

109TH CONGRESS
1ST SESSION

S. 1806

To authorize the United States Department of Energy to remediate the Western New York Nuclear Service Center in the Town of Ashford, New York, and dispose of nuclear waste.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2005

Mr. SCHUMER (for himself and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To authorize the United States Department of Energy to remediate the Western New York Nuclear Service Center in the Town of Ashford, New York, and dispose of nuclear waste.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “West Valley Remedi-
5 ation Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) The Federal Government has had the pri-
2 mary and central role in initiating, establishing, and
3 providing material for spent nuclear fuel reprocess-
4 ing and waste burial operations at the Center.

5 (2) The Federal Government has availed itself
6 of spent nuclear fuel reprocessing operations at the
7 Center, and has benefited from such operations to
8 process and store at the Center radioactively con-
9 taminated materials generated in, and by, various
10 Federal civilian and military programs.

11 (3) Under the West Valley Demonstration
12 Project Act, New York State has contributed over
13 \$200,000,000 toward site remediation, making New
14 York the only State that has contributed toward the
15 cleanup of a high-level radioactive waste site.

16 (4) Since passage of the West Valley Dem-
17 onstration Project Act, substantial progress has been
18 made in the remediation of radioactive wastes at the
19 Center, but the remediation of the Center has not
20 been completed.

21 (5) The Federal Government agreed in 1987 to
22 prepare an environmental impact statement con-
23 cerning closure for the post-vitrification phase of the
24 West Valley Demonstration Project, as will be need-
25 ed for remediation of the Center, and has made sub-

1 stantial progress since then in preparing such an en-
2 vironmental impact statement for the Center, includ-
3 ing the issuance of a draft environmental impact
4 statement in 1996, but the environmental impact
5 statement has not been completed.

6 (6) The lack of certainty about Federal respon-
7 sibility for the remaining remediation necessary at
8 the Center may impede progress toward completion
9 of the cleanup.

10 (7) Completion of the remaining remediation at
11 the Center in a prompt, thorough, and effective
12 manner, in full compliance with all applicable State
13 and Federal laws and regulations, is in the best in-
14 terest of the United States, the Great Lakes region
15 as a whole, the State and its citizens, and the Sen-
16 eca Nation of Indians and its members, which Na-
17 tion occupies ancestral territory downstream of the
18 Center.

19 (8) The facilities and contamination at the Cen-
20 ter are located on or in Pleistocene glacial deposits
21 that are being actively eroded by nearby creeks that
22 drain into the Great Lakes basin. To maintain the
23 long-term stability of any facilities that may remain
24 at the Center, active monitoring and maintenance of
25 erosion controls and other engineered features will

1 be required for as long as any residual radioactive
2 and hazardous waste and materials that may remain
3 at the Center present a hazard to the public.

4 (9) Public participation has been an important
5 part of the work already done, and the planning now
6 in progress, toward remediation of radioactive
7 wastes at the Center.

8 (b) PURPOSES.—(1) It is the intent of Congress that
9 the Federal Government achieve complete remediation of
10 all radioactive, solid, and hazardous waste contamination
11 at the Center in a manner that is protective of the Great
12 Lakes region and its residents and is consistent with all
13 applicable State and Federal laws and regulations regard-
14 ing public health and safety.

15 (2) This Act establishes exclusive Federal responsi-
16 bility for the complete remediation of the Center.

17 (3) The Secretary shall employ the best current tech-
18 nologies and develop new state-of-the-art technologies and
19 methodologies to accomplish the complete remediation of
20 the Center.

21 (4) This Act recognizes the importance of State,
22 Tribal, and public involvement in the development, selec-
23 tion, enforcement, and monitoring of remedial actions un-
24 dertaken at the Center, to protect the health and safety
25 of the citizens and environment of the Great Lakes region.

1 (5) This Act shall replace and supersede the West
2 Valley Demonstration Project Act.

3 **SEC. 3. DEFINITIONS.**

4 For purposes of this Act:

5 (1) The term “Center” means—

6 (A) the Western New York Nuclear Service
7 Center in West Valley, New York; and

8 (B) all land, roads, structures, including
9 buildings, fixtures, containers, and radioactive,
10 hazardous, and solid waste and nuclear material
11 at the Western New York Nuclear Service Cen-
12 ter, including the reprocessing and storage fa-
13 cilities, equipment, above-ground and under-
14 ground tanks, solidified radioactive waste, and
15 radioactive and nonradioactive wastes and ma-
16 terials in the State and Commission licensed
17 disposal areas, located within the legal bound-
18 aries of the Western New York Nuclear Service
19 Center.

20 (2) The term “Commission” means the Nuclear
21 Regulatory Commission.

22 (3) The term “hazardous waste” means any
23 solid waste designated as hazardous waste under 40
24 CFR Part 261 or as may be subsequently defined as
25 such by the Environmental Protection Agency, any

1 solid waste designated as a hazardous waste under
2 the State program authorized by the Environmental
3 Protection Agency pursuant to the Solid Waste Dis-
4 posal Act, and any waste material designated as a
5 hazardous waste under any other State statute or
6 regulation.

7 (4) The term “high level radioactive waste”
8 means the high level radioactive waste which was
9 produced by the reprocessing at the Center of spent
10 nuclear fuel. Such term includes both liquid wastes
11 which are produced directly in reprocessing, dry
12 solid material derived from such liquid waste, and
13 any such other material the Commission designates
14 as high level radioactive waste for purposes of pro-
15 tecting public health and safety.

16 (5) The term “License Termination Rule”
17 means the rule of the Commission published at 62
18 Federal Register 39058.

19 (6) The term “low level radioactive waste”
20 means radioactive waste not classified as high level
21 radioactive waste, spent nuclear fuel, transuranic
22 waste, or byproduct material as defined in section 11
23 e.(2) of the Atomic Energy Act of 1954.

24 (7) The term “nuclear materials” means any
25 special nuclear material, source material, or byprod-

1 uct material as defined by the Atomic Energy Act of
2 1954 and 10 CFR Part 40, or other such material
3 as the Commission may subsequently designate as
4 special, source, or byproduct nuclear material.

5 (8) The term “radioactive waste” means low
6 level radioactive waste, transuranic waste, and high
7 level radioactive waste.

8 (9) The term “remediation” means activities or
9 processes used to remove, destroy, degrade, trans-
10 form, immobilize, or treat radioactive, solid, or haz-
11 ardous waste.

12 (10) The term “Secretary” means the Secretary
13 of Energy.

14 (11) The term “solid waste” means any mate-
15 rial that is designated as solid waste under 40 CFR
16 Part 261 or as may be subsequently defined as such
17 by the Environmental Protection Agency, under the
18 State program authorized by the Environmental
19 Protection Agency pursuant to the Solid Waste Dis-
20 posal Act, or under any other State statute or regu-
21 lation.

22 (12) The term “State” means the State of New
23 York.

24 (13) The term “transuranic waste” means ma-
25 terial contaminated with elements which have an

1 atomic number greater than 92, including neptu-
2 nium, plutonium, americium, and curium, and which
3 are in concentrations greater than 10 nanocuries per
4 gram, or in such other concentrations as the Com-
5 mission may prescribe to protect the public health
6 and safety.

7 **SEC. 4. REMEDIATION OF THE CENTER.**

8 (a) The Secretary shall take all actions necessary to
9 remediate the Center in a manner that is timely, protective
10 of human health and the environment, consistent with the
11 License Termination Rule, and consistent with all applica-
12 ble requirements of Federal and State law, including clo-
13 sure and post-closure requirements set forth in Federal
14 or State environmental laws, and the provisions of this
15 Act. As part of such remediation, the Secretary shall de-
16 contaminate and decommission—

17 (1) the tanks and other facilities of the Center
18 in which the high level radioactive waste solidified
19 under the West Valley Demonstration Project Act
20 was stored;

21 (2) the facilities used in the solidification of the
22 waste; and

23 (3) any material and hardware used in connec-
24 tion with the West Valley Demonstration Project.

1 (b) The Secretary shall be responsible for all costs
2 associated with such remediation.

3 **SEC. 5. RADIOACTIVE WASTE DISPOSAL REQUIREMENTS.**

4 (a) The Secretary shall, as soon as feasible, transport
5 the high level radioactive waste at the Center to an appro-
6 priate Federal repository for permanent disposal. Pending
7 such transportation, the Secretary shall take appropriate
8 measures to safeguard such waste and ensure its safe stor-
9 age in a manner consistent with public health and safety
10 and Commission regulations or orders.

11 (b) The Secretary shall, as soon as feasible, in accord-
12 ance with applicable law, including applicable licensing re-
13 quirements, dispose of low level radioactive waste and
14 transuranic waste currently located at the Center and such
15 radioactive waste as may in the future be generated as
16 a result of the remediation authorized by this Act.

17 (c) For purposes of the Nuclear Waste Policy Act of
18 1982, all high level radioactive waste at the Center shall
19 be considered waste generated by atomic energy defense
20 activities. For purposes of the Waste Isolation Pilot Plant
21 Land Withdrawal Act, any transuranic waste at the Cen-
22 ter shall be considered radioactive waste generated by
23 atomic energy defense activities.

1 **SEC. 6. REGULATION BY THE COMMISSION.**

2 (a) Notwithstanding any other provision of law, the
3 Commission shall regulate the remediation of radioactive
4 waste and nuclear materials at the Center as set forth in
5 this section. The Commission is authorized to promulgate
6 such new or revised rules as it may deem necessary and
7 appropriate to assume such responsibility.

8 (b)(1) Not later than 2 years after the date of enact-
9 ment of this Act, the Secretary shall develop and submit
10 to the Commission for review and approval a decommis-
11 sioning plan that meets the criteria set forth in the Li-
12 cense Termination Rule and that addresses the radioactive
13 wastes and nuclear materials at the Center.

14 (2) Prior to any preliminary or final decision made
15 by the Commission on the Secretary's plan, the Commis-
16 sion shall provide a reasonable opportunity for the State
17 to review, comment on, and concur or not concur with the
18 decommissioning plan submitted by the Secretary and any
19 modifications to such plan.

20 (3) The Secretary shall implement the decommis-
21 sioning plan approved by the Commission.

22 (c) In making its determination, the Commission
23 shall apply the process and criteria set forth in the License
24 Termination Rule. The Commission shall further apply the
25 procedures provided in its regulations for the approval and

1 enforcement of decommissioning plans to the decommis-
2 sioning plan for the Center.

3 (d) Upon assumption of possession by the Secretary,
4 as provided for in section 9, all licenses and permits for
5 facilities at the Center issued by the Commission shall be
6 held in abeyance until the completion of the radiological
7 remedial action program authorized by this Act.

8 (e) Upon completion of the radiological remedial ac-
9 tion program authorized by this Act, or sooner upon re-
10 quest of the New York State Energy Research and Devel-
11 opment Authority, the Secretary shall assist the New York
12 State Energy Research and Development Authority in ap-
13 plying to the Commission to terminate, for the entire Cen-
14 ter or such portions of the Center as may qualify, the li-
15 cense issued by the Commission.

16 (f) If, after application of the License Termination
17 Rule to all portions of the Center, the entire Center is
18 not released for unrestricted use, the Center, or if appro-
19 priate a portion or portions thereof, shall be maintained
20 by the Secretary, or such other Federal agency as the
21 President may designate. The Secretary or such other
22 agency shall apply for a license or licenses from the Com-
23 mission and the Commission shall apply such procedures
24 and standards as the Commission would normally employ
25 to issue licenses for such materials so as to protect the

1 public health and safety and the environment. If the re-
2 quirements of such a licensing process cannot be met, the
3 Secretary shall conduct such additional radiological reme-
4 dial action as shall be needed to qualify for a license.

5 (g) The Secretary shall submit to the Commission
6 safety analysis reports and such other information as the
7 Commission may require to identify any danger to the
8 public health and safety which may be presented by the
9 remediation required under this Act or the conditions at
10 the Center.

11 (h) The Secretary shall afford the Commission access
12 to the Center to enable the Commission to carry out the
13 activities assigned to it under this Act.

14 **SEC. 7. NEW YORK STATE INVOLVEMENT.**

15 (a) The Secretary shall consult with the New York
16 State Department of Environmental Conservation, and
17 any such other agency as the Governor of the State may
18 designate, in carrying out this Act. Not later than 1 year
19 after the date of enactment of this Act, the Secretary shall
20 enter into an agreement with the State to establish ar-
21 rangements for consultation with the State regarding re-
22 mediation of the Center, and, if the Center is not remedi-
23 ated to allow unrestricted use, consultation on mainte-
24 nance of licensed portions of the Center.

1 (b) The agreement entered into under subsection (a)
2 shall include provisions for—

3 (1) the State’s review and comment on data
4 and draft documents; and

5 (2) the Secretary’s response to the State’s com-
6 ments.

7 (c) The Secretary shall provide the State access to
8 the Center, at all reasonable times, for the purpose of pro-
9 tecting the public health and safety and the environment.
10 This shall include access to collect samples, take measure-
11 ments, and observe ongoing activities and conditions.

12 **SEC. 8. ENVIRONMENTAL IMPACT STATEMENT.**

13 (a) Pursuant to obligations under the National Envi-
14 ronmental Policy Act of 1969, the Secretary shall prepare
15 any environmental impact statement for decommissioning
16 or long-term stewardship of the Center in cooperation with
17 the Commission, the Environmental Protection Agency,
18 and such other Federal and State agencies as may be ap-
19 propriate, and shall do so as a continuation of the environ-
20 mental impact statement process commenced by notice of
21 intent issued in 1988.

22 (b) The Secretary shall issue a revised draft environ-
23 mental impact statement within 2 years after the date of
24 enactment of this Act.

1 (c) The environmental impact statement process re-
2 ferred to in subsections (a) and (b), including records of
3 decision by the Secretary and the Commission, shall be
4 completed as soon as reasonably practicable.

5 (d) The Secretary shall hold and undertake meetings
6 on a quarterly basis at a location at or near the Center,
7 to which members of the local educational, scientific, and
8 political communities shall be invited, so that the Sec-
9 retary can advise such participants of the status of the
10 environmental impact statement process, including current
11 results, and in order to receive public comment.

12 (e) The Secretary shall make available to any member
13 of the public, at a public reading room at the Center, for
14 inspection, upon reasonable notice, at reasonable hours
15 and without payment of a fee or charge, those documents
16 related to the preparation of the environmental impact
17 statement referred to in this section, including background
18 information subject to disclosure under section 552 of title
19 5, United States Code (popularly known as the Freedom
20 of Information Act), that are requested in writing by such
21 member of the public. Copies of any such documents shall
22 be provided by the Secretary upon the payment of the
23 charges provided for under such section 552.

1 **SEC. 9. ASSUMPTION OF POSSESSION AND TRANSFER OF**
2 **TITLE.**

3 (a) Not later than 30 days after execution of the Co-
4 operative Agreement provided for in section 10, the Sec-
5 retary shall assume exclusive use and possession of the
6 entire Center.

7 (b) Upon completion of all remediation required
8 under this Act, or 20 years after the date of enactment
9 of this Act, whichever comes sooner, the Secretary shall
10 take title to any land or facilities at the Center that have
11 not been approved by the Commission for release for unre-
12 stricted use, and title to all radioactive and nonradioactive
13 wastes and materials located at any such portions of the
14 Center in accordance with all applicable Federal and State
15 laws and requirements.

16 (c) So long as the Secretary remains in possession
17 or holds title to the Center, or any portion thereof, neither
18 the Secretary nor any other person or entity, including
19 any governmental entity, shall transport or allow the
20 transport of any solid, hazardous, or radioactive waste to
21 the Center for the purpose of storing, treating, or dis-
22 posing of such waste at the Center.

23 **SEC. 10. COOPERATIVE AGREEMENT.**

24 Not later than 60 days after the date of enactment
25 of this Act, the Secretary shall enter into a Cooperative
26 Agreement with the New York State Energy Research and

1 Development Authority, or such other agency as the Gov-
2 ernor of the State shall designate, which shall contain the
3 following:

4 (1) Such provisions as may be necessary to ef-
5 fectuate the possession and transfer of title provi-
6 sions contained in section 9 and to facilitate the re-
7 lease and transfer to third parties of
8 uncontaminated portions of the Center, as appro-
9 priate.

10 (2) Provisions for the Secretary to assist the
11 New York State Energy Research and Development
12 Authority, or such other agency as the Governor of
13 the State may designate, in making such permit or
14 license applications as may be necessary to carry out
15 this Act.

16 (3) Sharing with the New York State Energy
17 Research and Development Authority, or such other
18 agency as the Governor of the State shall designate,
19 of information and plans relevant to the remediation
20 of the Center by the Secretary and to license or per-
21 mit applications as may be necessary to carry out
22 this Act.

23 (4) Indemnification of the State, and any rel-
24 evant instrumentality of the State that may hold
25 title to the Center, by the Secretary against any

1 claims, damages, losses, and expenses (including rea-
2 sonable attorney's and expert witness' fees) or liabil-
3 ities, arising out of or resulting from the perform-
4 ance by the Secretary or the Secretary's agents or
5 contractors of (or failure to perform) the Secretary's
6 obligations under this Act.

7 **SEC. 11. REPEAL OF THE WEST VALLEY DEMONSTRATION**
8 **PROJECT ACT.**

9 Upon assumption of exclusive use and possession of
10 the entire Center by the Secretary, as provided for in sec-
11 tion 9, the West Valley Demonstration Project Act is re-
12 pealed.

13 **SEC. 12. APPROPRIATIONS.**

14 (a) To implement the requirements of this Act, there
15 are authorized to be appropriated to the Secretary
16 \$95,000,000 for each fiscal year until the remediation of
17 the Center required by section 4 is completed. After the
18 remediation of the Center is completed, there are author-
19 ized to be appropriated for each fiscal year thereafter such
20 sums as are necessary for the Secretary to carry out the
21 activities required under this Act and any licenses or per-
22 mits concerning the Center issued to the Secretary under
23 Federal or State law.

24 (b) There are authorized to be appropriated to the
25 Secretary an additional amount of 5 percent of the

1 amount appropriated under subsection (a) for each fiscal
2 year, to be paid to the West Valley Central School District,
3 in the month of September, and the Town of Ashford,
4 West Valley Fire District No. 1, and Cattaraugus County,
5 in the month of January, in such proportions as such enti-
6 ties would normally receive in taxes. After the remediation
7 of the Center is completed and until such time as all Cen-
8 ter property is released for unrestricted use, there are au-
9 thorized to be appropriated to the Secretary an additional
10 amount of \$3,000,000 for each fiscal year, to be paid to
11 the local entities set forth above in the same proportions.
12 This payment is to offset the hardship suffered by the
13 community as a result of the use of the Center property
14 for the management of radioactive waste generated by the
15 Federal Government.

16 (c) The authority of the Secretary to enter into con-
17 tracts under this Act shall be effective for any fiscal year
18 only to such extent or in such amounts as are provided
19 in advance by appropriation acts.

20 **SEC. 13. NO EFFECT ON OTHER AUTHORITIES.**

21 (a) This Act in no way preempts or otherwise limits
22 the force or scope of any otherwise applicable Federal or
23 State laws, regulations, or treaties, unless specifically so
24 provided in this Act.

1 (b) This Act shall not supersede or repeal the Stipula-
2 tion of Compromise Settlement entered into by the United
3 States and the Department of Energy on May 27, 1987,
4 in the matter captioned Coalition on West Valley Nuclear
5 Wastes v. Department of Energy in the Western District
6 of New York, Civil Case No. 86–1052–C, and this Act
7 shall not diminish or alter the terms of that Stipulation.

8 (c) Nothing in this Act shall affect in any way the
9 Secretary’s obligations to comply with the Department of
10 Energy American Indian and Alaska Native Tribal Gov-
11 ernment Policy, and Executive Order 13175 on Consulta-
12 tion and Coordination with Indian Tribal Governments, or
13 any other policy or order that ensures effective implemen-
14 tation of a government to government relationship be-
15 tween the Unites States and tribal governments, including
16 fulfillment of trust obligations and equal protection meas-
17 ures arising from Department of Energy actions which
18 may potentially impact American Indian traditional, cul-
19 tural, and religious values and practices, natural re-
20 sources, and treaty and other federally-recognized and re-
21 served rights.

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