

**Congress of the United States**  
**Washington, DC 20515**

October 28, 2016

The Honorable Dr. Ernest J. Moniz  
Secretary  
United States Department of Energy  
1000 Independence Ave, SW  
Washington, DC 20585

Dear Secretary Moniz,

As members of New York State's Congressional delegation, we write to express our support for the comments recently submitted by the New York State Energy Research and Development Authority (NYSERDA) regarding the Department of Energy's (DOE) Consent-Based Siting Process for nuclear waste storage and disposal facilities. We urge DOE to reclassify the waste at the Western New York Nuclear Service Center in West Valley, New York as defense-related waste, to correct a historical misclassification of the waste at the facility.

The West Valley fuel reprocessing facility, which operated from 1966 to 1972, was established under a program of the Atomic Energy Commission, DOE's predecessor and was the only privately-operated reprocessing facility for spent nuclear fuel in the United States. As documents and records from that time reveal, the West Valley facility was heavily involved in the nation's defense activities – shipping and other records show that a significant proportion of the activities at and spent nuclear fuel sent to West Valley related to federal defense-related projects, and the vast majority of the uranium and plutonium produced at West Valley was sent to federal defense-related sites for defense purposes.

In 1976, the company behind West Valley withdrew from the project and turned the site over to New York State. To resolve questions of responsibility for the site's cleanup, Congress passed the West Valley Demonstration Project Act of 1980 (WVDPA). In the WVDPA, Congress directed DOE to pay 90 percent of clean-up and decommissioning costs at West Valley; as the legislative history expressly shows, this cost split was an acknowledgement of the facility's role in processing defense waste. The WVDPA also directed DOE to transport the facility's HLW to a federal facility.

Shortly thereafter, in 1982, Congress passed the Nuclear Waste Policy Act (NWPA), which further tasked the federal government with paying for the disposal of HLW produced in whole or in part by defense-related activities. In 1986, after the Department had determined that then-available funds associated with West Valley were insufficient to pay for either the decommissioning of the site or the NWPA disposal fee, DOE's Inspector General issued a report

that, for the first time, classified West Valley's HLW as commercial waste. This report both defied congressional intent and shifted the fiscal burden for disposal of the West Valley waste to New York State, but the Department has held fast to this position since 1986; most recently, the Department asserted in its October, 2014 "Assessment of Disposal Options for DOE-Managed High-Level Radioactive Waste and Spent Nuclear Fuel" that West Valley waste is "Commercial waste . . . not eligible for a repository exclusively for DOE-managed HLW and SNF from defense or DOE research and development activities."<sup>1</sup>

Under the WVDPA and NWPA, DOE has an obligation to protect New York taxpayers from shouldering hundreds of millions – if not billions – of dollars in unwarranted costs. Therefore, we request that the Department provide in writing, prior to its expected December 2016 publication of a report regarding its consent-based siting process: (i) a justification, within the framework of the NWPA, for its classification of the West Valley waste as "commercial"; and, (ii) calculations, including the method of such calculations, of the NWPA disposal fee the State of New York would have to pay if such fee were to be assessed both today and in 2048 (the currently expected date of a repository for commercial HLW) – we understand that the Department last advised the state in 2002 that the NWPA disposal fee at that time was more than \$150 million.

We urge the Department to seize this opportunity to correct the misclassification of West Valley's nuclear waste. Thank you for your consideration of this request. Please do not hesitate to reach out to our offices if you have any questions.

Sincerely,



Tom Reed  
Member of Congress



Brian Higgins  
Member of Congress



Kirsten Gillibrand  
United States Senator



Nita M. Lowey  
Member of Congress

---

<sup>1</sup> See [http://www.energy.gov/sites/prod/files/2014/10/f18/DOE\\_Options\\_Assessment.pdf](http://www.energy.gov/sites/prod/files/2014/10/f18/DOE_Options_Assessment.pdf).



**Chris Collins**  
Member of Congress



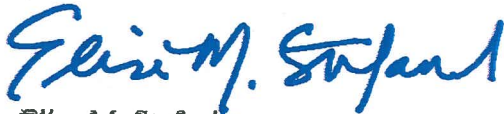
**Louise McIntosh Slaughter**  
Member of Congress



**Christopher P. Gibson**  
Member of Congress



**Paul Tonko**  
Member of Congress



**Elise M. Stefanik**  
Member of Congress



**Eliot L. Engel**  
Member of Congress



**Richard L. Hanna**  
Member of Congress



**Jerrold Nadler**  
Member of Congress



**Grace Meng**  
Member of Congress



**Lee M. Zeldin**  
Member of Congress