President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State except California.

With this confirmation, President Bush's nominees will make up 16 of the 41 active Federal circuit and district court judges for Pennsylvania—that is more than one third of the Pennsylvania Federal bench. With the additional four Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Although Republicans now decry Democratic filibusters of a mere handful of the most extreme nominees, Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Mr. SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were ten nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite how well-qualified these nominees were, many of their nominations sat pending before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, the Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts ''present Republicans with an opportunity to shape the judicial makeup of the court for years to come.''

Democratic support for the confirmation of Franklin Van Antwerpen is yet another example of our extraordinary cooperation despite an uncompromising White House and the record of how President Clinton's Pennsylvania nominees fared under Republican control in the Senate. In contrast to many of President Bush's nominees, Judge Van Antwerpen comes to us with a distinguished and widely acclaimed career on the bench—both on the State and Federal levels. He was rated unanimously well-qualified by the American Bar Association and has the respect of his peers on the bench and of the attorneys who appear before him. He is the kind of nominee this President and my Republican colleagues should be looking for as we fulfill our constitutional duty of appointing members to the Federal judiciary—an independent branch of the government.

I congratulate Judge Van Antwerpen and his family on his confirmation today.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—96

Akaka	DeWine	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lott
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Ensign	Murkowski
Bingaman	Enzi	Murray
Bond	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Santorum
Carper	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NOT VOTING—4

Hutchison	Miller
Kerry	Sessions

The nomination was confirmed.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I join with my colleague in requesting Senators to send in as many amendments as they possibly can. The Senator from Michigan and I will be here tomorrow in hopes that we can clear amendments. There are days when clearances could be facilitated. I think tomorrow is one of those days.

I say to my good colleague, the Senator from Michigan, Mr. LEVIN, am I correct in that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I say to my good friend from Virginia, he is absolutely not only correct but I would join his plea to our colleagues that we make good use of time tomorrow. If Senators are not here, their staff can deliver amendments so at least we can begin to consider them. We can make good use of tomorrow so when we come back we will have to use up less of the Senate's time.

So I join the chairman's plea that Members on both sides of the aisle, who have not filed amendments or given our staffs amendments, do that tomorrow. Let us try to work through some of them. We could clear them tomorrow and, even if we do not have contested amendments tomorrow, we could make some progress on this bill.

Mr. WARNER. I thank my colleague.

The distinguished Senator from Nevada, the Democratic whip, pointed out that he has a count of over 100-odd amendments with which we have to deal. So there is a formidable task ahead of us.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. The reason I speak as we close out this evening is to comment on a few things about the amendment pending before the Senate in regard to an effort to do two things: to make sure the $350 million that is available for the Department of Energy to provide cleanup in the States of Washington, Idaho, and South Carolina can move forward without any strings attached, and to ratify an agreement that the State of South Carolina has entered into with the Department of Energy concerning 51 tanks containing high-level waste.

I really do very much like my colleague from Washington, Senator CANTWELL, but we dramatically disagree on this. I cannot emphasize how dramatically we do disagree about what is at stake and what we are trying to accomplish.

My senior Senator from South Carolina could not have been possibly better to me since I have been in the Senate almost 18 months now. He is going through some accusations that I find not consistent with who Senator HOLLINGS is. I am not going to dwell on that, but I believe that most of us who

know Senator HOLLINGS very well believe he gives everybody the same treatment: Really hard. He is a fair man. He is a good man. We have some disagreement about how to handle the amendment before us, but I did not come to this issue without some time, attention, and thought to the matter.

Well over a year I have been involved with my State working with the Department of Energy to make sure that the 51 tanks that have high-level waste as a result of the cold war legacy material at the Savannah River site is cleaned up in a way that is environmentally sound for South Carolina, good for the taxpayer, and it makes sense.

I have a letter from the Governor of South Carolina. Contrary to what Senator HOLLINGS suggested, the Governor of South Carolina not only knows what we are doing, he encourages what we are doing. I received a letter to that effect. I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, SC, May 20, 2004.

Hon. LINDSEY O. GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: I am writing in support Section 3116, Defense Site Acceleration Completion in the FY 2005 Department of Defense Authorization bill, S. 2400. More specifically, this section of the bill will allow for an accelerated clean up of the Savannah River Site in South Carolina.

This Administration is concerned about the prospect of long-term storage of radioactive waste in aging tanks at the Savannah River Site. Under the current Nuclear Waste Policy Act, the cleanup process could leave the waste in those storage tanks for an additional 30 years.

However, the amendment allows the U.S. Department of Energy, working with the South Carolina Department of Health and Environmental Control, to move more quickly to clean up the Savannah River Site. In fact, the estimated cleanup time will be reduced by 23 years, at a savings of $16 billion to the taxpayers.

Most important is ensuring that the State of South Carolina will be able to retain an oversight role in the cleanup process. According to analysis by the South Carolina Department of Health and Environmental Control, the state's environmental regulatory agency, the clean up process will still require an equal partnership with the State.

As you move through the legislative process, we urge you and your colleagues to retain two very important goals for South Carolina: 1. allow for a more accelerated clean up process, and 2. provide strong language to protect the State's sovereignty within the process of accelerated cleanup.

Thank you for your leadership in the United States Senate. I look forward to working with you on this and many other matters of importance to our State.

Sincerely,

MARK SANFORD.

Mr. GRAHAM of South Carolina. I am going to read from it. The question Senator HOLLINGS raised was, well, if our Governor knew about this he would not agree to this because he is a good environmentalist.

We will agree on this: Our Governor is a good environmentalist. He has been a great Governor trying to change the culture of the way we do business in South Carolina. I have been working with him for well over a year to make sure our State gets those tanks cleaned up in our lifetime and we do not have to worry about ground water leakage.

The folks in Washington have a real problem on their hands, and I want to help them. The people in Idaho have problems on their hands, and I want to help them. I do not think they are being very responsible in terms of how we are dealing with each other's problems.

Here is a chronology of what has been going on in these three States. Idaho, South Carolina, and Washington have been separately negotiating with the Department of Energy about trying to agree on standards in their States to remediate the high-level waste that is left over from the cold war. Washington has a particular problem where they have tanks that are leaking into the ground water. That needs to be fixed sooner rather than later.

The question is, What is clean? The question is, Are we going to allow South Carolina, Idaho, and Washington to work with the Department of Energy to take care of their specific needs and specific problems in an environmentally sound manner or are we going to give one group a veto power over everybody else?

I hope we do not. January 26, 2004, Congressman HASTINGS and Senators MURRAY and CANTWELL sent a letter to Governor Locke and Secretary Abraham asking them to work together to resolve the ongoing dispute pertaining to waste classification.

On February 2, the deputy secretary and Governor Locke connected. Governor Locke indicated he would designate someone to enter into a discussion on behalf of the State of Washington.

That has been going on in South Carolina far before January 26. It is going on in Idaho. About 8 or 9 years ago Idaho reached agreement about certain aspects of cleaning up of the Idaho sites. Each site has a different problem and it is working with DOE in a way that is good for everyone, the State and at the Federal level, to clean up these sites.

The reason we are in court in Idaho is DOE unilaterally issued an order that gave them the authority to set the cleanup standards without consulting with the States. They were trying to change the game or the agreement Idaho had with DOE, and Idaho sued and we—South Carolina and Washington—joined as a friend of the court, saying we will not sit on the sidelines and watch the Department of Energy have the unilateral right to set cleanup standards. That is what we agree upon.

The amendment I have before the Senate does two important things. It does not allow the Department of Defense to withhold funds to Idaho and Washington unless they reach a similar agreement with South Carolina. It does not make what is going on in South Carolina a Presidential event, in terms of how it affects other States. It limits what is going on in South Carolina to South Carolina. It does not disadvantage Washington or Idaho. They have the right, the obligation to enter into an agreement, if any, with DOE. What we are doing in South Carolina only affects South Carolina. I will tell you in a moment what people in South Carolina who are in charge of our environmental needs say about this agreement. I will read the letter from the Governor here in a moment.

The Department of State, the Department of Energy, and the State of Washington, along with the State of Idaho, exchanged drafts and held conversations between January and April. There is a lot of paperwork out there that shows Idaho and Washington have been trying to do the same thing we have been doing in South Carolina. Here is the difference. We reached an agreement South Carolina likes that will get our tanks cleaned up in an environmentally sound manner. And listen to this, it allows the tanks to be cleaned up, remediated, and closed 23 years ahead of schedule, and it saves $16 billion to the American taxpayer.

I hope Washington and Idaho can get there. If they ever do get there, if they ever do reach an agreement with the Department of Energy where the Governor says I like it, where the environmental regulators say I like it, where the Nuclear Regulatory Commission says this is waste incidental to reprocessing, that this can be done in a way that is environmentally sound—I hope I will help, not stand in the way.

So much was said that is so wrong about this issue. To my two friends from Idaho, you have taken some political abuse here that is so far from the truth that it is mind-boggling. What Senators CRAPO and CRAIG have been doing is they have been working with me, in conjunction with all three States, to make sure they get the money they are entitled to regardless of what we do in South Carolina, and they have been kind enough to work with me to make sure my State's agreement can go forward. We are doing nothing to prejudice the lawsuit of the State of Idaho or their ability to reach an independent agreement. I can assure you, this is not blindsiding anybody because there is paperwork from January all the way through to recent months between Idaho and Washington, talking with DOE about trying to find an agreement.

On February 25, 2004, Jessie Roberson, the Assistant Secretary for Energy for Environmental Management came before Senator ALLARD in a hearing and talked about this extensively. He was asked numerous questions.

I ask unanimous consent to have an excerpt of that hearing printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TRANSCRIPT ON WASTE INCIDENTAL TO REPROCESSING, STRATEGIC FORCES SUBCOMMITTEE HEARING, FEBRUARY 25, 2004

QUESTIONS BY SENATOR WAYNE ALLARD TO MS. JESSIE ROBERSON, ASSISTANT SECRETARY OF ENERGY FOR ENVIRONMENTAL MANAGEMENT

ALLARD: Well, thank you very much for your participation. It's invaluable to this committee.

I'm going to be referring in my questioning to WIR, which stands for Waste Incidental Reprocessing. And I think it would behoove the committee to hear, Secretary Roberson, you summarize what the WIR issue is.

ROBERSON: Thank you, Chairman Allard. Thank you, Senator, as well.

Clean-up of tank waste at Hanford, Idaho, and Savannah River represents the greatest risk-reduction effort in the department's entire clean-up program.

ALLARD: And this all falls under Waste Incidental Reprocessing, is that correct?

ROBERSON: Absolutely.

ALLARD: Okay.

ROBERSON: And I'll explain what portion of the program that specifically applies to.

ALLARD: Very good.

ROBERSON: Okay, we have planned at these three sites to clean up tank waste, plans agreed to with our host states and that the NRC had also carefully reviewed. At each site, our plans acknowledge we would remove as much tank waste as we could. We would separate the tank waste into two factions.

The first is a high-activity faction containing over 95 percent of the radioactivity, which we would classify as high-level waste and treat and dispose of in the repository for spent fuel and high-level waste called for by the Nuclear Waste Policy Act.

And then a low-activity faction, which we would classify as low-level waste, incidental to reprocessing and, depending on its characteristics, treat and dispose of in an appropriate disposal facility for such material.

We would then determine whether we could demonstrate that disposing of a small amount of residues remaining in the tank, generally around one percent of the original volume, by immobilizing it in place and determine—to ensure that it would be comparable to the public health and safety requirements for disposal of low-level waste in a near-surface disposal facility. If it would, our plans were to classify the residues as low-level waste, incidental to reprocessing, to immobilize them in the tank and close the tanks with these residues in place.

A key element of these plans is the classification of the tank waste.

The problem we have encountered is that in July of 2003, an Idaho district court struck down the waste incident to reprocessing portion of DOE Order 435.1, the DOE order addressing how DOE and its contractors classify waste under the Atomic Energy Act. As a result, we now face uncertainty in implementing the very plans our host states had agreed made technical sense.

The classification of this waste is key to determining how to dispose of it. Therefore, if we're unable to resolve this issue regarding waste incidental to reprocessing, we face leaving these tank wastes in place far longer than we and our host states had anticipated. In fact, such delay would likely create more serious health and safety risk to workers and members of the public by leaving the waste in tanks longer and risking leaks to ground water.

ALLARD: Madam Secretary, why do you have to leave any of the waste residues behind?

ROBERSON: Mr. Chairman, let me just briefly describe the size of these tanks and the nature of the waste removal in question. Each tank can hold as much as 1.3 million gallons of liquid waste. At Hanford, for example, the tanks are 75 feet in diameter, and the tanks are of differing shapes. Some are concave, which means they don't have a flat bottom.

ALLARD: I guess that's about the size of this room . . . .

(CROSSTALK)

ROBERSON: Under the tri-party agreement at Hanford between DOE, Washington state and EPA, which governs the clean-up at that site, the goal is that we retrieve 99 percent of the tank waste. If all of the remaining waste were on the bottom of the tank, it would be just under one inch thick.

Because of radiological concerns with exposure for workers, tank waste removal must be done remotely. In addition, these tanks usually sit below 10 feet of soil cover. Our retrieval equipment must fit into openings two inches to two feet wide. And tank structures are not designed to support heavy loads for which equipment must be deployed to do the tank cleaning. So it is not a simple task to scrape the last remaining tank residues from a tank.

Further, much of the waste residues are expected to have a stiff consistency. Most removal techniques require directing pressurized water streams at the remaining waste to immobilize it and to move it to a location which can be pumped.

ROBERSON: We have spent over 10 years working on technologies to improve removal opportunities of the waste from these tanks.

Finally, many of the tanks are over 40 years old. And a number of them have known leak sites, requiring us to exercise great care to preclude water leaking from the tank.

As I said, DOE spent tens of millions of dollars exploring how to get as much residual waste as possible out of the tanks.

ALLARD: What is the material you plan to leave in the tanks?

ROBERSON: We think the residues, when stabilized, are appropriately considered low-level waste, suitable for shallow land burial. Analysis will be performed to ensure that they meet performance objectives established by DOE and the NRC for low-level waste performance objectives.

In fact, that is what the order that was struck down by the judge's ruling required.

ALLARD: Now, shouldn't the waste characteristics and the risks they pose be what matters in terms of safe disposal rather than the process that created the waste?

ROBERSON: Yes, Mr. Chairman, we believe so. And we believe that that is the philosophy behind the clean-up plans in place for those sites.

ALLARD: And how much more than your current estimates might this cost the American taxpayers?

ROBERSON: Our preliminary assessment was that it would cost as much as $50 billion more over the life-cycle of the department's clean-up program and extend that life-cycle by decades to have to process all of our tank waste as high-level waste for disposal in a geologic repository, including exhuming the tanks themselves, cutting them up and packaging them for disposal.

ALLARD: So what is the risk if you have to do that?

ROBERSON: Clearly, the risk to workers, and frankly to the environment, is much larger if we have to exhume tanks. Given that we cannot proceed with our clean-up plans that were based on our waste classification order, we risk leaving waste in tanks much longer than we had planned right now.

We also add to environmental risk by the need to dispose of the large amounts of metals resulting from the almost 250 large tanks and the associated equipment. Our analysis thus far indicates that we would increase worker exposure 10 fold. We would increase costs 10 fold and achieve no meaningful improvement in environmental protection.

ALLARD: So I don't see what the rational benefit is to the American taxpayer from the department having to implement the Idaho district court decision.

ROBERSON: Frankly, Senator, we don't see it either, which is why we are pursuing this. Rather than accelerating clean-up of tank waste in agreement with our host states, we face stopping much of that work.

ALLARD: What is your plan for resolving this WIR issue:

ROBERSON: Accelerated clean up of tank waste is a top priority for the entire department and the states that host our facilities. As pointed out in the General Accounting Office report completed last year, the WIR, waste incidental to reprocessing issue, poses a significant vulnerability for the department.

Consistent with both the GAO recommendations to seek legislative clarification regarding DOE's authority to classify tank waste and with the request by the House Oversight and Investigations Subcommittee last year, we proposed draft legislation to Congress that would clarify our authority for managing such waste.

We have since held discussions with affected states over the impact the Idaho district court decision had on our activities in Hanford, Idaho, and Savannah River, in order to seek to address issues they have raised about our proposed legislative approach.

In addition, we've just filed our opening brief in our appeal of the Idaho court decision to continue our litigation efforts to resolve the WIR issue. Without timely resolution to this issue, not only could we be unable to implement our clean-up plans, but DOE also could be forced to realign its resources across the complex in a manner that would significantly distort the department's clean-up and other priorities.

ALLARD: What about the $350 million, and what does it take to get that money released?

ROBERSON: The Department's fiscal year 2005 budget request includes $350 million in a high-level waste proposal that reflects the need to satisfactorily resolve this issue to support clean-up. These funds will be requested only to the extent that legal uncertainties concerning disposition of these wastes are resolved.

Until we can resolve the legal uncertainties related to WIR, it does not make sense for us to proceed with projects that prepare tank waste for disposition as other than high-level waste destined for deep geologic depository.

ALLARD: I want to thank you for your response.

Mr. GRAHAM of South Carolina. There was another Energy and Water hearing where the same topic was brought before the Congress. The topic is, how are you doing with your efforts to reach agreements with the three States in question to find cleanup standards they can agree to that are environmentally sound, that will allow things to go forward in a more expeditious manner?

The truth is, we have spent billions of dollars talking about cleaning up and we have done nothing but let tanks leak and have waste stay around for years and decades. Now we have a new model. Now we have new money, $350

million of new dollars, and we are using commonsense approaches to cleanup.

What are we trying to do in South Carolina? If I can explain very quickly. I am not a scientist, but I do have fairly good common sense. The 51 tanks that have high-level waste, those tanks will be cleaned up. The liquid in those tanks will be converted to glass logs, it is called vitrification, and that will be sent to Yucca Mountain.

What we are trying to do is clean these tanks up in a manner consistent with safety for South Carolina. The amendment says no tank can be closed unless the State of South Carolina issues a closure permit. The letter from my Governor says, not only am I aware of what you are doing, Senator GRAHAM, I support it because it will allow the tanks to be closed up 23 years ahead of schedule, it will save money, and we don't have to worry about tanks deteriorating.

The plan is to take all of the liquid out and the film on the bottom, which will be 1 to 1.5 inches, treated with concrete and other materials and the tank will be closed. To get that 1 to 1.5 inches out of the bottom of that tank will cost $16 billion and take 23 additional years and put people's lives at risk for no good reason, no good environmental reason.

Every State is trying to define what is clean for their State. Washington is trying to do the same thing. Maybe they will want half an inch. I don't know what they want. Idaho is trying to do the same thing. We have done it and I have a Nuclear Regulatory Commission report that says what is left in that tank after treatment is waste incidental to reprocessing, not high-level waste.

The people in my State who regulate the environment have sent a letter saying we want this agreement because we have final say over where you close the tank and the standards we have negotiated we think are good for South Carolina. The only reason we are having this argument is they don't want one State to go—I guess some groups want to have the leverage of all three States to get standards they believe are better than those by the South Carolina folks who regulate our environment, and they are trying to use some standard that may not be necessary for Idaho and South Carolina. We don't have the same problems they do in Washington.

I will stand behind any Senator from Washington to make sure DOE doesn't run over them. I will stand behind any Senator from Idaho to make sure they can negotiate on their own terms. I am asking this body to approve an agreement that is environmentally sound, fiscally responsible, that affects South Carolina, and is what all three States are trying to achieve.

I have had printed in the RECORD the letter from my Governor. I have had printed the study from the Nuclear Regulatory Commission. I ask unanimous consent to have printed the letter from the Department of Health and Environment Control in South Carolina, saying this is good for the State, they retain control over the tanks, and this is environmentally sound.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNE 30, 2000.

MR. ROY J. SCHEPENS,
Assistant Manager for High-Level Waste, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC.

SAVANNAH RIVER SITE HIGH LEVEL WASTE TANK CLOSURE: CLASSIFICATION OF RESIDUAL WASTE AS INCIDENTAL

DEAR MR. SCHEPENS: The U.S. Nuclear Regulatory Commission (NRC) has completed the review of the tank closure methodology for the high-level waste (HLW) tanks at the Savannah River Site (SRS). Under the terms and conditions of the Department of Energy (DOE)/NRC Memorandum of Understanding and the DOE/NRC Interagency Agreement, both dated July 9, 1997, the NRC is acting in an advisory capacity and is not providing regulatory approval. The focus of the review was whether or not the residual waste left in the HLW tanks, after cleaning, could be labeled as incidental waste. The criteria for incidental waste were approved by the Commission in the Staff Requirements Memorandum (SRM) dated February 16, 1993, in response to SECY–92–391, ''Denial of PRM 60–4—Petition for Rulemaking from the States of Washington and Oregon Regarding Classification of Radioactive Waste at Hanford,'' and described in the March 2, 1993, letter from R. Bernero, NRC, to J. Lytle, DOE. The review focused on DOE's ''Regulatory Basis for Incidental Waste Classification at the Savannah River Site High-Level Waste Tank Farms,'' ''High-Level Waste Tank Closure Program Plan,'' ''Environmental Radiological Analysis, Fate and Transport Modeling of Residual Contaminants and Human Health Impacts from the F-Area High-Level Waste Tank Farm,'' ''Industrial Wastewater Closure Module for the High-Level Waste Tank 17 System,'' and ''Industrial Wastewater Closure Module for the High-Level Waste Tank 20 System.'' It also included the responses (letter from R. Schepens, DOE, to K. Stablein, NRC, September 30, 1998) to the request for additional information, as well as information resulting from the April 1, 1999, public meeting between NRC and DOE staff. The results of the NRC staff review are enclosed to provide input to your decision. DOE is responsible for determining whether the residual tank waste can be classified as incidental.

Your tank closure methodology proposes using the incidental waste criteria approved by the Commission in the February 16, 1993 SRM and stated in the March 2, 1993, letter from R. Bernero, NRC, to J. Lytle, DOE, that were established for the treatment and disposal of removed HLW. In reviewing your methodology, staff took a generic performance-based approach rather than strictly applying the criteria developed in 1993. Criterion One from the March 1993, letter specified that ''. . . wastes have been processed (or will be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical.'' DOE identified only water washing and oxalic acid washing as technically feasible with regards to removal of key radionuclides following bulk waste removal. Water washing and bulk waste removal have been shown to be capable of removing 98 percent of the initial tank activity. Depending on the initial sludge inventories, oxalic acid washing, or comparable cleaning, will be required on selected tanks, although it is not considered to be economically practical for all 51 tanks.

The sampling methods used to characterize the HLW tanks at SRS have been evaluated. Several different sampling techniques were used. In general, the sampling process for Tanks 17 and 20 was adequate. NRC staff has concluded that available removal technologies have been extensively examined to determine those that are both technically and economically practical, and that the residual waste left in the tanks is limited to waste that cannot be removed by application of those technologies currently considered technically and economically practical for HLW tank cleaning. As the HLW tank closure process evolves over the next several decades the technical and economic feasibility of other waste removal options should continue to be evaluated.

The staff recommends that a set waste sampling protocol should be developed and followed. The number of samples obtained will be a function of the tank contents, as well as the homogeneity of the sludge. All sample results should be compared to process estimates to ensure consistency and accuracy. Any significant inconsistencies resulting from tank sampling and process history should result in further sampling.

The staff review generally found that DOE's methodology for removal of key radionuclides to the maximum extent economically and technically practical achieves the objectives of Criterion One.

The staff review of Criterion Two, '' . . . wastes will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for class C low-level waste as set out in 10 CFR Part 61,'' made use of information you provided on initial tank inventories and expected removal efficiencies. Fourteen of the 51 HLW tanks are anticipated to meet Class C limits by utilizing concentration averaging with only bulk waste removal and water washing. The other 37 tanks would require chemical cleaning via oxalic acid washing to meet Class C limits, even with the application of concentration averaging. DOE, therefore, plans to rely on alternative considerations of the classification of waste, rather than planning to use oxalic acid cleaning to meet Class C concentration limits. In particular, DOE relies on its plans to solidify the waste in layers of grout, some 30 feet below the surface of the ground, and relies on the disposal site, which it considers to be stable. In addition, it appears that there is reasonable assurance that the performance objectives of 10 CFR Part 61, Subpart C can be met without meeting the Class C concentration limits for all tanks. These considerations are similar to those in 10 CFR 61.58 of the Commission's regulations, and are viewed by DOE as providing comparable protection to an inadvertent intruder. Staff believes that concentration averaging in accordance with the Branch Technical Position on Concentration Averaging, is generally acceptable in this context to meet Class C concentration limits, and recognizes that the alternative provisions for waste classification proposed by DOE are generally similar to those in 10 CFR 61.58. Staff recommends that DOE develop site-specific concentration limits for residual waste in the SRS HLW tanks in order to bound the associated analyses and to provide a specific benchmark for satisfactory cleaning of the tanks.

As for the portion of Criterion Two that addresses the solid physical form, the staff believes that the waste has been sufficiently immobilized to help prevent inadvertent intrusion. By utilizing three different types of grout, the waste is further protected. The initial reducing grout pour helps to reduce

the mobility of the radionuclides. The middle layer of grout provides a solid foundation to guard against subsidence, and, finally, the top layer of strong grout provides protection against physical penetration of the waste. Therefore, the physical form aspect of Criterion Two appears to be achieved by our methodology.

Assessing Criterion Three, '' . . . wastes are to be managed, pursuant to the Atomic Energy Act, so that safety requirements comparable to the performance objectives set out in 10 CFR Part 61 are satisfied'' involves the evaluation of the tank farm performance assessment (PA).

DOE has indicated that it intends to meet a 4 mrem/yr drinking water dose limit. From standard dose modeling methodology, the drinking water dose is expected to be the largest dose contributor pathway. It appears from the performance assessment that the drinking water dose will be less than the 4 mrem/yr drinking water dose limit, and by extrapolation, that the individual dose will be less than the 25 mrem/yr total effective dose equivalent (TEDE) requirement of 10 CFR 61.41. In meeting the performance objective of §61.41, reliance on institutional controls beyond 100 years will not be needed, although DOE has proposed institutional controls in perpetuity. Future PAs should focus on meeting the performance objectives of 10 CFR Part 61 Subpart C and should not rely on any active institutional controls beyond 100 years. The NRC staff has concluded that the DOE methodology will achieve safety objectives comparable to §61.41.

To show protection of an inadvertent intruder, the standard agriculture scenario consists of a farmer who lives at the tank farm, and drills a well near the tank farm and then uses the well water to irrigate his crops and feed his livestock as well as himself. DOE–SR has provided only calculated drinking water doses for this intruder scenario. DOE's intruder PA showed that the maximum drinking water dose the farmer would receive via the ground-water pathway was 130 mrem/year at a well distance of 1 meter from the tank farm, at approximately 700 years. According to DOE–SR, the drinking water dose pathway is expected to be the highest dose contributor and, therefore, provides reasonable assurance of protection of individuals from inadvertent intrusion using a 500 mrem/year limit. The DOE–SR analysis assumes all activity is contained within the reducing grout layer located at the bottom of each tank, and that this contaminant zone is not disturbed. This then implies that there is no activity in any vertical component of the tank structure and, therefore, a typical construction scenario (with a 10 foot deep basement) would not disturb any contaminated portion of the tank structure.

The staff recommends that future performance assessments for SR tank closures, including individual tank closure modules, and the H-Tank Farm Fate and Transport Modeling, include the full agriculture scenario (all pathways) as well as the discovery scenario, as described in the Draft Environmental Impact Statement for 10 CFR Part 61. Staff also notes that closure of ancillary piping and equipment must consider an inadvertent intruder. That is, performance assessment must consider disturbed surface piping and equipment, which, in addition to tank sources, must not exceed a TEDE of 500 mrem per year (all pathways) for the discovery and agricultural scenarios. Furthermore, all external components (e.g., piping) have not been demonstrated to provide the same protection to an inadvertent intruder as the residual waste in the HLW tank bottoms. Without the proper intruder scenarios (e.g., intruder-agriculture) the NRC does not recognize in-situ disposal of external components as achieving the objectives of Criterion Three.

The worker is protected by DOE regulations which are analogous to 10 CFR Part 20. The worker protection performance objectives of §61.43 is, therefore, considered to be adequately addressed. By filling the tanks with three layers of grout, the site stability performance objectives of §61.44 can also be satisfied.

The staff recommends that future tank closure modeling should include a more thorough PA for all predicted or known source terms (i.e., all HLW tanks) in the F–Area Tank Farm and including the following: early degradation of grout, degradation of ancillary equipment and piping, combined aquifer scenarios, conservative distribution coefficient analysis, conservative radionuclide dispersion analysis, submerged tanks, conservative analysis for the horizontal versus vertical flux radiouclide transport processes for the saturated zone, and a complete all-pathways dose assessment. See the enclosed Technical Evaluation Report for further details and additional recommendations. In addition, future tank closure modeling (including individual tank closure modules, as well as fate and transport modeling for H–Tank Farm) should not refer to, or be reliant on in any way, previous modules. This will avoid confusion and errors associated with outdated data and assumptions.

By generally achieving each of the performance objectives stated in 10 CFR Part 61, Subpart C, the staff has concluded that the tank closure methodology is consistent with the objectives of Criterion Three.

Based on the information provided the staff has concluded that the methodology for tank closure at SRS appears to reasonably analyze the relevant considerations for Criterion One and Criterion Three of the three incidental waste criteria. DOE would undertake cleanup to the maximum extent that is technically and economically practical, and would demonstrate it can meet performance objectives consistent with those required for disposal of low-level waste. These commitments, if satisfied, should serve to provide adequate protection of public health and safety. Further, DOE's methodology relies on alternative classification considerations similar to those contained in the Commission's regulations at 10 CFR 61.58. The NRC staff, from a safety perspective, therefore does not disagree with DOE–SR's proposed methodology, contingent upon DOE reaching current goals for bulk waste removal, as well as water and chemical washing, such that the performance objectives comparable to those stated in Subpart C 10 CFR 61 are met. In addition, NRC judgment as to the adequacy of the methodology is dependent on verification that the assumptions underlying the analysis are correct.

The analysis performed regarding the proposed tank closure methodology for the HLW tanks located at the DOE Savannah River Site was performed by NRC according to the terms and conditions of the established Memorandum of Understanding and the Interagency Agreement. The analysis and resulting NRC conclusions are specific only to the 51 tanks located at the DOE Savannah River F and H Area tank farms, and related piping and equipment. The NRC assessment is a site-specific evaluation, and is not a precedent for any future decisions on waste classification scenarios at other sites, particularly sites under NRC jurisdiction.

Sincerely,

WILLIAM F. KANE,
Director, Office of Nuclear Material Safety and Safeguards.

Mr. GRAHAM of South Carolina. With that, to be continued. Thank you. Happy holidays.

Mr. AKAKA. Mr. President, I rise today in support of the fiscal year 2005 Defense authorization bill. I want to first commend Chairman WARNER and Senator LEVIN, who have continued their tradition of strong and bipartisan leadership. I also want to thank my friend, colleague and subcommittee chairman Senator ENSIGN, for his cooperation and leadership throughout this process this year.

While I think the bill before us goes a long way to supporting the needs of our service men and women, I do want to highlight a few concerns.

First, I am pleased that the administration finally followed Congress' lead and sent a request for an additional $25 billion to begin to address the ongoing military operations in Iraq and Afghanistan for the first few months of fiscal year 2005. While I do not support the structure of the administration's request, in part because it does not do enough to ensure accountability for how these funds would be used, I do support its intent, and I think it is imperative that we include an authorization of additional funding in the final version of this bill.

Second, while I support every action to aid our brave men and women in the armed forces, who are making so many sacrifices as they fight for our freedoms, I am concerned and disappointed by some of the actions we have taken in the bill we are reporting to the Senate. My greatest concern lies, as it did last year, in the reductions we have made in the working capital funds of the military services and defense agencies. While I disagreed with the cuts in these accounts last year, the ones this year are even more harmful, as DOD is already tapping these accounts to the greatest possible extent to get through the remainder of this fiscal year. So they will already be well below normal cash balances as they enter fiscal year 2005, and the $1.6 billion in reductions we have recommended in this bill will increase the risk of readiness problems by decreasing DOD's ability to provide spare parts, maintenance, and other support for our forces that are critical to their continued success. By cutting into these accounts, I believe we are sending a message that we do not support our troops, a message that I know could not be further from the truth.

Our forces deserve armored vehicles to protect them in Iraq, but they also deserve the spare parts they need to keep those vehicles running. When our troops come home, they deserve to have those vehicles repaired, rather than wait for maintenance from a depot until parts arrive that could have been ordered earlier if the working capital funds had had sufficient cash. We owe them the courage to make tough decisions to ensure that those needs are met now, not when future funds not yet requested may or may not become available.

On the positive side, I am pleased about our continued support for military construction and family housing

needs that are so critical to quality of life for our service men and women. I also support many of the provisions we have included that will further improve the management of the department. I particularly appreciate the bipartisan effort that the staff has made to address a wide range of procurement issues, environmental issues, and longstanding DOD financial management problems.

While I support the overall actions taken in this bill, and commend all of my colleagues for the hard work that they have invested, as ranking member of the Readiness Subcommittee I have mixed feelings about our actions. We have increased funding for some key programs, but at the expense of others where the impact might be more easily obscured. Our experience with the Air Force over the last few years has shown that there is a direct correlation between increased spare parts and mission capable rates for aircraft; those spare parts are provided through the Air Force Working Capital Fund. The Navy expects to have only a few days of cash on hand at the end of this fiscal year, and may be forced to bill customers before they actually receive their orders. And the Army faces a situation where its orders for parts and other key items exceed its cash on hand by more than 700 percent. Wartime, when we see a great expansion of customer needs for readiness and large fluctuations in required support, is not the time to take on more readiness risk by decreasing cash balances in the working capital funds. It hurts readiness, and it hurts the men and women who serve in uniform.

By reducing funding for the readiness accounts and failing to provide any supplemental funding for 2005, this bill does not do enough to meet the most pressing needs of our men and women in uniform.

I will support this bill, and I urge my colleagues to do the same. I think it is a good bill that could have been better, and I will continue to work throughout the rest of the authorization process to improve it.

MORNING BUSINESS

Mr. WARNER. I ask unanimous consent that the Senate now go into a period for morning business, with each Senator permitted to speak no longer than 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

MEDICARE VIDEOS

Ms. STABENOW. Mr. President, as we are wrapping up the session this week, I think it is very important to note what we all read in the Washington Post today. Something very serious was clearly spelled out. That is that the General Accounting Office has concluded the U.S. Department of Health and Human Services illegally spent Federal money on what amounted to covert propaganda, by producing videos about the Medicare changes that were made to look like news reports. Portions of the videos which had been aired by 40 television stations around the country do not make it clear that the announcers were paid by Health and Human Services, or paid by taxpayers, and that they were not real reporters.

In fact, the administration has violated two Federal laws. This comes from the nonpartisan arm, the Congressional Investigative Services, the General Accounting Office.

They indicated two different laws that the administration broke in these ads on Medicare.

No. 1, the Omnibus appropriations bill of 2003: The prohibition on using appropriated funds for publicity or propaganda purposes.

No. 2, the Anti-Deficiency Act: Incurred obligations in excess of appropriations available for that purpose.

This is just one more example of the ongoing saga in what happened in relationship to the passage of the new Medicare law and all of the irregularities—the pronouncement that, in fact, the law was violated and the other ethics investigations going on.

Let me go through some of what else is happening. It is stunning, actually, when you look at the full picture. I would argue that this is absolutely in the wrong direction and against the interests of those who count on Medicare—our seniors and disabled, and the American taxpayers who have been funding what the GAO says are illegal ads.

In addition to that, 2 weeks ago, the Congressional Research Service concluded that the administration potentially violated the law in a related matter in which the Medicare Program's chief actuary has said he was threatened with firing a year ago if he shared with Congress cost estimates that the Medicare legislation would be one-third more expensive than what we were told—one-third more expensive than the $400 billion the President said it would cost.

Also, the House ethics panel meanwhile is investigating whether Republican leaders attempted to bribe or coerce a Republican House Member—in fact, someone in my own State—to vote for the bill before it passed by a few votes just before dawn after the longest record rollcall in the history of the House.

We have numerous other challenges and questions. It is important to note for the record that the latest investigation by the GAO was not prompted by our side of the aisle, nor requested. It was something they looked into on their own separate from other concerns which have been raised. We have raised issues that relate to the advertising we have seen on television.

Concerning materials, the GAO indicated that, while they were not specifically in violation, the HHS materials have notable omissions and other weaknesses. They say it is a question of prudence and appropriateness for HHS's decision to communicate by placing advertising in Roll Call, which we all know is something that we read and certainly our constituents and the seniors and the disabled of the country do not read.

This goes on and on, questions of violating the law and questions of an ethics violation.

Now we see, in fact, that the administration specifically has broken two different laws. One of the questions is, What do we do about that? I think the public deserves the answer to that. What is it that we do when the administration violates the law as it relates to spending public dollars and advertising as it relates to this Medicare bill?

A colleague of mine is suggesting—since we know it is a campaign year and we know this is put forward certainly to put the best light on this for the administration—the Senator from New Jersey, Mr. LAUTENBERG, has suggested that the President repay the funds from his Presidential campaign.

Given what we know is happening this year and the fact that certainly the administration wants to have the best face put on this Medicare package and certainly has everything to gain from using public dollars to advertise that, I think it would be appropriate to ask the President to repay that from his campaign funds. In fact, they are in violation of the law.

We have seen questionable action after questionable action. The head of the center of Medicare and Medicaid, after writing this bill and working closely with the industry that benefits from it—the pharmaceutical industry—leaves to take a job with folks involved in the industry that will make money off of this new law.

We have seen other individuals leaving and going into lucrative positions where they will themselves be making money off of this new law.

We know it has been analyzed and that the pharmaceutical industry will be making, during the next 8 years, about $139 billion in new profits. That is tough to do if you are lowering prices and tough to do if you are providing a real Medicare benefit to seniors which they can afford.

The reality is that is not what this bill does. This bill doesn't allow Medicare to be able to negotiate group discounts as we do through the VA.

It creates a situation where up to 40 million seniors and disabled are locked into the highest possible prices—not only in our country but in the world. We have a bill that locks in high prices.

The industry is making billions of dollars from it. People from the administration are going to work for the industry or related businesses that will be making money off of this process.

We now see a situation where, again, the taxpayer money that was put aside