APPENDIX A

SPECIFIC LEGAL REQUIREMENTS THAT APPLY TO WEST VALLEY WASTE MANAGEMENT ACTIVITIES

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This appendix includes copies of the original West Valley Demonstration Project Act and the original Stipulation of Compromise settlement, as filed with the U.S. District Court for the Western District of New York.

WEST VALLEY PROJECT DEMONSTRATION ACT

PUBLIC LAW 96-368 [S. 2443]; October 1, 1980

WEST VALLEY DEMONSTRATION PROJECT ACT

For Legislative History of this and other Laws, see Table 1, Public Laws and Legislative History, at end of final volume

An Act 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,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

West Valley Demonstration Project Act. 42 USC 2021a note.

SECTION 1. This Act may be cited as the "West Valley Demonstration Project Act".

42 USC 2021a note.

SEC. 2. (a) The Secretary shall carry out, in accordance with this Act, a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

Activities.

(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

(4)The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

(5) The Secretary shall decontaminate and decommission—

(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

(B) the facilities used in the solidification of the waste, and

(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

Hearings.

(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

94 STAT. 1347

(3) The Secretary shall—

(A) undertake detailed engineering and cost estimates for the project,

(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques,

(C) conduct appropriate safety analyses of the project, and

(D) prepare required environmental impact analyses of the project.

41 USC 501 note.

(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 under which the State will carry out the following:

(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

(B) The Secretary shall provide technical assistance in securing required license amendments.

State costs, percentage.

(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

Licensing amendment application.

(D) 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) Within one year from the date of the enactment of this Act, the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project: *Provided,* That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law. The agreement shall provide for the following:

42 USC 2011 note.
42 USC 5801 note.

(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secre-

Publications in Federal Register

tary does not revise the plan to meet objections specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

(3) 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 project.

Reports and other information to Commission.

(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the Geological Survey, and the commercial operator of the Center.

Consultation with EPA and others.

SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

Appropriation authorization. 42 USC 2021a note.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(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. 4. Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up-to-date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

Report to Speaker of the House and President pro tempore of the Senate. 42 USC 2021a note.

Sec. 5. (a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

42 USC 2021a note.

42 USC 2011 note.

42 USC 5801 note.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

SEC. 6. For purposes of this Act

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

Definitions. 42 USC 2021a note.

(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 such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.

(5) 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.

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

42 USC 2014.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

Approved October 1, 1980.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COALITION ON WEST VALLEY NUCLEAR WASTES & RADIOACTIVE WASTE CAMPAIGN,	:	
	:	CIVIL NO. 86-1052-C
Plaintiffs,	:	
-V-	:	STIPULATION OF COMPROMISE SETTLEMENT
DEPARTMENT OF ENERGY, UNITED STATES OF' AMERICA,	:	
Defendant	:	

WHEREAS plaintiffs have filed this action challenging certain proposed actions of the United States Department of Energy relating to the disposal of low-level radioactive wastes generated from the solidification of high-level radioactive waste, and

WHEREAS plaintiffs and the defendant have met during the course of this litigation in an attempt to resolve through compromise the issues raised in the litigation, and

WHEREAS plaintiffs maintain that the defendants "Finding of No Significant Impact" dated August 6, 1986, which supported approval of disposal of certain radioactive wastes in two facilities situated at the Western New York Nuclear Service Center in West Valley, New York, should be annulled as contrary to the National Environmental Policy Act in that an Environmental Impact Statement (EIS) should have been prepared beforehand, and that

certain radioactive wastes which the defendant intends to dispose of are not "low-level wastes" but are instead "transuranic wastes" and that an EIS should be prepared by a date certain and that judicial review is necessary for other reasons as well, and

WHEREAS the defendant maintains that the Environmental Assessment undertaken which ultimately resulted in a Finding Of No Significant Impact proceeded in a manner within all statutory mandates of the National Environmental Policy Act and the guidelines promulgated thereunder, including those promulgated by the Council on Environmental Quality,

WHEREAS the defendant during discussions with plaintiffs, has made representations to the plaintiffs based on preliminary evaluations done by the defendant in good faith, which the plaintiffs utilized in arriving at this settlement. Those representations are as follows:

a. should the Class B/C wastes have to be moved from the existing emplacement as a result of the Environmental Impact Statement, it is estimated that there would be minimal occupational radiation doses associated with such potential future movement of the stored Class B/C wastes which would be further evaluated during the Environmental Impact Statement process; and

b. the defendant estimates that the costs of construction at the tumulus location for emplacement purposes is approximately $2,000,000 and the costs of converting the storage facility into a tumulus as approved by defendant is approximately $18,000,000.

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WHEREAS, each of the parties is desirous of resolving this lawsuit so that one of the foremost objectives of the West Valley Demonstration Project Act can be met, that is, the immobilization of the liquid high-level radioactive waste located at the Western New York Nuclear Service Center (hereinafter referred to as "Center"), and

WHEREAS, the parties desire to avoid extended litigation and concomitant delay to the West Valley Demonstration Project and the parties further desire to advance the best interests of the public health and safety in light of the high-level nuclear wastes located at the Center, now

IT IS HEREBY STIPULATED AND AGREED by and between the the plaintiffs, Coalition on West Valley Nuclear Wastes & Radioactive Waste Campaign, and the defendant, United States of America and the United States Department of Energy, by and through their respective attorneys as follows:

1. As used herein, the term "defendant" shall mean the United States of America and the United States Department of Energy and the term "plaintiffs" shall mean the Coalition on West Valley Nuclear Wastes and the Radioactive Waste Campaign.

2. The parties acknowledge that this agreement shall not constitute an admission of liability or fault on the part of the plaintiffs or the defendant or on the part of their agents,

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contractors or employees: this agreement is being entered into so that the best interests of the public and their health and safety can be served by the expeditious solidification of the high-level radioactive wastes located at the Western New York Nuclear Service Center and by the transport of said waste' to an appropriate federal repository for permanent disposal-in accordance with provisions of he West Valley Demonstration Project Act, Public Law 96-368. The procedures and actions set forth in the provisions of this agreement shall in force and in effect supersede the "Finding of No Significant Impact [FONSI] for Disposal of Project Low Level Wastes", dated August 6, 1986.

3. The Department of Energy had planned to prepare an Environmental Impact Statement concerning closure for the post-solidification phase of the project. The defendant hereby agrees that the scope of that Environmental Impact Statement shall include the following:

a. Disposal of those Class A wastes generated as a result of the activities of the Department of Energy at the West Valley Demonstration Project as mandated by the United States Congress under the West Valley Demonstration Project Act. However, in lieu of undertaking such an EIS, the defendant reserves the right to:

i. dispose of the Class A wastes in accordance with applicable law at a site other than the Center; or

ii. evaluate disposal of those Class A wastes in a separate EIS; or

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iii. seek and obtain Nuclear Regulatory Commission (NRC) review and approval of any proposed disposal methodology for such Class A wastes at the Center.

b. The disposal of those Class B/C wastes generated as a result of the activities of the Department of Energy at the West Valley Demonstration Project as mandated by the United States Congress under the West Valley Demonstration Project Act.

4. The parties hereby agree that the closure Environmental Impact Statement process -- including the scoping process -- shall begin no later than 1988 and that this process shall continue without undue delay and in an orderly fashion consistent with applicable law, the objectives of the West Valley Demonstration Project, available resources and mindful of the procedural processes (including public input) needed to complete the aforesaid Environmental Impact Statement. The defendant agrees to provide a six (6) month public comment period for the draft EIS.

5. Pending such Environmental Impact Statement, the plaintiffs withdraw and waive any objection or claim concerning immobilization of the Class B/C wastes in a cement form consistent with the applicable Nuclear Regulatory Commission "Technical Position on Waste Form, May 1983, Rev. 0".

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6. The plaintiffs withdraw and waive any objection or claim concerning the placement of the solidified Class B/C wastes in the "RTS Drum Cell" already under construction at the West Valley Demonstration Project pending a determination of the disposal of these solidified Class B/C wastes as a result of the Environmental Impact Statement. The Class A and Class B/C wastes shall be retrievably and temporarily stored pending the EIS or in the case of Class A wastes until fulfillment of the alternative disposal provisions under paragraph 3(a), supra.

7. The parties agree that for consideration of any on-site disposal, the defendant in the EIS shall evaluate erosion impacts and erosion control impacts and the need for erosion control measures.

8. While this agreement will not in and of itself subject the Department of Energy to formal NRC procedures, nor to actions required by law for licensed activities, it is hereby agreed that every good-faith effort shall be made to evaluate the site and the design(s) relative to the provisions of 10 C.F.R. S61.50 and s61.51. Similarly, if the Class B/C waste form does not satisfy or meet otherwise applicable NRC regulations and guidelines at the time of the draft Environmental Impact Statement, the defendant agrees that the scope of the Environmental Impact Statement shall

evaluate reasonable additional site suitability and disposal facility design safeguards to provide reasonable assurance that exposures to humans are within regulatory limits and guidelines established by the NRC.

9. The defendant agrees to hold and undertake meetings on a quarterly basis at a location at or near the West Valley Demonstration Project site to which members of the local geographical, educational, scientific and political communities -- including plaintiffs -- shall be invited, so that the defendant can advise such participants of the status of the Environmental Impact Statement process including current results and in order to receive public comment. The meetings shall commence during or prior to the EIS scoping process.

10. The defendant agrees to make available to the plaintiffs at the West Valley Demonstration Project Public Reading Room for public inspection upon reasonable notice, at reasonable hours and without a search charge, those documents requested with reasonable specificity which are reasonably related to the preparation of the EIS for the West Valley Demonstration Project including background information which would be available under a Freedom of Information Act request to the Department of Energy in accordance with the provisions of that Act. Should any person wish to have

copies, they may have such at nominal charges provided for under the Freedom of Information Act.

11. The defendant agrees to expeditiously seek and abide by a determination or prescription provided for under the West Valley Demonstration Project Act from the Nuclear Regulatory Commission (NRC) as to whether waste material (other than high-level waste) intended for disposal by the Department of Energy in conjunction with the West Valley Demonstration Project which waste material contains elements having an atomic number greater than 92 in concentrations greater than ten (10) nanocuries per gram but less than or equal to 100 nanocuries per gram, are transuranic wastes or low level wastes within the meaning of the West Valley Demonstration Project Act, Public Law 96-368 for disposal at the Center. For disposal at locations other than the Center, such disposal will be in accordance with applicable law. This determination or prescription shall be binding upon all parties except that plaintiffs reserve their right to seek judicial review of such determination or prescription of the Nuclear Regulatory Commission to the extent that such determination or prescription is arbitrary and capricious, an abuse of discretion or otherwise reviewable as not in accordance with the law.

12. The parties agree that this agreement shall fully and finally settle all the claims set forth in the Complaint and shall

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be binding upon the plaintiffs for themselves, their successors or assigns and shall release the defendant of liability for all those claims set forth in the Complaint. However, such release is conditioned upon compliance with the terms of this agreement. Additionally, it is expressly acknowledged that this agreement is designed to ensure that an EIS process is undertaken in accordance with the terms of this agreement and consistent with applicable law. However, the plaintiffs reserve all their rights to challenge the contents of any EIS under applicable law once the EIS process is completed.

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SO ORDERED:

HONORABLE JOHN T. CURTIN
UNITED STATES DISTRICT JUDGE

Dated: May 27, 1987.