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STATEMENT OF
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DEVELOPMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today at your request to provide an overview of the General Accounting Office's (GAO's) work in the nuclear waste area and to discuss an ongoing assignment examining relations between the Department of Energy (DOE), states, and Indian tribes regarding the waste program.

We have completed a number of reviews of DOE's nuclear waste program,¹ including

- two annual audit reports as required by the Nuclear Waste Policy Act,
- an ongoing series of quarterly status reports for the Senate Energy and Natural Resources Committee,
- a report on DOE's financial assistance program under the act, and
- fact sheets describing the monitored retrievable storage (MRS) program and issues concerning the postponement of second repository site-specific activities.

¹See Enclosure I for a list of GAO reports and fact sheets on the nuclear waste program.

We also have the following reviews underway:

- A third annual audit of overall program activities.
- An examination of DOE's management of its waste program costs.
- A review of various aspects of the MRS proposal.
- A review of DOE's relations with states and Indian tribes affected by implementation of the Nuclear Waste Policy Act.

My testimony will provide a brief overview of our completed work and, as you specifically requested, a short discussion of the tentative findings resulting from our ongoing work on federal, state, and Indian tribe relations.

COMPLETED WORK

Our first annual report on DOE's implementation of the Nuclear Waste Policy Act, issued January 10, 1985, discussed the difficult challenges facing DOE and its progress in meeting the statutory deadlines. We made several recommendations in this report to the Secretary of Energy concerning program financing arrangements.

Our second annual report, issued September 30, 1985, indicated that although DOE had made progress in completing actions required by the act, actions generally took longer than anticipated. The report also pointed out that DOE's plans for constructing an MRS facility could hinder the repository program's progress because both programs will be competing for limited technical staff and financial resources. Moreover, the report described DOE's inability to conclude a consultation and

cooperation agreement with the state of Washington because of state concerns about the liability associated with a potential nuclear waste accident.

In addition, we also concluded that DOE's siting approach--that of interpreting the act as requiring only one suitable site after detailed site testing--jeopardizes the first repository program's success. We pointed out that, if backup sites are not available, successful legal challenges or disapproval by a state or Indian tribe could cause a major setback to the program. As a result, we suggested that the Congress consider whether DOE needs to adopt a different siting approach. We included several options in our report, including directing DOE to modify its site characterization approach.

We have also prepared quarterly status reports since October 1984 at the Senate Energy and Natural Resources Committee's request highlighting nuclear waste program activities, ongoing litigation, and status of the Nuclear Waste Fund. The latest quarterly report discusses the May 28, 1986, siting decisions and the postponement of the second repository siting activities.

Our April 1986 report to the Secretary of Energy evaluated DOE's program to provide grants under the act. The report concluded that DOE's guidelines for financial assistance were not clear because they did not cover all funding circumstances. The report included a number of recommendations designed to ensure consistency in awarding grants and to ensure that grantees' needs are assessed.

We have also issued two fact sheets related to the waste program. One discusses DOE's plans for an MRS, and the other discusses issues affecting the postponement of second repository siting activities. The MRS fact sheet was issued as part of an ongoing effort to address a number of issues concerning DOE's

development of an MRS proposal. We expect to issue a more comprehensive report on this proposal later this year.

A second fact sheet provided information on factors which formed the basis of DOE's decision to postpone second repository siting activities, such as projections of spent fuel and defense waste. We also presented information on the connection between the MRS proposal and the decision to postpone second repository siting work.

ONGOING WORK ON FEDERAL,
STATE, AND INDIAN TRIBE RELATIONS

At the request of the Chairman and Ranking Minority Member, Senate Committee on Energy and Natural Resources, we reviewed the relationship between DOE, states, and Indian tribes affected by the implementation of the Nuclear Waste Policy Act. We are currently preparing a report, which we plan to release for comment in August 1986. Therefore, the following findings and analysis are tentative.

The Congress, while considering passage of the Nuclear Waste Policy Act of 1982, recognized that the siting of a permanent nuclear waste facility would be controversial and that the involvement of affected states and Indian tribes would be crucial to the successful implementation of the program. The act stipulates that DOE is to consult and cooperate with states and tribes in order to develop their confidence in health and safety aspects of the program. The act also stipulates that DOE pursue formal agreements with affected states and tribes once the program identifies sites for detailed study. Ultimately the act also permits a state or tribe to formally disapprove a site selection within its borders--a disapproval that can only be overruled by both Houses of the Congress.

DOE officials believe that they have the responsibility under the act to accomplish its objectives--to develop, site, and construct the nation's first geologic nuclear waste repository and related facilities. They believe that such a project is technically feasible and can be completed in a safe and timely manner. DOE officials, in the past year, have acknowledged that they were slow to involve states and tribes in the first repository program but say that they now recognize the important role of the states and tribes in the process. Accordingly, DOE officials cite their Mission Plan, which lays out a broad-based strategy and a number of organizational changes over the past 2 years as examples of how they are trying to better relate to states and tribes. These officials also point out that they have taken substantial steps to react to state comments on program documents. For example, because of comments received, DOE asked the National Academy of Sciences to review the methodology used in the first repository siting process. They also have recently begun to allow more state and tribe participation through internal coordinating groups where preliminary decisions are formulated.

While DOE officials say they are trying to involve affected parties in the nuclear waste program, the states, and Indian tribes that might be affected by a nuclear waste repository disagree. They are deeply concerned about the environmental impact an accidental radiation release from a waste repository would have, and are convinced that only through more influential participation will they be able to protect the environment in their jurisdiction.

Although states and Indian tribes recognize that DOE has the responsibility to make final program decisions, they also believe that the act gives them the right of full participation in the nuclear waste program. States and tribes feel they have largely been left out of this process, except to comment on DOE-prepared documents.

As a result of what they view as less than adequate participation, states and Indian tribes believe they have not had an influence on the direction of the program. They believe that the program itself suffers from a number of flaws, including an unfair, inadequate siting process and that it is being "pushed" to meet arbitrary deadlines. Because of these concerns, states and tribes told us that they have little confidence in DOE, and have placed little credibility in the program. Furthermore, because of the ongoing problems they have had with DOE and its predecessors, they have grown to mistrust DOE and do not believe that it can manage all of the technical problems associated with a repository.

Because of the different perspectives of the states, tribes and DOE, conflict--as manifested in litigation and other means--is likely to continue throughout the program. As of June 30, 1986, Mr. Chairman, at least 19 lawsuits were under review as a result of waste program activities. Also, since detailed site characterization studies have yet to be conducted at the candidate sites, long standing environmental concerns will not be resolved for some time. Thus, state and tribal opposition to a repository and related program efforts is likely to remain strong.

While we believe that DOE has improved its efforts to consult and cooperate with states and tribes, we plan to develop recommendations for DOE to help address states' and tribes' concerns about their level of participation in the program. We are considering recommending that DOE take steps to improve relations with the states and tribes, such as allowing more state and tribal participation in internal coordinating group meetings, better defining consultation and cooperation, and increasing the use of independent groups during upcoming program phases.

That concludes my prepared statement, Mr. Chairman. We would be pleased to respond to any questions at this time.

ISSUED GAO REPORTS ON THE NUCLEAR WASTE PROGRAMANNUAL REPORTS TO THE CONGRESS

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

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

QUARTERLY REPORTS TO THE
SENATE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

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

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

Status of the Department of Energy's Implementation of the Nuclear Waste Policy Act of 1982 as of March 31, 1985 (GAO/RCED-85-116, Apr. 30, 1985).

Status of the Department of Energy's Implementation of the Nuclear Waste Policy Act of 1982 as of June 30, 1985 (GAO/RCED-85-156, July 31, 1985).

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

Quarterly Report on DOE's Nuclear Waste Program as of December 31, 1985 (GAO/RCED-86-86, Jan. 31, 1986).

Quarterly Report on DOE's Nuclear Waste Program as of March 31, 1986 (GAO/RCED-86-154FS, Apr. 30, 1986).

OTHER CONGRESSIONAL REPORTS

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

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

REPORTS TO AGENCY OFFICIALS

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