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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.

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

21 Members present: Representatives Shimkus, McKinley, Harper,
22 Olson, Johnson, Flores, Cramer, Walberg, Walden (ex officio),
23 Tonko, and Peters.

24 Staff present: Mike Bloomquist, Deputy Staff Director;
25 Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant;

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

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

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

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

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

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

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

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

66 I recognize the state of New York's interest in eliminating
67 DOE's statutory prohibition on disposing high-level radioactive

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68 waste generated at the site over 50 years ago.

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

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

79 To get a better understanding of the alternative disposal
80 path for the remainder of the radioactive waste, Congress needs
81 additional information.

82 The amendment in the nature of a substitute, H.R. 2389, will
83 help gather that information by directing the Government
84 Accountability Office to identify the volumes and types of
85 radioactive waste at the site, disposal options for the waste
86 streams including cost and time frames, and benefits and
87 challenges of each disposal option.

88 This information will enable Congress to make a fully
89 informed decision in the future.

90 We will also consider H.R. 2278, the Responsible Disposal
91 Reauthorization Act of 2017, introduced by Representative Scott
92 Tipton and co-sponsored by my colleague on the Subcommittee on

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93 Environment, Representative Diana DeGette.

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

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

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

103 I look forward to passing these bipartisan bills and
104 continuing to advance policies to help the department meet its
105 environmental cleanup goals and obligations.

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

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

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

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

117 The Uranium Mill Tailings Radiation Control Act established

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118 a process for remediating inactive uranium ore processing sites
119 such as the one in Grand Junction, Colorado.

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

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

125 H.R. 2389 addresses a unique site in my home state, the
126 western New York Service Center in West Valley. The site is owned
127 by New York State and, from 1996 through 1972, was operated by
128 a private company to reprocess spent nuclear fuel primarily
129 provided by the federal government.

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

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

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

139 The state has reviewed documents from the site showing that
140 60 percent of the materials sent to West Valley was from facilities
141 that conducted defense activities and 80 percent of the
142 reprocessed plutonium shipped out of West Valley was sent to

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143 defense facilities.

144 H.R. 2389, as introduced, would resolve this issue. In
145 addition to clarifying the treatment of these wastes, the bill
146 authorizes \$75 million annually for 10 years for the West Valley
147 Demonstration Project.

148 This funding level is identical to the amount appropriated
149 in fiscal year 2018 and will ensure the cleanup will continue on
150 schedule.

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

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

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

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

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

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

164 You know, much of our Energy and Commerce Committee's focus
165 this Congress on modernization and lapsed authorizations at DOE
166 programs has been overseen by Vice Chairman Barton and Energy
167 Subcommittee Chairman Upton, and, of course, Chairman Shimkus has

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168 done a lot of work in this area as well.

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

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

178 This proactive bipartisan bill will assure this important
179 cleanup site remains available to safely dispose of contaminated
180 radioactive material.

181 The second bill that we are taking up today reauthorizes the
182 Department of Energy's environmental remediation activities at
183 the sole location in the United States that reprocessed spent
184 nuclear fuel for commercial purposes -- that's in West Valley,
185 New York.

186 The state of New York owns the site and funds a portion of
187 the cleanup activities at the location. The bill's sponsors --
188 Congressman Tom Reed -- is a strong advocate for an ongoing and
189 strengthened partnership between DOE and the state of New York.

190 I would also like to note the Environment Subcommittee
191 ranking member, my friend, Mr. Tonko, oversaw the program prior
192 to his election to Congress, and I appreciate his leadership on

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193 this issue as well. I can't think of anybody who knows it better.

194 That's correct, right?

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

197 [Laughter.]

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

200 Marking up these bills this morning will continue our agenda
201 to methodically review and renew, where necessary, important
202 federal government programs.

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

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

206 The chair looks to the minority side to see if there is any
207 interest in opening statements.

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

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

211

212 *****INSERT 1*****

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

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

219 The chair recognizes himself to offer an amendment in the
220 nature of a substitute and the clerk will report the amendment.

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

222

223 *****INSERT 2*****

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

226 Mr. Shimkus. And the chair recognizes himself five minutes
227 in support of the amendment in the nature of a substitute.

228 Forty years ago, Congress established a framework to dispose
229 of uranium mill tailings. Uranium mill tailings are the
230 byproduct material left over after mining and processing uranium
231 ore.

232 In 1996, Congress authorized a disposal cell for uranium mill
233 tailings located near Grand Junction, Colorado, to operate until
234 2023, or until it is full, whichever comes first.

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

240 H.R. 2278 extends the authorization operation for the Grand
241 Junction cell until 2048, or until it is full, whichever comes
242 first.

243 The amendment in the nature of a substitute makes a technical
244 change to the introduced bill to accurately cite the existing U.S.
245 Code and amend the bill's short title.

246 And with that, I will yield back my time and ask if anyone
247 wants to speak, and seeing no one, the question now is on -- hold
248 on -- the question is on -- the question is on the amendment in

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249 the nature of a substitute.

250 All those in favor say aye.

251 Those opposed, no.

252 The ayes have it. The amendment in the nature of a
253 substitute is agreed to.

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

256 All those in favor say aye.

257 Those opposed, no.

258 The ayes appear to have it. The ayes have it. The bill is
259 agreed to.

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

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

262

263 *****INSERT 3*****

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

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

269 The chair recognizes himself to offer an amendment in the
270 nature of a substitute and the clerk will report the amendment.

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

272

273 *****INSERT 4*****

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

276 Mr. Shimkus. The chair recognizes himself in support of the
277 amendment in the nature of a substitute.

278 In the 1960s, the state of New York partnered with the
279 developing commercial nuclear industry to demonstrate the
280 viability of repressing spent nuclear fuel at the West Valley
281 Service Center near West Valley, New York.

282 When commercial operations at the site ceased, the
283 environmental cleanup activities at the site became New York's
284 responsibility.

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

288 The act established a partnership between the Department of
289 Energy and New York and provided for a cost share with 90 percent
290 of the project costs coming from the federal government.

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

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

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299 The level of funding reflects the appropriations provided
300 to the site in recent years. The amendment in the nature of a
301 substitute updates the fiscal year the project is authorized and
302 directs the Government Accountability Office to submit a report
303 containing critical information to inform future decisions on the
304 cost and time lines associated with various disposal pathways for
305 the site's nuclear waste.

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

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

309 Mr. Shimkus. The gentleman is recognized for five minutes.

310 Mr. Tonko. Thank you.

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

315 I am disappointed that this amendment in the nature of a
316 substitute would strike Section 1(B) of the bill, causing the
317 issue to remain unsettled as it has since the 1986 IG report
318 injected uncertainty into the final disposition of these wastes.

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

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

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324 The sole permanent disposal site for this type of waste is
325 the Waste Isolation Pilot Plant in New Mexico. But WIPP only
326 accepts transuranic waste created through atomic energy defense
327 activity.

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

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

333 The amendment also adds a new requirement for a GAO report.
334 I would point out that at our legislative hearing both sides of
335 the aisle requested DOE to provide calculations, including the
336 methodology of those calculations of the Nuclear Waste Policy Act
337 disposal fee New York State might be required to pay.

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

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

346 Again, I want to express my disappointment that we are
347 ignoring the crux of the disagreement over the West Valley wastes.
348 But I hope we can continue to work together to ensure the site

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349 is eventually remediated and that the wastes are disposed of
350 properly.

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

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

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

357 Mr. Tonko. Yes, sir.

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

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

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

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

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

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374 Mr. Shimkus. And then the gentleman yields back his time.
375 Anyone else seeking time on the bill before us? If not, if
376 there is no further discussion, the vote occurs on the amendment
377 in the nature of a substitute.

378 All those in favor will signify by saying aye.

379 All those opposed, no.

380 The ayes have it. The amendment in the nature of a
381 substitute is agreed to.

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

384 All those in favor, say aye.

385 All those opposed, no.

386 The ayes appear to have it. The ayes have it. The bill is
387 agreed to.

388 Without objection, staff is authorized to make technical and
389 conforming changes to the legislation approved by the
390 subcommittee today. So ordered.

391 Without objection, the subcommittee stands adjourned.

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