steps, and Milestones

System must be updated in the budget formulation process to reflect decisions made by OMB on the Department's budget for FY 1990. This will occur in January 1989 for the Reagan Administration budget and in February-March for the new Administration's budget. The system will also require input for actual financial activity in budget execution for the first quarter of fiscal year 1989, which ends December 31, 1988. Other quarterly updates will occur shortly after March 31, 1989, June 30, 1989, and September 30, 1989.

Facilities Management Initiatives

Issue/Concern

Need for Office of Management and Budget (OMB) policy decisions on facilities management initiatives for third-party financing (TPF) and strategic facilities initiative (SFI).

Background

Two initiatives have been developed to meet the continuing problem of out-dated, high-cost maintenance facilities, the SFI and TPF. SFI is a DOE-wide program to eliminate marginally utilized facilities in order to devote scarce maintenance funds to the upkeep of strategically essential facilities. However, the current level of funding (\$2.2 million) will not provide for a viable program; at least \$10 million per year is needed. TPF, as proposed, applies when private investors, rather than the U.S. Treasury, provide the initial project funding and are reimbursed through cost-savings or lease payments over an amortizing period from operating funds. The only projects proposed for TPF are those which effect sufficient maintenance, energy, labor, and other cost savings over the *status quo* to pay the lease and, thus, not require additional funding by the Department. OMB has concerns with outyear mortgages and contingent liabilities should the Department cancel the lease. Two projects have been submitted and are awaiting OMB approval. Other projects are being held in abeyance. The only alternative to this initiative is line-item funding which is impractical for many projects in the current deficit environment.

Organization & Coordination

- Key DOE Officials include the Deputy Secretary (SFI & TPF policies), Program Secretarial Officers (SFI & TPF projects), and the Assistant Secretary for Management and Administration (manages both programs).
- OMB must make funding decision on SFI and each TPF project must be presented to OMB for approval.

Sensitivities

Congressional committees should be thoroughly briefed on TPF concept and each project.

Status, Deadlines, Next Steps, and Milestones

- Receive FY 1990 budget guidance from OMB (SFI).
- Receive project approvals from OMB (TPF).
- Brief Congressional committees on TPF process and projects.
- Publish DOE directive on TPF.

Davis-Bacon Act Revisions

Issue/Concern

Administration attempts to increase the dollar threshold for Davis-Bacon Act coverage have created a conflict with the Congress over the level of the threshold and over other proposed amendments.

Background

The *Davis-Bacon Act* applies to Federally funded or assisted construction contracts in excess of \$2,000. It requires the payment of prevailing wages and fringe benefits to laborers and mechanics engaged in the construction, alteration or repair, including painting and decorating, of public buildings or public works and, thereby, affects the costs of such contracts.

For the past two years, the Administration has proposed increasing the threshold to \$1 million for Department of Defense (DoD) construction and to \$100,000 for non-DOD construction. On May 3, 1988, the House voted to exempt from Davis-Bacon coverage all new Federal construction contracts of \$50,000, or less, and repair or renovation contracts of \$15,000 or less. In addition, a number of other amendments were proposed whose net effect would be to expand coverage of the *Davis-Bacon Act* and to potentially increase costs on Federally funded construction projects. The Senate avoided a fight over this reform and the proposed amendments did not become law.

Organization & Coordination

Key officials in the decision process have been the Deputy Assistant Secretary for Human Resource Management and the Director, Office of Industrial Relations.

Sensitivities

Building and Construction Trades Department, AFL-CIO; Associated General Contractors of America, Inc.; Associated Builders and Contractors, Inc.; Mechanical Contractors Association of America, Inc.

Status, Deadlines, Next Steps, and Milestones

The new Administration may wish to seek amendments to the *Davis-Bacon Act* to cut costs and to simplify administrative procedures. The new Congress may again attempt to amend the *Davis-Bacon Act* irrespective of Administration initiatives.

Key Issues
&
Upcoming Decisions

Office of
Minority Economic Impact

November 1988

Expansion of the Minority Financial Institution Deposit Program

Issue/Concern

Minority Financial Institution Deposit (MFID) Program is currently undergoing expansion from \$34.5 million to \$250 million.

Background

MFID Program is an interagency Program in created in response to several Executive Orders issued since 1970. DOE's source of funds is the Petroleum Pricing Violation Escrow Fund. This money is used to purchase Certificates of Deposit from Minority Financial Institutions at the 6-month T-bill rate, thus allowing participating institutions to benefit from any higher return on investment in minority business enterprises.

Organization & Coordination

While the Office of Minority Economic Impact has the programmatic lead, the Office of the Controller, supports and administers the accounting aspects of the program.

Sensitivities

The National Banking Association, the American League of Financial Institutions, and the Congressional Black Caucus follow developments of this Program closely.

Status, Deadlines, Next Steps, and Milestones

The approval for this expansion is currently pending in the Under Secretary's Office. Once approved, it may be appropriate to have a "Signing Ceremony" to honor relevant principals, contributors, and interested Congressmen.

Increasing DOE Support for Minority Students

Issue/Concern

The Department of Energy and its contractors should increase the participation of minority educational institutions (those with a minority student population greater than 50%), including Historically Black Colleges and Universities (HBCUs), in all activities supported by DOE.

Background

Public Law 95-619 of November 9, 1978 established the Office of Minority Economic Impact within DOE. The mission of the office includes development of programs to assist minority educational institutions and coordination of the activities undertaken by the Department and its contractors in support of Executive Order 12320 of September, 1981 (the HBCU program initiative). In FY 1986, funding was provided to the Office of Minority Economic Impact to support developmental activities for minority educational institutions. Annually, the Department provides the Office of the White House Initiative on HBCUs, an Annual Plan and a separate Performance Report covering support provided to HBCUs in six categories: 1) Research and Development, 2) Program Evaluation, 3) Training, 4) Facilities and Equipment, 5) Fellowships, Traineeships, Recruitment and Intergovernmental Personnel Act (IPAs), 6) Student Tuition Assistance, Scholarship and other financial aid.

Recent studies by a number of organizations have identified the underrepresentation of minorities and women in the sciences and engineering. Support provided to minority educational institutions by DOE and its contractors has generally shown steady improvement. The total DOE support in 1987 to HBCUs was \$20 million, but represented only 3.5 percent of total support provided to all higher educational institutions. However, the data for planned activities in FY 1989 and 1990 show significant reductions in support.

Organization & Coordination

The Director, Office of Minority Economic Impact has programmatic lead. All Departmental elements that make awards to or have participation by post-secondary educational institutions are potential participants.

Sensitivities

Organizations with primary interest in this activity include the Congressional Black Caucus, the Congressional Hispanic Caucus, the Congressional Caucus for Science and Technology, the National Association for Equal Opportunity in Higher Education, the United Negro College Fund, and the American Association for the Advancement of Science.

Status, Deadlines, Next Steps, and Milestones

General guidance on allocation of FY 1989 appropriations has been made by DOE program offices. However, specific decisions on individual award of grants and contracts can be influenced as late as the third quarter of FY 1989.

Funding for Minority Educational Support Initiatives

Issue/Concern

How will funding be provided in FY 1990 and beyond for the Minority Educational Program Support Initiatives?

Background

The Office of Minority Economic Impact (MI) proposed five new initiatives by an Action Memorandum to the Under Secretary dated July 26, 1988. These initiatives were approved on September 28, 1988 and \$1.7 million has been provided to MI from the Office of Energy Research (ER) in FY 1989 to fund the first year of four of these efforts.

The four initiatives include a doctoral Fellowship Program for Historic Black Colleges and Universities (HBCUs); academic support for 100 minority high school students pursuing careers in science, mathematics or engineering; establishment of a long-term mentor program for honor students starting at grade seven to increase minority representation in science and engineering; and expansion of a science and technology program at minority, two-year post-secondary educational institutions.

These four activities are not included in the current FY 1990 Budget for the Office of Minority Economic Impact. The Office of Energy Research has not committed to funding of the efforts managed by MI beyond FY 1989. The fifth initiative, support of a Science and Technology Alliance between three National Laboratories and three minority educational institutions, is being managed by ER.

Organization & Coordination

The Office of the Under Secretary, Assistant Secretary for Management and Administration, Director of Minority Economic Impact and Director of Energy Research are the key DOE Officials for this action.

Sensitivities

Organizations with primary interest in this activity include the Congressional Black Caucus, the Congressional Hispanic Caucus, the Congressional Caucus for Science and Technology, the National Association for Equal Opportunity in Higher Education, the United Negro College Fund, and the American Association for the Advancement of Science

Status, Deadlines, Next Steps, and Milestones

Funding options for the initiatives beyond FY 1989 include: obtain a commitment from ER for funding through FY 1993 or revise the MI FY 1990 Budget to reflect funding requirements to continue support for these initiatives. A decision on revision of the MI FY 1990 Budget would need to be made before the President's Budget is finalized. The public announcement of the initiatives is tentatively scheduled for the first quarter of FY 1989.

Key Issues
&
Upcoming Decisions

Office of
Nuclear Energy

November 1988

Long Term Supply of Plutonium 238 for NASA & DoD Missions

Secretarial Issue/Concern

What DOE actions should be taken to implement plans to establish a long-term, highly reliable supply of Pu-238 in the 10-15 kilogram/year range to meet minimum requirements for future NASA space and DoD national security missions?

Background

Pu-238, a non-weapons material, is currently produced at Savannah River (SR) with the costs of production essentially piggybacked on the much larger tritium production quantities using many of the same facilities. Uncertainties associated with the operation of the aging SR reactors and facilities, including concern over the ability of these facilities to continue to meet safeguards and environmental requirements and associated upgrading schedule and costs, threaten DOE's ability to meet future Pu-238 requirements.

DOE has reviewed options to assure long-term supply and concluded that the Fast Flux Test Facility/Fuels and Materials Examination Facility (FFTF/FMEF) complex at Hanford, Washington, a modern complex meeting all current environmental, health, safety, and safeguards requirements, should be converted and dedicated to produce Pu-238 to meet future NASA and DoD missions requirements.

Preliminary total estimated cost for modification of the Fuels and Materials Examination Facility is \$287 million.

Options include:

- Continue production at Savannah River and accept risks and uncertainties.
- Assign mission to FFTF/FMEF and budget for modifications to FMEF to eliminate Savannah River uncertainties and risks, and conflicts with Pu-238 production at weapons production facilities.
- Develop civilian power reactor production capability with associated institutional, technical, cost, and schedule risks and uncertainties.
- Develop foreign supply source with associated institutional, technical, cost and schedule risks and uncertainties.

Organization & Coordination

- Dennis Bitz, Deputy Assistant Secretary for Space and Defense Power Systems, has overall programmatic responsibilities.
- Jerry Griffith, Associate Deputy Assistant Secretary for Reactor Systems, Development and Technology, has FFTF/FMEF operating, design and construction responsibilities.
- Mike Lawrence, Manager, Richland Operations has contract authority and conducts day-to-day management of operating, design and construction activities for FFTF/FMEF.
- Office of Defense Programs contact: Jill Lytle, Deputy Assistant Secretary for Nuclear Materials.
- OMB contacts: Tom Palmieri and Alice Colston

- NASA contact: Dr. Leonard Fisk, Associate Administrator for Space Science and Applications

Sensitivities

- NASA concerned over DOE's ability to be a reliable supplier. NASA budgeting for Pu-238 production at either Savannah River or FFTF/FMEF, and cost sharing of FMEF and potential Savannah River modifications. (Office of Nuclear Energy is proposing it budget for FFTF/FMEF costs).
- Washington State Congressional delegation totally supportive of assignment to FFTF/FMEF.
- Assignment maintains DOE "foothold" at Hanford.
- OMB is questioning the apparent higher cost of Pu-238 production at the FFTF/FMEF complex versus assumed costs at Savannah River (under current conditions).

Status, Deadlines, Next Steps, and Milestones

Major decisions:

November 1988	Office of Nuclear Energy/Office of Defense Programs agreement on cost sharing for FMEF modifications
December 1988	OMB approval of mission and FY 1990 budget request
June 1989	DOE/NASA agreement on cost sharing and production costs:

Key events:

February 1989	Issue draft EIS for public comment
February 1989	Hold Environmental Impact Statement (EIS) public scoping meeting:
May 1989	Issue conceptual design report
October 1990	Start long lead procurement and FMEF modifications
October 1990	Issue final EIS
December 1993	Complete FMEF modifications:

Price-Anderson Act—Civil Penalties Provision

Secretarial Issue/Concern

DOE actions to implement the civil penalties provision of the *Price-Anderson Amendments Act of 1988*.

Background

The *Price-Anderson* provision of the *Atomic Energy Act of 1954* was designed to provide immediate relief to victims of nuclear incidents. The *Price-Anderson Amendments Act of 1988*, signed by the President on August 20, 1988, extended the provisions of the original Act until August 1, 2002. The amended Act includes a new provision which provides that the Secretary of Energy impose civil penalties on any contractor (or subcontractor or supplier) who violates any nuclear safety rule, regulation, or order issued by DOE. The Department is developing a strategy for implementing this provision. Options include:

- DOE could identify interim measures for assessing fines and penalties, to be followed by a formal rulemaking process that would involve extensive public involvement. Formal rulemaking would require a significant time; however, the public and Congress would most likely consider the rulemaking to be a basic requirement in fulfilling Section 17 of the Act.
- DOE could publish a list of rules in the *Federal Register* in order to decrease implementation time. However, basing a civil penalty on a *standard* for which there has not been formal rulemaking may raise legal questions.

Organization & Coordination

The Assistant Secretary for Nuclear Energy is coordinating initial efforts; the Assistant Secretary for Environment, Safety & Health will recommend fine/penalty provisions; program offices are responsible for implementing policy decisions; Operations Offices are the contracting office; and General Counsel's office will manage the rulemaking efforts.

Sensitivities

This issue is sensitive to Government contractors, who do not see the need for penalties in light of extensive Government oversight of their operations and the excellent occupational safety record of non-defense-related operations. Some Senators are sensitive to this issue, particularly with regard to the safety of weapons related facilities, as reflected in the 94-0 vote approving the penalties amendment.

Status, Deadlines, Next Steps, and Milestones

Major decisions

- Criteria for defining when a violation has occurred.
- Schedule of fines and penalties—if a penalty is assessed, should it be allowed to exceed a contractors award fee?
- Division of responsibility between Government and contractor when contractor is operating a Government facility.
- DOE will develop a position on the need for rulemaking and the possible degree of public involvement, by January 1, 1989. Formal rulemaking procedures, if necessary, would be initiated by the early spring of 1989.

Commercial Licensure & Nuclear Emergency Preparedness

Issue/Concern

DOE actions needed to expedite and secure full power licenses for commercial operation of nuclear plants nearing completion, e.g., Seabrook and Shoreham. How can the Nuclear Regulatory Commission (NRC) resolve the current regulatory impasse which results from State and local government non-participation in emergency preparedness at commercial power plants?

Background

Some State and local governments have refused to participate in planning and testing of emergency preparedness for these plants, thereby blocking the licensing of the Shoreham and Seabrook nuclear powerplants. The NRC, with strong Congressional and Administration support, issued in 1987 a final rule for evaluation of the adequacy of offsite emergency planning where State or local governments decline to participate in offsite emergency planning. This rule is based on the "realism doctrine" that one can reasonably assume some best effort response by State and local governments in the event of an accident. This would use the utility plan as the best available basis for emergency planning. This rule was upheld in the First Circuit Court of Appeals in 1988. In addition, the Administration is reviewing Executive Branch actions that could clarify Federal support of utility efforts to prepare for an emergency.

Both Shoreham and Seabrook are facing major challenges to final licensing decisions in litigation before the Nuclear Regulatory Commission. The recalcitrance of some State and local officials has blocked the owners' attempts to comply with Nuclear Regulatory Commission regulations in areas such as communication to the public through the Emergency Broadcast System, agreements with hospitals, and facilities for relocating populations in the event of an emergency. Tests of both utility plans were held in June 1988. Some local governments utilize and benefit from emergency preparedness plans prepared for nuclear powerplants for their general emergency planning and action networks.

Options include:

- Continue or increase DOE support up to the Secretarial level of NRC actions that would permit operation of Shoreham and Seabrook. Also continue DOE support of Executive Branch actions underway regarding Federal support of utility emergency planning efforts.
 - Pro:* DOE support of these actions might be the critical factor to tip the balance in favor of commencing operation of these plants.
 - Con:* DOE will face dissatisfaction of those few in Congress and those few State governors that oppose operation of these plants.
- Eliminate DOE support of these actions by NRC and the Executive Branch and adopt a neutral position on operation of these plants.
 - Pro:* Would remove DOE from front line of this controversial issue.
 - Con:* Might contribute to potential loss of these valuable electric generating resources without significantly reducing dissatisfaction of those opposing these

plants. Proponents of these plants would see DOE as uncaring and weak willed in support of nuclear power generally.

- Actively oppose operation of these plants.

Pro: Would please those in Congress and among State governors opposing these plants.

Con: Might be critical factor to tip the balance and result in abandonment of these plants. DOE would lose confidence and support of industry and those in Congress and State governors who generally support nuclear power.

Organization & Coordination

Assistant Secretary for Nuclear Energy has lead responsibility for the DOE support role. External coordination with the Nuclear Regulatory Commission, including the Chairman, and with the Executive Branch is imperative.

Sensitivities

- Extreme sensitivities among industry, members of Congress, and State governors who strongly support operation of Seabrook and Shoreham specifically and improved nuclear regulation generally. Also extreme sensitivities from other members of Congress and several State governors who are strongly opposed to operation of these plants.
- Utility concerns about emergency preparedness trends at NRC and FEMA that the problems at Seabrook and Shoreham could spread to other plants already in operation or nearing completion of construction.

Status, Deadlines, Next Steps, and Milestones

Major decisions

DOE should decide immediately which of the above options it will follow. Provided the first option is selected, DOE should then decide on the extent of its participation in anticipated extensive NRC litigation on challenges to the adequacy of the utilities resources and facilities. This litigation will occur in the first quarter of 1989.

Key events

Timing of DOE actions on this issue is dependent on actions of the utilities involved, the NRC, the intervenors in the cases, and possibly the courts. Conclusive actions may be reached in the first quarter of 1989 but could continue throughout 1989.

Restructuring the Uranium Enrichment Enterprise

Issue/Concern

What steps should be taken to restructure the uranium enrichment enterprise?

Background

DOE's uranium enrichment enterprise provides a business service (i.e., enriching uranium) to nearly 70 customers in the United States and 13 foreign countries operating in a highly competitive international market. DOE's sales volume is almost \$1.5 billion each year. To compete more effectively and to maximize the return on the Government's investment, the enrichment enterprise needs to be restructured. In 1988, the Administration proposed the establishment of a wholly-owned Government corporation to enhance the effectiveness of the enrichment enterprise. During the 100th Congress, the Senate passed several pieces of comprehensive legislation to establish a Government-owned enrichment corporation and to assist the uranium mining industry. House committees held hearings but failed to report out a bill.

Options include:

- Reintroduce comprehensive uranium legislation with support of miners
- Introduce *clean* uranium enrichment legislation
- Restructure internally within DOE without the need for legislation

Organization & Coordination

- Assistant Secretary for Nuclear Energy and the Deputy Assistant Secretary for Uranium Enrichment have programmatic responsibility.
- Manager, Oak Ridge Operations is Contracting Officer responsible for enrichment operations.
- Manager, San Francisco Operations has day-to-day management of AVLIS RD&D activities.
- Key decisions are made by the Under Secretary.

Sensitivities

Senate support for comprehensive legislation is strong; House interest in any legislation is weak. OMB interest in *clean enrichment only* legislation is strong.

Status, Deadlines, Next Steps, and Milestones

- Decide whether to propose legislation to create a Government corporation as part of the FY 1990 budget.
- Reintroduction of comprehensive legislation in Senate—spring 1989
- Hearings in both Houses of the 101st Congress

Nuclear Reactor Development for NASA & DoD Missions

Issue/Concern

Future space mission timing and requirements must be identified so DOE, DoD and NASA can set the pace and funding for nuclear power source development.

Background

A space nuclear reactor was developed and successfully demonstrated in 1965. The program was terminated in the early 1970s due to lack of identified missions. The SP-100 program is an advanced reactor program started in 1983 (prior to the SDI) for power levels in the tens to hundreds of KWe. Nuclear power possesses several advantages over other technologies for space application. NASA and DoD support development of space reactor technology. Neither want to commit to its use for a specific mission until the technology has been successfully demonstrated. Funding shortfalls have required restructuring of the program. Implementation of this restructuring has been jeopardized by further funding shortfalls. These shortfalls will require implementation of one of the following options.

- The SP-100 program structure may be left intact, with a reactor system developed, tested (at 100 KWe level) and ready for a flight test or mission application in the mid to late 1990s.
- The SP-100 reactor development may proceed as planned. There is need to adjust development schedule to allow reconsideration of power converter selection in 1992 time period. This may require deferring some system efforts, but may still allow matching near-term mission needs with ongoing technology developments.
- Completely restructure the SP-100 program to develop a nuclear reactor power system in a step-wise approach, providing a lower power reactor in the near term, followed by a higher power, more advanced technology development for the longer term; may be more responsive to near-term users' needs, but at an increased overall program cost.

Organization & Coordination

Assistant Secretary for Nuclear Energy is chairman of the Triagency SP-100 Steering Committee. Deputy Assistant Secretary for Space and Defense Power Systems has program responsibility. Manager, San Francisco Operations, has contracting responsibility for the System Developer. Manager, Richland Operations, is responsible for nuclear reactor test facility and operations (Ground Engineering Demonstration).

Sensitivities

Lack of firm missions by NASA, SDIO, and the Air Force undermines Congressional support. Some public and Congressional opposition exists on the use of nuclear power in space. A bill to ban nuclear power in earth orbit and, in some cases, outer space was introduced in the 100th Congress but not acted upon. Reintroduction of this bill in the 101st Congress is anticipated.

Status, Deadlines, Next Steps, and Milestones

SDIO Congressional appropriation for FY 1989 precludes funding for SP-100 (\$32 million was requested for FY 1989). This decision is not final. Lack of SDI funding would require a major restructuring of the current program, or employing one of the other options described above.

Key events:

January 1989	Symposium on Space Nuclear Power, Albuquerque, New Mexico
June 1989	SP-100 Program Semi-Annual Report to Congress
July 1989	Start of Ground Engineering System facility modifications.

Modular High Temperature Gas Reactor (MHTGR) Initiative

Issue/Concern

Implementation of a joint government/private sector initiative for the development of the MHTGR.

Background

In 1984, DOE selected a small modular HTGR concept over continued support of a large plant. DOE has spent over \$1B in HTGR development. In recent years DOE has attempted to zero out, but Congress has appropriated \$20-30 million per year. Gas Cooled Reactor Associates (GCRA), created by utilities representing 30 percent of the U.S. electric generating capacity, actively promotes the program. GCRA has been working to develop a government/private sector initiative for an initial MHTGR plant. The Nuclear Regulatory Commission's safety review indicates the conceptual design is generally satisfactory but along with a number of conditions, a continuing program of research and development is necessary to support final design and eventual licensing. Construction of a MHTGR at the Idaho National Engineering Laboratory has been proposed as part of the military New Production Reactors program.

Options include:

- Cancel the Civilian HTGR program
- Conduct a parallel but not duplication program
- Offer only to support a private sector initiative along the lines of the clean coal program

Organization & Coordination

- Assistant Secretary for Nuclear Energy Deputy Assistant Secretary for Reactor Systems Development and Technology have civilian MHTGR programmatic responsibility.
- Manager, San Francisco Operations has contract authority and conducts day-to-day management of civilian MHTGR activities.
- The recently formed New Production Reactor organization has programmatic responsibility for the military MHTGR program.

Sensitivities

Congress has consistently been a strong supporter of the MHTGR program. Many utilities vendors view the HTGR as a threat to the established LWR industry.

Status, Deadlines, Next Steps, and Milestones

Resolution of the roles of the civilian MHTGR and the military NPR must be completed by January 1989, if they are to be incorporated in the FY 1990 budget submission to Congress.

Uranium Enrichment-Atomic Vapor Laser Isotope Separation (AVLIS) Enrichment Program

Issue/Concern

Strategy for deployment of the AVLIS technology.

Background

Gaseous diffusion technology is proven but costs of production are strongly tied to cost of electricity. Present contracts for electricity costs are extremely low; new contracts will undoubtedly increase cost of production substantially.

- Foreign competitors are able to offer enriched uranium at prices substantially lower than U.S. prices. The U.S. position has eroded in the 1980s. DOE pricing has been substantially reduced.
- 1985 the AVLIS technology was selected from among several competing technologies, as the best to replace present GDF operations.

Congress has passed an appropriations bill that funds support of an early demonstration of the AVLIS technology. DOE and OMB, however, disagree fundamentally over the proper role, funding, and schedule for AVLIS R&D. OMB disagrees with the DOE economic analysis and believes that at most, AVLIS should be maintained at the level of \$90 million dollars per year until privatization legislation is enacted. The AVLIS program uses the same laboratory expertise used for the Special Isotopes Separation program. DOE believes that the program must be funded at greater than \$90 million a year to make progress. DOE prefers to proceed with AVLIS R&D during the same time as revenues are below outlays.

Options include:

- Accept OMB position--maintain funding level at \$90 million per year and let a possible Government corporation determine funding and schedule.
- Continue to press for funds for a 1992 demonstration.

Organization & Coordination

Office of Nuclear Energy/UE - Establishes policy and program guidance/oversight. Lawrence Livermore National Laboratory (LLNL) is the lead organization for AVLIS program integration. San Francisco Operations is responsible for day-to-day management of LLNL. Martin Marietta Energy Systems (MMES) is responsible for uranium processing and deployment planning. Oak Ridge Operations is responsible for day-to-day management of MMES.

Sensitivities

OMB disagrees with DOE's management of this program and wants private sector management. The gaseous centrifuge program was cancelled after several billion dollars had been spent on construction; Congress does not want a repeat of this experience.

Status, Deadlines, Next Steps, and Milestones

Major Decisions:

- Whether to begin deployment of AVLIS through pilot scale production.

Key events:

December 1988	Appeal passback to Domestic Policy Council (if necessary)
Summer 1989	Selection of private sector participant

Greater-Than-Class-C Low-Level Radioactive Waste Management

Issue/Concern

How should DOE manage greater-than-Class-C low-level waste (GTCC/LLW) prior to the availability of a licensed disposal facility?

Background

Public Law 99-240 requires the Federal Government to be responsible for the disposal of GTCC/LLW generated by a licensee in a Nuclear Regulatory Commission (NRC) licensed disposal facility. A licensed disposal facility—geologic repository or equivalent—would not be available for GTCC/LLW for at least 10 years. DOE has been informally asked by owners and NRC to consider taking small amounts of GTCC/LLW for economic and safety reasons. Congress has shown interest in changing the law to require NRC licensing of DOE long-term storage.

Options include:

- Refuse acceptance of GTCC/LLW until a new licensed facility is available.
- Accept waste in the near-term at existing DOE storage facilities.
- Announce an initiative to build a GTCC waste facility.

Organization & Coordination

- Assistant Secretary for Nuclear Energy has programmatic responsibility.
- Assistant Secretary for Office of Defense Programs has responsibility for existing DOE waste management facilities.

Sensitivities

States hosting DOE facilities already object to long-term storage of GTCC/LLW at existing DOE facilities. Fee schedules to accommodate all storage, treatment, and disposal costs borne by DOE may be prohibitively expensive to GTCC/LLW owners and generators.

Status, Deadlines, Next Steps, and Milestones

Major decisions:

- Near-term acceptance of GTCC/LLW for storage at existing DOE facilities.

Key events:

1st Qtr./CY 1989 Comprehensive plan for GTCC/LLW Program

West Valley Demonstration Project High-Level Waste Storage

Issue/Concern

Should DOE plan to consolidate storage of West Valley solidified high-level radioactive waste (HLW) with Defense HLW until a repository is available for disposal?

Background

Public Law 96-368 requires DOE to solidify the liquid high-level waste stored at the former nuclear fuel reprocessing plant at West Valley, NY, and dispose of the high-level waste in a Federal repository. Solidification of the high-level waste will be completed in 1994. A Federal repository for high-level waste will not be available before 2010, requiring storage of high-level waste on-site or at a DOE facility. Cleanup of facilities used by the Project and early completion of Project activities at West Valley could reduce Project costs by some \$700 million (year-of-expenditure dollars). Facilities will be available in 1989 at Savannah River to store solidified Defense Programs high-level waste until a Federal repository is available for disposal.

Options include:

- Store high-level waste canisters at West Valley until a repository is available.
- Transport and store with Defense Programs high-level waste canisters at a DOE facility until a repository is available; complete project activities at West Valley at least 10 years early.

Organization & Coordination

- Assistant Secretary for Nuclear Energy has programmatic responsibility for the West Valley Project
- Assistant Secretary for Defense Programs has responsibility for Defense Programs high-level waste storage facilities

Sensitivities

Shipment of canisters in the mid-1990s will be the first transportation of solidified high-level waste in the U.S., thereby incurring close public scrutiny. State's hosting DOE facilities are increasingly opposed to storage as well as disposal of waste from out-of-State DOE operations.

Status, Deadlines, Next Steps, and Milestones

Major decisions:

- Early shipment of West Valley canisters to a DOE Defense high-level waste storage facility

Key events:

1994 Complete production of West Valley canisters

Effective Utilization of Test Facilities

Issue/Concern

How can the Department best utilize its array of test and research facilities in the face of increasing costs of operation?

Background

The Department constructed many facilities over the last 30 years, including those to support the multi-billion dollar breeder reactor program. Each program office (Defense, Energy Research, and Nuclear Energy) independently manages its own facilities. Nuclear Energy's facilities have, in the main, been shutdown, with the exception of the Fast Flux Test reactor complex at Hanford (new, but with annual operating costs of \$100 million per year) and the EBR-II complex at Idaho (old, but with operating costs of \$50 million per year). Facility operating costs are rapidly increasing as a result of growing safety and health requirements. The close out of the breeder program has been essentially completed with the only remaining program being the feasibility demonstration of the Integral Fast Reactor at EBR-II scheduled for completion in 1992. A reduction in the program budget has put increased pressure on developing new missions for the nuclear energy facilities. A Pu-238 power source production has been proposed by DOE for the FFTF, and creation of a university training center for the EBR-II. These have not yet been approved as part of the President's FY 1990 budget.

Options include:

- Consolidate/coordinate all DOE nuclear facilities operations to maximize utilization.
- Secure new missions for the nuclear energy facilities and budget for these new missions.
- Plan for close out of one of the two nuclear energy facility centers.

Organization & Coordination

- Facility operations currently managed through three program offices (Office of Nuclear Energy, Office of Energy Research, Office of Defense Programs) and six field offices (Richland Operations, CH, Savannah River, AL, Oak Ridge Operations, San Francisco Operations)
- Consider 9-person steering committee (one person from each office on trial basis to determine whether a more effective communication/utilization pattern will emerge)
- Coordinate with OMB/Congressional committee to permit more co-mingling of civilian and defense R&D to maximize facility utilization at least cost.

Sensitivities

Justification interests of Congressional Committees, and turf issues between program offices & field offices.

Status, Deadlines, Next Steps, and Milestones

Major decisions:

- OMB/Congressional action on FY 1990 budget
- Department decision to NAS-II report recommendation addressing centralization and communications improvements among DOE organizations and facility contractors

Key events:

- OMB passback on FY 1990 budget
- Creation of INPO - like organization among DOE contractors

Cost Growth in Remedial Action Projects for Ground Water Cleanup

Issue/Concern

How should the Administration focus debate on rising cleanup costs associated with court imposed environmental standards for uranium mill tailings sites?

Background

Congress passed the *Uranium Mill Tailings Act of 1978* requiring the Federal Government to pay for cleanup of abandoned uranium mill tailings sites. EPA proposed ground water standards in 1983; but the greater concern is that a 1985 court ruling remanding those standards is just part of an overall trend toward standard setting that goes well beyond that required on any sort of cost benefit considerations. As part of the process of developing the FY 1989 budget, DOE agreed to submit a legislative proposal on controlling ground water cleanup costs for mill tailings sites. No legislation was submitted in 1988.

Options include:

- Submit legislation that ties action to costs/benefits evaluations.
- Submit a different legislative proposal. Possible options include: increase the States' share of the cost of ground water restoration, or technically correct the basis for the court remand and remove the need for revised standards.
- Submit no legislation; follow through efforts to influence EPA's final standards and then structure a ground water restoration program that is paced to limit annual expenditures (e.g., a level funded program that treats sites sequentially based on health risk priority).

Organization & Coordination

- Assistant Secretary for Nuclear Energy/Director, Office of Remedial Action and Waste Technology have programmatic responsibility.
- Assistant Secretary for Environment, Safety & Health/Deputy Assistant Secretary for Environment have responsibility for environmental policy and for concurrence on related legislative proposals.
- Manager, Albuquerque Operations Office, has contract authority, manages day-to-day uranium mine tailings remedial action projects (UMTRAP) activities, and has the lead for interactions with State authorities and with NRC.
- States are responsible for concurring in DOE's plans for remedial action at UMTRAP sites and for providing 10 percent of the cleanup costs.

Sensitivities

Most states and local authorities will oppose a change to the status quo—which creates jobs and is pro-environment. States are having difficulty appropriating 10 percent share; will strongly oppose proposals to increase share and may be unable to accomplish in any case.

Status, Deadlines, Next Steps, and Milestones

Major decisions:

- Whether or not to submit UMTRAP ground water legislation.

Key events:

1st Qtr./CY 1989	EPA promulgate final ground water standards for UMTRAP.
1st Qtr./CY 1989	DOE decision on submission of ground water legislation.

Nuclear Space Launch Emergency Preparedness Program (SNAP)

Issue/Concern

Concern about use of nuclear devices for powering deep space exploratory spacecraft.

Background

There is increasing awareness of the use of nuclear devices for powering deep space exploratory spacecrafts. Emergency preparedness will be one of the major issues addressed for the next launch involving such a nuclear device, scheduled for October 1989. Given the accidents with Chernobyl, COSMOS 1900, and the Challenger, the visibility that launch will receive is expected to make it a major event. Congressional hearings are anticipated.

DOE produces *radioisotopic thermoelectric generators* (RTGs) from Plutonium-238, a heat producing radionuclide. Two RTGs will power the spacecraft *Galileo* scheduled for launch in October 1989 and one RTG will power the spacecraft *Ulysses*, to be launched in October 1990. Current collaborations with NASA, required under an interagency agreement, include development of emergency preparedness plans and procedures, readiness reviews, and exercises of these plans prior to launch. The interagency agreement and the statutory requirements under the Federal Radiological Emergency Response Plan (FRERP) necessarily obligate DOE to provide resources and expertise for emergency preparedness and effectively extends the *Price-Anderson Act* to indemnify NASA and its contractors in the event of a nuclear emergency.

Organization & Coordination

DOE's Albuquerque Operations office advises NASA on emergency preparedness and nuclear safety. Program lead is with the Assistant Secretary for Nuclear Energy and the Assistant Secretary for Environment, Safety and Health represents DOE on the Interagency Nuclear Safety Review Panel (which carries out an independent safety evaluation prior to launch) with NASA and DoD.

Sensitivities

Congressional inquiries are expected due to the Challenger accident. A bill was introduced to forbid nuclear power sources in space in October 1988. Public interest groups are concerned with the issue, e.g., Committee to Bridge the Gap and Citizens Against Nuclear Power in Space.

Status, Deadlines, Next Steps, and Milestones

January 1989	Develop Protective Action Guides
March 1989	Finalize DOE Emergency Response Plans
March 1989	NASA finalize and publish Environmental Impact Statement for <i>Galileo</i> launch
June-Sept 1989	Emergency Response Exercises
October 1989	<i>Galileo</i> launch

Key Issues
&
Upcoming Decisions

Office of Policy,
Planning and Analysis

November 1988

Lower Oil Prices, OPEC, & the Domestic Oil Industry

Secretarial Issue/Concern

What are the implications for OPEC and the domestic oil industry if oil prices keep dropping or remain low for an extended time?

Background

A combination of circumstances has temporarily wrested crude oil price setting power from producers. The failure of Iraq and Iran to agree on post-war oil production quotas and increased production by the United Arab Emirates, Saudi Arabia, and Kuwait have destroyed the equilibrium of the crude oil price structure.

Over the last three months U.S. crude oil prices have been quite volatile. The following chart shows the wide price swings for West Texas Intermediate (WTI) crude since August.

The price rise in mid-October was sparked traders speculating that OPEC meetings in Madrid on October 20-21, 1988, would produce an agreement on production limits. When that failed to happen, the barrel lost over \$1.00 in trading on October 24. By the end of the month, the price settled back to \$13.60 a barrel.

Price volatility has also been driven by buyer uncertainty about production levels, with prices falling because of high production levels in OPEC and non-OPEC countries. Production remains unchecked. The Saudis reportedly are producing 6 million barrels per day (MMBD). Recent events in the market are reminiscent of 1986 when Saudi Arabia released large volumes of oil into the world market intending to discipline those producing above quota—and then moved to preserve market share. Overall OPEC production may be as high as 21 MMBD, more than 20 percent above OPEC *quota* levels. In this atmosphere, it is not surprising that prices are falling. If OPEC and non-OPEC producers continue to produce large volumes, then the *futures* price for crude oil will continue to fall.

The fall in world oil prices and the effect on U.S. producers is serious. U.S. oil production continued declining in 1988. For the first seven months of 1988 oil production fell by over 125,000 barrels a day. Since prices began dropping in 1986 investment in oil and gas wells has declined and further drops will continue to block investment in exploration and production. In 1987, investment fell by nearly 18 percent over 1986, and with recent price declines the picture for

1988 is uncertain. At the end of October the operating rig count stood at 933, compared to 2,000 in 1985 and 4,000 in 1981. Moreover, the number of enhanced oil recovery projects being initiated by the industry has decreased from 512 in 1986 to 366 in early 1988, a decline of nearly 30 percent. Since 1986, the U.S. has lost nearly one million barrels a day of production. Lower world oil prices will shut in U.S. marginal producers as prices drop below *lifting* costs. One oil industry trade association recently reported that 18,241 *stripper* wells were temporarily abandoned in 1987, following the abandonment of 19,233 wells in 1986.

The depressed state of the industry has potential for longer term effects as the enrollment in petroleum geology programs has decreased by 25 percent since 1982, and continues at low levels.

The oil service industry also has been severely depressed since 1986 due to lower and more volatile oil prices, shut-in or abandoned wells, and the decline in oil production and well-service projects. In the last two years several major domestic oil field service companies went bankrupt.

Volatile oil prices increases the risk of doing business, making it more difficult to finance domestic oil activities. As local economies feel the pinch of lower oil prices, with reduced incomes and business failures, banks are reticent to make loans for oil development projects. There has been a banking crisis in Texas, Oklahoma, Louisiana, and Colorado because of the dual effects from reduced volumes of energy loan and the cost of bad real estate loans made when oil prices and production were higher. In 1987, 181 banks closed, and though September 1988 there were 186 bank failures.

The recent weakness in crude oil prices has fed concern about how far world oil prices can fall. Large volumes of low-cost oil remain in production throughout the world. Based on the economics of low-cost producers, prices could go lower. However, at some low level of prices, OPEC's political resolve may begin to reform. Reassertion of OPEC power might be expected when competition has driven per barrel profits to the point where little is lost by adopting and adhering to strict output restrictions.

Organization & Coordination

The Office of Policy, Planning and Analysis maintains close cooperation with the Office of International Affairs and Energy Emergencies on OPEC issues.

Sensitivities

U.S. oil producers, particularly the independents and the associated service industry, are very concerned about the level of oil prices because it affects their business every day and determines their ability to borrow capital for future exploration and production. On the other hand, lower oil prices contribute to lower manufacturing and production costs, increased ability to compete in world trading markets, and other economic benefits to consumers. Lower oil prices have made a substantial contribution to the health of the economy over the past few years.

Status, Deadlines, Next Steps, and Milestones

The next OPEC Minister's meeting is scheduled for November 21, 1988. Prior to the meeting of the Ministers the long term strategy and price monitoring committees will meet beginning November 17, 1988. Also important will be the progress of the ongoing peace talks between Iran and Iraq that resumed on October 21, 1988.

Global Climate Change

Secretarial Issue/Concern

Congressional interest in the possibility of global climate change now emphasizes policy proposals to reduce or stabilize greenhouse gas emissions.

Background

Burning of fossil fuels accounts for about half of all greenhouse gas emissions. The remainder arise from deforestation, agriculture, chlorofluorocarbons (CFC's), or from natural sources. Emissions from the U.S. and Western Europe are stable or declining. Emissions from developing nations and Eastern Europe exceed those of the U.S. and Western Europe and are growing, possibly offsetting emission reduction efforts by other nations.

International scientific consensus is incomplete on the timing, magnitude, and regional distribution of possible climate change effects. DOE has a number of programs that are relevant to the climate change issue. DOE is the lead Federal Agency in basic scientific research on CO₂ and climate change. DOE programs in conservation, renewable energy, nuclear, fossil, fusion, and environmental analysis also have a bearing on this issue, and could be the focus of congressional action.

Organization & Coordination

- DOE has interagency lead for scientific research on CO₂ and climate change, through the Office of Energy Research. This work is funded at \$18 million for FY 1989. The White House Office of Science and Technology Policy coordinates government-wide activities.
- Environment, Safety, and Health has been asked to carry out four congressionally mandated policy studies in FY 1989.

Sensitivities

Legislation has been introduced by Senators Wirth, Stafford, and others. This legislation emphasizes technological, regulatory, and research approaches to limit the burning of fossil fuels, and to increase the use of efficiency improvement, nuclear energy, and renewable energy. DOE's FY 1990 budget may be affected.

Key Events/Milestones

- The Intergovernmental Panel on Climate Change will advise United Nations organizations on policy, science, and technological developments. (11/88).
- DOE will participate in a meeting in The Hague to plan implementation of the Montreal Protocol, which limits production of CFCs and halon. (10/88).
- The Environmental Protection Agency will publish a Congressionally mandated report on policy options and effects of climate change. (12/88).
- The Office of Technology Assessment will publish a policy report. (2/89).
- Legislation introduced late in the 100th Congress is expected to be reintroduced in the next Congress.

Oil Import Fee

Secretarial Issue/Concern

Should an oil import fee be imposed to raise U.S. oil prices, reduce oil imports, increase domestic oil production, or raise federal revenues?

Background

U.S. oil imports are growing and domestic oil production is declining under the influence of low oil prices. Current low prices do not support the investment needed to revive U.S. oil output. The domestic oil industry is suffering a loss of productive capacity that may not be easily restored. An import fee would help domestic oil producers by raising prices, but it would also raise costs to oil users. In March 1987, DOE evaluated an oil import fee and determined that the economic costs of a fee far outweighed the industry benefits. Critics of that finding, using different assumptions, found the opposite. The Reagan Administration has steadfastly opposed oil import fees.

Organization & Coordination

No one DOE office has responsibility for the oil import fee issue. The Policy Office has provided guidance on the issue and has coordinated with other Departments (OMB, Treasury and Commerce). The Energy Information Administration (EIA) has provided modeling assistance for evaluating proposals.

Sensitivities

Representatives of producing states favor a fee to raise or stabilize oil prices and to help oil producers. Some legislators favor a fee to reduce the Federal deficit. Legislators from consuming states generally oppose a fee because of its effect on oil prices and on the national economy.

Status, Deadlines, Next Steps, and Milestones

There are no pending actions on oil import fees. But legislation is a near certainty in the next Congress, as was true last year.

§232 Investigation

Secretarial Issue/Concern

What will be the outcome of the investigation into whether oil imports threaten to impair the national security?

Background

The Commerce Department, in consultation with DOE and other agencies, is conducting an investigation under §232 of the Trade Expansion Act of 1962. Initiated by a petition filed by a domestic oil industry coalition, the investigation will determine the effect on the national security of imports of crude oil and refined petroleum products. §232 provides that if it is found that an article is being imported into the U.S. in such quantities or under such circumstances as to threaten to impair the national security, the President shall take such action as he deems necessary to adjust the imports of that article and its derivatives.

A positive finding was made in 1959 (under a predecessor statute to §232), and it was reconfirmed by investigations in 1975 and 1979. The Attorney General rendered an opinion in 1975, that, although the factual basis for the 1959 finding had changed, the finding remained valid; in 1977 the Justice Department reaffirmed this view. Based on these findings, the U.S. imposed oil import quotas from 1959 to 1973, and oil import fees from 1973 to 1979. The U.S. continues to rely on these findings as the basis for its ban on imports of Libyan crude oil.

The expectation is that there will be a positive finding, confirming the finding of 1979. However, since the only remedies specifically authorized under §232 are import controls (e.g., fees and quotas), it is expected that the recommendations will include other actions not specifically authorized by §232 and requiring Congressional action. Most likely, the proposals will resemble the President's recommendations forwarded to Congress in May 1987, following publication of the DOE *Energy Security*

Organization & Coordination:

The lead office is Policy, Planning and Analysis, which coordinates with General Counsel.

Sensitivities:

This matter raises highly controversial issues pitting various segments of the domestic energy industry against energy consumers and oil exporting countries. An important element will be timing—the coincidence of the release of the report and the state of oil prices. If oil prices are dropping when the report is published or if they fall prior to release of the report and stay low, then the report will have a different political *spin* than if prices are back in the \$15 to \$18 per barrel range and moving upward. In addition, the finding and proposed recommendations will be of greatest concern to the petitioners who represent a significant number of independent producers and associated oil field service industries. Moreover, the investigation has drawn the attention of several Members of Congress who will be interested in the final report and the proposals for action.

Key Upcoming Events/Milestones:

The Secretary of Commerce is required to report his findings to the President within one year of receiving the industry's application, i.e., by December 1, 1988. Section 1501 of the *Omnibus Trade Act* amended §232 to provide that if the report contains a positive finding, the President, within 90 days, must decide whether he agrees with the Secretary's finding and, if so, determine what actions need to be taken. The actions are to be implemented within another 15 days. Within 30 days after making these determinations, the President is to report to Congress his reasons for taking, or not taking, action.

FERC Rulemaking on Electricity Generation

Secretarial Issue/Concern

What are the implications for the electric power industry if the Federal Energy Regulatory Commission (FERC) issues final rules relating to implementation of the *Public Utility Regulatory Policies Act of 1978* (PURPA) and the generation of electricity by independent power producers?

Background

Under the PURPA, as now implemented by FERC, electric utilities must offer to buy power produced by *cogenerators* and *small power producers* at "full avoided cost," i.e., the cost that the utility would otherwise incur to produce an equivalent amount of power from its own facilities. These costs are determined using procedures set by State regulatory authorities, acting under FERC rules. Accurate long-term projection of avoided costs is difficult, and substantial overpayments have occurred in some states.

The FERC has issued two Notices of Proposed Rulemaking (NOPRs) for determining avoided costs under PURPA. The first provides specific guidance to the States for setting avoided costs. In some States, regulatory authorities have devised competitive bidding schemes as an alternative to setting avoided cost administratively. The second NOPR would sanction bidding as the preferred alternative, although adoption of bidding by states would be voluntary. In a third NOPR, FERC proposes to eliminate rate regulation and reduce other regulatory requirements for *independent power producers*—a new category of non-utility power producers who by definition have no market power and hence should not be subject to price regulation.

PURPA has greatly expanded the use of renewable energy and cogeneration in electricity production. PURPA guarantees *qualifying facilities* (QFs) a market for their capacity and output. Since PURPA's enactment in 1978, 61,950 megawatts (MW) of QF-provided capacity has been filed with FERC. In comparison, utilities plan to add just 67,800 MW of capacity from 1987 to 1996. Hence, QFs are playing a major role in new utility generation. DOE filed formal comments on the FERC rulemakings that were generally supportive of the provisions that conceptually contribute to increased competition for electrical generating capacity additions.

Organization & Coordination

The Office of Policy, Planning, and Analysis has the lead responsibility for analyzing issues relating to PURPA and its implementation. All proposals are reviewed by the Assistant Secretaries for Conservation and Renewable Energy, Fossil Energy, and Nuclear Energy, as well as the Office of General Counsel.

Lead responsibility for implementation of PURPA rests with the FERC.

Sensitivities

Electric utilities are divided on the issue of increasing competition for new capacity additions and the reliability of QFs. Investor-owned utilities are strongly opposed to the NOPR *wheeling* proposals. Industrial electricity consumers, many public utilities, and qualifying facility developers want stronger *wheeling* provisions. The renewable energy and cogeneration industries oppose the NOPRs because they curtail the advantages

PURPA provides QFs. State regulators generally oppose the NOPRs on the ground of FERC *interference* with state regulation of electric utilities. Congressional views on the substance of the FERC rulemaking are mixed and uncertain.

During recent confirmation hearings for FERC commissioners, the general Senate position was reflected in the advice to the nominees to "go slow, assure maximum public review, and proceed with caution" in this area. The House Committee on Energy and Commerce has not been a direct participant in the FERC NOPR process to date, but has shown an intense and continuing interest.

Status, Deadlines, Next Steps, and Milestones

The NOPRs are under review and final rules have not been issued. The FERC schedule is uncertain, but action during the first 6 months of 1989 is likely. If the rules become final, there will be a substantial period of uncertainty until judicial review is completed. Related Congressional inquiries into reform of *Public Utility Holding Company Act* (PUHCA) restrictions on IPPs are just beginning.

Gasoline Tax

Issue/Concern

An increase in the Federal gasoline tax to raise revenues, reduce budget deficits, stimulate fuel efficiency, and reduce oil imports.

Background

For the last several years low gasoline prices have reduced incentives to purchase fuel efficient automobiles, and have stimulated gasoline consumption. In addition, U.S. oil import volumes are growing and domestic oil production is declining due to low world oil prices. (See *Policy, Planning and Analyses* issue paper on the *Effects of Lower Oil Prices*, page 1 above). Various policies, such as a gasoline tax, have been suggested to mitigate the effects of lower prices.

Existing Federal gasoline excise taxes are essentially user fees to finance the Nation's highway infrastructure (The Federal gasoline tax currently is 9.1¢ per gallon and the diesel fuel tax is 15¢ per gallon.) Proposals have been made to employ a gasoline tax as a revenue raiser to reduce the Federal budget deficit, provide an alternative to fuel efficiency standards for stimulating improved fuel efficiency, and finance revenue-neutral domestic oil production incentives.

DOE analyses show for example, that a 25¢ per gallon tax could reduce motor fuel use by 4 to 5 percent and raise about \$26 billion (in 1988 dollars) in revenue. However, such a tax has certain economic drawbacks. It would reduce GNP by about \$20 billion (in 1988 dollars), thus reducing net Treasury receipts. Moreover, such a tax is regressive since low-income automobiles users spend a much higher percentage of their income on gasoline than higher income users.

Nevertheless, fiscal constraints are likely to induce continual reassessments of motor fuel taxation options. One such option would be to enact incremental fuel taxation that would begin at low levels (3, 4, or 5¢ per gallon) and be phased in to higher levels over a decade or longer. Incremental fuel taxes, while substantially reducing net revenues initially, would have the advantage of imposing a lesser impact on low-income consumers and on GNP.

Organization & Coordination

The Office of Policy, Planning and Analysis has responsibility for analysis of energy tax issues and coordination of policy development with other Departments (OMB, Treasury, and Commerce). The Energy Information Administration provides modeling assistance for evaluation of proposals.

Sensitivities

Gasoline taxes have been opposed by a variety of specific and general interests. Several industry and consumer groups have cooperated in opposing the tax. The domestic refinery industry is strongly opposed. For the last 15 years, political support for a *conservation-level* gasoline tax has been weak because the gasoline tax is perceived as broadly unpopular, especially at levels that would have any significant oil conservation benefit. In a recent poll, fewer than 10 percent of Americans favored a 30¢ per gallon gasoline tax, even though strong support was measured for other policies to reduce energy use.

Status, Deadlines, Next Steps, and Milestones

We anticipate that gasoline tax legislation will be introduced in the 101st Congress and that DOE will be called upon to testify in subsequent hearings.

Natural Gas Competition

Issue/Concern

The natural gas industry is in a period of rapid change from a regime of heavy regulation to one in which competition will be the predominant force driving decisions, both governmental and private.

The concern is what to anticipate and how to react to future developments in the natural gas industry from a Federal Government perspective.

Background

The *Natural Gas Policy Act of 1978* (NGPA) established a scheme of phased deregulation of natural gas prices and a limited mechanism for pipelines to transport gas owned by others when a producer and a consumer dealt directly.

The Administration established a policy of encouraging the development of a more competitive natural gas industry in 1983 by sending legislation to Congress that supported complete wellhead decontrol and mandatory pipeline transportation for third parties (open access).

No legislation passed but the Federal Energy Regulatory Commission (FERC) promulgated several rules that embraced the policies of the Administration's legislation. Because of statutory constraints the FERC cannot fully adopt the necessary regulations to complete the transition from heavy regulation to a market-driven industry.

Because the transition is incomplete, there are many issues that must be dealt with over the next few years. The following is a listing of some of the issues:

- Should natural gas decontrol legislation be introduced?
- Should *open access* legislation be introduced?
- Are there other legislative provisions that will be necessary to complete the transition?
- Does the *take-or-pay* problem require further governmental intervention?
- Are domestic producers playing on a *level playing field* vis-a-vis Canadian producers?
- Should brokering of pipeline capacity be allowed?
- Should industrial customers be allowed to bypass local distribution companies and be served directly by interstate pipelines?
- Is reform of certificate regulation needed to permit natural gas pipelines to be built when and where needed to allow natural gas to play an effective role in containing the rise in imported oil?

Organization & Coordination

Policy, Planning and Analysis has the lead within DOE on this project. The FERC has jurisdiction over many of these issues. International Affairs and Energy Emergencies and the Economic Regulatory Administration have a deep interest in those issues related to Canadian imports.

Sensitivities

- The *take-or-pay* issue is very sensitive between producers and pipelines.
- Decontrol of natural gas prices was once a sensitive consumer issue but appears to have become less so because the market seems clearly to be driving natural gas prices. Consumers have enjoyed low gas prices for several years.
- Some high-cost gas producers may oppose decontrol because it will make it more difficult for them to continue to get the higher than market prices for their gas.
- The FERC Chairman is a key player and has strong feelings about many of these issues.

Status, Deadlines, Next Steps, and Milestones

There are no key events scheduled other than the myriad orders and rulemakings issued by the FERC.

Oil Pipeline Deregulation

Issue/Concern

Most of the oil pipeline industry operates under competitive conditions that would justify deregulation of part, but not all of the industry.

The issue is to adopt a regulatory scheme that accommodates the *competitive* pipelines but continues to regulate *noncompetitive* pipelines.

Background

In 1987, the Administration proposed legislation that would deregulate about 150 oil pipelines and continue to regulate the 5 to 10 pipelines that monopolize certain markets. Congressmen Synar (D-OK) and Fields (R-TX) introduced legislation advocated by the oil pipeline industry that would price deregulate all oil pipelines. A hearing on these bills were held on March 30 before the House Subcommittee on Energy and Power.

Both before and after the hearing, representatives of the oil pipeline industry met with representatives of the Departments of Energy and Justice, the Office of Management and Budget, and the Federal Energy Regulatory Commission to develop a consensus on how pipelines with monopoly power should be regulated.

On September 7, 1988, DOE sent a new Administration bill to Congress that was endorsed by the oil pipeline industry. The bill was coordinated with several key interest groups that in the past have been concerned with the consequences of deregulating oil pipelines.

Organization & Coordination

Policy, Planning and Analysis has the lead on this project. The Office of Competition, in Congressional, Intergovernmental and Public Affairs, is very knowledgeable on oil pipeline issues. Fossil Energy has a minor interest because of the Naval Petroleum Reserve.

Sensitivities

Oil Pipeline Industry: Because of an adverse court ruling, the industry faces a very uncertain regulatory future at the FERC and thus would like to see progress on some form of legislation.

Shippers: Because this issue was long perceived as dormant, many shippers are not aware of the recent movement in favor of compromise legislation. Meetings have been held with various segments of the shipping community to explain the areas of consensus and to discuss concerns they might have on the new approach.

Vice President's Task Force on Regulatory Reform: Oil pipeline deregulation is on the Task Force's list of recommended actions. The Task Force has been involved in the progress on this issue.

FERC Chairman: The FERC Chairman has stated her position in favor of a legislative solution, thereby relieving FERC of the difficult job of implementing the court decision.

Status, Deadlines, Next Steps, and Milestones

There are no key events scheduled.

Energy Tax Policy

Issue/Concern

What is the impact on U.S. oil production of the U.S. oil and gas tax and fiscal system?

Background

The U.S. has lost approximately 1 million barrels per day of crude oil production since 1985. At \$20 per barrel this represents approximately \$7.5 billion per year in lost production revenues, capital that could be reinvested to replace U.S. reserves. Many believe that cost effective modifications of the U.S. oil and gas tax and fiscal system can ameliorate the problem. Bills are continually introduced that propose to modify the current system of energy taxation. Currently no bills are under serious consideration. However, if crude oil prices remain at current levels, energy tax issues may emerge during the first session of the 101st Congress, possibly as early as spring 1989.

Organization & Coordination

The Office of Policy Planning and Analysis has recently reestablished an Office of Energy Tax Policy. Within DOE, energy tax policy issues have in the past been analyzed by individual program or policy offices on an "as needed" basis.

Currently there is no other governmental entity that is charged with the responsibilities of analyzing energy tax policy issues within the context of U.S. energy policy.

Sensitivities

- There are numerous Congressional committees and Executive departments charged with the analysis of U.S. tax policy. There may be numerous instances in which energy policy and equitable and efficient energy tax policy conflict with maximum short term collection of tax revenues.
- DOE's analysis of foreign oil and gas tax and fiscal regimes will create certain issues with foreign policy implications.

Status, Deadlines, Next Steps, and Milestones

- The Office of Policy Planning and Analysis is completing an analysis of the structure and economic impact of the U.S. and seven foreign oil and gas tax and fiscal systems.
- The first phase of the study will analyze the structure and the micro and macroeconomic impact of the U.S. oil and gas tax and fiscal system and is currently scheduled for completion by November 15, 1988.
- The first phase of the study will also analyze the numerous energy tax proposals that have been made in introduced bills, as well as those proposals that are likely to arise during the next round of energy tax debates.

Energy Targets

Issue/Concern

The President is required by the *Energy Security Act* to transmit to the Congress in February 1989 energy targets for net imports, domestic production, and end-use consumption for calendar years 1990 and 2000.

Background

Title III of the *Energy Security Act* requires in February of every odd-numbered year, that the President transmit to the Congress energy targets for net imports, domestic production, and end-use consumption for calendar years 1985, 1990, and 2000. This precedes the Act's requirement that in every even-numbered year the President transmit to the Congress a report regarding the *energy targets* submitted the preceding year. The legislation anticipated that the Administration would use the *energy targets* to guide decisions about energy programs and policies. The first *energy targets* and report on the targets were submitted in 1981 and 1982, respectively.

Organization & Coordination

The Office of Policy, Planning and Analysis has programmatic lead. Before transmission to the President for his approval and subsequent transmission to the Congress, review and concurrence are required by the Secretary, the Deputy Secretary, the Under Secretary, General Counsel, the Office of Management and Budget, and the Assistant Secretaries for Congressional Affairs, Conservation and Renewable Energy, Fossil Energy, International Affairs, and Nuclear Energy.

Sensitivities

DOE has consistently opposed the legislative requirement to use *energy targets* to guide decisions about energy programs and policies. The targets and the report on the targets have always reflected the market approach as the major determinant of national energy policy. Neither the energy industry nor other outside interest groups have demonstrated any significant interest in setting *energy targets*.

Status, Deadlines, Next Steps, and Milestones

December 15, 1988	Complete energy targets.
January 6, 1989	Complete concurrence process.
January 13, 1989	Complete Executive Secretariat review.
January 31, 1989	Complete review by principals.
February 2, 1989	Transmit energy targets to the Congress (<i>Statutory deadline</i>).

Oil and Gas Leasing of the ANWR Coastal Plain

Issue/Concern

Is leasing of the coastal plain of the Arctic National Wildlife Refuge (ANWR) for oil and gas activities important for fulfilling U.S. energy needs?

Background

The *Alaska National Interest Lands Conservation Act of 1980* set aside a 19 million acre Arctic National Wildlife Refuge in the northeast corner of Alaska. Because of indications of large oil and gas deposits along the 1.5 million acre coastal plain of the Refuge, however, Congress directed the Department of the Interior to study the coastal plain's resources and environment and to make recommendations on how best to manage the area. The Interior Department report, which was sent to Congress in 1987, described the ANWR Coastal Plain as the most promising known prospect for a major new oil and gas discovery in the United States, holding as much as 9 billion barrels of recoverable oil reserves as well as large (but not economically recoverable) natural gas resources. The Secretary of the Interior recommended that Congress open the area to leasing for environmentally sound oil and gas activities. President Reagan reiterated this position in his May 6, 1987, recommendations on energy security.

Congress considered a number of bills concerning this issue during 1988, but no decision was made. Several bills would have prevented leasing by designating the area as "wilderness", whereas other bills would have opened the area for leasing. By the summer of 1988, two pro-leasing bills were advancing. The Senate Committee on Energy and Natural Resources reported out a bill to allow leasing, but the bill never received floor consideration. In the House, the Merchant Marine and Fisheries Committee reported out a similar bill, which was referred to the House Committee on Interior and Insular affairs, where it stalled in the Energy and Environment Subcommittee.

Organization & Coordination

Any decision on ANWR must be made by Congress, although an Administration veto is possible. The Department of the Interior has been the lead agency on this issue. DOE's role has been to articulate the significance of ANWR's potential oil and gas reserves to the overall U.S. energy balance and to explain how development of these reserves fits into our national energy policy. The Office of Policy, Planning, and Analysis has taken the lead here, with important support from the Office of Congressional, Intergovernmental and Public Affairs and the Office of Conservation and Renewable Energy.

Sensitivities

There are wide differences in opinion on this issue. Many (e.g., the Sierra Club, National Resources Defense Council) believe that ANWR's Coastal Plain is a unique wilderness that should be preserved in its pristine state and that increased conservation and greater use of renewable energy would make its oil resources unnecessary, while others (namely, the Reagan Administration and the oil industry) believe that the need for secure, domestic oil supplies, particularly for our transportation sector, outweighs the environmental impacts of exploration and development, which in any case can be

mitigated. Despite support of the House leadership for a pro-leasing bill, political divisions and concerns prevented progress of a bill in the House. Compromise amendments were discussed in both Houses that would have delayed a decision pending the completion of a special energy policy plan that would rank various alternatives, putting "least cost" options before the costlier options. These amendments were rejected.

Status, Deadlines, Next Steps, and Milestones

Congress can be expected to take up this issue again in 1989. Hearings involving DOE witnesses are possible. Because it takes ten years or more to develop Arctic oil resources, it is important to make an early decision on leasing if ANWR is to be developed early in the 21st century.

Public Utility Holding Company Act

Issue/Concern

Should the *Public Utility Holding Company Act* (PUHCA) be repealed or amended?

Background

PUHCA was enacted in 1935 to correct abuses in the management and financing of public utility holding companies in the 1920s. It accomplished these objectives by subjecting interstate utility holding companies to stringent oversight regulation by the Securities and Exchange Commission (SEC). Many utility analysts today regard PUHCA as an anachronism that inhibits economic reorganization of the electric utility industry. Advocates of this view assert that the Federal Energy Regulatory Commission (FERC) and state public utility commissions (PUCs) are amply capable of protecting the public interest. The Administration, with support from the SEC and the industry, tried unsuccessfully in the early 1980s to obtain repeal or substantial amendment of PUHCA. A major reason for the failure of the legislation was a lack of clear support from state regulators. The FERC has proposed to establish a new category of non-utility entities called *independent power producers (IPPs)* which would not be subject to traditional rate regulation. However, IPPs would still be subject to PUHCA, and PUHCA could prevent many prospective producers from entering the electricity market as IPPs. The Edison Electric Institute recently proposed amendments to exempt IPPs from PUHCA.

Organization & Coordination

The Office of Policy, Planning and Analysis (PE) has traditionally had the lead on electric utility rate regulation issues, and has a study in process reviewing the options for modifying PUHCA. General Counsel also has an interest in PUHCA issues.

Sensitivities

- Most investor-owned electric utilities probably favor easing PUHCA's constraints.
- Most municipal or public-owned utilities probably oppose such changes.
- Consumer organizations are also likely to be opposed.
- The current views of the Congress and state regulators are unclear.

Status, Deadlines, Next Steps, and Milestones

The prospects for final rules from the FERC on IPPs are very uncertain. However, if the FERC acts to facilitate IPPs, this will probably trigger a major effort by the utility industry and other prospective IPPs to modify PUHCA.

Alternative Transportation Fuels

Issue/Concern

Alternative transportation fuels policy

Background

The 1987 analysis *Energy Security: A Report to the President of the United States*, proposed, and DOE has undertaken, a comprehensive assessment of the costs and benefits of alternative fuel use in transportation. DOE has so far issued three progress reports. The assessment's analyses of costs are to be completed by December 1988. Congress recently enacted The *Alternative Motor Fuels Act of 1988*, which calls for corporate average fuel economy incentives to manufacturers of alternative fuels vehicles; for purchase of such vehicles by the Federal Government; for testing and study of truck and bus engines operating on alcohols and compressed natural gas; and for a variety of other studies. The legislation authorizes \$18 million over fiscal years 1990-1993.

Organization & Coordination

- Policy Development Oversight: Office of the Under Secretary.
- Policy Coordination: Office of Policy, Planning and Analysis (PE), Office of the Assistant Secretary for Conservation and Renewable Energy (CE), Office of the Assistant Secretary for Environment, Safety, and Health (EH), Office of the Assistant Secretary for Fossil Energy (FE)
- Programmatic Lead: PE
- Program Offices involved in analyses: CE, EH, FE.

The Senate Government Affairs Committee and the House Committee on Energy and Commerce have been closely following DOE's Assessment and will carefully review any future policy recommendation. The new legislation formalizes Congressional oversight of this issue. Also monitoring DOE's analytical work are the petroleum and gas industry, the renewable fuels and coal industries, and State and local jurisdictions planning use of alternative fuels as a means of complying with Clean Air Act provisions.

Status, Deadlines, Next Steps, and Milestones

October 1988	Release of DOE's fourth report on the Cost/Benefit Assessment
October 1988	Commitment of resources to undertake the <i>benefits</i> portion of the Assessment
December 1988	Release of DOE's fifth report
As needed	Evaluation of alternative fuels policy options

National Energy Policy Plan VII

Issue/Concern

The 1989 National Energy Policy Plan (NEPP VII)

Background

Title VIII of the *Department of Energy Organization Act* requires the submission to Congress, on a biennial basis, of a National Energy Plan. The plan must include:

- Data and analysis to support the objectives, resource needs, and policy recommendations contained in the Plan.
- An estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs economically and consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives.
- An evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation.
- A summary of research and development efforts funded by the Federal Government to forestall energy shortages, reduce waste, foster recycling, encourage conservation practices, and otherwise protect environmental quality, including recommendations for developing technologies.
- A review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purpose of the Plan.

Public hearings, including at least one in a rural area, are required as part of the NEPP preparation process.

Although due to the Congress by April 1 of odd-numbered years, extensions of that deadline have been routinely requested and granted. The last National Energy Plan submitted by DOE to Congress took the form of the 1987 assessment, *Energy Security: A Report to the President of the United States*.

Organization & Coordination

- Policy development oversight: Deputy Secretary/Assistant Secretaries.
- Programmatic Lead: PE

Sensitivities

The National Governors' Association, State and local governments, and virtually all energy industries, are active participants in NEPP development.

Status, Deadlines, Next Steps, and Milestones

April 1, 1989 Statutory due date for National Energy Policy Plan

**Key Issues
&
Upcoming Decisions**

**Office of
Civilian Radioactive Waste Management**

November 1988

Nuclear Waste Program Management & Operating Contractor

Secretarial Issue/Concern

What are the implications of the Department of Energy having a Management and Operating (M&O) Contractor in place this year for analysis, engineering, and licensing support for the repository and the Monitored Retrievable Storage (MRS) facility?

Background

The procurement process for the M&O contractor is nearing the point of contract selection, anticipated in late 1988. This contractor will be responsible for design and analysis of the overall Nuclear Waste Management System to ensure that the system is optimized and that the interfaces among the repository, Monitored Retrievable Storage (MRS) facility, and transportation elements are specified and controlled. The contractor will also be assigned specific responsibilities for the analysis, engineering, and licensing support of the repository and MRS facilities.

Organization & Coordination

The Office of Civilian Radioactive Waste has the lead for this issue with support from the Procurement Office. The Manager of the Nevada Operations Office will also assist the transition of work from existing contractors to the new contractor.

Sensitivities

Where some of the work now performed by existing contractors will be assigned to the M&O contractor, the existing contractors may be sensitive. These contractors include Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Sandia National Laboratory, and the United States Geological Survey.

Status, Deadlines, Next Steps, and Milestones

The M&O contractor for the Systems Engineering, Development, and Management of the Nuclear Waste Management System is expected to be selected in late CY 1988 and to start work in FY 1989. Resources must be deployed for an effective and efficient initiation of work by the M&O contractor.

If a letter contract is to be used, such a contract could be signed in late 1988 shortly after the award is announced and the contractor would begin work immediately. If a letter contract is not used, the contractor would not begin work until the second quarter of 1989 when negotiation of the final contract would be complete.

Nuclear Waste Program—Interactions with the Nuclear Waste Negotiator

Secretarial Issue/Concern

How can the Department effectively optimize its interactions with the Office of the Nuclear Waste Negotiator?

Background

The *Nuclear Waste Policy Amendments Act of 1987* (NWPAA) established the Office of the Nuclear Waste Negotiator (the Negotiator) to attempt to find a State or Indian Tribe willing to host a repository or Monitored Retrievable Storage facility. A technically qualified site is required and reasonable terms negotiated before DOE could proceed to develop such a volunteer site. Any proposed agreement reached by the Negotiator and a potential host State or Indian Tribe would need to be presented to the Congress and enacted into law before the agreement becomes effective. The Negotiator is to be nominated by the President and confirmed by the Senate. The NWPAA placed the Office of the Nuclear Waste Negotiator within the Executive Office of the President. However, recent Congressional action established the office as an independent office outside of the Executive Office of the President. The Negotiator has until January 1993 to complete work. The Negotiator has not yet been nominated.

Organization & Coordination

The Office of Civilian Radioactive Waste coordinates DOE interactions with the Office of the Negotiator. The Offices of General Counsel and Management and Administration also participate.

Sensitivities

The Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs have been active proponents for the appointment of the Negotiator as well as the Nevada delegation.

With regard to potential repository and Monitored Retrievable Storage site volunteers, there have been expressions of interest from a number of localities for an MRS facility. However, there have been mixed or negative reactions from the state governments.

Status, Deadlines, Next Steps, and Milestones

A Negotiator must be nominated and financial support arranged from the Nuclear Waste Fund. Technical support is also required. Funding arrangements require establishment of agreements with OMB and Treasury.

Nuclear Waste Program—Interactions with the Nuclear Waste Technical Review Board

Secretarial Issue/Concern

How can the Department maximize the effectiveness of its interactions with the Nuclear Waste Technical Review Board (NWTRB)?

Background

The *Nuclear Waste Policy Amendments Act of 1987* (NWPAA) established the NWTRB to evaluate the technical and scientific validity of activities undertaken by DOE's Radioactive Waste Management Program. The Congressional intent was to establish a mechanism to enhance confidence in the Radioactive Waste Management Program through technical review by an independent body of eminently qualified experts. Congress established the Board as an independent review body with 11 members appointed by the President that is to report at least twice a year to the Congress and the Secretary. The Board will continue to exercise its oversight role until one year after the repository begins receiving spent nuclear fuel.

The National Academy of Sciences, as required by the NWPAA, has nominated 38 individuals to the White House for the Board. No appointments have been made yet.

Organization & Coordination

The Office of Civilian Radioactive Waste coordinates the DOE interactions with the Board. The Offices of General Counsel and Management and Administration also participate.

Sensitivities

Members of Congress, especially the appropriations, authorization and oversight committees will be particularly interested in the work of the Board and how the DOE responds to their findings.

Status, Deadlines, Next Steps, and Milestones

The Department must be prepared to arrange financial support for the NWTRB from the Nuclear Waste Fund and to provide program information. Funding arrangements require establishment of agreements with General Services Administration, Office of Management and Budget and Treasury. The NWPAA specifies that the Board's first report shall be submitted by December 22, 1988.

Nuclear Waste Program—UNLV Participation in Licensing Support System

Secretarial Issue/Concern

How will the Department meet the requirement to place the Licensing Support System (LSS) at the University of Nevada, Las Vegas (UNLV)? How will the Department respond to the intent of Congress that the LSS should utilize a "supercomputer?"

Background

The FY 1989 *Energy and Water Appropriations Bill* directs the Department to place the Licensing Support System (LSS) currently being developed by DOE at the University of Nevada, Las Vegas (UNLV). The Act also directs DOE to negotiate a cooperative agreement with UNLV and provides up to \$6 million for the project.

The LSS is an electronic information management system containing material from DOE, its contractors, potential parties, interested governmental participants, and parties (Nevada) to the repository licensing proceeding. It is intended to provide document discovery during the licensing proceeding. The LSS was the subject of a negotiated rule-making by the Nuclear Regulatory Commission (NRC). The proposed rule was issued by the NRC on October 31, 1988.

The intent of Congress was that the LSS should utilize a supercomputer situated at the university. The system does not, however, require a supercomputer application, but rather a very large text processing and retrieval computer system. The Department has briefed the Appropriations Committee staff on the difference between the operational needs of the LSS and the operational capability of a supercomputer.

The Chairman of the Subcommittee on Energy and Water Development, Senate Committee on Appropriations, has written the Department on the supercomputer issue. His letter stated that "*... in addition to participation in the development of the LSS facility, the cooperative agreement was intended to provide UNLV with high performance computing capacity to support the computational needs of the nuclear waste program.*" A report was requested by December 15, 1988 addressing the additional computational needs of the program.

Organization & Coordination

The key DOE official in the decision process is the Director of the Office of Civilian Radioactive Waste Management

Sensitivities

Members of the Nevada Congressional delegation and the Senate Committee on Appropriations support the supercomputer concept, as well as placing the LSS at UNLV. UNLV itself and a group of industry leaders in Nevada support both the LSS and the supercomputer being installed there.

Status, Deadlines, Next Steps, and Milestones

DOE has been working with the university and has received a proposal from them for the LSS. The UNLV proposal is currently being evaluated by DOE. The evaluation and accompanying recommendations will be made early in FY 1989.

In response to the Chairman's request, DOE has begun a series of studies evaluating the scientific computational needs for the program and how they can be best met. The first study is a requirements analysis to be completed by December 15, 1988; a computer capacity analysis to support these requirements will be completed January 15, 1989. And finally, an analysis of the supercomputer at UNLV is due by February 15, 1989. The Chairman has been notified of this schedule.

Yucca Mountain Site Characterization Plan

Issue/Concern

Release of a Site Characterization Plan for Yucca Mountain.

Background

The *Nuclear Waste Policy Act* requires that DOE establish a plan for site characterization activities at the Yucca Mountain site and submit it to the Nuclear Regulatory Commission (NRC) and the State of Nevada for comment. Before sinking an exploratory shaft, DOE must hold public hearings in the vicinity of the site to inform the residents of the plan and receive their comments.

The plan was first issued as a *consultative draft* in January 1988 and comments received from several sources have been evaluated. State comments were received too late to be addressed in the same manner as those received from the NRC. The State of Nevada, before submitting comments, held that the consultative draft was incomplete and, therefore, could not be reviewed in the manner it should be. The Site Characterization Plan is scheduled to be released in December 1988. Hearings required by the Act will probably be held in Nevada in February or March 1989.

In addition to the public hearings, an outreach program has been established to prepare and distribute supplemental materials. Briefings for officials and the public will be held.

Organization & Coordination

The Office of Civilian Radioactive Waste Management has overall responsibility for the Plan, the outreach program, and regulatory interactions with the NRC. There is extensive participation by the Offices of General Counsel and Environment, Safety, and Health. Responsibility for preparing the Plan rests with the manager of the Yucca Mountain Project Office.

Sensitivities

The Plan will receive intense scrutiny from the NRC, Congress, and the State of Nevada. Public hearings will generate public interest and media coverage. The State can be expected to comment negatively as part of its overall strategy of opposing the repository.

Status, Deadlines, Next Steps, and Milestones

December 1988	scheduled release of Site Characterization Plan, followed by a 90-day comment period, required by law.
January 10, 1989 thru	
February 23, 1989	briefings for officials and the general public
March 1989	formal hearings in the vicinity of the site

Construction of Yucca Mountain Exploratory Shaft Facility

Issue/Concern

How will the Department obtain technical information needed to assess Yucca Mountain as a potential repository site?

Background

As a potential repository site, Yucca Mountain has to meet a variety of regulatory requirements to be shown to be suitable for repository construction. The exploratory shaft facility (ESF) will be a primary vehicle for deriving the needed technical information to make this assessment.

The exploratory shaft facility site was selected from among potential areas in the surrounding region on the basis of several technical factors. The exploratory shaft facility will provide access to the horizon level for the potential repository. The exploratory shafts will have depths of about 1,100 feet.

The facility will include testing rooms and over 10,000 feet of drifts which will allow for measurements and analysis to be made on the geologic strata and other significant characteristics of the site from the surface to the horizon level. These data will be used to address the key issues identified by the regulatory agencies and the OCRWM staff for assessing the viability of the site and designing the repository and waste package.

The State views the construction of the ESF as a major milestone that must be met in order for the repository to be located in Nevada. By its actions, such as delaying issuance of permits, the State is continuing to vigorously oppose the repository being located in Nevada.

The Department, on October 19, 1988, announced a five month delay (from 6/89 to 11/89) in the initiation of shaft construction for the ESF. The Department determined that the additional time was necessary to ensure that an adequate quality assurance program and decision control measures were in place.

Organization & Coordination

The Civilian Radioactive Waste Management Office is responsible for overall activities. The Yucca Mountain Project Office has on-site management responsibility.

Sensitivities

Since the Exploratory Shaft Facility construction is considered a major milestone by all interested and affected parties, the Nuclear Waste Technical Review Board, State of Nevada, Congress, industry, public, and local governments will all follow this activity closely.

Status, Deadlines, Next Steps, and Milestones

December 1988	Issuance of the Site Characterization Plan to NRC and State of Nevada
Undetermined	Receive Permits from the State of Nevada
March 1989	Public Hearings

May 1989	Begin Site Preparation
November 1989	Initiate Shaft Construction

Nuclear Waste Program Implementation of a Quality Assurance Program

Issue/Concern

When will the Department have a fully qualified Quality Assurance (QA) program in place?

Background

In order to receive a license from the Nuclear Regulatory Commission (NRC) for either the high-level radioactive waste repository or the Monitored Retrievable Storage (MRS) facility, or to receive certification for transportation casks, DOE is required to have a fully qualified QA program in place. The Office of Civilian Radioactive Waste Management is in the process of developing and implementing a QA program that will be accepted by NRC.

During the past year, the Department has devoted considerable effort to enhance its QA program. An Office of Quality Assurance was established to strengthen QA program direction and management control. Key baseline documents detailing QA program requirements and the QA program description have been approved by the Department and submitted to NRC. The Department has also actively engaged in prelicensing consultation with the NRC to identify and resolve issues.

Within the past several years, DOE's Yucca Mountain Project Office in Nevada has issued two separate sets of stop work orders to its contractors, not because of the lack of quality work but the lack of necessary procedures and processes to document quality work. Actions were immediately undertaken to correct the problems such as development of sufficient procedures and training of personnel. These stop work orders were subsequently alleged by the State of Nevada to be examples that the ongoing work was being performed in a "slipshod" manner and that DOE was not committed to protecting fully the public health and welfare.

Organization & Coordination

The Director, Office of Civilian Radioactive Waste Management, and the Director, Office of Quality Assurance, are the responsible program officials for the development and monitoring of the Quality Assurance program. All DOE and contractor employees are responsible for conducting their jobs in accordance with the QA program. The responsibility to achieve quality is a line function.

Sensitivities

Due to the critical importance of the QA function to the program's success, the subject has received heightened attention from NRC, the State of Nevada, and Congressional authorizing and appropriations committees. The results of QA audits may also periodically become an issue as the program moves to implement the QA program.

Status, Deadlines, Next Steps, and Milestones

The Department has committed to NRC to have a fully qualified QA program in place and accepted by the NRC prior to the start of new site characterization activities. Ad-

ministrative and technical implementing procedures and training of personnel in these procedures are required to support repository development initiatives. In addition, a comprehensive set of QA audits will be undertaken throughout the program to ensure compliance with the QA requirements.

Nuclear Waste Program Costs

Issue/Concern

DOE's estimates of the program costs have increased from \$23 billion in 1983 to \$33 billion in 1987. This has occurred despite declining projections of waste to be stored at a repository.

Background

DOE annually publishes its Analysis of the Total-System Life-Cycle Cost for the Civilian Radioactive Waste Management Program which helps determine whether the revenue-producing mechanism established by the Nuclear Waste Policy Act (i.e., fees from commercial generators of electricity from nuclear power plants and fees paid by DOE for radioactive waste produced by national defense activities) is sufficient to pay for the costs of the program. DOE currently collects a fee of one mill per kilowatt hour of electricity generated in commercial nuclear power plants. No costs of the program have yet been paid by DOE. (See Defense High-Level Waste Fee issue paper)

The first estimate, in 1983, established the cost of the program at approximately \$23 billion. The sixth annual evaluation of the adequacy of the fee is currently under development. The 1988 total-system cost for the program with two repositories and a Monitored Retrievable Storage facility is presently estimated to be between \$31 to \$32 billion (in constant 1987 dollars). The number will change slightly by the time the report is finalized in January 1989.

The Nuclear Waste Policy Amendments Act (NWPAA) substantially changed the program. The Department is to characterize one site instead of three, which led to a savings in the program of about \$5 billion. However, changes in data, work content and scope, and refinement of analytical techniques have increased the cost of the program by about \$4 billion. Thus, there is only a net decrease in total program costs of about \$1 billion from the 1987 estimate.

The total-system cost for a single-repository system is estimated at \$22.8 billion. This is a savings of \$8.3 billion from the two repository scenario. The single repository case is assumed for cost analysis purposes only; there are a number of technical and institutional issues that would have to be resolved before a single repository could dispose of all the waste that the analysis is based upon.

Organization & Coordination

The lead office is the Office of Civilian Radioactive Waste Management.

Sensitivities

The utilities that provide funding for the program, the National Association of Regulatory Utility Commissioners, the Edison Electric Institute/Utility Nuclear Waste Management Group, the Congressional oversight and appropriations Committees, and the General Accounting Office will be very interested in the 1988 estimates due to the changes in the program based on the NWPAA Amendments.

Status, Deadlines, Next Steps, and Milestones

January 1989

Publish the Total-System Life-Cycle Cost Report and the Annual
Fee Adequacy Report for 1988

Nuclear Waste Program Schedule

Issue/Concern

When will the Department be able to begin to accept spent fuel from utility customers?

Background

DOE, in the 1985 Mission Plan, originally committed itself to an aggressive, success oriented schedule to enable it to meet the requirements of the *Nuclear Waste Policy Act of 1982* (NWPA) to begin accepting spent fuel from utility customers in January 1998 at the first repository. However, by June 1987, DOE reported a five-year extension in the schedule from 1998 to 2003 in its Mission Plan Amendment. In addition, DOE, on October 19, 1988, announced that it was delaying the initiation of the construction of the exploratory shaft facility by five months from June 1989 to November 1989.

Most of the time extension occurs in the near term, during the site-characterization phase. The activities scheduled for this phase include the preparation and public review of the site characterization plan, the construction of the Exploratory Shaft Facility (ESF), underground and surface-based testing program, the preparation of the Environmental Impact Statement, and the development of the license application.

Organization & Coordination

Responsibility for scheduling is within the Office of Civilian Radioactive Waste Management.

Sensitivities

The utilities are very concerned about schedule changes due to the impact it may have on their operations. The Nuclear Regulatory Commission is interested in assuring that adequate time is provided for site characterization and licensing activities. The State of Nevada is also interested in the program schedule.

Status, Deadlines, Next Steps, and Milestones

DOE plans to issue a second Amendment to the Mission Plan in early 1989 that addresses the program schedule.

Interactions with Monitored Retrievable Storage Review Commission

Issue/Concern

The Monitored Retrievable Storage Review Commission's report to Congress on the need for an MRS facility as part of a national nuclear waste management system may have significant implications on the Department's ability to site and construct such a facility.

Background

The MRS Review Commission, established by the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), is a three-member commission appointed by the Congress that is to report to Congress in November 1989 on the need for an MRS facility as a part of a national nuclear waste management system. As part of their review they will analyze the status and adequacy of the DOE evaluation of the need for the MRS.

In March 1987, DOE proposed that Congress authorize construction of an MRS facility in Oak Ridge, Tennessee as an integral part of the nuclear waste management system to receive, handle, package, and dispatch spent fuel from U.S. nuclear power reactors. At the time, a city of Oak Ridge task force favored the proposal and endorsed it. The State of Tennessee, however, strongly opposed the facility on the grounds that it was not needed; it would have an adverse impact on the economic growth expected in that region; and it could become a de facto permanent storage facility. The NWPAA annulled the Department's proposal to site the facility in Tennessee but authorized DOE to redo the site selection and operate an MRS subject to specific conditions.

The MRS Review Commission is comprised of Alex Radin of Washington D.C., Prof. Dale Klein of Austin, Texas, and Prof. Frank Parker of Nashville, Tenn. The Department has made a number of presentations and continues to provide extensive background documents and information to them. Financial support for the MRS Review Commission has been arranged from the Nuclear Waste Fund.

Organization & Coordination

The Office of Civilian Waste Management coordinates departmental interactions with the MRS Review Commission. Until the MRS Review Commission submits its report to Congress and appropriate Departmental decisions are made, a lead Operations Office will not be designated.

Sensitivities

The MRS, without constraints on implementation, is strongly supported by the Senate Energy and Natural Resources Committee and nuclear utilities as offering a potential method for DOE to meet contractual obligations for the U.S. to begin removing spent nuclear fuel from crowded reactor fuel storage pools by a relatively early and certain date. Other groups are opposed, concerned that MRS would divert resources from or become an alternative to permanent disposal in a repository. While there has been continuing expressions of interest from local communities, there has also been a mixed or negative reaction from the state governments.

Status, Deadlines, Next Steps, and Milestones

The Monitored Retrievable Storage Review Commission's report to Congress is due November 1989. The Department has provided program information as required and is prepared to advise the Commission on major policy and technical considerations regarding the continued desirability of an MRS under numerous operational scenarios.

Licensing of Permanent Geologic Repository

Issue/Concern

What is the importance the Nuclear Regulatory Commission's (NRC) licensing process for the permanent geologic repository?

Background

The Nuclear Waste Policy Act of 1982, as amended, specifically stipulates that DOE shall obtain from NRC a license to operate the repository. This is a unique arrangement (DOE as applicant with NRC as regulator), since DOE is otherwise exempted from NRC's licensing requirements. The NWPA requires specific pre-licensing interactions between DOE and NRC (such as review of DOE's Site Characterization Plan) but makes no special provisions for a general pre-licensing consultation process.

The NWPA mandates that NRC shall issue a license to DOE within three years of their acceptance of the license application, with the provision that this may be extended by one year. Since the new regulations have not been applied before, there are a significant number of precedents, both technical and programmatic, to be established. For example, to facilitate an orderly communications process between the two Federal agencies, DOE and NRC entered into a Memorandum of Understanding which governs the details of information exchange occurring prior to license application.

To facilitate the three year license review schedule, NRC has worked with DOE to implement a centralized information system, the Licensing Support System, to accommodate the information needs of all parties to the legal proceedings, and to minimize the usual schedule impacts resulting from the legal process.

Organization & Coordination

The Secretary for Energy will be the applicant for the repository license to be issued by the NRC.

The Director, Office of Civilian Radioactive Waste Management, is responsible for the conduct of all activities required to obtain the license from NRC.

Sensitivities

During the pre-licensing phase, the NRC must maintain a posture of objectivity while providing DOE with regulatory guidance on technical and procedural matters affecting the license. Edison Electric Institute/Utility Nuclear Waste Management Group, however, believes that DOE is too responsive to the Nuclear Regulatory Commission staff comments and requests during pre-licensing period.

Status, Deadlines, Next Steps, and Milestones

For the Pre-Licensing Phase, DOE will submit the Site Characterization Plan to NRC in December 1988. The NRC will be requested to provide comments on the plan by April 1989.

Transportation of Radioactive Wastes

Issue/Concern

How is the Department responding to concerns from the public about the transportation of radioactive materials ?

Background

Although the safety record over the past 40 years has been excellent, public concern over transportation of radioactive materials remains a potentially contentious issue since these materials will be transported through nearly all states in the contiguous lower 48 states. The concerns are manifested in the sub-issues of routing and emergency preparedness. Concerns exist now even though shipments are not expected to begin until after the turn of the century.

Because routing and emergency preparedness are both highly visible public issues, they have been addressed in the public arena. Both issues have been discussed at periodic DOE sponsored Transportation Coordinating Group (TCG) meetings, and other public meetings.

States and Indian Tribes in so called "Corridor" States (i.e., those States and Tribes through whose jurisdictions spent fuel will be transported) have pressed for early involvement and funding in order to participate in the program. At this time, the Department has not identified specific routes (either rail or highway). No final site selection has been made for either a repository or a Monitored Retrievable Storage facility and initial shipments will probably not begin until 2003.

Organization & Coordination

The direction of the Transportation Program is the responsibility of the Director, Office of Civilian Radioactive Waste Management. Major aspects of the program are handled by the Chicago and Idaho Operations Office. The Office of Defense Programs is responsible for transportation of radioactive materials used in the nuclear weapons program and closely coordinates with the civilian radioactive waste program.

Sensitivities

State of Nevada officials have requested DOE to designate routes through Nevada in anticipation of selection of the Nevada site. The Western Governors' Association, the National Governors Association, and the National Conference of State Legislators have expressed its concerns about transport of radioactive waste. Various state representatives have requested training funds be allocated much earlier than DOE's recommended 3-5 years before shipping begins.

Status, Deadlines, Next Steps, and Milestones

The next transportation meeting, scheduled for December 7-8, 1988, will include a one day seminar devoted to routing regulations. The issue of funding "Corridor" state and tribal participation and the level of involvement in the program will not be decided at that meeting. However, funding and participation is a live issue that the program must address in the near term.

Defense High-Level Waste Fee

Issue/Concern

Since this Nation will dispose of both commercial spent nuclear fuel and defense high-level waste in the same repository, what will be the arrangement for sharing the cost of disposal?

Background

On April 30, 1985, the President instructed the Secretary of the Department of Energy to proceed with arrangements for emplacement of Defense High-Level Waste in the commercial repository developed by the Department.

On December 2, 1986, the Department published a Notice in the *Federal Register* describing a methodology for sharing the costs of the program between national defense activities funded in the Defense Programs (DP) budget and commercial waste generators budgeted under the Nuclear Waste Fund. In August 1987, the Department published a *Federal Register* notice describing a revised methodology for sharing costs of the program between national defense activities and commercial waste generators. The methodology is to be included in a Memorandum of Agreement (MOA) being jointly developed by Defense Programs and Office of Civilian Radioactive Waste Management. The primary purpose of the MOA is to describe the payment schedule, but development of the MOA has been stalled.

Edison Electric Institute and the National Association of Regulatory Utility Commissioners filed law suits against the Department charging that the Department's actions are unfair to the utility industry and its customers principally because the Department did not follow formal rulemaking procedures in preparing the methodology and the DP share of costs is too low. In May 1988, hearings were held before the Circuit Court of Appeals for the District of Columbia. The Court ruled that the suit was "not ripe for review" because the methodology had not yet been used to determine an actual cost share. The utilities have also complained about the fact that they have been paying into the Nuclear Waste Fund for years and DP has not yet contributed to program costs and there is still no schedule for DP payments.

For the FY 1989 budget submission OMB objected to including funds in the DP budget prior to receipt of disposal services. DOE included no money in the FY 1990 DP budget submission to OMB for payments into the Waste Fund.

Organization & Coordination

The lead office for the preparation of the MOA is the Office of Civilian Radioactive Waste Management.

Sensitivities

Utilities have paid approximately \$3.5 billion into the Nuclear Waste Fund, while no payments have been made by the Department for defense disposal. Continued lack of defense payments could trigger additional lawsuits by the utilities. The Government Accounting Office strongly suggested that the payment schedule be put in place.

§175 Report to Congress on the Yucca Mountain Site

Issue/Concern

The Secretary is required by the Nuclear Waste Policy Act of 1982, as amended, to report to Congress on the potential impacts on the State and surrounding counties of locating a repository at the Yucca Mountain site and to provide recommendations for the mitigation of any such impacts. The report is due 12/22/88.

Background

Section 175(a) of the NWPA, as amended, directs the Secretary of Energy to report to Congress, within one year of the enactment of the Amendments Act, on the potential impacts of locating a repository at the Yucca Mountain site and on the Secretary's recommendations for the mitigation of such impacts. Much of the language contained in §175 was drawn from a resolution passed by the Nevada State Legislature.

Organization & Coordination

The Director, Office of Civilian Radioactive Waste Management, is responsible for the Report.

Sensitivities

Requests have been received from the State of Nevada and Lincoln County to review the report prior to its submission to Congress. These requests remain under consideration.

The Section 175 Report will be of considerable interest to the State of Nevada, affected local governments and the general public in as much as it will discuss the potential impacts of the repository in Nevada and the Department's recommendations for mitigation.

Nevada is in the process of preparing its own socio-economic impact statement, which will differ from that of DOE.

Status, Deadlines, Next Steps, and Milestones

The Section 175 Report will be submitted for final DOE concurrence on November 28, 1988 and the final report is expected to be sent to Congress on December 22, 1988.

Payments-Equal-To-Taxes Rulemaking

Issue/Concern

Should the Department proceed with a rulemaking to establish a mechanism to make payments-equal-to-taxes (PETT) for the Yucca Mountain, Nevada, and Hanford, Washington sites?

Background

The *Nuclear Waste Policy Act*, as amended, requires the Secretary to make payments to affected States, Indian Tribes and units of local government equal to the taxes they would be entitled to if authorized to tax site characterization activities at the site.

Based on the *Nuclear Waste Policy Act*, the State of Washington and Benton County, Washington, are entitled to PETT for the period May 28, 1986, through December 22, 1987 (date of enactment of the *Nuclear Waste Policy Amendments Act* which dropped the Washington site from consideration). After payments are made to Washington State and Benton County, WA, only the State of Nevada and Nye County, NV will continue to receive PETT payments.

The Department has met with the affected parties on five specific occasions over the past two years to discuss the PETT issue. It was further discussed in quarterly program status meetings open to the affected parties. The issue where the Department and the affected parties are farthest apart is the definition of "site", which will directly affect the size of the payment.

In February 1987, the Department issued draft PETT and financial assistance guidelines to the affected parties for comment in preparation for a rulemaking. That effort was suspended upon passage of the Amendments Act. In March 1988 a determination was made to proceed with a rulemaking based upon the need to ensure consistency of application of the PETT provisions. A proposed rule is in preparation.

At an August 1988 meeting, the Department was presented with a letter from the Governor of Washington indicating his opposition to a rulemaking for PETT and suggesting negotiations on the issue as an alternative. Subsequently, the Department has received a letter from the Washington Congressional delegation expressing opposition to the rulemaking and urging the Department to enter into negotiations with the State.

The Department has recently received requests for payment of PETT from the State of Washington and various local governments that total \$67 million.

Organization & Coordination

The rule would be issued by the Director, Office of Civilian Radioactive Waste Management with the concurrence of the Secretary. The Office of General Counsel has significant involvement as does the Program Manager, Yucca Mountain Project Office and Richland Operations Office.

Sensitivities

All affected State and local governments will oppose a rulemaking on PETT. The nuclear utilities will support restraint in computing PETT payments.

Status, Deadlines, Next Steps, and Milestones

In light of the Governor's and the Washington State Congressional delegation's request to negotiate on the issue, a decision must be made on whether to proceed with the rule-making.

General Accounting Office Audits of Nuclear Waste Program

Issue/Concern

The nuclear waste program is subject to continual auditing by a GAO team located in the Department of Energy Headquarters Building. Although there are currently no unresolved issues two new reports have been completed that require a response. These reports are: (1) "Nuclear Waste: Fourth Annual Report on DOE's Nuclear Waste Program;" and (2) "Nuclear Waste: Repository Work Should Not Proceed Until Quality Assurance is Adequate."

Background

The Nuclear Waste Policy Act (NWPA) of 1982 mandates an annual audit of the nuclear waste program by the GAO. In addition, special audits of aspects of the program have been requested by members of Congress, and GAO may undertake audits on its own initiative. Also, a quarterly status report on the program is issued by GAO in response to a March 1984 request from the Senate Committee on Energy and Natural Resources.

The Fourth Annual Report on DOE's Nuclear Waste Program was issued September 28, 1988. This report contains one recommendation for DOE action, to provide the MRS Review Commission with new analyses on the benefits of a Monitored Retrievable Storage (MRS) facility. The mandated DOE response to Congress is due November 28, 1988. DOE plans to concur with the GAO recommendation.

The special audit of the quality assurance program was conducted in response to a request from the Chairman, Subcommittee on Energy and Power, House Committee on Energy and Commerce. The recommendations are that DOE not proceed with site characterization work until its quality assurance program is accepted by the Nuclear Regulatory Commission (NRC) and that procedures to ensure that issues are resolved be incorporated in the pre-licensing consultation agreement. DOE concurs in the first recommendation but believes the second may be inappropriate. The response to Congress will be due in late December.

The latest quarterly status report is as of June 30, 1988. The quarterly reports have been consistently factual and noncontroversial.

Organization & Coordination

The Office of Civilian Radioactive Waste Management is responsible for responding to GAO reports regarding the program.

Sensitivities

GAO's fourth annual audit contains a "Matter for Congressional Consideration," suggesting the Congress may wish to explore with DOE the advantages of earlier and more complete characterization on the secondary rock formations at Yucca Mountain to determine if additional capacity for disposal exists beyond the currently defined primary area. DOE does not consider it appropriate to express an opinion in this matter.

Status, Deadlines, Next Steps, and Milestones

November 28, 1988 DOE response to Congress on Fourth Annual Audit is due

December 29, 1988 The DOE response to Congress on Quality Assurance Audit is due

**Key Issues
&
Upcoming Decisions**

**Bonneville Power
Administration**

November 1988

Access to BPA's Portion of the Pacific Northwest-Pacific Southwest Intertie

Issue/Concern

BPA's Intertie Access Policy (IAP) specifies the terms and conditions for gaining access to BPA's portion of the Pacific Northwest-Pacific Southwest Intertie. The policy is being challenged in court on the basis of its rate implications, Intertie access priorities, and its impact on competition.

Background

BPA initiated an Interim Intertie Access Policy in 1984, and pursued broad public involvement both then and during the development of a Long Term Intertie Access Policy. The Intertie Access Policy provides for an 18-month experiment designed to increase competition among non-Federal Northwest utilities in the short-term power market. The final Intertie Access Policy was issued and became effective in May 1988. The program is scheduled to begin January 1989.

The Intertie Access Policy reflects a carefully constructed balance of interests among various utilities and utility groups in different regions, as well as among BPA customers and interest groups. This policy has considerable support. BPA believes the best course for all parties is to proceed with the 18-month experiment to test the balance of benefits.

However, both the Interim and Long Term IAPs have been challenged in Federal court.

Under the U.S./Canada Free Trade Agreement, Canadian electric utilities would enjoy marketing rights vis-a-vis BPA and the Intertie Access Policy comparable to non-Northwest U.S. utilities.

Organization & Coordination

The Intertie Access Policy development has been overseen by the Deputy Secretary. Its legal status is monitored by the Office of General Counsel.

Sensitivities

The interests—in general concerning transmission access priorities and price competition—of California utilities, State regulatory agencies, and Congressional members have been expressed at congressional hearings and through correspondence. British Columbia entities have also evinced an interest in the Intertie Access Policy, which is specifically addressed in the U.S./Canada Free Trade Agreement.

Status, Deadlines, Next Steps, and Milestones

The length of court deliberations is uncertain. There is also the potential for congressional action in regards to pricing, access priorities, and power reliability

Improved Coordination of Columbia River

Issue/Concern

A study is being done by BPA and British Columbia Hydro and Power Authority (B.C. Hydro) to improve coordination of Columbia River hydroelectric production.

Background

BPA and B.C. Hydro currently have a Non-Treaty Storage Agreement which sets guidelines for river and reservoir levels and fluctuations, hydraulic criteria, operating controls, and storage arrangements. The joint study being done now is based on expanding the Agreement in scope and extending it for 10 years.

Improved coordination of the river's use could generate several hundred additional megawatts of firm power under critical water conditions. The public utility operators of 5 mid-Columbia hydroelectric dams and their participants are involved in the study development.

Completion of system operations studies is expected by November 1988 and will be followed by negotiations with B.C. Hydro and Mid-Columbia project owners and participants.

Organization & Coordination

An Environmental Assessment and Finding of No Significant Impact will be submitted to the Office of Environment, Safety, and Health in early 1989.

Sensitivities

These studies and negotiations will be monitored by environmental groups and Indian tribes, especially with regard to potential impacts on fish and wildlife. They will also be of interest to surplus power users, including California utilities and BPA's direct-service industrial customers.

Status, Deadlines, Next Steps and Milestones

Initiation of public involvement program is scheduled for October 1988. This involves briefings for utilities and other constituents on environmental criteria to be addressed in the study.

BPA's 1989 Rate Review

Issue/Concern

The 1989 review of BPA's wholesale power and transmission rates could lead to rate adjustments for fiscal years 1990 and 1991.

Background

Current BPA rates took effect on October 1, 1987, for a 2-year period. The average increase in the wholesale priority firm power rate was 7.7 percent. This rate increased 5.8 percent for direct sales to preference customers—from 2.23 cents per kilowatt-hour to 2.36 cents per kilowatt-hour. Retail electric rates in the Pacific Northwest are about one-half the national average.

The rate review will be conducted through the quasi-judicial process specified in the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act).

Organization & Coordination

The environmental documentation will be coordinated with the DOE Office of Environment, Safety, and Health. The Deputy Secretary or his/her designate will be kept apprised of developments in the Rate Case.

Sensitivities

No rate increase is popular, and BPA will be under public pressure from its customers and other interests to hold down its costs and to propose zero-increase rates.

Status, Deadlines, Next Steps and Milestones

If a 1989 rate adjustment is necessary, BPA plans to publish its Initial Rate Proposal for FYs 1990-91 in late February 1989. The formal hearing process will continue through June and a Record of Decision will be issued by BPA in late July 1989. The final rate proposal will be submitted to the Federal Energy Regulatory Commission for final approval, with a request for interim application beginning October 1, 1989.

Refinancing Washington Nuclear Projects

Issue

Redeeming or refinancing bonded indebtedness for Washington Nuclear Projects.

Background

Under net-billing agreements signed in the 1970s, BPA underwrites more than \$6 billion in revenue bonds issued by the Washington Public Power Supply System (Supply System) for the construction of three large nuclear plants in Washington State. One of these projects has been operating since 1984; the other two are unfinished and in a preservation mode.

About \$2 billion of the bonds have interest rates of 13-15 percent. Nearly \$1.5 billion of these are callable in 1991-92, with another block becoming callable in 1996-97. Redeeming or refinancing the \$2 billion of high-interest bonds could save BPA \$100 million a year.

In consultation with other parties, BPA has developed three broad approaches for reducing Supply System debt service. These include: conventional refinancing of the bonds with new bonds at lower interest rates issued by the Supply System; redeeming the bonds with funds which BPA customers provide by prepaying their power bills; and redeeming the bonds with funds from BPA revenues.

An additional vehicle under conventional refinancing is the purchase of bond insurance, which would help foster market acceptance of new Supply System Bonds. Such acceptance should be aided by Supply System and utilities pending settlements of bondholder claims in a major securities fraud litigation.

Organization & Coordination

The Deputy Secretary and General Counsel will be kept informed.

Sensitivities

This issue is controversial in that numerous BPA customers are opposed to any initiative which could raise near-term rates regardless of its long-range benefit to ratepayers.

Status, Deadlines, Next Steps, and Milestones

A preliminary decision on a redemption/refinancing plan will be made by BPA in consultation with DOE and other parties in February 1989. In March 1989 a financial plan will be presented at BPA's annual budget hearings before Congress.

Key Issues
&
Upcoming Decisions

Western Area Power
Administration

November 1988

Drought Impact

Issue

Impact on power customers of the Western Area Power Administration (WAPA) should drought conditions continue in the West.

Background

WAPA markets electricity from Federal hydroelectric plants in the Sacramento, Colorado, Rio Grande, and Missouri River basins. Hydroelectric generation was about 87 percent below its normal level for (FY) 1988, due to drought conditions in the West. The effects of the drought were compounded by record high temperatures and correspondingly high demands for electricity.

To meet its contract obligations WAPA was forced to purchase high-cost power from other sources. However, reservoir carryover storage is currently less than 90 percent of normal raising concerns about meeting contract obligations during FY 1989 and FY 1990 should the drought continue.

WAPA submitted language to clarify its authority to use its Emergency Fund for power purchases during periods of below-normal hydropower generation as part of its FY 1990 budget request.

Organization & Coordination

WAPA's Administrator has programmatic lead. Any reprogramming or supplemental appropriations requires the concurrence of the DOE Controller.

Reprogramming of funds would require the approval of OMB and the appropriate Congressional committees. Supplemental appropriations would require authorizing legislation.

Sensitivities

Competition over the use of the rivers and reservoirs between power interests, irrigation, navigation, recreation, and environmental interests is an ongoing issue. This year the conflict was compounded by drought conditions. Congressional action may be invoked. Customers may file suit if WAPA is unable to meet its contract commitments for power deliveries, although WAPA is contractually protected from liability in such an event.

Status, Deadlines, Next Steps, and Milestones

In the event of insufficient funds, to cover the higher level of PP&W activity required for FY 1989 and 1990, WAPA has three options: to request reprogramming of funds from WAPA's other activities to PP&W; to use WAPA's Emergency Fund; or to request supplemental appropriations.

California-Oregon Transmission Project

Issue

Whether construction of the California section of a third high-voltage alternating current (AC) transmission line between the Pacific Northwest and California will proceed expeditiously.

Background

In 1984, Congress authorized the Secretary of Energy to construct or participate in the construction of the Third AC Intertie Project—a 346-mile, 500-kV transmission line from the California-Oregon border area to central California and associated reinforcements to the transmission system in the Pacific Northwest. A plan was developed in which DOE's Bonneville Power Administration (BPA) and Western Area Power Administration (WAPA)—together with non-Federal entities—would jointly finance and manage construction of the Project. The estimated cost of the project in California is \$433 million.

The Third AC Intertie would add approximately 1600 megawatts (MW) of transmission capability to the existing Intertie system. This will provide significant economic benefits and increase the reliability of the transmission grid in the western U.S. A recent economic analysis of the project calculated its net present value to be \$660 million for economy sales alone. Including firm capacity sales of 600 MW increases the net present value to nearly \$1 billion. WAPA is one of 32 utilities participating in the California part of the project, and will receive a 6.25-percent (100 MW) share for use by the DOE Laboratories and wildlife refuges in California.

Participation applications by three investor-owned utilities have been refused by the California Public Utilities Commission until they resolve a key transmission access dispute. The dispute has already delayed the project's in service date by two years.

The authorizing legislation directed the Secretary to proceed promptly should any of the participating entities refuse to cooperate or otherwise act to delay construction of the new line.

Organization & Coordination

The Administrators of WAPA (for the California section) and BPA (for the Pacific Northwest section) have the programmatic lead. The Secretary or Deputy Secretary must make the final decision whether to continue the project without the three utilities in question.

No interagency coordination is called for unless funding is required, in which case OMB and Congressional approval must be sought.

Sensitivities

Various private landowners and timber companies have objected to the line routing in northern California and have contacted their Congressmen.

The Chairman of the House Energy and Commerce Committee has initiated a General Accounting Office (GAO) study of the Pacific Northwest section of the Intertie. The GAO study suggested that the feasibility of a smaller, 800 MW, Intertie be examined. The Committee has requested BPA's views on this suggestion.

Status, Deadlines, Next Steps, and Milestones

No action-forcing events are imminent, but DOE must eventually consider whether the benefits of the Intertie to the western U.S. and to DOE's laboratories, coupled with a clear signal of Congressional intent to keep the project moving, justify a more active role by the Department in getting the California segment of the Intertie built.

Tracy-Livermore Transmission Line

Issue

Should DOE continue to construct a Federally owned transmission line to serve Lawrence Livermore National Laboratory (LLNL)—a major DOE weapons laboratory?

Background

LLNL purchases its electric power primarily from the Western Area Power Administration (WAPA) with supplementary power provided by Pacific Gas and Electric Company (PG&E). However, the only transmission lines to LLNL are owned by PG&E. Therefore, WAPA must wheel power to the laboratory over PG&E's lines and pay PG&E the associated wheeling costs, which are passed along to LLNL.

The DOE's San Francisco Operations Office (DOE/SAN) manages LLNL. In 1985, DOE/SAN requested WAPA to construct a Federally owned transmission line from WAPA's Tracy Switchyard to the Laboratory in order to provide redundancy in the event of disruption to the existing service and to give LLNL access to cheaper alternative power sources, as PG&E will not give LLNL access to other suppliers, besides WAPA, over their lines.

PG&E vigorously opposed the proposed Tracy-Livermore line at the Secretarial level and before Congress, arguing that they could make modifications to their existing service that would make a new line unnecessary. In November 1987, PG&E submitted a proposal to DOE/SAN describing their plan for improved service to LLNL. DOE/SAN compared the Tracy-Livermore line and PG&E's proposal to determine which approach provided the desired redundancy and was most cost-effective to DOE over the long term. The evaluation concluded that both proposals met the redundancy criterion, but the Tracy-Livermore line offered superior economics. Hence, DOE/SAN requested WAPA to proceed with construction of the Tracy-Livermore line in March 1988. A subsequent review of this decision, requested by the Secretary, confirmed the cost effectiveness of the new line. The construction contract for the line was awarded this spring and field work was begun in August 1988. Nevertheless, PG&E continues to challenge the DOE/SAN decision to build the new line.

Organization & Coordination

The DOE/SAN Manager is responsible for the economic evaluation and the decision to build the line. WAPA's Administrator has responsibility for management of the construction effort.

Sensitivities

PG&E is expected to continue to raise objections to the line before DOE and Congress. Two important members of the Subcommittee on Water and Power Resources, Interior and Insular Affairs Committee, have been sympathetic to PG&E's position.

Status, Deadlines, Next Steps, and Milestones

The Right-of-Way and Land Acquisition should be completed by January 1989. Construction of the transmission line should be completed by the summer of 1989.

Auburn Dam

Issue

Should the Auburn Dam Project be constructed as a multipurpose project or as a flood control project only?

Background

In 1965, Congress authorized the Bureau of Reclamation to construct the Auburn Dam, located immediately east of the city of Auburn, California, and about 20 miles northeast of the Sacramento metropolitan area, as a multipurpose (e.g. flood control, irrigation, municipal water, recreation and power) water project. Construction began in 1967, but was suspended in 1975 following an earthquake. After a seismic evaluation of the Auburn Dam site was completed in 1980, the Secretary of the Interior announced that a redesigned Auburn Dam would be seismically safe, but he deferred further construction until other local issues concerning the dam were resolved.

A severe storm in February 1986 threatened to cause major flooding in the Sacramento area, renewing interest in the flood control benefits from an Auburn Dam. In March 1987, the U.S. Army Corps of Engineers issued a special report on the Lower American River, which revealed that the existing Folsom Dam and Reservoir—downriver from the Auburn Dam site—offers less than the 100-year flood control protection required by the Federal Emergency Management Agency (FEMA). Based on the results of the Corps' report a bill was introduced in the House in 1987 to amend the 1965 Auburn Dam authorization act to provide for specified Lower American River flows and a cost-sharing formula. Upstream support and financing for a full-scale multipurpose dam is weak.

However, there was downstream support for flood control, due to the unavailability of flood insurance under existing law. A bill was introduced in 1988 to construct a "dry dam" at the Auburn Dam site. A "dry dam" facility would provide flood control but no other benefits. Congress extended the availability of existing FEMA flood insurance in the Sacramento area for 2-4 years while the Corps of Engineers conducts another feasibility study.

County officials where the project is located are opposed to the "dry dam" concept because they are upstream of the flood-prone areas and are most interested in the recreational and municipal water benefits from a multipurpose dam. In September 1988, the American River Authority (ARA), representing two local counties and their respective water agencies, offered to provide up to \$700 million in non-Federal financing for construction of a multipurpose Auburn Dam. In October, the Interior Department responded by establishing a task force to study ARA's proposal and negotiate an agreement.

Organization & Coordination

Under a 1980 Interagency Agreement, WAPA has responsibility for evaluating the marketability of any hydroelectric facilities that may be constructed by Reclamation. Therefore, a WAPA representative serves as an advisor to the Interior Department's task force.

Sensitivities

WAPA has remained neutral in the Auburn Dam debate, while providing information and analysis to both sides upon request. Although the ARA proposal would increase the availability of power sold by WAPA in California, it could lead to higher power rates. WAPA's power customers have not yet taken a position on the ARA proposal. New legislation introduced in the 101st Congress is likely to continue the controversy between upstream and downstream beneficiaries, WAPA's power customers, irrigation interests and environmentalists.

Status, Deadlines, Next Steps, and Milestones

The Interior Department's task force will continue discussions with ARA over their proposal. If an agreement is reached, legislation to implement the new concept will likely be introduced in the next session of Congress.

Bonneville Unit, Central Utah Project

Issue

New legislation to increase authorization for the Colorado River Storage Project (CRSP) and provide for non-Federal financing of the Bonneville Unit of the Central Utah Project (CUP), which is a part of the CRSP.

Background

The Bonneville Unit is a partially complete, multipurpose water project in Utah. The completion of the irrigation and drainage (I&D) features of the Unit will require raising the authorization ceiling for the CRSP.

Beginning in 1984, the Western Area Power Administration (WAPA) and the Bureau of Reclamation sought non-Federal financing for the Diamond Fork Power System, which is part of the Unit. The Public Power Development Corporation presented a financing proposal in 1986. Shortly thereafter, the sponsoring water organization for the CUP, the Central Utah Water Conservancy District (CUWCD), expressed an interest in non-Federal financing of the power system, as well as the I&D features of the Unit.

Legislation was considered in the 100th Congress to raise the authorization for the CRSP and to allow the CUWCD to provide non-Federal financing of the I&D features using CRSP power revenues. Several versions and amendments to the legislation were offered, reflecting dissension among water, power, and environmental interests. In October 1988, Congress passed a simple noncontroversial bill increasing the CRSP authorization by \$45 million in order to continue construction of the municipal and industrial features of the Unit. This was considered a stop-gap measure to keep essential work ongoing while the competing interests work out their differences. Discussions are currently underway among the parties to reach consensus on a single piece of legislation. The group includes WAPA, Reclamation, affected power and water interests, and the Upper Colorado Basin States of Utah, Colorado, Wyoming, and New Mexico.

Organization & Coordination

WAPA's Administrator has the programmatic lead for evaluating the impact of various CUP financing proposals on CRSP power rates.

The Bureau of Reclamation (DOI) has the lead on development of the Central Utah Project.

Sensitivities

The Utah Congressional delegation will be very interested in seeing new CRSP legislation pass in the next Congress. However, any substantive changes to the CRSP legislation may be controversial because: 1) many legislators resist appropriating additional funds for irrigation features of water projects in the West; 2) non-Federal financing is likely to result in changes to the CRSP repayment structure and possibly raise customers' power rates; 3) WAPA's customers in other parts of its service area are concerned that CRSP negotiations might set an adverse precedent for negotiations elsewhere; and 4) the Upper Basin States will be particularly alert to any changes in the existing CRSP legislation, which currently provides for equitable assistance among the States in the repayment of irrigation projects.

Status, Deadlines, Next Steps, and Milestones

The group will continue to negotiate with the objective of proposing draft legislation for introduction in the 101st Congress. The Chairman of the Water and Power Resources Subcommittee, House Interior and Insular Affairs Committee has asked the General Accounting Office to examine the Federal investment and repayment of the CUP and CRSP, presumably in preparation for upcoming legislation.

1989 Rate Increases

Issue

Customer reactions to power rate increases needed in 1989.

Background

The Western Area Power Administration (WAPA) is responsible for development of power and transmission rates for its resources. The rate adjustment process provides several opportunities for public participation, in accordance with the Administrative Procedures Act and established regulations.

Concern about rate increases can be expected from WAPA's power customers as a result of several power rate adjustments scheduled to occur during 1989. WAPA recently initiated the public participation process for a 12 percent rate increase for the Boulder Canyon Project, and has begun the process for a 14 percent rate increase for the Pick-Sloan Missouri Basin Program. A rate adjustment for WAPA's Loveland Area Office will result in a substantial rate increase for certain customers, while the magnitude of three other anticipated power and transmission rate adjustments in early 1989 is uncertain.

The projects from which WAPA markets power are typically multipurpose. Irrigation, flood control, navigation, power, fish and wildlife functions all may benefit from the existence of a single dam and reservoir. All power-related construction costs, including generation and transmission facilities, are repaid with interest by WAPA's power customers power rates also recover certain joint-use costs. In addition, if costs assigned to irrigators for repayment are beyond their ability to repay, power users assist in repaying the Treasury for those costs. Power rates also recover those operational expenses, which are allocated to power. The Federal agency that has responsibility for operation of these multipurpose facilities, usually the Department of the Interior (Bureau of Reclamation) or the Department of Defense (Corps of Engineers), is responsible for determining which beneficiary of a dam and reservoir should pay for the construction and operational costs of that facility.

WAPA is committed to holding expenditures to a prudent and responsible level, so as to avoid inappropriate rate adjustments. However, WAPA has little influence on the operational and construction expenses of the Bureau of Reclamation and Corps of Engineers or the allocation of costs to power for repayment by those same agencies.

Organization & Coordination

WAPA's Administrator is responsible for developing WAPA power and transmission rates. The Deputy Secretary is responsible for approving and placing WAPA's rates into effect on an interim basis.

Cost information provided by the Bureau of Reclamation and the Corps of Engineers is used by WAPA in developing rates. Rates may be put into effect on an interim basis by the Deputy Secretary, but FERC has final rate approval.

Sensitivities

Power customers will be directly impacted by any rate increases, and will carefully examine the justifications for cost increases. Congressional interest in cost control could arise as constituents seek to forestall increases in rates.

Status, Deadlines, Next Steps, and Milestones

Continuation and initiation of public processes for rate adjustments will occur over the next several months.

Key Issues
&
Upcoming Decisions

Alaskan Power Administration

November 1988

Alaska Power Administration Divestiture

Secretarial Issue/Concern

The introduction to Congress of authorizing legislation for the divestiture of the Alaska Power Administration (APA).

Background

The APA consists of two projects, Eklutna and Snettisham, which were funded through a Federal loan. Congress must authorize the sale of APA and thus a proposal to divest the APA was first submitted in the President's budget for FY 1986. While APA and its two projects have served their authorized purposes well, there is no longer a need for a Federally owned power administration as the State and its electric utilities can handle the APA functions as well or better than the Federal government.

The selling price for APA was based upon a discounted present value of future payments if Federal ownership were to continue. This approach would avoid significant rate increases thereby protecting the interests of APA customers. Revenues from the sales are estimated at about \$80 million.

Legislation to authorize the sales will be ready for transmittal to the 101st Congress.

Organization & Coordination

APA under direction of Under Secretary Donna R. Fitzpatrick and Acting Assistant Secretary for Conservation and Renewables John R. Berg have programmatic lead on the issue.

A special APA Divestiture Task Force was set up to oversee the divestiture project. The team includes: Under Secretary Donna R. Fitzpatrick Acting Assistant Secretary for Conservation John R. Berg, Ana M. Larkin, Bob Cross, Gordon Hallum, Joe Malinovsky (APA) Rodney Adelman, (Washington Liaison Office for APA, Southeastern Power Administration, and Southwestern Power Administration)

Office of General Counsel has the lead for the legislative package.

OMB will conduct a formal round of interagency coordination before clearing the divestiture legislation for submittal to Congress. Key players will be Treasury, Agriculture, Interior, and Army.

Sensitivities

There is good but cautious support within Alaska. The Alaskan Congressional delegation is supportive, so long as rate payers' interests are protected, i.e. there would be no significant rate increases.

However, the national public power associations oppose the APA sale because they fear this may become a precedent for sale of other Federal power facilities. There are indications that the Congressional authorizing and appropriations committees (the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs) are receptive to the sale idea.

Status, Deadlines, Next Steps, and Milestones

APA will complete the negotiated purchase agreements and legislative package by November 1988. DOE and OMB expect to complete the review and clearance process and transmit package to Congress by the end of 1988.

**Key Issues
&
Upcoming Decisions**

Southeastern Power Administration

November 1988

Southeastern Power Administration--Divestiture Study

Secretarial Issue/Concern

Support of legislation to permit study of divestiture of Southeastern Power Administration (SEPA) proposed in the President's FY 1988 and FY 1989 Budgets.

Background

The Department of Energy is now prohibited by law from spending funds to study the divestiture of a power marketing agency, except for Alaska Power Administration. Legislation to permit the study, has been introduced in the House. The proposal was referred to the House Interior and Insular Affairs Committee and assigned to the Water and Power Resources Subcommittee. Identical legislation, introduced in the Senate, has been referred to the Senate Energy and Natural Resources Committee and assigned to the Water and Power Subcommittee.

Local interest to purchase was expressed in an April 1987 letter to the President by two of Southeastern's preference customers, Municipal Electric Authority of Georgia and South Carolina Public Service Authority.

Organization & Coordination

The Secretary, Under Secretary (with the Assistant Secretary for Conservation and Renewable Energy), and the Administrator of Southeastern have programmatic lead.

Sensitivities

In the past, the American Public Power Association and the National Rural Electric Cooperative Association have strongly opposed divestiture of the power marketing administrations. Recent discussion, however, indicate they may be receptive to divestiture measures which could result in transfer to preference customers, i.e. municipalities, rural electric cooperatives, and other public bodies.

Status, Deadlines, Next Steps, and Milestones

If the Department intends to pursue such legislation in the 101st Congress it should be included in the Department's legislative program and FY 1990 budget submittal.

Southeastern Power Administration--Allocation of Water Resources

Issue/Concern

The Corps of Engineers has proposed restrictions in electric generation operations of the Federal hydropower projects in an effort to enhance the recreational aspects of the facilities.

Background

The Corps of Engineers, in an effort to accommodate recreation users during a drought situation at the Federal hydroelectric projects, has proposed restrictions in project operations to enhance the recreation aspects and reduce the hydropower function. However, the proposal does not address the Power Marketing Programs' loss of revenue due to reduced electric power generation. This loss of revenue will also affect the Power Marketing programs' ability to repay the cost of the power portion of the projects. Several members of the Georgia delegation appear determined to seek a legislative resolution to the competing interests dilemma in the use of the Federal projects. Two legislative proposals concerning the issue were introduced in the House and referred to Committee but were not enacted during the 100th Congress.

Organization & Coordination

The Assistant Secretary for Conservation and Renewable Energy, and the Under Secretary are the key DOE officials in the decision process.

An equitable reallocation of costs should be agreed upon between DOE and the Department of the Army before any changes in Federal hydropower facilities operations takes place.

Sensitivities

The American Public Power Association, National Rural Electric Cooperative Association, and the Regional Power Associations, have adopted resolutions stating that any modification of the Federal projects include a reallocation of costs. connected with that modification. At the same time recreation groups are seeking operational changes to the Federal project operations to hold the reservoir levels near full pool for recreation purposes.

Status, Deadlines, Next Steps, and Milestones

Legislative efforts will possibly be intensified during the early days of the next Congressional session.

Southeastern Power Administration--Rate Increase

Issue/Concern

An increase of rates in the Georgia-Alabama System for a sixteen month period to recover the deficits created by drought conditions.

Background

Power marketing contracts allow a rate increase every five years. The next opportunity to raise rates in the Georgia-Alabama System is October 1, 1990. The Southeastern Power Administration (SEPA) submitted a rate filing in FY 1985 for the rate review period FY 1986 through FY 1990. The rates were approved but immediately drought conditions occurred, causing Southeastern to purchase energy which was not anticipated in the rate filing. The power purchases, plus reduced revenues, have caused deficits in each year from 1986 through 1988 and the cumulative deficit has now reached over \$32 million. The current rates were approved by DOE and FERC through September 1990. The Administrator's one-on-one discussions with preference customers about a rate increase prior to the expected time have resulted in positive reactions.

Organization & Coordination

The Under Secretary with the Assistant Secretary for Conservation and Renewable Energy and the Administrator for SEPA have the lead to obtain interim approval of rates. FERC provides final approval of rate increases.

Sensitivities

The preference customers of SEPA could refuse contract amendments which would permit the increase in rates before the expiration date, however, it is unlikely they will do so.

Status, Deadlines, Next Steps, and Milestones

For the six month period beginning in November 1988 and ending in May 1989, SEPA proposes to go through the public participation process to obtain the approval of increased rates and amended contracts for the Georgia-Alabama System with implementation of rates on June 1, 1989.

**Key Issues
&
Upcoming Decisions**

Southwestern Power Administration

November 1988

Southwestern Power Administration--W. D. Mayo Lock and Dam

Issue/Concern

Potential conflict regarding development of Federal hydroelectric generating facility at W. D. Mayo Lock and Dam.

Background

In 1986, Congress authorized the Cherokee Nation of Oklahoma (Cherokee Nation) to design and construct a hydroelectric generating facility at the W. D. Mayo Lock and Dam on the Arkansas River in Oklahoma. The facility would be owned and operated by the Corps of Army Engineers. Power from the project would be marketed by Southwestern Power Administration (SWPA). The project was viewed as an innovative arrangement between the private sector and the Federal Government. The authorizing legislation provides that, upon the Corps' acceptance of the project, SWPA would be obligated to repay the design and construction costs of the project and provide an annual royalty to the Cherokee Nation. The preliminary draft agreements needed to initiate development of the project have been exchanged and negotiations are ongoing.

Organization & Coordination

The Secretary, Under Secretary (with the Assistant Secretary for Conservation and Renewable Energy), and the Administrator of Southwestern have programmatic lead.

Sensitivities

The Oklahoma Congressional delegation sponsored the legislation for the project. There has been conflict between the Corps and the Cherokee Nation regarding the acceptability of the preliminary project design. Congressional inquiries could be expected in the event that conflict is not resolved or the estimated cost of the approved project is such that is not financially feasible, and SWPA does not agree to participate in the project.

Status, Deadlines, Next Steps, and Milestones

The Corps of Engineers will complete its evaluation of the project design by November 1988. SWPA expects to complete its marketing feasibility analysis by December 1988.

Southwestern Power Administration--Harry S Truman Project

Issue/Concern

Conflict with State of Missouri regarding operation of Southwestern Power Administration's (SWPA) Harry S Truman (HST) Project.

Background

Recreational interests and Missouri State officials have objected to operation of the HST power facilities as originally authorized (six power turbines with pumpback capability) because of fish kill during pumpback operation and downstream turbulence with six-unit generation. By design, dependable economic operation of the Harry S Truman Dam requires pumping water back into the reservoir at night to be reused for generation of power during daytime peak-demand periods. Those interests, supported by members of the Missouri Congressional delegation and the Governor of Missouri, have requested that restrictions be placed on operation of the project to permit only conventional power generation with a maximum of four units. The effect of those restrictions would be to reduce the dependable capacity at HST from 160 to 31 MW which would require SWPA's customers to purchase more expensive replacement power from other sources. However, the SWPA rate payers would still be required to repay the \$250 million capital investment for the HST hydroelectric facility despite the reduction in dependable capacity. Direct negotiations between the Corps of Army Engineers, state officials, and SWPA have been ongoing since August 1988.

Organization & Coordination

The Secretary, Under Secretary (with the Assistant Secretary for Conservation and Renewable Energy), and the Administrator of SWPA have programmatic lead.

Sensitivities

A Congressional contingent from Missouri have supported the State's position in a meeting with Assistant Secretary of the Army Page. Eight other senators have written the Secretary of the Army expressing their opposition to the State's operational restrictions that would result in increased cost of power to their constituents.

Status, Deadlines, Next Steps, and Milestones

Continued negotiations will be scheduled until issues are resolved.