

# *Appendix A*

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## *Financial Statements*

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**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

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## ***OVERVIEW***

### **Reporting Entity**

The Nuclear Waste Policy Act (NWPA) of 1982 (Public Law 97-425) established the Office of Civilian Radioactive Waste Management (OCRWM) within the Department of Energy (DOE). OCRWM's mission is to manage and dispose of the nation's spent nuclear fuel and high-level radioactive waste. The Office provides leadership in developing and implementing strategies to accomplish this mission that ensure public and worker health and safety, protect the environment, merit public confidence, and are economically viable.

The Nuclear Waste Policy Amendments Act of 1987 (Title V, Public Law 100-203) directed the Secretary of Energy to characterize only the Yucca Mountain site in Nevada to determine if it is suitable for a repository for spent nuclear fuel (SNF) and high-level radioactive waste (HLW).

As of September 30, 1999, OCRWM employed 2,138 people. This included 170 OCRWM Federal staff, 14 Federal full-time equivalents (FTEs) at other Headquarters offices, 6 Federal FTEs at the DOE Nevada Operations Office, 110 U.S. Geological Survey employees, and 1,838 contractor employees, including employees of national laboratories.

OCRWM carries out its mission through two business centers -- the Yucca Mountain Site Characterization Project and the Waste Acceptance, Storage and Transportation Project -- and a Program Management Center.

The Yucca Mountain Site Characterization Project, located in Las Vegas, Nevada, oversees the scientific and technical investigation of Yucca Mountain, including:

- Addressing the major unresolved technical questions about the site;
- Operating the exploratory studies facility;
- Developing repository and waste package design elements that are critical to determining the feasibility of the engineered barrier system;
- Preparing a final environmental impact statement to accompany the Secretarial site recommendation, should the site be found suitable;
- Preparing a site recommendation report for the Secretary's submittal to the President should the site be found suitable; and
- Preparing and submitting a license application for repository construction to the Nuclear Regulatory Commission, should the President recommend and the Congress approve the Yucca Mountain site.

The Waste Acceptance, Storage and Transportation Project, located in Washington, D.C., focuses on the development of processes for the legal and physical transfer of commercial SNF to the Federal Government, establishment of an acceptance process for DOE-owned SNF, including naval SNF; HLW and immobilized surplus plutonium, creation of a national transportation capability for waste acceptance, and the resolution of institutional issues with Program stakeholders.

OCRWM's Program Management Center provides program integration and management support to the

Director, OCRWM, and to the two business centers. The Program Management Center is comprised of the Office of Quality Assurance in Las Vegas, Nevada, the Office of Program Management and Administration, and the Systems Engineering and International Division of the Office of Acceptance, Transportation and Integration, in Washington, D.C. The Center is responsible for quality assurance, program planning and administration, program management, technical and regulatory integration, international waste management activities, institutional activities, and management of the Nuclear Waste Fund (NWF) and OCRWM's investment portfolio.

### **Fiscal Year (FY) 1999 Technical Performance**

OCRWM's three technical performance measures in the Secretary's Fiscal Year 1999 Performance Agreement with the President were all completed during the FY. The FY 1999 measures were:

- **Complete peer review of the total system performance assessment to provide formal, independent evaluation and critique.**

*RESULTS: The peer review of the total system performance assessment was completed on May 26, 1999, and the Final Peer Review Report containing comment responses was completed on August 12, 1999. The review panel's recommendations have been factored into FY 2000 and out-year planning.*

- **Complete repository and waste package design inputs for use in total system performance assessment.**

*RESULTS: Repository and waste package design inputs were completed on August 27, 1999, and will be used in the development of the total system performance assessment for the Yucca Mountain site recommendation.*

- **Complete a draft environmental impact statement.**

*RESULTS: The draft environmental impact statement was completed in July 1999.*

### **Fiscal Year 2000 Technical Performance Measures**

The following Secretarial commitments have been identified as technical performance measures for OCRWM in FY 2000:

- Complete public hearings on the Draft Environmental Impact Statement which was published in July 1999.
- Select the reference design for site recommendation and license application.
- Select the reference natural systems models for site recommendation and license application.

### **Fiscal Year 1999 Financial Performance**

OCRWM is required by the NWPA to recover the full cost of the Program. The Program's total cost was estimated in *Analysis of the Total Systems Life Cycle Cost of the Civilian Radioactive Waste Management Program*, dated December 1998, and updated in December 1999.

Program funding comes from the NWF and the Defense Nuclear Waste Disposal appropriation (DNWDA). The NWF consists of fees paid by the owners and generators of SNF from commercial reactors, in accordance with provisions of their contracts with DOE for disposal services. NWF assets in excess of those appropriated to pay program costs are invested in U.S. Treasury securities. The DNWDA was established by the Congress in lieu of direct payment of defense fees by DOE into the NWF, to pay for the disposal costs of HLW resulting from atomic energy defense activities and other DOE-managed nuclear materials. As of September 30, 1999, cumulative revenue from fees, including the DNWDA, totaled approximately \$12.583 billion, and cumulative interest earnings and other revenue totaled approximately \$6.769 billion. Cumulative expenditures from appropriations, including direct appropriations to the Nuclear Regulatory Commission, the now defunct Office of the Nuclear Waste Negotiator, and the Nuclear Waste Technical Review Board, totaled approximately \$6.383 billion.

As of September 30, 1999, the U.S. Treasury securities held by OCRWM had a market value of \$8.481 billion, compared to \$8.611 billion at the end of FY 1998 reflecting a decline because of rising interest rates. Investment income for FY 1999 was \$638.4 million including \$519.7 million in interest earnings and \$118.7 million in net gains on the sale of securities.

OCRWM's primary financial goal is to ensure that future spending needs can be met. Therefore, OCRWM relies on the asset-liability matching approach to investing used by pension funds and insurance companies. By matching investments to anticipated funding requirements, OCRWM reduces the risk that changes in interest rates will adversely affect the fee adequacy balance, ensures that identified spending projections will be met, and makes investments at the most favorable rates currently available.

In its FY 1998 financial statements, OCRWM established the following two financial performance measures, both of which were achieved in FY 1999. The FY 1999 measures were:

- To maintain an adequate liquid reserve of approximately \$2 billion in short-term Treasury securities with an average maturity of 3 years, to meet unexpected spending needs.

*RESULTS: During the year, the average month-end balances in the contingency fund was \$1.7 billion and the average of its month-end maturities was 2.9 years.*

- To reallocate existing investments and invest any additional surpluses to match the revised Program spending profile through at least the year 2019.

*RESULTS: The cumulative spending profile was matched in all but one year through the year 2020, and additional funds were invested in later years.*

### **Fiscal Year 2000 Financial Performance Measures**

The following have been identified as financial performance measures for OCRWM in FY 2000:

- To maintain an adequate liquid reserve of approximately \$2 billion in short-term Treasury securities, with an average duration not to exceed 3 years, to meet unexpected spending needs.
- To invest any surpluses to match anticipated Program spending through at least the year 2021.

### **Year 2000 (Y2K) Compliance**

The high priority OCRWM accorded Y2K preparedness paid off in a smooth transition to the January 1,

2000, date rollover. OCRWM experienced only two minor Y2K software problems, which did not impact core operations. Since FY 1997, OCRWM had worked to upgrade systems and networks with Y2K-compliant hardware and software. Significant efforts and resources were invested in the assessment, renovation, validation as Y2K-compliant, and implementation of both mission-critical and non-mission-critical systems.

OCRWM's four mission-critical systems were validated as Y2K-compliant and implemented ahead of the Secretary's stretch goal of January 31, 1999. OCRWM also validated as Y2K-compliant and implemented 1,013 non-mission-critical software applications, 10 telephone systems, 31 networks, 168 servers, 3,173 workstations, 23 building systems, 10 pieces of laboratory equipment, 4 health and safety systems, and 1,400 embedded systems. Again, OCRWM exceeded the Secretary's stretch goal of March 31, 1999, for non-mission-critical systems.

OCRWM completed and tested a Y2K Business Continuity Plan, which provided contingency plans and a strategy for mitigating risks in the event of Y2K-related system failures or loss of external or internal services. The plan provided for timely resumption and continuation of core business processes and activities by establishing minimum levels of service or operations. The required end-to-end testing documents and contingency plans for mission-critical systems were completed by August 30, 1999. The contingency planning process entailed the identification of the most likely worst-case scenarios and plans for their mitigation. In accordance with DOE direction, OCRWM's contingency plan addressed several possible failure scenarios including: a four-hour interruption, a four-day unavailability of service, and a worst-case scenario of a four-week service interruption. The most likely scenario, a four-hour interruption, would have been only a minor inconvenience for OCRWM personnel in ensuring business continuity. As a precautionary measure, however, OCRWM created duplicate hard copies of its mission-critical databases for use with manual processes.

The following table estimates OCRWM's Y2K costs; it includes the costs of hardware and software procurements and upgrades, as well as burdened labor costs to investigate, test, renovate, and validate Y2K compliance for all systems and software.

**OCRWM Y2K Cost Estimates (dollars in thousands)**

<b>Budget Organization</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>
<b>RSIS</b>	\$ -	\$ 2,448	\$ 72	\$ 285	\$ 150	\$ 2,955
<b>RW</b>	-	283	160	75	25	543
<b>TESS (TRW)</b>	-	3,802	372	562	262	4,998
<b>YMSCO</b>	-	857	25	25	25	932
<b>Totals</b>	<b>\$ -</b>	<b>\$ 7,390</b>	<b>\$ 629</b>	<b>\$ 947</b>	<b>\$ 462</b>	<b>\$ 9,428</b>

### **Limitations of the Financial Statements**

The accompanying financial statements were prepared to report the financial position, net cost, changes in net position, budgetary resources, and financing of the NWF and the DNWDA, pursuant to the NWPA, as amended. While the statements have been prepared from the books and records of the NWF and the DNWDA, in accordance with the formats prescribed by the Office of Management and Budget, the statements are different from the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with the realization that they relate to the NWF and the DNWDA; that unfunded liabilities reported in the financial statements cannot be liquidated without the enactment of an appropriation; and that the payment of all liabilities, other than those resulting from contractual obligations, can be abrogated by DOE.





2001 M Street, N.W.  
Washington, DC 20036

## Independent Auditors' Report on Financial Statements

United States Department of Energy  
Office of Civilian Radioactive Waste Management:

We have audited the accompanying balance sheets of the Office of Civilian Radioactive Waste Management (OCRWM) as of September 30, 1999 and 1998, and the related statements of net cost, changes in net position, budgetary resources, and financing for the years then ended. These financial statements are the responsibility of OCRWM's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget Bulletin No. 98-08, *Audit Requirements for Federal Financial Statements*, as amended. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in note 12 to the financial statements, OCRWM is involved as a defendant in several matters of litigation relating to its inability to accept waste by the January 31, 1998 date specified in the Nuclear Waste Policy Act of 1982, as amended. The Court of Appeals for the District of Columbia Circuit has ruled that the Standard Contract (1) imposes an unconditional obligation on DOE to initiate waste acceptance by January 31, 1998 and (2) offers a potentially adequate remedy for the failure of DOE to meet this obligation. It is too early to evaluate the ultimate impact on OCRWM of claims based on the decisions in these cases and resolution of such claims will involve highly fact-specific and individualized decisions about the costs incurred by each contract holder as a result of the delay of DOE in meeting its obligation under the Standard Contract. However, DOE has estimated possible damages to be between \$500 million and \$1 billion. OCRWM has recorded an estimated liability of \$500 million relating to these matters in the financial statements for the years ended September 30, 1999 and 1998.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Office of Civilian Radioactive Waste Management as of September 30, 1999 and 1998, and its statements of net costs, changes in net position, budgetary resources, and reconciliation of net costs to budgetary obligations for the years then ended in conformity with generally accepted accounting principles.





As discussed in note 2 to the financial statements, OCRWM implemented Statements of Federal Financial Accounting Standards No 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government* and No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, effective October 1, 1997.

In accordance with *Government Auditing Standards*, we have also issued reports dated January 14, 2000 on our consideration of OCRWM's internal control over financial reporting and on our tests of its compliance with certain provisions of laws and regulations. Those reports are an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Our audit was made for the purpose of forming an opinion on OCRWM's financial statements, taken as a whole. The information presented in the Overview is not a required part of the basic financial statements but is supplementary information required by Office of Management and Budget Bulletin No. 97-01, *Form and Content of Agency Financial Statements*, as amended. We have considered whether this information is materially inconsistent with the principal financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we do not express an opinion on it. The performance information included in the Overview is addressed in our auditors' report on internal control over financial reporting in accordance with OMB Bulletin No. 98-08, as amended.

KPMG LLP

January 14, 2000

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Balance Sheets

As of September 30, 1999 and 1998

(Dollars in thousands)

	1999	1998
<b>Assets</b>		
Intragovernmental:		
Fund balance with Treasury (note 3)	\$ 88,101	\$ 90,765
Investments (note 4)	8,481,205	8,610,666
Accounts receivable:		
Receivable from Department of Energy (notes 2 and 11)	1,486,056	1,175,211
kWh fees (note 5)	11,298	9,848
Accrued investment interest (note 4)	81,388	83,857
Other assets	445	278
Total intragovernmental assets	10,148,493	9,970,625
Accounts receivable (note 5):		
kWh fees	153,258	144,321
One-time spent fuel fees	880,489	880,489
Interest from one-time spent fuel fees	1,523,355	1,415,345
General property, plant, and equipment, net (note 6)	22,367	28,112
Other assets	808	993
Total Assets	\$ 12,728,770	\$ 12,439,885
<b>Liabilities</b>		
Liabilities covered by budgetary resources:		
Intragovernmental:		
Accounts payable	\$ 5,249	\$ 4,253
Deferred revenue (note 14)	1,142,059	925,141
Total intragovernmental liabilities	1,147,308	929,394
Accounts payable	34,896	47,437
Deferred revenue (note 14)	11,802,824	10,242,761
Contract holdback	322	390
Other governmental liabilities	3,462	3,390
Total liabilities covered by budgetary resources	12,988,812	11,223,372
Liabilities not covered by budgetary resources:		
Intragovernmental:		
Pension and other actuarial liabilities	3,564	3,740
Other unfunded governmental liabilities	1,454	3,451
Estimated liability for waste acceptance obligation (note 12)	500,000	500,000
Total liabilities not covered by budgetary resources	505,018	507,191
Total Liabilities	13,493,830	11,730,563
Commitments and contingencies (notes 12 and 13)		
<b>Net position:</b>		
Unexpended appropriations (note 7)	87,663	89,256
Cumulative results of operations	(500,000)	(273,915)
Total net position before unrealized gain	(412,337)	(184,659)
Unrealized gain (loss) on investments available for sale	(352,723)	893,981
Total Net Position	(765,060)	709,322
Total Liabilities and Net Position	\$ 12,728,770	\$ 12,439,885

The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Statements of Net Cost

For the years ended September 30, 1999 and 1998

(Dollars in thousands)

	<u>1999</u>	<u>1998</u>
<b>Costs:</b>		
First repository costs (Notes 9 and 10):		
Intragovernmental	\$ 35,015	\$ 39,384
With the public	<u>335,651</u>	<u>389,760</u>
Total first repository costs	370,666	429,144
Less: earned revenue (note 14)	<u>(369,594)</u>	<u>(428,042)</u>
Net first repository costs	1,072	1,102
Cost not assigned to first repository:		
Estimated liability for waste acceptance obligation (note 12)	<u>—</u>	<u>500,000</u>
Net cost of operations	<u>\$ 1,072</u>	<u>\$ 501,102</u>

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The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Statements of Changes in Net Position

For the years ended September 30, 1999 and 1998

(Dollars in thousands)

	<b>1999</b>	<b>1998</b>
Net cost of operations	\$ (1,072)	\$ (501,102)
Financing Sources (other than exchange revenues):		
Imputed financing	1,072	1,102
Net results of operations	—	(500,000)
Prior period adjustment (note 15)	(226,085)	149,822
Net change in cumulative results of operations	(226,085)	(350,178)
Decrease in unobligated balances	(1,593)	(55,823)
Change in unrealized gain on investments	(1,246,704)	774,018
Change in net Position	(1,474,382)	368,017
Net position - beginning of the period	709,322	341,305
Net position - end of period	\$ (765,060)	\$ 709,322

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The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Statements of Budgetary Resources

For the years ended September 30, 1999 and 1998

(Dollars in thousands)

	<u>1999</u>	<u>1998</u>
<b>Budgetary resources:</b>		
Budgetary authority	\$ 353,465	\$ 346,000
Unobligated balance:		
Brought forward October 1	99,534	107,075
Adjustments:		
Temporarily restricted from FY 96 authority (note 3)	<u>(85,000)</u>	<u>(85,000)</u>
Total budgetary resources	<u>\$ 367,999</u>	<u>\$ 368,075</u>
<b>Status of budgetary resources</b>		
Obligations incurred	\$ 360,439	\$ 353,545
Unobligated balances available:		
Apportioned, balance currently available	11,560	14,530
Unobligated balances not yet available:		
Other unobligated balances not yet available	<u>(4,000)</u>	<u>—</u>
Total status of budgetary resources	<u>\$ 367,999</u>	<u>\$ 368,075</u>
<b>Outlays</b>		
Obligations incurred	\$ 360,439	\$ 353,545
Obligated balance net, beginning of period	97,985	138,396
Obligated balance transferred, net	—	(18)
Less: obligated balance net, end of period	<u>(100,476)</u>	<u>(97,985)</u>
Total outlays	<u>\$ 357,949</u>	<u>\$ 393,938</u>

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The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Statements of Financing

For the years ended September 30, 1999 and 1998

(Dollars in thousands)

	<b>1999</b>	<b>1998</b>
<b>Resources used to finance activities</b>		
Budgetary resources obligated for orders and delivery of goods and services to be received or benefits to be provided to others	\$ 360,439	\$ 353,545
Less earned revenue	(369,594)	(428,042)
Less offsetting collections, recoveries of prior year authority	—	(19)
Appropriations transferred-out	19,600	21,600
Total resources used to finance activities	10,445	(52,916)
<b>Relationship of total resources to the net cost of operations</b>		
<i>Deduct resources used to fund items not part of the net cost of operations:</i>		
Increase or (decrease) in budgetary resources obligated to order goods and services not yet received or benefits not yet provided	(14,650)	44,949
Resources that fund expenses recognized in prior periods	(1,541)	3,363
Resources that finance the acquisition of assets or liquidation of liabilities	(2,133)	(5,918)
Total resources used to fund items not part of the net cost of operations	(18,324)	42,394
Resources Used to Finance the Net Cost of Operations	(7,879)	(10,522)
<b>Costs that do not generate resources</b>		
<i>Components of net cost of operations that do not require or generate resources during the reporting period:</i>		
Expenses or exchange revenue related to the disposition of assets or liabilities, or allocation of their costs over time:		
Expenses related to use of assets	8,369	10,371
Losses or (gains) from revaluation of assets and liabilities	(490)	189
Decrease or (increase) in exchange revenue receivable from the public	—	(38)
Subtotal	7,879	10,522
Estimated liability for waste acceptance obligation (note 12)	—	500,000
Other net cost components that do not require or generate resources during the reporting period	1,072	1,102
Total components of net cost of operations that do not generate resources during the reporting period	8,951	511,624
<b>Net cost of operations</b>	<b>\$ 1,072</b>	<b>\$ 501,102</b>

The accompanying notes are an integral part of these statements.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1999 and 1998

(Dollars in thousands unless otherwise noted)

**(1) Legislative Background**

The Nuclear Waste Policy Act (NWPA) was signed into law on January 7, 1983. The NWPA establishes a framework for the financing, siting, licensing, operating and decommissioning of one or more mined geologic repositories for the Nation's spent nuclear fuel and high-level radioactive waste which is to be carried out by the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). In addition, the NWPA contains other provisions including:

Assigning responsibility for the full payment of disposal costs to the owners and generators of high-level radioactive waste and spent nuclear fuel and creating a special Nuclear Waste Fund (NWF) within the Treasury of the United States.

Providing for contracts between DOE and the owners and generators of spent nuclear fuel and high-level radioactive waste pursuant to which DOE is to take title to the spent nuclear fuel or high-level radioactive waste as expeditiously as possible, following commencement of repository operations and, in return for payment of fees established by the NWPA, to begin disposal of the spent nuclear fuel or high-level radioactive waste not later than January 31, 1998.

Requiring evaluation of the use of civilian disposal capacity for the disposal of high-level radioactive waste resulting from atomic energy defense activities (defense waste). In April 1985, President Reagan notified DOE of his determination that a separate defense waste repository was not necessary and directed DOE to proceed with arrangements for disposal of such waste. Fees, equivalent to those paid by commercial owners, must be paid for this service by the Federal Government.

On December 22, 1987, the President signed into law the Budget Reconciliation Act; Subtitle A of Title V of which contained amendments to the NWPA of 1982. The legislation directed DOE to characterize only the Yucca Mountain site in Nevada as a candidate site for the first repository.

The legislation also provided for the termination of site-specific activities at all candidate sites other than the Yucca Mountain site, within 90 days of enactment, and for phasing out, not later than 6 months after enactment, all research programs in existence designed to evaluate the suitability of crystalline rock as a potential repository host medium. In the event that the Yucca Mountain site proves unsuitable for use as a repository, the legislation requires DOE to terminate site-specific activities and report to Congress.

Further, the legislation authorized DOE to pay interest on overpayments of kilowatt hour (kWh) fees consistent with the December 5, 1985 ruling of the United States Court of Appeals. Interest on these overpayments of kWh fees was fully paid or credited as of September 30, 1990.



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Notes to Financial Statements

September 30, 1999 and 1998

(Dollars in thousands unless otherwise noted)

Additionally, the legislation annulled and revoked DOE's Monitored Retrievable Storage (MRS) proposal, submitted to Congress on March 31, 1987, to construct an MRS facility in Oak Ridge, Tennessee. However, the legislation authorized DOE to site, construct and operate one MRS facility subject to certain conditions.

Although the NWPA prohibits the selection of an MRS site through a DOE-directed site-survey process until the repository site is recommended to the President, it allowed for expedited siting to proceed via a Nuclear Waste Negotiator, authorized to negotiate a proposed agreement with a State or Indian Tribe that would agree to host a repository or MRS facility. The Negotiator was to submit to Congress proposed agreements. No volunteer hosts were identified, and the Office of the Nuclear Waste Negotiator expired in January 1995.

**(2) Significant Accounting Policies**

**Basis of Presentation** – The standards used in the preparation of the accompanying financial statements are issued by the Office of Management and Budget pursuant to recommendations of the Federal Accounting Standards Advisory Board. On October 19, 1999, the governing Council of the American Institute of Certified Public Accountants (AICPA) amended the AICPA's Code of Professional Conduct to designate the Federal Accounting Standards Advisory Board as the body authorized to establish Generally Accepted Accounting Principles for Federal Government entities. Accordingly, the accompanying financial statements are in accordance with Generally Accepted Accounting Principles.

Prior to the AICPA Council's action, the AICPA considered Federal accounting standards as representing a comprehensive basis of accounting other than Generally Accepted Accounting Principles.

These financial statements include all activity related to OCRWM, including the Nuclear Waste Fund (NWF) and the Defense Nuclear Waste Disposal appropriation, used for the disposal of spent nuclear fuel and high-level radioactive waste. They have been prepared from the books and records of OCRWM in accordance with the form and content for agency financial statements, specified by the Office of Management and Budget (OMB) in OMB Bulletin No. 97-01, as amended

**Basis of Accounting** – OCRWM's financial statements are prepared using the accrual method of accounting. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. OCRWM also uses budgetary accounting to facilitate compliance with legal constraints and to monitor its budget authority.

**Revenue Recognition** – A one-time fee (see note 5) was recorded by the NWF as of April 7, 1983, for spent nuclear fuel generated prior to that date. Fees recognized by the NWF are based upon kWh of

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1999 and 1998

(Dollars in thousands unless otherwise noted)

electricity generated and sold by civilian nuclear reactors on or after April 7, 1983. Fees are recognized as revenue to the extent of expenses incurred, subject to congressional authorization (also see note 8). Revenue in excess of current expenses is deferred. The life cycle of the program is expected to extend over a period of over 100 years.

The most recent contractor estimate, completed in December 1999, of the total cost of a surrogate single repository system (without interim storage) examined two cases, both reflecting the adoption of the Enhanced Design Alternative II (EDA II) (see Report to Update the Total Systems Life Cycle Cost (TSLCC) for Site Recommendation/License Application). Case 1 assumed that closure and decommissioning activities begin 50 years after the beginning of waste emplacement. In Case 2, closure and decommissioning activities begin 125 years after the beginning of waste emplacement, when it is expected that the temperature of the emplacement drift wall will remain below the boiling point of water. Based on the contractor estimate for Case 1, the total system life cycle cost in FY 1999 dollars would be \$51,570,000; for Case 2, the contractor estimate is \$56,890,000. The design effort is continuing and will likely impact the cost estimates contained in this report. As such, the assessment represents a snapshot in time that will be updated about the time of the release of the Site Recommendation Consideration Report. Yucca Mountain, Nevada, was assumed as the location for the repository since it is the only site that DOE is authorized by law to characterize, but this does not constitute a pre-decision that Yucca Mountain is a suitable repository site. Contractor cost estimates for a two-repository system were not developed since DOE does not have current cost information or designs for a second repository.

To estimate the share of the total system costs that should be allocated to the disposal of DOE's high-level waste and spent nuclear fuel, the methodology announced by DOE in the Federal Register in August 1987 was used. Based on the December 1999 contractor estimate, DOE's share of the total system life cycle cost in FY 1999 dollars would be \$14,590,000 for Case 1 and \$16,350,000 for Case 2. DOE funding provided through FY 1999 totaled \$1,122,830, which is less than its share of the total system costs incurred through September 30, 1999. Interest accruing on this outstanding balance totaled \$833,291.

The most significant Program changes affecting costs that distinguish the December 1999 contractor estimate from the 1998 Analysis of the Total System Life Cycle Cost (TSLCC) of the Civilian Radioactive Waste Management Program are inclusion of drip shields, increased underground excavation to meet the lower thermal load requirements, and increased waste handling building pool capacity for fuel blending. Also, in the 1998 TSLCC, the period of operations was 100 years. For Case 1, this was decreased to 50 years and for Case 2 it was increased to 125 years.

OCRWM entered into an agreement with the Office of Environmental Management in September 1999, stipulating DOE's current and future liability for the disposal of DOE-owned spent nuclear fuel and high-level radioactive waste (DW). DOE's share of total Program cost cannot be determined finally until the program is completed and the final program costs are known. However, DOE's DW total cost share to date is estimated to be approximately \$2,604,815, including interest

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amounting to \$833,291, based on the methodology published in the Federal Register in August 1987. As of September 30, 1999 and 1998, the NWF was due \$1,484,912 and \$1,175,211 from DOE, respectively.

For fiscal year 1999 and 1998, Congress appropriated \$189,000 and \$190,000, respectively, from the Defense Nuclear Waste Disposal appropriation to be used for nuclear waste disposal activities. Of the fiscal year 1996 appropriation, \$85,000 was restricted to obligation and expenditure for an interim storage facility. None of this restricted portion was used in fiscal year 1999 nor 1998, as statutory authority for an interim storage facility was not enacted. As of September 30, 1999, OCRWM had used the remaining fiscal year 1998 appropriation of \$5,660, and \$186,073 of the current year appropriation. Also, at September 30, 1999, OCRWM had obligated \$2,927 of the fiscal year 1999 appropriation for payment in 2000.

**Investments** – Investments, which consist of U.S. Treasury securities, are classified as available-for-sale and are reported at fair value in accordance with Statement of Financial Accounting Standards (SFAS) No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, with unrealized gains and losses excluded from earnings and reported as a separate component of net position. OCRWM uses the effective interest rate method in determining book value of OCRWM investments.

**General Property, Plant, and Equipment** – Purchases of general property, plant, and equipment (PP&E) exceeding \$25 are capitalized if they have a useful life greater than two years. PP&E is depreciated on a straight-line basis over the estimated useful lives of the assets which range from 5 to 30 years. Maintenance costs are borne by OCRWM for equipment either on loan from or shared with other programs.

Costs of construction are capitalized as construction work in process. Upon completion or beneficial occupancy, the cost is transferred to the appropriate property account.

**Accounts Receivable** – Payment of accounts receivable will not be complete until OCRWM starts accepting waste. An allowance for doubtful accounts related to one-time spent fuel fees has not been recorded as of September 30, 1999, as OCRWM is not obligated to accept waste without payment of fees. Also see note 1.

**Liabilities** – Liabilities represent the amount of monies or other resources that are likely to be paid by OCRWM as the result of a transaction or event that has already occurred. However, no liability can be paid by OCRWM absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as liabilities not covered by budgetary resources and there is no certainty that the appropriation will be enacted. Also, liabilities of OCRWM arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

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**Accrued Annual Leave** – Federal employees’ annual leave is accrued as it is earned, and the accrual is reduced annually for actual leave taken and increased for leave earned. Each year, the accrued annual leave balance is adjusted to reflect the latest pay rates and unused annual leave balances. To the extent that current or prior year appropriations are not available to fund annual leave earned but not taken, funding will be obtained from future financing sources. Sick leave and other types of nonvested leave are expended as taken.

**Tax Status** –OCRWM, as a part of the Department of Energy which is a Federal agency, is not subject to Federal, State, or local income taxes.

**Changes in Accounting Principle** – In 1998, OCRWM implemented Statement of Federal Financial Accounting Standards (SFFAS) No. 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government* effective October 1, 1997. The effect of this standard is the creation of a new financial statement – the statement of net cost.

In 1998, OCRWM also implemented Statement of Federal Financial Accounting Standards (SFFAS) No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, effective October 1, 1997. SFFAS No. 7 requires that the NWF properly classify, recognize, and measure resource inflows to the cost of services performed and identify total budgetary resources. As a result, OCRWM ensured that the full cost of providing goods and services to other federal entities and the public is captured and identified. SFFAS No. 7 also requires two new financial statements – the Statement of Budgetary Resources and the Statement of Financing.

**First Repository Costs** – For the years ended September 30, 1999 and 1998, first repository costs consist primarily of Yucca Mountain costs.

**(3) Fund Balance with Treasury**

A summary of fund balance with the U.S. Treasury as of September 30, 1999 and 1998 is as follows:

	1999	1998
Nuclear Waste Fund	\$ 174	\$ 105
Defense Nuclear Waste Disposal Appropriation	87,927	90,660
	\$ 88,101	\$ 90,765

The Defense Nuclear Waste Disposal appropriation is provided by Congress in lieu of direct payments by DOE into the NWF for disposal of defense waste. \$85,000 of this appropriation remained restricted to obligation and expenditure on an interim storage facility.

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**(4) Investments**

For the years ended September 30, 1999 and 1998, the NWF received proceeds of \$2,813,364 and \$1,954,979, respectively, from the sale of securities. The realized gain on the sale using the specific identification method for the years ended September 30, 1999 and 1998 was \$118,730 and \$50, respectively. From September 30, 1998 to 1999, and from 1997 to 1998, the (decrease) increase in net unrealized gain on available-for-sale securities included in net position was (\$1,246,704) and \$774,018, respectively.

Accrued interest receivable on investments as of September 30, 1999 and 1998 totaled \$81,388 and \$83,857, respectively.

The gross unrealized gain (loss) on available-for-sale securities was (\$352,723) and \$893,981 for the years ended September 30, 1999 and 1998, respectively.

Investments in U.S. Treasury securities held as of September 30 of each year consisted of the following:

		1999			
		<u>Cost</u>	<u>Amortized (premium) discount, net</u>	<u>Investments, net</u>	<u>Investments at fair value</u>
Intragovernmental securities available for sale:					
Marketable	\$	232,293	(21,311)	210,981	212,901
Due after 1 year but within 5 years		1,578,553	(95,440)	1,483,113	1,482,076
Due after 5 years but within 10 years		1,017,044	(38,554)	978,490	969,036
Due after 10 years		5,947,816	213,527	6,161,344	5,817,192
	\$	<u>8,775,706</u>	<u>58,222</u>	<u>8,833,928</u>	<u>8,481,205</u>
		1998			
		<u>Cost</u>	<u>Amortized (premium) discount, net</u>	<u>Investments, net</u>	<u>Investments at fair value</u>
Intragovernmental securities available for sale:					
Marketable	\$	857,056	5,958	863,014	868,115
Due after 1 year but within 5 years		1,523,205	(86,329)	1,433,751	1,501,540
Due after 5 years but within 10 years		459,905	(34,533)	428,497	463,732
Due after 10 years		4,964,906	26,517	4,991,423	5,777,279
	\$	<u>7,805,072</u>	<u>(88,387)</u>	<u>7,716,685</u>	<u>8,610,666</u>

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**(5) Receivables Due from Utilities**

Owners and generators of civilian spent nuclear fuel and high-level radioactive waste have entered into contracts with DOE for disposal services and for payment of fees to the NWF.

The NWPA specifies two types of fees to be paid to the NWF for disposal services: (a) a one-time charge per kilogram of heavy metal in solidified high-level radioactive waste or spent nuclear fuel existing prior to April 7, 1983; and (b) a one mil per kWh fee on all net electricity generated and sold by civilian nuclear power reactors on or after April 7, 1983. The Secretary shall annually review the adequacy of the fees established. In the event the Secretary determines either insufficient or excess revenue is being collected, the Secretary shall propose an adjustment to the fee to ensure full cost recovery. The contracts between DOE and the owners and generators of the waste provide three options for payment of the one-time spent fuel fee, one of which must have been selected by June 30, 1985, or within two years of contract execution. The options were:

- Payment of the amount due, plus interest earned from April 7, 1983, in 40 quarterly installments, with the final payment due on or before the first scheduled delivery of spent fuel to DOE;
- Payment of the amount due, plus interest from April 7, 1983, in a single payment, any time prior to the first delivery of spent fuel to DOE; or
- Payment of the amount due, any time prior to June 30, 1985, or two years after contract execution, in the form of a single payment, with no interest due.

Under options (1) and (2), interest accrues from April 7, 1983, to date of first payment, at the 13-week Treasury bill rate compounded quarterly. Under option (1), beginning with the first payment, interest is calculated at the 10-year Treasury note rate in effect at the time. Since NWF's scheduled date of nuclear waste acceptance is not until year 2010, the utilities which selected option (1) were not required to make installments during 1999 or 1998. During 1999 and 1998, there were no utilities that selected the option (3).

During 1999 and 1998, there were no payments or adjustments of one-time spent fuel fees by owners and generators of civilian high-level radioactive waste and spent nuclear fuel.

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Public and intragovernmental receivables from utilities at September 30 of each year were as follows:

	1999	1998
Current portion of accounts receivable:		
Kilowatt hour fees:		
Public	\$ 153,258	\$ 144,321
Intragovernmental	11,298	9,848
Total current portion of accounts receivable	164,556	154,169
Public one-time spent fuel fees:		
Option (1)	143,531	143,531
Option (2)	736,958	736,958
	880,489	880,489
Public interest on one-time spent fuel fees:		
Option (1)	249,110	231,533
Option (2)	1,274,245	1,183,812
	1,523,355	1,415,345
Total long-term accounts receivable from Public	2,403,844	2,295,834
Total accounts receivable	\$ 2,568,400	\$ 2,450,003

**(6) General Property, Plant, and Equipment, Net**

General property, plant, and equipment and related accumulated depreciation consisted of the following at September 30, 1999 and 1998:

	1999	1998
General property, plant and equipment	\$ 87,365	\$ 87,479
Less accumulated depreciation	(64,998)	(59,367)
Net book value	\$ 22,367	\$ 28,112

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**(7) Unexpended Appropriations**

	1999	1998
Unexpended appropriations		
Unobligated and unavailable	\$ 85,000	\$ 85,000
Undelivered orders	2,663	4,256
Net book value	\$ 87,663	\$ 89,256

**(8) Financing**

The NWPA provides that financing for the NWF consist of:

- Unexpended balances available on the date of enactment for functions or activities incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel.
- Funds appropriated by Congress.
- Fee payments.
- Investment income from authorized investments.

Expenditures are made from the NWF subject to congressional appropriation. Investments are made in U.S. obligations from funds in excess of current needs. If, at any time, monies available in the NWF are insufficient to discharge responsibilities under the NWPA, borrowings may be made from the U.S. Treasury. The NWPA limits the NWF from incurring expenditures, entering into contracts and obligating amounts to be expended, except as provided in advance by appropriation acts.



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**(9) Costs**

A summary of first repository costs for the years ending September 30, 1999 and 1998 is as follows:

	<u>1999</u>	<u>1998</u>
Costs:		
First repository costs at Yucca Mountain	\$ <u>278,552</u>	\$ <u>343,902</u>
All other first repository costs:		
Program support	70,717	55,444
Transfer appropriation	19,600	21,600
Waste acceptance, storage and transportation	725	7,096
Imputed costs	<u>1,072</u>	<u>1,102</u>
Total all other first repository costs	<u>92,114</u>	<u>85,242</u>
Total cost of first repository operations	\$ <u><u>370,666</u></u>	\$ <u><u>429,144</u></u>

During 1999 and 1998, Congress authorized certain funds to be transferred directly from the NWF to various entities to pay for necessary expenses of OCRWM. Amounts transferred consisted of:

	<u>1999</u>	<u>1998</u>
Nuclear Regulatory Commission	\$ 17,000	\$ 19,000
Nuclear Technical Review Board	<u>2,600</u>	<u>2,600</u>
Net book value	\$ <u><u>19,600</u></u>	\$ <u><u>21,600</u></u>

The Nuclear Waste Technical Review Board (Board) was established under the Amendments Act. The Board, an independent establishment within the executive branch of the U.S. government, was established to evaluate the technical and scientific validity of activities undertaken by the Secretary, including site characterization activities and activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

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**(10) Pension Plan**

DOE employees working for OCRWM are covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). As required by law, employees make contributions to the plans based on a percentage of their salaries with an amount contributed by OCRWM in accordance with the required retirement system regulations. Data regarding the CSRS and the FERS actuarial present value of accumulated benefits, assets available for benefits, and unfunded pension liability are not available to individual departments and agencies and therefore are not disclosed by OCRWM. As such, reporting is the responsibility of the U.S. Office of Personnel Management.

Under Statement of Federal Financial Accounting Standards (SFFAS) No. 5, *Accounting for Liabilities of the Federal Government*, an employer entity is required to recognize an expense for its employees' retirement benefits equal to the service costs for these employees for the year based on the plans' actuarial cost methods and assumptions. The difference between the retirement benefit expense and contributions made by the entity is reported as an imputed financing source as these costs will ultimately be funded by the Office of Personnel Management (OPM). As a result, OCRWM recognized total retirement expense of \$1,309 and \$1,373, as of September 30, 1999 and 1998, respectively, and an imputed financing source of \$1,072 and \$1,102 to reflect the portion of 1999 and 1998 retirement expense to be paid by OPM, respectively. The retirement benefit expenses were computed in accordance with cost factors provided by OPM.

**(11) Transactions With Other Government Agencies**

The NWPA established OCRWM within DOE to carry out the provisions of the NWPA and created a separate fund in the Treasury of the United States. All of the investment and borrowing powers of the NWF are limited to transactions with the U.S. Treasury. In discharging its obligations under the NWPA, DOE contracts for services with numerous contractors including other Federal Government agencies. Further, significant administrative services are provided by DOE.

As of September 30, 1999 and 1998, OCRWM owed other government agencies \$5,249 and \$4,253, respectively, for services and costs provided to OCRWM. For the years ended September 30, 1999 and 1998, OCRWM had incurred costs of \$14,343 and \$16,606, respectively, for services and costs provided by other government agencies.

As discussed in note 2, OCRWM is owed \$1,486,056 and \$1,175,211 as of September 30, 1999 and 1998, respectively, from DOE for the disposal of defense high-level waste in civilian repositories. This receivable as of September 30 1999 and 1998 is comprised of current portions of \$116,071 and \$194,660 and long-term portions of \$1,369,985 and \$980,551, respectively.

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**(12) Litigation**

***DOE's Waste Acceptance Obligation***

OCRWM is involved with various matters of litigation relating to its obligation in a standard contract (Standard Contract) with utilities to initiate waste acceptance by January 31, 1998, the date specified in the NWPA of 1982, as amended. A summary of those actions is included below.

**Indiana Michigan and Northern States Cases**

The Court of Appeals for the District of Columbia Circuit has ruled that the Standard Contract for Disposal of Spent Nuclear Fuel entered into with utility generators of SNF (1) imposes an unconditional obligation on DOE, reciprocal to the utilities' obligation to pay fees, to initiate waste acceptance by January 31, 1998 and (2) offers a potentially adequate remedy for the failure of DOE to meet this obligation. Indiana Michigan Power Co. v. U.S. Department of Energy, 88 F.3d 1272 (D.C. Cir. 1996); Northern States Power Co. v. U.S. Department of Energy, 128 F.3d 754 (D.C. Cir. 1997). In addition, the Northern States decision precludes DOE from invoking the unavoidable delays clause of the Standard Contract and from asserting traditional sovereign acts defenses in any suits for damages in the Court of Federal Claims. DOE did not appeal the decision in the Indiana Michigan case. DOE and the State of Michigan filed petitions for certiorari in the Northern States case, which the Supreme Court denied on November 30, 1998.

These cases do not present a direct impact on the NWF because no contractual damages were sought and the Court denied equitable relief, such as an escrow of funds. All other cases discussed in this section, however, are based on the holdings in these two cases. Claims based on the decisions in Indiana Michigan and Northern States could affect the NWF in various ways. If the court determines that a contract holder must pursue its contractual remedies and proceed under the delays clause of the Standard Contract, the contract holder may be found eligible to receive equitable adjustments of its nuclear waste fees, thereby reducing revenues to the NWF. Alternatively, if a court were to determine that a contract holder can pursue a damage suit for breach of contract, the contract holder may obtain a judgment against DOE for money damages. It is unclear whether such a judgment would be paid out of the Judgment Fund, the NWF, or some other source of funds. If the size of the NWF were to be substantially affected by either equitable adjustments or payments of judgments, DOE might then be obligated to propose fee adjustments pursuant to the NWPA's "full cost recovery" provision, 42 U.S.C. 10222(a)(4). Any such fee adjustments would be "across the board" and applicable to all utilities with currently operating reactors.

It is too early to evaluate the ultimate impact on OCRWM of claims based upon the decisions in the Indiana Michigan and Northern States cases. Resolution of any such claims will involve highly fact-specific and individualized decisions about the incremental costs incurred by each contract holder as a direct result of the delay of DOE in meeting its obligations under the Standard Contract. Estimating any such potential impacts is further complicated by recent, and apparently conflicting,

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decisions rendered by the Court of Federal Claims. Although these decisions are being appealed, and are therefore not final, a preliminary analysis suggests that contract holders may not be entitled to any remedy other than those provided for in the Standard Contract. Thus, DOE may have no liability to make payments to contract holders to address the delay of DOE in meeting its obligations under the Standard Contract. However, contract holders may be eligible to receive credits against future payments into the NWF. It is not possible at this time to forecast accurately the potential impact on the NWF because of the large number of variables that cannot now be quantified with sufficient certainty. Any forecast at this time must necessarily be based on many assumptions concerning the current and future situations of the contract holders. For the most part, these assumptions relate to general categories of contract holders rather than individual contract holders. DOE currently has little data for individual contract holders as to their actual and projected storage costs, the extent to which such costs would not be incurred but for the delay of DOE in meeting its obligations under the Standard Contract and the extent to which those incremental costs could be mitigated. Last year, DOE estimated that its potential liabilities for credits against future payments might be between \$500 million and \$1 billion. While DOE is not changing that estimate for this report, it should be noted that the experience of DOE during the past year indicates that there is a very high degree of uncertainty about the assumptions upon which that estimate is based.

**Cases Brought in the U.S. Court of Appeals for the District of Columbia Circuit**

Consolidated Edison Company of New York and Illinois Power v. U.S. Department of Energy, case no. 98-1358.

These two utilities filed a petition for review of DOE's fee adequacy determination. In addition, they sought damages and specific relief for DOE's failure to commence disposal of their spent nuclear fuel. On April 16, 1999, the D.C. Circuit granted DOE's motion to dismiss on the ground that the petitioners' arguments were precluded by the decision in Northern States and were moot. On June 1, 1999, Consolidated Edison filed a petition for rehearing en banc on the ground that the Court did not address the issue of its jurisdiction to hear Standard Contract cases. The Court of Appeals dismissed the petition on August 2, 1999. Consolidated Edison filed a petition for certiorari on November 1, 1999, asking the U.S. Supreme Court to examine, inter alia, the question of the Court of Appeals' jurisdiction. The petition is pending.

Arizona Public Service Commission v. U.S. Department of Energy, case no. 98-1346; General Electric Co. v. U.S. Department of Energy and STP Nuclear Operating Co. v. U.S. Department of Energy, consol. case nos. 98-1356 and 98-1348.

These petitions were filed in the Court of Appeals for the District of Columbia Circuit for review of DOE's failure to commence disposal of spent nuclear fuel in an attempt to ensure that the decision in Northern States applies to utilities that were not parties to that case. On January 5, 1999, the Court of Appeals ordered that the petitioners show cause why their petitions should not be dismissed in light of the decision in Northern States that the Standard Contract provides a potentially adequate remedy. On

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April 16, 1999, the Court of Appeals dismissed the petitions for review on the grounds that the petitioners have potentially adequate remedies in other fora and are bound by the ruling in Northern States. The petitioners did not appeal the ruling.

Wisconsin Electric Power Company v. U.S. Department of Energy, case no. 98-1342.

On August 21, 1999, the Wisconsin Electric Power Company (WEPCO) submitted to DOE's Contracting Officer a "Proposed Bilateral Modification and Request for Equitable Adjustment" under DOE Contract No. DE-CR01-83NE44425. The proposal requests non-monetary and monetary relief for DOE's delay in disposing of spent nuclear fuel generated by WEPCO's Point Beach Nuclear Plant (Point Beach).

On September 24, 1999, WEPCO filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit in which it asserts that DOE's failure to accept WEPCO's proposal is inconsistent with the mandate in Northern States. In October 1999, DOE filed a motion to dismiss the petition on the ground that WEPCO has failed to exhaust its administrative remedies under the contract as directed by the Court in Northern States. On November 24, 1999, the Court determined to postpone consideration of the motion to dismiss until the case has been briefed on the merits. Oral argument has not yet been scheduled.

**Cases Brought in the U.S. Court of Federal Claims**

A total of eleven contract holders have sued the United States in the U.S. Court of Federal Claims for damages due to breach of contract caused by DOE's failure to commence disposal by January 31, 1998. Two trial judges have reached different conclusions concerning the Court's jurisdiction to entertain breach of claims and cross appeals of these decisions are now pending in the U.S. Court of Appeals for the Federal Circuit.

Northern States Power Co. v. United States, case no. 98-484C

The Northern States Power Company filed a complaint on June 8, 1998, alleging that it had incurred and continues to incur substantial costs for extended on-site storage of spent nuclear fuel and wastes because of DOE's failure to commence disposal by January 31, 1998. Northern States maintained that DOE's projected twelve-year delay in commencing disposal represented a time departure beyond the risks of delay reasonably foreseeable at the time of contract formation and that therefore the administrative "Delays" and "Disputes" clauses of the Standard Contract should not control. Northern States also argued that remedies under the Standard Contract do not offer complete relief, and therefore it should be permitted to by-pass the contractual disputes procedure in favor of an action for breach of contract in court.

On April 6, 1999, Judge Wiese granted the Department's motion to dismiss Northern States' claim and concluded that Northern States must exhaust the Standard Contract's equitable adjustment remedy for

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any delay caused by the Government. On May 20, 1999, Northern States filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

Yankee Atomic Electric Co. v. United States, case no. 98-126C, Connecticut Yankee Atomic Power Company v. United States, case no. 98-154C, and Maine Yankee Atomic Power Co. v. United States, case no. 98-474C.

On February 18, 1998, the Yankee Atomic Power Electric Company filed suit seeking damages for breach of contract based upon the extended storage of its spent nuclear fuel at its shut-down nuclear plant because of the delay in beginning spent nuclear fuel acceptance by DOE. Yankee asserted that while it had paid its contractual fees in full, DOE had not commenced disposal and had thus breached the Standard Contract. DOE argued that any delay in acceptance of Yankee's spent nuclear fuel was redressable under the "Avoidable Delays" clause of the Standard Contract and that Yankee had failed to exhaust its contractual remedies. Similar suits invoking the same issues were filed by Connecticut Yankee and Maine Yankee.

On October 29, 1998, Judge Merow of the U.S. Court of Federal Claims granted summary judgment for Yankee Atomic on the issue of liability because, in his view, Yankee Atomic had no adequate contractual remedy. The Court stated that a controversy is subject to a "Disputes" clause only where complete relief is available under the contract. In considering the adequacy of a remedy under the Standard Contract, the Court held that an adjustment to the contract charges was unavailable to Yankee Atomic as the contract permits only a prospective adjustment to the post April 7, 1983 fees, 10 C.F.R. 961.11, Art. VIII, A.2. Since Yankee had already paid all of its fees, it could not obtain a prospective fee adjustment. The Court further held that statutory restrictions on the use of contract payments precluded DOE from retroactively adjusting Yankee's charges to reflect its on-site storage costs. Thus, the Court reasoned that the Standard Contract provided no adequate contractual remedy for Yankee. The Court also issued orders finding that, for the same reasons stated in the Yankee Atomic decision, DOE is liable to Connecticut Yankee and Maine Yankee for breach of contract.

Because of the apparently inconsistent decisions of the two Claims Court Judges on a controlling issue of law, the Department filed a motion to certify for interlocutory appeal Judge Merow's orders and for a stay of proceedings in the Yankee cases and the Northern States case. On October 6, 1999, the Court issued orders staying the cases while the Yankee and Northern States interlocutory appeals are briefed, argued and finally decided by the Federal Circuit.

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Commonwealth Edison Co. v. United States, case no. 98-621C; Southern Nuclear Operating Co., including Alabama Power Co. and Georgia Power Co. v. United States, case no. 98-614C; Duke Power Co., a Division of Duke Energy Corporation v. United States, case no. 98-485C; Florida Power and Light Co. v. United States, case no. 98-483C; Indiana Michigan Power Co. v. United States, case no. 98-486C; Boston Edison Co. v. United States, case no. 99-447C; Sacramento Municipal Utility District v. United States, case no. 98-488C.

These utilities with currently-operating reactors have filed suit in the U.S. Court of Federal Claims. DOE has filed motions to dismiss on the ground that the utilities have not exhausted their contractual remedies by applying for equitable adjustment of their ongoing fees. All of these cases are stayed pending the appeals in the Yankee and Northern States Power cases.

**Cases Brought in the U.S. District Court, District of Minnesota**

Patrick Roedler v. U.S. Department of Energy, case no. 98-1843.

On August 7, 1998, the plaintiffs in this case, ratepayers of the Northern States Power Company who are not signatories to the Standard Contract, filed suit alleging essentially the same breach of contract claims asserted in the cases above. Plaintiffs contend that the Department's failure to commence accepting spent nuclear fuel by January 31, 1998, has caused them substantial damages due to continuing onsite storage costs at Northern States' Monticello and Prairie Island nuclear generating plants. They assert that, if off-site disposal of Prairie Island's spent nuclear fuel does not begin before 2004, the facility's on-site storage capacity will be exhausted and that ratepayers will incur substantial payments associated with a premature shutdown of the Prairie Island plant. The plaintiffs claim that they are entitled to recover over \$340 million.

A hearing was held on March 11, 1999 on the Department's motion to dismiss on the ground that the plaintiffs have no contractual rights and that plaintiffs are attempting to litigate the same breach of contract claim that the utility itself has directly advanced in the Northern States' case. On December 23, 1999, the Court granted DOE's motion to dismiss. The plaintiffs have until February 22, 2000, to file an appeal, if they choose.

**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1999 and 1998

(Dollars in thousands unless otherwise noted)

**(13) Additional Waste**

In November 1993, DOE's Office of Environmental Safety and Health issued a report that identified additional waste owned by the Department, from both commercial and defense projects, that may require disposal in a repository for spent nuclear fuel and high-level radioactive waste. Since the issuance of this report, the Department has issued formal decisions with regard to the disposition of DOE-owned spent nuclear fuel and executed a Memorandum of Agreement providing for the acceptance of DOE-owned spent fuel and high-level waste in a monitored geologic repository. The December 1999 contractor estimate of the total cost of a surrogate single repository system (without interim storage) included a comprehensive estimate of the costs to dispose of this DOE-owned spent nuclear fuel. The estimate was based on the design and operating assumptions, at the time, to transport this material to a repository and to construct, operate, monitor, and eventually close the repository. The Defense Nuclear Waste Disposal appropriation was established by the Congress in 1993, in lieu of direct payment of fees by DOE into the NWF for the disposal of defense-related spent nuclear fuel and high-level radioactive waste. The estimate of DOE's share of the total Program cost reflects the costs associated with the disposition of these materials. In accordance with the Memorandum of Agreement, OCRWM will only accept DOE-owned spent fuel and HLW if all past financial obligations, prior to initial acceptance, are paid in full. As of the end of fiscal year 1999, the Department's outstanding obligation was \$1.5 billion. As decisions are made with regard to the disposition of additional materials and additional information becomes available, OCRWM will revise its cost estimates.

High-level radioactive waste owned by the State of New York and currently stored at the West Valley Demonstration Project site, is of a type that may be disposed of in a Federal repository if the State of New York were to enter into a contractual agreement with DOE, similar to the provisions of 10 CFR Part 961. To date, the State of New York has not entered into such an agreement. No amount has been recorded in the financial statements as of September 30, 1999, because, at this time, DOE is not legally required to take title to or dispose of the West Valley high-level waste, nor is the State of New York required to enter into a disposal contract with DOE if it does not plan to dispose of the high-level waste in a Federal repository.



**UNITED STATES DEPARTMENT OF ENERGY  
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT**

Notes to Financial Statements

September 30, 1999 and 1998

(Dollars in thousands unless otherwise noted)

**(14) Deferred and Earned Revenue**

As described in note 2, all fees, both kWh fees and Defense high-level waste fees, as well as the related interest, are recognized as revenue to the extent of expenses incurred. Revenue in excess of current expenses is deferred.

Deferred revenue at September 30, 1999 and 1998 was as follows:

	1999	1998
Fees collected:		
kWh fees:		
Public	\$ 631,298	\$ 567,343
Intragovernmental	41,337	41,039
Defense high-level waste fees, intragovernmental	319,818	210,024
Interest on one-time spent fuel fees, public	108,010	115,606
Interest, intragovernmental:		
Income on investments	519,669	466,653
Defense high-level waste fees	181,616	156,072
Net gain on sale of investments	118,730	50
Other revenue	12	71
	1,920,490	1,556,858
Total revenues		
Less – earned revenue	(369,594)	(428,042)
Add – prior period adjustment	226,085	
	1,776,981	1,128,816
Change in deferred revenue		
Deferred revenue – beginning balance	11,167,902	10,039,086
Deferred revenue – ending balance	\$ 12,944,883	\$ 11,167,902

**(15) Prior Period Adjustment**

The prior period adjustments reflected in the statement of changes in net position represent reclassifications required to properly present the cumulative results of operations. The adjustments are presented in the period recognized in accordance with OMB 97-01 and SFFAS No. 7.



2001 M Street, N.W.  
Washington, DC 20036

## **Independent Auditors' Report on Internal Control Over Financial Reporting**

Office of Civilian Radioactive Waste Management  
United States Department of Energy:

We have audited the financial statements of the Office of Civilian Radioactive Waste Management (OCRWM) as of and for the years ended September 30, 1999 and 1998, and have issued our report thereon dated January 14, 2000. We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 98-08, *Audit Requirements for Federal Financial Statements*, as amended. Our audit report included a paragraph emphasizing contingencies arising from several matters of litigation.

The management of OCRWM is responsible for establishing and maintaining internal control over financial reporting. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control policies and procedures. The objectives of internal control are to provide management with reasonable, but not absolute, assurance that (1) transactions are executed in accordance with laws governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements, and certain other laws, regulations, and government-wide policies identified by the OMB as applicable to OCRWM; (2) assets are safeguarded against loss from unauthorized acquisition, use, or disposition; (3) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with applicable accounting principles described in Note 2 to the financial statements; and (4) transactions and other data that support reported performance measures are properly recorded, processed, and summarized to permit preparation of performance information in accordance with criteria stated by management. Because of inherent limitations in internal control, fraud may nevertheless occur and not be detected. Also, projection of any evaluation of internal controls to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit, we considered OCRWM's internal control over financial reporting by obtaining an understanding of OCRWM's significant internal controls, determined whether these internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin 98-08, as amended. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on the internal control over financial reporting. Consequently, we do not provide an opinion on internal controls.





Our consideration of internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions, under standards issued by the American Institute of Certified Public Accountants and OMB Bulletin No. 98-08, as amended, and, accordingly, would not necessarily disclose all reportable conditions that are material weaknesses. Reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal controls that, in our judgment, could adversely affect OCRWM's ability to record, process, summarize, and report financial data consistent with the assertions by management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements, in amounts that would be material in relation to the financial statements being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above.

With respect to internal controls related to performance measures determined by management to be key and reported in the Overview to the financial statements, our evaluation was limited to obtaining an understanding of relevant internal control policies and procedures designed to permit preparation of reliable and complete performance information, and assessing control risk (the risk that a material misstatement in a reported performance measure could occur and not be prevented or detected on a timely basis by OCRWM's internal controls). Our procedures were not designed to provide assurance on internal control over reported performance measures, and accordingly, we do not provide an opinion on such controls.

However, we noted other matters involving internal controls and their operation that we have reported to management of OCRWM in a separate letter.

This report is intended solely for the information and use of the management of OCRWM and the United States Department of Energy and is not intended to be and should not be used by anyone other than these specified parties.

**KPMG LLP**

January 14, 2000



2001 M Street, N.W.  
Washington, DC 20036

## Independent Auditors' Report on Compliance with Laws and Regulations

Office of Civilian Radioactive Waste Management  
United States Department of Energy:

We have audited the financial statements of the Office of Civilian Radioactive Waste Management (OCRWM) as of and for the years ended September 30, 1999 and 1998, and have issued our report thereon dated January 14, 2000. We conducted our audit in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 98-08, *Audit Requirements for Federal Financial Statements*, as amended, except for those portions of the Bulletin that relate to the Federal Financial Management Improvement Act (FFMIA) of 1996. The Department of Energy Office of Inspector General is responsible for determining compliance with FFMIA. Our audit report included a paragraph emphasizing contingencies arising from several matters of litigation.

The management of OCRWM is responsible for complying with laws and regulations applicable to the NWF. As part of obtaining reasonable assurance about whether OCRWM's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 98-08, as amended. However, providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit. Accordingly, we do not express such an opinion.

The results of our tests of compliance with the laws and regulations described in the preceding paragraph disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards* and OMB Bulletin No. 98-08, as amended.

This report is intended solely for the information and use of the management of OCRWM and the United States Department of Energy and is not intended to be and should not be used by anyone other than these specified parties.

**KPMG LLP**

January 14, 2000

