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ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 16, 2018

To: Subcommittee on Environment Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: 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"

On **Friday, May 18, 2018, at 9:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Environment will hold a 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."

I. BACKGROUND

The United States Department of Energy (DOE) is responsible for remediating and monitoring 70 years of nuclear energy research and weapons production by DOE and its predecessor agencies. Completion of remediation and decommissioning nuclear sites often takes longer and costs more than initially predicted.[1] This is due to several factors, including regulation changes, radiation detection improvement, new information, and accrued interest. Because of the high cost associated with permanent disposal of radioactive waste, both the Federal Government and States seek to clarify their legal responsibilities.

[1] Government Accountability Office, *Modernizing The Nuclear Security Enterprise, Observations on DOE's and NNSA's Efforts to Enhance Oversight of Security, Safety, and Project and Contract Management* (Feb. 2018) (GAO-18-374T).

II. BILLS TO BE CONSIDERED

A. H.R. 2278, the Responsible Disposal Reauthorization Act of 2017

The Climax Uranium Company began processing uranium in Grand Junction, Colorado in 1951. The uranium milling process produced 2.2 million tons of radioactive tailings. Before the health risks and dangers of the mill tailings were well understood, contractors and the community used an estimated 300,000 tons of radioactive tailings as fill material and the sand mixture in mortar and concrete.[2]

In order to protect the public and the environment from uranium mill tailings, Congress passed the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Title 1 of UMTRCA established a process for remediating inactive uranium-ore processing sites, including the Grand Junction site. Title I also provided for the creation of disposal cells to encapsulate the uranium mill tailings and associated contaminated materials, including waste from vicinity properties. The city of Grand Junction contained 80 percent of the vicinity properties identified to date. Radioactive tailings were used in the construction of its local golf course, parks, schools, hospitals, police station, and homes.[3] The only remaining operational low-level nuclear waste disposal cell created pursuant to the Title I authority is the Cheney Disposal Cell located in Grand Junction.

H.R. 2278 would amend UMTRCA to authorize DOE to continue to operate the Cheney Disposal Cell until September 30, 2048 or until the disposal cell is filled to capacity, whichever occurs first. Current law allows the Cheney Disposal Cell to operate through September 2023. Congress has extended the closure date of the Cheney Disposal Cell multiple times to allow additional contaminated materials to be received, most recently in 1996.[4]

B. H.R. 2389, to reauthorize the West Valley demonstration project, and for other purposes

The Western New York Nuclear Service Center (WNYNSC) in West Valley, New York, which operated from 1966 to 1972, was the only private facility for spent nuclear fuel (SNF) reprocessing in the United States. It accepted SNF from both commercial and defense sources. Approximately 60 percent of the SNF reprocessed at WNYNSC came from the Hanford Site,

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[2] Department of Energy, *Grand Junction, Colorado, Site, Fact Sheet* (Nov. 2017) (www.lm.doe.gov/Grand_Junction/Fact_Sheet_GJO.pdf).

[3] The S.M. Stoller Corporation for the Department of Energy, *Lessons Learned During Remediation of More than 4,000 Properties in Grand Junction, Colorado, USA* (Apr. 2014) (www.rpic-ibic.ca/documents/RPIC_FCS2014/Presentations/6-Elmer_201404_LessonsLearned_Elmer_20140321.pdf).

[4] PL 104-259.

and 80 percent of the recovered plutonium was returned to Hanford.[5] Currently, the West Valley site contains transuranic waste (TRU) and solidified high-level nuclear waste (HLW).[6] The unique status of a privately-owned reprocessing facility that accepted defense waste, on a state owned site, with DOE statutory cleanup responsibilities, has caused confusion and disagreements between the State of New York (NY) and DOE on the designation of the waste and the fiscal liabilities. Only TRU designated to be from atomic energy defense activity can be sent to the Waste Isolation Pilot Plant in New Mexico for permanent disposal; there are currently no repositories for non-defense TRU.

The West Valley Demonstration Project Act (WVDPA), enacted in 1980, states the "[a]ct does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof."[7] The state of New York maintains that the Nuclear Waste Policy Act of 1982 (NWPA) is the appropriate statute to guide the waste designation. The NWPA states that, "costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities should be paid by the Federal Government."[8] Further, the NWPA defines "atomic energy defense activity" as "any activity of the Secretary performed in whole or in part" in carrying out, "defense nuclear materials production, defense nuclear waste and materials by-products management, and defense research and development."[9] New York claims that, because of the NWPA, WNYNSC radioactive waste is from atomic energy defense activity and the costs to dispose of the waste permanently is the responsibility of the Federal Government. However, since 1986, DOE has classified the HLW at WNYNSC as "commercial waste" rather than waste stemming from atomic energy defense activities. New York disagrees with this designation and has filed comments with DOE asserting that waste at the site should be classified as "from atomic energy defense activity."[10]

H.R. 2389 would amend the WVDPA to authorize $75,000,000 for the West Valley Demonstration Project for each of the fiscal years 2017 through 2026. Additionally, the bill designates all of the radioactive waste at the high-level radioactive waste management

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[5] The New York State Energy Research and Development Authority, *NYSERDA's View on the Defense Origin of the West Valley Waste at the Western New York Nuclear Service Center* (March 2017) (westvalleyctf.org/2017_Materials/03/2017-03-22_NYSERDA_Waste_Classification_Presentation.pdf).

[6] Department of Energy, *West Valley Demonstration Project Site Cleanup By the Numbers* (June 2017) (www.energy.gov/sites/prod/files/2017/08/f36/WVDP%20Site%20by%20Numbers%20June%202017.pdf).

[7] 42 U.S.C. § 2021a note Sec. 5. (B).

[8] 42 U.S.C. § 10107(b)(2).

[9] 42 U.S.C. § 10101(3).

[10] *Id.*

demonstration project at the WNYNSC in West Valley, New York as waste resulting from atomic energy defense activities.

III. WITNESSES

The following witnesses have been invited to testify:

Panel I

Representative Tom Reed (R-NY)

Panel II

Mark Gilbertson
Associate Principle Deputy Assistant Secretary for Regulatory and Policy Affairs, Office of Environmental Management
U.S. Department of Energy

Panel III

Noah C. Shaw
General Counsel and Secretary
New York State Energy Research and Development Authority (NYSERDA)