Western Interstate Nuclear Board
P.O. BOX 15038 • LAKEWOOD, COLORADO 80215 • (303) 238-8383

SPECIAL REPORT

PRECEDENTS AND PROPOSALS FOR STATE INVOLVEMENT IN FEDERAL ENERGY DECISIONS

August, 1977

Prepared by:
John Watson, J.D., Resource Analyst
Douglas Larson, Legislative Analyst

SUMMARY

This report outlines several existing and proposed options for state involvement in federal energy-related decisions. These options may be helpful in understanding the present degree of state input and in developing a case to increase state involvement in various federal energy decisions.

The report is divided into three sections roughly corresponding to the degree of control the state exercises over energy-related decisions, from state dominance to a mixture of federal and state control to federal dominance with opportunities for state input. Examples of the state input in each section are provided. Each example includes background information, a summary of the provisions for state input, and the text of those provisions.

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*Indicates proposals not currently in effect.

I. STATE DOMINANCE

This section provides examples where the federal government has preempted state law in a certain field and then given much of the authority back to the states, provided the state meets certain minimum requirements set forth in the federal law, such as adopting a stringent state strip mine reclamation law, etc., and can properly administer the program. In most cases where the state meets the requirements of the federal law ans assumes responsibility, state actions will circumscribe related federal decisions, including decisions related to management of federal reources. However, typically, state actions following the state's assumption of responsibility are subject to some type of federal review to insure the state actions are in compliance with federal law.

In some cases, particularly under the nuclear agreement states example, states have not elected to assume the responsibility to carry out the program, because of a lack of federal funds. This may also become the case under the strip mine bill.

Following are examples of state dominance in what are fundamentally federal energy-related decisions.

COAL STRIP MINE BILL

Background: Federal legislation to regulate coal surface mining has been passed by Congress and is on the President's desk. Unlike earlier legislation which passed the Congress and was vetoed, it is expected that the President will sign the bill.

The Surface Mining Control and Reclamation Act of 1977 (HR 2) sets minimum standards for environmental protection for coal surface mining and the surface effects of underground coal mining on all land, including State, Federal, and private land. The Act follows a procedure similar to both the Clean Air Act and the Federal Water Pollution Control Act (discussed below) by totally preempting state regulation of coal strip mining except where a state has developed an acceptable program for such regulation meeting the minimum performance standards created by the federal statute. Where a state receives approval of its regulatory program, it is permitted to implement regulation over state and private lands. In some instances the state may also apply their standards to federal lands. Where state officials fail to submit an approvable state program or do not adequately enforce an approved system, the federal government reserves the right to subject all lands in the state (federal, state, and private) to federal regulation and enforcement.

Summary of Provisions: 1) States wishing to assume exclusive jurisdiction of strip mining over state and private lands must submit a program to the Department of Interior within 18 months of enactment (with some exceptions). Such program would include a state law and/or regulation as stringent or more stringent than the reclamation standards in the federal statute. Interior has six months from submission to approve or deny the program. Although not specifically stated in the statute or conference committee report, it appears that Interior cannot disapprove a proposed state program solely on the grounds that it is too stringent. If the program is disapproved, the state has 60 days to resubmit a program, otherwise the Secretary of Interior will move to implement a federal program for state and private lands. Federal disapproval of a proposed state program is subject to review in the courts.

2) Interior will implement a federal program within 34 months of enactment where a state has not submitted an approvable program or is not enforcing an approved state program.

3) Interior shall implement a program for regulation of federal lands within one year of enactment. States with approved programs for regulation of state and private lands may elect to enter into cooperative agreements with Interior for state regulation of federal lands. States with existing cooperative agreements may elect to have the agreements continued with appropriate changes to conform to the Act.

Like approval of a state's general program, the Interior Department's approval of a states' election to regulate surface mining on federal land is contingent upon a finding that the state has adequate manpower and budget to enforce the program and that the program is consistent with the Act (greater stringency is consistent with the Act). However, approval of a state's election to regulate surface mining on federal land does not change the current requirement in federal law that the Secretary of Interior must approve mining plans. This

apparently means that a state which, through a cooperative agreement, is enforcing reclamation standards on federal land can prevent proposed mining by not issuing a permit even though the Interior Department approves and visa versa, i.e. the state can approve a mining plan and Interior disapprove it and there would be no mining.

(Note: The numbers in the Text of Provisions section below correspond to the numbers in the Summary of Provisions section.)

Text of Provisions:

(1) Sec. 503. (a) Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 521 and 523 and title IV of this Act, shall submit to the Secretary, by the end of the eighteen-month period beginning on the date of enactment of this Act, a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through--

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act.

(4) a State law which provides for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulation of surface coal mining and reclamation operations for coal on lands within the State:

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.

(b)The Secretary shall not approve any State program submitted under this section until he has--

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) For the purposes of this section and section 504, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of elegibility for financial assistance under titles IV and VII of this Act or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable.

(2) Sec. 504. (a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty-four months after the date of enactment of this Act if such State--

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: Provided, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State Program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. If a Federal program is implemented for a State, section 522 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, and biological, chemical, and other relevant physical conditions.

(b) In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State.

(c) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(d) Permits issued pursuant to a previously approved State program shall be valid but reveiwable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him an opportunity for hearing and reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501 (b), to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(e) A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 503 (b) and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this Act and meeting its purposes through the criteria set forth in section 503 (a) (1) through (6). Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

(f) Permits issued pursuant to the Federal program shall be valid under any superseding State program: Provided, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permits to determine that the requirements of this Act and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501, to conform ongoing surface mining and reclamation operations to the additional State requirements.

(g) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal program. The Secretary shall set forth any State law or regulation which is preempted and superseded by the Federal program.

(h) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

(3) Sec. 505. (a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operation than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. The Secretary shall set forth any State law or regulation which is construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

(4) Sec. 523. (a) No later than one year after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: Provided, That except as provided in section 710 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: Provided, That the Secretary shall retain his duties under sections 2(a), (2) (B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 522 (b) of this title.

(b) The requirements of this Act and the Federal lands program or an approved State program for State regulation of surface coal mining on Federal lands under subsection (c), whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to susequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 522 of this Act, or to regulate other activities taking place on Federal lands.

(d) The Secretary shall develop a program to assure that with respect to the granting of permits, leases, or contracts for coal owned by the United States, that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

ATOMIC ENERGY ACT OF 1954 - AGREEMENT STATES

Background: The federal government preempted control of all nuclear energy related activities in 1954 when it passed the Atomic Energy Act. It wasn't long, however, before administrators of the Act and members of Congress realized there were certian activities that were more appropriately the subject of state and local control. Thus, in 1959 Congress passed the "Amendments to the Atomic Energy Act of 1954, as amended, with respect to Cooperation with States." The amendments outlined the procedures whereby states which were able to demonstrate the sufficiency of their program, could assume exclusive jurisdiction over the regulation of certain "byproduct, source, and special nuclear materials" for purposes of protection against radiation hazards. Areas that remain the province of the federal government include: construction and operation of production and utilization facilities; export and import of nuclear materials and facilities and possession of near weapon quantities and grades of special nuclear materials; and disposal of nuclear waste materials.

The importance of the amendments in terms of state jurisdiction over the prescribed areas of responsibility is evidenced by this paragraph from Senate Report No. 870, 86th Congress, First Session, September 1, 1959:

> " It is not intended to leave any room for the exercise of dual or concurrent jurisdiction by States to control radiation hazards by regulating byproduct, source, or special nuclear materials. The intent is to have the material regulated and

> licensed either by the Commission, or by the State and local governments, but not by both. The bill is intended to encourage States to increase their knowledge and capacities, and to enter into agreements to assume regulatory responsibilities over such materials."

Of the 25 "Agreement States" throughout the country, 10 are in the West: Arizona, California, Colorado, Idaho, Nebraska, Nevada, New Mexico, North Dakota, Oregon, and Washington.

Summary of Provisions: 1) An extensive purposes section in the 1959 amendments recognizes the importance of state regulation as to certain by-product, source, and special nuclear materials and shows the intention of Congress to promote an orderly regulatory pattern between the federal and state governments.

2) The Atomic Energy Commission (now the Nuclear Regulatory Commission) is authorized to enter into an agreement with the Governor of any state regarding any one or more of the following materials: (a) byproduct materials; (b) source materials; and (c) special nuclear materials in quantities not sufficient to form a critical mass, for purposes of protection of the general public health and safety against radiation hazards.

3) The Commission may enter into agreements where the Governor of the state certifies the state has an adequate program and the Commission finds the state program is compatible with the Commission's program.

4) The amendments also authorize execution of cooperative agreements with any state or states to perform cooperative inspections or other functions relative to the Commission's licensing and regulatory functions.

5) Finally, the Commission must give prompt notice to the states regarding any application for a license over which the Commission retains responsibility and must give the states reasonable opportunity to offer evidence and give advice on the application.

Text of Provisions:

(1) Purposes.

> Sec. 274. (a) It is the purpose of this section--
> (1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;
> (2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;
> (3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;
> (4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(2) Agreements.

Sec. 274.(b) Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State--

(1) byproduct materials;

(2) source materials;

(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have the authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(3) Governor certifies program.

Sec. 274.(d) The Commission shall enter into an agreement under subsection b. of this section with any State if--

(1) the Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

(4) Cooperative agreements.

Sec. 274.(i)The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

(5) State comment on license applications.

Sec. 274(l)With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take position for or against the granting of the application.

CLEAN AIR ACT

Background: Current law, enacted in 1967 and amended in 1970, preempts state control of air pollution from both stationary and moving sources. A system of federal approval of state implementation plans for the state to adopt and enforce state standards at least as stringent as the minimum federal requirements is established. Absent approval of a state plan, federal standards apply and are enforced by the Environmental Protection Agency (EPA).

Although Congress is presently considering major amendments to the Act, this section will summarize current law. Proposed amendments deal primarily with the "non-deterioration" issue and do not make major changes in the present system of state control following federal approval of a state program.

The Act sets (a) emission standards (emissions from a source) and (b) ambient air quality standards (cumulative standards defining the air level concentrations permitted for a particular area). Two sets of air quality standards are defined: (a) primary standards are designed to achieve a level of ambient air quality necessary to protect public health; (b) secondary standards are designed to achieve a level of air quality which will avoid any adverse effects associated with the presence of an air pollutant in the ambient air. (Secondary standards are more stringent than primary standards.)

An important Surpreme Court decision delivered in 1976 deserves mention. Hancock v. Train states that federally-owned and operated facilities need not comply with the state permitting procedures. Nevertheless, these facilities must comply with the state standards outlined in an approved state plan. The only recourse for enforcement of the state standards against these facilities, however, is via filing a citizen's suit. The case applies only to federally owned and operated facilities (eg. an ERDA owned and operated demonstration project). Federally permitted or licensed activities must still receive a state permit prior to operation (eg. coal-fired power plant constructed on federal land, but owned and operated by other than the federal government.)

Summary of Provisions: 1) Establishes state as primarily responsible for assuring compliance with the Act. Requires setting up "air quality control regions."

2) States must submit, for EPA approval, an implementation plan for national primary and secondary ambient air quality standards. Plan contents are outlined.

3) EPA will establish an implementation plan for a state that does not submit a plan or for a state whose plan is not approved.

4) EPA may delegate enforcement authority to a state whose enforcement plan is approved.

5) EPA may intervene and enforce standards when a state fails to adequately enforce the same.

6) Conference procedures are established to abate air pollution on a collective basis: state, interstate, municipality.

7) State standards must be at least as stringent as federal standards.

8) Air Quality Advisory Board is established.

(1) States have primary resporsibility. (Note: all section numbers for clean air refer to 42 United States Code)

Sec. 1857c--2. Air quality control regions--Responsibility of State for air quality; submission of implementation plan

(a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

Designated regions

(b) For purposes of developing and carrying out implementation plans under section 1857c--5 of this title--

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

Authority of Administrator to designate regions; notification of Governors of affected States

(c) The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Adminstrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(2) State Implementation Plans (SIP's).

Sec. 1857c--5. State implementation plans for national primary and secondary ambient air quality standards--Submission to Administrator; time for submission; State procedures; required contents of plans for approval by Administrator; approval of revised plan by Administrator

(a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 1857c--4 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1) approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that--

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necssary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transprotation controls;

(C) it includes provision for establishment and operation of appropriate devices methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4) for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(2) State Implementation Plans (SIP's), (Cont'd)

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapeter, which reports shall be available at reasonable times for public inspections; and (v) for authority comparable to that in section 1857h--1 of this title, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements,

(3) (A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard or performance under section 1857c--6 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necssary to permit the State to make a determination under clause (A).

(3) EPA establishes and enforces federal plan.

Sec. 1857c-5 (c) (1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion therof, for a State if--

(A) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(B) the plan, or any protion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(4) State may enforce approved plan.

Sec. 1857C-6 (c) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(5) EPA may intervene.

Sec. 1857c-8 (a) (2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person--

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(6) Conference procedures.

Sec. 1857d (b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) orginate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(7) State standards at least as stringent.

Sec. 1857d--(1) Retention of State authority

Except as otherwise provided in sections 1857c--10(c), (e), and (f), 1857f--6a, 1857--6c (c) (4), and 1857f--11 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 1857c--6 or section 1857c--7 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(8) Air Quality Advisory Board.

Sec. 1857e (a) (1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

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Duties of Board

(b) The board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter and make such recommendations as it deems necessary to the President.

FEDERAL WATER POLLUTION CONTROL ACT

Background: The Federal Water Pollution Control Act (FWPCA) sets minimum federal standards for the protection of and eventual elimination of polluting discharges into the nation's navigable waters. An interim goal of providing for the protection and propagation of fish, shellfish, and wildlife and providing for recreation in and on the water is set for July 1, 1983. The national goal to eliminate the discharge of pollutants into navigable waters is set for 1985.

The Administrator of the Environmental Protection Agency (EPA) is required to set national standards for a variety of discharge sources which apply to all sources throughtout the country. The statute effectively pre-empts all state standards for regulating pollutant discharges into navigable waters within the state's jurisdiction. The National Pollutant Discharge Elimination System (NPDES) is established requiring a permit for the discharge of any pollutant or combination of pollutants into navigable waters. At the request of the Governor of a state and upon proof of: (a) state standards at least as protective as federal standards; and (b) a state administrative system capable of administering and enforcing the permit system, a state may assume the responsibilities established by the Act. Where a state fails to enforce an approved program, the EPA may intervene to assure protection of the nation's waters.

When a state receives approval of a state program, federal certification provisions take effect. Thus, an application for a federal permit or license for an activity which will result in the discharge of pollutants (eg. permit to build power plant on federal land) must contain a certificate from the state regulatory authority (usually state health boards) that the state discharge standards will be complied with. The state has one year from the date of application to grant or deny the certificate. Failure by the state to act within the year waives the certification requirement. A federal permit or license cannot be issued unless the application contains a state certificate or the requirement has been waived by the passage of one year.

Summary of Provisions: 1) Congressional policy recognizing primary responsibilities of the states.

2) State standards in existence on the date of enactment remain in effect for interstate and intrastate waters where EPA finds them consistent with the FWPCA.

3) States without standards on the date of enactment must develop and submit them to EPA for the state to assume primary responsibility over discharges into navigable waters.

4) States shall develop, and submit for approval, a continuing planning process.

5) EPA may permit the states to enforce their own program.

6) Federal enforcement provisions are provided for, including situations where a state fails to enforce their own program.

Summary of Provisions: (Cont'd)

7) Federal "certification provisions" are provided similar to CZM requirements. An applicant for a federal license or permit for an activity that will discharge pollutants (eg. construction and operation of a power plant on federal land) must receive a certificate from the state regulatory agency stating the planned activity complies with the state standards. The certification provision is waived if the state does not act within a year of a request for a certificate. No federal permit or license will be issued unless the certificate provisions are complied with or have been waived by the passage of time.

8) The National Pollutant Discharge Elimination System (NPDES) is established. This program may be administered by the state following approval by EPA of the state program. Federal supervision of state enforcement of the program exists.

9) A Water Pollution Control Advisory Board is set up composed of State, interstate, local and public and private interest group members.

Text of Provisions:

(1) Congressional Policy.

> Sec. 101 (b). It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act.

(2) Existing State Standards.

> Sec. 303 (a). (1) In order to carry out the purpose of this Act, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination, he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.
>
> (2) Any State which, before the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this Act unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3) Submission of new state standards.

Sec. 303. (a) (3)(A) Any State which prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b)(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if --

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(4) State planning process.

Sec. 303. (e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301 (b)(2) section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

(5) State program enforcement.

Sec. 306 (c) Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(6) Federal enforcement.

Sec. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308 of this Act in a permit issued by a State under an approved permit program under section 402 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitation as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of 'federally assumed enforcement'), the Administrator shall enforce any permit condition or limitation with respect to any person--

(A) by issuing an order to comply with such condition or limitation or

(B) by bringing a civil action under subsection (b) of this section.

(7) Federal permit requires state certificate.

Sec. 401.(a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge orginates or will orginate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge orginates or will originate, that any such discharge will comply with the applicable provisions of sections 301,302,306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstae agency, or the Administrator, as the case may be.

(8) NPDES.

Sec. 402.(a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, not withstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

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Sec. 402.(c) (3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective actior is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(9) Water Pollution Control Advisory Board.

Sec. 503. (a)(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contribuing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

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(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act.

II. Both Federal and State Control

This section provides examples where both the federal government and state government exercise control over an energy decision. The examples include: (a) state veto power over a federal decision or state modification of a federal permit or decision typically subject to federal override in the "national interest"; (b) federal government permitting a state to enforce its law on federal land, provided that the state law does not conflict with the "national interest"; (c) split jurisdiction where the federal government exercises sole control over part of a process, but leaves the remaining part of the process under sole state control; (d) joint decision-making with the state and federal governments retaining their respective authorities which could be exercised if the joint decision is disagreeable to either party; and (e) permissable delegation of authority to states. Following are examples of both federal and state control over energy-related decisions.

OUTER CONTINENTAL SHELF (OCS) LANDS ACT REVISIONS

Background: The Outer Continental Shelf Lands Act (43 USC 1331 et. seq) became law on August 7, 1953, based on the Congressional policy that the subsoil and seabed of the Outer Continental Shelf "appertain to the United States and are subject to its jurisdiction, control, and power of disposition..." The Secretary of the Interior is given the responsibility to administter the Act and issue necessary rules and regulations for leasing and management of OCS lands. Oil and gas leases on OCS lands are granted to the highest bidder in a competitive bidding procedure based on a cash bonus system with a production royalty set by the Secretary of at least 12½%.

The 94th Congress failed to pass major revisions of the OCS Lands Act. Although both Houses passed their own versions (HR 6218, S 521), the bill that came out of Conference was recommitted to Conference following brief debate in the House. The purpose of recommitting the bill was to modify two controversial provisions: 1) Senate language authorizing the federal government to contract for exploratory drilling on the OCS and 2) provisions for revamping the existing structure for developing safety regulations for OCS operations.

Congress this year is considering bills similar to those of last session. The Senate passed its version (S 9) on July 15, 1977, but made major changes in sections dealing with federal/state relations. Summaries of last session's S 521 as it came out of conference and this year's S 9 as passed by the Senate are provided below.

Summary of Provisions (S 521): 1) During preparation of a proposed federal lease program, the Secretary of Interior must invite and consider suggestions from the Governor of an affected state. Time limits for comments and consideration are provided.

2) Once the lease program has been prepared, the Secretary must submit the program to Congress, the Attorney General, the Governors of affected states, and the Regional Outer Continental Shelf Advisory Boards and must coordinate program with state coastal zone management systems.

3) The Governors of affected states may set up Regional Outer Continental Shelf Advisory Boards. The Boards advise the Secretary on "all matters relating to Outer Continental Shelf oil and gas development."

4) Recommendations of the Governor of an affected state or the Advisory Boards must be accepted by the Secretary unless he determines they are contrary to the national security or the overriding national interest. A determination of the overriding national interest is defined.

Text of Provisions (S 521):

(1) Sec. 208. Sec. 18.(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider suggestions from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the *Federal Register* pursuant to paragraph (3) of this subsection, the Secretary shall transmit a copy of such proposed program to the Governor of each affected State for review and comment. If any such comment is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together, with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(2) Sec. 208. Sec. 18. (c) (3). Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, the Governors of affected States, and the Regional Outer Continental Shelf Advisory Boards, and shall publish such proposed program in the *Federal Register*.

(d) (1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such proposed program upon competition, and any State, local government, Regional Outer Continental Shelf Advisory Board, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State, local government, or Regional Outer Continental Shelf Advisory Board was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved, and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(e) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(f) The Secretary shall by regulation, establish procedures for--

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas leases and permittees, and representatives of other individuals or organizations engaged in activity in or on the Outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) coordination of the program with the management program being developed by any State for approval pursuant to section 305 of the Coastal Zone Management Act of 1972 and to assure consistency, to the maximum extent practicable, with the management program of any State which has been approved pursuant to section 306 of such Act. Such procedures shall be applicable to any revision or reapproval of the leasing program.

(3) Regional Advisory Boards.

Sec. 208. Sec. 19. Regional Outer Continental Shelf Advisory Boards.--(a) The Governors of affected States may establish Regional Outer Continental Shelf Advisory Boards for their regions with such membership as they may determine, after consultation with the Secretary and the Secretary of Commerce.

(b) Representatives of the Secretary, the Secretary of Commerce, the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard, the Administrator of the Environmental Protection Agency, and the Administrator of the Occupational Safety and Health Administration shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section.

(c) Each Board established pursuant to subsection (a) shall advise the Secretary on all matters relating to outer Continental Shelf oil and gas dvelopment, including development of the leasing program required by section 18 of this Act, approval of development and production plans required pursuant to section 25 of this Act, implementation of baseline and monitoring studies, and the preparation of environmental impact statements prepared in the course of the implementation of the provisions of this Act.

(4) Secretary must accept recommendations.

Sec. 208.Sec.19. (d) If any Regional Advisory Board or the Governor of any affected State--

(1) makes specific recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposal development and production plan; and

(2) submits such recommendations to the Secretary within sixty days after receipt of notice of such proposed lease sale or of such development and production plan, the Secretary shall accept such recommendations, unless he determines they are not consistent with national security or the overriding national interest. For purposes of this subsection, a determination of overriding national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner, consistent with the policies of this Act. If the recommendations from State Governors or Regional Advisory Boards conflict with each other, the Secretary shall accept any of those recommendations which he finds to be the most consistent with the national interest. If the Secretary finds that he cannot accept recommendations made pursuant to this subsection, he shall communicate in writing, to such Governor or such Board the reasons for rejection of such recommendations. The Secretary's determination that recommendations are not consistent with the national security or the overriding national interest shall be final and shall not, alone, be a basis for invalidation of proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

Summary of Provisions (S 9): (1) The Regional Advisory Boards have been eliminated from the Senate bill, but the Secretary must still accept Governor's recommendations on the size, timing, or location of a proposed lease sale or a proposed development and production plan, as long as the Secretary has determined the recommendations provide for a "reasonable balance between the national interest and the well-being of the citizens of the affected state."

(2) The Secretary is authorized to enter into cooperative agreements with coastal states to provide for joint procedures on several aspects of OCS development.

(3) A portion of the Senate committee report explains the purpose and Congressional intent of the sections dealing with federal/state coordination. (Sen. Rept. No. 95-284, 95th Cong. 1st session, June 21, 1977.)

Text of Provisions (S 9):

(1) Sec. 208. Sec.19 Coordination With Affected States and Local Governments.--

(a) Any Governor of any affected State may submit recommendations to the Secretary regarding the size, timing or location of a proposed lease sale or with respect to a proposed development and production plan.

(b) Such recommdnations shall be submitted within sixty days after notice of such proposed lease sale or receipt of such development and production plan.

(c) The Secretary shall accept such recommendations if he determines, after having provided the Governor the opportunity for full consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For the purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Secretary's determination that recommendations are not consistent with the national interest shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

(2) Cooperative Agreements.

> Sec. 208. Sec.19. (d) The Secretary is authorized to enter into cooperative agreements with affected coastal States for purposes which are consistent with this Act, and applicable Federal law. Such agreements may include the sharing of information, the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations and stipulations relevant to outer Continental Shelf operations both on and offshore.

(3) Senate Report on S 9.

> Sec. 19. Coordination with affected States and local governments This section provides that if a Governor of a potentially affected State, makes a specific recommendation to the Secretary regarding the size, timing or location of a proposed lease sale, or on a proposed development and production plan or the statement of non-OCS activity which must accompany it, within 60 days after receipt of notice of such activity, the Secretary is to accept such recommendation if he determines that it provides for a reasonable balance between the national interest and the well-being of the citizens of the affected State. He must communicate, in writing, the reasons for accepting or rejecting the Governors' recommendation.
>
> The intention of this section is to insure that Governors of affected States have a a leading role in decisions as to potential lease sales and production and development plans. Governors of affected States should also consult with representatives of affected local governments and should forward their views, when appropriate, as part of their formal recommendations.
>
> The intent of the committee is to insure that the Secretary give thorough consideration to the voices of responsible regional and local State officials in planning OCS leasing and development. The committee did not believe that any State should have a veto power over OCS oil and gas activities. The committee fully expects, however, that the advice of the Governor, be given full and careful consideration and be incorporated into the ultimate decision of the Secretary, insofar as they are not inconsistent with the balanced approach to OCS leasing set out in this act.
>
> It is also expected that any recommendations made by a Governor, and the reasons for rejection of such recommendations, will be part of the record of any judicial proceedings as to a lease sale, provided for in the citizens; suit subsection (23(a)) or for review of a development and production plan, provided for in the judicial review subsection (23(c)).

COLORADO VETO OVER FEDERAL WATER REALLOCATION

Background: The Colorado Constitution establishes priorities for the beneficial use of water in the state for domestic, agriculture, and industrial uses. Concern over the use of federal water allocations to stimulate massive energy development led to negotiations between Governor Lamm and the Department of Interior's Bureau of Reclamation. These negotiations led to a Memorandum of Understanding (MOU) which was signed in mid-July between Governor Lamm and Secretary of Interior Andrus.

Summary of Provisions: 1) The purpose of the MOU is to set the policy Interior will follow in reviewing applications for reallocation or reassignment of water from Bureau of Reclamation projects tc energy production/conversion uses.

2) The State may review water reallocation applications.

3) Except where the overriding national interest requires otherwise, Interior must receive the Governor's concurrence regarding the application before water is reallocated from agricultural, municipal or light industrial uses to energy production/conversion uses.

Text of Provisions:

(1) Purpose.

> NOW, THEREFORE, it is the purpose of this Memorandum of Understanding between the Department of the Interior and the State of Colorado to set forth the policy to be followed by the Department of the Interior in reviewing applications by water user organizations under repayment contract to the Bureau of Reclamation seeking to reallocate or reassign water from Bureau of Reclamation projects from agricultural, municipal or light industrial uses to energy production/conversion uses. . . .

Text of Provisions: (Cont'd)

(2) State review of reallocation application.

The Department shall submit or forward to the State, in writing, any request or application for a reallocation, transfer, or reassignment of water as described above from a Bureau of Reclamation project in Colorado. The State shall be given a reasonable time to advise and consult with the Department concerning approval or disapproval of the proposed reallocation, transfer or reassignment.

(3) State veto of approval.

Prior to approval of any such request or application, the Secretary of the Interior shall obtain the concurrence, in writing, of the Governor of Colorado, except upon a determination of the Secretary of the Interior that applicable congressional directives or the overriding national interest require approval of the application notwithstanding State disapproval. The Secretary shall specify and give notice to the State of the reasons for such a determination.

STATE VETO OVER NUCLEAR WASTE DISPOSAL (HR 2675, S 1623)

Background: The Energy Research and Development Administration (ERDA) is charged with developing a program for the disposal of radioactive waste. General areas in several states have been identified as potential waste disposal locations. President Carter has ordered a new review of the waste disposal program.

Summary of Bill: HR 2675, introduced by Rep Carr, MI, and S 1623, introduced by Sen McGovern (SD) provide that ERDA cannot contract for construction of a waste storage facility in a state if the state legislature, by concurrent resolution, states that the proposed site shall not be used for such purpose. Hearings on HR 2675 have been held in the House Interior Committee. An amendment similar to S 1623 was defeated in the Senate July 12 by a 58-39 vote.

Text of Provisions:

(1) Sec. 107. (g)

(1) The Energy Research and Development Administration must publically notify the presiding officers of the State Legislature of its intent to explore a site in that State for the purpose of construction of a radioactive waste storage facility.

(2) The Energy Research and Development Administration shall not permit contracting for construction of a radioactive waste storage facility at a site in a State where the State Legislature by concurrent resolution states that that site shall not be used for such purpose.

LOAN GUARANTEES FOR SYNTHETIC FUELS COMMERCIALIZATION (HR 12112 of 1976)

Background: In 1975 and again in 1976 legislation giving the Energy Research and Development Administration (ERDA) the authority to issue loan guarantees to private industry for the development of synthetic fuel facilities, such as coal gasification facilities, made its way through Congress only to be killed on the House floor. Because such synthetic fuel facilities may cost upwards of $1 billion and have asubstantial impact on the environment, economy and social structure in the area where they would be located, Congress was urged to and did include provisions for securing state input, including a provision for Governor's concurrence.

Summary of Provisions: One provision of HR 12112 requires ERDA to inform the Governor of an affected state if federally subsidized synthetic fuel facility is proposed to be located in the state. If the Governor recommends that the proposed facility not be constructed, then the ERDA Administrator cannot issue the loan guarantee, "unless the Administrator finds that there is an overriding national interest in taking such action..." The Administrator's override of a Governor's objection to a proposed facility is reviewable in federal court.

Other sections of the bill provided for a lesser degree of state involvement and should be categorized under the third section, "Federal Dominance with State Input," but are noted as follows:

--One provision requires ERDA to establish, by regulation, procedures for review and comment on a proposed facility by states and others.

--Another provision requires the establishment of an advisory panel to advise ERDA on the loan guarantee program, including the impact of the demonstration facilities on communities, states and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts. Among other groups, the panel must include Governors or their designees as designated by the Chairman of the National Governors' Conference.

--A third provision requires ERDA to consult with states and local government prior to determining that grants are needed to meet the needs of communities impacted by the synthetic fuel facility.

Text of Provisions:

(1) Governor's concurrence.

> Sec. 19. (e) (1) As soon as the Administrator knows the geographic location of a proposed facility for which a guarantee or commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. The Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to 5 U.S.C. 706(2) (A) through (D). Such review shall take place in the United States court of appeals for the circuit in which the State involved is located,upon application made within ninety days from the date of such decision.

(2) Other state input.
- Review and comment on proposed facility.

> Sec. 19.(e) (1) The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

-Advisory Panel

Sec. 19.(e) (3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of synthetic fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference, Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be slected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 106(e) of the Energy Reorganization Act of 1974 (42 U.S.C. 5816(e) shall apply to the panel.

-Consultation prior to impact aid grants.

Sec. 19.(k)(5). If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Administrator may--

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: Provided, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: Provided further, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated with or result from, such demonstration facility and which are determined by the Administrator to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

COASTAL ZONE MANAGEMENT ACT OF 1972 (with major 1976 amendments)

Background: Passage of the Coastal Zone Management (CZM) Act in 1972 followed several years of study and debate. As with the Clean Air Act and the Water Pollution Control Act, Congress recognized the primary responsibility of the states in managing the coastal resource and development taking place. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) and all 30 eligible states have received federal program development grants. (The original 1972 Act provided for annual administration grants following program approval on a cost sharing basis of 1/3 state money, 2/3 federal money. The 1976 amendments to the Act raised the federal share to 80%.)

To implement a program, a state must (a) make coastal resource inventories; (b) develop and submit for approval comprehensive management plans; and (c) create legal and administrative agencies to implement their plans. Upon program approval by the Secretary of Commerce, a state becomes eligible for implementation grants. Washington, in early 1975, was the first state to comply with these requirements and receive approval of the state program.

Approval of the state program also brings into force the "Federal consistency provisions" of the Act. This gives coastal state Governors the right to decide whether a federal license or permit for an action affecting the coastal zone will be consistent with the state management program. Except in cases of overriding national interest, the Governor must certify consistency before the federal agency can grant the license.

(The 1976 amendments to the Act were brought on by the energy crisis and anticipated increased shoreside impacts resulting from OCS oil and gas leasing. Because of a Supreme Court decision stating the federal government had sole control over activities taking place outside the 3 mile offshore jurisdiction of the states, the states have no major role in OCS development decisions nor do they receive revenues from such development. Relief for onshore impacts from OCS development, then, are provided for through categorical impact aid instead of bonus or royalty revenue sharing. This planning and impact aid is provided for through the Coastal Energy Facility Impact Fund created by the 1976 amendments.)

Summary of Provisions: 1) Congressional declaration of policy stresses the role of the states in managing the coastal zone resources and development impacts.

2) Requirements for state programs are outlined.

3) Following approval of a state program, the "Federal consistency provisions" of the Act are operative. Except where the national interest dictates otherwise, no application for a federal license or permit will be granted for activities affecting the coastal zone, unless the applicant provides the federal agency responsible for reviewing the application with a "certification" from the state Governor that the application is consistent with the state program. Mediation of disagreements between the federal and state governments is provided for.

Text of Provisions:

(1) Congressional policy.

> 16 U.S.C. Sec. 1452 The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishement of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(2) Program requirements.

> 16 U.S.C. Sec.1454. (b) The management program for each coastal state shall include each of the following requirements:
>
> (1) An identification of the boundaries of the coastal zone subject to the management program.
>
> (2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.
>
> (3) An inventory and designation of areas of particular concern within the coastal zone.
>
> (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.
>
> (5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.
>
> (6) A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.
>
> (7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(2) Program requirements. (Cont'd)

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

(3) Federal Consistency Provisions

16 U.S.C. Sec. 1456. Coordination and cooperation--Federal agencies

(a) In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)

(1) Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) (A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practical time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until--

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence.

(ii) concurrence by such state with such certification is conclusively presumed, as provided for in subparagraph (A); or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(3) Federal Consistency Provisions. (Cont'd)

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

STATE INPUT INTO LICENSING OF NUCLEAR FACILITIES (HR 4866, HR 4867)

Background: Presently, States have a right to prompt notice of a license application whereupon they are given a reasonable time for comment on the application. From the text of the statute (see section above "Atomic Energy Act of 1954 - Agreement States") Congress clearly intended that the licensing body pay close attention to these State comments before a license was ultimately issued. The proposed legislation outlined below would give the states a significantly greater deal of control over the licensing process. Both bills are currently before the House Interior Committee.

Summary of Bills: HR 4867 provides that no Nuclear Regulatory Commission (NRC) license can take effect for a 90 day period during which time the affected state under provisions of state law may disapprove the license. The state law, upon which the state must base its disapproval, must "not be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to" the Atomic Energy Act. However, the state law cannot be considered inconsistent solely because it is more stringent than the federal law or regulations.

HR 4866 provides that NRC cannot issue a license unless license applicant establishes that the affected state has approved the project for which the NRC license is being sought. Again, a state's approval of a facility must be based on state law. Such state law must not be inconsistent with the Atomic Energy Act; however, greater stringency in the state law cannot be the sole basis for determining that the state law is inconsistent with the federal law.

Text of Bills:

(1) HR 4867, State disapproval after NRC license issued.

Sec. 193 (a) Upon the issuance of any license to construct or modify any production or utilization facility, the Commission shall notify affected States.

(b) No license for construction or modification of any production or utilization facility shall take effect if such license is disapproved by an affected State before the expiration of the ninety-day period which begins on the date of notice by the Commission to such State under subsection (a).

(c) Disapproval by a State under subsection (b) shall be exercised in such manner as is provided under State law for such purpose, except that no standard or requirement imposed by the State as a condition of its approval (other than a requirement solely relating to facility location) may be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to this Act. Such Board may not determine a State standard or requirement to be inconsistent for purposes of this subsection solely on the basis that such standard or requirement requires more stringent safety measures than are required pursuant to this Act.

(d) For purposes of this section, the term 'affected State' means the State within whose boundaries the proposed construction or modification of a production or utilization facility will occur.

(2) HR 4866, State approval needed as requisite for NRC license.

> Sec. 193. (a) No application for a license for construction or modification of any production or utilization facility may be issued by the Commission unless the applicant for such license establishes that such construction or modification has been approved before application to the Commission for such license, by affected States.
>
> (b) State law may permit approval for purposes of subsection (a) on the basis of a finding--
>
> (1) that the location of the proposed facility is in compliance with applicable State law (including State land use and environmental laws), and
>
> (2) that construction of the proposed facility would be consistent with State energy development plans which plans may take into account various considerations such as economics, impacts upon air and water quality, and other possible hazards to health or the environment, or
>
> on such other basis as may be determined under State law.
>
> (c) Approval by a State under subsection (a) shall be exercised in such manner as is provided under State law for such purpose, except that no standard or requirement imposed by the State as a condition of its approval (other than a requirement solely relating to facility location) may be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to this Act. Such Board may not determine a State standard or requirement to be inconsistent for purposes of this subsection solely on the basis that such standard or requirement requires more stringent safety measure than are required pursuant to this Act.
>
> (d) For purposes of this section, the term 'affected State' means the State within whose boundaries the proposed construction or modification of a production or utilization facility will occur.

COAL COOPERATIVE AGREEMENTS

Background: The Department of Interior promulgated regulations setting environmental performance standards for strip mine operations on federal coal leases in May 1976. A major provision of these regulations (43 CFR 3041 and 30 CFR 211), commonly called the 3041/211 regulations, authorizes Interior to enter into "cooperative agreements" with any state which would provide for one of two things: (a) where a state could show it had environmental protection standards at least as stringent as federal standards and could show the state could enforce those provisions, the state standards would become federal standards and the state could enforce and administer the provisions on federal as well as state lands; (b) where state standards were not as stringent as the federal rules, if a state could show it could adequately enforce and administer the federal rules, the state would be permitted to do so on federal lands.

To date all six western coal states have entered into a cooperative agreements. Wyoming and Montana both are administering and enforcing their own state standards on federal as well as state and private lands. Colorado, New Mexico, Utah and North Dakota were not able to meet the "stringency" test for their own standards and are now enforcing the federal provisions on federal lands. Colorado and New Mexico are the only states with agreements providing for some federal money to enforce the standards on federal lands.

Summary of Provisions: 1) States with at least as stringent reclamation standards as provided for in federal rules may have the state standards incorporated into federal rules for that state and the state would be permitted to enforce those standards.

2) States unable to meet the stringency test would be permitted to enforce the federal rules on federal lands if they could show their capability to do so.

3) Pending federal strip mine legislation makes provision for the existing cooperative agreements. Also, see section on federal strip mining legislation in category I.

Western Interstate Nuclear Board
P.O. BOX 15038 • LAKEWOOD, COLORADO 80215 • (303) 238-8383

SPECIAL REPORT

PRECEDENTS AND PROPOSALS FOR STATE INVOLVEMENT IN FEDERAL ENERGY DECISIONS

August, 1977

Prepared by:
John Watson, J.D., Resource Analyst
Douglas Larson, Legislative Analyst

SUMMARY

This report outlines several existing and proposed options for state involvement in federal energy-related decisions. These options may be helpful in understanding the present degree of state input and in developing a case to increase state involvement in various federal energy decisions.

The report is divided into three sections roughly corresponding to the degree of control the state exercises over energy-related decisions, from state dominance to a mixture of federal and state control to federal dominance with opportunities for state input. Examples of the state input in each section are provided. Each example includes background information, a summary of the provisions for state input, and the text of those provisions.

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*Indicates proposals not currently in effect.

I. STATE DOMINANCE

This section provides examples where the federal government has preempted state law in a certain field and then given much of the authority back to the states, provided the state meets certain minimum requirements set forth in the federal law, such as adopting a stringent state strip mine reclamation law, etc., and can properly administer the program. In most cases where the state meets the requirements of the federal law ans assumes responsibility, state actions will circumscribe related federal decisions, including decisions related to management of federal reources. However, typically, state actions following the state's assumption of responsibility are subject to some type of federal review to insure the state actions are in compliance with federal law.

In some cases, particularly under the nuclear agreement states example, states have not elected to assume the responsibility to carry out the program, because of a lack of federal funds. This may also become the case under the strip mine bill.

Following are examples of state dominance in what are fundamentally federal energy-related decisions.

COAL STRIP MINE BILL

Background: Federal legislation to regulate coal surface mining has been passed by Congress and is on the President's desk. Unlike earlier legislation which passed the Congress and was vetoed, it is expected that the President will sign the bill.

The Surface Mining Control and Reclamation Act of 1977 (HR 2) sets minimum standards for environmental protection for coal surface mining and the surface effects of underground coal mining on all land, including State, Federal, and private land. The Act follows a procedure similar to both the Clean Air Act and the Federal Water Pollution Control Act (discussed below) by totally preempting state regulation of coal strip mining except where a state has developed an acceptable program for such regulation meeting the minimum performance standards created by the federal statute. Where a state receives approval of its regulatory program, it is permitted to implement regulation over state and private lands. In some instances the state may also apply their standards to federal lands. Where state officials fail to submit an approvable state program or do not adequately enforce an approved system, the federal government reserves the right to subject all lands in the state (federal, state, and private) to federal regulation and enforcement.

Summary of Provisions: 1) States wishing to assume exclusive jurisdiction of strip mining over state and private lands must submit a program to the Department of Interior within 18 months of enactment (with some exceptions). Such program would include a state law and/or regulation as stringent or more stringent than the reclamation standards in the federal statute. Interior has six months from submission to approve or deny the program. Although not specifically stated in the statute or conference committee report, it appears that Interior cannot disapprove a proposed state program solely on the grounds that it is too stringent. If the program is disapproved, the state has 60 days to resubmit a program, otherwise the Secretary of Interior will move to implement a federal program for state and private lands. Federal disapproval of a proposed state program is subject to review in the courts.

2) Interior will implement a federal program within 34 months of enactment where a state has not submitted an approvable program or is not enforcing an approved state program.

3) Interior shall implement a program for regulation of federal lands within one year of enactment. States with approved programs for regulation of state and private lands may elect to enter into cooperative agreements with Interior for state regulation of federal lands. States with existing cooperative agreements may elect to have the agreements continued with appropriate changes to conform to the Act.

Like approval of a state's general program, the Interior Department's approval of a states' election to regulate surface mining on federal land is contingent upon a finding that the state has adequate manpower and budget to enforce the program and that the program is consistent with the Act (greater stringency is consistent with the Act). However, approval of a state's election to regulate surface mining on federal land does not change the current requirement in federal law that the Secretary of Interior must approve mining plans. This

apparently means that a state which, through a cooperative agreement, is enforcing reclamation standards on federal land can prevent proposed mining by not issuing a permit even though the Interior Department approves and visa versa, i.e. the state can approve a mining plan and Interior disapprove it and there would be no mining.

(Note: The numbers in the Text of Provisions section below correspond to the numbers in the Summary of Provisions section.)

Text of Provisions:

(1) Sec. 503. (a) Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 521 and 523 and title IV of this Act, shall submit to the Secretary, by the end of the eighteen-month period beginning on the date of enactment of this Act, a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through--

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act.

(4) a State law which provides for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of this title for the regulation of surface coal mining and reclamation operations for coal on lands within the State:

(5) establishment of a process for the designation of areas as unsuitable for surface coal mining in accordance with section 522 provided that the designation of Federal lands unsuitable for mining shall be performed exclusively by the Secretary after consultation with the State; and

(6) establishment for the purposes of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations; and

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.

(b)The Secretary shall not approve any State program submitted under this section until he has--

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), and the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel necessary for enforcement of the environmental protection standards.

The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program was submitted to him.

(c) If the Secretary disapproves any proposed State program in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program or portion thereof. The Secretary shall approve or disapprove the resubmitted State program or portion thereof within sixty days from the date of resubmission.

(d) For the purposes of this section and section 504, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of elegibility for financial assistance under titles IV and VII of this Act or in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to the injunction shall be conducted by the State pursuant to section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable.

(2) Sec. 504. (a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal program for a State no later than thirty-four months after the date of enactment of this Act if such State--

(1) fails to submit a State program covering surface coal mining and reclamation operations by the end of the eighteen-month period beginning on the date of enactment of this Act;

(2) fails to resubmit an acceptable State program within sixty days of disapproval of a proposed State program: Provided, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) fails to implement, enforce, or maintain its approved State Program as provided for in this Act.

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months. Promulgation and implementation of a Federal program vests the Secretary with exclusive jurisdiction for the regulation and control of surface coal mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal program the Secretary shall be the regulatory authority. If a Federal program is implemented for a State, section 522 (a), (c), and (d) shall not apply for a period of one year following the date of such implementation. In promulgating and implementing a Federal program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, and biological, chemical, and other relevant physical conditions.

(b) In the event that a State has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State.

(c) Prior to promulgation and implementation of any proposed Federal program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(d) Permits issued pursuant to a previously approved State program shall be valid but reveiwable under a Federal program. Immediately following promulgation of a Federal program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him an opportunity for hearing and reasonable opportunity for submission of a new application and reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501 (b), to conform ongoing surface mining and reclamation operations to the requirements of the Federal program.

(e) A State which has failed to obtain the approval of a State program prior to implementation of a Federal program may submit a State program at any time after such implementation. Upon the submission of such a program, the Secretary shall follow the procedures set forth in section 503 (b) and shall approve or disapprove the State program within six months after its submittal. Approval of a State program shall be based on the determination that the State has the capability of carrying out the provisions of this Act and meeting its purposes through the criteria set forth in section 503 (a) (1) through (6). Until a State program is approved as provided under this section, the Federal program shall remain in effect and all actions taken by the Secretary pursuant to such Federal program, including the terms and conditions of any permit issued thereunder shall remain in effect.

(f) Permits issued pursuant to the Federal program shall be valid under any superseding State program: Provided, That the Federal permittee shall have the right to apply for a State permit to supersede his Federal permit. The State regulatory authority may review such permits to determine that the requirements of this Act and the approved State program are not violated. Should the State program contain additional requirements not contained in the Federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in regulations promulgated pursuant to section 501, to conform ongoing surface mining and reclamation operations to the additional State requirements.

(g) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal program. The Secretary shall set forth any State law or regulation which is preempted and superseded by the Federal program.

(h) Any Federal program shall include a process for coordinating the review and issuance of permits for surface mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation.

(3) Sec. 505. (a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operation than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. The Secretary shall set forth any State law or regulation which is construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

(4) Sec. 523. (a) No later than one year after the date of enactment of this Act, the Secretary shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place pursuant to any Federal law on any Federal lands: Provided, That except as provided in section 710 the provisions of this Act shall not be applicable to Indian lands. The Federal lands program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question. Where Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program: Provided, That the Secretary shall retain his duties under sections 2(a), (2) (B) and 2(a)(3) of the Federal Mineral Leasing Act, as amended, and shall continue to be responsible for designation of Federal lands as unsuitable for mining in accordance with section 522 (b) of this title.

(b) The requirements of this Act and the Federal lands program or an approved State program for State regulation of surface coal mining on Federal lands under subsection (c), whichever is applicable, shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to susequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require any surface mining and reclamation operations to conform with the requirements of this Act and the regulations issued pursuant to this Act.

(c) Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State program, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 522 of this Act, or to regulate other activities taking place on Federal lands.

(d) The Secretary shall develop a program to assure that with respect to the granting of permits, leases, or contracts for coal owned by the United States, that no class of purchasers of the mined coal shall be unreasonably denied purchase thereof.

ATOMIC ENERGY ACT OF 1954 - AGREEMENT STATES

Background: The federal government preempted control of all nuclear energy related activities in 1954 when it passed the Atomic Energy Act. It wasn't long, however, before administrators of the Act and members of Congress realized there were certian activities that were more appropriately the subject of state and local control. Thus, in 1959 Congress passed the "Amendments to the Atomic Energy Act of 1954, as amended, with respect to Cooperation with States." The amendments outlined the procedures whereby states which were able to demonstrate the sufficiency of their program, could assume exclusive jurisdiction over the regulation of certain "byproduct, source, and special nuclear materials" for purposes of protection against radiation hazards. Areas that remain the province of the federal government include: construction and operation of production and utilization facilities; export and import of nuclear materials and facilities and possession of near weapon quantities and grades of special nuclear materials; and disposal of nuclear waste materials.

The importance of the amendments in terms of state jurisdiction over the prescribed areas of responsibility is evidenced by this paragraph from Senate Report No. 870, 86th Congress, First Session, September 1, 1959:

> " It is not intended to leave any room for the exercise of dual or concurrent jurisdiction by States to control radiation hazards by regulating byproduct, source, or special nuclear materials. The intent is to have the material regulated and

> licensed either by the Commission, or by the State and local governments, but not by both. The bill is intended to encourage States to increase their knowledge and capacities, and to enter into agreements to assume regulatory responsibilities over such materials."

Of the 25 "Agreement States" throughout the country, 10 are in the West: Arizona, California, Colorado, Idaho, Nebraska, Nevada, New Mexico, North Dakota, Oregon, and Washington.

Summary of Provisions: 1) An extensive purposes section in the 1959 amendments recognizes the importance of state regulation as to certain by-product, source, and special nuclear materials and shows the intention of Congress to promote an orderly regulatory pattern between the federal and state governments.

2) The Atomic Energy Commission (now the Nuclear Regulatory Commission) is authorized to enter into an agreement with the Governor of any state regarding any one or more of the following materials: (a) byproduct materials; (b) source materials; and (c) special nuclear materials in quantities not sufficient to form a critical mass, for purposes of protection of the general public health and safety against radiation hazards.

3) The Commission may enter into agreements where the Governor of the state certifies the state has an adequate program and the Commission finds the state program is compatible with the Commission's program.

4) The amendments also authorize execution of cooperative agreements with any state or states to perform cooperative inspections or other functions relative to the Commission's licensing and regulatory functions.

5) Finally, the Commission must give prompt notice to the states regarding any application for a license over which the Commission retains responsibility and must give the states reasonable opportunity to offer evidence and give advice on the application.

Text of Provisions:

(1) Purposes.

> Sec. 274. (a) It is the purpose of this section--
> (1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;
> (2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;
> (3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;
> (4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

(2) Agreements.

Sec. 274.(b) Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State--

(1) byproduct materials;

(2) source materials;

(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have the authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(3) Governor certifies program.

Sec. 274.(d) The Commission shall enter into an agreement under subsection b. of this section with any State if--

(1) the Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

(4) Cooperative agreements.

Sec. 274.(i)The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

(5) State comment on license applications.

Sec. 274(l)With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take position for or against the granting of the application.

CLEAN AIR ACT

Background: Current law, enacted in 1967 and amended in 1970, preempts state control of air pollution from both stationary and moving sources. A system of federal approval of state implementation plans for the state to adopt and enforce state standards at least as stringent as the minimum federal requirements is established. Absent approval of a state plan, federal standards apply and are enforced by the Environmental Protection Agency (EPA).

Although Congress is presently considering major amendments to the Act, this section will summarize current law. Proposed amendments deal primarily with the "non-deterioration" issue and do not make major changes in the present system of state control following federal approval of a state program.

The Act sets (a) emission standards (emissions from a source) and (b) ambient air quality standards (cumulative standards defining the air level concentrations permitted for a particular area). Two sets of air quality standards are defined: (a) primary standards are designed to achieve a level of ambient air quality necessary to protect public health; (b) secondary standards are designed to achieve a level of air quality which will avoid any adverse effects associated with the presence of an air pollutant in the ambient air. (Secondary standards are more stringent than primary standards.)

An important Surpreme Court decision delivered in 1976 deserves mention. Hancock v. Train states that federally-owned and operated facilities need not comply with the state permitting procedures. Nevertheless, these facilities must comply with the state standards outlined in an approved state plan. The only recourse for enforcement of the state standards against these facilities, however, is via filing a citizen's suit. The case applies only to federally owned and operated facilities (eg. an ERDA owned and operated demonstration project). Federally permitted or licensed activities must still receive a state permit prior to operation (eg. coal-fired power plant constructed on federal land, but owned and operated by other than the federal government.)

Summary of Provisions: 1) Establishes state as primarily responsible for assuring compliance with the Act. Requires setting up "air quality control regions."

2) States must submit, for EPA approval, an implementation plan for national primary and secondary ambient air quality standards. Plan contents are outlined.

3) EPA will establish an implementation plan for a state that does not submit a plan or for a state whose plan is not approved.

4) EPA may delegate enforcement authority to a state whose enforcement plan is approved.

5) EPA may intervene and enforce standards when a state fails to adequately enforce the same.

6) Conference procedures are established to abate air pollution on a collective basis: state, interstate, municipality.

7) State standards must be at least as stringent as federal standards.

8) Air Quality Advisory Board is established.

(1) States have primary resporsibility. (Note: all section numbers for clean air refer to 42 United States Code)

Sec. 1857c--2. Air quality control regions--Responsibility of State for air quality; submission of implementation plan

(a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

Designated regions

(b) For purposes of developing and carrying out implementation plans under section 1857c--5 of this title--

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

Authority of Administrator to designate regions; notification of Governors of affected States

(c) The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Adminstrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(2) State Implementation Plans (SIP's).

Sec. 1857c--5. State implementation plans for national primary and secondary ambient air quality standards--Submission to Administrator; time for submission; State procedures; required contents of plans for approval by Administrator; approval of revised plan by Administrator

(a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 1857c--4 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1) approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that--

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necssary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transprotation controls;

(C) it includes provision for establishment and operation of appropriate devices methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4) for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(2) State Implementation Plans (SIP's), (Cont'd)

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapeter, which reports shall be available at reasonable times for public inspections; and (v) for authority comparable to that in section 1857h--1 of this title, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements,

(3) (A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard or performance under section 1857c--6 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necssary to permit the State to make a determination under clause (A).

(3) EPA establishes and enforces federal plan.

Sec. 1857c-5 (c) (1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion therof, for a State if--

(A) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(B) the plan, or any protion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(4) State may enforce approved plan.

Sec. 1857C-6 (c) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(5) EPA may intervene.

Sec. 1857c-8 (a) (2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person--

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(6) Conference procedures.

Sec. 1857d (b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) orginate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(7) State standards at least as stringent.

Sec. 1857d--(1) Retention of State authority

Except as otherwise provided in sections 1857c--10(c), (e), and (f), 1857f--6a, 1857--6c (c) (4), and 1857f--11 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 1857c--6 or section 1857c--7 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(8) Air Quality Advisory Board.

Sec. 1857e (a) (1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

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Duties of Board

(b) The board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter and make such recommendations as it deems necessary to the President.

FEDERAL WATER POLLUTION CONTROL ACT

Background: The Federal Water Pollution Control Act (FWPCA) sets minimum federal standards for the protection of and eventual elimination of polluting discharges into the nation's navigable waters. An interim goal of providing for the protection and propagation of fish, shellfish, and wildlife and providing for recreation in and on the water is set for July 1, 1983. The national goal to eliminate the discharge of pollutants into navigable waters is set for 1985.

The Administrator of the Environmental Protection Agency (EPA) is required to set national standards for a variety of discharge sources which apply to all sources throughtout the country. The statute effectively pre-empts all state standards for regulating pollutant discharges into navigable waters within the state's jurisdiction. The National Pollutant Discharge Elimination System (NPDES) is established requiring a permit for the discharge of any pollutant or combination of pollutants into navigable waters. At the request of the Governor of a state and upon proof of: (a) state standards at least as protective as federal standards; and (b) a state administrative system capable of administering and enforcing the permit system, a state may assume the responsibilities established by the Act. Where a state fails to enforce an approved program, the EPA may intervene to assure protection of the nation's waters.

When a state receives approval of a state program, federal certification provisions take effect. Thus, an application for a federal permit or license for an activity which will result in the discharge of pollutants (eg. permit to build power plant on federal land) must contain a certificate from the state regulatory authority (usually state health boards) that the state discharge standards will be complied with. The state has one year from the date of application to grant or deny the certificate. Failure by the state to act within the year waives the certification requirement. A federal permit or license cannot be issued unless the application contains a state certificate or the requirement has been waived by the passage of one year.

Summary of Provisions: 1) Congressional policy recognizing primary responsibilities of the states.

2) State standards in existence on the date of enactment remain in effect for interstate and intrastate waters where EPA finds them consistent with the FWPCA.

3) States without standards on the date of enactment must develop and submit them to EPA for the state to assume primary responsibility over discharges into navigable waters.

4) States shall develop, and submit for approval, a continuing planning process.

5) EPA may permit the states to enforce their own program.

6) Federal enforcement provisions are provided for, including situations where a state fails to enforce their own program.

Summary of Provisions: (Cont'd)

7) Federal "certification provisions" are provided similar to CZM requirements. An applicant for a federal license or permit for an activity that will discharge pollutants (eg. construction and operation of a power plant on federal land) must receive a certificate from the state regulatory agency stating the planned activity complies with the state standards. The certification provision is waived if the state does not act within a year of a request for a certificate. No federal permit or license will be issued unless the certificate provisions are complied with or have been waived by the passage of time.

8) The National Pollutant Discharge Elimination System (NPDES) is established. This program may be administered by the state following approval by EPA of the state program. Federal supervision of state enforcement of the program exists.

9) A Water Pollution Control Advisory Board is set up composed of State, interstate, local and public and private interest group members.

Text of Provisions:

(1) Congressional Policy.

> Sec. 101 (b). It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act.

(2) Existing State Standards.

> Sec. 303 (a). (1) In order to carry out the purpose of this Act, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination, he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.
>
> (2) Any State which, before the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this Act unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3) Submission of new state standards.

Sec. 303. (a) (3)(A) Any State which prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b)(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if --

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(4) State planning process.

Sec. 303. (e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301 (b)(2) section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

(5) State program enforcement.

Sec. 306 (c) Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(6) Federal enforcement.

Sec. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308 of this Act in a permit issued by a State under an approved permit program under section 402 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitation as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of 'federally assumed enforcement'), the Administrator shall enforce any permit condition or limitation with respect to any person--

(A) by issuing an order to comply with such condition or limitation or

(B) by bringing a civil action under subsection (b) of this section.

(7) Federal permit requires state certificate.

Sec. 401.(a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge orginates or will orginate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge orginates or will originate, that any such discharge will comply with the applicable provisions of sections 301,302,306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstae agency, or the Administrator, as the case may be.

(8) NPDES.

Sec. 402.(a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, not withstanding section 301(a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

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Sec. 402.(c) (3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective actior is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(9) Water Pollution Control Advisory Board.

Sec. 503. (a)(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contribuing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

XXXXX

(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act.

II. Both Federal and State Control

This section provides examples where both the federal government and state government exercise control over an energy decision. The examples include: (a) state veto power over a federal decision or state modification of a federal permit or decision typically subject to federal override in the "national interest"; (b) federal government permitting a state to enforce its law on federal land, provided that the state law does not conflict with the "national interest"; (c) split jurisdiction where the federal government exercises sole control over part of a process, but leaves the remaining part of the process under sole state control; (d) joint decision-making with the state and federal governments retaining their respective authorities which could be exercised if the joint decision is disagreeable to either party; and (e) permissable delegation of authority to states. Following are examples of both federal and state control over energy-related decisions.

OUTER CONTINENTAL SHELF (OCS) LANDS ACT REVISIONS

Background: The Outer Continental Shelf Lands Act (43 USC 1331 et. seq) became law on August 7, 1953, based on the Congressional policy that the subsoil and seabed of the Outer Continental Shelf "appertain to the United States and are subject to its jurisdiction, control, and power of disposition..." The Secretary of the Interior is given the responsibility to administter the Act and issue necessary rules and regulations for leasing and management of OCS lands. Oil and gas leases on OCS lands are granted to the highest bidder in a competitive bidding procedure based on a cash bonus system with a production royalty set by the Secretary of at least 12½%.

The 94th Congress failed to pass major revisions of the OCS Lands Act. Although both Houses passed their own versions (HR 6218, S 521), the bill that came out of Conference was recommitted to Conference following brief debate in the House. The purpose of recommitting the bill was to modify two controversial provisions: 1) Senate language authorizing the federal government to contract for exploratory drilling on the OCS and 2) provisions for revamping the existing structure for developing safety regulations for OCS operations.

Congress this year is considering bills similar to those of last session. The Senate passed its version (S 9) on July 15, 1977, but made major changes in sections dealing with federal/state relations. Summaries of last session's S 521 as it came out of conference and this year's S 9 as passed by the Senate are provided below.

Summary of Provisions (S 521): 1) During preparation of a proposed federal lease program, the Secretary of Interior must invite and consider suggestions from the Governor of an affected state. Time limits for comments and consideration are provided.

2) Once the lease program has been prepared, the Secretary must submit the program to Congress, the Attorney General, the Governors of affected states, and the Regional Outer Continental Shelf Advisory Boards and must coordinate program with state coastal zone management systems.

3) The Governors of affected states may set up Regional Outer Continental Shelf Advisory Boards. The Boards advise the Secretary on "all matters relating to Outer Continental Shelf oil and gas development."

4) Recommendations of the Governor of an affected state or the Advisory Boards must be accepted by the Secretary unless he determines they are contrary to the national security or the overriding national interest. A determination of the overriding national interest is defined.

Text of Provisions (S 521):

(1) Sec. 208. Sec. 18.(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider suggestions from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the *Federal Register* pursuant to paragraph (3) of this subsection, the Secretary shall transmit a copy of such proposed program to the Governor of each affected State for review and comment. If any such comment is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together, with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(2) Sec. 208. Sec. 18. (c) (3). Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, the Governors of affected States, and the Regional Outer Continental Shelf Advisory Boards, and shall publish such proposed program in the *Federal Register*.

(d) (1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such proposed program upon competition, and any State, local government, Regional Outer Continental Shelf Advisory Board, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State, local government, or Regional Outer Continental Shelf Advisory Board was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved, and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(e) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(f) The Secretary shall by regulation, establish procedures for--

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas leases and permittees, and representatives of other individuals or organizations engaged in activity in or on the Outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) coordination of the program with the management program being developed by any State for approval pursuant to section 305 of the Coastal Zone Management Act of 1972 and to assure consistency, to the maximum extent practicable, with the management program of any State which has been approved pursuant to section 306 of such Act. Such procedures shall be applicable to any revision or reapproval of the leasing program.

(3) Regional Advisory Boards.

Sec. 208. Sec. 19. Regional Outer Continental Shelf Advisory Boards.--(a) The Governors of affected States may establish Regional Outer Continental Shelf Advisory Boards for their regions with such membership as they may determine, after consultation with the Secretary and the Secretary of Commerce.

(b) Representatives of the Secretary, the Secretary of Commerce, the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard, the Administrator of the Environmental Protection Agency, and the Administrator of the Occupational Safety and Health Administration shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section.

(c) Each Board established pursuant to subsection (a) shall advise the Secretary on all matters relating to outer Continental Shelf oil and gas dvelopment, including development of the leasing program required by section 18 of this Act, approval of development and production plans required pursuant to section 25 of this Act, implementation of baseline and monitoring studies, and the preparation of environmental impact statements prepared in the course of the implementation of the provisions of this Act.

(4) Secretary must accept recommendations.

Sec. 208.Sec.19. (d) If any Regional Advisory Board or the Governor of any affected State--

(1) makes specific recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposal development and production plan; and

(2) submits such recommendations to the Secretary within sixty days after receipt of notice of such proposed lease sale or of such development and production plan, the Secretary shall accept such recommendations, unless he determines they are not consistent with national security or the overriding national interest. For purposes of this subsection, a determination of overriding national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner, consistent with the policies of this Act. If the recommendations from State Governors or Regional Advisory Boards conflict with each other, the Secretary shall accept any of those recommendations which he finds to be the most consistent with the national interest. If the Secretary finds that he cannot accept recommendations made pursuant to this subsection, he shall communicate in writing, to such Governor or such Board the reasons for rejection of such recommendations. The Secretary's determination that recommendations are not consistent with the national security or the overriding national interest shall be final and shall not, alone, be a basis for invalidation of proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

Summary of Provisions (S 9): (1) The Regional Advisory Boards have been eliminated from the Senate bill, but the Secretary must still accept Governor's recommendations on the size, timing, or location of a proposed lease sale or a proposed development and production plan, as long as the Secretary has determined the recommendations provide for a "reasonable balance between the national interest and the well-being of the citizens of the affected state."

(2) The Secretary is authorized to enter into cooperative agreements with coastal states to provide for joint procedures on several aspects of OCS development.

(3) A portion of the Senate committee report explains the purpose and Congressional intent of the sections dealing with federal/state coordination. (Sen. Rept. No. 95-284, 95th Cong. 1st session, June 21, 1977.)

Text of Provisions (S 9):

(1) Sec. 208. Sec.19 Coordination With Affected States and Local Governments.--

(a) Any Governor of any affected State may submit recommendations to the Secretary regarding the size, timing or location of a proposed lease sale or with respect to a proposed development and production plan.

(b) Such recommdnations shall be submitted within sixty days after notice of such proposed lease sale or receipt of such development and production plan.

(c) The Secretary shall accept such recommendations if he determines, after having provided the Governor the opportunity for full consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For the purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Secretary's determination that recommendations are not consistent with the national interest shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

(2) Cooperative Agreements.

> Sec. 208. Sec.19. (d) The Secretary is authorized to enter into cooperative agreements with affected coastal States for purposes which are consistent with this Act, and applicable Federal law. Such agreements may include the sharing of information, the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations and stipulations relevant to outer Continental Shelf operations both on and offshore.

(3) Senate Report on S 9.

> Sec. 19. Coordination with affected States and local governments This section provides that if a Governor of a potentially affected State, makes a specific recommendation to the Secretary regarding the size, timing or location of a proposed lease sale, or on a proposed development and production plan or the statement of non-OCS activity which must accompany it, within 60 days after receipt of notice of such activity, the Secretary is to accept such recommendation if he determines that it provides for a reasonable balance between the national interest and the well-being of the citizens of the affected State. He must communicate, in writing, the reasons for accepting or rejecting the Governors' recommendation.
>
> The intention of this section is to insure that Governors of affected States have a a leading role in decisions as to potential lease sales and production and development plans. Governors of affected States should also consult with representatives of affected local governments and should forward their views, when appropriate, as part of their formal recommendations.
>
> The intent of the committee is to insure that the Secretary give thorough consideration to the voices of responsible regional and local State officials in planning OCS leasing and development. The committee did not believe that any State should have a veto power over OCS oil and gas activities. The committee fully expects, however, that the advice of the Governor, be given full and careful consideration and be incorporated into the ultimate decision of the Secretary, insofar as they are not inconsistent with the balanced approach to OCS leasing set out in this act.
>
> It is also expected that any recommendations made by a Governor, and the reasons for rejection of such recommendations, will be part of the record of any judicial proceedings as to a lease sale, provided for in the citizens; suit subsection (23(a)) or for review of a development and production plan, provided for in the judicial review subsection (23(c)).

COLORADO VETO OVER FEDERAL WATER REALLOCATION

Background: The Colorado Constitution establishes priorities for the beneficial use of water in the state for domestic, agriculture, and industrial uses. Concern over the use of federal water allocations to stimulate massive energy development led to negotiations between Governor Lamm and the Department of Interior's Bureau of Reclamation. These negotiations led to a Memorandum of Understanding (MOU) which was signed in mid-July between Governor Lamm and Secretary of Interior Andrus.

Summary of Provisions: 1) The purpose of the MOU is to set the policy Interior will follow in reviewing applications for reallocation or reassignment of water from Bureau of Reclamation projects tc energy production/conversion uses.

2) The State may review water reallocation applications.

3) Except where the overriding national interest requires otherwise, Interior must receive the Governor's concurrence regarding the application before water is reallocated from agricultural, municipal or light industrial uses to energy production/conversion uses.

Text of Provisions:

(1) Purpose.

> NOW, THEREFORE, it is the purpose of this Memorandum of Understanding between the Department of the Interior and the State of Colorado to set forth the policy to be followed by the Department of the Interior in reviewing applications by water user organizations under repayment contract to the Bureau of Reclamation seeking to reallocate or reassign water from Bureau of Reclamation projects from agricultural, municipal or light industrial uses to energy production/conversion uses. . . .

Text of Provisions: (Cont'd)

(2) State review of reallocation application.

The Department shall submit or forward to the State, in writing, any request or application for a reallocation, transfer, or reassignment of water as described above from a Bureau of Reclamation project in Colorado. The State shall be given a reasonable time to advise and consult with the Department concerning approval or disapproval of the proposed reallocation, transfer or reassignment.

(3) State veto of approval.

Prior to approval of any such request or application, the Secretary of the Interior shall obtain the concurrence, in writing, of the Governor of Colorado, except upon a determination of the Secretary of the Interior that applicable congressional directives or the overriding national interest require approval of the application notwithstanding State disapproval. The Secretary shall specify and give notice to the State of the reasons for such a determination.

STATE VETO OVER NUCLEAR WASTE DISPOSAL (HR 2675, S 1623)

Background: The Energy Research and Development Administration (ERDA) is charged with developing a program for the disposal of radioactive waste. General areas in several states have been identified as potential waste disposal locations. President Carter has ordered a new review of the waste disposal program.

Summary of Bill: HR 2675, introduced by Rep Carr, MI, and S 1623, introduced by Sen McGovern (SD) provide that ERDA cannot contract for construction of a waste storage facility in a state if the state legislature, by concurrent resolution, states that the proposed site shall not be used for such purpose. Hearings on HR 2675 have been held in the House Interior Committee. An amendment similar to S 1623 was defeated in the Senate July 12 by a 58-39 vote.

Text of Provisions:

(1) Sec. 107. (g)

(1) The Energy Research and Development Administration must publically notify the presiding officers of the State Legislature of its intent to explore a site in that State for the purpose of construction of a radioactive waste storage facility.

(2) The Energy Research and Development Administration shall not permit contracting for construction of a radioactive waste storage facility at a site in a State where the State Legislature by concurrent resolution states that that site shall not be used for such purpose.

LOAN GUARANTEES FOR SYNTHETIC FUELS COMMERCIALIZATION (HR 12112 of 1976)

Background: In 1975 and again in 1976 legislation giving the Energy Research and Development Administration (ERDA) the authority to issue loan guarantees to private industry for the development of synthetic fuel facilities, such as coal gasification facilities, made its way through Congress only to be killed on the House floor. Because such synthetic fuel facilities may cost upwards of $1 billion and have asubstantial impact on the environment, economy and social structure in the area where they would be located, Congress was urged to and did include provisions for securing state input, including a provision for Governor's concurrence.

Summary of Provisions: One provision of HR 12112 requires ERDA to inform the Governor of an affected state if federally subsidized synthetic fuel facility is proposed to be located in the state. If the Governor recommends that the proposed facility not be constructed, then the ERDA Administrator cannot issue the loan guarantee, "unless the Administrator finds that there is an overriding national interest in taking such action..." The Administrator's override of a Governor's objection to a proposed facility is reviewable in federal court.

Other sections of the bill provided for a lesser degree of state involvement and should be categorized under the third section, "Federal Dominance with State Input," but are noted as follows:

--One provision requires ERDA to establish, by regulation, procedures for review and comment on a proposed facility by states and others.

--Another provision requires the establishment of an advisory panel to advise ERDA on the loan guarantee program, including the impact of the demonstration facilities on communities, states and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts. Among other groups, the panel must include Governors or their designees as designated by the Chairman of the National Governors' Conference.

--A third provision requires ERDA to consult with states and local government prior to determining that grants are needed to meet the needs of communities impacted by the synthetic fuel facility.

Text of Provisions:

(1) Governor's concurrence.

> Sec. 19. (e) (1) As soon as the Administrator knows the geographic location of a proposed facility for which a guarantee or commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. The Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to 5 U.S.C. 706(2) (A) through (D). Such review shall take place in the United States court of appeals for the circuit in which the State involved is located,upon application made within ninety days from the date of such decision.

(2) Other state input.
- Review and comment on proposed facility.

> Sec. 19.(e) (1) The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

-Advisory Panel

Sec. 19.(e) (3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of synthetic fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference, Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be slected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 106(e) of the Energy Reorganization Act of 1974 (42 U.S.C. 5816(e) shall apply to the panel.

-Consultation prior to impact aid grants.

Sec. 19.(k)(5). If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Administrator may--

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: Provided, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: Provided further, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated with or result from, such demonstration facility and which are determined by the Administrator to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

COASTAL ZONE MANAGEMENT ACT OF 1972 (with major 1976 amendments)

Background: Passage of the Coastal Zone Management (CZM) Act in 1972 followed several years of study and debate. As with the Clean Air Act and the Water Pollution Control Act, Congress recognized the primary responsibility of the states in managing the coastal resource and development taking place. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) and all 30 eligible states have received federal program development grants. (The original 1972 Act provided for annual administration grants following program approval on a cost sharing basis of 1/3 state money, 2/3 federal money. The 1976 amendments to the Act raised the federal share to 80%.)

To implement a program, a state must (a) make coastal resource inventories; (b) develop and submit for approval comprehensive management plans; and (c) create legal and administrative agencies to implement their plans. Upon program approval by the Secretary of Commerce, a state becomes eligible for implementation grants. Washington, in early 1975, was the first state to comply with these requirements and receive approval of the state program.

Approval of the state program also brings into force the "Federal consistency provisions" of the Act. This gives coastal state Governors the right to decide whether a federal license or permit for an action affecting the coastal zone will be consistent with the state management program. Except in cases of overriding national interest, the Governor must certify consistency before the federal agency can grant the license.

(The 1976 amendments to the Act were brought on by the energy crisis and anticipated increased shoreside impacts resulting from OCS oil and gas leasing. Because of a Supreme Court decision stating the federal government had sole control over activities taking place outside the 3 mile offshore jurisdiction of the states, the states have no major role in OCS development decisions nor do they receive revenues from such development. Relief for onshore impacts from OCS development, then, are provided for through categorical impact aid instead of bonus or royalty revenue sharing. This planning and impact aid is provided for through the Coastal Energy Facility Impact Fund created by the 1976 amendments.)

Summary of Provisions: 1) Congressional declaration of policy stresses the role of the states in managing the coastal zone resources and development impacts.

2) Requirements for state programs are outlined.

3) Following approval of a state program, the "Federal consistency provisions" of the Act are operative. Except where the national interest dictates otherwise, no application for a federal license or permit will be granted for activities affecting the coastal zone, unless the applicant provides the federal agency responsible for reviewing the application with a "certification" from the state Governor that the application is consistent with the state program. Mediation of disagreements between the federal and state governments is provided for.

Text of Provisions:

(1) Congressional policy.

> 16 U.S.C. Sec. 1452 The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishement of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

(2) Program requirements.

> 16 U.S.C. Sec.1454. (b) The management program for each coastal state shall include each of the following requirements:
>
> (1) An identification of the boundaries of the coastal zone subject to the management program.
>
> (2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.
>
> (3) An inventory and designation of areas of particular concern within the coastal zone.
>
> (4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.
>
> (5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.
>
> (6) A description of the organizational structure proposed to implement such management program including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.
>
> (7) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(2) Program requirements. (Cont'd)

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

(3) Federal Consistency Provisions

16 U.S.C. Sec. 1456. Coordination and cooperation--Federal agencies

(a) In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)

(1) Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) (A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practical time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until--

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence.

(ii) concurrence by such state with such certification is conclusively presumed, as provided for in subparagraph (A); or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(3) Federal Consistency Provisions. (Cont'd)

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

STATE INPUT INTO LICENSING OF NUCLEAR FACILITIES (HR 4866, HR 4867)

Background: Presently, States have a right to prompt notice of a license application whereupon they are given a reasonable time for comment on the application. From the text of the statute (see section above "Atomic Energy Act of 1954 - Agreement States") Congress clearly intended that the licensing body pay close attention to these State comments before a license was ultimately issued. The proposed legislation outlined below would give the states a significantly greater deal of control over the licensing process. Both bills are currently before the House Interior Committee.

Summary of Bills: HR 4867 provides that no Nuclear Regulatory Commission (NRC) license can take effect for a 90 day period during which time the affected state under provisions of state law may disapprove the license. The state law, upon which the state must base its disapproval, must "not be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to" the Atomic Energy Act. However, the state law cannot be considered inconsistent solely because it is more stringent than the federal law or regulations.

HR 4866 provides that NRC cannot issue a license unless license applicant establishes that the affected state has approved the project for which the NRC license is being sought. Again, a state's approval of a facility must be based on state law. Such state law must not be inconsistent with the Atomic Energy Act; however, greater stringency in the state law cannot be the sole basis for determining that the state law is inconsistent with the federal law.

Text of Bills:

(1) HR 4867, State disapproval after NRC license issued.

Sec. 193 (a) Upon the issuance of any license to construct or modify any production or utilization facility, the Commission shall notify affected States.

(b) No license for construction or modification of any production or utilization facility shall take effect if such license is disapproved by an affected State before the expiration of the ninety-day period which begins on the date of notice by the Commission to such State under subsection (a).

(c) Disapproval by a State under subsection (b) shall be exercised in such manner as is provided under State law for such purpose, except that no standard or requirement imposed by the State as a condition of its approval (other than a requirement solely relating to facility location) may be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to this Act. Such Board may not determine a State standard or requirement to be inconsistent for purposes of this subsection solely on the basis that such standard or requirement requires more stringent safety measures than are required pursuant to this Act.

(d) For purposes of this section, the term 'affected State' means the State within whose boundaries the proposed construction or modification of a production or utilization facility will occur.

(2) HR 4866, State approval needed as requisite for NRC license.

> Sec. 193. (a) No application for a license for construction or modification of any production or utilization facility may be issued by the Commission unless the applicant for such license establishes that such construction or modification has been approved before application to the Commission for such license, by affected States.
>
> (b) State law may permit approval for purposes of subsection (a) on the basis of a finding--
>
> (1) that the location of the proposed facility is in compliance with applicable State law (including State land use and environmental laws), and
>
> (2) that construction of the proposed facility would be consistent with State energy development plans which plans may take into account various considerations such as economics, impacts upon air and water quality, and other possible hazards to health or the environment, or
>
> on such other basis as may be determined under State law.
>
> (c) Approval by a State under subsection (a) shall be exercised in such manner as is provided under State law for such purpose, except that no standard or requirement imposed by the State as a condition of its approval (other than a requirement solely relating to facility location) may be inconsistent, as determined by the Atomic Safety and Licensing Board, with any standard or requirement applicable to such facility pursuant to this Act. Such Board may not determine a State standard or requirement to be inconsistent for purposes of this subsection solely on the basis that such standard or requirement requires more stringent safety measure than are required pursuant to this Act.
>
> (d) For purposes of this section, the term 'affected State' means the State within whose boundaries the proposed construction or modification of a production or utilization facility will occur.

COAL COOPERATIVE AGREEMENTS

Background: The Department of Interior promulgated regulations setting environmental performance standards for strip mine operations on federal coal leases in May 1976. A major provision of these regulations (43 CFR 3041 and 30 CFR 211), commonly called the 3041/211 regulations, authorizes Interior to enter into "cooperative agreements" with any state which would provide for one of two things: (a) where a state could show it had environmental protection standards at least as stringent as federal standards and could show the state could enforce those provisions, the state standards would become federal standards and the state could enforce and administer the provisions on federal as well as state lands; (b) where state standards were not as stringent as the federal rules, if a state could show it could adequately enforce and administer the federal rules, the state would be permitted to do so on federal lands.

To date all six western coal states have entered into a cooperative agreements. Wyoming and Montana both are administering and enforcing their own state standards on federal as well as state and private lands. Colorado, New Mexico, Utah and North Dakota were not able to meet the "stringency" test for their own standards and are now enforcing the federal provisions on federal lands. Colorado and New Mexico are the only states with agreements providing for some federal money to enforce the standards on federal lands.

Summary of Provisions: 1) States with at least as stringent reclamation standards as provided for in federal rules may have the state standards incorporated into federal rules for that state and the state would be permitted to enforce those standards.

2) States unable to meet the stringency test would be permitted to enforce the federal rules on federal lands if they could show their capability to do so.

3) Pending federal strip mine legislation makes provision for the existing cooperative agreements. Also, see section on federal strip mining legislation in category I.

Text of Provisions:

(1) Sec. 211.75 Applicability of State law.

(a) On the effective date of this Part, and from time to time thereafter, the Secretary shall direct a prompt review of State laws and regulations in effect or adopted and due to come into effect, relating to reclamation of lands disturbed by surface mining of coal in each State in which Federal coal has been leased, permitted, or licensed. If, after such review, the Secretary determines that the requirements of the laws and regulations of any such State afford general protection of environmental quality and values at least as stringent as would occur under exclusive application of this Part, he shall, by rulemaking, direct that the requirements of such State laws and regulations thereafter be applied as conditions upon the approval of any proposed exploration or mining plan, unless (i) the Secretary determines that such application of the requirements of such laws and regulations would unreasonably and substantially prevent the mining of Federal coal in such State, and (ii) the Secretary determines that it is in the overriding national interest that such coal be produced without such application of such requirements. In any such determination of overriding national interst, the Secretary will consult in advance of such determination with the Governor of the State involved.

(2) (b) On the effective date of this Part, the Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of formulating and entering into agreements to provide for a joint Federal-State program with respect to surface coal mining reclamation operations for administrative and enforcement purposes. Such agreements shall, wherever possible, provide for State administration and enforcement of such programs, provided that Federal interests are protected. Any such agreement shall be entered into by rulemaking, and shall have as its principal purpose the avoiding of quality of administration and enforcement of reclamation laws governing surface coal mine reclamation operations.

(3) Sec. 523(c). Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreemtn in accordance with the provision of this Act. States with cooperative agreements existing on the date of enactment of this Act, may elect to continue regulation on Federal lands within the State, prior to approval by the Secretary of their State programs, or imposition of a Federal program, provided that such existing cooperative agreement is modified to fully comply with the initial regulatory procedures set forth in section 502 of this Act. Nothing in this subsection shall be construed as authorizing the Secretary to delegate to the States his duty to approve mining plans on Federal lands, to designate certain Federal lands as unsuitable for surface coal mining pursuant to section 522 of this Act, or to regulate other activities taking place on Federal lands.

1872 GENERAL MINING LAW AND PROPOSED REVISIONS

Background: For over a century, the General Mining Law of 1872, with amendments, has governed the disposition of "hardrock" or "locatable" minerals on federal lands. Deposits of minerals, other than coal, oil, gas, oil shale, sodium, phosphate, and potash (and sulfur in the states of Louisiana and New Mexico) are open to location and ultimately purchase from the United States under the statute. The Act sets broad parameters in certain respects, i.e., the maximum and minimum size of a claim, the minimum amount of annual work necessary to maintain possession of the claim, and minimum location and discovery procedures. Nevertheless, the law left a significant amount of regulatory authority to the states. Details such as restricting claim dimensions to less than the statutory limit, mandating greater work requirements and designating the appropriate procedures for recording mining claims are in the regulatory realm of the states. Case law has interpreted the 1872 statute in such a way that state environmental protection standards also apply to these federal lands.

Major revisions of the statute have been proposed for several years. Congress currently has three proposals before it. Two bills would change the present location-patent system to a leasing system similar in some ways to the Mineral Lands Leasing Act of 1920. The third bill would retain the location-patent approach, but require conformance to certain environmental protection provisions. All three bills are scheduled for hearings sometime this fall.

Summary and Text of Provisions (1872 statute): What is, perhaps, the most often quoted section of the 1872 law also remains the basis for extensive state control of certain aspects of mineral development on these federal lands. 30 United States Code section 22 states in its entirety:

> "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

Summary of Provisions (HR 5831, introduced by Congressman Ruppe for the American Mining Congress): The Ruppe bill retains the location-patent system for hardrock minerals. The statutory language regarding the extent of state input into the development of these minerals consists of broad and very general statements to the effect that state environmental requirements shall apply.

Text of Provisions:

> Sec. 7 (c) A plan of development may cover a mining claim or claims and shall show--
>
> xxxx
>
> (vii) the manner in which compliance with Federal, State, and local laws and regulations relating to the protection of the environment will be effectuated. The plan or amended plan may be disapproved by the Secretary only if it does not constitute a method by which the mineral deposit can be extracted by an operator operating in good faith and in compliance with all applicable laws, or if the lands described in item (vi) are not reasonably necessary with respect to quantity or location for mining processing operations or uses reasonably incident thereto
>
> Sec.12. (a) Nothing in this Act shall be deemed to exempt the owner of a mining claim from applicable Federal,State, and local laws relating to the protection of the environment.

Summary of Provisions (HR 5806, introduced by Congressman Udall): Udall's bill would change the present location-patent system to a leasing system.

1) Prospecting licenses issued by the Secretary of the Interior must contain provisions for conformance with state environmental protection standards.

2) The Secretary may exclude lands from development where requested by the Governor of a state.

3) Federal environmental regulations shall conform to and be at least as stringent as state standards.

Text of Provisions:

(1) Prospecting licenses.

Sec. 4 (a) (1) The Secretary shall, under such regulations as he may prescribe, issue to any person a prospecting license. No person may conduct mineral prospecting for commercial purposes for any hardrock mineral on Federal lands without such a prospecting license. Each prospecting license shall be for a term of two years and shall not be subject to a fee. A separate prospecting license will be required for prospecting in each State. Each prospecting license shall contain such reasonable conditions as the Secretary may require, including conditions for the protection of the environment, and shall be subject to all applicable Federal, State and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the prospecting license. A prospecting license shall confer no right to a lease under this Act.

(2) Exclusion of lands.

Sec. 5. (a) (1) Where the Secretary determines that Federal lands should be excluded from prospecting, exploration, or development under this Act for the reasons set forth in subsection (a) (2), the Secretary is authorized to close such Federal lands from the application of some or all of the provisions of this Act that permit prospecting, exploration, or development, if such lands are not subject to a development and production lease issued hereunder.

xxxx

(5) Where the Secretary finds that the national interest so requires (or where the Governor has petitioned for exclusion pursuant to subsection (b))no leases shall be issued on any Federal lands included in a notice of proposed exclusion until action on the matter has become final.

(6) No exclusion authorized by this section shall modify or invalidate valid existing rights.

(b) Any person having an interest which is or may be adversely affected (including the Governor or an affected State) shall have the right to petition the Secretary to seek an exclusion, or the revocation of an exclusion under this section. Such petition shall contain allegations of fact with supporting evidence which would tend to support the proposed action. The petitioner shall be granted a hearing in the vicinity of the affected land within a reasonable time and finding with reasons therefor upon the matter of their petition.

(3) Federal environmental regulations.

Sec. 12 (b) Pursuant to section 30, the Secretary shall issue environmental regulations which shall--

(1) contain requirements designed to insure that the operation of the lease (i) will not result in a violation of applicable water or air quality standards, (ii) will control or prevent erosion or flooding, release of toxic substances, accidental subsidence of land or rock slides, underground, outcrop or refuse bank fires, damage to fish or wildlife or their habitat or to public or private property, waste of mineral resources, and hazards to public health and safety, and (iii) if the surface has been disposed of with a reservation of all or any minerals to the United States, will be in conformance with any State or local land use plans or programs;

xxxx

(4) be developed with full participation of all interested Federal departments and agencies, State agencies, local governments, and other interested bodies and groups;

(5) be compatible with, and assure at least the same degreee of environmental protection and reclamation as is required by, any Federal or State law or regulatory program applicable in the State in which the lands are located.

Summary of Provisions (S. 1248, introduced by Senator Metcalf): The Metcalf bill would also change the present location-patent system to a leasing system. Whereas, all leasing revenues would go into the general fund of the U. S. Treasury under the Udall bill, S 1248 would distribute 50% of the federal revenues to the states.

1) Except where the public interest dictates otherwise, the Secretary of Interior may not authorize mineral operations that are not consistent with state standards for land use or local zoning.

2) Mineral development must comply with state standards for protection of the public health and welfare and environment.

Text of Provisions:

(1) Compliance with state land use regulations and local zoning.

> Sec. 205. (d) The Secretary shall not authorize mineral operations pursuant to this Act which would be inconsistent with State or local zoning or land use regulations except when he finds that authorization would be in the public interst and consistent with the policies of this Act.

(2) Compliance with state environmental and public health standards.

> Sec. 205. (c) Operators authorized under the terms of this Act to prospect for , explore, or develop mineral deposits shall comply with State standards for public health and safety, environmental protection and rehabilitation, and conduct of prospecting, exploration, and development activities if those standards are more stringent than applicable Federal standards.

> Sec. 304. (a) All leases, permits, and other contracts issued pursuant to this Act shall be subject to such terms and conditions as the Secretary determines are needed to carry out the provisions of this Act.
>
> (b) The terms and conditions required by subsection (a) of this section shall include, but not be limited to, terms and conditions requiring holders of contracts, in addition to compliance with other requirements specified by the Secretary, to--
>
> (1) comply with applicable air and water quality standards established by or pursuant to applicable Federal and State law;
>
> (2) comply with State standards for public health and safety; environmental protection and rehabilitation; and siting, construction, operation, and maintenance of facilities and workings, if such standards are more stringent than applicable Federal standards.

ALASKA "D-2" LANDS (S 1787)

Background: Section 17(d)(2) of the Alaska Native Claims Settlement Act authorized the Secretary of the Interior to withdraw up to 80 million acres of vacant, unreserved, and unappropriated federal land for study as potential additions to the "four systems": National Parks, Wildlife Refuges, National Forests, and Wild and Scenic River Systems. Congress authorized these withdrawals to continue through 1978, at which time they will terminate by operation of law. Congress is now working on several proposed bills dealing with the disposition and future management systems for the withdrawn lands. Unless the time is extended for Congress to complete legislation, the withdrawls will terminate in 1979. One of these bills is discussed below.

Summary of Provisions: Legislation (S 1787) endorsed by Governor Hammond, Senator Stevens, and Congressman Young (all of Alaska) called the "Alaska National Interest Lands Act" would add approximately 25 million acres to the traditional four systems, parks, wildlife refuges, forests, and wild rivers. Another 58 million acres would be designated "Federal Cooperative Lands" to be managed by existing federal agencies. These federal lands would

Summary of Provisions: (Cont'd)

be managed in conjunction with state and private lands which would be designated for cooperative management by state government and private landowners under the classification authority of a newly established Alaska Land Classification Commission. The establishment of these lands as areas dedicated to cooperative management would be contingent upon a finding by the Secretary of Interior that the state has designated a substantial amount of State acreage to cooperative management. Without this finding, these federal lands would be managed by existing federal agencies as designated by Congress. If the lands are cooperatively managed, decisions of the Commission could be vetoed by either the federal or state government in accordance with the provisions of the bill.

Text of Provisions: (1) this is one example of 22 sections adding lands to existing parks, wildlife refuges, forests, and wild rivers:

> Sec. 101 (a) There is hereby established the Aniakchak-Caldera National Monument of approximately 0.18 million acres. This area shall consist of the lands, waters and interests therein generally depicted on the map entitled Boundary Map, National Monument Alaska dated_____, 1977, which shall be on file and available for public inspection in the principal office of the Commission and in the Office of the Secretary.
>
> (b) As soon as practicable after the date of enactment of this Act, a map and a legal description of the area established by this title shall be published by the Secretary in the *Federal Register* and filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and such map and legal description shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal description may be made. Whenever possible, cadastral surveys and boundaries shall follow or approximate hydrographic divides or embrace other physiographic features.
>
> Sec. 102. Subject to valid existing rights, lands, waters, and interests therein comprising the area established by section 101 of this title shall be administered by the Secretary under the laws of general applicability to other areas comprising a unit of the National Park System, including, but not limited to,

(2) This is one of 17 sections establishing federal cooperative lands:

> Sec. 3701. (a) There is hereby established the Chugach Federal Cooperative Lands of approximately 1.77 million acres. This area shall consist of the lands, waters, and interests therein, generally depicted on the map entitled Boundary Map Federal Cooperative Lands, Alaska dated_____ 1977 which shall be on file and available for public inspection in the principal office of the Secretary of Agriculture.
>
> (b) As soon as practicable after the date of the enactment of this Act, a map and a legal description of the area established by the title shall be published in the *Federal Register* and filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives and such map and legal description shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal description may be made. Whenever possible, cadastral surveys and boundaries shall follow or approximate hydrographic divides or embrace other physiographic features.
>
> Sec. 3702. (a) Classification of this area shall be the responsibility of the Commission in accordance with Title XXXXII and the other provisions of this Act. The United States Forest Service shall manage and regulate uses within this unit in accordance with Commission classifications and the provisions of Titles XXXXII and XXXXIII of this Act. Except to the extent that they would be inconsistent with a Commission classification or the provisions of this Act, land use and management decisions made by the Chief of the United States Forest Service, or his designee, shall be in accordance with the laws and regulations which generally govern the functions of such agency.
>
> (b) The Chugach Federal Cooperative Lands shall be open to all uses authorized under the public land laws except disposal under those laws authorizing the conveyance of title from Federal ownership: Provided, however, That, subject to valid existing rights, the Commission may close lands to a particular use if it finds that such use is incompatible with a land use plan developed by the Commission pursuant to section4201 or upon finding that exigent circumstances exist.

(3) Authorizes establishment of Alaska Cooperative Lands:

Sec. 4001. (a) Following designation under Alaska state law and upon a finding by the Secretary of compliance with the substantiality requirement of section 4201 (a), there shall be established Alaska Cooperative Lands. The location and boundaries of such lands shall be determined by mutual agreement of the Secretary and the State of Alaska. Prior to such agreement, the Secretary shall consult as necessary with other federal officials, including, but not limited to the Secretaries of Agriculture, Defense, Transporation and State. Upon designation, Alaska Cooperative Lands shall be classified and managed in accordance with Titles XXXXII and XXXXIII of this Act and applicable laws of the State of Alaska. Following consultation with the Commission, the State of Alaska may substitute other lands for lands initially designated pursuant to this section provided that the Secretary finds continuing compliance with the requirement of substantiality under section 4201 (a) of this Act.

(b) As soon as practicable after the date of designation pursuant to subsection (a) of this title, a map and legal description of the area established by this title shall be published by the Secretary in the *Federal Register* and filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and such map and legal description shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal description may be made. Whenever possible, cadastral surveys and boundaries shall follow or approximate hydrographic divides or embrace other physiographic features.

(4) Authorizes establishment of Private Cooperative Lands:

Sec. 4101. (a) With the approval of the Commission, and subject to valid existing rights, private landowners may dedicate their lands for periods of not less than ten years as Private Cooperative Lands. Upon dedication, such lands shall be classified by the Commission and managed by the landowner in accordance with such classification and other provisions of this Act.

(b) With the concurrence of the State of Alaska, privately owned lands designated as Private Cooperative Lands under this title shall be exempt from State and local real property taxation and assessment so long as such lands are not developed or leased to third parties. For purposes of this subsection development shall mean any disturbance of the land which results in the production of revenue. The Commission shall promulgate regulations to supplement the meaning of development for purposes of this section.

(c) Private Cooperative Lands shall be open to all uses, except that the Commission may close areas to a particular use if it finds that such use is incompatible with a land use plan developed by the Commission pursuant to section 4201, or upon a finding that exigent circumstances exist: Provided, however, That lands dedicated pursuant to this title may, upon notification to the Commission, be removed from the designation of Private Cooperative Lands, and effective upon such removal, the provisions of this title shall no longer be applicable to such land so removed: Provided further, That if such lands are removed from the designation of Private Cooperative Lands prior to the expiration of each ten-year period, such landowner shall be liable for accrued local and State property taxes and assessments, which would have been owing on such lands, but for their designation as Private Cooperative Lands, together with interest, thereon in an amount to be determined at the rate charged by the appropriate taxing agency for delinquent property taxes.

(5) Establishes Joint State/Federal Alaska Land Classification Commission. Establishes Secretary of Interior veto of Commission decisions regarding federal lands and establishes Governor of Alaska veto of Commission decisions over state lands.

Sec. 4201. (a) Upon a finding by the Secretary that the State of Alaska has designated a substantial amount of State land as Alaska Cooperative Lands pursuant to title XXXX, there shall be established the Alaska Land Classification Commission, whose members shall be selected as follows:

(1) four members appointed by the President, with the advice and consent of the Senate, one of whom shall be designated by the President, at the time of appointment, as Co-Chairman, and one of whom shall be a Native as that term is defined in section 3(b) of the Settlement Act; and

(2) four members appointed by the Governor of the State of Alaska, one of whom shall be designated by the Governor, at the time of appointment, as Co-Chairman.

(b) Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall be filled in the same manner as the original appointment was made.

(c) (1) The Federal Co-Chairman shall be compensated at a rate to be determined by the President, but not to exceed the rate provided for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The other Federal members of the Commission shall be compensated at a rate to be determined by the President, but not to exceed the rate provided for GS-16 of the General Schedule under section 5332 of title 5, United States Code.

(3) The State Co-Chairman and State members of the Commission shall be compensated in accordance with applicable State law.

(5)(Cont'd)

(d) Five members of the Commission shall constitute a quorum.

(e) With respect to all Federal lands subject to this Act, the Secretary or Secretary of Agriculture, with respect to lands managed by the United States Forest Service, may veto a decision of the Commission. With respect to all State lands subject to this Act, the Governor of the State of Alaska may veto a decision of the Commission.

(f) The Co-Chairman, acting jointly, shall have the power, in accordance with regulations prescribed by the Commission, to create and abolish employments and positions, including temporary and intermittent employments as they deem necessary for the purposes of the Commission, to fix and provide for the qualification, appointment, removal, compensation, pension and retirement rights of employees; and to procure needed office space, supplies and equipment.

(g) The Commission is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement. Each department and agency of the Federal Government may cooperate fully with the Commission in making the services, equipment, personnel, and facilities of such department or agency available to the Commission.

(h) The Commission is authorized to accept donations, gifts, grants, and other contributions and to utilize the same in carrying out its functions under this Act.

(i) The Commission shall keep and maintain complete accounts and records of its activities and transactions, and such accounts and records shall be available for public inspection.

(j) The Federal Government shall pay 50 per centum of the costs and other expenses incurred by the Commission in any one fiscal year.

(k) The principal office of the Commission shall be located within the State of Alaska.

(l) All Commission meetings shall be public and shall be dully noticed at least fifteen days prior to the date when the meeting is to take place.

(m) It shall be the function of the Commission--

(1) to provide for the inventory of lands under its juridiction using, where appropriate, information obtained from other agencies including, but not limited to, the United States Geological Survey, Bureau of Mines and Alaska State Department of Natural Resources;

(2) to develop comprehensive land use plans with respect to lands under its jurisdiction of the Commission;

(3) to make land classifications pursuant to such plans;

(4) to provide advice and other assistance, upon request, in the development and review of land-use plans for lands selected by Native Corporations under the Settlement Act and by the State under the Alaska Statehood Act;

(5) to review existing withdrawals of Federal and State lands and to recommend to appropriate officers of the government of the United States and the State of Alaska such modifications of such withdrawals as the Commission deems necessary;

(6) to make recommendations to appropriate officers of the governments of the United States and the State of Alaska as to necessary changes in laws, policies, budgets, and programs relating to the public lands of Alaska;

(7) to make recommendations to appropriate officers of the governments of the United States and the State of Alaska to insure that economic growth and development are orderly, planned and compatible with State and national environmental objectives, with the public interest in the parks, forests, wildlife refuges, wild and scenic rivers, and other public lands in Alaska, and the economic and social well-being of the residents of the State of Alaska: and

(8) to make recommendations to appropriate officers of the governments of the United States and the State of Alaska to improve coordination and consultation between said governments in making resource allocation and land use decisions.

(n) Notwithstanding any other provision of law, the Joint Federal-State Land Use Planning Commission for Alaska shall cease to exist upon the expiration of the one-hundred-and-twenty-day period following the establishment of the Commission pursuant to this Act. Immediately upon the expiration of such period all property of the Joint Commission and all unexpended funds appropriated to that Commission are hereby transferred to the Commission established by this Act.

(o) In the event that the State of Alaska fails to comply with subsection (a) of this title, the agencies designated to manage Federal Cooperative Lands established by this Act shall inventory, classify, plan, and manage those lands in accordance with subsections (m) (1), (2), and (3) of this title. Title XXXXIII, and other provisions of this Act, in addition the appropriate agency shall carry out any other responsibility assigned to the Commission by this Act, including, but not limited to the guarantee of necessary public access as provided in section 4301.

(6) Establishes administration of (a) access; (b) mineral development; (c) boundary adjustments; and (d) wildlife management:

Sec. 4301. The Commission shall take such action as may be necessary to guarantee needed public access across lands designated pursuant to this Act. The location and mode of such access shall be in accordance with land use plans developed pursuant to section 4201. The Commission is authorized to acquire by donation, purchase with donated or appropriated funds, condemnation, or exchange, lands, waters, and any interest therein, of the State of Alaska, its political subdivisions, or any private landowner, as the Commission determines necessary to carry out its functions under this section.

Sec. 4302. Mineral exploration and development shall be permitted in accordance with the provisions of this Act. With respect to such activities, the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and the Act of July 31, 1947 (30 U.S.C. 101 et seq.) shall apply to lands open or classified for such purposes pursuant to the provisions of this Act. With respect to said lands, exploration and development of minerals currently subject to location under the General Mining Laws (30 U.S.C. 31 et seq.) shall be governed by the location-lease system provided for in Title XXXXV.

Sec.4303. (a) Following reasonable notice in writing to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and after publication of notice in the *Federal Register*, the appropriate Secretary may make minor revisions in the boundaries of the Federal units established by this Act.

(b) Except as provided in subsection (a) of this section, the Secretary, the Secretary of Agriculture, and the Commission are prohibited from administratively establishing in Alaska any new units or additions to units of the systems referred to in this Act.

Sec.4304. The taking of fish and game on all lands subject to this Act shall be regulated by the State of Alaska in accordance with applicable State law, including, but not limited to, the regulation of seasons, bag limits, means and methods, the administrative structure for wildlife management and regulation, the determination of resource depletion and the definition of subsistence use and local residency. Where there is a conflict caused by depletion, the taking of fish and game for subsistence purposes shall be given preference over the taking of fish and game for other purposes. Such preference shall be granted to the local residents of the area affected by a conflict between consumptive uses. Noting in this section shall be construed to require that hunting or fishing be permitted where depletion of the resource would dictate a complete prohibition of such activities.

(7) Authorizes Cooperative Agreements for preservation of environmental quality.

Sec. 4310. (a) The Secretary, the Secretary of Agriculture, and the Commission, after necessary consultation, are authorized to cooperate and seek agreements with the heads of other Federal agencies and the owners of lands and waters within adjacent to, or related to areas described in this Act, including, without limitation, the State of Alaska or any political subdivision thereof, any Native corporation, village or group having traditional cultural or resource-based affinities for such areas, and with the concurrence of the Secretary of State, the governments of foreign nations. Such agreements shall have as their purpose the assurance that resources will be used, managed, and developed in such a manner as to be consistent with the preservation of the environmental quality of such areas. The agreements may also provide for access by visitors to and across the lands which are subject of the agreements.

(b) The heads of any Federal agency, other than agencies that are parties to cooperative agreements established in accordance with the provisions of subsection (a) of this section, having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in the lands and waters within, adjacant to, or related to areas described in this Act, and the head of any Federal department or interdepartmental agency, other than parties to such agreements, having authority to license any undertaking in such lands and waters shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, afford the Secretary, the Secretary of Agriculture, or the Commission as appropriate, a reasonable opportunity to comment with regard to such undertaking.

GEOTHERMAL STEAM ACT OF 1970

Background: Regulation of the geothermal resource is in a state of confusion. When dealing with federal ownership of both the surface and subsurface estate, it is clear that development and production is subject to the 1970 statute. When dealing with state ownership of the same or private ownership of both estates, it appears clear state law applies. Where the mineral estate has been severed from the surface estate, however, and the surface ownership has passed out of federal control, it is uncertain whether state law, federal law or a combination of the two apply. A case to resolve this question, U.S. v. Union Oil Company of California, is pending in the Supreme Court.

However, in the clearcut case of federal ownership of surface estate and minerals, the Geothermal Steam Act of 1970 says very little about state input into federal decisions. The only apparent state input would be in the case of several federal lessees joining together to jointly develop geothermal resources. In such a case the Secretary of Interior may delegate significant authority to state agencies to oversee the development.

Summary and Text of Provision: Several lessees of federal geothermal resources may unite with one another and collectively develop and operate under a cooperative or unit plan of development. Where this occurs, the Secretary of Interior may, in his discretion, delegate authority for altering or modifying prospecting, development, and production rates and restrictions to the state government.

> Sec. 1017. For the purpose of properly conserving the natural resources of any geothermal pool, field, or like area, or any part thereof, lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever this is determined and certified by the Secretary to be necessary or advisable in the public interest. The Secretary may in his descretion and with the consent of the holders of leases involved, establish, alter, change, revoke, and make such regulations with reference to such leases in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure reasonable protection of the public interest. He may include in geothermal leases a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States. Any such plan may, in the discretion of the Secretary, provide for vesting in the Secretary or any other person, committee, or Federal or State agency designated therein, authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control for the purposes of section 1006 of this title.

III. FEDERAL DOMINANCE WITH STATE INPUT

This last section includes examples of varying degrees of state input into federal dominated decisions. However, the effect of that state input is largely determined by the responsiveness of the federal official in charge of the program. The examples range from: statutory requirements that the affected federal department solicit state input and if state recommendations are not accepted that the federal agency must explain why; to merely a determination that state input is permissable and should be received. Of course, there is always the unstructured input into federal energy decisions, such as Governors meeting with top federal officials, meeting of state and federal staffs, etc.

FEDERAL COAL LEASING ACT AMENDMENTS (PL 94-377)

Background: The Act establishes rules for the exploration and leasing of federal coal deposits. Many such coal deposits either underlie privately owned surface estate or are interspersed with state and privately owned coal deposits.

Summary of State Input Provisions: (1) In the case where coal in National Forests is proposed to be leased for development, the Secretary of Interior must: notify the Governor of the state in which the coal is located of the intended lease sale; wait 60 days for the Governor's response; and, if the Governor objects to the sale, refrain from leasing for 6 months during which time the Governor may submit to the Secretary reasons for not leasing the coal and "the Secretary shall, on the basis of such statement, reconsider the issuance of such lease." (emphasis added)

(2) The Act requires preparation of land use plans prior to the lease of any coal. During preparation of the land use plans, the appropriate State and local governments must be consulted and a public hearing prior to adoption of the plan must be held if so requested.

(3) The Act requires a license for exploring for federal coal. "Each license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license" (emphasis added). The inclusion of state laws and regulations in the conditions for issuance of a federal permit adds a degree of state input into federal coal exploration practices; however, giving the Secretary discretion not to revoke a license because the holder has violated those license conditions which are found in state law reduces the strength of the state input.

Text of Provisions:

(1) Governor's limited veto of leasing in National Forests.

> Sec. 3. Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this Act shall be submitted to the Governor of each State within whch the coal deposits subject to such lease are located. No such lease may be issued under this Act before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be used and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(2) Consult states on land use plans.

> Sec. 3. In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(3) Inclusion of state laws and regulations in conditions for exploration license.

Sec. 4. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment and shall be subject to all applicable Federal, State and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

BILL CREATING DEPARTMENT OF ENERGY (S 826)

Background: The bill would create a Cabinet-level federal Department of Energy by combining the existing Energy Research and Development Administration, Federal Power Commission, and programs from various other federal agencies. Both House and Senate have passed the legislation in varying forms. The bill is now in Conference Committee. The Senate version of the bill (Title X) provides for formalized input into DOE decisions by Regional Energy Advisory Boards composed of state Governors.

Summary of Title X: Title X would create Regional Energy Advisory Boards with membership on the Boards determined by state Governors. Various federal agencies would participate as observers only. Each Board may make recommendations regarding Department of Energy programs which have a direct effect on the region. "If any Regional Advisory Board makes specific recommendations... the Secretary (of energy) shall, if such recommendations are not adopted in the implementation of the program, publish his reasons for not adopting such recommendations in the Federal Register within sixty days after the implementation of such program."

Text of Provision:

Sec. 1001. (a) The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, The Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal CoChairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act shall participate as an observer in the deliberations of any such Board which contains one or more States which are members of such commission.

(c) Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) If any Regional Advisory Board makes specific recommendations pursuant to subsection (c) the Secretary shall, if such recommendations are not adopted in the implementation of the program, publish his reasons for not adopting such recommendations in the *Federal Register* within sixty days after the implementation of such program.

ENERGY MINERALS ACTIVITY RECOMMENDATION SYSTEM (EMARS)

Background: The Department of Interior (DOI) announced a new coal leasing policy in February of 1973. The new policy (now operative) is EMARS. The system is designed to work within the Bureau of Land Management's (BLM) land use planning and programming systems to determine the location, size, timing and susceptibility to rehabilitation of future federal coal leases. The program is directed to meeting three long-term goals associated with federal coal leasing policy: (a) assuring environmental protection; (b) providing for orderly and timely resource development; and (c) assuring fair market value return to the public for development of the nation's coal resource.

The three phases of EMARS are: (a) Nominations and Programming; (b) Scheduling; and (c) Leasing.

(a) Nominations and Programming. In the first phase Interior issues an annual "call" for nominations in the Federal Register. Industry responds to this call by designating areas they feel should be leased. The public responds by designating areas they feel should not be leased (areas of public concern). Data supplied by the nominations process, then, is intergrated into the BLM planning and programming system, i.e., resource data collection, assimilation, and analysis.

(b) Scheduling. The end product of this phase is a federal coal leasing schedule approved by the Secretary of the Interior. BLM field offices derive land use plans and ultimately propose tracts for coal leasing. Ostensibly this phase incorporates the greatest degree of state and local government and public participation, including public hearings.

(c) Leasing. Areas open to leasing are announced followed by lease sales and ultimately lease issuance. Cooperative agreements between Interior and six Western coal states afford the states a great degree of input into the mining plan approval and regulatory enforcement stages of the federal program following lease issuance.

Summary of Provisions: 1) Call for nominations from industry, state and local government and the public. Information integrated into BLM planning process.

2) Interior must consult with the Governor of each state where coal leases are proposed. As a result of 1975 amendments to the Mineral Lands Leasing Act of 1920, a Governor's input regarding leasing in National Forests is now given greater weight.

Text of Provisions:

(1) "Call" for nominations.

> Sec. 3525.8 (a) *Purpose.* This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short term leasing applications, nominations are the primary source of information on the need for additional coal leasing.
>
> (b) *Description of process.* The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.
>
> (1) *Industry nominations.* Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(1) "Call" for nominations. (Cont'd)

(2) *Areas of public concern.* Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations.* Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(2) Consultation with Governors.

43 C.F.R. Sec. 3525. 14 (a) *General consultation.* Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest.* (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease proposal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall on the basis of this statement, reconsider the lease proposal.

BLM ORGANIC ACT COOPERATIVE AGREEMENTS AND ADVISORY COUNCILS

Background: The Federal Land Policy and Management Act of 1976 (commonly called the Organic Act or FLAPMA) establishes major land use planning and public land management authorities for the single largest federal land manager in the country. The Bureau of Land Management controls access to and activities on over 60% of the federally owned land in the U. S. virtually all of which is in the West. The Act is touted by those in the BLM bureaucracy as marking the first major shift in public land policy in over 200 years, i.e., a shift from public land disposal (federal dominion to state and private ownership) to public land retention.

Summary of Provisions: 1) State/Federal cooperative agreements are clearly authorized by the statute for the management, protection, development and sale of public lands.

2) The Secretary of the Interior may establish Advisory Councils composed of private citizens and state and local government officials. Other government and public participation is provided for.

Text of Provisions:

(1) Sec. 307(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(2) Sec. 309.(a) The Secretary is authorized to establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App.1).

(b) Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Members of advisory councils shall serve without pay, except travel and perdiem will be paid each member for meetings called by the Secretary.

(d) An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

OIL SHALE ENVIRONMENTAL ADVISORY PANEL (OSEAP)

Background: Set up under the Federal Advisory Committee Act, OSEAP was established by Interior to advise the Secretary in the performance of functions in connection with the supervision of federal oil shale leases. OSEAP is composed of representatives from federal agencies primarily, state government, county government, and citizens groups. OSEAP recommendations have included selection of sites to be leased.

Summary and Text of Provisions: The Act stipulates that a federal officer or employee must attend or chair each advisory committee meeting. He/she is authorized, whenever a determination is made that it is in the public interest, to adjourn any meeting and meetings cannot be held unless federal personnel call them and approve the agenda. The Federal Advisory Committee Act provides that:

> "the function of advisory committees should be advisory only and that all matters under their consideration should be determined in accordance with law, by the official, agency, or officer involved...Unless otherwise specifically provided by Statute or President directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal government."

REGIONAL ENERGY RESEARCH ADVISORY BOARD (RERAB)

Background: The Energy Research and Development Administration (ERDA) presently has a Task Group for the Rocky Mountain-Plains States dealing with regional energy R&D. In late 1976 ten Western Governors approached ERDA through the now dissolved Western Governors Regional Energy Policy Office (WGREPO) with the issue of setting up a regional advisory board with two primary objectives: (a) promoting more energy research projects among the region's research institutions and state agencies; and (b) a

general goal of promoting joint planning, programming, and budgeting between state and federal governments on energy R&D. The advisory board would interact primarily with the ERDA Task Group and would be made up of one representative from each of ten Western states and three university representatives from throughout the region. Action on a proposed letter of agreement between the state representatives and the ERDA Task Group has been deferred several times since the last formal meeting of the people involved in December, 1976.

(Note: At the time of this printing access to the draft letter of agreement was impossible. Thus, a summary of provisions and the text of provisions will not be provided.)

ALASKA NATURAL GAS TRANSPORTATION ACT (PL 94-586)

Background: The route for transporting natural gas from the North Slope of Alaska to the lower 48 states is much contested. Late in the last session of Congress, a bill, S 3521, was passed which established a procedure for determining the route to be used to transport the gas. The procedure is:

By May 1, 1977 --FPC recommends route to President.

By July 1, 1977 --Governors, State PUC's, federal agencies and other interested parties submit comments to President.

By Sept 1, 1977 --President recommends route to Congress.

--Within 60 days of President's recommendation, Congress must enact joint resolution to approve recommended route.

--If Congress fails to act within 60 days, President has 30 days to make new recommendation.

Summary of State Input Provisions: State input is limited to making comments to the President, which can be done by states on any issue. Statutory provision for state input may connote intent that President take account of such input.

Text of Provision:

Sec. 6. (b) Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine appropriate.