

S 81 IS

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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 States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'West Valley Remediation Act of 2007'.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings- Congress finds the following:

(1) The Federal Government has had the primary and central role in initiating, establishing, and providing material for spent nuclear fuel reprocessing and waste burial operations at the Center.

(2) The Federal Government has availed itself of spent nuclear fuel reprocessing operations at the Center, and has benefited from such operations to process and store at the Center radioactively contaminated materials generated in, and by, various Federal civilian and military programs.

(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, but the environmental impact statement has not been completed.

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

(7) Completion of the remaining remediation at the Center in a prompt, thorough, and effective manner, in full compliance with all applicable State and Federal laws and regulations, is in the best interest of the United States, the Great Lakes region as a whole, the State and its citizens, and the Seneca Nation of Indians and its members, which Nation occupies ancestral territory downstream of the Center.

(8) The facilities and contamination at the Center are located on or in Pleistocene glacial deposits that are being actively eroded by nearby creeks that drain into the Great Lakes basin. To maintain the long-term stability of any facilities that may remain at the Center, active monitoring and maintenance of erosion controls and other engineered features will be required for as long as any residual radioactive and hazardous waste and materials that may remain at the Center present a hazard to the public.

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

(b) Purposes- (1) It is the intent of Congress that the Federal Government achieve complete remediation of all radioactive, solid, and hazardous waste contamination at the Center in a manner that is protective of the Great Lakes region and its residents and is consistent with all applicable State and Federal

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) all land, roads, structures, including buildings, fixtures, containers, and radioactive, hazardous, and solid waste and nuclear material at the Western New York Nuclear Service Center, including the reprocessing and storage facilities, equipment, above-ground and underground tanks, solidified radioactive waste, and radioactive and nonradioactive wastes and materials in the State and Commission licensed disposal areas, located within the legal boundaries of the Western New York Nuclear Service Center.

(2) The term `Commission' means the Nuclear Regulatory Commission.

(3) The term `hazardous waste' means any solid waste designated as hazardous waste under 40 CFR Part 261 or as may be subsequently defined as such by the Environmental Protection Agency, any solid waste designated as a hazardous waste under the State program authorized by the Environmental Protection Agency pursuant to the Solid Waste Disposal Act, and any waste material designated as a hazardous waste under any other State statute or regulation.

(4) The term `high level radioactive waste' means the high level radioactive waste which was produced by the reprocessing at the Center

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.

(8) The term `radioactive waste' means low level radioactive waste, transuranic waste, and high level radioactive waste.

(9) The term `remediation' means activities or processes used to remove, destroy, degrade, transform, immobilize, or treat radioactive, solid, or hazardous waste.

(10) The term `Secretary' means the Secretary of Energy.

(11) The term `solid waste' means any material that is designated as solid waste under 40 CFR Part 261 or as may be subsequently defined as such by the Environmental Protection Agency, under the State program authorized by the Environmental Protection Agency pursuant to the Solid Waste Disposal Act, or under any other State statute or regulation.

(12) The term `State' means the State of New York.

(13) The term `transuranic waste' means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

SEC. 4. REMEDIATION OF THE CENTER.

(a) The Secretary shall take all actions necessary to remediate the Center in

a manner that is timely, protective of human health and the environment, consistent with the License Termination Rule, and consistent with all applicable requirements of Federal and State law, including closure and post-closure requirements set forth in Federal or State environmental laws, and the provisions of this Act. As part of such remediation, the Secretary shall decontaminate and decommission--

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

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

(3) any material and hardware used in connection with the West Valley Demonstration Project.

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

SEC. 5. RADIOACTIVE WASTE DISPOSAL REQUIREMENTS.

(a) The Secretary shall, as soon as feasible, transport the high level radioactive waste at the Center to an appropriate Federal repository for permanent disposal. Pending such transportation, the Secretary shall take appropriate measures to safeguard such waste and ensure its safe storage in a manner consistent with public health and safety and Commission regulations or orders.

(b) The Secretary shall, as soon as feasible, in accordance with applicable law, including applicable licensing requirements, dispose of low level radioactive waste and transuranic waste currently located at the Center and such radioactive waste as may in the future be generated as a result of the remediation authorized by this Act.

(c) For purposes of the Nuclear Waste Policy Act of 1982, all high level radioactive waste at the Center shall be considered waste generated by atomic energy defense activities. For purposes of the Waste Isolation Pilot Plant Land Withdrawal Act, any transuranic waste at the Center shall be considered radioactive waste generated by atomic energy defense activities.

SEC. 6. REGULATION BY THE COMMISSION.

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

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 to the public health and safety which may be presented by the remediation required under this Act or the conditions at the Center.

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

SEC. 7. NEW YORK STATE INVOLVEMENT.

(a) The Secretary shall consult with the New York State Department of Environmental Conservation, and any such other agency as the Governor of the State may designate, in carrying out this Act. Not later than 1 year after the date of enactment of this Act, the Secretary shall enter into an agreement with the State to establish arrangements for consultation with the State regarding remediation of the Center, and, if the Center is not remediated to allow unrestricted use, consultation on maintenance of licensed portions of the Center.

(b) The agreement entered into under subsection (a) shall include provisions for--

- (1) the State's review and comment on data and draft documents; and
- (2) the Secretary's response to the State's comments.

(c) The Secretary shall provide the State access to the Center, at all reasonable times, for the purpose of protecting the public health and safety and the environment. This shall include access to collect samples, take measurements, and observe ongoing activities and conditions.

SEC. 8. ENVIRONMENTAL IMPACT STATEMENT.

(a) Pursuant to obligations under the National Environmental Policy Act of 1969, the Secretary shall prepare any environmental impact statement for decommissioning or long-term stewardship of the Center in cooperation with the Commission, the Environmental Protection Agency, and such other Federal and State agencies as may be appropriate, and shall do so as a continuation of the environmental impact statement process commenced by notice of intent issued in 1988.

(b) The Secretary shall issue a revised draft environmental impact statement within 2 years after the date of enactment of this Act.

(c) The environmental impact statement process referred to in subsections (a) and (b), including records of decision by the Secretary and the

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 portions of the Center in accordance with all applicable Federal and State laws and requirements.

(c) So long as the Secretary remains in possession or holds title to the Center, or any portion thereof, neither the Secretary nor any other person or entity, including any governmental entity, shall transport or allow the transport of any solid, hazardous, or radioactive waste to the Center for the purpose of storing, treating, or disposing of such waste at the Center.

SEC. 10. COOPERATIVE AGREEMENT.

Not later than 60 days after the date of enactment of this Act, the Secretary shall enter into a Cooperative Agreement with the New York State Energy Research and Development Authority, or such other agency as the Governor of the State shall designate, which shall contain the following:

(1) Such provisions as may be necessary to effectuate the possession

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, there are authorized to be appropriated for each fiscal year thereafter such sums as are necessary for the Secretary to carry out the activities required under this Act and any licenses or permits concerning the Center issued to the Secretary under Federal or State law.

(b) There are authorized to be appropriated to the Secretary an additional amount of 5 percent of the amount appropriated under subsection (a) for each fiscal year, to be paid to the West Valley Central School District, in the month of September, and the Town of Ashford, West Valley Fire District No. 1, and Cattaraugus County, in the month of January, in such proportions as such entities would normally receive in taxes. After the remediation of the

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 treaty and other federally-recognized and reserved rights.

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