



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 11, 1980

MEMORANDUM FOR: Tom Rehm, EDO
FROM: *ST* Sheldon Trubatch, OGC
SUBJECT: *ST* S. 2443

Enclosed is a proposed revised version of Commission views on S. 2443, as amended. I would appreciate your comments by June 18, 1980.

Enclosure:

1. Draft Ltr Ahearne to Jackson
2. S. 2443

Rec'd Off. EDO
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The Honorable Henry M. Jackson
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the Nuclear Regulatory Commission's (NRC) views on S. 2443, as recently amended, a bill which would authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York. The NRC strongly supports initiation of this project to solidify high-level wastes at West Valley and agrees that the Department of Energy (DOE) is the appropriate organization to conduct this project. DOE, through its contractors, is the only organization with the requisite technical resources to perform the detailed engineering and development work for retrieving, solidifying, and disposing of the high-level liquid wastes at West Valley. Therefore, the Commission strongly supports these aspects of S. 2443. However, the amendment recently accepted by the committee raises several substantial problems which are described below. For these reasons, the NRC does not support S. 2443 as currently drafted.

With regard to the NRC, the bill would require the Secretary of Energy to consult with the NRC in carrying out the project, and would preserve any application licensing requirements of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. For the reasons discussed below, the Commission believes that S. 2443 is consistent with the Commission's current licensing authority. However, as also discussed below, Commissioners Gilinsky and Bradford believe that the NRC should have direct authority to license any DOE solidification facility at West Valley.

The Commission believes that its current authority for licensing non-Federal waste management activities at West Valley is adequate, and that this authority permits adequate evaluation of any DOE solidification activities at that site. The Atomic Energy Act of 1954 authorizes the Commission to regulate the receipt, possession and transfer of licensed materials by Nuclear Fuel Services, Inc. (NFS), the commercial licensed operator at West Valley. The current commercial license for West Valley does not permit NFS to transfer high-level liquid waste to a DOE solidification facility, to modify its storage facilities to permit such a transfer, or to terminate its license in anticipation of a transfer to DOE of responsibility for the site. Consequently, before DOE could begin to solidify the high-level liquid waste at West Valley, the Commission must first amend the current NFS license. Section 2(b)(3)(B) would require New York State and the Department of Energy to jointly submit an application to the NRC for a license amendment. This provision appears inconsistent with the current regulatory regime under which New York State and NFS are co-licensees. Accordingly, the Commission believes that NFS should be required to join any application for license amendments.

Of course, the Commission must find that any amendments provide adequate protection to the public health and safety and are in accord with the common defense and security. Accordingly, if DOE is authorized to build a waste solidification

facility on the licensed NFS site, NRC could conduct analyses to determine: (1) whether any transfers to and from the licensed NFS waste storage facility can be accomplished safely, and (2) whether the impacts of the solidification facilities on other NRS-licensed facilities are contrary to the requirement for protection of the public health and safety. Section 2(b)(3)(D) would authorize the Secretary of Energy to conduct activities which he determines to be appropriate for the protection of public health and safety. This provision could create an overlap of jurisdiction by the NRC and DOE and could lead the Secretary to take actions inconsistent with evaluations by the NRC. Accordingly, the Commission recommends that this section be amended to require the Secretary to consult with the NRC before taking such actions.

Moreover, the NRC's authority under the Energy Reorganization Act of 1974 includes the imposition of waste form criteria on the solidified product from a DOE waste solidification plant at West Valley. Such solidified waste would result from activities licensed under the Atomic Energy Act. Consequently, DOE would require an NRC license to receive and store such material in a facility used primarily for these purposes. Waste form criteria would be included in such a license. We interpret Section 2(b)(3)(C) as preserving NRC's authority to require waste form criteria for any wastes of military origin currently at West Valley and which will be solidified by DOE. In our view, these wastes are not related to any military programs for the purpose of Pub L. 96-164, and, thus, the NRC is not prohibited from expending funds to establish waste form criteria for these wastes. The Commission supports Section 2(b)(3)(C) if it is intended to make unambiguous this NRC authority.

Section 2(b)(3)(A) would also require the chosen solidification technology to be applicable to other liquid wastes. This additional requirement is potentially inconsistent with the imposition of waste form criteria based on the protection of public health and safety and, thus, could prevent implementation of the solidification program. The chemical composition of the West Valley waste may require the choice of a unique solidification process not applicable to other waste. Thus, solidification processes suitable for other wastes may not satisfy the NRC's criteria for solidify the West Valley wastes. Accordingly, the Commission recommends that this provision be deleted.

The authorities discussed above appear to provide the NRC with substantial and sufficient regulatory oversight over any further DOE waste solidification activities at West Valley.

On the other hand, Commissioners Bradford and Gilinsky believe that the Commission could more effectively discharge its responsibilities regarding public health and safety at West Valley if it had direct authority to license a DOE solidification plant at that site. While the Commission could indirectly affect DOE's solidification activities there as explained above, it currently is not authorized to license a DOE waste solidification facility because such a

facility would likely not be used primarily for the receipt and storage of high-level wastes resulting from activities licensed under the Atomic Energy Act as required by Section 202(3) of the Energy Reorganization Act of 1974. These Commissioners believe that the potential public health hazards related to solidification, the intimate connection between the licensed storage activities and solidification, and the need for extensive NRC review of the solidification process to assure that the appropriate quality assurance requirements have been identified support the extension of NRC licensing authority to a DOE solidification plant for the West Valley wastes. Moreover, in their view, such solidification activity would not present issues of national security because about 40% of the waste is of commercial origin, the radiochemical composition of the waste is publicly available, and NRC licensing would not interfere with any current national defense activities. Finally, these Commissioners believe that the Commission's existing regulatory process would provide the public participation necessary to any decision regarding radioactive waste management at West Valley.

The Commission appreciates this opportunity to express its views. If you have further questions on these matters, the Commission will be pleased to provide further assistance.

Sincerely,

John F. Ahearne

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Calendar No. 822

96TH CONGRESS
2D SESSION

S. 2443

To authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

IN THE SENATE OF THE UNITED STATES

MARCH 19 (legislative day, JANUARY 3), 1980

Mr. MOYNIHAN (for himself and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MAY 15 (legislative day, JANUARY 3), 1980

Reported by Mr. JACKSON, with amendments to the text

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "West Valley Demonstra-
- 4 tion Project Act".

1 SEC. 2. (a) The Secretary of Energy (hereinafter in this
2 Act referred to as the "Secretary") shall carry out, in accord-
3 ance with the provisions of this Act, a high-level liquid nu-
4 clear waste management demonstration project at the West-
5 ern New York Service Center in West Valley, New York
6 (hereinafter referred to as "the project"). The Secretary shall
7 carry out the project by vitrifying the high-level liquid
8 nuclear wastes located at such Center or by employing the
9 most effective technology for solidification available. The
10 Secretary shall, as part of the project, also (1) as soon as
11 feasible transport such solidified wastes, in accordance with
12 applicable provisions of law, to an appropriate Federal re-
13 pository for long term burial, and (2) decontaminate and de-
14 commission facilities, materials, and hardware used in con-
15 nection with the project.

16 (b) During the fiscal year ending September 30, 1980,
17 the Secretary shall—

18 (1) prepare a plan for safe removal of such wastes
19 from tank numbered 8D-2 and any other storage tank
20 at the Center containing such wastes including safely
21 breaching the tanks, operating waste removal equip-
22 ment, and sluicing techniques,

23 (2) determine the feasibility of immobilization and
24 waste handling techniques required by the unique situ-
25 ation of such wastes at the Center, including initiation

1 of detailed engineering and cost estimates as well as
2 safety analyses and environmental impact analyses,
3 and

4 (2) title to the high level liquid wastes at the
5 Center shall be transferred to the United States upon
6 payment by the State of New York and other appropri-
7 ate persons of an appropriate fee, as determined by the
8 Secretary, for the perpetual care and maintenance of
9 such wastes.

10 (3) enter into a cooperative agreement with the
11 State of New York pursuant to the "Federal Grant
12 and Cooperative Agreement Act of 1977", Public Law
13 95-224, to provide for the conduct of the demonstration
14 project, without transfer to the United States of title to
15 the high level liquid wastes or to the project site, and
16 for the following activities:

17 (A) demonstration of vitrification technology
18 or technologies which can be replicated for other
19 applications in the United States;

20 (B) submission jointly by the Department of
21 Energy and the State of New York of an applica-
22 tion for a licensing amendment as soon as possi-
23 ble with the Nuclear Regulatory Commission pro-
24 viding for the demonstration;

1 (C) application of the Atomic Energy Act of
2 1954, as amended, and the Energy Reorganiza-
3 tion Act of 1974, as amended, to all aspects of the
4 demonstration project; and

5 (D) conduct of other activities at the project,
6 as determined to be appropriate by the Secretary,
7 to protect public health and safety and to be in
8 the national interest regarding the safe manage-
9 ment of nuclear wastes in the United States.

10 SEC. 3. There is authorized to be appropriated to the
11 Secretary not more than \$5,000,000 for the fiscal year
12 ending September 30, 1980, for the project. Funds author-
13 ized and appropriated in subsequent fiscal years for the proj-
14 ect shall not be used by the Secretary for such purpose until
15 the Secretary, the State of New York, and other appropriate
16 persons enter into such contracts and agreements as may be
17 required—

18 (a) to provide for the transfer of title of such
19 wastes and the payment therefor;

20 (b) (a) to enable the Secretary to utilize property
21 and facilities at the Center for the project,

22 (c) (b) to share the costs of the project, except
23 that the non-Federal share of such costs shall be lim-
24 ited to no more than 10 per centum thereof and in de-
25 termining such share the Secretary shall consider the

1 utilization of such Center by the Secretary for the proj-
2 ect, the amount of money in the existing perpetual care
3 fund originally designated to provide, for ultimate dis-
4 position of the high-level liquid nuclear waste at the
5 Center, and such other factors as the Secretary deems
6 appropriate, and

7 ~~(d)~~ (c) to otherwise provide for the conduct of the
8 project in a timely manner.

9 SEC. 4. In carrying out the project, the Secretary shall
10 consult with the Nuclear Regulatory Commission, the Ad-
11 ministrator of the Environmental Protection Agency, the
12 Secretary of Transportation, the Director of the Geological
13 Survey, the State of New York, and the commercial operator
14 of the Center.

15 SEC. 5. Not later than February 1, 1981, and on Febru-
16 ary 1 of each calendar year thereafter during the term of the
17 project, the Secretary shall transmit to the Committee on
18 Science and Technology, the Committee on Interior and In-
19 sular Affairs, and the Committee on Interstate and Foreign
20 Commerce of the House of Representatives and the Commit-
21 tee on Energy and Natural Resources of the Senate an up-to-
22 date report containing a detailed description of the activities
23 of the Secretary in carrying out the project, including the
24 costs incurred, and the activities to be taken in the next fiscal
25 year and the costs thereof. Any contract or agreement ex-

1 ecuted under ~~section~~ *sections 2 and 3* of this Act, together
2 with summaries thereof, shall be promptly transmitted to
3 such committees for their information and review.

4 SEC. 6. Other than the costs and responsibilities estab-
5 lished by this Act for the project, nothing in this Act shall be
6 construed as affecting any rights, obligations, or liabilities of
7 the commerical operator of the Center, the State of New
8 York, or any person, as is appropriate, arising under the
9 Atomic Energy Act of 1954 or under any other law, con-
10 tract, or agreement for the operation, maintenance, or decon-
11 tamination of any facilities or property at the Center or for
12 any wastes at the Center. Nothing in this Act shall be con-
13 strued as affecting any applicable licensing requirements of
14 the Atomic Energy Act of 1954 or the Energy Reorganiza-
15 tion Act of 1974. The provisions of this Act shall not apply
16 or be extended to any facilities or property at the Center
17 which is not used in conducting the project.

WEST VALLEY DEMONSTRATION PROJECT ACT

MAY 20 (legislative day, JANUARY 3), 1980.—Ordered to be printed

Mr. JACKSON, from the Committee on Energy and Natural Resources,
submitted the following

REPORT

[To accompany S. 2443]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2443) to authorize the Department of Energy to carry out a high-level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York having considered the same, reports favorably thereon with amendments to the text and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 3, lines 1 to 6, strike subsection 2(b)(3) and insert in lieu thereof the following:

(3) Shall enter into a cooperative agreement with the State of New York pursuant to the "Federal Grant and Cooperative Agreement Act of 1977", Public Law 95-224, to provide for the conduct of the demonstration project, without transfer of title to the United States to the high level liquid wastes or to the project site, and for the following activities:

"(A) demonstration of vitrification technology or technologies which can be replicated for other applications in the United States;

"(B) submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration;

"(C) application of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, to all aspects of the demonstration project; and

"(D) conduct of other activities at the project, as determined to be appropriate by the Secretary, to protect public

health and safety and to be in the national interest regarding the safe management of nuclear wastes in the United States."

2. On page 3, lines 15 to 16, strike subsection 3(a) and renumber subsections 3(b), 3(c), and 3(d) as subsections 3(a), 3(b), and 3(c) respectively.

3. On page 4, line 23, strike the word "section" and insert in lieu thereof the words "sections 2 and".

PURPOSE OF THE MEASURE

The purpose of the measure is to authorize the Department of Energy to carry out a high-level, liquid nuclear waste management demonstration project at the Western New York Center in West Valley, New York.

SUMMARY OF MAJOR PROVISIONS

The bill directs the Secretary of Energy to carry out a project to solidify the high-level nuclear waste currently stored in tanks at the Western New York Service Center in West Valley, New York. The Secretary is also directed to transport such solidified waste to a long-term Federal repository and to decontaminate facilities used in the project. With the \$5 million authorized to be appropriated in Fiscal Year 1980 the Secretary is to prepare a plan for the safe removal and immobilization of the waste. The Secretary is to enter into contracts and cooperative agreements to permit the joint conduct with the State of New York of the cost-shared project.

BACKGROUND AND NEED

In November 1978, the Department of Energy submitted to the Congress the Western New York Nuclear Service Center Study, which was prepared pursuant to Section 105 of Public Law 95-238. The following paragraphs are excerpted from the History contained in that report:

A stated purpose of the Atomic Energy Act of 1954 was to promote "wide-spread participation in the development and utilization of atomic energy for peaceful purposes." The Atomic Energy Commission (AEC) actively encouraged private industry to enter the field of nuclear power. By the end of 1955, the AEC concluded agreements for the first few demonstration power reactors.

In 1954, the AEC began a program to encourage private participation in the reprocessing of irradiated nuclear fuel as part of its program to commercialize the entire nuclear fuel cycle. To have commercial reprocessing services available for the first irradiated fuel in 1961, the AEC offered to make available the reprocessing technology developed for the defense program.

In 1959, New York State's interest in attracting atomic development culminated in the formation of the Office of Atomic Development (OAD) as an independent agency responsible for coordination of atomic regulatory and develop-

ment functions within the State. To encourage nuclear development the OAD acquired the West Valley site in 1961, which became designated the Western New York Nuclear Service Center (WNYNSC). The purpose of the Center was to store nuclear fuels and radioactive wastes and to be available for related industrial development.

The Davison Chemical Co. was sufficiently encouraged by the developments in the late 1950's to consider the feasibility of constructing a reprocessing facility. In 1961, Davison expressed interest in operating the WNYNSC. In January 1962, Davison outlined its plans to the AEC for constructing a private reprocessing plant. To pursue the reprocessing venture, Davison set up Nuclear Fuel Services, Inc. (NFS), whose stock was owned by the W. R. Grace Co. (78 percent) and American Machine and Foundry (22 percent). NFS, in its proposal, indicated its willingness to provide and maintain storage for a limited period of time for the high-level liquid wastes (HLLW) resulting from the reprocessing operations. Subsequently, the wastes would become the responsibility of the AEC. NFS also said it was willing to collect and return to the AEC an amount calculated to provide the estimated full costs for perpetual storage at the point of turnover. NFS was simultaneously negotiating to make New York State responsible for perpetual care of the wastes. The proposed, and eventually approved, method of waste disposition was to store them in liquid form in underground storage tanks, similar to the method being used at AEC production facilities.

During the following years, a complex series of negotiations took place among the AEC, NFS, and OAD. In 1962, the OAD became the New York Atomic Research and Development Authority (NYARDA). These negotiations culminated in four contractual agreements. NFS entered into a contract with the AEC under which the AEC would provide a baseload for the first five years of the reprocessing plant operation. NFS also entered into three contracts with NYARDA: (1) a lease for the WNYNSC; (2) a facilities contract under which NFS would build storage facilities for nuclear fuel and radioactive wastes; and (3) a waste storage agreements which provided the terms for NFS to maintain the wastes for a period of time, limited by the duration of the lease, thereafter, turning them over to NYARDA along with a fund for perpetual care. New York State through NYARDA provided assurance (as amendment No. 1 to the Application for License) to the Federal Government that the State would be responsible for the wastes in perpetuity.

In May 1963, the AEC issued a permit authorizing construction of the NFS plant. Construction was completed in early 1966, and on April 19 of that year, the AEC issued a license to NFS for operation of the first commercial nuclear fuel reprocessing plant.

On November 14, 1970, the AEC amended its regulations (10 CFR 50, Appendix F) to require that high-level liquid wastes generated at licensed fuel reprocessing facilities be

solidified within five years after separation, and shipped to a Federal repository within ten years after separation. The existing NFS wastes were specifically excepted from these regulations pending a future rule-making proceeding by the AEC. The Nuclear Regulatory Commission (NRC), since 1974 the successor to the regulatory arm of the AEC, is still in the process of making this rule.

From 1966 to 1972, about 640 metric tons (MT) of nuclear fuel were processed at the WNYNSC. Approximately 380 MT of AEC's production reactor and 100 MT of commercial reactor fuel were supplied under the baseload contract. The remainder was supplied directly to NFS by public utilities. In 1972, the plant was shut down to expand its capabilities and to make modifications to reduce radioactive effluents and radiation exposure levels to plant personnel. At the time, NFS estimated this modification program would cost about \$15 million and take two years to complete.

The proposed modification program involved a significant alteration, as determined by the AEC, of a licensed facility and, therefore, required a complete licensing review. This included review of the plant's ability to mitigate the consequences of natural phenomena (earthquakes and tornadoes). When the NFS facilities were constructed, the need to withstand certain natural phenomena was recognized and the facilities were built to the specifications of the Uniform Building Code for earthquake zone 3. These were construction specifications which did not require that the ability of the plant too withstand a certain magnitude of earthquake be demonstrated. However, during the licensing review, the AEC stipulated that new facilities must also be able to withstand the effects of the highest magnitude tornado that can be expected to occur at least once in ten million years and the highest magnitude earthquake that can be expected to occur at least once in one million years. AEC also requested that NFS assess the capability of the existing structures to withstand these phenomena. By 1976, NFS judged that over \$600 million would be required to complete the proposed modification program if these and other criteria, actively being considered at the time, were imposed.

In April 1976, NFS notified the New York State Energy Research and Development Authority (NYSERDA), the successor to NYARDA, of its intention to exercise its right under the Waste Storage Agreement to surrender the responsibility for all wastes at the WNYNSC to NYSERDA. On September 22, 1976, NFS announced its decision to withdraw from the nuclear fuel reprocessing business, citing rising costs and uncertain regulatory requirements as key factors. The biggest reason was stated to be a "drastic increase" in the seismic criteria for the plant. On November 30, 1976, NYSERDA advised the Federal Government that ownership of the WNYNSC and responsibility for its contents should, in their opinion, be transferred to the Energy Research and Development Administration.

While there is no current threat to the public health and safety from the storage of the commercial high-level nuclear waste in tanks at the Western New York Nuclear Service Center, there is historical precedent for carbon steel tanks to develop leaks after they have been in use a number of years. Thus the West Valley tanks constitute a potential for uncontrolled migration of the high-level nuclear waste at some future date. It is therefore timely to begin consideration of how to solidify these high-level commercial nuclear waste. Since these commercial nuclear wastes are stored at a commercially-owned facility on land leased from the State of New York with responsibility for the long-term management of the waste vested in the State of New York (after expiration of the lease), the solidification of these commercial nuclear wastes might be delayed for a considerable period of time prior to resolution of the source of funding to put the waste into a form suitable for disposal in a long-term Federally operated repository. Since a full-scale demonstration facility for solidifying high-level nuclear waste has never been operated in the United States, there is a potential for significant technical knowledge to be gained from such a project in addition to licensing information which would be obtained if such a demonstration facility were to require licensing. On this basis the Federal government should derive sufficient benefit to pay 90 percent of the cost associated with this solidification demonstration project. This bill gives the Department of Energy the requisite authority and direction to enter into such a demonstration project based on a cooperative agreement with the State of New York as specified in the bill and subject to future authorization and appropriation acts.

LEGISLATIVE HISTORY

Section 105 of Public Law 95-238 required the Secretary of Energy to prepare a report on options available for the decommissioning or the further use of the Western New York Nuclear Service Center. The text of section 105 is as follows:

Sec. 105. (a) The Administrator of the Energy Research and Development Administration shall prepare and submit to the Congress within one year after the date of the enactment of this Act a study, which considers the available options, including, but not limited to—

(1) Federal technical and financial aid in support of decommissioning high level waste disposal operations at the Western New York Nuclear Service Center;

(2) Federal operation of the Western New York Nuclear Service Center for the purposes of decommissioning existing facilities and disposing of existing high level wastes, including a demonstration program for the solidification of high level wastes for permanent burial;

(3) permanent Federal ownership of and responsibility for all or part of the Western New York Nuclear Service Center, and Federal receipt of the license from the present co-licensees; and

(4) use of the Western New York Nuclear Service Center for other purposes.

(b) Preparation of such study shall be in cooperation with the Nuclear Regulatory Commission and other Federal agencies, the State of New York, the industrial participants, and the public, and the Administrator shall conduct informational public hearings (in lieu of any formal administrative hearings) prior to completion of the study. The study shall recommend allocation of existing and future responsibilities among the Federal Government, the State of New York, and present industrial participants in the Western New York Nuclear Service Center.

(c) Ninety days prior to submission of the study to the Congress the Administrator shall release the proposed study for comment by interested parties, and such comments as are received shall be submitted as attachments to the final study submitted to the Congress.

(d) Nothing in this section shall be construed as intending to commit the Federal Government to any new assistance or participation in the Western New York Nuclear Service Center, nor as relieving any party of any duties or responsibilities under any law, regulation, or contract to provide for the safe storage of nuclear waste.

(e) For the purpose of carrying out the provisions of this section there is included in subsection 101(20) of this Act authorization of appropriations in the amount of \$1,000,000.

As a result of the DOE report which was submitted in February, 1979, Section 107(B)(3) was added to H.R. 3000 (FY 1980 DOE Authorization for Civilian Programs) as an amendment adopted in the House Committee on Science and Technology. However, H.R. 3000 was not enacted. Again this year the House Committee on Science and Technology adopted an amendment for a West Valley Demonstration Project in H.R. 6627.

In 1979, the Senate approved a Nuclear Waste Demonstration Project at West Valley in Section 308 of S. 673, the DOE National Security and Military Application of Nuclear Energy Authorization Act of 1980. Section 308, however, was deleted in the committee of conference, because it was considered to be a program which should be funded for civilian waste management.

On March 19, 1980, Senators Moynihan and Javits introduced S. 2443, the West Valley Demonstration Project Act. The bill was discussed as part of the hearings on the nuclear energy programs with S. 2443, the DOE Authorization Act for Fiscal Year 1981—Civilian Applications.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 14, 1980, by unanimous vote with a quorum present, recommends that the Senate pass S. 2443 as amended, as described herein.

COMMITTEE AMENDMENTS

The Committee adopted an amendment and approved conforming amendments to the bill as introduced. The bill before the Committee provided that the United States should take title to the high-level

nuclear waste stored at the Western New York Service Center upon payment of an appropriate fee, as determined by the Secretary, for the perpetual care and maintenance of such waste. An amendment was offered to strike section 2(b) (3) and insert a new text. The new text requires the Secretary to enter into a cooperative agreement with the State of New York pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224).

Public Law 95-224 limits a cooperative agreement to the provision of federal funding, assistance, and other support without the federal government taking title to or direct responsibility for any property or real estate in a demonstration project. The amendment requires the cooperative agreement to provide for the conduct of the demonstration project without transfer to the United States of title to the high-level nuclear waste or to the project site. The cooperative agreement is also to provide for the demonstration of vitrification technology or technologies which can be replicated for other applications in the United States.

If necessary for conduct of the demonstration project the Secretary, pursuant to the cooperative agreement, is to submit, with the State of New York, an application to the Nuclear Regulatory Commission for a licensing amendment to the license held by Nuclear Fuel Services. The cooperative agreement is to provide for application of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, to all aspects of the demonstration project. Further, the cooperative agreement is to provide for the conduct of other activities at the project as determined by the Secretary to be appropriate to protect the public health and safety and to be in the national interest regarding the safe management of nuclear waste in the United States.

The intent of the Committee in adopting this amendment is to insure that a joint activity is pursued by the State of New York and the Department of Energy to immobilize the commercial wastes. The Committee believes that it is not desirable to relieve completely the parties currently responsible for the wastes from future involvement in the project by enactment of this legislation. The intent is not to transfer title of the waste or any facilities at the Western New York Service Center to the federal government at this time.

Conforming amendments were necessary in section 3(a), which was stricken, and in section 5 by inserting reference to section 2 in the last sentence of such section.

SECTION-BY-SECTION ANALYSIS

Section 2. Subsection (a) directs the Secretary to carry out subject to this Act a demonstration project at the Western New York Service Center to vitrify or to solidify with the most effective technology high-level nuclear waste stored at such Center in tanks. The Secretary is also directed to transport the solidified waste to a long-term federal repository and to decommission facilities used in the demonstration project.

In subsection (b) the Secretary is directed to prepare a plan for removing the high-level waste from storage tanks and to identify immobilization and waste handling techniques, including initiation of related engineering design, cost estimates, safety analyses, and environ-

mental impact analyses. Subsection (b) further directs the Secretary to enter into a cooperative agreement with the State of New York for the conduct of the demonstration project. In keeping with Public Law 95-224, title to the high-level waste and to the project site is not to be transferred to the United States. The cooperative agreement is to provide for:

- (1) demonstration of waste solidification technology which can be replicated for other applications;
- (2) if required by law, submission of a joint licensing amendment with the State of New York to the NRC;
- (3) observance of applicable federal law; and
- (4) conduct of other activities at the Project as determined by the Secretary.

Section 3. This Section authorizes \$5 million for Fiscal Year 1980. Expenditure of such funds by the Secretary must be preceded by contracts and agreements to enable the Secretary to utilize property and facilities at the Center for the project, to share the cost of the project with a limit of not more than 10 per centum for the non-federal share, and to provide otherwise for the timely conduct of the project. The Committee notes that the provisions of the Uranium Mill Tailings Radiation Control Act of 1978 provides for a 90/10 federal/non-federal cost sharing for the cleanup of radioactive hazards resulting from commercial nuclear activities and may be a useful precedent.

Section 4. Section 4 directs the Secretary in the conduct of the project to consult with certain other federal agencies, the State of New York, and the commercial operator of the Center. The Committee intends that the Secretary, however, have the decision authority among federal agencies except as limited elsewhere by law.

Section 5. Section 5 requires the Secretary to submit an up-to-date report to the Congress annually during the project, including a detailed description of activities. The Committee specifically directs that the Secretary, in keeping with the practice related to all construction projects, submit a Schedule 44 form for this Plant and Capital Equipment Project. This submission is to include a total estimated cost at the time of completion of the project, including estimated date of completion and all ancillary costs associated with the project. This submission should be forthcoming at the earliest possible date but in no event later than completion of the detailed engineering design. The Committee intends that the project will be conducted in a manner to ensure reasonable costs consistent with applicable law and regulation.

Section 6. This Section provides that nothing in this Act shall be construed to affect any rights, obligations, or liabilities of any party under any legal instrument relating to the Center or any waste at the Center. The Section further disclaims any effect on applicable licensing requirements pursuant to the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. The provisions of this Act are not intended to extend to any facilities or property at the Center which are not used in the conduct of the project. However, they are not intended to prevent the Secretary from entering into cooperative agreements and contracts for other use of facilities at the Center.

COST AND BUDGETARY CONSIDERATION

In compliance with section 403 of the Budget Reform Act, the Congressional Budget Office has furnished the following estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 15, 1980.

HON. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate,
Dirksen Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2443, the West Valley Demonstration Project Act, as ordered reported by the Senate Committee on Energy and Natural Resources, May 14, 1980. This bill authorizes the Secretary of Energy to demonstrate the vitrification of high-level liquid nuclear waste at the Western New York Service Center in West Valley, New York. The project must also include transporting the solidified waste to a long-term storage site and decontaminating equipment used in the project. By the end of fiscal year 1980, the Secretary must prepare a plan for the safe handling and removal of the waste, enter into a cooperative agreement with the State of New York for conducting the project, and submit jointly with the State an application for licensing to the Nuclear Regulatory Commission. The bill authorizes the appropriation of \$5 million for the project for fiscal year 1980. Because this amount has already been appropriated for 1980, this bill would result in no additional cost to the government.

Sincerely,

C. G. NUCKOLS
(For Alice M. Rivlin, Director).

REGULATORY IMPACT EVALUATION


In compliance with paragraph 11 (b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2443.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals or businesses. Other than studies and corresponding reports to the President and to Congress, little if any additional paperwork would result from enactment of S. 2443.

EXECUTIVE COMMUNICATION

The committee received no executive communication on bill S. 2443.

CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by bill S. 2443, as ordered reported. 

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