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TO REAUTHORIZE THE WEST VALLEY DEMONSTRATION PROJECT, AND FOR OTHER PURPOSES

SEPTEMBER 7, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2389]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2389) to reauthorize the West Valley demonstration project, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Committee Action	6
Committee Votes	6
Oversight Findings and Recommendations	6
New Budget Authority, Entitlement Authority, and Tax Expenditures	6
Congressional Budget Office Estimate	6
Federal Mandates Statement	8
Statement of General Performance Goals and Objectives	8
Duplication of Federal Programs	8
Committee Cost Estimate	8
Earmark, Limited Tax Benefits, and Limited Tariff Benefits	8
Disclosure of Directed Rule Makings	9
Advisory Committee Statement	9
Applicability to Legislative Branch	9
Section-by-Section Analysis of the Legislation	9
Changes in Existing Law Made by the Bill, as Reported	9

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. WEST VALLEY DEMONSTRATION PROJECT.

(a) REAUTHORIZATION.—Section 3(a) of the West Valley Demonstration Project Act (Public Law 96–368; 42 U.S.C. 2021a note) is amended by striking "$5,000,000 for the fiscal year ending September 30, 1981" and inserting "$75,000,000 for each of fiscal years 2019 through 2028".

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that describes—

(1) the volumes, origins, and types of radioactive waste at the Western New York Service Center in West Valley, New York;

(2) what options have been identified for disposal of each such type of radioactive waste;

(3) what is known about the costs of, and timeframes for, each such option;

(4) the benefits and challenges of each such option, according to the State of New York and the Department of Energy; and

(5) as of the date of enactment of this Act—

(A) how much has been spent on the disposal of radioactive waste associated with the demonstration project prescribed by section 2(a) of the West Valley Demonstration Project Act; and

(B) what volumes and types of radioactive waste have been disposed of from the Western New York Service Center.

PURPOSE AND SUMMARY

H.R. 2389, to reauthorize the West Valley Demonstration Project, and for other purposes, was introduced by Rep. Tom Reed (R–NY) on May 4, 2017, with Rep. Brian Higgins (D–NY), Rep. Nita Lowey (D–NY), Rep. Jerrold Nadler (D–NY), and Rep. Louise Slaughter (D–NY). The legislation reauthorizes the Department of Energy's (DOE) high-level liquid nuclear waste demonstration project at the Western New York Service Center (Center) in West Valley, New York. Key provisions of H.R. 2389 include the following:

- The bill would authorize $75,000,000 for each of the fiscal years from 2019 through 2028.
- The bill also would require the Comptroller General to submit a report to Congress to identify options to dispose of the site's radioactive waste, including costs of and time frames for each option.

BACKGROUND AND NEED FOR LEGISLATION

From the initial development of the United States' commercial nuclear industry in the 1950s through the eventual maturation and large-scale deployment of large light-water reactor technologies in use today, a variety of nuclear enrichment, fuel forms, and reactor technologies have been examined to identify the most viable and sustainable supply chain and reactor deployment options. The Atomic Energy Commission (AEC) led the Federal government's efforts to develop and advance nuclear technologies, as well as regulate the safe use of such technologies.

Extracting and enriching uranium by reprocessing spent nuclear fuel was one option the AEC and the emerging commercial nuclear industry considered.

To test the economic and technological feasibility of reprocessing nuclear fuel, and with the support and involvement of the AEC, the State of New York partnered with Nuclear Fuel Services (NFS) to construct and operate a facility at the West Valley Service Center. NFS operated the facility on State-owned land leased to NFS from 1966 to 1972 and was provided nuclear fuel from a variety of sources, the majority of which was from AEC reactors due to the lack of sufficient quantities of spent fuel from commercial reactors

to support fully NFS' activities. During this time, about 642 tons of nuclear fuel was reprocessed, 60 percent or 380 tons of which was provided from the N-Reactor at the Federal government's Hanford facility in Washington State.

In 1976, NFS opted to cease operation after increased costs associated with a pending modification required by federal regulations altered the site's economic viability. In doing so, the company also took advantage of the ability to shift waste management responsibilities to New York. NFS' lease with New York expired in 1980 and responsibility to operate and remediate the site fully reverted to the State.

West Valley Demonstration Project Act and subsequent legislation

In 1980, Congress recognized that the Federal government shared responsibility to remediate the site as a result of the overlapping interests facilitated by the AEC and the nation's atomic energy development program. During the Committee on Interstate and Foreign Commerce's hearing on proposed legislation, New York Governor Hugh Carey stated, New York "cannot carry this [remediation project] alone. It was never contemplated by any of the parties, including the United States, that the State alone would bear the cost and burdens of the failure of this risky venture." [1]

On October 1, 1980, the West Valley Demonstration Project Act [2] (WVDP Act) was enacted to direct DOE to partner with New York State to decontaminate and decommission the West Valley site. The WVDP Act established a partnership between DOE and New York and provided for a cost share arrangement to manage the facilities and remediate the site, with 90 percent of the project costs coming from the Federal government.

The Committee Report accompanying the WVDP Act states:

> [T]he Committee recognizes that a substantial quantity of this waste was produced in the course of fulfilling contracts with the [AEC] and that most of such contracts were related to the military program. Because of the extensive past Federal involvement, the Committee is willing to have the government pay 90 percent of the cost of the project. In view of the unique circumstances regarding the Federal government's past extensive involvement at the West Valley site, the Committee believes that it is a special situation, and does not intend that the share provided by the Federal government constitute precedent for any subsequent remedial actions which may be performed by the Federal government.[3]

The WVDP Act authorized $5 million for DOE in 1981 with estimated costs expected to total between $250 to $500 million over the course of the project.

While Congress agreed to provide cleanup funding, the WVDP Act did not commit the Federal government to supporting disposal costs. The Committee report accompanying WVDP Act stated that "the transfer of the title to the high-level radioactive wastes (HLW)

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[1] Committee on Interstate and Foreign Commerce report accompanying H.R. 6865, the West Valley Demonstration Project Act, September 15, 1980.
[2] West Valley Demonstration Project Act, P.L. 96–368.
[3] WVDP Act Committee Report.

will be governed by such conditions as may be established in subsequent legislation, including the payment of a disposal fee" and the cost share program did not apply to ultimate disposal costs.[4]

Section 5(b) of the WVDP Act notes that the Federal government is not authorized "to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof." The Committee report states the intent behind this provision:

> [T]he Federal government is not authorized under this Act to acquire title to any [HLW] at the Center or to the Center or any portion thereof. This subsection then clarifies that nothing in this Act authorizes the Federal government to acquire title to either the [HLW] at the Center or the Center itself or any portion thereof. This Committee recognizes that the Federal government will acquire title to the [HLW], in that disposal of such waste is a Federal responsibility. However, resolution of the issue as to when title to [HLW] transfers to the Federal government has not yet been addressed in legislation, and the Committee does not believe it appropriate to resolve this issue in the context of this legislation and defers resolution of this question until such time as the issue is addressed on a generic basis in a more comprehensive bill.[5]

The subsequent, comprehensive bill came two years later during Congressional consideration of the Nuclear Waste Policy Act of 1982 (NWPA). The NWPA provides that "costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government." The NWPA also defines "atomic energy defense activity" as "any activity of the Secretary performed in whole or in part" in carrying out, among other things, "defense nuclear materials production, defense nuclear waste and materials by-products management, and defense research and development." Because of disputes concerning the applicability of this definition to the West Valley waste, an analysis by GAO of the origins of and disposal pathways for the waste is required in H.R. 2389.

In the NWPA, Congress did not address the prohibition on taking title to West Valley nuclear waste in the NWPA, nor did Congress include any particular site's material as part of the definition of HLW from atomic energy defense activities. Further, Congress had another opportunity to address a disposal path when Congress passed the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act in 1992. Congress authorized WIPP to accept transuranic waste generated from atomic energy defense activities, but did not specifically reference waste generated at the West Valley site, leaving the disposition path open to question.

The Center's low-level waste (LLW) is subject to disposal requirements established by the Low-Level Radioactive Waste Policy Act, which was enacted on December 22, 1980 or less than 90 days after the WVDP Act. Under the LLW policy, the Center's waste can be sent to a commercially available LLW disposal facility. According to the State of New York, LLW disposal costs have been covered under the program's 90 percent cost-share agreement with DOE.

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[4] WVDP Act Committee Report.
[5] WVDP Act Committee Report.

Legislative issues

H.R. 2389 reauthorizes DOE's activities at the West Valley site for the first time since 1981. The level of funding reflects the level of funding provided in fiscal year 2018 appropriations legislation and is aligned with the projected funding needs to meet DOE's schedule to fully remediate the site by the mid-2040's.

As introduced, H.R. 2389 directed that all nuclear waste at the Center would be considered generated from atomic energy defense activities. This would shift undefined costs from the non-defense budget accounts to the account that funds national defense programs.

In testimony before the Committee, the State of New York identified two primary issues associated with the disposal pathway for the Center's nuclear waste. First, costs associated with disposal of HLW are currently the responsibility of New York State, as established in the WVDP Act. The NWPA required that generators of commercial HLW pay a fee to dispose of the waste in a Federal repository. Under current requirements, when the repository is available, the State of New York would pay into the Nuclear Waste Fund an amount commensurate with the share of the total repository costs of the site's HLW. In 1986, the DOE Inspector General estimated New York's contribution to the Waste Fund to be $68.7 million, and no further estimate has been provided despite New York State's requests.

New York is also seeking a disposal pathway for nuclear waste that would be categorized as "Greater-Than-Class-C" (GTCC). GTCC waste contains higher concentrations of radioactivity than current regulatory limits established by the Nuclear Regulatory Commission (NRC) for low-level waste. NRC's LLW classification includes three classes: Class A, B, and C. Material that has radioactive characteristics above Class C but does not meet the statutory definition of HLW is considered GTCC or transuranic waste at West Valley, the only site where such wastes exist that is designated by DOE as "commercial."

The Committee recognizes that there has been considerable evolution in costs, schedule, technology, and waste disposal locations since the WVDP Act was enacted in 1980. However, to make a fully informed decision, the report required by section 2 of H.R. 2389 is necessary. This Committee recognizes the need for a disposal pathway for the non-HLW, non-LLW at West Valley.

In December 2017, DOE submitted a report to Congress, pursuant to section 631 of the Energy Policy Act of 2005, describing GTCC disposal alternatives. DOE's inventory of GTCC for the section 631 report included the West Valley material, which would be subject to future Congressional action. As Congress advances a GTCC disposal policy, the Committee expects the Center's GTCC waste to be included in a designated permanent disposal facility.

The disposal pathway for the Center's HLW remains subject to the nation's nuclear waste management program pursuant to the Nuclear Waste Policy Act, as amended. The Committee's ongoing work to reconstitute the Federal government's HLW and spent nuclear fuel disposal program will benefit New York State's interest to move the Center's HLW to a repository for disposal. DOE's projection to complete remediation at the site is in the mid-2040's. It

is the Committee's expectation that the repository will be operating by such date and enable removal of the material.

The Government Accountability Office report required by H.R. 2389 also recognizes that the various disposal options may impact New York State and surrounding communities. Documenting the information will allow Congress to have a robust understanding of how amending the WVDP Act could affect state and local stakeholders.

COMMITTEE ACTION

The Subcommittee on Environment and held a hearing on H.R. 2389 on May 18, 2018. The Subcommittee received testimony from:

- Tom Reed (NY–23), Member, U.S. House of Representatives;
- Mark Gilbertson, Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, Office of Environmental Management, Department of Energy; and,
- Noah Shaw, General Counsel and Secretary, New York State Energy Research and Development Authority.

On June 27, 2018, the Subcommittee on Environment met in open markup session and forwarded H.R. 2389, as amended, to the full Committee by a voice vote. On July 12, 2018, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2389, as amended, reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2389 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2389 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 29, 2018.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2389, a bill to reauthorize the West Valley Demonstration Project, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2389—A bill to reauthorize the West Valley Demonstration Project, and for other purposes

Summary: The Department of Energy (DOE) is responsible for remediating sites contaminated with radioactive waste and other environmental hazards stemming from federal activities related to the production of nuclear weapons and nuclear energy research. H.R. 2389 would authorize appropriations for ongoing cleanup activities at the West Valley Demonstration Project, a nuclear waste remediation site in New York. The bill also would require the Government Accountability Office (GAO) to report to the Congress on options for disposing of the site's radioactive waste.

Assuming appropriation of the specified amounts, CBO estimates that implementing H.R. 2389 would cost $345 million over the 2019–2023 period.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2389 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 2389 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2389 is shown in the following table. The costs of the legislation fall within budget function 270 (energy).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	75	75	75	75	75	375
Estimated Outlays	0	49	71	75	75	75	345

Basis of estimate: For this estimate, CBO assumes that H.R. 2389 will be enacted near the start of fiscal year 2019.

Under current law and the terms of an agreement with the state of New York, DOE is responsible for paying 90 percent of the costs to dispose of radioactive waste, decontaminate facilities, and remove nonessential structures from the site of the West Valley Demonstration Project. H.R. 2389 would authorize the appropriation of

$75 million annually over the 2019–2028 period for those purposes. (In 2018, funding for cleanup activities at that site totals $75 million.) Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 2389 would cost $345 million over the 2019–2023 period (and $405 million after 2023). Estimated outlays are based on historical spending patterns for DOE's environmental management programs.

CBO estimates that requiring GAO to prepare a report on options for disposing of the site's radioactive waste would not significantly affect that agency's costs, which are subject to appropriation.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2389 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 2389 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Megan Carroll, Mandates: Jon Sperl.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 2389 is to reauthorize DOE's activities at the Western New York Service Center in West Valley, New York, and to gather additional information regarding the project's nuclear waste disposal costs, time, and pathways.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2389 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2389 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 2389 contains no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. West Valley Demonstration Project

This section amends section 3(a) of the West Valley Demonstration Project Act to authorize $75,000,000 for each of the fiscal years 2019 through 2028.

This section also requires the Comptroller General submit to Congress a report that describes volumes, origins, and types of radioactive waste at the Western New York Service Center in West Valley, New York; options identified for disposal of radioactive waste; costs of and timeframes for each such options; benefits and challenges of each such option; and how much has been spent on disposal of radioactive waste and volumes and what types of radioactive waste have been disposed of from the Western New York Service Center.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

WEST VALLEY DEMONSTRATION PROJECT ACT

* * * * * * *

SEC. 3. (a) There are authorized to be appropriated to the Secretary for the project not more than [$5,000,000 for the fiscal year ending September 30, 1981] *$75,000,000 for each of fiscal years 2019 through 2028*.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

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