

CHAPTER 348**(HCR 244)**

A CONCURRENT RESOLUTION directing the Interim Joint Committee on Agriculture and Natural Resources to study issues concerning the competitiveness of Kentucky coal in the generation of electricity and directing the Governor and Attorney General to take action against the Federal Department of Energy for failure to convert and dispose of depleted uranium hexafluoride wastes in Paducah, Kentucky.

WHEREAS, the importance of coal to the economy of the Commonwealth cannot be overstated and the importance of the electric generation market to the coal industry is similarly vital; and

WHEREAS, the market share for Kentucky coal is falling in the electricity generation sector; and

WHEREAS, the mechanism and factors that regulate and control that market may contribute to the declining market share; and

WHEREAS, over the past 50 years the Department of Energy (DOE) has allowed approximately 57,000 cylinders with 700,000 tons of corrosive and reactive depleted uranium hexafluoride (DUF6) waste to pile up at the DOE's Paducah, Kentucky, Portsmouth, Ohio, and Oak Ridge, Tennessee facilities without any plan for disposal; and

WHEREAS, this waste is owned by the DOE and was generated by the Atomic Energy Commission, the Energy Research and Development Administration, DOE, the United States Enrichment Corporation and USEC, Inc., in connection with uranium enrichment conducted for the nation's nuclear weapons and nuclear energy programs; and

WHEREAS, the United States Congress required the DOE to dispose of this vast quantity of legacy waste in July 1998 by adopting the "McConnell Act" (Public Law 105-204), a law which requires the Secretary of Energy to:

- (1) Prepare a plan to commence construction of conversion facilities at the Paducah, Kentucky and Portsmouth, Ohio gaseous diffusion plants not later than January 31, 2004;
- (2) Recycle or dispose of this material; and
- (3) Reserve \$373 million in an account at the Treasury Department from the funds accumulated by USEC prior to the date of privatization; and

WHEREAS, the DOE Paducah Gaseous Diffusion Plant in Paducah, Kentucky (Paducah Plant) stores approximately 37,000 cylinders out of a DOE inventory of 57,000 cylinders of this corrosive and reactive waste in 15 separate storage areas covering over 15 acres; and

WHEREAS, some of this waste has leaked through corroded containers, and due to the considerable threat to human health and the environment presented by continued storage of this material in unsuitable conditions, it is imperative that the DOE implement the McConnell Act so that the cleanup and community re-industrialization goals set by the Paducah Community Reuse Organization can be achieved; and

WHEREAS, the DOE issued a Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (PEIS) on April 16, 1999, which recommends that DOE should begin conversion of the DUF6 inventory at two conversion facilities instead of one facility, due to the increased risk

associated with the transportation of large numbers of DUF6 cylinders, increased transportation cost, potential issues with regulatory and stakeholder acceptance of large quantities of corroded cylinders moving through or into their states, and the requirements of Pub. L. 105-204; and

WHEREAS, the DOE Office of Nuclear Energy issued a Final Plan for the Conversion of Depleted Uranium Hexafluoride (the Plan) in July 1999 to construct two conversion plants and set forth milestones, including: (1) the award of a contract to convert and dispose of this waste in the 1st quarter of the year 2000, and (2) construction of conversion facilities beginning in the 1st quarter of the year 2002; and

WHEREAS, the DOE has received three final bids from private industry to construct and operate two conversion plants, and DOE announced that it would award a contract on January 15, 2002; and

WHEREAS, the DOE declined to issue a contract on January 15, 2002, and on February 28, 2002, the DOE announced that it was abandoning the award of this two plant contract altogether; and

WHEREAS, the DOE issued a letter on February 28, 2002, indicating that it will invite bidders to prepare a cost study for only one conversion plant at an undisclosed location with a new Request for Proposal to be issued in a year although the DOE already has data from its 125-page study entitled "Preconceptual Design Studies and Cost Data of Depleted Uranium Hexafluoride Conversion Plants and the PEIS"; and

WHEREAS, the DOE has violated its commitment and obligation to comply with the requirements of the McConnell Act, and nearly four years after the passage of the law, DOE conduct indicates that it has no intention of complying with any aspect of the plan to begin construction of two facilities by January 31, 2004, in Kentucky and Ohio; and

WHEREAS, the DOE ignored written requests by the Governors of Kentucky, Tennessee, and Ohio to reinvigorate implementation of the plan to convert and dispose of this waste; and

WHEREAS, DUF6 can be defined as either a reactive hazardous waste or a corrosive hazardous waste under the Environmental Protection Agency (EPA) regulations implementing the Resource Conservation and Recovery Act (RCRA) at 40 C.F.R. 261, et seq; and furthermore, virtually all DUF6 has been determined to be a "waste" by the Nuclear Regulatory Commission, and therefore such material cannot be deemed source material exempted from regulation under RCRA; and

WHEREAS, the States of Ohio and Tennessee have previously taken enforcement actions against the Department of Energy to address this legacy waste; in particular, DOE has been placed on notice that it will be required to manage DUF6 as a RCRA hazardous waste in Ohio and will face stipulated penalties in Tennessee if the DUF6 is not managed and converted in a timely manner; and

WHEREAS, the Commonwealth of Kentucky has the authority to declare and regulate the DUF6 as a "hazardous waste" under its authorities; and furthermore, the Kentucky Natural Resources and Environmental Protection Cabinet has the authority to compel the Secretary of Energy to convert and recycle or dispose of this waste through the issuance of judicially enforceable Compliance Orders and the imposition of fines and penalties; and

WHEREAS, the Commonwealth of Kentucky has failed to take any enforcement action whatsoever against the DOE with respect to the conversion and disposition of DUF6";

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. The Interim Joint Committee on Agriculture and Natural Resources is directed to conduct a study of the market forces which control the purchase of coal in the electric generation industry and report its findings to the Legislative Research Commission.

Section 2. The study shall include but not be limited to the following subjects:

(1) The allocation method by which nitrogen oxide (NOx) emission allowances are distributed to existing and new sources;

(2) The role of the Public Service Commission in the fuel purchasing and ratemaking process and the public policy which underlies that regulatory function. Specifically, the study shall examine the full effect of the awarding of coal contracts to out-of-state competitors on tax revenues, jobs, wages, benefits, and environmental compliance costs; and

(3) The factors which hamper the ability of Kentucky coal to be competitive against foreign coal and coal from other states;

Section 3. The report shall include recommendations for legislative action and shall be due on or before December 1, 2002.

Section 4. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified in Sections 1, 2, and 3 of this Resolution to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Section 5. The Senate finds that delays in converting and disposing of the DUF6 that is stored at the Paducah Gaseous Diffusion Plant pose an unacceptable risk to human health and the environment.

Section 6. The Senate concludes that the DOE is in willful and knowing violation of obligations and commitments relating to compliance with the McConnell Act (Public Law 105-204) and plans issued pursuant thereto.

Section 7. The Senate calls upon the Governor and the Attorney General to pursue all available legal avenues that will lead to the prompt conversion and disposition of the depleted uranium hexafluoride in a manner consistent with Pub.L.105-204 and the plans issued thereto.

Section 8. The Senate, in addition to any other steps deemed necessary or desirable by the Governor and Attorney General, specifically requests the secretary of Natural Resources and Environmental Protection Cabinet to:

- (1) Evaluate whether depleted uranium hexafluoride waste can be lawfully regulated as a "hazardous waste;"
- (2) Determine whether DUF6 can be regulated as a "hazardous waste" and take all steps required to declare it as a "hazardous waste;"
- (3) Notify the DOE immediately upon such designation; and
- (4) Move as quickly as lawfully permissible to issue a Compliance Order which sets forth specific milestones to convert, recycle, and dispose of this DUF6 consistent with Pub. L. 105-204 and the plans issued thereto.

Section 9. The Governor and Attorney General are requested to report on actions they have taken and actions they are planning in connection with this resolution, and that this report shall be delivered to the Speaker of the House and the Senate President by September 1, 2002.

Approved April 23, 2002