

GAO

United States General Accounting Office

Report to the Chairman, Committee on
Natural Resources, House of
Representatives

September 1993

NUCLEAR WASTE

Funds Spent to Identify a Monitored Retrievable Storage Facility Site



150075

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Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-254076

September 7, 1993

The Honorable George Miller
Chairman, Committee on Natural
Resources
House of Representatives

Dear Mr. Chairman:

The Nuclear Waste Policy Amendments Act of 1987 established the federal Office of the Nuclear Waste Negotiator for a 5-year period. The Nuclear Waste Negotiator—appointed by the President and confirmed by the Senate—was empowered to attempt to find a state or Indian tribe willing to host a repository or a monitored retrievable storage (MRS) facility for the permanent or temporary storage of nuclear waste, respectively. The Negotiator was also empowered to negotiate with a Governor of a state or the governing body of an Indian tribe the terms and conditions under which the prospective host would accept either facility at a technically qualified site on reasonable terms.

Pursuant to your January 25, 1993, letter, we agreed to review the accounts of the Office of the Nuclear Waste Negotiator to determine if the office's expenditures were consistent with the administrative provisions of the legislation that created the office. We also agreed to ascertain whether grants made by the Department of Energy (DOE) to identify a volunteer host for a temporary storage facility for nuclear waste were in keeping with the objectives of the temporary storage program and were properly monitored.

Results in Brief

The expenditures of the Nuclear Waste Negotiator's office were consistent with the administrative provisions of the legislation that created the office. Section 408 of the Nuclear Waste Policy Amendments Act of 1987 gives the Negotiator considerable discretion in managing office procedures such as hiring and paying staff and entering into leases and contracts.

DOE's awards of grants to counties and Indian tribes were consistent with the objectives of the MRS program. DOE has adequately reviewed grant applications and has monitored grantees' expenditures.

Background

The Nuclear Waste Policy Act of 1982 requires, among other things, that DOE (1) develop a repository to permanently dispose of nuclear waste and (2) study and propose to the Congress an MRS facility to temporarily store the waste. Amendments to the act in 1987 authorized DOE to develop an MRS, subject to linkages to progress in developing a repository. The amendments also placed the Negotiator's office within the Executive Office of the President; however, Public Law 100-507 made the office an independent establishment within the executive branch.

The Negotiator's office was funded by a transfer from the Nuclear Waste Fund that was to be carried over to subsequent fiscal years until expended.¹ In conjunction with the creation of the Negotiator's office, the Secretary of Energy was authorized to make grants of financial assistance to states and Indian tribes to assess the feasibility of siting an MRS facility in their respective jurisdictions. These grants are divided into two categories: Phase I (preliminary) and Phase II (advanced) grants. Grantees can receive up to \$100,000 for Phase I grants for use over a 6-month period to develop an understanding of the nuclear waste management system and to determine if they have a real interest in pursuing the feasibility of hosting an MRS facility. Grantees can receive up to \$3 million more in two stages of the Phase II grants to support a more-detailed examination of the feasibility of hosting an MRS facility. At the end of the first stage, in which a grantee may receive up to \$200,000, the Governor of the state or chief executive of the Indian tribe must, among other things, notify the Negotiator that one or more areas to be considered for a potential MRS site have been identified. The remaining funds will be provided in stage two to continue feasibility studies and begin formal discussions and negotiations with the Negotiator that may lead to developing a proposed agreement to host an MRS facility that would be considered by the Congress.

In August 1990, Mr. David H. Leroy was confirmed by the Senate as the first Nuclear Waste Negotiator. By that time, only about 2-1/2 years remained in the authorized life of the Negotiator's office.² On June 11, 1993, President Clinton accepted Mr. Leroy's resignation and directed the Secretary of Energy to perform the duties of the Nuclear Waste Negotiator. To date, the Clinton administration has not nominated a new Negotiator.

¹The Nuclear Waste Policy Act of 1982, as amended, requires utilities to pay fees into the Nuclear Waste Fund to support radioactive waste disposal activities.

²On Oct. 24, 1992, the Congress extended the life of the Negotiator's office until Jan. 1995.

Negotiator's Expenditures Were Consistent With Legislation

The expenditures of the Nuclear Waste Negotiator's office were consistent with legislative requirements. To address concerns about the expenditures of the Negotiator's office, we reviewed the provisions of the 1987 amendments related to the office and interviewed the Nuclear Waste Negotiator and members of his staff about the office's operations. We also reviewed documents pertaining to significant office expenses including payroll, consultant fees, leased space, printing, and travel at the Negotiator's office in Boise, Idaho. These expenses accounted for about 82 percent of the office's total expenses in fiscal year 1992. (App. I shows the expenses of the Negotiator's office through May 31, 1993.)

Section 408 of the 1987 amendments establishes the administrative powers of the Negotiator's office, and therefore, establishes the requirements or criteria under which the Negotiator operates the office. The section provides the Negotiator with substantial discretionary authority to, among other things,

- appoint such officers and employees as the Negotiator determines to be necessary and prescribe their duties;
- obtain services as authorized by title 5, United States Code, section 3109 at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule in title 5 of the United States Code;
- promulgate such rules and regulations as may be necessary to carry out such functions; and
- for the purposes of administrative functions, enter into and perform contracts, leases, cooperative agreements, or other transactions as necessary on such terms as the Negotiator determines to be appropriate, with any agency of the United States, or with any public or private person or entity.

The Negotiator's annual salary of \$123,100 was consistent with the 1987 amendments that the Negotiator be compensated at Level III of the Executive Schedule. Also in accordance with section 408 of the amendments, the Negotiator hired and established the pay scales for the remainder of the office's staff. Currently, the office maintains nine permanent staff positions, a part-time clerical assistant, and an intermittent government relations employee. Payroll was the largest expenditure of the Negotiator's office during fiscal years 1991 and 1992, accounting for 38 percent (\$604,000) and 42 percent (\$719,045) of the office's total expenses, respectively.

Costs for consultants accounted for about 15 percent (\$237,951) and (\$274,375) of the office's total expenditures in fiscal years 1991 and 1992, respectively. According to the office, scientific or technical personnel are not on the office's staff, but the office has chosen to hire contract consultants for those areas of expertise. The Negotiator's office has not competitively bid for these services. However, awarding noncompetitive contracts for consultants is, as noted above, within the discretionary authority of the Negotiator to enter into transactions on terms that he deems appropriate.

Although the 1987 amendments allow the office flexibility in leasing space, the Negotiator's staff performed market surveys prior to leasing offices in Washington, D.C., and Boise, Idaho. For example, the staff determined that it could lease private office space in Washington, D.C., less expensively and faster than by leasing federal office space. In addition, the staff considered at least seven separate locations before leasing offices in Boise.

The office's staff established informal contracting procedures even though the office believed that its enabling legislation gave it the flexibility to contract under terms as it deemed necessary. One such procedure was that written quotations should be obtained from vendors for contracts greater in value than \$2,500. We selected and reviewed the office's contract files for printing services and found that the office generally followed its procedure.

The office's staff told us that the office contracted with a private company to obtain government rates for travel. To verify this, we reviewed selected travel vouchers of the Negotiator and his chief of staff and reviewed the travel expenses of all office staff from September 1990 through May 1993. Most travel was by air, and the office obtained government rates for this travel through a private travel service.

DOE Adequately Administered MRS Grants

The purpose of the MRS grants is to ensure that eligible interested parties have resources to become actively involved in the program. To determine whether DOE has adequately reviewed grant applications and monitored grantees' uses of grant funds, we reviewed all Phase I and Phase II grant applications received by DOE through March 1993 and interviewed DOE officials who were directly involved in reviewing these applications. Specifically, we reviewed the grant files to ascertain whether DOE had adequately evaluated grant applications and ensured that grantees had met

financial and technical reporting requirements in accordance with DOE's financial assistance solicitation and amendments. We also reviewed MRS grant files and other documents pertaining to the feasibility grants.

DOE adequately reviewed grant applications by determining, among other things, whether applicants' proposed work statements and schedules were compatible with DOE's requirements and whether projected costs for contractors, travel, per diem, and other expenses appeared reasonable. DOE rejected six grant applications as a result of its reviews, and five other applications were withdrawn for various reasons. For example, DOE rejected two applicants from Alaska because of the transportation system that would be required to support an MRS site in that state. An Indian tribe in Oklahoma withdrew its Phase I application after receiving negative feedback from the local population and after the Governor of the state requested that the tribe withdraw its application.

Also, DOE ensured that required financial and technical progress reports were submitted by applicants. Such reports present the status of funds committed to the project and results of the work performed. We found evidence in DOE's files that DOE sent letters to jurisdictions requesting such reports when the jurisdictions did not submit them as required. We did not, however, visit the grantees and review their records documenting how the grant funds were spent.

DOE received a total of 21 Phase I applications for grant funds to study the feasibility of hosting an MRS. Of these 21 applications, 5 were subsequently withdrawn by the applicants, and 6 were denied by DOE on various grounds. DOE awarded 10 eligible grant applicants about \$942,000 for Phase I.³ In addition, DOE awarded \$200,000 in first-stage Phase II grants each to three applicants that had previously obtained Phase I grants. Five other Phase II applications were under review by DOE when we completed our audit work. Appendix II lists the applicants that have received MRS grants.

DOE views an application for a grant only as an expression of interest in assessing the feasibility of hosting an MRS facility. As such, MRS grant-related activities are flexible. Grantees are able, for example, to study specific areas in which they would like additional information without having to make any commitments to site a facility. Reports submitted to DOE by grantees have shown that they have typically spent MRS grant funds to travel to nuclear facilities, attend technical conferences,

³One grantee eventually returned its unused grant funds of about \$100,000 at DOE's request.

contract for outside experts and vendors, publish reports on their findings, and disseminate information.

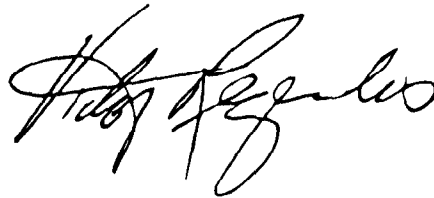
Agency Comments

We discussed the facts in this report with the Chief of Staff of the Office of the Nuclear Waste Negotiator and officials from DOE's Office of Civilian Radioactive Waste Management and Office of Placement and Administration. Their comments have been included where appropriate. Generally, they agreed with the accuracy of the facts. However, as agreed with your office, we did not obtain written agency comments on a draft of this report.

We conducted our review between March and July 1993 in accordance with generally accepted government auditing standards. The scope of our work and the methodology used to satisfy the review's objectives were presented in corresponding sections of the report.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will make copies available to the Secretary of Energy and others upon request. Please call me at (202) 512-3841 if your or your staff have any questions. Major contributors to this report are listed in appendix III.

Sincerely yours,



Victor S. Rezendes
Director, Energy and Science Issues

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Abbreviations

DOE	Department of Energy
GAO	General Accounting Office
MRS	monitored retrievable storage

Office of the Nuclear Waste Negotiator's Costs

Cost	Fiscal Year 1991	Fiscal Year 1992	As of May 31, 1993
Payroll	\$604,000	\$719,045	\$472,730
Retirement and insurance	118,187	156,913	109,258
Incentive awards	6,000	8,750	14,968
Consultants	237,951	274,375	154,175
Space rental	161,056	162,327	115,078
Travel	138,594	212,769	96,141
Administrative equipment	65,373	9,985	1,875
Furniture	59,655	1,107	1,587
Printing	47,769	47,474	8,255
Commercial contractor	41,350	17,208	24,176
Moving expense	26,361	0	0
Postage	20,810	26,355	(14,776)
General Services Administration	19,710	23,300	20,000
Telephone	14,497	19,651	10,205
Office supplies	10,635	5,156	2,555
Operating supplies	10,227	5,030	2,868
Newspapers/periodicals	7,989	8,053	5,871
Delivery	7,207	9,382	3,068
Miscellaneous publications	1,140	1,695	2,675
Photographic services	1,191	18,977	751
Equipment rental	518	888	465
Other government agency	(75)	588	0
Total	\$1,600,145	\$1,729,028	\$1,031,935

MRS Grantees by Phase

Phase I	Amount of Grant
Mescalero Apache Tribe, N. Mex.	\$100,000
Skull Valley Band of Goshute Indians, Utah	100,000
Fremont County, Wyo.	100,000
Fort McDermitt Paiute Shoshone Indian Tribe, Nev.	100,000
San Juan County, Utah	100,000
Ponca Tribe, Okla.	100,000
Eastern Shawnee Tribe, Okla.	41,962
Prairie Island Indian Community, Minn.	100,000
Grant County, N. Dak.	99,968
Yakima Indian Nation, Wash. ^a	99,710
Total	\$941,640

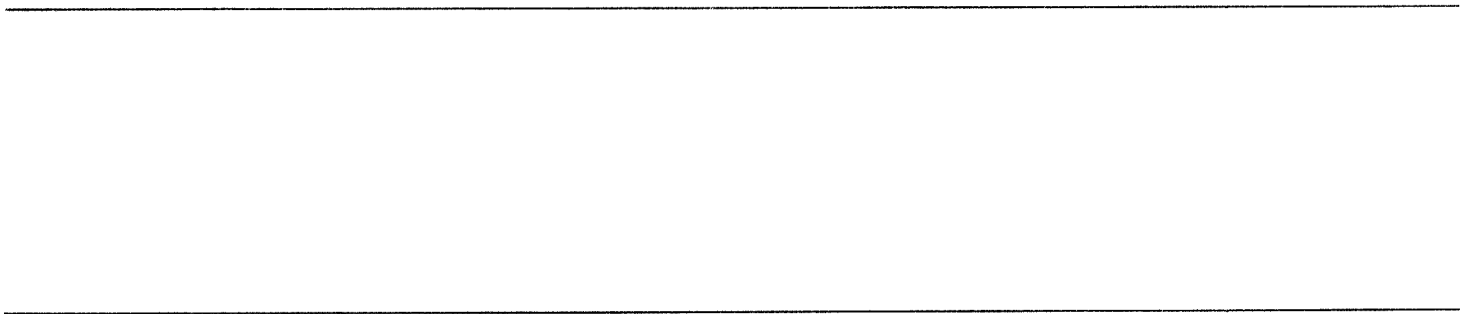
^aIn January 1992, DOE awarded a Phase I MRS grant for \$99,710 to the Yakima Indian Nation. In February 1993, DOE was reimbursed by the nation because it did not expend funds in connection with the grant.

Phase II	Amount of Grant
Mescalero Apache Tribe, N. Mex.	\$200,000
Skull Valley Band of Goshute Indians, Utah	200,000
Fort McDermitt Paiute Shoshone Indian Tribe, Nev.	200,000
Total	\$600,000

Major Contributors to This Report

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Related GAO Products

Nuclear Waste: Yucca Mountain Project Behind Schedule and Facing Major Scientific Uncertainties (GAO/RCED-93-124, May 21, 1993).

Transition Series: Energy Issues (GAO/RCED-93-13TR, Dec. 1992).

Nuclear Waste: Operation of the Monitored Retrievable Storage Facility Is Unlikely by 1998 (GAO/RCED-91-194, Sept. 24, 1991).

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