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6 MARKUP OF: H.R. 2278, RESPONSIBLE DISPOSAL

7 REAUTHORIZATION ACT OF 2017; H.R. 2389,

8 TO REAUTHORIZE THE WEST VALLEY DEMONSTRATION

9 PROJECT, AND FOR OTHER PURPOSES

10 WEDNESDAY, JUNE 27, 2018

11 House of Representatives

12 Subcommittee on Environment

13 Committee on Energy and Commerce

14 Washington, D.C.

15

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18 The subcommittee met, pursuant to call, at 12:26 p.m.,
19 in Room 2123 Rayburn House Office Building, Hon. John Shimkus
20 [chairman of the subcommittee] presiding.

21 Members present: Representatives Shimkus, McKinley,
22 Harper, Olson, Johnson, Flores, Cramer, Walberg, Walden (ex

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23 officio), Tonko, and Peters.

24 Staff present: Mike Bloomquist, Deputy Staff Director;
25 Samantha Bopp, Staff Assistant; Daniel Butler, Staff
26 Assistant; Karen Christian, General Counsel; Kelly Collins,
27 Staff Assistant; Margaret Tucker Fogarty, Staff Assistant;
28 Adam Fromm, Director of Outreach and Coalitions; Ali Fulling,
29 Legislative Clerk, Oversight & Investigations, Digital
30 Commerce and Consumer Protection; Theresa Gambo, Human
31 Resources/Office Administrator; Jordan Haverly, Policy
32 Coordinator, Environment; Mary Martin, Deputy Chief Counsel,
33 Energy & Environment; Sarah Matthews, Press Secretary; Drew
34 McDowell, Executive Assistant; Peter Spencer, Professional
35 Staff Member, Energy; Austin Stonebraker, Press Assistant;
36 Andy Zach, Senior Professional Staff Member, Environment;
37 Elizabeth Ertel, Minority Deputy Clerk; Jean Fruci, Minority
38 Energy and Environment Policy Advisor; Rick Kessler, Minority
39 Senior Advisor and Staff Director, Energy and Environment;
40 Dan Miller, Minority Policy Analyst; Alexander Ratner,
41 Minority Policy Analyst; Tim Robinson, Minority Chief
42 Counsel; Tuley Wright, Minority Energy and Environment Policy
43 Advisor; and Catherine Zander, Minority Environment Fellow.

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44 Mr. Shimkus. The subcommittee will come to order. The
45 chair recognizes himself for an opening statement.

46 This morning's Subcommittee on Environment will markup
47 two bills to reauthorize Department of Energy environmental
48 remediation programs.

49 Last month, we received testimony on H.R. 2389 to
50 reauthorize the West Valley Demonstration Project. We heard
51 three different perspectives about challenges and
52 opportunities at the West Valley New York site.

53 The bill's sponsor, Congressman Tom Reed, highlighted
54 the importance of advancing cleanup at the West Valley
55 location, and his constituents, the local communities, and
56 the district.

57 A Department of Energy witness provided a historical
58 perspective as the federal government partner on the ground,
59 carrying out the statutory programs over the last 38 years
60 pursuant to the West Valley Demonstration Project Act.

61 And the New York State Energy Research and Development
62 Authority, or NYSERDA, offered the host state's viewpoint on
63 the importance of expediting cleanup activities at the site
64 and transferring responsibility to dispose of material to the
65 federal government.

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66 Obviously, Mr. Tonko also was connected to that in
67 another life so he has a great interest in this.

68 I recognize the state of New York's interest in
69 eliminating DOE's statutory prohibition on disposing high-
70 level radioactive waste generated at the site over 50 years
71 ago.

72 There are different forms and quantities of this
73 material at the site and we know that some of the high-level
74 radioactive waste from the reprocessing spent nuclear fuel
75 must be sent to a deep geological repository at Yucca
76 Mountain, Nevada site as required under the Nuclear Waste
77 Policy Act.

78 As we heard, DOE is not expected to complete cleanup at
79 the site until the mid-2040s, and that's a long time, Mr.
80 Tonko. And so efforts of the House of Representatives to get
81 our nation's nuclear waste management program back on track
82 is critical for the disposal pathway.

83 To get a better understanding of the alternative
84 disposal path for the remainder of the radioactive waste,
85 Congress needs additional information.

86 The amendment in the nature of a substitute, H.R. 2389,
87 will help gather that information by directing the Government

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88 Accountability Office to identify the volumes and types of
89 radioactive waste at the site, disposal options for the waste
90 streams including cost and time frames, and benefits and
91 challenges of each disposal option.

92 This information will enable Congress to make a fully
93 informed decision in the future.

94 We will also consider H.R. 2278, the Responsible
95 Disposal Reauthorization Act of 2017, introduced by
96 Representative Scott Tipton and co-sponsored by my colleague
97 on the Subcommittee on Environment, Representative Diana
98 DeGette.

99 In 1996, Congress reauthorized operations at the Cheney
100 Disposal Cell in Mesa County, Colorado, for 27 years until
101 September 30th, 2023.

102 Ranking Member Pallone helped get that original bill
103 enacted as a ranking member of the Subcommittee on Energy and
104 Power in the 104th Congress.

105 The bill before us today proactively extends the date
106 for the uranium mill tailings disposal cell in Mesa County,
107 Colorado, to operate for another 25 years.

108 I look forward to passing these bipartisan bills and
109 continuing to advance policies to help the department meet

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110 its environmental cleanup goals and obligations.

111 With that, I will yield back my time and yield to the
112 ranking member, Mr. Tonko, for five minutes.

113 Mr. Tonko. Thank you, Mr. Chair, and thank you for
114 holding today's subcommittee markup.

115 As we heard during our legislative hearing last month,
116 sites located across our country are dealing with the legacy
117 of our nation's entry into the Atomic Age.

118 Today, we will consider bills that address two of these
119 sites -- H.R. 2278, the Responsible Disposal Reauthorization
120 Act, and H.R. 2389, a bill to reauthorize the West Valley
121 Demonstration Project and for other purposes.

122 The Uranium Mill Tailings Radiation Control Act
123 established a process for remediating inactive uranium ore
124 processing sites such as the one in Grand Junction, Colorado.

125 H.R. 2278 would authorize DOE to continue to operate the
126 Cheney Disposal Cell through September of 2048, or until it
127 is filled to capacity.

128 Currently, DOE is authorized to operate this cell
129 through September of 2023. I hope we can move this bill
130 forward today.

131 H.R. 2389 addresses a unique site in my home state, the

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132 western New York Service Center in West Valley. The site is
133 owned by New York State and, from 1996 through 1972, was
134 operated by a private company to reprocess spent nuclear fuel
135 primarily provided by the federal government.

136 This activity resulted in transuranic waste and high-
137 level nuclear waste, which is continuing to be stored at that
138 site.

139 Since 1986, based on a DOE inspector general report, DOE
140 has classified the waste at West Valley as commercial waste
141 rather than waste deriving from atomic energy defense
142 activities.

143 This has caused a major disagreement between DOE and New
144 York for decades. Under this classification, DOE believes
145 the costs for disposal of the waste should be borne by the
146 state of New York due to its ownership of the site.

147 The state has reviewed documents from the site showing
148 that 60 percent of the materials sent to West Valley was from
149 facilities that conducted defense activities and 80 percent
150 of the reprocessed plutonium shipped out of West Valley was
151 sent to defense facilities.

152 H.R. 2389, as introduced, would resolve this issue. In
153 addition to clarifying the treatment of these wastes, the

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154 bill authorizes \$75 million annually for 10 years for the
155 West Valley Demonstration Project.

156 This funding level is identical to the amount
157 appropriated in fiscal year 2018 and will ensure the cleanup
158 will continue on schedule.

159 I support this bill and will have more to say if the
160 amendment in the nature of a substitute is offered. But,
161 ultimately, I hope we can work together to resolve this
162 unsettled nuclear waste issue.

163 And with that, Mr. Chair, I thank you and yield back.

164 Mr. Shimkus. The gentleman yields back the time.

165 The chair now recognizes the chairman of the full
166 committee, Mr. Walden, for three minutes.

167 The Chairman. Thank you very much, Mr. Chairman, and
168 good afternoon. Welcome to our subcommittee markup.

169 As you've heard, we are going to consider these two
170 pieces of legislation that address projects at the Department
171 of Energy's Offices of Environmental Management and Legacy
172 Management.

173 You know, much of our Energy and Commerce Committee's
174 focus this Congress on modernization and lapsed
175 authorizations at DOE programs has been overseen by Vice

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176 Chairman Barton and Energy Subcommittee Chairman Upton, and,
177 of course, Chairman Shimkus has done a lot of work in this
178 area as well.

179 The two targeted bills before us today are part of the
180 Environment Subcommittee's related efforts to address cleanup
181 projects and legacy needs associated with the development
182 deployment of atomic energy technologies.

183 And as you've heard, H.R. 2278, the Responsible Disposal
184 Reauthorization Act of 2017, extends the authorized operation
185 at the Grand Junction, Colorado, uranium mill tailings
186 disposal cell for another quarter century, mirroring the
187 length of time the site was originally authorized to operate.

188 This proactive bipartisan bill will assure this
189 important cleanup site remains available to safely dispose of
190 contaminated radioactive material.

191 The second bill that we are taking up today reauthorizes
192 the Department of Energy's environmental remediation
193 activities at the sole location in the United States that
194 reprocessed spent nuclear fuel for commercial purposes --
195 that's in West Valley, New York.

196 The state of New York owns the site and funds a portion
197 of the cleanup activities at the location. The bill's

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198 sponsors -- Congressman Tom Reed -- is a strong advocate for
199 an ongoing and strengthened partnership between DOE and the
200 state of New York.

201 I would also like to note the Environment Subcommittee
202 ranking member, my friend, Mr. Tonko, oversaw the program
203 prior to his election to Congress, and I appreciate his
204 leadership on this issue as well. I can't think of anybody
205 who knows it better.

206 That's correct, right?

207 Mr. Shimkus. Well, we're -- we were talking. I said he
208 didn't fix it. That's we're -- he came here.

209 [Laughter.]

210 The Chairman. Well, I wasn't going to go to the heart
211 of the matter before us today, but you would have thought,
212 you know.

213 Marking up these bills this morning will continue our
214 agenda to methodically review and renew, where necessary,
215 important federal government programs.

216 So I look forward to passage of these bills this
217 afternoon and, with that, I yield back all 48 seconds.

218 Mr. Shimkus. The gentleman yields back his time.

219 The chair looks to the minority side to see if there is

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220 any interest in opening statements.

221 Seeing none, the chair calls up H.R. 2278 and asks the
222 clerk to report.

223 [The Bill H.R. 2278 follows:]

224

225 *****INSERT 1*****

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226 The Clerk. H.R. 2278, to extend the authorization of
227 the Uranium Mill Tailing Radiation Control Act of 1978,
228 relating to the disposal site in Mesa County, Colorado.

229 Mr. Shimkus. Without objection, the first reading of
230 the bill is dispensed with and the bill would be open for
231 amendment at any point, so ordered.

232 The chair recognizes himself to offer an amendment in
233 the nature of a substitute and the clerk will report the
234 amendment.

235 [The Amendment offered by Mr. Shimkus follows:]

236

237 *****INSERT 2*****

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238 The Clerk. Amendment in the nature of a substitute to
239 2278, offered by Mr. Shimkus.

240 Mr. Shimkus. And the chair recognizes himself five
241 minutes in support of the amendment in the nature of a
242 substitute.

243 Forty years ago, Congress established a framework to
244 dispose of uranium mill tailings. Uranium mill tailings are
245 the byproduct material left over after mining and processing
246 uranium ore.

247 In 1996, Congress authorized a disposal cell for uranium
248 mill tailings located near Grand Junction, Colorado, to
249 operate until 2023, or until it is full, whichever comes
250 first.

251 The cell contains about 4.5 million cubic yards of
252 residual radioactive material, receives approximately 2,700
253 cubic yards of additional waste per year, and has sufficient
254 space to receive an estimated 235,000 cubic yards, which
255 represents 86 more years of operation at current rates.

256 H.R. 2278 extends the authorization operation for the
257 Grand Junction cell until 2048, or until it is full,
258 whichever comes first.

259 The amendment in the nature of a substitute makes a

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260 technical change to the introduced bill to accurately cite
261 the existing U.S. Code and amend the bill's short title.

262 And with that, I will yield back my time and ask if
263 anyone wants to speak, and seeing no one, the question now is
264 on -- hold on -- the question is on -- the question is on the
265 amendment in the nature of a substitute.

266 All those in favor say aye.

267 Those opposed, no.

268 The ayes have it. The amendment in the nature of a
269 substitute is agreed to.

270 The question now occurs on forwarding H.R. 2278 as
271 amended to the full committee.

272 All those in favor say aye.

273 Those opposed, no.

274 The ayes appear to have it. The ayes have it. The bill
275 is agreed to.

276 The chair calls up H.R. 2389 and asks the clerk to
277 report.

278 [The Bill H.R. 2389 follows:]

279

280 *****INSERT 3*****

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281 The Clerk. H.R. 2389, to reauthorize the West Valley
282 Demonstration Project and for other purposes.

283 Mr. Shimkus. Without objection, the first reading of
284 the bill is dispensed with and the bill will be open for
285 amendment at any point, so ordered.

286 The chair recognizes himself to offer an amendment in
287 the nature of a substitute and the clerk will report the
288 amendment.

289 [The Amendment offered by Mr. Shimkus follows:]

290

291 *****INSERT 4*****

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292 The Clerk. The amendment in the nature of a substitute
293 to H.R. 2389, offered by Mr. Shimkus.

294 Mr. Shimkus. The chair recognizes himself in support of
295 the amendment in the nature of a substitute.

296 In the 1960s, the state of New York partnered with the
297 developing commercial nuclear industry to demonstrate the
298 viability of repressing spent nuclear fuel at the West Valley
299 Service Center near West Valley, New York.

300 When commercial operations at the site ceased, the
301 environmental cleanup activities at the site became New
302 York's responsibility.

303 IN 1980, Congress recognized that the federal government
304 shared a portion of the responsibility to clean up the site
305 and passed the West Valley Demonstration Project Act.

306 The act established a partnership between the Department
307 of Energy and New York and provided for a cost share with 90
308 percent of the project costs coming from the federal
309 government.

310 While Congress agreed to provide cleanup funding for the
311 West Valley Demonstration Project as well as passage of the
312 Nuclear Waste Policy Act two years later, prohibited DOE from
313 disposing of the site's high-level radioactive waste.

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314 The material was generated from commercial activity and
315 remains the responsibility of the state to pay for the
316 disposal costs. H.R. 2389 reauthorizes DOE's activities at
317 the West Valley site for the first time since 1981.

318 The level of funding reflects the appropriations
319 provided to the site in recent years. The amendment in the
320 nature of a substitute updates the fiscal year the project is
321 authorized and directs the Government Accountability Office
322 to submit a report containing critical information to inform
323 future decisions on the cost and time lines associated with
324 various disposal pathways for the site's nuclear waste.

325 And with that, I yield back my time and the chair looks
326 to the ranking member.

327 Mr. Tonko. Mr. Chair, I move to strike the last word.

328 Mr. Shimkus. The gentleman is recognized for five
329 minutes.

330 Mr. Tonko. Thank you.

331 The record is clear that the high-level radioactive
332 waste in transuranic wastes left at West Valley were
333 primarily from atomic energy defense activities and should be
334 disposed of as such.

335 I am disappointed that this amendment in the nature of a

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336 substitute would strike Section 1(B) of the bill, causing the
337 issue to remain unsettled as it has since the 1986 IG report
338 injected uncertainty into the final disposition of these
339 wastes.

340 I know some hope that DOE and New York will be able to
341 work this issue out. But I do not think it will be that
342 simple.

343 Negotiations have languished for years and some issues
344 may not be able to be resolved at all -- for example, the
345 disposal of West Valley's transuranic waste.

346 The sole permanent disposal site for this type of waste
347 is the Waste Isolation Pilot Plant in New Mexico. But WIPP
348 only accepts transuranic waste created through atomic energy
349 defense activity.

350 Moving forward, I hope we can address this larger waste
351 classification issue in such a way that takes into account
352 the site's unique history that has led us to this point.

353 With that being said, retaining the reauthorization
354 language is important to ensure the site's cleanup continues
355 on schedule.

356 The amendment also adds a new requirement for a GAO
357 report. I would point out that at our legislative hearing

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358 both sides of the aisle requested DOE to provide
359 calculations, including the methodology of those calculations
360 of the Nuclear Waste Policy Act disposal fee New York State
361 might be required to pay.

362 As far as I am aware, DOE has not responded to that
363 request for the record. So I find it odd that we are now
364 asking GAO for similar information that we had requested of
365 DOE but never received before this bill moved to markup.

366 Mr. Chair, I hope we can take the time to review the
367 language outlining the scope of this GAO report in greater
368 detail between now and full committee to ensure that both DOE
369 and New York State feel it will result in a final product
370 that is equitable.

371 Again, I want to express my disappointment that we are
372 ignoring the crux of the disagreement over the West Valley
373 wastes. But I hope we can continue to work together to
374 ensure the site is eventually remediated and that the wastes
375 are disposed of properly.

376 If the amendment in the nature of a substitute is
377 approved, I will continue to support the bill moving to full
378 committee, but ask that the majority work with us if any
379 language refinement is needed.

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380 And with that, I thank you and yield back.

381 Mr. Shimkus. Would the gentleman yield to me?

382 Mr. Tonko. Yes, sir.

383 Mr. Shimkus. So this -- as we found out, this is a
384 particular conundrum -- that it also crosses other committees
385 of jurisdiction, which will have a major say in this.

386 So we think the CBO report is an important step in the
387 right direction. But I want to commit to you, as we move
388 forward on how to fix the overall national -- what I've been
389 saying since the floor vote on 3053 is we have a national
390 problem that needs a national solution.

391 I think part of the conundrum for us is right now we
392 have stalled in the national solution. So if we can move the
393 national solution forward and we have some certainty, then I
394 think we may be able to try to address some of these other
395 concerns.

396 And I really do want to look forward to trying to help
397 you all and actually come out and visit the site, too, so,
398 which --

399 Mr. Tonko. Okay. I appreciate that, Mr. Chair, and
400 yes, let's at least work to provide for that certainty.

401 Mr. Shimkus. And then the gentleman yields back his

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402 time.

403 Anyone else seeking time on the bill before us? If not,
404 if there is no further discussion, the vote occurs on the
405 amendment in the nature of a substitute.

406 All those in favor will signify by saying aye.

407 All those opposed, no.

408 The ayes have it. The amendment in the nature of a
409 substitute is agreed to.

410 The question now occurs on forwarding H.R. 2389 as
411 amended to the full committee.

412 All those in favor, say aye.

413 All those opposed, no.

414 The ayes appear to have it. The ayes have it. The bill
415 is agreed to.

416 Without objection, staff is authorized to make technical
417 and conforming changes to the legislation approved by the
418 subcommittee today. So ordered.

419 Without objection, the subcommittee stands adjourned.

420 [Whereupon, at 12:34 p.m., the subcommittee was
421 adjourned.]