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LEGISLATIVE HEARING ON:

H.R. 2278, THE RESPONSIBLE DISPOSAL REAUTHORIZATION ACT OF 2017;

AND H.R. 2389, TO REAUTHORIZE THE WEST VALLEY DEMONSTRATION

PROJECT AND FOR OTHER PURPOSES

FRIDAY, MAY 18, 2018

House of Representatives,

Subcommittee on Environment,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:00 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, McKinley, Johnson, Flores,

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Walberg, Duncan, Tonko, and Green.

Staff Present: Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant; Kelly Collins, Legislative Clerk, Energy and Environment; Margaret Tucker Fogarty, Staff Assistant; Jordan Haverly, Policy Coordinator, Environment; Zach Hunter, Director of Communications; Mary Martin, Chief Counsel, Energy and Environment; Drew McDowell, Executive Assistant; Peter Spencer, Senior Professional Staff Member, Energy; Austin Stonebraker, Press Assistant; Everett Winnick, Director of Information Technology, Priscilla Barbour, Minority Energy Fellow; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Jourdan Lewis, Minority Staff Assistant; Alexander Ratner, Minority Policy Analyst; Tuley Wright, Minority Energy and Environment Policy Advisor; and Catherine Zander, Minority Environment Fellow.

Mr. Shimkus. The Subcommittee on the Environment will now come to order.

The chair will recognize himself for 5 minutes for an opening statement.

Thank you for joining us at this morning's hearing to review legislation to reauthorize two projects within the Department of

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Energy's portfolio of environmental remediation activities.

I am pleased to report that last week, the House overwhelmingly passed the Nuclear Waste Policy Amendments Act of 2018. This long-overdue legislation provides a disposal path for commercial spent nuclear fuel and our Nation's defense high-level radioactive waste. This defense waste material requires the most careful handling and the most stringent isolation requirements in the Federal Government's inventory. However, extensive decontamination work remains to be accomplished across the country at DOE sites.

DOE's Office of Environmental Management faces a significant workload to complete decontamination work at legacy Cold War sites. Since its establishment about 30 years ago, Environmental Management has successfully remediated 92 sites, but the most technologically challenging projects remain in process at 17 locations.

This morning, Mr. Mark Gilbertson will represent the Department on issues addressed in the legislature proposals. Since this committee last discussed the critical programs under the Office of Environmental Management, the Department has welcomed a new Assistant Secretary, Anne White. We look forward

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to working with Assistant Secretary White on the rest of the Environmental Management's portfolio.

Our hearing today will discuss one of the Department's unique projects. During the early years of our Nation's civilian nuclear industry, New York State leased land to a private entity to demonstrate the feasibility of reprocessing spent nuclear fuel. The legacy cleanup at the site, known as West Valley Demonstration Project, is jointly overseen by DOE and the New York State Energy Research and Development Authority, on behalf of New York State.

Prior to his election to Congress, the ranking member of this subcommittee, Mr. Tonko, was the president and CEO of NYSERDA -- NYSERDA. I look forward to the unique perspective and the interests he brings to this morning's hearing based on his previous experience.

In 1980, Congress passed the West Valley Demonstration Project Act to direct DOE to partner with New York to address legacy environmental issues, and authorized \$5 million to spend on this project for fiscal year 1981. The project has not been reauthorized since, and Congressman Reed's bill provides Congress a chance to review the project. The lingering question of how to dispose of the high-level radioactive waste, which was generated

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prior to passage of the Nuclear Waste Policy Act, is an important one that needs further examination.

I welcome my colleague here this morning, and thank Mr. Reed whenever he shows up, for his leadership on behalf of his constituents to bring attention to ongoing issues at the West Valley site.

DOE will provide context regarding key upcoming milestones and remaining challenges at the West Valley site, while NYSDORA will give a voice to the New York State government. These respective viewpoints provide this subcommittee important information as Congress considers the next steps at the site.

We will also receive testimony on a bipartisan bill sponsored by Congressman Tipton to extend the authorization of the Grand Junction, Colorado, disposal cell. Mining and processing uranium generate a byproduct known as uranium mill tailings. Congress passed the Uranium Mill Tailings Radiation Control Act 4 years ago to establish a framework for DOE to dispose of mill tailings. The bill also authorized the Grand Junction, Colorado, site to serve as a disposal location.

H.R. 2278, the Responsible Disposal Reauthorization Act, extends the site's authorization for another 25 years. The

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proactive reauthorization exemplifies the foresight needed for these disposal sites to plan accordingly.

I am pleased to hold the hearing today, and I look forward to the testimony.

And with that, I have a minute remaining. Does anyone seek the rest of my time?

Seeing none, the chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

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Mr. Tonko. Thank you, Mr. Chair.

And, first, let me welcome our colleague from New York, Mr. Reed, to discuss his bill on the West Valley Demonstration Project. Thank you for your interest, Tom. It is an important part of the energy concept in New York and environmental concerns.

I also want to welcome our other witnesses, Mark Gilbertson of DOE's Office of Environmental Management, and Noah Shaw, who I am proud to say is representing my former employer, the New York State Energy Research and Development Authority. NYSERDA is, I think, a great collection of consummate professionals. Thank you, Noah, for being part of that and for the legal expertise you provide and for your commitment to West Valley. It is incredibly important.

Thank you both for joining us for this legislative hearing on two bills: H.R. 2278, the Responsible Disposal Reauthorization Act of 2017; and H.R. 2389, to reauthorize the West Valley Demonstration Project.

While this committee, under the leadership of Chair Shimkus, has made progress in addressing some of our Nation's most significant nuclear waste challenges, a number of outstanding issues remain.

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DOE's Office of Environmental Management was established to remediate sites contaminated with high-level radioactive waste, spent nuclear fuel, excess uranium and plutonium, and contaminated soil and groundwater. These sites located across the country are dealing with the legacy of our Nation's entry into the atomic age.

The Uranium Mill Tailings Radiation Control Act established a process for remediating an active uranium or processing sites, such as the site in Grand Junction, Colorado. H.R. 2278 would authorize DOE to continue to operate the Cheney Disposal Cell until September 30 of 2048, or until the disposal cell is filled to capacity. Currently, DOE is authorized to operate this cell through September of 2023.

I want to give some additional attention to Mr. Reed's legislation. The bill authorizes some \$75 million for the West Valley Demonstration Project for fiscal years 2017 through 2026. This is identical to the amount appropriated in fiscal year 2018, and will ensure the cleanup will continue on schedule. But West Valley is a unique site. Its history is unlike other properties, and this has caused the point of disagreement between the relevant stakeholders for decades, which is addressed in the other provision of H.R. 2389.



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From 1966 through 1972, the Western New York Nuclear Service Center was the only privately-owned facility for spent nuclear fuel reprocessing in the United States. When that business ceased operating, the site eventually reverted back to its owner, New York State. And, of course, DOE's predecessor, the Atomic Energy Commission, was intimately involved in the operation of the site.

Approximately 60 percent of the spent nuclear fuel reprocess at the site came from Hanford, and 80 percent of the recovered plutonium was returned to Hanford. Ultimately, this activity resulted in transuranic waste and high-level nuclear waste continuing to be stored at that site.

This bill is not the first time Congress has had to consider a unique solution to address West Valley. In 1980, Congress passed the West Valley Demonstration Project Act, which directed DOE to carry out high-level radioactive waste management. This bill made DOE responsible for 90 percent of the cost of the site's cleanup. And 2 years later, the Nuclear Waste Policy Act made it clear that costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities should be paid by the Federal Government. However, since 1986, based on a DOE IG report, DOE has classified the high-level waste at West

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Valley as commercial waste, rather than waste deriving from atomic energy defense activities.

Under this formulation, DOE believes the cost for disposal of the waste should be borne by the State of New York due to its ownership of the site, and that is the crux of the disagreement. I understand that DOE will reiterate that under the statute. It cannot own the waste at West Valley. But that is immaterial to the question of who is responsible for bearing the cost of cleaning up and disposing of it.

The standard under the Nuclear Waste Policy Act is whether the waste was generated in whole or in part from any atomic energy defense activity or at any facility used in connection with any such activity. Under the Act it is either defense related or not.

So where the waste generated, as a result of atomic energy defense activities, I think the record is clear that this is the case for West Valley. The high-level radioactive waste and transuranic waste left at this site are primarily from atomic energy defense activities and should be disposed of as such, but obviously this issue remains unsettled, which is why we are here today.

I look forward to a full debate on West Valley this morning.

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And even if this bill does not move forward, I will continue to urge DOE to engage with the State of New York to try to reach an understanding on this critical issue.

So, Mr. Chair, I thank you again, and yield back, and look forward to hearing from our witnesses.

[The prepared statement of Mr. Tonko follows:]

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Mr. Shimkus. The gentleman yields back his time.

The chair doesn't see the chairman of the full committee nor the ranking member, so with that, we will conclude our member opening statements.

The chair would like to remind members that pursuant to committee rules, all members' opening statements will be made part of the record.

We want to thank all our witnesses for being here today and taking the time to testify before this subcommittee. Today's witnesses will have the opportunity to give opening statements followed by a round of questions, although we usually don't question Members of Congress, especially you.

Mr. Tonko. There was a key word there, "usually."

Mr. Shimkus. That is right.

Our first witness panel for today's hearing includes the Honorable Tom Reed, Member of the U.S. House of Representatives, from the great State of New York. With that, sir, you are recognized for 5 minutes.

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**STATEMENT OF THE HON. TOM REED, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF NEW YORK**

Mr. Reed. Well, thank you very much, Chairman. And good morning to my colleagues, to the Ranking Member Tonko and my fellow colleagues on the committee today. Thank you for an opportunity to address you and to offer testimony in regards to the legislation.

I am proud to have introduced H.R. 2389, to reauthorize the West Valley Demonstration Project, along with my colleagues, Congressman Nadler and Higgins, and the late Congresswoman Slaughter.

Nuclear cleanup sites must be at the top of the priority list. There are still nuclear sites in the United States that need to be managed and cleaned up. The Western New York Nuclear Service Center in my district is one such site.

The Department of Energy estimates that making the investments needed now in nuclear site remediation will save our Nation hundreds of millions of dollars in the coming decades. The cleanup at this site, designated the West Valley Demonstration

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Project, is very important to our constituents in New York State, as nuclear waste cleanup is a matter of environmental health and the health and safety of our fellow citizens.

I have worked with the constituents on the West Valley Citizen Task Force, the Department of Energy, State and local officials, along with my colleagues in Congress, to raise awareness about the need for consistent funding at this facility. Given the public safety issue of dealing with radioactive waste and the long-term cost savings, this bill makes good sense from a governmental and a financial standpoint.

H.R. 2389 will provide the necessary resources over a sufficient number of years to continue the cleanup work required by the Demonstration Project Act. At its core, the Western New York Nuclear Service Center was an Atomic Energy Commission project. And because New York State was encouraged by the AEC to develop it, the Federal Government should provide a disposal path for all waste on the site.

Records show that the majority of waste at the site was the result of reprocessing federally owned nuclear fuel, most of it from the Federal Government's Hanford facility in Washington State. The result of that reprocessing then went to the Federal

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Government, in some part for weapons research or weapons use.

In summary, this bill will authorize sufficient funding to continue the cleanup work and reduce overall life cycle costs and treat all radioactive waste at the site as resulting from the atomic energy defense activities. I appreciate your commitment to this important issue, and encourage you and your staffs to continue working with our office, as we will work with you to solve this important issue.

Thank you very much for your time this morning. I do look forward to your questions, but hopefully you will honor the commitment of not asking those questions of your witness before you.

With that, I yield back the balance of my time.

[The prepared statement of Mr. Reed follows:]

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Mr. Shimkus. The gentleman yields back his time.

The gentleman from Texas, do you seek recognition?

Mr. Flores. No, I was just going to ask him a hard question, but I know he couldn't answer it so --

Mr. Shimkus. The gentleman yields back his time.

So thank you, Tom, for being here. Obviously, you have got a good ally and friend who is the ranking member of the subcommittee. We have worked well on a lot of issues together, so this will be something new for many of us, and we look forward to finding out more about it.

With that, you are dismissed.

Mr. Reed. Thank you very much. Have a good day.



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Mr. Shimkus. And we will sit the second panel down.

So welcome.

Joining us now is Mr. Mark Gilbertson, Associate Principal Deputy Assistant Secretary, that is a mouthful, for Regulatory and Policy Affairs, the Office of Environmental Management, Department of Energy.

Sir, you are recognize for 5 minutes, and welcome.

**STATEMENT OF MARK GILBERTSON, ASSOCIATE PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR REGULATORY AND POLICY AFFAIRS, OFFICE OF ENVIRONMENTAL MANAGEMENT, DEPARTMENT OF ENERGY**

Mr. Gilbertson. Thank you.

Good morning, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. I also would like to recognize Representative Reed's interest on behalf of his district and the support for the West Valley site. Thank you for the opportunity to appear before you today to represent the Department of Energy's Office of Environmental Management. I will provide you with an overview of the impacts of the bill, H.R. 2389, which proposes to amend the West Valley Demonstration Act.

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Regarding the bill, the Department has several concerns. Section 1(b) of the bill appears to be inconsistent with section 5(b) of the West Valley Demonstration Project Act, as it could be construed to have the effect of assigning the Department the responsibility and financial liability for all radioactive waste at West Valley resulting from atomic energy defense activities.

Further, section 1(b) would not be consistent with the Department's financial responsibilities that are clearly defined in existing laws, agreements, and settlements, as well as the Department's historical position on responsibilities and liabilities for the vitrified commercial high-level radioactive waste.

For example, the consent decree entered into by the State of New York and the Federal Government provides that the Federal Government is responsible -- only responsible for 50 percent of the cost, depending on the activity, for the Nuclear Regulatory Commission licensed disposal area.

The Federal Government and the State of New York have reached similar allocation agreements regarding other cleanup activities at West Valley. The proposed bill contradicts, without expressly eliminating, these legally binding agreements. This could also

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set a precedent for the Department's liability for disposal costs for other commercial waste that would be designated as defense waste.

The Department's historical position has been and remains that the high-level radioactive waste was generated as a result of commercial activities. And the explicit mission of the AEC, Atomic Energy Commission, was to foster a private nuclear industry, including a private reprocessing capability. The Atomic Energy Commission made its reprocessing technology available to private industry and also provided spent nuclear fuel for reprocessing operations in order to incentivize private investment and reprocessing business operations.

While 60 percent of the spent nuclear fuel reprocessed at West Valley did come from the end reactor at Hanford, this reactor generated both electricity and plutonium for the nuclear weapons program. This arrangement was agreed to in a deliberative manner to honor the Federal Government's commitment to provide spent nuclear fuel to support West Valley's commercial reprocessing operations.

The contract to provide spent fuel from the Department for reprocessing at West Valley was entered into for this purpose, not

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as a means to manage or dispose of defense spent nuclear fuel. The West Valley Demonstration Project Act of 1980 explicitly assigns title to the West Valley vitrified commercial high-level radioactive waste with the State, and deferred the question of its ultimate disposition to generic legislation then under consideration.

The Nuclear Waste Policy Act of 1982, passed just 2 years later, did not alter the West Valley Demonstration Act provisions. The disposition of the West Valley vitrified commercial high-level radioactive waste was the responsibility of New York State and not the Department.

Thank you for providing me with the opportunity to represent the Department's views on H.R. 2389. The Department's Office of Environmental Management is committed to achieving its mission and will continue to apply innovative environmental cleanup strategies to complete its work at West Valley in a safe, efficient, and cost effective manner, to serve as a strong steward of taxpayer resources.

I am pleased to answer any questions you may have.

[The prepared statement of Mr. Gilbertson follows:]

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Mr. Shimkus. Thank you, sir.

And now we will go to a round of questions, and I will start by recognizing myself for 5 minutes.

When Congress directed the Department to partner with the State of New York to remediate this site, Congress explicitly prohibited DOE from acquiring title to any high-level radioactive waste at the site. This leaves the waste in the hands of the State of New York. As we will hear from the next witness, Congress recognized that the Federal Government had a role in cleaning up the site, and Congress has met this commitment by appropriating over \$1.4 billion just over the last 20 years for this purpose. H.R. 2389 would reclassify the waste as a result from atomic energy defense activities, thereby affecting previously established disposal responsibility.

According to New York, there is a balance of nearly \$30 million set aside to pay for disposal costs in a trust fund from a legacy account in 2016. But in 1986, the DOE, Department of Energy IG, said that the State would owe \$68 million to the Nuclear Waste Fund.

Has DOE reassessed how much would be due to the waste fund based on that outdated estimate?

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Mr. Gilbertson. Thank you for that question. We have not reassessed that amount recently in recent times, and I would like to take that question for the record.

Mr. Shimkus. Thank you. Has DOE conducted any preliminary cost analysis to determine how much it would cost to dispose of West Valley waste, either at a commercial facility for the Greater-than-Class C or at another disposal facility?

Mr. Gilbertson. Thank you for that question. I haven't -- at the present time, the Department has not analyzed that particular cost because the repository is not available to take the waste.

Mr. Shimkus. Would you agree that having that information would be helpful to move the conversation forward?

Mr. Gilbertson. Could you please repeat that, sir?

Mr. Shimkus. We are asking these questions obviously to put in the record but also try to figure out how we move forward. Do you think that having that information -- that our ability to have that information will help us deliberate and decide to move forward in one way or another?

Mr. Gilbertson. I believe it would help you.

Mr. Shimkus. Okay. That's all the questions I have.

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The chair now recognizes the ranking member of the sub, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Chair Shimkus.

Mr. Gilbertson, thank you for being here and for the work done by the Office of Environmental Management. I hope today's discussion can help us better understand some of the disagreements around the West Valley site.

In October of 2016, members of New York's delegation, including Mr. Reed, who we just heard from, and myself, wrote to DOE regarding West Valley. And we asked for calculations, including the method of such calculations of the Nuclear Waste Policy Act disposal fee for the State of New York and how much it would have to pay if such a fee were to be assessed both today and in 2048.

Now, in response to the chair, you just indicated that you will work on that information and get it to the subcommittee, and I hope it does include the methodology along with the number. I think that would be useful information. And so, thank you, for agreeing to provide that to the committee.

In DOE's response to that October 2016 letter, DOE stated, and I quote: There may be considerable merit in disposing of the



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West Valley high-level waste and defense high-level waste in the same repository. And we do believe such a conversation is timely and would welcome a dialogue with the State of New York and other interested parties with respect to the potential disposal of the West Valley high-level waste.

I understand from the State that other than one initial meeting, and I believe that was in March of 2017, DOE has not responded to requests to engage in any such discussion. Can you or will you commit to following up with the State of New York on this matter and to provide whatever information you can in response to the State's request?

Mr. Gilbertson. Thank you for that question. We have an ongoing dialogue with the State where we are exploring through the Phase II planning process, which I am sure you are aware of, the ultimate disposition of a lot of the materials on the site. So it has been a conversation and I agree that it will be a conversation going into the future. So, yes, we will talk with the State, continue to talk with the State about that.

Mr. Tonko. All right. And NYSERDA's review of documents from the West Valley site shows that 60 percent of the materials sent to West Valley was from facilities where defense activities

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were underway and that 80 percent of the reprocessed plutonium shipped out of West Valley was sent to Federal defense facilities. Also, that the character of the materials was suitable for bomb making, not civilian uses.

So do you have any reason to question these facts? And would you agree that if they are true, then the West Valley waste was generated at least in part related to defense activities?

Mr. Gilbertson. Thank you for that question. Those facts are facts that have been known for a long period of time. They have been known since when the original act was put into place. It is the Department's position, based on that set of facts, that the materials that we provided were for commercial purposes and not defense. So I think that we stipulate that the facts are the correct facts. We have a different interpretation of what that material is.

Mr. Tonko. I would hope that these would be the cornerstone of the discussion between the State of New York and the Department.

In your testimony, you noted that DOE does not own the West Valley site. As I understand it, this bill does not implicate ownership. And the question whether the waste is related to

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defense activities does not need to be directly linked to who technically owns it.

Apart from the ownership question, is there any evidence that has caused DOE to believe that the majority of this waste is not related at least in part to defense activities?

Mr. Gilbertson. So we go back to the origins of the intent of why the material was provided to West Valley. The material was provided to West Valley for commercial purposes, which is why we have the split with regard to costs we are doing the work at the sites that we do. So we believe that this is, you know, the long-standing position that we have, it is commercial material.

Mr. Tonko. But you say that, but the products sent back were all usable or characterized as defense related, the reprocessed materials. So how can you suggest that there is not a defense-related component to that?

Mr. Gilbertson. So the materials that were taken back, you are right, the percentages of materials have been known for a long time where they went, it was part of a commercial process. So we believe that the material was presented -- provided originally to a commercial kind of process, would allow it to be sold back as a commercial entity, and so --

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Mr. Tonko. But if it is sold to a private entity doesn't mean it is ranked commercialized; it was being used for defense-related purposes. Isn't that at the crux of this question here? Isn't that the big debate? And doesn't it suggest or indicate strongly that it is defense related?

Mr. Gilbertson. So I believe this set of facts and information was known when the act was put in place originally when we entered into negotiations with the State of New York. We have moved forward with the cleanup with regard to the division of responsibilities and have -- it is our position that it was commercially -- provided for commercial purposes in that we have divvied up the responsibilities for costs with regard to moving forward with the cleanup at the site.

Mr. Tonko. Well, I am out of time, but I do have to indicate that acts are always revisited and that there is always amending that can be done. And I think as more information is presented, we need to have the facts guide us.

And, with that, I yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair would now recognize the gentleman from South Carolina, Mr. Duncan, for 5 minutes.

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Mr. Duncan. Thank you, Mr. Chairman.

And, Mr. Gilbertson, thanks for being here today. For States that have a Department of Energy cleanup site, the disposal of radioactive waste is a top priority. I know this because we have one in South Carolina, the Savannah River Site. It is right outside my district, but I am very engaged with the site.

SRS serves as a DOE site responsible for cleanup, waste management, and disposition of nuclear materials. Sixty percent of the missions at SRS are environmental management missions. This includes the disposition of solid, liquid, and transuranic waste. One of the largest check DOE EM projects of liquid waste is the liquid waste cleanup at SRS. The South Carolina Department of Health and Environmental Control describes its mission as the single greatest environmental risk at South Carolina.

I have been to the tank farms. I have seen the vitrification facilities. I have been to Hanford. I have seen the closure process out there with EM. The defense waste processing facility at SRS vitrifies high-level waste, has been doing so for over 20 years, and remains the only site in the country able to do so. I guess Hanford has got a defense waste vitrification plant underway, I don't know the status of that. When I was there in

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2008-2009, they were working on it.

There is over 34 million gallons of radioactive byproduct held in 45 waste tanks at Savannah River Site. So from your perspective at DOE's Office of Environmental Management, what do you believe the Department's cleanup priorities are for the Savannah River Site?

Mr. Gilbertson. So for the Savannah River Site, we do believe that cleanup of the tank waste is the highest priority for the Department to complete there. And we are moving forward with the Salt Waste Processing Facility to bring that onboard so we can clean up the tanks at an even faster pace down there at Savannah River.

Mr. Duncan. Is the priority to single line the thinner metal tanks first?

Mr. Gilbertson. Right. The priority are the higher risk tanks first, to disposition the materials in those tanks first. Yes.

Mr. Duncan. So more than half of DOE's environmental budget at SRS is spent on this tank waste, and some tank waste meets the WIPP acceptance criteria, but it cannot be sent there because it is considered high-level waste due to how that waste was created,

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right? So WIPP is currently limited to only being able to accept defense-related transuranic waste. This is the issue with West Valley that we have been discussing earlier. And can you talk a little bit about how the lack of clarity of what is considered high-level waste affects disposal efforts at Savannah River Site?

Mr. Gilbertson. So we believe that under the 435 order, that we have the ability to disposition various materials. And there has been legislation that was put in place to affect your site. The 3116 legislation that allowed us to dispose of tank waste materials not as high-level waste. So there are provisions with the regulations. We are constantly looking at ways to improve the process to make it more clear as to what waste can be dispositioned in the proper technical manner at sites.

Mr. Duncan. Do you see in the future the ability to take this vitrified high-level waste from sites like Savannah River Site, and if Yucca is not online, to a place like WIPP?

Mr. Gilbertson. So at the present time, we are not able to take --

Mr. Duncan. Because of the classification?

Mr. Gilbertson. -- take tank waste to the WIPP facility to dispose of it. There is a provision in the current permit that

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doesn't allow us to take tank waste. We have a permit modification that we put in to the State of New Mexico to potentially allow for them to take tank waste.

The issue is, is currently, as defined, the high-level waste, without some clarifications, tank waste can't go to the WIPP facility. The issues of it, there is a potential for some of the material that is tank waste, though, to be within the characteristics, technical characteristics of what can be disposed of from a performance assessment perspective at WIPP.

Mr. Duncan. So I am about out of time. Let me make this statement.

You can't take the waste from the tank farms and the EM efforts at Savannah River Site, even though it is similar to the waste from other places, because of how it is created, and its classification is highly radioactive waste -- defense waste -- because it was created for defense purposes.

I can tell you, if it doesn't go to WIPP, it needs to go to Yucca Mountain. And If Yucca Mountain doesn't come onsite, we are going to have to do something, because the concrete slab that these vitrified, stainless steel tanks are sitting in, under a metal building at Savannah River Site, is not a long-term



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repository for this waste.

It is time for this Nation to follow the law, which is Yucca Mountain. Open Yucca Mountain up and let's get this waste out of South Carolina and out of Hanford and out of Idaho and out of Oak Ridge, and all the other places where it is stored, and put it in a long-term repository known as Yucca Mountain, because it was studied and it is the law of the land and it is time for us to do that.

With that, Mr. Chairman, I yield back.

Mr. Shimkus. The chair appreciates your passion, and we are glad you are on the committee.

So the chair now recognizes the gentleman from Flores -- I mean, from Flores, from -- Mr. Texas -- the gentleman from Texas, Mr. Flores, for 5 minutes.

Mr. Flores. It is okay. I mean, we have been there since 1725, so it will work out.

Mr. Gilbertson, one quick question. What would happen if the Cheney disposal site is closed?

Mr. Gilbertson. Please repeat that, sir.

Mr. Flores. What would happen if the Cheney Disposal Cell is closed?

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Mr. Gilbertson. If the chain?

Mr. Flores. Cheney. The one in Colorado.

Mr. Gilbertson. So I am not familiar with that disposal cell, and so I will take that question for the record.

Mr. Flores. It is the only location in the country that can take uranium mining tailings. So we will submit the question for the record and ask you to respond supplementally.

That is it. I yield back.

Mr. Shimkus. The gentleman yields back.

At this time, seeing no other members wishing to ask questions, we would like to thank you for being here and thank you for answering our questions. Obviously, some of my colleagues have -- are going to pose some questions, including myself, for you. We would hope you get those back to us in a timely manner, and you are dismissed. Thank you for being here.

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Mr. Shimkus. So for our last panel, we have Mr. Noah Shaw, general counsel and secretary, New York State Energy Research and Development Authority. Sir, thank you for being here. I have learned a lot this morning, and I look forward to learning more.

With that, you are recognized for 5 minutes. Your full statement has already been submitted for the record.

**STATEMENT OF NOAH SHAW, GENERAL COUNSEL AND SECRETARY, NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**

Mr. Shaw. Good morning, Mr. Shimkus, Ranking Member Tonko, and members of the committee. My name is Noah Shaw. I am the general counsel of the New York State Energy Research and Development Authority, or NYSERDA. It is my honor to be here today, not only to support the long-term reauthorization of funding for the cleanup of the Western New York Nuclear Service Center, known as the West Valley site, but also to present you with facts regarding the defense origin of West Valley's nuclear waste.

Before I begin, let me just say that I appreciate Congressman Tonko's opening statement, which tees up my testimony in which I

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will expand on the discussion of the defense origins of West Valley's nuclear waste.

Activities at the West Valley site began in the early 1960s when the Department of Energy's predecessor, the U.S. Atomic Energy Commission, or AEC, provided a so-called baseload of spent nuclear fuel from defense-related sources. The intent was that such an arrangement would only be necessary until additional civilian nuclear plants could be constructed. But, ultimately, during the facility's operation from 1966 to 1972, 60 percent of the fuel reprocess came from defense-related activities. About 80 percent of the plutonium and 99.8 percent of the uranium shipped out of West Valley went back to defense complex sites.

In 1972, nuclear fuel services, which operated the facility, shut it down for upgrades and then never reopened it. NFS withdrew from the reprocessing business and turned West Valley, which was by then highly contaminated, over to New York State, which owned the property.

In 1980, Congress passed the West Valley Demonstration Project Act, pursuant to which the Department of Energy has taken possession of more than 150 acres where the reprocessing activities took place and the Federal Government agreed to pay 90

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percent of the cleanup costs. Two years later, in 1982, Congress passed the Nuclear Waste Policy Act, which recognized the Federal Government's responsibility for permanent disposal of high-level radioactive waste from the country's atomic energy defense activities.

Historically, the Federal Government has recognized that West Valley waste was from defense sources. The Congressional Record supporting the 1980 West Valley Demonstration Project Act includes many references to how and why the West Valley site's cleanup is appropriately a Federal responsibility, given the site's role in the country's defense complex. And even the Department of Labor's employee compensation program for work-related illnesses at DOE complex sites, which was set up less than 20 years ago, designates West Valley as a, quote, "atomic weapons employer," end quote.

However, in 1986, the Department of Energy Inspector General, without explanation, designated West Valley as a, quote/unquote, commercial site, in a report regarding the growing potential costs of the NWPA. This designation has been repeated by DOE ever since without any stated factual or legal support.

West Valley is both truly -- is truly unique, as both the chair and ranking member have stated today. It is the only site

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managed by the Office of Environmental Management with onsite waste that DOE calls commercial or where DOE asserts that the State is responsible for a disposal fee. West Valley also houses the only transuranic waste in the Nation, waste that was generated by DOE as part of its cleanup project that is prohibited from disposal at the Waste Isolation Pileup Plant, WIPP, in New Mexico.

DOE's designation of the West Valley waste as commercial not only creates a roadblock to completing the cleanup of the site, but it also means that scarce EM cleanup funds have to be expended for potentially perpetual storage of the TRU at West Valley.

On January 13, 2017, DOE wrote to Congressman Higgins, after discussions between the Department and the New York delegation, to say that DOE had determined that it would consider whether West Valley waste could or should be disposed of with the remainder of the country's similarly packaged waste. But despite its repeated attempts to discuss this matter with the Department since then, DOE staff has failed to engage.

This is just the latest in a long history of DOE's apparent resistance to addressing this matter. Repeatedly stating its, quote, historical position that it doesn't own the waste and, therefore, isn't responsible for its disposition, even though

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ownership per se is not a relevant question with respect to whether the waste is defense related or not. To say the issue is lingering may be an understatement, at least as far as New York and the surrounding communities are concerned.

The State is left to conclude that legislation is the only path forward regarding how the West Valley waste will be disposed, just as, in 1980, Congress had to intervene regarding the responsibility for the site's cleanup.

A statutory designation of the West Valley waste as defense waste would finally allow it to be treated similarly to the other high-level and transuranic waste associated with our country's atomic defense activities. This is the equitable outcome for these wastes for the site, and for the communities who have now hosted the site for generations.

We also wish to emphasize the importance of funding authorization. Funding for the West Valley cleanup has been at an all time low in recent years. Appropriate funding levels allow for work to continue as contemplated by the Act, by the West Valley Demonstration Project Act. And in the absence of appropriate funding levels, work is delayed, adding to total project cost and timeframe.

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Thank you for your attention, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Shaw follows:]

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Mr. Shimkus. Thank you very much, sir.

And I will recognize myself for 5 minutes for opening questions.

Enactment of H.R. 3053 would break the current impasse on our Nation's nuclear waste management program and provide a path to complete the Yucca Mountain repository, while allowing DOE to pursue temporary storage efforts in the meantime. Your testimony notes concern that a repository might not be available for decades, but with congressional support, the nuclear waste could be transported well within a decade.

Do you support reconstituting DOE's nuclear waste management program and moving forward with a repository and storage program to remove the West Valley waste?

Mr. Shaw. We support a pathway for the West Valley waste, whether that pathway is an interim solution --

Mr. Shimkus. Okay. We need your help here, right? I have this debate and discussion with locations all around the country. If you need it moved, you have to have a place for it to go. There is current law of the land, which is a Nuclear Waste Policy Act, amended in 1987, the national government assigned a location. That location has been politically blocked for about 9 years. We

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are unblocking it.

It would be helpful for States to realize what the Federal law is and be helpful. A lot of the New York colleagues have been strongly supportive of the bill we just passed last week. It is kind of timely that you are here now. And so if you don't want it there, you have to have a place to go.

What we have done in H.R. 3053 is allow both options for completion, and I am going to -- the follow-up question will show the timeliness of this. But we have accepted the premise that an interim is an important process in getting to a final repository.

Without a national solution, you will be an interim site forever, right? And no one wants that. Science is a long-term geological repository, and so -- I am not meaning to lecture, we are just asking for your help --

Mr. Shaw. I understand.

Mr. Shimkus. -- in how we phrase this to your State and to the Nation. What is the current estimated timeframe for DOE to complete the decontamination and remediation of the West Valley facilities?

Mr. Shaw. There is, as you may know, an ongoing supplemental environmental impact statement process with respect to the future

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of the site right now. The range of options includes, obviously, as you might imagine, a variety of timeframes for the completion of the project. You know, I wouldn't -- I think the last EIS suggested that we could be looking at anywhere from, you know, 10 to 35 years. I think that we will know more about the likely timeframe once the SEIS process is completed.

Mr. Shimkus. And I think DOE has between 2040 and 2045, which would be the worst-case scenario. Based on the estimated work remaining and the timelines associated with DOE's waste management program, it seems that the best and the most expeditious disposal path available to the State of New York is to have the Senate consider the bipartisan nuclear waste bill passed by the House just last week.

And, again, I wanted to thank my colleagues, obviously, and the ranking member who was very helpful in moving this forward.

By the time West Valley is done, worst case 2045, the repository will be open and accepting long-term geological storage. So we are glad to have you there, and I would take back to your folks in the State that a positive response on the Nation trying to solve this problem for all 50 States is moving forward, and we would hope that New York State would be fully supportive.

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With that, I yield back my time, and I turn to the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

And, Mr. Shaw, thank you again for your testimony and, again, thank you for your work on behalf of the residents of my home State of New York. It is helpful for the committee to have a full understanding of the history of the West Valley site.

Can you explain what the effect would be on ultimate cleanup of the West Valley site if H.R. 2389 became law?

Mr. Shaw. It would provide a pathway for both the transuranic waste and a practical pathway for the high-level waste. Right now, because of the commercial designation, the transuranic waste has no pathway, it can't go to WIPP. And because of the application by DOE of the NWA provisions regarding the disposal fee, we are looking at a cost to the State, at the time of an ultimate repository that may very well be prohibitive. So it would open the path for actually getting the waste off the site.

Mr. Shimkus. You also mentioned the -- Mr. Gilbertson was asked about discussions, and he said that they are routine, they are ongoing. But I am understanding from your comments that some

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elements of that discussion have not occurred.

Mr. Shaw. To be clear, the discussions that I believe Mr. Gilbertson was referring to are the discussions with respect to the ongoing environmental impact statement process. And those indeed -- you know, I commend our site staffs, they work well together on a daily basis. They work in the same building, a very close working relationship there. However, when it comes to this higher level question of the defense versus nondefense character of the waste onsite, we have attempted to engage and have not been provided much of a response.

Mr. Tonko. Thank you for that clarification.

Earlier this morning, DOE mentioned that the Department does not and cannot own the waste at West Valley. Can you explain how the Nuclear Waste Policy Act considers waste ownership, and how it is or is not relevant to today's discussion?

Mr. Shaw. My reading of the Act is that it is not relevant. The question under section -- well, the statement under section 8 of the Act is that the fee provisions do not apply to, quote, any atomic energy defense activity or to any facility used in connection with any such facility.

I believe that the facts as we have stated them, and the

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facts that were considered by Congress in passing the Act back in 1980, clearly establish that the activities at West Valley were defense related. The question of ownership, while it may be sort of consistent with the way DOE thinks about other sites, really doesn't apply here, and it is a unique site with a unique history and a unique waste profile. And, unfortunately, it doesn't fit into the boxes that DOE usually applies.

Mr. Tonko. Thank you. And compared to some other sites in the DOE complex, West Valley is relatively small, that is, it does not have nearly as much waste as places like Savannah River and Hanford. Can you explain why Congress should step in and clarify the waste designation as defense related?

Mr. Shaw. Well, precisely because of some of the -- thank you for the question. Precisely because of some of the themes that have been repeated here. It is a unique site. It doesn't fit the usual equations that DOE has used in the past with respect to deciding pathways for waste. And after 30 years of attempting to reconcile this disagreement with respect to the defense nature of the waste, we don't see another pathway forward.

We have requested the calculation of the fee, as you have related numerous times, and that has not been forthcoming. We

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have requested a factual or legal analysis for the designation of commercial, and that has not been forthcoming, other than to say that it was provided for, quote/unquote, commercial purposes.

I will say, lots of private contractors have been handling defense waste around the country and made a lot of money on it for a long time. That is not the question that needs to be answered when determining whether this material is defense related or not.

Mr. Tonko. Thank you. And I understand that the next phase of the environmental impact statement process for this site recently began. There were a number of community meetings and comments have been submitted. Can you summarize the reactions you have received and how they relate to this proposed legislation?

Mr. Shaw. Thank you for the question. I think it is important to understand the full thrust of the community engagement and concern with respect to the site and how it relates to this bill. I was at the meetings. Large sectors of the community showed up from across the political spectrum to emphasize their concern about what would happen to the waste and, in particular, to say that it should be a cleanup, a full cleanup.

Obviously, that is one of the options within the SEIS process that is being considered. However, there are a number of options

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within the SEIS process, including the full cleanup, that won't be practically feasible unless this waste has a pathway. And the only way this waste can have a pathway is if it is designated as defense waste.

Mr. Tonko. And the \$75 million that is appropriated in fiscal year 2018 is also the level included in the Reed bill.

Mr. Shaw. Yes.

Mr. Tonko. What is the impact of underfunding West Valley?

Mr. Shaw. Well, you know, a lot -- in the past, the funding levels have been down in the 60s. That differential between 75 and in the 60s doesn't seem like a lot, however, when you consider that nearly more than a third of the budget is just to keep the lights on and keep it safe, that differential makes a big difference in the work that can be done on the site. There is a lot of work that is going to be happening over the course of the next 10, 15 years especially, as they start to go below grade in Phase II of the cleanup and, therefore, the need for sufficient funding is even more imperative going forward maybe than it has been in the past.

Mr. Tonko. Mr. Shaw, thank you. And my best to the NYSERDA team.



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And with that, Mr. Chair, I yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair, seeing no other members wishing to ask questions, I would like to thank all our witnesses today.

Before we conclude, I would like to ask unanimous consent to submit the following documents for the record: a statement for the record from Carmelo Melendez, director, Office of Legacy Management at U.S. Department of Energy; a letter from the Colorado Department of Public Health and Environment; and a letter from Representative Scott Tipton.

[The information follows:]

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Mr. Shimkus. And pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record, and ask the witnesses to submit their response within 10 business days upon receipt of the questions.

Without objection, the subcommittee is adjourned.

[Whereupon, at 10:00 a.m., the subcommittee was adjourned.]