

S 81 IS

110th CONGRESS

1st Session

**S. 81**

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**

**January 4, 2007**

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.

*Be it enacted by the Senate and House of Representatives of the United*

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

(4) Since passage of the West Valley Demonstration Project Act, substantial progress has been made in the remediation of radioactive wastes at the Center, but the remediation of the Center has not been completed.

(5) The Federal Government agreed in 1987 to prepare an environmental impact statement concerning closure for the post-vitrification phase of the West Valley Demonstration Project, as will be needed for remediation of the Center, and has made substantial progress since then in preparing such an environmental impact statement for the Center, including the issuance of a draft environmental impact statement in 1996.

not been completed.

(6) The lack of certainty about Federal responsibility for the remaining remediation necessary at the Center may impede progress toward

laws and regulations regarding public health and safety.

(2) This Act establishes exclusive Federal responsibility for the complete remediation of the Center.

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

(4) This Act recognizes the importance of State, Tribal, and public involvement in the development, selection, enforcement, and monitoring of remedial actions undertaken at the Center, to protect the health and safety of the citizens and environment of the Great Lakes region.

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

### **SEC. 3. DEFINITIONS.**

For purposes of this Act:

(1) The term `Center' means--

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

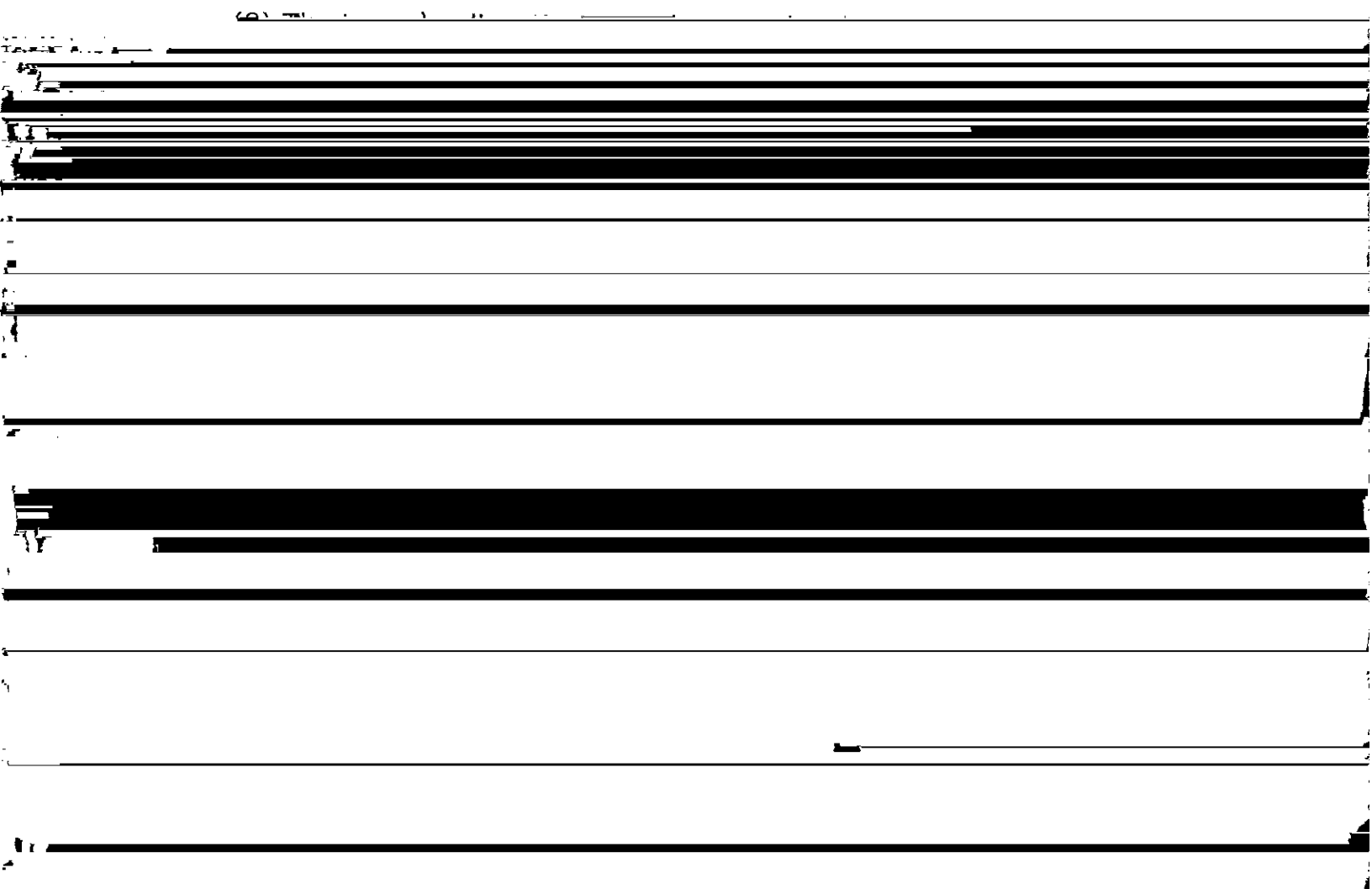
(B) the Western New York Nuclear Service Center in West Valley, New York.

of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and any such other material the Commission designates as high level radioactive waste for purposes of protecting public health and safety.

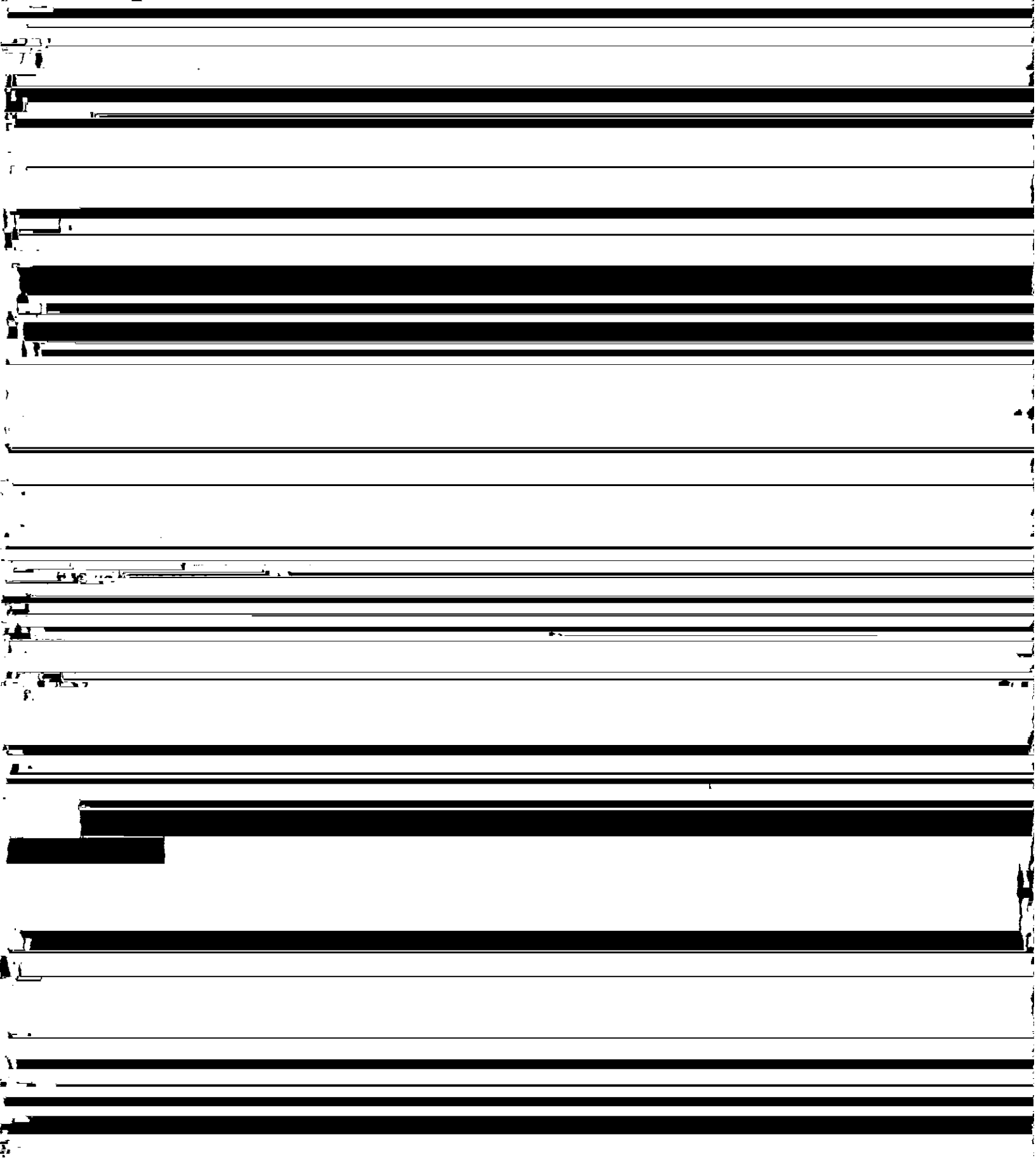
(5) The term `License Termination Rule' means the rule of the Commission published at 62 Federal Register 39058.

(6) The term `low level radioactive waste' means radioactive waste not classified as high level radioactive waste, spent nuclear fuel, transuranic waste, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act of 1954.

(7) The term `nuclear materials' means any special nuclear material, source material, or byproduct material as defined by the Atomic Energy Act of 1954 and 10 CFR Part 40, or other such material as the Commission may subsequently designate as special, source, or byproduct nuclear material.



a manner that is timely, protective of human health and the environment,  
consistent with the Disease Transmission Reduction Act.



such responsibility.

(b)(1) Not later than 2 years after the date of enactment of this Act, the Secretary shall develop and submit to the Commission for review and approval a decommissioning plan that meets the criteria set forth in the License Termination Rule and that addresses the radioactive wastes and nuclear materials at the Center.

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

(3) The Secretary shall implement the decommissioning plan approved by the Commission.

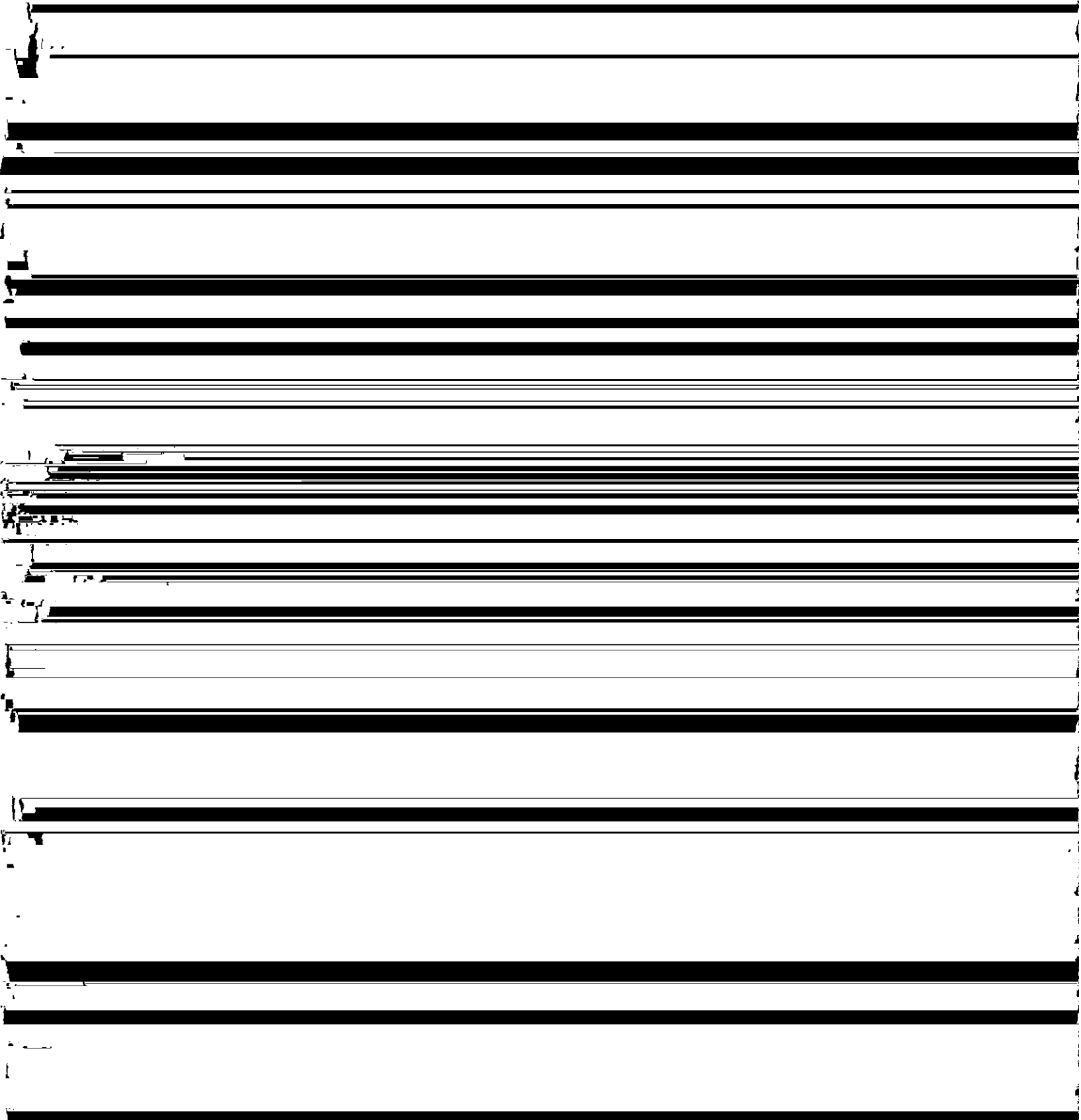
(c) In making its determination, the Commission shall apply the process and criteria set forth in the License Termination Rule. The Commission shall further apply the procedures provided in its regulations for the approval and enforcement of decommissioning plans to the decommissioning plan for the Center.

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

(e) Upon completion of the radiological remedial action program authorized by this Act, or sooner upon request of the New York State Energy Research and Development Authority, the Secretary shall assist the New York State Energy Research and Development Authority in applying to the Commission to terminate, for the entire Center or such portions of the Center as may qualify, the license issued by the Commission.

(f) If, after application of the License Termination Rule to all portions of the Center, the entire Center is not released for unrestricted use, the Center, or if appropriate a portion or portions thereof, shall be maintained by the Secretary, or such other Federal agency as the President may designate. The Secretary or such other agency shall apply for a license or licenses from the Commission and the Commission shall apply such procedures and standards as the Commission would normally employ to issue licenses for such materials so as to protect the public health and safety and the environment. If the requirements of such a licensing process cannot be met, the Secretary shall conduct such additional radiological remedial action as shall be needed to qualify for a license.

(g) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger



Commission, shall be completed as soon as reasonably practicable.

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

(e) The Secretary shall make available to any member of the public, at a public reading room at the Center, for inspection, upon reasonable notice, at reasonable hours and without payment of a fee or charge, those documents related to the preparation of the environmental impact statement referred to

in this section, including background information subject to disclosure under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), that are requested in writing by such member of the public. Copies of any such documents shall be provided by the Secretary upon the payment of the charges provided for under such section 552.

## **SEC. 9. ASSUMPTION OF POSSESSION AND TRANSFER OF TITLE.**

(a) Not later than 30 days after execution of the Cooperative Agreement provided for in section 10, the Secretary shall assume exclusive use and possession of the entire Center.

(b) Upon completion of all remediation required under this Act, or 20 years after the date of enactment of this Act, whichever comes sooner, the Secretary shall take title to any land or facilities at the Center that have not been approved by the Commission for release for unrestricted use, and title to all radioactive and nonradioactive wastes and materials located at any such

and transfer of title provisions contained in section 9 and to facilitate the release and transfer to third parties of uncontaminated portions of the Center, as appropriate.

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

(3) Sharing with the New York State Energy Research and Development Authority, or such other agency as the Governor of the State shall designate, of information and plans relevant to the remediation of the Center by the Secretary and to license or permit applications as may be necessary to carry out this Act.

(4) Indemnification of the State, and any relevant instrumentality of the State that may hold title to the Center, by the Secretary against any claims, damages, losses, and expenses (including reasonable attorney's and expert witness' fees) or liabilities, arising out of or resulting from the performance by the Secretary or the Secretary's agents or contractors of (or failure to perform) the Secretary's obligations under this Act.

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

Upon assumption of exclusive use and possession of the entire Center by the Secretary, as provided for in section 9, the West Valley Demonstration Project Act is repealed.

## **SEC. 12. APPROPRIATIONS.**

(a) To implement the requirements of this Act, there are authorized to be appropriated to the Secretary \$95,000,000 for each fiscal year until the remediation of the Center required by section 4 is completed. After the remediation of the Center is completed, the Secretary shall

Center is completed and until such time as all Center property is released for unrestricted use, there are authorized to be appropriated to the Secretary an additional amount of \$3,000,000 for each fiscal year, to be paid to the local entities set forth above in the same proportions. This payment is to offset the hardship suffered by the community as a result of the use of the Center property for the management of radioactive waste generated by the Federal Government.

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

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

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

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

(c) Nothing in this Act shall affect in any way the Secretary's obligations to comply with the Department of Energy American Indian and Alaska Native Tribal Government Policy, and Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments, or any other policy or order that ensures effective implementation of a government to government relationship between the United States and tribal governments, including fulfillment of trust obligations and equal protection measures arising from Department of Energy actions which may potentially impact American Indian traditional, cultural, and religious values and practices, natural resources, and