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Office of Environmental Management
U.S. Department of Energy
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Subcommittee on Environment
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Thank you for the opportunity to appear before you today to represent the Department of Energy's (DOE) Office of Environmental Management (EM). I would like to provide you with an overview of the West Valley Demonstration Project, current cleanup status, and the impacts of the bill, H.R. 2389, which proposes to amend the West Valley Demonstration Project Act (WVDPA).

Overview

In or around 1961, New York State created the approximately 3,300-acre Western New York Nuclear Service Center (WNYNSC) in the Town of Ashford to store nuclear fuels and radioactive wastes and to be available for related industrial development. In or around 1963, a private corporation, Nuclear Fuels Services, Inc., was authorized to construct on the WNYNSC a spent nuclear fuel reprocessing facility. From 1966 to 1972, the WNYNSC was operated by this private corporation and was the first, and only, site in the nation that commercially reprocessed spent nuclear fuel. The WNYNSC is owned by the New York State Energy Research and Development Authority (NYSERDA).

In 1980, Congress passed the West Valley Demonstration Project Act (WVDPA), which directed DOE to carry out a high-level radioactive waste management demonstration project at the WNYNSC for the purpose of demonstrating solidification techniques that can be used for preparing high-level radioactive waste for disposal. The WVDPA requires DOE to:

1. Solidify, in a form suitable for transportation and disposal, the high-level radioactive waste at the WNYNSC;
2. Develop containers suitable for the disposal of high-level radioactive waste;
3. As soon as feasible, transport the solidified high-level waste to a Federal repository for disposal;
4. Dispose of low-level radioactive waste and transuranic waste produced by the solidification of the high-level radioactive waste; and
5. Decontaminate and decommission the tanks and other facilities used at the WNYNSC in which the high-level radioactive waste solidified, the facilities used in the waste's solidification, and any material and hardware used in connection with the West Valley Demonstration Project.

The WVDPA prohibits DOE from taking title to the high-level waste, the WNYNSC, or any portion of the WNYNSC. Since DOE cannot own any real property or facilities at the WNYNSC, the WVDPA required DOE to enter into a Cooperative Agreement with New

York State to gain access to the requisite facilities and the high-level radioactive waste.

The DOE and NYSERDA Cooperative Agreement, effective October 1980, affords DOE access and control of approximately 150-acres within the WNYNSC, which is commonly referred to as the West Valley Demonstration Project or WVDP, to fulfill the requirements set forth in the WVDPA.

DOE has achieved significant progress in its cleanup efforts at the WVDP with the treatment and removal of over 600,000 gallons of radioactive waste from underground tanks, including vitrification of the high-level waste (HLW). That success enabled the progression of cleanup efforts with the start of demolition of the site's Vitrification Facility. Demolition work began in September 2017, marking the first facility of its kind to be demolished in the U.S. and the first major radiological structure to be demolished at the WVDP. The start of demolition was preceded by years of planning and preparation, including removal and offsite disposal of major components from the HLW Vitrification Cell, which operated from 1996 to 2002. During its operation, the facility safely converted more than 600,000 gallons of liquid waste into vitrified glass, safely encapsulating 25 million curies of radioactivity into a stable waste form. The resulting canisters of vitrified waste from the former spent fuel reprocessing plant have been removed from the Main Plant Process Building and placed in storage.

Inventory of Waste at WNYNSC

1. The buried wastes within the State-Licensed Disposal Area (SDA), a disposal facility for commercial wastes (mostly Greater-Than-Class-C LLW) that is owned and operated by the State of New York.

Waste that remains at WVDP includes:

1. Vitrified high-level waste stored in 278 canisters on the on-site storage pad.
2. Low-level radioactive waste (LLW), mixed low-level waste, and transuranic waste resulting from continuing cleanup of the site.
3. Wastes that have already been buried in the Nuclear Regulatory Commission (NRC) - Licensed Disposal Area (NDA). Most of the wastes in this disposal area were produced by commercial activities and are Greater-Than-Class-C (GTCC) LLW. GTCC LLW is generated by NRC or Agreement State licensees and has radionuclide concentrations exceeding the limits for disposal as Class C LLW under the NRC regulations in 10 CFR 61.55. An Agreement State is a state that has signed an agreement with the NRC to regulate certain uses of certain radioactive materials within the state. A small quantity, 31 cubic meters, of waste in the NDA is waste owned or generated by DOE with characteristics similar to GTCC LLW. (This waste is described as "GTCC-like waste" in the Environmental Impact Statement for Disposal of GTCC LLW and GTCC-like waste.)

Potential Impacts of H.R. 2389

The Department has several concerns regarding H.R. 2389.

Section 1(b) seems inconsistent with Section 5(b) of the WVDPA; it could be construed to have the effect of assigning DOE responsibility and financial liability for “all radioactive waste at the high level radioactive waste management demonstration project,” at the WNYNSC, by considering all such waste as resulting from atomic energy defense activities. “All radioactive waste” is not defined and could be construed to include all the radioactive waste described in the above inventory. Assigning DOE ownership and financial liability for “all radioactive waste” would also not be consistent with the WVDPA. The WVDPA does not include references to the NDA or the SDA. The WVDPA’s legislative history contemplated DOE performing certain authorized activities while not taking ownership of waste or facilities. Further, section 1(b) would not be consistent with DOE financial responsibilities clearly defined in existing laws, agreements and settlements, as well as the Federal government’s historical position on responsibilities and liabilities for the vitrified commercial HLW, the NDA, and the SDA at the WNYNSC. For example, the Consent Decree entered into by the State of New York and DOE in the case of *New York v. United States*, No. 06-CV-810 (W.D.N.Y. 2010), provides that the Federal government is only responsible for a portion of the cost, depending upon the activity, for the NDA. The Federal and State governments have reached similar allocation agreements regarding other facilities at West Valley. The proposed bill contradicts without expressly vitiating these legally-binding agreements. Also, this could set a precedent for the Federal Government’s liability for disposal costs for certain commercial waste that would be designated as defense waste, which has heretofore been the responsibility of a commercial waste generator.

Further, the Federal government’s historical position has been, and remains, that the HLW was generated as a result of commercial activities. Beginning with the Atoms for Peace program, an explicit mission of the Atomic Energy Commission (AEC), the predecessor agency to DOE, was to foster a private nuclear industry, including a private reprocessing capacity. The AEC made its reprocessing technology available to private industry and also provided spent nuclear fuel (SNF) for reprocessing operations in order to incentivize private investment in reprocessing business operations. The contract to provide DOE SNF for reprocessing at West Valley was entered into for this purpose, not as a means to manage or dispose of defense SNF.

The Department’s position is that the WVDPA and the Nuclear Waste Policy Act of 1982 clearly assign responsibility to New York State to pay for disposal of the vitrified waste at West Valley. That is, the WVDPA explicitly left title to the West Valley vitrified waste with the State and deferred the question of its ultimate disposition to generic legislation then under consideration. The NWPA, passed just two years later, did not alter the WVDPA provision that disposition of the West Valley vitrified waste was the responsibility of New York State and not DOE.

Over the years, the State has advocated that the waste at West Valley should be deemed “defense waste” because the waste was at least “in part” derived from defense nuclear materials production or management; some of the SNF that was reprocessed at West Valley came from the

N-Reactor at Hanford. The Department does not agree with those propositions. While 60 percent of the SNF reprocessed at West Valley did come from the N-Reactor at Hanford, a “dual-use” reactor that generated both electricity and plutonium for the weapons program, this arrangement was agreed to in a deliberative manner to honor the Federal government’s commitment to provide a base-load of SNF to support West Valley’s commercial reprocessing operations.

In addition, Section 1(a) of the bill authorizes West Valley appropriations of \$75 million for each of the fiscal years beginning with 2017 through 2026. This authorization level exceeds funding proposed in the fiscal year 2019 Budget Request for West Valley.

Conclusion

Mr. Chairman and Ranking Member Tonko, thank you for providing me the opportunity to present the Department’s views on H.R. 2389. EM is committed to achieving its mission and will continue to apply innovative environmental cleanup strategies to complete its work at West Valley safely, on schedule and within budget. I am pleased to answer any questions you may have.