

Appendix to the Majority Memorandum

I. H.R. 806, Ozone Standards Implementation Act of 2017

Section 1. Short Title.

This section provides the short title of “Ozone Standards Implementation Act of 2017.”

Section 2. Facilitating State Implementation of Existing Ozone Standards.

This section provides a schedule for implementation of the national ambient air quality standards (NAAQS) for ground-level ozone published in 2015. Section 2(a) provides that states shall submit designations to implement the 2015 NAAQS for ground-level ozone not later than October 26, 2024. The Administrator of the Environmental Protection Agency (EPA) shall promulgate final designations with respect to those standards not later than October 26, 2025, and states shall submit implementation plans not later than October 26, 2026.

Section 2(b)(1) provides the standards shall not apply to the review and disposition of a preconstruction permit application required under title I of the Clean Air Act (CAA) (42 U.S.C. 7401 et seq.) if the Administrator or the state, local, or tribal permitting authority, as applicable, has determined the application to be complete prior to the date of promulgation of final designation of an area, or has published a public notice of a preliminary determination or draft permit before the date that is 60 days after the date of promulgation of final designation.

Section 2(b)(2) provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable, or limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

Section 3. Facilitating State Implementation of National Ambient Air Quality Standards.

This section includes provisions to facilitate more efficient implementation of NAAQS by states.

Section 3(a)(1) would extend the current NAAQS review cycle for criteria pollutants from five years to ten years. Section 3(a)(2) would provide that no revision of the ozone standards shall be proposed prior to October 26, 2025.

Section 3(b) provides that the Administrator, when establishing or revising a NAAQS, may consider, as a secondary consideration, likely technological feasibility.

Section 3(c) provides that the Administrator, prior to establishing or revising a NAAQS, shall request, and the Clean Air Scientific Advisory Committee shall provide, the advice provided for in CAA Section 109(d)(2)(C)(iv) regarding any adverse public health, welfare,

social, economic, or energy effects, which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

Section 3(d) provides that the Administrator, when establishing or revising a NAAQS, shall concurrently publish implementing regulations and guidance as necessary to assist states, permitting authorities, and permitting applicants, and that the new or revised NAAQS shall not apply to preconstruction permit applications until such final regulations and guidance have been published.

Section 3(e) provides that in Extreme ozone nonattainment areas, contingency measures are not required to be included in nonattainment plans.

Sections 3(f)(1), (2), and (3) ensure that economic feasibility, in addition to technological achievability, be taken into consideration in certain requirements for plans for Moderate, Serious, and Extreme ozone nonattainment areas. Section 3(f)(4) eliminates certain demonstration requirements in approving provisions of an implementation plan for an Extreme ozone nonattainment and which anticipates development of new control techniques or improvement of existing control technologies.

Section 3(g) provides that, for particulate matter nonattainment areas, the milestones that must be included in plans to show reasonable further progress must take into account technological achievability and economic feasibility.

Section 3(h) provides that, with respect to air quality monitoring data influenced by exceptional events, an exceptional event may include stagnation of air masses that are not ordinarily occurring, and may also include a meteorological event involving high temperatures or lack of precipitation.

Section 3(i) provides that within two years of enactment of the Act, the Administrator, in consultation with states, shall submit to Congress a report on (i) the extent to which foreign sources of air pollution impact the area designations and the attainment and maintenance of NAAQS; (ii) the EPA's procedures and timelines for disposing of petitions relating to emissions from sources emanating outside the United States that are submitted pursuant to section 179B(b) of the CAA; (iii) the total number of such petitions received by the agency and related information; and (iv) whether the Administrator recommends any statutory changes to facilitate more efficient review and disposition of such petitions.

Section 3(j) provides that the Administrator shall, in consultation with the National Oceanic and Atmospheric Administration, (i) conduct a study on the atmospheric formation of ozone and effective control strategies, including with regard to the relative contribution of manmade and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation in urban and rural areas, and with regard to wintertime ozone; (ii) that the study be peer reviewed in accordance with the requirements applicable to highly influential scientific assessments; (iii) that the Administrator submit a report to Congress

describing the results of the study; and (iv) that the Administrator incorporate the results of the study into any Federal rules and guidance implementing the 2015 ozone standards.

Section 4. Definitions.

This section contains the following definitions:

- (1) The term “Administrator” means the EPA Administrator.
- (2) The term “Best Available Control Technology” has the meaning given that term in CAA section 169(3).
- (3) The term “Highly Influential Scientific Assessment” means a highly influential scientific assessment as defined in the publication of the Office of Management and Budget entitled “Final Information Quality Bulletin for Peer Review” (70 Fed. Reg. 2664 (January 14, 2005)).
- (4) The term “Lowest Achievable Emission Rate” has the meaning given that term in CAA section 171(3).
- (5) The term “national ambient air quality standard” means a national ambient air quality standard promulgated pursuant to CAA section 109.
- (6) The term “Preconstruction Permit” means a permit that is required under title I of the CAA (42 U.S.C. 7401 et seq.) for the construction or modification of a stationary source, and includes any such permit issued by the EPA or a state, local, or tribal permitting authority.
- (7) The term “2015 Ozone Standards” means the national ambient air quality standard for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

Section 5. No Additional Funds Authorized.

This section provides that no additional funds are authorized to carry out the requirements of the Act and amendments made by the Act, and that such requirements shall be carried out using amounts otherwise authorized.

II. H.R. ____, Brownfields Enhancement Economic Redevelopment and Reauthorization Act of 2017

Section 1. Short Title.

Section 2. Redevelopment Certainty for Governmental Entities.

This section amends the definition of “owner or operator” in section 101(20)(D) of CERCLA by removing the term “involuntarily,” which means that a unit of state or local government that acquires ownership or control involuntarily is not an “owner or operator” under CERCLA. Section 1 also makes a conforming change in the definition of “contractual relationship” in section 101(35)(D).

Section 3. Petroleum Brownfield Enhancement.

This section amends the definition of “brownfield site” in section 101(39)(D) to clarify that a petroleum site is eligible to be a brownfield site if there is no viable responsible party and if EPA or the state determine that the site will be assessed and remediated by a person who is not potentially liable to clean up the site.

Section 4. Clarification of Leaseholder Interest.

This section clarifies the existing definition of a “bona fide prospective purchaser” in 101(40) of CERCLA with respect to a tenant or person who holds a lease hold interest, but who otherwise meets the requirements to be a bona fide prospective purchaser. This section also defines a “leaseholder.”

Section 5. Expanded Eligibility for Nonprofit Organizations.

This section deems certain non-profit entities (501(c)(3) organizations, limited liability corporations and limited liability partnerships (the members of which are non-profit organizations), and qualified community development entities) “eligible entities” under section 104(k)(1).

Section 6. Treatment of Publicly Owned Brownfields Sites.

This section provides that an otherwise eligible entity may receive a brownfields assessment or remediation grant even if the brownfields property was acquired prior to January 11, 2002.

Section 7. Remediation Grant Enhancement.

This section increases the limit for remediation grants from \$200,000 to \$500,000 and allows EPA to waive that limit up to \$750,000 based on the size, the ownership status, or the level of contamination of the site.

Section 8. Multipurpose Brownfields Grants.

This section allows EPA to issue multipurpose grants to inventory, characterize, assess, plan, provide technical assistance, and remediate one or more sites in an area proposed by the eligible entity. The grants may be up to \$1,000,000. This section also establishes criteria and conditions for the award of the multipurpose grants.

Section 9. Administrative Costs for Grant Recipients.

This section allows eligible entities to use up to 5 percent of a grant to pay administrative costs. The section also restricts what may be considered as an administrative cost.

Section 10. Renewable Energy on Brownfields Sites.

This section directs EPA to include in the ranking system for grant applications, the extent to which a grant would facilitate the production of renewable energy on the brownfields site.

Section 11. Small Community Technical Assistance Grants.

This section allows EPA to make grants to states under section 128(a) for the purpose of assisting small communities, Indian tribes, rural areas, or disadvantaged areas in the state in taking an inventory of sites, site assessment or remediation, facilitating community involvement, or site preparation at brownfields sites. EPA may use up to \$1,500,000 of the funds available under 104(k) for this purpose and the grants to states may not be more than \$20,000. The section also defines “Disadvantaged Area” and “Small Community.”

Section 12. Brownfields Funding.

This section is the authorization for appropriations of the brownfields program under section 104(k) of CERCLA.

Section 13. State Response Program Funding.

This section is the authorization of appropriations for state response grants under section 128(a) of CERCLA

III. H.R. _____, Nuclear Waste Policy Amendments Act of 2017

Section 1. Short Title and Table of Contents.

This section entitles the Act the “Nuclear Waste Policy Amendments Act of 2017” and identifies the sections of the bill as follows: Section 1, Short Title and Table of Contents; Title I, Monitored Retrievable Storage; Title II, Permanent Repository; Title III, DOE Contract Performance; Title IV, Benefits to Host Community; Title V, Funding; and, Title VI, Miscellaneous.

TITLE I. MONITORED RETRIEVABLE STORAGE

Sec. 101. Monitored Retrievable Storage.

This section amends section 141(b) of the NWPA to direct the Secretary of Energy (Secretary) to complete a study of the need for and feasibility of the construction of one or more monitored retrievable storage facilities (MRS) and submit such report to Congress by June 1, 2019. The section also requires the Secretary to publish a request for information to help the Secretary evaluate options to enter into MRS agreements with respect to one or more MRS.

Section 101(b) makes conforming changes to allow for more than one MRS, strikes the limitation contained in section 141(g) of the NWPA, and adds definitions to section 2 of the NWPA for “MRS agreement” and “Department-owned civilian waste.”

Sec. 102. Authorization and Priority.

This section amends section 142 of the NWPA to authorize the Secretary to site, construct, and operate one or more MRS and store, pursuant to a MRS agreement, Department-owned civilian waste at a non-Federal MRS that is licensed by the NRC. The section also directs the Secretary to prioritize storage at a non-Federal MRS unless the Secretary determines it is faster and less expensive for DOE to site, construct, and operate an MRS. The Secretary must provide such determination to Congress within 30 days.

Sec. 103. Conditions for MRS Agreements.

This section amends section 143 of the NWPA to prohibit the Secretary from entering into an MRS agreement for an MRS unless (1) the MRS holds a license pursuant to the Atomic Energy Act of 1954 and has approval to store Department-owned civilian waste at such facility from the governor of the state, any unit of general local government with jurisdiction over the area, and any affected Indian tribe; (2) the Commission has issued a decision for a repository under section 114(d) of the NWPA; and (3) the MRS agreement provides the quantity of HLW and SNF will not exceed the limits described in section 148(d)(3) and (4).

Sec. 104. Survey.

This section amends section 144 of the NWPA to allow the Secretary to survey and evaluate sites for an MRS based on listed criteria, including acceptability to state authorities, affected units of local government, and affected Indian tribes. The section would require the

Secretary to issue a request for proposals for a MRS agreement with a non-Federal MRS before conducting any survey.

Sec. 105. Site Selection.

This section amends section 145 of the NWPA to allow for more than one MRS site to be evaluated.

Sec. 106. Benefits Agreement.

This section amends section 147 of the NWPA to allow a non-Federal entity subject to a MRS agreement to enter into a benefits agreement with the Secretary under section 170.

Sec. 107. Licensing.

This section amends section 148(c) of the NWPA to apply to a DOE MRS and amends section 148(d) of the NWPA to modify the requirement that the Commission issue a license for a construction authorization for a repository prior to licensing an MRS to require the Commission to issue a final decision approving or disapproving a construction authorization prior to MRS licensing.

TITLE II. PERMANENT REPOSITORY

Sec. 201. Land Withdrawal, Jurisdiction, and Reservation.

This section provides for the permanent withdrawal of lands described in subsection (c) and provides the Secretary jurisdiction over the withdrawal. The withdrawal is reserved by the Secretary for development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, postclosure, and other activities associated with the disposal of HLW and SNF under the NWPA.

Section 201(b) revokes previous public land orders and right-of-way within the withdrawal.

Section 201(c) describes the boundaries of the land subject to the withdrawal and requires the publication in the Federal Register and documentation of the copies of the described maps.

Section 201(d) describes the relationship of the withdrawal to lands previously withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

Section 201(e) assigns certain management responsibilities to the Secretary for lands in the withdrawal, including the development of a management plan for the lands; prioritizing Yucca Mountain Project activities; use by the Air Force under agreed terms and conditions with the Secretary; and related non-Yucca Mountain Project uses, such as grazing, hunting and

trapping, and mining. The subsection provides for limited public access to continue the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary considers consistent with the purposes of the withdrawal. The subsection also authorizes the Secretary to close a portion of the withdrawal or airspace above the withdrawal.

Section 201(f) provides that the United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property as a result of mining, mineral leasing, or geothermal leasing activities conducted on the withdrawal.

Section 201(g) provides the Secretary authority to acquire lands and interests within the withdrawal.

Section 201(h) provides the Federal government the exclusive authority to issue, implement, or enforce any air quality permit for any Federal facility or activity that is subject to the requirements of the NWPA for the purpose of siting, constructing, or operating a repository, or located, or occurring, in the withdrawal. The subsection preempts state air quality permitting with respect to such Federal facilities or activities.

Section 201(i) removes Federal, state, Interstate, and local requirements subject to section 6001(a) of the Solid Waste Disposal Act for material transported to a repository for disposal.

Section 201(j) defines terms used in this section consistent with the NWPA, in addition to defining the “withdrawal,” “Secretary concerned,” and “Project.”

Section 201(k) makes this section, except subsections (c), (e)(2)(A), (h), (i), and (j) effective on the date that the Commission approves the issuance of a construction authorization under section 114(d) of the NWPA for the Yucca Mountain site.

Sec. 202. Water Access.

This section amends section 124 of the NWPA to add subsection (b) to state that the use of water from any source to accomplish the purposes of this subtitle to carry out Department functions is declared to be beneficial to interstate commerce and does not threaten to prove detrimental to the public interest. It also prohibits a state from enacting or applying a law that discriminates against this use and allows the Secretary, through purchase or otherwise, to obtain water rights necessary to carry out Department functions under this subtitle.

Section 202(b) makes this section effective on the date the Commission approves the issuance of a construction authorization under section 114(d) of the NWPA for the Yucca Mountain site.

Sec. 203. Application Procedures and Infrastructure Activities.

This section amends section 114(d) of the NWPA to require NRC consideration of the construction authorization for the repository 18 months after the date of enactment of the Nuclear

Waste Policy Amendments Act of 2017. It also removes certain conditions on the quantity of metric tons of heavy metal for Commission's approval of a license to authorize construction submitted under section 114(b). It also allows for amendments to an approved construction authorization license to be considered using expedited, informal procedures and directs the Commission to decide on license amendments within one year, unless the Commission notifies Congress that the deadline needs to be extended. The subsection allows the Secretary to undertake infrastructure activities at the Yucca Mountain site considered necessary or appropriate to support the construction or operation of a repository or transportation to such site. Infrastructure activities include safety upgrades; site preparation; the construction of a rail line to connect the Yucca Mountain site with the national rail network; and construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

Section 203(b) amends section 114(f)(6) to add certain actions that are not required for an environmental analysis, prohibits the Commission from disapproving of the construction authorization, license to receive and possess or any other action, on the grounds that an infrastructure activity was undertaken. The section also provides that actions undertaken outside the geologic repository operations area do not require a license from the Commission.

Sec. 204. Pending Repository License Application.

This section provides that nothing in this Act or amendments made by this Act shall be construed to require the Secretary to amend or otherwise modify an application for a construction authorization pending as of the date of enactment of this Act.

Sec. 205. Limitation on Planning, Development, or Construction of Defense Waste Repository.

This section prohibits the Secretary from taking any action relating to planning, development, or construction of a defense waste repository until the Commission issues a final decision on an application for a construction authorization for a repository under section 114(d)(1) of the NWSA. The section also defines the term "defense waste repository."

Sec. 206. Sense of Congress Regarding Transportation Routes.

This section expresses the Sense of Congress that the Secretary should consider transportation routes to the repository site to avoid Las Vegas, Nevada.

TITLE III. DOE CONTRACT PERFORMANCE

Sec. 301. Title to Material.

This section amends section 123 of the NWSA to allow the Secretary to accept title to HLW or SNF for a repository or an MRS. The section also provides the Secretary the authority to enter into new contracts or negotiate modifications to existing contracts for acceptance of title, subsequent transportation, and storage of HLW or SNF, including the expedited titling,

transportation, and storage of fuel to an MRS from nuclear facilities that have ceased commercial operation.

TITLE IV. BENEFITS TO HOST COMMUNITY

Sec. 401. Consent.

This section amends section 170 of the NWPA by clarifying the number of benefits agreements that may be available and by adding a new subsection (g) expressing that if the State of Nevada enters into a benefits agreement under this section, such agreement shall not be considered an expression of consent to siting the repository.

Sec. 402. Content of Agreements.

This section amends the table in section 171 of the NWPA titled “Benefits Schedule.”

Section 402(b) amends section 171(a) of the NWPA to prohibit payments from a benefits agreement to be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the MRS or repository concerned.

Section 402(c) amends section 171(b) of the NWPA to remove the State of Nevada’s agreement to waive its rights to disapprove of the recommendation of the Yucca Mountain site as a condition to enter into a benefits agreement.

Section 402(d) amends section 171(c) of the NWPA to provide that payments under a benefits agreement to the State of Nevada shall be made from the Waste Fund.

Sec. 403. Covered Units of Local Government.

This section inserts section 172A in the NWPA to allow covered units of local government, not earlier than one year after the date of enactment, to enter into a benefits agreement with the Secretary. Such benefits agreements are to mitigate impacts of locating a repository at the Yucca Mountain site, as described in section 175(b). Payments to covered units of local governments under a benefits agreement are provided by the Waste Fund and cannot be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the repository. Entering into a benefits agreement under this section by a covered unit of local government shall not be considered to be an expression of consent to the siting of a repository in the State of Nevada. This section also defines covered unit of local government to mean any affected unit of local government with respect to a repository or any unit of general local government in the State of Nevada.

Section 403(b) makes conforming amendments to section 170(a)(4) relating to benefits agreements.

Sec. 404. Termination.

This section amends section 173 of the NWPA to modify the conditions for the termination of a benefits agreement from a Secretarial determination to the Commission's disapproval of a license to authorize construction for a repository under section 114(d).

Sec. 405. Other Benefits.

This section amends section 174 of the NWPA to require the Secretary to consider MRS in proposals to site Federal research projects and directs the Secretary to provide an annual plan for potential Federal projects to be located, or proposed to be located, in such state. The section also provides for the Secretary to prioritize funding for higher education from the Waste Fund to institutions located in the State of Nevada.

Sec. 406. Disposal of Spent Nuclear Fuel.

This section amends section 122 of the NWPA to all economic benefits derived from the retrieval of SNF to be shared with any state, affected units of local government, and affected Indian tribes, where the repository is located.

Sec. 407. Updated Report.

This section amends section 175(a) of the NWPA to require the Secretary to update a report identifying potential actions to mitigate impacts associated with the activities authorized under Subtitle A.

TITLE V. FUNDING

Sec. 501. Assessment and Collection of Fees.

This section amends section 302(a)(4) of the NWPA to direct the Secretary to establish procedures for the assessment of fees to provide sufficient revenues to offset the costs required by the Waste Fund. The section also directs the Secretary to establish procedures to collect fees. The Secretary may not collect a fee until the Commission issues a final decision on the construction authorization for a repository under section 114(d) and the fees collected cannot exceed 90 percent of the amounts appropriated from the Waste Fund. Assessed fees that are not collected pursuant to the requirements of this section shall be collected when the Secretary determines necessary for the purposes of the Waste Fund, subject to appropriations.

Section 501(b) provides the Secretary the authority to seek modification of a contract under section 302(a) of the NWPA to ensure the contract complies with this section.

Section 502(c) makes technical and conforming amendments to section 302(a) of the NWPA.

Sec. 502. Use of Waste Fund.

This section amends section 302(d) of the NWPA to define allowable uses of the Waste Fund.

Section 502(b) makes conforming amendments in section 117(d) and 141(f) with respect to allowable uses of the Waste Fund.

Sec. 503. Annual Multi-Year Budget Proposal.

This section amends section 302(e) of the NWPA to require DOE to submit a multi-year budget proposal annually.

Sec. 504. Availability of certain amounts.

This section amends section 302 of the NWPA by adding a new subsection (f) that makes certain amounts of funding from the Waste Fund available to the Secretary, without further appropriations, when SNF is received at the Yucca Mountain site, when HLW or SNF is emplaced in a repository, when decommissioning activities related to a repository commence, when post-decommissioning maintenance or monitoring related to a repository commences, or for fees not yet collected pursuant to subsection (a)(3). This section also allows amounts described in the benefits schedule to be available without further appropriations.

TITLE VI. MISCELLANEOUS

Sec. 601. Certain Standards and Criteria.

This section requires the Environmental Protection Agency to determine if standards promulgated under section 121(a) of the NWPA should be updated and to submit to Congress a report on such determination. If the Administrator determines that the standards promulgated under section 121(a) of the NWPA should be updated, the Administrator shall promulgate updated standards within two years of making such determination. This section also requires the NRC to promulgate updated technical requirements under section 121(b) of the NWPA to be consistent with updated generally applicable standards.

Section 601(b) states that nothing in this section shall affect the standards, technical requirements, and criteria for the Yucca Mountain site under section 801 of the Energy Policy Act of 1992.

Sec. 602. Application.

This section makes a conforming amendment by striking section 135(h) of the NWPA, which prohibits DOE from using a private facility for management of spent nuclear fuel.

Sec. 603. Office of Civilian Radioactive Waste Management.

This section amends section 304(b) of the NWPA to provide for not more than two five-year terms for the Director of the Office of Civilian Radioactive Waste Management and requires the Director to be appointed from persons who have extensive expertise and experience in organizational and project management. The section also allows the Director to serve up to one year following the expiration of the term or until a new Director is confirmed.

Section 602(b) amends section 203(a) of the Department of Energy Organization Act by striking paragraph (8) and transferring all functions described in that paragraph to the Office of Civilian Radioactive Waste Management.

Section 602(c) makes a conforming amendment to section 2(17) of the NWPA.