have done everything we can in the Senate. It is now up to the House to appoint conferees. Once that is done, we will move as quickly as possible to solve the differences we have with the House of Representatives and move forward on this bill.

I yield my time back and urge we move to the legislation. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2400 which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

Pending:

Graham of South Carolina amendment No. 3170, to provide for the treatment by the Department of Energy of waste material.

Crapo amendment No. 3226 (to amendment No. 3170), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. It is my understanding, under the order that is before the Senate, the first order of business would be two voice votes on two amendments pending. Is that right?

The PRESIDING OFFICER. Two amendments were to be disposed of.

Mr. REID. Mr. President, if I could take a minute.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. In our conversations before the Senate was called back into session, the Senator from Idaho indicated he would like to speak for 5 minutes prior to those two voice votes and that time would be credited against the 2 hours the majority has on the underlying Cantwell amendment. I understand he is going to make that request.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I ask unanimous consent that I be allowed 5 minutes taken out of our side of the time that is allocated during this morning's debate to discuss an issue and make a unanimous consent request.

Mr. REID. Mr. President, if I could be heard, reserving the right to object, it is my further understanding this would have no bearing on our voting in 5 minutes on the two amendments. Is that right?

Mr. CRAPO. That is correct, Mr. President.

The PRESIDING OFFICER. Is there objection?

Ms. CANTWELL. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Idaho.

Mr. CRAPO. Mr. President, I therefore ask unanimous consent that it be made in order that I be allowed to amend my amendment in the form of amendments that are at the desk at this time. The purpose of this request is that there has been some question raised in regard to the South Carolina language, as to whether it creates any precedential value in regard to other States which are dealing with radioactive materials and the handling of them. We do not believe there is such a precedential effect and we believe it is very clear there is not, but because some have raised that question, we would like to simply amend the legislation that is before us today to make it perfectly clear there is no precedential effect of this language on any State other than South Carolina.

For that reason, I ask unanimous consent that I be allowed to amend my own amendment, which is at the desk, in the form of an amendment which we have presented to the other side.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. I ask for regular order.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Has the 5 minutes been used that the Senator requested for debate?

The PRESIDING OFFICER. There was an objection to the Senator's 5-minute request.

Mr. REID. Regular order.

Mr. CRAIG. I ask to speak for up to 2 minutes.

Mr. REID. Objection.

The PRESIDING OFFICER. Objection is heard.

The question is on agreeing to amendment No. 3226.

The amendment (No. 3226) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3170, as amended.

The amendment (No. 3170) was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. It is now my understanding the Cantwell amendment will be reported. It has not been reported yet, is that true?

The PRESIDING OFFICER. Under the previous order, the Senator from Washington, Ms. CANTWELL, is recognized to offer her amendment.

AMENDMENT NO. 3261

Ms. CANTWELL. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. HOLLINGS, Mrs. MURRAY, Mrs. CLINTON, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER, proposes an amendment numbered 3261.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To ensure adequate funding for, and the continuation of activities related to, the treatment by the Department of Energy of high level radioactive waste)

Beginning on page 384, strike line 3 and all that follows through page 391, line 7, and insert the following:

SEC. 3117. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

(a) ANNUAL REPORT REQUIRED.—Subtitle C of title XLVII of the Atomic Energy Defense Act (50 U.S.C. 2771 et seq.) is amended by adding at the end the following new section:

''SEC. 4732. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

''The Secretary of Energy shall submit to Congress each year, in the budget justification materials submitted to Congress in support of the budget of the President for the fiscal year beginning in such year (as submitted under section 1105(a) of title 31, United States Code), the following:

''(1) A detailed description and accounting of the proposed obligations and expenditures by the Department of Energy for safeguards and security in carrying out programs necessary for the national security for the fiscal year covered by such budget, including any technologies on safeguards and security proposed to be deployed or implemented during such fiscal year.

''(2) With respect to the fiscal year ending in the year before the year in which such budget is submitted, a detailed description and accounting of—

''(A) the policy on safeguards and security, including any modifications in such policy adopted or implemented during such fiscal year;

''(B) any initiatives on safeguards and security in effect or implemented during such fiscal year;

''(C) the amount obligated and expended for safeguards and security during such fiscal year, set forth by total amount, by amount per program, and by amount per facility; and

''(D) the technologies on safeguards and security deployed or implemented during such fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by inserting after the item relating to section 4731 the following new item:

''Sec. 4732. Annual report on expenditures for safeguards and security.''.

SEC. 3118. AUTHORITY TO CONSOLIDATE COUNTERINTELLIGENCE OFFICES OF DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION WITHIN NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORITY.—The Secretary of Energy may consolidate the counterintelligence programs and functions referred to in subsection (b) within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and provide for their discharge by that Office.

(b) COVERED PROGRAMS AND FUNCTIONS.—The programs and functions referred to in this subsection are as follows:

(1) The functions and programs of the Office of Counterintelligence of the Department of Energy under section 215 of the Department of Energy Organization Act (42 U.S.C. 7144b).

(2) The functions and programs of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration under section 3232 of the National Nuclear Security Administration Act (50 U.S.C. 2422), including the counterintelligence programs under section 3233 of that Act (50 U.S.C. 2423).

(c) ESTABLISHMENT OF POLICY.—The Secretary shall have the responsibility to establish policy for the discharge of the counterintelligence programs and functions consolidated within the National Nuclear Security Administration under subsection (a) as provided for under section 213 of the Department of Energy Organization Act (42 U.S.C. 7144).

(d) PRESERVATION OF COUNTERINTELLIGENCE CAPABILITY.—In consolidating counterintelligence programs and functions within the National Nuclear Security Administration under subsection (a), the Secretary shall ensure that the counterintelligence capabilities of the Department of Energy and the National Nuclear Security Administration are in no way degraded or compromised.

(e) REPORT ON EXERCISE OF AUTHORITY.—In the event the Secretary exercises the authority in subsection (a), the Secretary shall submit to the congressional defense committees a report on the exercise of the authority. The report shall include—

(1) a description of the manner in which the counterintelligence programs and functions referred to in subsection (b) shall be consolidated within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and discharged by that Office;

(2) a notice of the date on which that Office shall commence the discharge of such programs and functions, as so consolidated; and

(3) a proposal for such legislative action as the Secretary considers appropriate to effectuate the discharge of such programs and functions, as so consolidated, by that Office.

(f) DEADLINE FOR EXERCISE OF AUTHORITY.—The authority in subsection (a) may be exercised, if at all, not later than one year after the date of the enactment of this Act.

SEC. 3119. ON-SITE TREATMENT AND STORAGE OF WASTES FROM REPROCESSING ACTIVITIES AND RELATED WASTE.

(a) Notwithstanding any other provision of law the Department of Energy shall continue all activities related to the storage, retrieval, treatment, and separation of tank wastes currently managed as high level radioactive waste in accordance with treatment and closure plans approved by the state in which the activities are taking place as part of a program to clean up and dispose of waste from reprocessing spent nuclear fuel at the sites referred to in subsection (c).

(b) TOf the amount authorized to be appropriated by section 3102(a)(1) for defense site acceleration completion, $350,000,000 shall be available for the activities to be undertaken pursuant to subsection (a).''.

(c) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

The PRESIDING OFFICER. Under the previous order, there will be 4 hours of debate equally divided on the amendment.

The Senator from Idaho.

Mr. CRAIG. Mr. President, I will take but a few moments because the Senator from Washington is on the floor to debate her amendment. It is an important and serious amendment she brings, but what she has refused to allow Idaho to do this morning, by objecting to the unanimous consent request of Senator CRAPO, is to deny Idaho and Washington the right to assure that the legislation that was passed is not precedent setting to the agreements Idaho and Washington now have.

In 1995, Idaho's Governor Phil Batt, with my assistance, negotiated a milestone agreement with the Department of Energy on the cleanup and removal of nuclear waste in Idaho. After that agreement was in place, I teamed with the then-Senator, now Governor, Dirk Kempthorne, to codify that agreement into law as a provision in an annual Department of Defense authorization. What Senator GRAHAM of South Carolina has done Idaho did in 1995. That became the basis for Idaho to operate and in large part then for Washington to proceed to begin the cleanup of a very serious problem the State of Washington has at Hanford.

Certainly, the Senator from Washington and I, and my colleague from Idaho, recognize the complexity and the seriousness of this problem. That is not in dispute. When DOE then asked to change and modify some of those relationships, a judge said, no, you cannot do that without a rulemaking process. DOE has determined to go ahead with that, but up until then they have said, their attorneys have said and the attorneys at OMB have said, you do not have a clear path forward to cleanup. Idaho disagrees and Washington disagrees.

At the same time, DOE does not plan to spend the money, denying us the cleanup we expect and we believe is under the milestone agreement crafted by Idaho, accepted by DOE, and accepted by this Senate in 1995.

What the Senator from Idaho tried to do, and the Senator from Washington refused to allow him to do, which is very frustrating to understand, is to assure any action taken today that South Carolina would want to take, that their Governor, their attorney general and their environmental agencies want to take, is no way precedent setting against the court agreement or against the Idaho relationship and agreement Governor Batt crafted and that the State of Washington has.

Is that confusing to anyone? Well, it should not be. There are fairly clear lines out there. I do not understand why we are not allowed to clarify that at this moment. If we cannot, then we will clarify it in other ways over the course of the action on this bill.

There are a variety of vehicles we can take because it is paramount that we, as we think we have, assure our State agreement is in place, and most importantly that DOE can move forward in this fiscal year to spend some $97 million in cleanup they are now saying they cannot do because the advice from their attorneys and the advice from OMB is not to spend; they do not have a clear path forward.

We believe the legislation offered by Senator CRAPO offers that clear path forward, and clearly that is the direction we want to go, to assure Idaho's agreement, to assure Washington is on firm ground but, most importantly that we do not lose 12 or 14 months of cleanup and that the $97 million slated to head to Idaho drifts off and is spent somewhere else, along with the cleanup money for Washington being spent somewhere else.

We want it on the ground at Hanford. We want it on the ground at the INEEL in Idaho Falls doing what DOE and Idaho and Washington are proceeding to do. At the same time, I cannot, nor will I, step in front of a State that has worked its way through its process and believes it is on safe ground to move forward with its cleanup.

There are some five tanks in South Carolina to be cleaned up. Others are being cleaned up now. I am sure South Carolina wants that process to go forward. We all know in a rulemaking process, and the vetting that goes forward in a rulemaking process, we may well be 24 months away from that kind of a decision once the rule is made, once it is tested, once it is aired in the public and, I am quite confident, once two or three lawsuits are filed against it. Idaho does not have that kind of time, nor does the State of Washington, nor does the State of South Carolina. We want cleanup. We want cleanup now. And we want it to meet the standards under the Nuclear Waste Policy Act. We believe what we are doing offers that, profoundly.

Now we are here to debate what the Senator from Washington and I believe is a disagreement between the two of us. I don't disagree with all of her bill. I certainly support parts of it. But what I do disagree with is that the State of Washington or Idaho or South Carolina or any one of the sovereign 50 States of our Nation cannot sit down with a Federal agency, under Federal law, and craft an agreement that gets them to the appropriate cleanup, acceptable by the environmental community in South Carolina, by their Governor, by their attorney general. That is exactly what Idaho did in 1995, exactly what Idaho's Senators, myself and then-Senator Dirk Kempthorne, brought to this Senate floor and brought to the Defense authorization bill—and this Senate passed it.

Why should we deny or refuse those kinds of State relationships? Does the Federal Government in all instances totally dominate as long as the State is within the construct of the law, the Federal law that governs nuclear waste, because that is within the sole jurisdiction of the Federal Government. We all understand that. I don't

think so. I think South Carolina did what they felt they needed to do. DOE agrees with them. Now, by action, a voice vote of this Senate, the Senate agrees with them. Let's affirm that, protect the State of Washington and protect the State of Idaho, make sure their agreements are what we want them to be, and move forward. The Idaho Governor and the Idaho congressional delegation stand united in that position and in that opinion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington. The Senator from Washington controls the time.

Ms. CANTWELL. Mr. President, I am going to start this debate on the Cantwell amendment, which is the pending amendment before us, and take 15 minutes or so, if the Chair will give me recognition of that time being up. Then, depending on how we organize the debate, I would like to defer to Senator HOLLINGS of South Carolina because this impacts him.

We are here today to talk about whether we as a body want to change the Nuclear Waste Policy Act and redefine high-level waste as something other than waste that should be taken out of tanks in Savannah River, out of Washington State Hanford tanks to be stored in a permanent repository, or whether we are going to leave some of that in the tanks in the ground and have ground water continue to be contaminated.

What my colleagues on the other side of the aisle have done is put into the Defense authorization bill a change to nuclear waste policy. It is a change in 30 years of science and policy in this country that says that spent nuclear fuel from reactors is highly radioactive, high-level waste, and should be reprocessed into glassified logs, vitrified logs, and taken to a permanent storage site.

DOE is now trying to say some of that we can leave in the tanks. We don't know how much. We would like to just say it is generally up to our discretion and leave some of that in the tanks and thereby not be clear with the Congress about what level. That is a change to the Nuclear Waste Policy Act. The Nuclear Waste Policy Act in 1982 set the standard. If my colleagues want to have a debate about changing the Nuclear Waste Policy Act, this Senator is more than willing to have that debate, have the proper hearings, have the proper process, and have the debate.

The actual jurisdiction for that is the Energy Committee, and that is what the Parliamentarian has ruled, that the DOD authorization bill through the Senate Armed Services Committee was not the appropriate authority for changing the Nuclear Waste Policy Act, the language that conflicts with that within the underlying Graham amendment that we just modified—the underlying bill language which was just modified by the Graham amendment.

Why are we in this predicament? Why are the American people waking up on this day finding out that a national debate is about to ensue about changing the definition of high-level waste? And that affects every State in this country. If you are going to allow one State and the DOE to negotiate and change the definition of high-level waste, why not just change the definition of transuranic waste or other kinds of waste and then, obviously, have that definition apply to States on transportation issues, on storage issues, and many other issues?

Let's review where we are and why I am so concerned, because it impacts Washington State. The Hanford Reservation in Washington State has 50 million gallons of highly radioactive nuclear waste that is already leaking into the ground water. You can see the Hanford Reservation site here, and the Columbia River. Imagine my concern about tanks leaking into the ground and the fact that leakage contaminates ground water, and that affects the Columbia River, a major tributary through the Northwest. It affects the vitality of our economy in many ways—in fishing, in tourism, in energy generation. No one in the region wants to believe that somehow radionuclides are now in the Columbia River—which, in fact, they are—and that it is going to grow to an amount where we cannot protect humans, fish, and safe drinking water. But that is where we are heading if we don't clean up this nuclear waste.

What does it really look like at Hanford today? I point out to my colleagues, because the Hanford site, which is on the map here—you can see this is the entire Hanford site. This is the picture showing the Columbia River. This red spot here is the contaminated ground water that is already leaking into the ground from tanks at Hanford. It is an 80-square-mile area. That is a plume of various chemicals that have already leaked out of the tank at Hanford. Similar leakage is happening at Savannah river. How this is going to be cleaned up given that the leakage is already starting to affect the Columbia River is a major issue for the Northwest.

So we don't take lightly the fact that DOE has now snuck into the Defense authorization bill a change in the Nuclear Waste Policy Act that would reclassify this waste and say some of it is low level and we can simply grout it. By that they mean they can pour cement and sand on top of it and say that it is now fixed.

I ask the question of my colleagues, If DOE and the State of South Carolina had the authority to make a decision on this and work together, why don't they just do it? If they are not trying to change existing law, why don't they just come together and make an agreement on cleanup? They are not because they are trying to change existing law. They are trying to change the definition of what is high-level waste. They are trying to do that without having the proper hearings, without going through the proper committees of jurisdiction, without giving people enough time and enough notice on this issue.

We could continue this debate for many days and not clearly give the American people the insight to 30 years of history of nuclear waste policy. But let's look at the various definitions of nuclear waste because it is an immense framework, that 50 years of disposal law, and what is high-level waste and its definition. It is under the Nuclear Waste Policy Act. What is spent nuclear fuel? It is a definition under the Nuclear Waste Policy Act. That is what this underlying bill tries to change, the Nuclear Waste Policy Act definition of ''nuclear high-level waste'' and how spent nuclear fuel can be treated. That is being done without a full debate and hearings in the proper committees of jurisdiction. What DOE and South Carolina are trying to do is change that definition so they can leave some of that storage in the tanks.

My colleagues would like to say this does not set a precedent. I can tell you that is not the way it is being viewed around the country. It certainly is setting a precedent. In fact, the Minneapolis Star Tribune said this provision:

> . . . would also set a troubling precedent for waste handling in other states. . . . If shortcuts can be taken at Savannah River, why not at Prairie Island?

In their site? Why not Idaho, in their facility? Why not as you deal with transuranic waste in New Mexico, in Arizona, or in other States? Because if you are going to give States and DOE the ability to just negotiate definitions and change them, why are we stopping here with tank waste?

Why aren't we considering other things? This is an issue that needs the full attention of this Congress. It needs the full attention not only of the Members who come from States where we have ground water leaking and contamination. Members should realize this vote is about changing a Federal policy that has been 30 years on the books without the debate and without the science. This is an inappropriate time to be changing this policy.

What about the waste we have in these States? One report I will read for some of my colleagues before I turn it over to the Senator from South Carolina who wants to make a few points about this, the ground water contamination at Savannah River is just as serious as it is in Washington State. Yes, they have fewer tanks than we do in Washington State, but it is some of the most contaminated waste that exists.

I am very concerned that we actually do something to clean up the ground water. This report entitled ''Nuclear Dumps By The Riverside: Threats to the Savannah River from Radioactive Contamination at the Savannah River Site,'' which was done in March of this

year, says that the contamination in the ground water and surface water often greatly exceeded safe drinking water limits in both radioactive and nonradioactive toxic materials. This material threatens the Savannah River and possibly other resources in the region and comes from the radioactive hazardous waste being dumped in trenches, contaminated soil, and from the high-level waste tanks that are not being retrieved.

This is a report saying it is leaking into the ground water at Savannah River, that it is causing an impact; it is contaminating that ground water; it is causing pollution in the Savannah River. I find that very much a concern.

In Washington State, along the Columbia River, this stretch of the Columbia River has one of the largest bedding grounds for salmon in our State. Now those fish are being contaminated in a similar way if we do not come up with an effective cleanup plan.

What is the tritium and drinking water standard at Savannah River? Water that is tritium-tainted is far more dangerous to children and developing fetuses than to adults. Recent research indicates the current safe drinking water standards for tritium are not adequate to protect developing fetuses to the level comparable for that of nonpregnant adults.

What are we saying to people at Savannah River? Do not go fishing in the Savannah River? Do not provide some sort of safety for consumers who are depending on that?

The report goes on and talks about subsistence fishing in the Savannah River. We have many tribes in the Northwest that fish out of the Columbia River, too. We are not going to protect them because the level of contamination that is already in the water now is starting to show very dangerous signs for both ground water standards and subsistence fishing?

We need to do our job and clean this up. For 30 years the policy has been to take the waste out of the tanks, move it, glassify it, and put it in a permanent storage. We are changing that with very little debate in the Senate today.

Obviously, I urge my colleagues to support the Cantwell amendment which would strike this reclassification and say to DOE: Here is the cleanup money for the States of Washington, Idaho, and for Georgia, and the money should be spent on this cleanup effort.

It continues the process of cleaning up the tanks that have been classified as high-level waste, and it makes the cleanup process continue to move forward.

We took the language from Governor Kempthorne. Governor Kempthorne said to many people, including my colleagues from Idaho, that he had concern with the current underlying bill. In fact, Governor Kempthorne, like our Governor in Washington, has had to deal with this in a major way. This is what he said about the legislation:

[I]t would be a huge step backward, reinforcing public fears about our nation walking away from nuclear cleanup obligations.

I ask unanimous consent to have printed an article from the Idaho Statesman in which former Governors Cecil Andrus and Phil Batt said the same thing, that to adopt this legislation could jeopardize the full implementation and agreement.

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

[From the Idaho Statesman, June 3, 2004]

FORMER GOVERNORS RAISE CONCERN ABOUT DOE BILL ON NUCLEAR WASTE

Two former Idaho governors urged Idaho's senators Wednesday to defend a 1995 nuclear waste agreement as they vote today on two Department of Energy issues.

Former Gov. Cecil Andrus and Phil Batt raised concerns about an amendment to the $450 billion annual defense budget bill, which would allow DOE to leave some radioactive waste in the ground in South Carolina.

Critics say the bill threatens the agreement Batt negotiated for removal of nuclear waste from the Idaho National Engineering and Environmental Laboratory. Idaho's two Republican senators say it doesn't.

''We caution our congressmen not to adopt legislation which would in any way alter or jeopardize the full implementation of the agreement,'' Andrus and Batt said in a joint statement.

Idaho's Republican U.S. Sens. Mike Crapo and Larry Craig say they agree with Batt and Andrus, but believe the bill doesn't threaten Batt's agreement. They say a second amendment they sponsor, which also is up for a vote today, would restore $95 million to the budget to ensure DOE keeps its commitment to Idaho.

''We are working overtime now, not only to honor those commitments, but to secure the necessary monies to allow the cleanup to continue at the INEEL,'' Craig said.

Craig and Crapo find themselves at odds with Idaho Gov. Dirk Kempthorne and Idaho's two Republican U.S. Reps. Mike Simpson and C.L. ''Butch'' Otter, who oppose the plan to reclassify South Carolina's nuclear waste. They argue that passing the bill sets a precedent threatening to undercut an Idaho victory in federal court last year that stopped DOE from reclassifying waste sludge in buried tanks from high-level to low-level waste.

''This legislation would be a huge step backward, reinforcing public fears about our nation walking away from nuclear cleanup obligations,'' Kempthorne said recently.

Crapo disagrees. DOE had tried to get he and Craig and Washington senators to sign on to the reclassified definition of waste, which would allow the government to clean up Cold-War era sites like the INEEL at far lower costs. But they refused.

They agreed, however, with Republican Sen. Lindsey O. Graham of South Carolina, that states ought to be able to negotiate separate waste deals that would reclassify the waste differently than elsewhere, Crapo said.

''Each state has different needs and circumstances,'' Crapo said.

Democratic Sen. Maria Cantwell of Washington has introduced an amendment that would pull Graham's agreement out of the defense bill. She has criticized Graham, Crapo and Craig for proposing the reclassification in South Carolina without a public hearing and national debate.

''If somebody thinks this is an issue that affects the state of Washington, or affects just Idaho, or affects South Carolina—it doesn't,'' she said. ''There are bodies of water, with the potential of nuclear waste in them, that flow through many parts of our country.''

Crapo said he and Craig are willing to strengthen the language in Graham's amendment to ensure it doesn't threaten Idaho, if necessary. Under the 1995 agreement, the federal government is required to remove specific nuclear waste at the INEEL to certain specifications and under deadlines, or face monetary penalties.

If DOE doesn't respect the deal, shipment of spent nuclear fuels to the INEEL from Navy reactors would have to stop.

''All I'm saying is leave our agreement alone,'' Batt said.

Ms. CANTWELL. Obviously, we want to move forward with the language that Kempthorne's office and others in our State of Washington and others say to DOE, to move ahead on your cleanup plans under the current law, which says that hazardous nuclear fuel, spent nuclear fuel, needs to be taken out of tanks, glassified, and put into a permanent repository. That is what we have been working toward.

This is not a debate we should be having in one afternoon on the Senate floor. It is far more complex than that. This Senator certainly did not want to have this complex debate on the Senate floor. This Senator wanted this policy to go through the normal channels for discussion.

This Senator did not fill the amendment tree last week with a process in which this Senator had to object just to get a vote. So now we are having a debate which gets a time limit on my amendment. But this Senator was not the person who set this process in motion. I will stand here and debate the policy that is before the Senate.

Mr. ALLARD. Will the Senator yield?

Ms. CANTWELL. I yield.

Mr. ALLARD. We did have a committee hearing on February 25, 2004. We had the committee hearing and Mr. Roberson testified in front of that committee. On March 23, 2004, there was a committee hearing on the very same issue. Those two previous committees were within my subcommittee on Armed Services. On March 31, 2004, Senator DOMENICI in his committee had this debate. It has been going on in the Environment and Public Works Committee back to 2000. We have testimony from there. There has already been a lot of discussion about this subject and the proper way of disposing it.

This is the same kind of procedure we have used in Colorado to clean up Rocky Flats where we have had an expedited procedure. The people of Colorado are delighted because now we have closure and we have it ahead of time and under budget, so far. Hopefully, we can get this to apply to other areas.

Ms. CANTWELL. Does the Senator have a question? I don't know that I heard the question, but let me say the underlying Graham language was never debated by the Energy Committee. The underlying Graham language was never seen prior to the Energy Committee—before this bill came out of the SASC Committee. In fact, the ranking member of the Energy Committee sent a

letter saying that this SASC Committee did not have jurisdiction over this issue.

So the Graham language in this bill has not been before the Energy Committee regarding its exact language and the impact of that language.

Now, broad concepts about whether DOE has the right to reclassify waste, yes, have been a big subject of debate. In fact, that is why I believe the courts basically said the Department of Energy does not have jurisdiction over this issue and that they have to change the Nuclear Waste Policy Act if they want to have this authority.

Mr. ALLARD. If the Senator will yield, I would like to clarify that it was not the Energy Committee, it was the Appropriations Energy and Water Development Subcommittee. Make that clear for the RECORD.

The PRESIDING OFFICER. The Senator has used her 15 minutes.

Ms. CANTWELL. I yield to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Washington, Senator CANTWELL, and my colleague from Michigan, Senator LEVIN. They have been carrying the ball for a national policy particularly as it affects my State of South Carolina.

The truth is, I just heard that the Appropriations Energy and Water Development Subcommittee, upon which I serve, had hearings about Savannah River. I had never heard of the hearings. I know they did not have hearings in the Armed Services Committee and they did not consider it in the Armed Services Committee.

Now, right to the distinguished request made by my wonderful colleague from Idaho, they seem to think there is sort of a States rights.

Mr. ALLARD. Will the Senator yield?

Mr. HOLLINGS. I will get through my thought and I will yield.

They seem to think there is sort of a States rights to high-level radioactive nuclear waste. I can tell you, I have the distinction of standing at the desk of John C. Calhoun, the grandfather of States rights. But there are no States rights when it comes to high-level radioactive waste.

I am having a hard time getting a logical grasp to this particular problem because I want to be super cautious and understanding of my colleague, Senator GRAHAM. He is a wonderful Senator. He and I work together on everything, but we differ on this one. It is not a political difference; it is a matter of policy.

I have been involved with nuclear policy over some 50 years. Forty-nine years ago, as Lieutenant Governor of the State of South Carolina, I was chairman of the Regional Advisory Council on Nuclear Energy. It was a compact of some 17 States. We were talking about the high-level radioactivity waste. At that particular time we were cautioned by the experts in nuclear fission that the Savannah River was not a place for permanent storage, whatever, in that we had the Tuscaloosa aquifer, which is the water supply going into the Savannah River that now furnishes Savannah, Augusta, and other cities along that river their water supply.

Otherwise, it is on the very edge of an earthquake fault. The earthquake fault comes right through from Calhoun County to Orangeburg County over to Aiken County. I had hearings about the San Andreas earthquake fault out in California in the Commerce Committee some 30 years ago. I know how dangerous this is.

We are all familiar about the dangerous nature of trying to store high-level radioactive waste in the Savannah River site. We were told at that time: Don't worry they will only be there for 2 years. And now, as I stand on the Senate floor, the 2 years has become 4, the 4 has become 8, the 8 has become 16, the 16 has become 32; and now it is almost 50-some years and we are still dealing with this problem.

It is a complex problem, but it has been dealt with nationally with the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982. They ascribed to the Department of Energy the administration of high-level radioactive waste.

Along came the State of Kentucky, along with this so-called scheme that is afoot—the Kentucky case against the United States—and Kentucky tried to redefine high-level radioactive waste.

In the Kentucky decision, under the exclusionary clause, the court found they could not do that; that is, States were only relegated to solid waste, not radioactive or high-level waste.

So under that particular decision, citing, of course, the Resource Conservation and Recovery Act of 1976, they said the States could, yes, deal with the solid waste but not with the high-level radioactive waste. And we had subscribed. That is what is confusing to this Senator and the Senators from Idaho and California and the State of Washington and everywhere else, because under that exclusionary clause of the 1954 Act, you cannot just come around with a little State amendment, and try to redefine high-level radioactive waste for the other 49 States or the other 48 States.

That is why, if it were able to be handled just at the State level, the Senators from Idaho or the Senators from Georgia or the Senators from South Carolina could handle it on their own. It would just be handled on their own. That is the dilemma we are in. Because my distinguished colleague has not only put in what the New York Times has called a stealth amendment, with no hearings and no consideration whatsoever, and gone around to his colleagues, obviously, over on the other side of the aisle, because he has been looking for assistance from Georgia and Idaho and Washington and all the other States that could be affected, and he said: Now this only affects my State. My Governor is for it and I am for it. I have talked to the Energy Department, and this is how to get moving and accelerate the removal of this waste. And what I am interested in is the removal of this waste.

Well, I am interested in the removal of the waste just as expeditiously and as safely as possibly can be done. Let me emphasize—and it will show in an affidavit by David E. Wilson, the Assistant Bureau Chief for Land and Waste Management of the Department of Health and Environmental Control of South Carolina. I ask unanimous consent to have printed in the RECORD the entire affidavit.

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

CASE NO. CV–01–413–S–BLW—AFFIDAVIT OF DAVID E. WILSON, JR., P.E.

Carlisle Roberts, Jr., General Counsel; Samuel L. Finklea, III, Chief Counsel for Environmental Quality Control, Office of General Counsel, SC Department of Health and Environmental Control, Columbia, SC.

United States District Court for the District of Idaho, Natural Resources Defense Council, Inc.; Snake River Alliance, Petitioners, vs. Spencer Abraham, Secretary, Department of Energy; United States of America, Respondents.

David E. Wilson, Jr., P.E., being duly sworn upon oath deposes and says:

1. The U.S. Department of Energy (DOE) owns the Savannah River Site (SRS) located in South Carolina.

2. Reprocessing of nuclear fuel at the Savannah River Site (SRS), reprocessing occurred at the F and H-Area Chemical Separations Facilities, otherwise known as the F and H–Area Canyons.

3. Each facility used different suites of chemicals to derive preferred radioactive isotopes, including, but not limited to plutonium, uranium, and neptunium.

4. Although different suits of chemicals were used in reprocessing, the general process was the same; irradiated nuclear fuel and targets were first dissolved in corrosive chemicals, then other chemicals were added to separate the preferred radioactive isotopes from the fission and activation products in the fuel and targets.

5. The preferred isotopes were then used for weapons manufacture and other uses, and the separated fission and activation products, along with the chemicals they were suspended in (first and second cycle raffinate streams), were disposed of in under ground tanks.

6. During the course of reprocessing at SRS, approximately 37 million gallons of liquid wastes were generated containing approximately 426 million curies of radioactivity.

7. The waste placed in these tanks over the years have settled and precipitated out solid materials in a layer of sludge at the bottom of the tanks.

8. There are 3 million gallons of this sludge (8% of the volume) containing 226 million curies of radioactivity (55% of the curies).

9. The material above the sludge layer consists of concentrated supernate liquids and post-evaporation salt cake.

10. There are approximately 34 million gallons (92% of the volume) of supernate and salt cake containing 200 million curies of radioactivity (45% of the curies).

11. The reprocessing wastes were placed in 51 underground tanks at SRS, ranging in size from 750,000 gallons to over 1,300,000 gallons.

12. Twenty-four (24) of the 51 tanks are constructed of carbon steel inside concrete containment vaults and do not have fully secondary containment.

13. The remainder of the tanks have full secondary containment.

14. All 24 tanks that do not have full secondary containment tanks are well beyond their design lives and 9 of the 24 have had known leaks to their secondary containment.

15. Two of these tanks have been closed through a process approved by the State of South Carolina.

16. To date, the Defense Waste Processing Facility (DWPF) has treated approximately one million gallons of liquid waste containing 30 million curies radioactivity.

Further your affiant sayeth naught. David E. Wilson, Jr., P.E.

March 24, 2003, Columbia, SC.

SWORN TO before me this 24th day of March, 2003.

Notary Public for South Carolina.

My commission expires 12/5/05.

Mr. HOLLINGS. Let me just state at the outset that South Carolina has 70 percent of all of the Nation's defense-related radioactivity. Under section 8 of Mr. WILSON's affidavit, there are 3 million gallons of this sludge containing 226 million curies of radioactivity, 55 percent of the curies. That is over half of the radioactivity. You are not dealing with just little remains and harmless sludge that we can pour sand over and then seal with concrete.

Incidentally, it is not going to leak from the top. The only thing that leaks from the top is the Ship of State. That is the White House. We all know that. These containers ship and leak from the bottom. We have three types of containers: the one single wall, the second type is the single wall with a saucer underneath, and then they made the double wall.

We have found, from a recent report by the Alliance for Nuclear Accountability, the type 1s and 2s have leak sites. The third type tank has small amounts of ground water that have leaked into the tanks, and so forth.

So we are dealing with fire, and we are dealing with it on a national basis. Heaven knows, I have worked with it on an international basis.

In earlier years, they had a plane that, unfortunately, let go of a hydrogen bomb into the Mediterranean. If anybody wants to travel to the Cote d'Azur or the Mediterranean, all they have to do is come to Aiken, SC, because they loaded up the marsh and the sand all where this bomb had been dropped in the Mediterranean, put it in 55-gallon drums, brought it across the harbor there at Charleston, carried it up and buried it in Aiken, SC.

I have worked with the 5-year compacts, and that is why I was astounded and aghast at this idea that somehow this is a little problem for South Carolina and it would be easily handled. It is not that easily handled.

This is what the amendment says, and this is, I think, the intent of the distinguished colleague from South Carolina, because we have to sign off on it.

Well, under the Kentucky case, there is not any signoff on it. Now, of course, the Department of Energy—and they are all friendly with the distinguished Secretary Abraham. But I do not trust them—not honest-wise. I know Senator Abraham is as honest as the day is long, but I do not trust his disposition with respect to nuclear. In fact, I had to stand on the floor when he was trying to abolish the Department of Commerce and Energy. President Bush's Secretary of Energy wanted to abolish his Department before he became Secretary.

This particular amendment has been put on the Armed Services bill, without hearings, without us knowing anything about it, and certainly without the Attorney General knowing about it. I called two members of the South Carolina Department of Health and Environmental Control, and they did not know anything about it.

They were appalled and aghast. It says:

Notwithstanding any other provision of Law with respect to materials stored at a Department of Energy site at which activities are regulated by the State—

''At which activities are regulated by the State.'' Now, that goes to that 1976 act, which says that the States under that particular provision regulate solid waste but not radioactive. That is why we have had this difference. One lawyer would say, reading that: Why, it starts off ''at which activities are regulated by the State,'' and that could only relate to solid waste, not radioactive waste. It doesn't amend the Nuclear Waste Policy Act of 1954 which exclusively relegates to the Congress and to all 50 States the designation of high-level waste.

But then he goes on to add this language:

High level radioactive waste does not include radioactive material resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy determines is in deep geological repository and has, to the maximum extent practical, in accordance been removed.

And you get into these fancy words ''to the maximum extent practical.'' Now, why do I say what I do? On the one hand, you know what the intent is. The intent of Senator GRAHAM of South Carolina is the same intent of Senator HOLLINGS of South Carolina: to protect South Carolina from this high-level radioactive waste. But that doesn't happen that way because of the Kentucky case and everything else of that kind.

You can go and read the Kentucky decision. I don't want to take up all of the time. In other words, it isn't the intent. And if I was seated as a judge on a court saying, well, let's try to find out what the congressional intent was, the congressional intent was not to redefine high-level radioactive waste; it was just to allow an agreement with the State of South Carolina and the Department of Energy to work out how to remove that sludge. But it didn't go to the basic law. That would be one argument.

Another argument would say: Wait a minute; with the State of South Carolina, we can do whatever we want, and we could give permission to the Department of Energy, the right to reclassify high-level radioactive waste.

So you have this duplicity in this particular amendment, particularly as you see how it is drawn. Section D of the amendment says: Defined in this section, the term ''State'' means the State of South Carolina.

So all you have to do is run around to the colleagues and work the amendment and legislation in the same way. I don't fault my colleague, but I think he is making a grievous error in the sense that he is saying this just applies to the State of South Carolina, and we can protect the State.

The Governor of South Carolina, Mark Sanford, has been strong on the environment. I knew he wouldn't approve it. Now I have his letter purportedly approving it.

I ask unanimous consent to print the letter in the RECORD.

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

STATE OF SOUTH CAROLINA,
Columbia, SC, May 20, 2004.

Hon. LINDSEY O. GRAHAM,
United States Senate,
Washington, DC.

DEAR SENATOR GRAHAM: I am writing to 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. I look forward to working with you on this and many other matters of importance to our State.

Sincerely,

MARK SANFORD,
Governor.

Mr. HOLLINGS. This is on May 20. He addresses it to Senator GRAHAM and says: I am writing about this section to allow an accelerated cleanup. The administration is concerned—he is talking about the prospect of long-term

storage at Savannah River. However, the amendment allows the Department of Energy, working with the State of South Carolina Department of Health and Environmental Control, to move more quickly to clean up the Savannah River site.

He doesn't say to reclassify high-level waste. And in fact, the estimated cleanup time will be reduced. Here is the key paragraph of this particular letter:

Most important is ensuring that the State of South Carolina will be able to retain an oversight to the cleanup process.

No. Under the exclusionary clause, there is no oversight by the State of South Carolina, the State of Idaho, the State of Colorado, the State of Michigan, the State of Washington. There is no oversight to that particular provision because you have the categorical law under the Nuclear Waste Policy Act where the Congress alone defines it and not by agreement between the health and environmental department of a particular State and the U.S. Department of Energy.

So you can see that the Governor thinks he has something. But then he cancels it out. It reminds me when we had the reorganization of our insurance department. The Capital Life Insurance Company was reorganizing and looking for a slogan. And the winning slogan was by Sam B. King. He said: Fritz, do you know what the new slogan is? Capital Life will surely pay if the small print on the back don't take it away.

So you have a similar kind of situation here in this amendment and in this letter and in this understanding and this intent. You have to go to congressional intent. He says: It ensures that the State of South Carolina will be able to retain an oversight. You don't retain an oversight over the exclusionary clause of the definition of high-level waste by an agreement between a DEHC department and the Department of Energy. Come on. That is exactly what we have in play here.

The House of Representatives over on the congressional side, they considered this and said: Wait a minute; if we are going to redefine high-level radioactive waste in America, let's go to the National Academy of Sciences and get an expert. Don't listen to Senator HOLLINGS or Senator GRAHAM or any other Senators or any other Secretary that is trying to save money because they have been engaged in this over the years. Let's go to the National Academy of Sciences. Let's have hearings. Let's get the expert opinion. And if there is a redefinition of high-level radioactive waste, we will have it. But let's not do it this way.

I have many an authority here with respect to it, but the most recent authority is the State itself. You can get a letter from the Governor, but here is the amicus brief in the National Resources Defense Council v. Spencer Abraham whereby in Idaho they have already lost the case. The council brought it in the State of Idaho. The State of Idaho joined with them and everything else like that, and they lost at the district level.

Then on appeal, we have a brief signed by Samuel L. Finklea, the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC, dated 23 March. So as of March 23, the State of South Carolina on appeal said: No way; we are with Idaho. We are with the decision. We are not redefining high-level radioactive waste.

And yet you have the State of South Carolina's Governor writing this letter but saying, provided further that the State has a sign-off, which legally it can't. You can't designate to the State under the exclusionary clause one State sign off to the thing. That is what has caused the confusion here and the misunderstanding between the particular colleagues.

I am going to cut it short because I know everybody wants to move today. I think I have made our position clear. I have letters here. I ask unanimous consent that letters and citations from the South Carolina Wildlife Federation, the Sierra Club, and various other organizations that I will enumerate be printed in the RECORD.

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

SOUTH CAROLINA
WILDLIFE FEDERATION,
Columbia, SC, June 2, 2004.

Senator FRITZ HOLLINGS,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: Today I am writing you because we at the South Carolina Wildlife Federation are concerned and appalled at the effort to reclassify certain categories of nuclear waste at the Savannah River Site (SRS). Merely changing the name of the waste from high-level with the wave of a magic wand does not make the risk to the environment any less. On the contrary, it means that an unnecessary and unacceptable risk will be inflicted upon the citizens and wildlife of South Carolina, Georgia and the country as a whole.

The South Carolina Wildlife Federation opposes the proposed changes to the Defense Authorization bill to reclassify these high-level wastes as ''incidental'' thereby lowering the standard for cleanup.

The 1982 Nuclear Waste Policy Act is specific in its policy regarding the disposal of nuclear waste as it clearly states for this waste to be buried deep underground in a repository chosen for disposal of this waste. The Department of Energy (DOE) has made several attempts in the past to shirk its responsibility and the courts have soundly rejected its reclassification attempts.

Failing to clean up the tanks and remove the waste can lead to serious long-lasting pollution of the Savannah River and the groundwater resources of South Carolina, resources that provide water for drinking, industry, and agriculture. The Savannah River is also an extremely important recreational resource for boating and fishing, and it provides critical wildlife habitat for diverse fishery, waterfowl and other species.

Thank you for once again coming to the rescue of the environment through your cosponsorship of the Cantwell-Hollings Amendment to the Defense Authorization Bill, S. 2400. Your amendment would remove the reclassification language from the Defense Authorization bill. We fully support you in this effort.

Such an important change in the nuclear waste storage policy should only be given serious consideration in a stand-alone bill where it can be put forth for full debate in the light of day, not bobtailed onto a spending bill. Thank you.

Sincerely yours,

ANGELA VINEY,
Executive Director.

SIERRA CLUB
SOUTH CAROLINA CHAPTER,
Columbia, SC, June 2, 2004.

Re: S. 2400 Defense Authorization

Senator ERNEST HOLLINGS,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: The South Carolina Chapter of the Sierra Club thanks you for the Cantwell-Hollings Amendment to S. 2400, the Defense Authorization Bill.

Senator Lindsay Graham has decided that the best way to eliminate an environmental hazard is to redefine it. We find this unacceptable.

When Department of Energy Secretary Abraham visited the Savannah River Site (SRS) recently he named SRS a national laboratory specializing in nuclear waste cleanup. For a moment we rejoiced in thinking that both the environment and economic development would benefit simultaneously.

That thought did not last long. Senator Graham said we do not need to make every effort to clean-up highly radioactive waste. According to him it can be abandoned on the site permanently with an amendment to the Defense Authorization Bill.

Congress is needlessly debating whether to lower our standards for protecting our water supplies from radioactive waste leaking from nuclear weapons production sites. We appreciate you being on the right side of this issue.

The SRS complex houses approximately 37 million gallons of high-level radioactive waste, much of it in the form of liquid sludge. That is enough radioactive waste to fill every bathtub in Richland, Lexington and Aiken counties in South Carolina.

When SRS was built in the 1950's, the plan was to move out the waste from nuclear weapons production within 10 years. The deadly waste is still there 50 years later. If Graham's amendment passes, South Carolina will be stuck with it forever.

This dangerous waste is stored in old tanks that have been known to leak. The tanks sit in the water table in one of the largest and most important watersheds in the Southeast. The Savannah River and the entire watershed serve agriculture, industry, fishing, and recreational activities. Failing to clean up the tanks will lead to a serious and long-lasting pollution threat that is detrimental to the entire nation.

Graham proposes mixing the radioactive sludge with grout and using the tanks as permanent waste depositories. This action was declared illegal by a federal judge in Idaho. That is why Graham has introduced his amendments, to make what is now illegal, legal.

Before jumping into this risky method of waste storage, most studies need to be done on the potential for water supply contamination by waste leaching out of the grout. This method of storing the waste may actually make it more difficult to retrieve it in the event of a leak.

State Attorney General Henry McMaster has filed an amicus brief on behalf of South Carolina agreeing with the National Resources Defense Council, the environmental

group that initiated the lawsuit, that the waste not remain in its current location.

Another concern about Senator Graham's provision is that it would allow DOE sole discretion in deciding what constitutes high-level radioactive waste in South Carolina, severely limiting the state's voice on such matters. The state would no longer be the final say on what defines high-level waste in our own backyard and the state would have limited or no power to halt DOE from abandoning this highly radioactive waste. So much for ''states rights'' and ''checks and balances.''

The Sierra Club urges the deletion of sections 3116 and 3119 of the Defense Authorization Act. Please do not allow the abandonment of high-level radioactive waste at SRS.

Again, Senator Fritz Hollings, thank you for standing up for South Carolina and safeguarding the welfare of our future generations by opposing the Graham amendment.

Sincerely,

DELL ISHAM,
SC Chapter Director,
Sierra Club.

Mr. HOLLINGS. The South Carolina Wildlife Federation; South Carolina Sierra Club; South Carolina Coastal Conservation League; Carolina Peace Resource Center; Environmentalists, Inc.; the mayor of Savannah; Action For a Clean Environment; Atlanta Women's Action for a New Direction; Center for Environmental Justice; Coosa River Basin Initiative; Georgia Conservation Voters; Georgia Peace and Justice Coalition; Physicians for Social Responsibility in Atlanta; Southern Alliance for Clean Energy; Alliance for Nuclear Accountability; National Council of Churches; Sierra Club; National Resources Defense Council; Public Citizen; Episcopal Church; United Methodist Church; American Rivers; League of Conservation Voters; Church Women United; GreenPeace; a number of Native American tribes; and the Idaho Conservation League.

Incidentally, Mr. President, this particular editorial that appeared timely this morning, ''Shortcut on Nuclear Waste,'' in the New York Times, outlines the particular problem. It emphasizes why we don't have States' rights with respect to high-level radioactive waste. We are playing with fire here on the Armed Services bill. This is a stealth amendment with no hearings and no consideration. I know my State as well as anybody. In the majority of the State, everybody is against this.

I ask unanimous consent that the New York Times editorial be printed in the RECORD at this point.

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

SHORTCUT ON NUCLEAR WASTE

The Senate may consider today whether to allow the Energy Department to reclassify certain nuclear wastes at a weapons plant in South Carolina so they can be disposed of faster and cheaper than if the department complied with current law. Although many senators may be tempted to skim over this issue as a matter of parochial concern to South Carolina, they need to consider this matter carefully lest they set a terrible precedent. The Energy Department has a notoriously poor record in handling environmental issues. It should not be granted such unbridled power to define its waste problems away with the stroke of a pen.

The Savannah River site in South Carolina has accumulated a huge inventory of radioactive wastes left over from weapons production, some 37 million gallons held in 51 underground tanks. Under the 1982 Nuclear Waste Policy Act, virtually all of this material is deemed high-level waste, which must be disposed of in a deep repository like the one being built at Yucca Mountain in Nevada.

For some years now, the Energy Department has been hoping to separate its wastes into two streams, reserving deep burial for only the part with high radioactivity. In the case of the South Carolina site, the department is prepared to pump most of the waste out of the tanks for disposal through deep burial. But it wants to leave a hard-to-remove residue of sludge in the tanks and bury it under grout.

Officials estimate that this approach could save $16 billion and trim 23 years from the lengthy cleanup process. But those plans were stymied when a federal judge in Idaho concluded that the scheme violated the waste-policy act.

Now Senator Lindsey Graham, Republican of South Carolina, has inserted language in a defense authorization bill that would achieve the same end. It would allow the department to reclassify the wastes in South Carolina in a way that would allow the disposal of some material on the site. Mr. Graham notes that the state's governor and its health and environmental regulators have signed off on the plan, and he says the decisions on how to handle each tank will be made collaboratively by federal and state officials.

Senator Graham's language is potentially a highly significant change in nuclear waste policy, yet it was inserted into a broad military authorization bill behind closed doors, without the benefit of hearings or open discussion. This is unacceptable, given that few areas could have more potential impact on public health for thousands of years into the future.

The Energy Department is largely empowered to set its own waste disposal policies, with only minimal oversight from the Nuclear Regulatory Commission. Before allowing the department to reclassify its waste products, the Senate should follow the lead of the House and call for an in-depth study of the approach by the National Academy of Sciences. The decision should not be left to an agency that is desperate to get past a staggeringly difficult waste disposal problem.

Mr. HOLLINGS. Mr. President, I yield the floor and thank my distinguished colleague from Washington for her leadership, and also Senator LEVIN for alerting me to this particular danger. This is a highly dangerous matter. We should not be running around with a little legislative rider on the Armed Services bill on a single State exception, even if it were legal. I don't think it is legal. But even if it were legal, it would all of a sudden indirectly, and without other States being involved, redefine high-level radioactive waste. We don't want to do that. This is no way to legislate, and no way to treat this highly dangerous element.

I thank the Chair.

The PRESIDING OFFICER (Mr. CRAPO). Who yields time?

The Senator from Colorado is recognized.

Mr. ALLARD. In a moment, I will call on the junior Senator from South Carolina.

First of all, I want to clarify this for the RECORD. We have had three hearings this year on this very issue. Prior to this year, we have had a number of hearings dealing with the disposal of nuclear waste. I know for a fact the Environment and Public Works Committee had a hearing in 2000 on the disposal of nuclear waste.

On February 25, 2004, the Strategic Forces Subcommittee of the Armed Services Committee held a hearing on the development of an energy environmental management program, and a key witness was Jesse Roberson, and we talked about this very issue.

On March 23, 2004, in the Armed Services Committee hearing we had on the Department of Energy programs, a key witness in that particular hearing was Secretary Spencer Abraham.

On March 31, 2004, at the Appropriations Energy and Water Subcommittee hearing on environmental management, a key witness was Jesse Roberson.

Having clarified that for the RECORD, I yield 10 minutes to the junior Senator from South Carolina.

The PRESIDING OFFICER. The junior Senator from South Carolina is recognized.

Mr. GRAHAM of South Carolina. Mr. President, in terms of my senior Senator, who I respect greatly, there is no doubt in my mind that he loves his State. Secondly, this is not about who loves South Carolina. We have a policy disagreement about what is best for our State. That happens on occasion in politics. Senator HOLLINGS has been more than gracious in terms of helping me adjust to the Senate and coming to my office, and I publicly acknowledge that. I regret that we differ, but we do.

I assure my colleagues that I just did not wake up one day, as the junior Senator from South Carolina, sneaking around everybody to come up with an amendment that would change the whole national policy on nuclear waste for the heck of it. I didn't do that. I have been in Congress now for 10 years and in the Senate for a little over a year and a half. In the House, I represented the Savannah River site, our State's largest employer. It is the facility that was intricately involved in winning the cold war. We have over 50 tanks full of high-level liquid waste.

The Clinton administration and myself had a bumpy road. I think it is fair to say I did not agree with the Clinton administration a lot, but one thing that we did find common ground about in the 1997 timeframe and I think Senator ALLARD probably remembers this—is that the Clinton administration came up with a new way of looking at high-level waste, how you characterize it.

There was a hearing about this in 2000 in the Senate before I got here. During the Clinton administration, the policy was—and before the Clinton administration—that if the material started out life as high-level liquid waste, no matter what happened in the

intervening time or whatever characterization it had after being treated, it would have to be considered high-level waste—defense material, high-level waste. The Clinton administration said that is not very logical. What we need to do is look at the characterization of the waste at the end, not where it came from. There was a hearing in May of 2000 about that concept. I supported that concept then and I support it now.

In all due deference to my senior Senator, there is nothing in this amendment that changes the definition of high-level nuclear waste. The way you look at high-level nuclear waste and the way you characterize it was changed in the Clinton administration in a logical way. We have cleaned up two tanks. That has been lost in this debate. There are 50-plus tanks of high-level liquid waste. Two of them have been dried up and cleaned up. The procedures to clean up those tanks have worked. That has been several years ago. This amendment allows more money to be put on the table to clean up the rest of the tanks.

Here is what we have been able to do. We have been able to strike an agreement between the environmental regulators in South Carolina and the Department of Energy defining what ''clean'' is in terms of those tanks. All of the liquid waste will be taken out. There will be about an inch and a quarter of material left in the bottom of the tank, like the other two tanks that have already been closed. There will be a process to treat that inch and a quarter. The NRC has been consulted and has blessed this project, saying what is left in the bottom of the tank after it is treated is waste incidental to reposit.

About people and their opinions regarding what is best for the safety of my State, my senior Senator has been an advocate for my State for a very long time. I respect him. I can assure you I share his concerns about what is best for the environment of this region.

I have some letters I would like to introduce. I have a letter from the Governor of South Carolina that I think he has already introduced. Last week, when we talked about this, Senator HOLLINGS said he cannot believe the Governor would support this. He has been a great environmentalist.

Mark Sanford, our Governor, does have a very good environmental record, depending on what scorecard you want to look at. But Mark comes from the coast. I think most people would say he has been environmentally sensitive.

The letter that Senator HOLLINGS read, please do not misunderstand at all, this is an absolute total endorsement of this amendment by our Governor. I am not the type of Senator who would not tell our Governor what we are doing. The Governor was given the language a long time ago.

On April 27, we had a delegation meeting about this language. I have been shopping this language around for weeks. We have been talking about how to clean up Idaho, Washington, and South Carolina for years. We have had hearings in Senator ALLARD's committee about this very topic, where DOE came in and talked about the plan to clean up these tanks and talked about the two tanks that had already been cleaned up.

There have been negotiations going on between Idaho, Washington, and South Carolina, independent of each other, with the DOE to try to find a common ground in those States as to how to clean up this high-level liquid waste.

To my colleague in Washington, who truly is a friend, and I am sorry we got so off stripped on this, we will get over it and work together for the common good when this is over.

On January 26, 2004, Congressman HASTINGS, Senator MURRAY, and Senator CANTWELL sent a letter to Governor Locke and Secretary Abraham and asked them to work together to resolve the ongoing dispute over waste classification. They did a very good thing in that regard. I ask unanimous consent to print that letter in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, January 26, 2004.

Hon. GARY LOCKE,
Governor, State of Washington, Olympia, WA.

Hon. SPENCER ABRAHAM,
Secretary, Department of Energy, Washington, DC.

DEAR GOVERNOR LOCKE AND SECRETARY ABRAHAM: We have become increasingly concerned about the lack of an agreement between the State of Washington and the Department of Energy to resolve the ongoing dispute pertaining to the classification of High Level Waste.

Our primary and overriding concern is the safe and timely cleanup of the Hanford site. We know that we share this goal with both the State of Washington and the United States Department of Energy.

We are calling on you to take the initiative to establish immediate high level discussions between the State of Washington and the Department of Energy to resolve this issue. We would like to see a commitment to continue the dialogue until such time as a mutually acceptable agreement can be reached.

We know the parties have legitimate disagreements. We would ask that such conversations take place without preconditions being set, which could serve to hinder successful negotiations.

The stakes are incredibly high and the price of failure is the continued exposure of the people and the environment to unnecessary risks, by potentially slowing the pace of cleanup activities.

We know you share our commitment to making our communities safe. We ask for your leadership to create momentum for a successful resolution of this issue.

In the past when seemingly intractable problems have faced cleanup obstacles, they have been solved by your common commitment to rise above the obstacles to reach shared objectives. We are confident that working together this outcome can be reached.

Sincerely,
Congressman DOC HASTINGS,
Senator PATTY MURRAY,
Senator MARIA CANTWELL.

Mr. GRAHAM of South Carolina. Mr. President, the letter was an effort by the legislative delegation in the State of Washington to get the DOE to come up with some classification system for Hanford.

Our distinguished Presiding Officer from the State of Idaho has been working for months now for his State to see if they could come up with a classification system for the State of Idaho. In February 2004, the Governor of Washington indicated he would designate someone to enter into discussion on behalf of the State of Washington. Governor Locke's chief of staff called the Deputy Secretary to indicate he was the Governor's designee to hold discussions with the Department of Energy. Shortly thereafter, the Department of Energy shared draft language with the State of Washington.

What has been going on here for a very long time is a collaborative process between the three States and the Department of Energy to remediate the environment when it comes to high-level waste in a manner acceptable to the State. That is the process. That has always been the process, and that must be the process.

But here is what we do not want to do as we negotiate individually. We do not want to, as my senior Senator said, have a State have the ability to define high-level waste because it is a national concern and a national issue. So we have been jealously guarding that concept. This amendment does not give the State of South Carolina the ability to define high-level waste because we would have 50 different versions. What it does do is it requires a collaborative process. We have already closed two tanks, and before those two tanks could be closed, South Carolina had to issue a permit saying: Yes, they are able to be closed. This amendment gives the State of South Carolina permitting authority over tank closure. That is exactly what Washington and Idaho are trying to pursue.

Governor Locke has been working with DOE. The difference is South Carolina has gotten there, and to my friend from Washington, there will come a day—soon, I hope—where you can negotiate classification of waste with DOE satisfactory to Washington. And there will come a day when the Governor of Washington, whoever that may be, will say: That is a good deal. And the regulators in the State will say: That is a good classification with which we can live.

The truth is, if that day ever arrives, because of the way the Nuclear Waste Policy Act is written, you are going to need legislative language to bless that agreement.

Washington has a severe problem with tank leakage. I want to tell my

friends from Washington, if that day arrives to where you can find a standard acceptable to your State—

The PRESIDING OFFICER. The Senator has used 10 minutes.

Mr. GRAHAM of South Carolina. I ask for 5 more minutes.

Mr. ALLARD. I yield an additional 5 minutes.

Mr. GRAHAM of South Carolina. If that day ever arrives, the Senator from Washington is going to come to this body, and I am going to help her. I say the same to my friend from Idaho. That day has arrived in South Carolina. We have vetted this proposal with everybody I know.

I ask unanimous consent that a letter from the Speaker of the South Carolina House, David Wilkins, be printed in the RECORD.

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

SOUTH CAROLINA
HOUSE OF REPRESENTATIVES,
Columbia, SC, May 27, 2004.

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

DEAR SENATOR GRAHAM: It has come to my attention that you have included language in the FY 2005 Department of Defense Authorization bill, S. 2400, which would allow for accelerated cleanup of the Savannah River Site. I write today to express my support of Section 3116.

I understand that the South Carolina Department of Health and Environmental Control has worked with you since August of last year to craft legislation that gives South Carolina ''a seat at the table'' when determining what radioactive materials will remain in South Carolina. I support that goal and the expedited cleanup of the radioactive waste tanks at the Savannah River Site.

South Carolina and the Department of Energy have had a good working relationship over the years. It is my sincere hope that your legislation will allow this partnership to continue in a mutually beneficial way which cleans up SRS more expeditiously and in a fiscally prudent manner.

I concur with Governor Sanford. This language will allow for a more accelerated cleanup process and will help protect the State's sovereignty with respect to the accelerated cleanup.

Thank you for your service to the State. I look forward to working with you on this and other issues of importance to the State and Nation.

Sincerely,

DAVID H. WILKINS,
Speaker of the House.

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent that a letter from the deputy commissioner of the South Carolina Environmental Quality Control, Robert King, Jr., be printed in the RECORD.

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

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL,
Columbia, SC, May 18, 2004.

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

Re: Sec. 3116. Defense Site Acceleration Completion

DEAR SENATOR GRAHAM: The Department has reviewed the above referenced language proposed to be added to the S. 2400 National Defense Authorization Act for FY 2005. As you are aware, the Department considers the storage of high-level radioactive waste in aging tanks at the Savannah River Site to be the single most potentially hazardous condition to the environment and people of South Carolina. In fact, the Department has worked closely with the Department of Energy (DOE) to safely close two of the original fifty-one storage tanks.

It is the Department's position that the above referenced language will provide a process to close the remaining storage tanks in a similar manner. This will include removing highly radioactive radionuclides to the maximum extent possible and will also provide for public participation in the decision-making process.

As always, alternative language could be developed; however, this proposed language allows DOE to move forward with the important task of removing the high-level radioactive waste from the storage tanks while providing a decision-making framework in which the State is included.

If you have any questions or need any further information, please have your staff contact David Wilson at (803) 896–4004.

Sincerely,

ROBERT W. KING, JR.,
Deputy Commissioner, Environmental Quality Control.

Mr. GRAHAM of South Carolina. Mr. President, this letter to me says that the agreement they have achieved with DOE is environmentally sound for South Carolina; we would like to move forward with tank cleanup. Here is why this is so important to my State: It will allow $88 million to be put on the table. It will allow these tanks, now that we have reached an agreement to become dry and safe and secure and closed up, to be closed 23 years ahead of schedule. I invite everybody in this body to come to Aiken, SC, and the surrounding community to enjoy golf, leisure, and fishing. I will take you fishing in the Savannah River, if you would like to go.

I do not want 23 years to go by and the chance of the tanks leaking to grow. I do not want the problem that Washington has. I want Washington to be able to fix their problem, and I will help the State of Washington. But I have a chance to do something in my State that we have not had a chance to do in 10 years. The origin of this being done started in the Clinton administration, and we are building on what happened then.

This amendment is focused only on the agreement in South Carolina. Senator CRAPO, Senator CRAIG, and Senator ALEXANDER have an amendment to make it absolutely certain. I think it already is, but I am not here to put any other State in a bad situation. I am not here to make Washington do what we are doing in South Carolina or to prejudice Idaho at all. I am just simply asking this body to listen to the people who are responsible for the ground water who tell me this is a good agreement, it will help my State if we move forward on it, and it will safe $16 billion, for whatever that is worth.

The attorney general of South Carolina was mentioned by my distinguished senior Senator. I have a letter from him supporting this agreement. I ask unanimous consent to print this letter in the RECORD.

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

THE STATE OF SOUTH CAROLINA,
OFFICE OF THE ATTORNEY GENERAL,
May 18, 2004.

Re: Sec. 3116. Defense Site Acceleration Completion

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

DEAR SENATOR GRAHAM: It is my understanding that the South Carolina Department of Health and Environmental Control supports your proposed amendment to be added to the S. 2400 National Defense Authorization Act for FY 2005.

DHEC considers the storage of high-level radioactive waste in aging tanks at the Savannah River Site to be potentially the most hazardous environmental situation in South Carolina. Your proposed amendment allows federal authorities to remove this radioactive hazardous waste, while ensuring that the State is statutorily included in the process, with ultimate ''veto'' power on removal decisions.

Please allow this letter to serve as my official statement of support for your amendment.

Thank you for all that you do on behalf of South Carolina and its grateful citizens.

Yours very truly,

HENRY MCMASTER.

Mr. GRAHAM of South Carolina. Mr. President, when we talk about people with agendas, there are all kinds of political agendas when one talks about nuclear programs. That is just politics, and that is the strength of America. There is nothing wrong with that.

I have a letter from the Aiken County, SC, legislative delegation—Democrat and Republican house members and senators—who say please approve this agreement because it will clean up these tanks ahead of schedule, and it will be a good thing for our community. The difference between them and the New York Times, which is a great paper, is they live there. The Savannah River site is located in Aiken, SC.

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:

AIKEN COUNTY,
LEGISLATIVE DELEGATION,
Aiken, South Carolina, May 25, 2004.

Hon. LINDSEY O. GRAHAM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: We are writing to support Section 3116, Defense Site Acceleration Completion, in S. 2400. As we understand it, this section of the bill will allow The Savannah River Site to accelerate cleanup of the Site's remaining waste tanks in a manner consistent with the way Tanks 17 and 20 were closed in the late 1990s.

We believe that your language will allow the establishment of environmentally prudent regulations regarding tank waste that will allow the Department of Energy, in conjunction with the South Carolina Department of Health and Environmental Control, to move more quickly to clean up the Savannah River Site.

We especially appreciate your efforts to work with the State to ensure the State of South Carolina will have a seat at the table when determining the ultimate disposition of any materials left in the state. We concur with Governor Sanford that according to analysis by the South Carolina Department of Health and Environmental Control, the cleanup process envisioned by Section 3116 will provide ''a decision making framework in which the State is included.''

We appreciate your efforts on behalf of the Aiken Community to get this cleanup done expeditiously and your continued efforts to do it in a way that decreases the impact on the taxpayers of this nation.

Senator W. Greg Ryberg, Senator Thomas L. Moore, Senator Nikki Setzler, Representative Robert S. Perry, Jr., Representative Donald C. Smith, Representative William ''Bill'' Clyburn, Representative J. Roland Smith, Representative James ''Jim'' Stewart, Jr., Representative Ken Clark.

Mr. GRAHAM of South Carolina. Mr. President, I have another letter from the mayor of Aiken, Fred Cavanaugh, who worked at this site, supporting this agreement. In addition, I have a letter from Ronnie Young, the chairman of the Aiken County Council, where the council endorses this amendment.

I have a letter from the Chamber of Commerce, the people who have to make a living. I can assure you the Aiken County Chamber of Commerce believes this will not poison the area. It will do absolutely the opposite. It will make it more attractive.

I ask unanimous consent to print those letters in the RECORD.

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

CITY OF AIKEN, SC,
May 26, 2004.

Hon. LINDSEY GRAHAM,
Russell Senate Building,
Washington, DC.

DEAR SENATOR GRAHAM: I want to thank you for the positive work you are doing on behalf of the citizens of our country, South Carolina and closer to home, Aiken County. More precisely, thank you for seeking a resolution to the questions related to the definition of—radioactive waste incidental to reprocessing (WIR). As we know, radioactive waste stored in underground tanks is the greatest potential risk to public health and the environment at the Savannah River Site (SRS), and unless resolved, the WIR lawsuit and related issues will stop these critical activities. Your amendment to the Senate Armed Services Committee Authorization Bill will allow for the continued removal and disposition of the waste in a safe manner, and we believe it is critical that it be enacted into law.

Your amendment allows SRS to continue to remove waste and close tanks to the same standards and with the same diligence as in the past. It has the endorsement of SC/DHEC and the Governor of South Carolina. Under your amendment SC/DHEC will continue to oversee and approve all SRS waste removal and disposal activities thus assuring continued protection to the public and environment.

Conversely, without your amendment, activities to remove and dispose of high level radioactive waste will be stopped and wastes will remain in the less safe liquid form in fifty year old underground tanks. Instead of completing waste removal by 2018, wastes will remain in the old tanks. Equally critical will be the loss of trained and skilled SRS workers because this critical work will stop. I support your amendment as being in the best interest of the citizens of South Carolina who are interested in the safe removal and disposition of high level radioactive wastes. Please convey my position on this important matter to your colleagues in Congress.

Sincerely,

FRED B. CAVANAUGH,
Mayor.

AIKEN COUNTY COUNCIL,
Aiken, SC, May 25, 2004.

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

DEAR SENATOR GRAHAM: This letter comes as confirmation of my support of Section 3116, Defense Site Acceleration Completion in the FY 2005 Department of Defense Authorization Bill, S. 2400. This bill will allow for an accelerated clean up of the Savannah River Site.

Aiken County is very concerned with the storage of high level radioactive waste in aging tanks at the Savannah River Site. Under the present Nuclear Waste-Policy Act, the cleanup could leave the waste in the aging storage tanks for approximately 30 additional years. This possibly is the most potentially hazardous condition to the people and environment of South Carolina.

However, with the acceptance of Section 3116, Defense Site Acceleration Completion, the Department of Energy and the South Carolina Department of Health and Environmental Control will be able to move much more quickly to cleanup the Savannah River Site, with an estimated savings of $16 billion to the taxpayers.

During the cleanup, it is of major importance to the citizens of South Carolina that we are allowed to retain an oversite role in the cleanup process.

I urge you and your fellow statesmen to allow for the accelerated cleanup process at the Savannah River Site and to provide a decision making framework in which the State of South Carolina is included.

If you have additional questions or need other information, please contact me at (803) 642–1690.

Sincerely,

RONNIE YOUNG,
Chairman, Aiken County Council.

GREATER AIKEN CHAMBER OF COMMERCE,
May 25, 2004.

Hon. LINDSEY GRAHAM,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: Let me begin by saying thank you for your efforts in seeking a resolution to the uncertainties related to the definition of radioactive waste incidental to reprocessing (WIR). Radioactive waste stored in underground tanks is the greatest potential risk to public health and the environment of the Savannah River Site, and unless resolved, the WIR lawsuit and related issues will stop those critical activities. Your amendment to the Senate Armed Services Committee authorization bill will allow for the continued removal and disposition of waste in a safe manner.

SRS has safely removed radioactive wastes from underground tanks for almost ten years and has permanently closed two tanks. These efforts were permitted by the South Carolina Department of Health and Environmental Control (SC/DHEC) with the oversight of the U.S. Environmental Protection Agency. The Nuclear Regulatory Commission has reviewed the SRS program and stated that it is comparable to commercial requirements and standards.

The Chamber supports your amendment as being in the best interest of those citizens in Aiken and South Carolina who are interested in the safe removal and disposition of high-level radioactive wastes.

Without your amendment, activities to remove and dispose of high level radioactive wastes will be stopped and wastes will remain in the less safe liquid form in fifty-year old underground tanks. Instead of completing waste removal by 2018, wastes will remain in tanks for a significantly longer period of time. Additionally, the SRS cannot afford to loose these highly trained and skilled employees.

In closing, the Greater Aiken Chamber of Commerce, representing 900 businesses and 40,000 employees within the region believes that it is critical that your amendment be enacted into law. Again, thank you for your continued support of the greater Aiken region.

Signature,

CHARLES WEISS,
President & CEO.

Mr. GRAHAM of South Carolina. Mr. President, I have letters from the mayor of Jackson, SC, which is down site; the Aiken Electric Cooperative; the Economic Development Partnership from Aiken; the Nuclear Regulatory Commission has blessed this project saying that what is left in the tank is waste incidental to reprocessing; the Defense Nuclear Facilities Safety Board has looked at this amendment; the North Augusta Chamber of Commerce, a community on the other side of the site; and the SRS Retiree Association, people who worked their whole lives out there supporting this.

Mr. President, quickly, we will have more time to talk. This is a big deal to my State. Similar efforts are ongoing in other States, and I hope they get there. I am not going to do anything to prejudice their ability to get there on their terms. I am simply asking that the deal struck between the environmental regulators and our Governor in South Carolina be approved so that we can clean up the rest of these tanks, the 49 remaining, in an economically and environmentally sound fashion.

That is all this has ever been about.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Who yields time?

The Senator from Colorado.

Mr. ALLARD. I yield 6 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I thank Chairman ALLARD for yielding to me at this time.

I rise today in opposition to the amendment by the Senator from Washington, but I do so by first saying that this is an extremely complex issue. I happened to be presiding one night when the Senator from Washington stood up and talked about her amendment. I respect very much the issues she has delineated. She has done a very good job of articulating the complexity of this issue and why it needs to be thought through so carefully before we vote, as we are going to do today.

After carefully reviewing the facts, I am convinced the language adopted in

the Armed Services Committee related to disposal of nuclear waste at the Savannah River Site is prudent and that this language should not be struck.

The Savannah River site is located in Aiken, SC, right on the South Carolina-Georgia border. About half the folks who work at the Savannah River site live in my State. Operations and the treatment of waste at the Savannah River Site affect my State, as well as South Carolina, because if there is any polluting, if there is any leakage, it will go into the Savannah River which is on the border of South Carolina and Georgia.

Current provisions of the Nuclear Waste Policy Act in the fiscal year 2005 funding for the Savannah River Site restrain and preclude planned risk reduction activities in the treatment and disposition of radioactive waste. Section 3116 is extremely important to the Department of Energy's environmental remediation and cleanup efforts at the Savannah River Site. It will resolve both the nuclear waste policy and funding issues and allow these risk-reduction activities to continue.

This provision will allow the cleanup of these materials 23 years earlier and at an estimated cost savings of $16 billion. Regardless of the cost savings, it is imperative that the cleanup of the Savannah River Site be completed at the earliest date possible.

The Savannah River Site is currently home to 49 tanks containing 35 million gallons of radioactive material that is divided into three types of waste: liquid, sludge, and sediment. Section 3116 will allow South Carolina and the Department of Energy to execute the agreement that has been reached on how best to treat this tank waste.

In 1997, the Savannah River Site became the first site in the Department of Energy complex to close a high-level waste tank. The language in the bill was worked out with great care between the State of South Carolina, State environmental regulators, Senators on both sides of the aisle, and the Department of Energy.

I quote from a letter sent to the Secretary of Energy from the Defense Nuclear Facility Safety Board in relation to section 3116 of the Defense bill, the section this amendment will strike.

The letter states:

> The Board believes that disposal of wastes as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste.

It is true that an Idaho district court struck down the DOE rule which set procedures for nuclear waste disposal across the board. However, the court struck down this rule based not on the content of the rule but because they thought the rule exceeded DOE's jurisdiction. I agree DOE should not have unilateral ability to determine nuclear waste disposal policy. However, I believe the procedures DOE has implemented at the Savannah River Site are sound and that these procedures should be allowed to continue while the question of who has the authority to set cleanup standards and policies is resolved. In fact, the procedures which section 3116 would allow have been in place since the early 1980s.

I would also like to note, in response to those who believe the low-yield sludge should be removed in the tanks at the Savannah River Site and other facilities, that the process of removing that sludge would increase the risk to workers by sevenfold and significantly increase the risk to the environment based on the risk of extracting the tanks and transporting the additional fuel thousands of miles across country, significantly increasing the exposure to the population at large.

Section 3116 in the underlying bill will prevent substantial delays, the accompanying health and safety risks, and increases in the expense of removing and disposing of this material, a delay in expense not driven by public health and safety considerations but, in fact, contrary to public health and safety.

Without clarifying the law, the delay would likely create more serious health and safety risks to workers and members of the public by leaving the waste in tanks longer and risking leaks to ground water. Delays in increased costs will require DOE to divert resources from other efforts across the complex in a manner that would significantly distort the Department's cleanup and other priorities. There is less risk to the workers, the environment, and the communities by removing the waste from the tanks, extracting the high-level waste from the other types of waste for appropriate disposal, and stabilizing any small amount of low-level waste residues in place in the tanks using a cement grout.

Physicists, not lawyers, should determine if radioactive waste is high- or low-level waste. The physical characteristics, not the source, of radioactive waste should determine if it is high-level or low-level waste.

I hope my colleagues will join me in opposing this amendment by supporting an expeditious and safe cleanup of the nuclear waste at the Savannah River site.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington.

Ms. CANTWELL. Mr. President, I will yield to the Senator from New Mexico, the ranking member of the Energy Committee, to give a statement, but before that I want to enter into the record a couple of documents and make a statement.

First, I have great respect for the junior Senator from South Carolina and his work on so many issues. He did a great service for many men and women in this country by leading a battle in getting health care coverage for the National Guard. There is a large percentage in our State serving in the National Guard in both Iraq and Afghanistan, and I know my State thanks him on this.

On this issue, we certainly disagree. I think it is a change in strategy, or at least a deal that has been cut behind closed doors, because I do view it as a change to the Nuclear Waste Policy Act. That is the way my State views it. That is the way 20 newspapers across the country view it. That is the legal opinion of staff, that it is a change to the definition of what is high-level waste.

I point out that South Carolina, up until the Senator's amendment, has been pretty consistent. I have an August 12, 2003, letter sent to the Secretary of Energy from the State of South Carolina, signed by the State of South Carolina saying DOE already has the tools it needs to address this issue; that it does not need to use a sledge hammer to get the job done, and goes ahead and says they should use the current definition of the law.

Also in March 2004, a couple of months ago, South Carolina said DOE cannot ignore Congress's intent by simply calling high-level waste by a different name. And later, South Carolina goes on to say this poses a threat to the citizens' health and natural resources.

So I find it very interesting that the State of South Carolina filed those documents in court, sent letters to the Secretary of Energy making those statements, and now all of a sudden South Carolina has changed its position. I don't know if they were saying they didn't believe in their case and that is why they wanted to spend the State's legal time and money filing it. I don't know if they have their cabinet officials signing letters to the Secretary of Energy that they don't believe. But I think actually the issue is the State of South Carolina has been pretty consistent. In fact, the House Members, when this issue was before the House of Representatives, said let's not put any language in changing the definition of what is high-level waste. If there needs to be a study, we are willing to study it. That is what the members of the South Carolina delegation voted on. So I think they have been pretty consistent.

While my colleague, the junior Member from South Carolina, is trying to move ahead on nuclear waste cleanup, I think we have a disagreement among ourselves and with what South Carolina's position has been consistently for several years now, and that is that DOE has the authority. What DOE wants to do is leave waste behind. They don't have the authority to do that, nor does science think that is a prudent way to deal with this issue.

I ask unanimous consent to have that material printed in the RECORD, Mr. President.

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

SUMMARY OF ARGUMENT

NATURAL RESOURCES DEFENSE COUNCIL, ET AL. VERSUS SPENCER ABRAHAM, SECRETARY, DEPARTMENT OF ENERGY, ET AL.

In the late 1970s and early 1980s, Congress recognized that spent nuclear fuel and radioactive waste generated as a result of the reprocessing of spent nuclear fuel pose a grave, long-term threat to public health and the environment. As a consequence of this threat, Congress enacted the NWPA to ensure that this waste is permanently isolated in a deep geologic repository. In both the NWPA and the Atomic Energy Act (AEA), Congress defined ''high-level radioactive waste'' to require DOE to consider first, the source of the waste and second, the concentration of fission products in solidified wastes. The definition follows: ''(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including the liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.'' 42 U.S.C. 10101(12). The AEA incorporates this definition by reference. 42 U.S.C. 2014(dd).

By using the same definition in the NWPA and AEA, Congress made plain its intent to include spent nuclear fuel reprocessing waste resulting from defense activities within the scope of the HLW disposal scheme that Congress established in the NWPA. Congress clearly intended that the definition of HLW would apply to both commercial and defense waste and that HLW from both sources would be permanently isolated. This intent becomes even clearer when reading this definition in the context of Congress's reasons for enacting the NWPA, to wit, permanently isolating radioactive waste because of the long-term danger it poses to human health and the environment.

The evaluation method of DOE Order 435.1, however, establishes a system for reclassifying high-level radioactive waste that provides DOE unlimited discretion to determine whether a large volume of highly radioactive waste stored in or near our states is required to be disposed of in a deep geologic repository. Such unfettered discretion is not provided for in the NWPA or AEA and this Court should affirm the District Court's decision invalidating DOE's attempt, through Order 435.1, to ignore the criteria in these statutes.

AUGUST 12, 2003.

Hon. SPENCER ABRAHAM,
U.S. Department of Energy,
Washington, DC.

DEAR SECRETARY ABRAHAM: The Department of Energy and states affected by DOE facilities face technical, political, and fiscal challenges as we decide how to treat and dispose of high-level waste created by Cold War-era reprocessing. It will take our combined efforts to devise and implement responsible, effective policies that protect human health and the environment as well as respect taxpayer dollars.

We write to express concern with DOE's current strategy for addressing this key issue. DOE's recent proposal to reopen the Nuclear Waste Policy Act runs counter to our mutual interests.

Fortunately for our shared high-level waste challenge, reasonable solutions exist within the current law without undermining public trust in DOE's efforts to properly manage nuclear waste. DOE already has the tools it needs to address this issue by making internal policy changes; it doesn't need a sledgehammer to do the job.

DOE's recent statements to Congress appear to exaggerate the impacts of the recent judicial decision on high-level waste classification. The federal court decision only confirmed long-standing national policy, which requires disposal of high-level waste in a geologic repository while allowing properly treated, less radioactive wastes to be disposed elsewhere.

The court's ruling allows DOE to proceed with retrieval and treatment of liquid waste from tanks at Hanford, Savannah River and INEEL. If the wastes in question are not highly radioactive following treatment, DOE has the ability now to develop a classification strategy to qualify these wastes for management, including disposal, outside a high-level waste repository. What the court rejected was giving DOE free rein to override national policy as expressed in the Nuclear Waste Policy Act.

The States of Idaho, Oregon, South Carolina and Washington participated in the lawsuit, not as parties, but as friends of the court to protect our interests in safe, cost-effective, timely cleanup and responsible use of repository capacity. As you may know, last November the states made a concrete proposal to resolve these issues outside of litigation, outlined, the legal and practical risks associated with continuing to litigate this matter, and offered to enter into mediation with the parties. DOE rejected our efforts and choose to litigate instead.

Today we renew our offer to work with DOE to develop a waste classification strategy that ensures protective, cost-effective, and timely disposal of the nation's defense high-level radioactive waste in a manner consistent with the court's opinion.

We urge you to reconsider your strategy and to work with the states on a reasonable solution within the framework of existing law. By doing so, we can do the job right without jeopardizing progress on repository development, slowing down cleanup or undermining public trust in our efforts.

C. STEPHEN ALLRED,
Director, State of Idaho Department of Environmental Quality.

TOM FITZSIMMONS,
Director, State of Washington Department of Ecology.

R. LEWIS SHAW,
Deputy Commissioner, South Carolina Department of Health and Environmental Control.

MICHAEL W. GRAINEY,
Director, State of Oregon Department of Energy.

Ms. CANTWELL. I yield 20 minutes to the Senator from New Mexico who, as the ranking member from the Energy Committee, knows of our efforts to try to get the Senate Armed Services Committee not to deal with this issue since they didn't have jurisdiction over it. He sent a letter to the committee urging them on that and has had a great deal of history on this issue.

I yield the floor to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 20 minutes.

Mr. BINGAMAN. I thank the Senator from Washington for yielding me time to speak to her amendment to strike section 3116 and follow-on sections. Section 3116 is labeled the Defense Site Acceleration Completion. That is the name of the section. That is a fair characterization of what the provision intends to do. It does propose to hasten the day when the Department of Energy can declare its work complete.

In my view, it does not accelerate in any way the cleanup of DOE defense sites. It does accelerate the date that DOE can declare its responsibility completed. In fact, to the contrary, the provision allows the Department of Energy to abandon its commitment to clean out these sites and to walk away from them while there are substantial amounts of high-level radioactive waste still in the ground.

Section 3116 is not a model of clarity. I am told the provision no longer applies to DOE sites in Washington State, Idaho, and in New York as it once did. It now only applies to high-level radioactive waste tanks at Savannah River, S.C. There is not specific language in the provision saying that, but I am certainly willing to accept the intent of the provision.

The obvious question is, what is in the Savannah River tanks? From 1953 until the end of the cold war, the Department of Energy at Savannah River has made plutonium for our nuclear weapons. It did so by irradiating uranium fuel in five nuclear reactors on that site and it then reprocessed the spent fuel to separate the plutonium from the highly radioactive waste products. The waste material consists of a mixture of highly toxic, hazardous chemicals used in the chemical separation process—a mixture of that along with a wide variety of highly radioactive fission products and transuranic elements, formed during the nuclear reaction. Some of these fission products emit intense amounts of radiation over a short period of time. Others emit less intense amounts of radiation over a much longer period of time. Both pose a serious danger to the public health and to the environment.

The short-lived radionuclides remain dangerous for hundreds of years. The long-lived ones remain dangerous for thousands of years.

The Department of Energy has been storing this mixture in 51 steel tanks at Savannah River. The tanks each hold on average about a million gallons of waste. In other words, each is about the size of our Capitol dome. I repeat, we have 51 of those tanks, each about the size of the Capitol dome, located at Savannah River. The waste in the Savannah River tanks is, by definition, high-level radioactive waste. We have been using that term in our laws now for over 30 years. Different laws have worded the definition differently, but they have all said essentially the same thing, and that is that high-level radioactive waste is the material that results from reprocessing spent fuel, and that includes both the liquid waste produced directly in reprocessing and any solid material that settles out of the liquid or is derived from it.

There are two important legal consequences that flow from this tank waste being defined as high-level radioactive waste. The first legal consequence is that its disposal is subjected to licensing and regulation by the Nuclear Regulatory Commission. That is required under the Energy Reorganization Act of 1974, which was signed into law by President Ford.

The second legal consequence is the waste must be buried in a deep geological repository, rather than being left where it is. This is a requirement we put into law in the Nuclear Waste Policy Act of 1982 which was signed into law by President Reagan.

The Department of Energy has begun removing the liquid waste from the tanks at Savannah River and turning it into glass logs and storing the glass logs until they can be buried in a geologic repository which is expected to be built at Yucca Mountain. Removing all of the sludge that has settled to the bottom of these tanks clearly is going to prove difficult and expensive. So to sidestep that requirement, the Department of Energy would like to reclassify the waste as something other than high-level radioactive waste and leave it where it is.

Years ago the Department of Energy adopted an administrative order asserting that they had the authority to do that. Last fall a Federal judge in Idaho held the order was unlawful.

The Department is now asking Congress to change the law and to give the Department of Energy the power the court said the Department did not have. Section 3116 would do that, so far as the Savannah River tanks are concerned. The language of 3116 is very clear. It says notwithstanding all of the laws that say Savannah River wastes are high-level radioactive wastes, the Secretary of Energy, in his discretion or her discretion, can decide they are not high-level radioactive wastes.

The Secretary's discretion would not be entirely without limits. Section 3116 imposes three tests that have to be met for the Secretary to exercise this discretion, but on close examination those tests impose very few restrictions on the Secretary. Let me talk a minute about each of these three tests.

The first test is that the material ''does not require permanent isolation in a deep geologic repository.'' As I said before, the high-level radioactive waste is made up of both intensely radioactive short-lived radionuclides and less intensively radioactive long-lived radionuclides. The first step speaks to the second group of less intensely radioactive long-lived radionuclides. The need for permanent isolation correlates with the length of time the material remains radioactive. According to the Department of Energy, over 99 percent of the radioactivity now present in the high-level waste tanks is from short-lived radionuclides. These will remain dangerous for several hundred years. But because they will decay to safe levels sometime before the end of this millennium, they do not, according to the Department of Energy, require permanent isolation in the deep geologic repository.

The first test in section 3116 may look like a serious hurdle, but according to the Department of Energy, 99 percent of the radioactivity in the tanks passes that test.

The second test is no better. It requires the secretary to determine that ''highly radioactive radionuclides have been removed to the maximum extent possible.'' The second test speaks to the first proof of radionuclides, intensely radioactive, short-lived ones which DOE believe make up 99 percent of the radioactivity in the tanks.

The second test is no test at all. It does not require DOE to reduce the highly radioactive short-lived radionuclides to meet a public health and safety standard based on the maximum safe dose to the public or a maximum concentration level. It simply says do what can be done ''to the maximum extent practicable.''

That means, as the court said last summer, ''if DOE determines that it is too expensive or too difficult to remove short-lived radionuclides from the waste, DOE is free to say the waste is no longer high-level radioactive waste, even though it will remain dangerous for centuries.''

The third test is the most illusory of the three. At first glance it appears to subject the disposal of the tank wastes to State regulation. If the third test is meant to do that, it marks a major departure in the law. The courts have consistently held that the Atomic Energy Act preempts the States from regulating nuclear waste disposal. The third test confers no authority on the State to regulate nuclear waste disposal. It clearly states that South Carolina's Regulatory Authority must be ''conferred on the State outside this Act.'' So far as I am aware, there is no Federal law that gives South Carolina or any other State the authority to regulate the disposal of high-level radioactive defense waste.

The only agency with authority to regulate the disposal of high-level radioactive waste is the Nuclear Regulatory Commission. The NRC has had that authority for 30 years. Section 3116 strips it of that authority, limits its role to one of ''consultation'' and ''review'' of criteria.

My conclusion is that section 3116 is a very troubling provision. It deregulates the disposal of the Savannah River tank waste in all but name. It is essentially the legislative equivalent of the ''Mission Accomplished'' banner we saw on the aircraft carrier that allowed the Department of Energy to declare its work was done and to walk away from its obligations.

Section 3116 also sets a terrible precedent, in my view. If we agree to give DOE this authority at Savannah River in this bill this year, why not give the same authority with regard to Hanford next year and with regard to the Idaho National Engineering and Environmental Laboratory next year? And with regard to West Valley Demonstration Plant the year after that?

Enactment of section 3116 may also toll the death knell from the Civilian Nuclear Waste Program that we have had in place for many years. That program is already in serious jeopardy. It is years behind schedule. It is likely to be grossly underfunded this year. It is beset by lawsuits and serious technical challenges. Shipping nuclear waste on the public highways and railways will be extremely unpopular. Section 3116 sends the message that we do not need a deep geologic repository for Savannah River tank waste, that it is safe to leave those wastes where they are.

The obvious question is, If it is safe to leave high-level waste in the Savannah River tanks, why not leave those same kinds of wastes at Hanford and at the Idaho laboratory? If it is safe to leave defense wastes where they are, why not leave commercial powerplant wastes where they are, as well?

For all these reasons, I urge my colleagues to vote for Senator CANTWELL's amendment and to strike section 3116 from the bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. I yield myself 5 minutes.

I reiterate for the record this was a collaborative approach between the State of South Carolina and the Department of Energy. They sat down for hours and they looked at wherever jurisdiction was and said: We have a common goal. We would like to remove this waste as soon as possible. So they have worked out an agreement.

That is what this amendment is all about that Senator GRAHAM is talking about. It is good science. We have a lot of support out there. In fact, in an Environment and Public Works hearing in the year 2000, my colleague from South Carolina mentioned that particular hearing where they talked about the disposal of nuclear waste. The Natural Resources Defense Council actually said the regulation of radioactive waste should be based on its hazardous characteristics and not when it was generated.

That is what has been proposed by the Department of Energy. The Nuclear Regulatory Commission had this to say about what the Department of Energy is trying to do with the work:

> In all cases, the NRC staff found that DOE's proposed methodology and conclusions met the appropriate WIR criteria and therefore met the performance objectives and dose limits that would apply to near-surface low-level waste disposal and would protect public health and safety.

This was out of the letter sent May 18, 2004, to the Chair of the Committee on Environment and Public Works, JAMES INHOFE.

I have another letter from the Defense Nuclear Facilities Safety Board.

When it comes to safety, they are strong advocates for safety. One sentence illustrates what this letter is all about, dated May 14, 2004:

The Board believes that disposal of waste as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste.

This is the agreement, again, worked out between South Carolina and the Department of Energy.

I yield back my time.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. How much time remains?

The PRESIDING OFFICER. There is 61 minutes for the Senator from Washington and 86 minutes 41 seconds for Senator ALLARD.

Ms. CANTWELL. Mr. President, I yield 10 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mrs. CLINTON. Mr. President, I am strongly in support of the Cantwell-Hollings amendment. To me, this debate is about process, policy, and precedent. In my view, the provision in the underlying bill that the Cantwell amendment replaces fails all three tests.

As my colleagues have explained, the reason we are in the Senate debating this issue is that the Armed Services Committee added language to the Department of Defense authorization bill, giving the Department of Energy broad new authority to reclassify nuclear waste so it can be left in place rather than disposed of according to the best technical know-how.

Along with the Presiding Officer, I am privileged to serve on the Armed Services Committee. I consider it a great honor and responsibility. However, I simply do not think we should be including a shift in nuclear waste cleanup policy in the DOD bill. Any major change to the Nuclear Waste Policy Act, which is what the underlying language represents, should be considered by the committees of jurisdiction, the Energy Committee and the Environment and Public Works Committee. Any major change in the Nuclear Waste Policy Act should be considered in open hearings where a range of views can be expressed.

Instead, a major change was made to this essential policy of our Nation in a closed markup of the Armed Services Committee. The committees of jurisdiction were not consulted about the language in the bill. We have had no hearings about this language yet here we are on the Senate floor debating it. Even some of my friends on the other side of the aisle who are supporting it have cloaked their support in lukewarm language because it is not all clear what the full implications of these changes would be.

A few years ago, the Department of Energy decided to change the definition of high-level waste by its own fiat, notwithstanding years of precedent and statutory language to the contrary.

Now, I do not have enough technical knowledge—I do not even dream of understanding all that would go into making a decision about how to define high-level nuclear waste—but people were concerned about that decision by the Department of Energy, and so they sued over the change.

When the Department of Energy lost in court, a suit on which my State of New York filed an amicus brief, in support of overturning the Department of Energy change, then, obviously, the Department of Energy chose a different route.

They first tried it on the Energy bill. But because of other conflicts over the Energy bill, they were not successful. So then they came back with the Department of Defense bill. Unfortunately, this was a closed process, and many people who would otherwise have an opinion were not able to participate.

I think this is not in the best interests of making policy on such an important issue. It may very well be that an open policy process—with hearings with the committees of jurisdiction being involved—would lead to the State of South Carolina having different options than other States. I could understand that. But that is not how this has come before us.

Certainly, on behalf of the State of New York, they are very much opposed to the underlying language in the DOD authorization. I want to express the State's opposition.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from Gov. George Pataki, dated May 6, 2004, addressed to Senator LEVIN, as well as an editorial from the Buffalo News dated May 10, 2004.

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

STATE OF NEW YORK,
Albany, NY, May 6, 2004.

Hon. CARL LEVIN,
Ranking Member, Armed Services Committee, Washington, DC.

DEAR SENATOR LEVIN: I urge you to oppose language proposed by the Department of Energy (DOE) in the FY05 Department of Defense Authorization Act that could allow DOE to reclassify high level radioactive waste contained in underground tanks at several DOE sites across the country, including the former spent nuclear fuel reprocessing facility at West Valley, New York. In July 2003, a federal district court ruled that DOE's order permitting such reclassification violates the Nuclear Waste Policy Act. DOE has appealed that decision to the United States Circuit Court of Appeals, and the appeal remains pending. New York and the States of Washington, Oregon, Nevada, and South Carolina filed an amicus brief in that case opposing DOE's position that it has the authority to reclassify high level radioactive waste in order to shirk its responsibility to safely remove it.

The reclassification of high level radioactive waste would allow DOE to leave the high level waste in the ground where the tanks are located, instead of shipping the high level waste to a federal repository, as required under the Nuclear Waste Policy Act. This reclassification would be particularly egregious at West Valley, where DOE is proposing to close underground storage tanks containing thousands of gallons of radioactive material, and then leave it to New York State to monitor and maintain the closed tanks to protect the groundwater for thousands of years.

While I am in favor of expediting the cleanup of radioactive waste, speed should not come at the expense of completing cleanups essential to protecting public health and safety. It is my understanding that there is sufficient work for DOE to do at all of the sites in question, including West Valley, while DOE works with the states, tribes, and public health and environmental advocates to develop final cleanup solutions that are acceptable to all parties.

Very truly yours,

GEORGE E. PATAKI,
Governor.

[From the Buffalo News, May 10, 2004]

DANGEROUS GAMES—FEDERAL EFFORT TO BURY NUCLEAR WASTES AT WEST VALLEY IS UNCONSCIONABLE

The federal Department of Energy is trying to use administrative sleight of hand to avoid its responsibility in the cleanup of nuclear waste at West Valley and several other states.

This contemptible effort involves downgrading the threat of nuclear waste, thereby allowing the government to bury that dangerous material at West Valley and other sites instead of shipping it to a permanent repository as called for in a 1982 law.

Fortunately, New York Sens. Charles E. Schumer and Hillard Rodham Clinton recognized this downgrading for what it was, a threat to West Valley and surrounding areas from the possibility of future leakage of this radioactive material. After they protested the legislation, Sen. Lindsey Graham, a Republican from South Carolina who introduced the bill that would have allowed the DOE to downgrade the threat of nuclear wastes, altered his bill. It now will apply only to the waste remediation project at Savannah River, S.C.

But that doesn't remove the danger. The House, essentially led by Republican Majority Leader Tom DeLay, still has to consider the DOE legislation. That cannot be a comforting thought to residents living near West Valley.

The department argues that the wastes should be classified as ''high-level'' based only on how they originated, not what they are. But what they are is still bad, still radioactive and still a federal responsibility.

Decades of expensive cleanup progress have improved safety at West Valley, but the work is far from over. The radioactive liquid wastes from a nuclear fuels reprocessing effort have been solidified into safer glass logs, which were supposed to be stored elsewhere. But the anticipated long-term storage facility at Yucca Flats is years from completion. Tanks and residual wastes still remain at West Valley, and an underground plume of water is contaminated with radioactive strontium. Covering wastes with concrete won't help that.

The 600,000 gallons of West Valley wastes have their counterpart in nuclear weapons production wastes at other sites—53 million gallons at Hanford on the Washington-Oregon border, 34 million gallons at Savannah River near Aiken, S.C., and 900,000 gallons at the Idaho National Engineering and Environmental Laboratory.

West Valley is the only site where the state shares the cost of cleanup.

Those costs may run into the tens of billions of dollars over decades, but the mess remains a federal issue. At West Valley, the risk includes not only the site's land but water drainage that flows into Buttermilk

Creek, Cattaraugus Creek and Lake Erie. Trace amounts of that radioactivity have been tracked as far as Buffalo.

The DOE also is threatening to withhold $350 million in cleanup money from military-related cleanup efforts unless it gets a change in the definition of what constitutes high-level waste. That bit of weaseling does the department no credit. These sites were created by the federal government, and the federal government should not be allowed to walk away from them.

Acceptable cleanup at West Valley involves removal of all wastes and dismantling and removal of the contaminated structures that were used to process and store them. The government cannot be allowed to escape that responsibility through administrative trickery.

If the federal government truly could end a problem by renaming it, we'd already be at ''mission accomplished'' in Iraq.

Mrs. CLINTON. I am concerned how this is being portrayed, and I am sure it is meant to be a fix for a specific situation in South Carolina, but it is setting a precedent. That is what we do around here. We set precedents. It is hard to imagine that the Department of Energy would be satisfied only taking their new definition to one State. It would be South Carolina first, but then what would be next?

In particular, I am concerned about western New York where we have a site known as West Valley. Through the West Valley Act, the Federal Government and the State of New York agreed, decades ago, to partner to reprocess commercial nuclear waste. In many respects, this project has been a success, but in the last several years the site has been the subject of a bitter debate between the Federal Government and the State of New York. Why would that be? Because, in New York's view, the Department of Energy is not fulfilling its responsibilities for the cleanup obligations it assumed under the West Valley Act.

I bring this up because it is directly relevant, even though it is not the same act. The West Valley site has the same type of waste that the Department of Energy would be able to reclassify at Savannah River under section 3116 of the Department of Defense bill. That is no coincidence.

Rather, the language that the Department of Energy originally sought to include in both the Energy bill last year and the DOD bill this year would have provided the DOE with general authority to reclassify high-level wastes at Hanford, Savannah River, the Idaho labs, and West Valley.

Now, obviously, West Valley does not have the mind-boggling quantities that are present at other sites, but we are still talking about 600,000 gallons of waste. That is a significant amount. It is not a problem that New York State or the local governments in the area will be able to handle if the Department of Energy decides it can wash its hands literally of its responsibility.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. CLINTON. Mr. President, I ask unanimous consent for 5 more minutes.

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

Mrs. CLINTON. So when the Department of Defense markup approached, New York Governor George Pataki wrote to Chairman WARNER and Ranking Member LEVIN urging them not to include DOE's language in the bill.

While the provision was changed before the markup, and it is now intended only to affect the Savannah River site, DOE's original language would have affected West Valley and the other sites I have mentioned. We know that is exactly what DOE is aiming for. That is their goal and their objective, to try to reclassify nuclear waste.

So New York State remains opposed to section 3116 of the bill. On behalf of the Governor and my State, I am supporting the Cantwell amendment, because I think we need a different process to get to the point of determining what our nuclear waste classification system should be.

It is certainly a very difficult issue. I respect the Presiding Officer's concern about the cost. I share that concern. These are incredibly expensive undertakings that go on for decades. But, in effect, we are cleaning up the mess we made. We made it for military purposes. We made it for commercial purposes. We owe it to ourselves and future generations to do it as well as it can be done. I, for one, hope we can take this issue off the floor of the Senate by passing the Cantwell amendment. Then let's have the hearings in the Energy Committee and the EPW Committee. If there is a role for the Armed Services Committee, let's do it there, also, because, for me, this is setting a precedent that is very troubling, to have a matter this important decided in such a quick consideration in a closed markup of the Armed Services Committee. I hope we will support the Cantwell amendment, and then put our heads together to determine if there are differences between Savannah River, Hanford, and West Valley that merit different classifications. If there are new advances in dealing with how we would grout over the high-level nuclear waste—we know that has not worked in the past; maybe it can work now—then we can proceed in a more sensible manner that protects the health and safety of our people and preserves the environment in the areas where this waste is stored and dispose of it appropriately.

I thank the Senator from Washington for being such a leader on this issue.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank the Senator from New York for coming to the floor and speaking on this issue, and for her leadership in the Senate Armed Services Committee.

Before my colleague from Washington and I got a whiff of this plan, because the Senate Armed Services Committee met behind closed doors on this issue and the language was considered behind closed doors—I appreciate the fact that the Senator from New York was there fighting, at the very beginning, this language being put into the DOD bill. I appreciate her comments about the fact that basically we are taking a bill that is about defense authorization and now changing waste policy, and weighing down the process.

Why would we want to weigh down the process of moving something that is about supporting our troops and supporting our efforts with a change in nuclear waste policy? The House dealt with this responsibly. They said: If you want to look at this policy, let's study it and get information. So that is what the House has done.

Mr. President, I yield the Senator from Washington 15 minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for 15 minutes.

Mrs. MURRAY. Mr. President, I rise today in support of the Cantwell amendment. I thank my colleague from Washington State for her tireless effort on this issue and her commitment to assuring the Federal Government meets its responsibility to the people of our State by fully cleaning up the Hanford site.

Today, on the Senate floor, there is an unprecedented attack on my State's ability to ensure that we clean up the nuclear waste that threatens the families I represent. I am here to fight it. I am here to send a clear message to the administration: You should be back at the table working with all the States and all of Congress instead of trying to get the Senate to bail you out of a court case that you lost.

The handwriting is on the wall. The White House wants Washington families to accept a lower cleanup standard. They are holding our funding hostage. They are fighting us in court. They are pushing misguided legislation right here on the Senate floor.

If the White House wins this attempt to leave more nuclear waste untreated, then Washington State families will lose. That is why I am on the Senate floor with my colleague from the State, Senator CANTWELL, fighting the bill's nuclear waste provisions and standing up for my State.

I know my colleague from Washington agrees that the fastest, most effective way to clean up America's contaminated nuclear sites is for the DOE to work as a partner with the States. But sadly, we are here today seeing a new attempt by the White House to overreach its authority, to circumvent a court case it lost and blackmail my State into accepting a lower cleanup standard. That threatens the families I represent, and I am not going to stand for it.

What is at stake is the cleanup of the Hanford nuclear reservation in the tricities in Washington where we developed the plutonium that helped our country win World War II and the cold war. My grandfather settled in the tricities in 1916. My dad grew up there. My dad saw how much those communities sacrificed to help our Nation

have a strong military. Our country has an obligation to make those communities whole, not leave them with high nuclear waste that has leaked from underground tanks.

Any time someone has threatened our cleanup efforts, I have taken them on, and it doesn't matter if they are Democrats or Republicans. In the 1990s, when the Clinton administration proposed inadequate budgets for the Hanford cleanup, I took them on, and I used my position in committee and on the Senate floor to get my State the funding we needed. Every time the Bush administration has tried to cut Hanford funding, it had a fight on its hands from this Senator. It is one of the reasons I joined with my colleagues in 2001 to create the Senate Nuclear Cleanup Caucus so that all communities across the country that are dealing with nuclear waste will have a strong bipartisan voice in the Senate.

Time and again I have taken on this White House when it tried to hurt the families I represent, and I have the scars to prove it. In fiscal year 2002, the Bush administration tried to cut Hanford funding by $57 million. I worked in committee and on the floor to deliver $145 million more for Hanford than the President's budget. Then in fiscal year 2003, the Bush administration tried to cut Hanford funding by $300 million. They also tried to hold our cleanup dollars hostage unless we would jump through the hoops they set out for us. With my support, the Senate rejected the White House's misguided attempts. And through my work on the Energy and Water Appropriations Subcommittee, instead of a $300 million cut, we added $433 million to the President's budget for Hanford.

Time and again I have used my position on the Budget Committee and the Energy and Water Appropriations Subcommittee to protect my State, and I have gone toe to toe with this administration over nuclear cleanup. In February of 2002, I sharply questioned the President's budget director on their plans to shortchange Hanford. In April of 2002, I chaired a hearing of the Energy and Water Appropriations Subcommittee to review the Bush administration's work at Hanford and other sites. So don't think for a minute that we in Washington State are going to accept these attacks on our ability to get a fast and thorough cleanup of the nuclear waste that is at Hanford.

For more than a year, the Department of Energy has been trying to change the ground rules so it can leave more waste untreated, declare victory, and walk away from our Nation's most contaminated nuclear sites. They tried to do it in the courts, and they lost. Today they are trying to do it on the floor of the Senate.

As my colleagues know, I have been raising warning flags about this effort by the administration for many months. I warned about it in August of last year. In September, upon passage of the energy and water bill, I once again raised concerns about this matter. But this attempt is part of a much longer and disturbing effort.

I want to take a few minutes to review the history because it shows an administration that is venturing far outside the standard practice in ways that threaten my State and many others.

Let me first offer some background on the Department of Defense bill that is before the Senate. The underlying bill contains two provisions dealing with high-level nuclear waste and the Department of Energy's authority for cleaning up nuclear waste sites in our country. One provision seeks to withhold funding from States that don't agree to give up their regulatory oversight of certain high-level waste. The second provision deals directly with the cleanup of the Savannah River site in South Carolina. But in reality, it has serious implications for every nuclear waste site in the country.

The Department of Energy is making a great deal of noise about a court case it lost. The DOE is claiming it cannot proceed with cleanup sites in Idaho, South Carolina, and Washington State until legislation is passed that essentially overturns that court's decision.

I believe it is important to look at how we came to this position today, because it clearly illustrates how DOE has refused good-faith offers to resolve this issue between the original litigants, six States, and the Department. So let me give you all a short history of how the issue developed.

In 1999, the Department of Energy issued regulations giving itself broad authority to reclassify nuclear waste. Essentially, the Department wanted to make unilateral decisions about what it needed to treat and remove from leaking underground storage tanks and what waste it could leave in the ground forever. This would be a dramatic departure from our current system where DOE must work with State and Federal regulators on such matters.

To prevent that type of game playing, the Natural Resources Defense Council brought a lawsuit against the Department of Energy in Idaho district court. Before that case went to trial, the NRDC and the States offered to settle the issue. Unfortunately, the Department of Energy did not appear to take that effort seriously, and they rejected that cooperative approach. This is an important point. When the NRDC and the States offered to work out these issues outside of the court system, DOE rejected their offer. So the case went forward and DOE lost. They lost in July of 2003.

One would expect at this point that DOE would go back to the plaintiff and the States to settle the issues. But that is not what happened. Instead, the Department appealed to the ninth circuit and immediately came running here to Congress asking for legislation to do what the Idaho court had rejected.

Shortly after that decision, the Idaho district court sent out an order asking parties to consider mediation. The NRDC and the States quickly agreed to the court's request. Amazingly, DOE rejected the court's request. I believe this is an absolutely critical point because it demonstrates the Department has never approached this issue with a mindset open to considering the States' concerns or those of the winning plaintiff. This is the second time DOE rejected offers by other interested parties to cooperatively address this issue. This was a tremendous opportunity to try and reach broad consensus, and DOE passed it up. The court's mediation offer would have had a neutral court-appointed mediator and a very good forum for resolving differences. In fact, this could still happen, and it should.

My point in walking through the history of the issue is to highlight the fact that the Department of Energy has had many opportunities to resolve this issue with the States and with the original litigants. It rejected State offers to resolve issues before litigation went forward. And more amazingly, it rejected the Idaho district court's request for parties to use mediation after it lost the case. The States and litigants accepted the court's offer. DOE rejected it, and that is inexcusable. Bluntly, to me, it appears that DOE has allowed this issue to be taken over by its legal people.

Recently environmental management Assistant Secretary Jesse Roberson testified to us that DOE and Washington State have agreed upon a plan for cleaning up the tanks, and that is largely correct. My State is very eager to work through this and for this work to proceed. The fact is DOE seems to be the only one that feels new legislation is needed. It is not. The original litigants and States want to proceed with cleanup and don't believe the Idaho district court ruling presents any obstacles.

Unfortunately, this tactic of fighting the states and trying to do an ''end run'' around the other partners in the cleanup is not new for this administration. The truth is that the fastest, most effective way to clean up these sites is for the DOE to work in partnership with the states and Federal regulators. Time and time again, however, this administration has tried to go it alone to the detriment of the residents who live near these contaminated sites.

The Department of Energy needs to get back to working in partnership with the states and federal regulators. A unilateral approach will simply cost more money and will only create further delays.

Governor Kempthorn of Idaho and Governor Locke of Washington are both opposed to the legislative language currently in the underlying bill. In fact, I have a letter last month from Governor Locke of Washington state outlining his concerns.

For years, Senators and Congressmen with these waste sites located in their states and districts have had to fight

tooth and nail to get adequate funding to ensure cleanup of these sites. Further, as a group we have had to fight back simplistic notions of erecting fences and calling the sites clean and safe. This constant struggle on behalf of our States and districts brought together bi-partisan groups of Members in both the House and Senate to fight on these issues.

The House and Senate Nuclear Waste Cleanup caucuses have made a tremendous difference in how the administration and our fellow congressional members view the cleanup program. I believe the strength of these caucuses have been our unity and commitment to protect our state and citizens interests in cleanup. We have worked together to make sure the federal government lives up to its responsibility to clean up these sites. But the language in this bill is a license for the federal government to walk away from those very responsibilities. Leaving more waste permanently in the ground is not a real cleanup.

What should be of equal concern to every member of this body is the attempt to make such a dramatic legislative end run around the Nuclear Waste Policy Act without any hearing. This is a real, substantive weakening of a carefully crafted law.

Yet, we are weakening it without any broad consensus in this body, any hearing before a Senate committee, or any mark-up before the committee of jurisdiction—the Energy and Natural Resources Committee.

I propose to my colleagues that we—remove the offensive language in the underlying bill, allow cleanup to proceed at all three sites, and then set about carefully considering any new legislation.

We need more time to address this issue in a more thoughtful manner. There is plenty of time for the Energy and Natural Resources Committee to hold a hearing on this issue and move consensus legislation if necessary. We should not give in to DOE's efforts to leverage out of Congress bad policy that gives away the legal protections our states and citizens have currently.

The blatant attempt by DOE to withhold funding and stop work should not be accepted by this Congress. Six States have filed an amicus brief opposing DOE's efforts. The Governors of Idaho and Washington object to DOE's efforts. The House has not accepted DOE's language.

I urge my colleagues to support our States and citizens, uphold the Federal Government's responsibility to full and real cleanup, and not reward DOE's unilateral approach to cleanup. This isn't just about court orders and bureaucratic agreements. This is an obligation that we have to communities in my state that produced the plutonium that helped our country win World War II and the cold war.

And there is no way that I am going to let the Bush administration or the Department of Energy or Senators from other States do things that threaten the families I represent.

I have got a message for anyone who tries to threaten my State and force us to accept a lower standard for cleanup. Don't you dare try to tie our hands as we work to protect our communities. The only way we are going to clean it up—quickly and thoroughly is through a real partnership with all of the players. I urge the Department of Energy to get back to its job of cleaning up the waste, rather than wasting valuable time seeking help from Congress over a court case that it lost.

I urge my colleagues to reject the administration's approach and support this amendment. Don't tie the hands of communities who are working hard to clean up nuclear waste. Don't reward the Department of Energy's heavy-handed tactics. Don't leave the families I represent with untreated waste that threatens their health and safety.

I urge my colleagues to support this amendment.

Mr. ALLARD. Mr. President, I yield 10 minutes to the Senator from Idaho.

Mr. CRAPO. Mr. President, I want to weigh in on this issue and try to bring clarity to what it comes down to. As has been said by virtually every speaker today, this issue was caused as a result of the outcome of a lawsuit in Idaho with regard to the authority and jurisdiction and prerogatives of the Department of Energy in managing high-level waste as a result of reprocessing.

When the court case came down the way it did, it threw into question the manner in which the Department of Energy would proceed with its cleanup operations in three States—Washington, Idaho, and South Carolina. There are people on all sides of that issue. Some say it is clear what they have to do. There are those who say it is unclear. There are those who say we can find clarity if we take some time to work it through between the States and the DOE.

The bottom line is there was an issue. As a result of this issue, the question of funding availability for the ongoing cleanup became paramount. It was the DOE's position, as taken by the Office of Management and Budget, that if we didn't have a clear path forward on these cleanups, approximately $350 million that would have been available and was authorized and appropriated for cleanup in these three States would not be available in the next year. So the first urgent hurdle that came up was we had to make clear that the cleanup had to go on while we are trying to resolve these issues.

The second issue that came up is, how do we resolve them? In that context, the Senator from South Carolina is exactly correct. Each of the three involved States—Idaho, my State; his State, South Carolina; and the State of Washington—got involved in negotiating with the Department of Energy. In fact, in the beginning, there was some concern from the States, as to whether they were going to be allowed to be engaged in these negotiations, and Senator CRAIG and I, from Idaho, and the Senator from South Carolina, Senator GRAHAM, made it clear we would take no steps that our States did not authorize and approve. We actually provided the incentive for these negotiations to take place.

As we began moving forward, a dynamic developed where it became evident that the State of South Carolina, because of differences in the State of South Carolina's issues, was going to make it through to and reach an agreement with the Department of Energy. This agreement, as has already been indicated, is one supported by the Governor of South Carolina, the attorney general, the applicable environmental regulator, and many others in the State whose input the Senator from South Carolina has brought forth as part of the record.

The States of Washington and Idaho, however, were not able to reach an agreement. Then we came forward and this bill came to the floor, and we have now found ourselves here with the State of South Carolina having an agreement, and the States of Idaho and Washington not having an agreement, and the question as to the money.

A very important issue that seems to have immediately passed in the debate today is what happened in the beginning of the debate. Today, my amendment and the amendment of the Senator from South Carolina, joined in by Senator CRAIG, were passed with a voice vote. Those amendments did a very critical and important thing. They made it clear the authorized cleanup dollars, the $350 million, were going to largely be able to be made available for continuing operations while we continue to try to work out these negotiations. I think that is a big part of the story today that needs to be made clear, because a big success for the country has been achieved already through those amendments.

Secondly, we are now dealing with the question of the South Carolina language. When you boil down the debate today, it comes down to a question we have been focusing on in Idaho. And that is, does the South Carolina language create a precedent or some kind of a pressure which would cause us to have to deal with this issue in the State of Idaho or the State of Washington any differently?

The answer to that is simply no. In fact, I think if there is any precedent in what is happening in this dynamic today, it is the opposite, because the State of Idaho, Senator CRAIG, and I made it very clear to the committee, to the Department of Energy, and to everyone—and Senator GRAHAM of South Carolina joined us in making it clear—there would be no language in this bill relating to the State of Idaho unless and until the State of Idaho agreed to such language and Idaho's Senators brought that language forward. That is why we have very clear language in the bill that says the language that deals

with South Carolina deals with South Carolina only.

Having said that, there still has been a debate promulgated around the country, and it is raging in Idaho with regard to this very issue. Is there any precedential value in the South Carolina language that would cause a threat to any other State, particularly Idaho or Washington?

Senator CRAIG and I strongly believe the answer to that is no, but there is a question about it. Idaho's Governor, Governor Kempthorne, has been quoted on this floor as raising the question. So Senator CRAIG and I, working with the Senator from South Carolina and other Senators, decided we would make it ironclad clear, if it was not so clear already.

This morning, before this whole debate began, I asked unanimous consent to bring a further amendment that would have made it crystal clear, if it is not already crystal clear, that there is no precedential value here. Let me say before I go through what this amendment is, we believe it was crystal clear already in the statutory language, and Senator GRAHAM, Senator CRAIG, and I and others have made it clear in the record developed in the debate on this bill that there is no precedential impact of this language because each State is dealing with its own circumstances and working out its own solutions with the Department of Energy.

Having said that, here is the language, frankly, we were not given unanimous consent to put into the bill this morning. The language would have said:

> Nothing in this section shall alter or jeopardize the full implementation of the settlement agreement entered into by the United States with the State of Idaho. . . .

And then there is a description of that agreement.

> Or the Hanford Federal facility agreement and consent order, or the Federal facility agreement with the State of Idaho.
>
> Furthermore, nothing in this section establishes any precedent or is binding on the States of Idaho, Washington, or any other State for the management, storage, treatment, and disposition of radioactive and hazardous materials.

We were stopped this morning from getting unanimous consent—I still do not understand why—we were stopped this morning from getting unanimous consent to put this amendment into the amendment we adopted earlier dealing with the funding stream. That is not going to stop us from moving this language in an amendment and putting it on the bill to make it very clear to anybody who still has any doubt that there is no intention here of creating any kind of precedent or pressure with regard to any other State.

I want to make it very clear we have now provided this language to the desk in the form of an amendment. That amendment will immediately follow the action on this vote with regard to the amendment of the Senator from Washington. Presuming that we still have an opportunity because of the vote, we will proceed with this amendment to make it very clear to anybody who has any lingering doubts that this Congress has no intention and this statutory language is not intended to create any precedential pressure or value, whether it be in court or in legislative negotiations, with regard to how Idaho, Washington, or, frankly, any other State will negotiate with the Department of Energy.

It should be absolutely ironclad clear already, but Senator CRAIG and I worked with our Governor, and he is supportive of this effort to resolve this issue, and we are going to make it very clear to the Nation that this debate over whether there is some precedential value here is simply a debate that is contrived to object to allowing South Carolina to reach its own solution.

It seems to me as we approach this issue, we must recognize that nothing will happen with regard to the management of radioactive material in the States of Idaho or Washington or, frankly, South Carolina, for that matter, unless and until those States agree. That is why Senator CRAIG and I have been on this floor advocating States rights and why we will continue to do so.

Senator CRAIG and I have made a very strong, a very clear position to the administration and to this Congress, which is that our Idaho agreement—which, by the way, was entered into in 1995 and ratified by this Congress—will not be weakened or altered or modified, and that no agreement will be reached on these management issues regarding radioactive materials and hazardous waste unless and until the State of Idaho agrees to that solution. Those two principles are hard rock, base positions Senator CRAIG and I have made very clear.

Like I say, if there is any question about what the precedent of these proceedings means, the precedent is that Senator CRAIG and I will not allow—we will not allow—this Congress to move forward with these kinds of issues.

The PRESIDING OFFICER. The Senator from Idaho has used 10 minutes.

Mr. CRAPO. I thank the Senator for this time. I encourage us to support the efforts to make certain these things will move forward and particularly when we bring this amendment that we were not allowed to bring this morning, we encourage the entire Senate to support it to help make this issue crystal clear to anyone who has lingering doubts.

Mr. ALLARD. Mr. President, I ask unanimous consent that the vote occur in relation to the Cantwell amendment at 2:10 p.m. today, with the remaining time until then divided so Senator CANTWELL controls her remaining time and the remaining time under the control of Senator ALLARD or his designee.

Mr. REID. Reserving the right to object, if I can ask the Chair, how much time does the Senator from Washington, Ms. CANTWELL, have?

The PRESIDING OFFICER. The Senator from Washington has 33 minutes, and the Senator from Colorado has 75½ minutes.

Mr. REID. I say to the distinguished manager of the bill, you are probably going to have about 10 minutes on your side.

Mr. ALLARD. We have one speaker remaining.

Mr. REID. No objection, Mr. President.

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

Mr. ALLARD. I yield the floor.

Mr. LEVIN. Will the Senator yield me 10 minutes?

Ms. CANTWELL. I yield the Senator from Michigan 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. LEVIN. Mr. President, the Department of Energy has over 100 million gallons of high-level radioactive waste stored in 177 underground storage tanks, many of which are leaking. The Department of Energy and its predecessors have been generating and storing this high-level radioactive waste for 50 years.

The high-level radioactive waste is stored basically at three sites—Idaho, South Carolina, and Washington. It was generated by years of reprocessing nuclear reactor fuels to recover plutonium and highly enriched uranium for use in nuclear weapons and other defense purposes.

The DOE has a small amount of highly radioactive waste stored in two tanks in New York that was generated as a result of a failed effort to process spent nuclear fuel from commercial nuclear power reactors.

At the time the Nuclear Waste Policy Act was debated, the Department of Energy wanted the ability to reclassify high-level radioactive waste, including sludge, to low-level or waste incidental to reprocessing, for example. Congress denied this authority to the Department of Energy when the Nuclear Waste Policy Act was adopted.

The high-level radioactive waste that is stored in the Department of Energy tanks is highly radioactive. According to the State of South Carolina Department of Health and Environmental Quality, the 37 million gallons of high-level radioactive waste at the Savannah River site contain 426 million curies of radioactivity.

The Department of Energy was required under its obligation to clean up the nuclear weapons complex to pump the liquid waste out of those tanks. The layer of sludge, semihard material that was generated over the years as solids in the waste that sank to the bottom of the tanks, was included. It is to be left if the DOE has its way. They would like to leave that sludge in the tanks forever. They want to cover the solids with grout and declare the tanks are cleaned up. But by law, by the Nuclear Waste Policy Act, that sludge is high-level radioactive waste and, as such, must be disposed of as high-level radioactive waste.

This sludge accounts for only 8 percent of the volume of material in the tanks, but it accounts for over half of the radioactivity. So under the DOE plan, over half of the radioactivity in the tanks at Savannah River would remain in the ground, covered by grout, presumably forever.

Again, this sludge is high-level radioactive waste as defined in the Nuclear Waste Policy Act. So for the Department of Energy to succeed in leaving the sludge at the bottom of the tanks, the waste has to somehow or another be redefined. So they issued an order to DOE under which it gave itself the authority to reclassify high-level radioactive waste. That way it could leave the sludge in the tanks.

Under that order, the Department of Energy would have reclassified the high-level radioactive waste in the tank—the sludge—either as low-level radioactive waste or as waste incidental to reprocessing activities. By issuing that order, the Department of Energy sought to give itself what Congress had previously denied it, which was the authority to reclassify high-level radioactive waste.

So the lawsuit began with the Natural Resources Defense Council suing the Department of Energy in Federal district court in Idaho, claiming that the Department of Energy did not have the authority to reclassify high-level radioactive waste and that the sludge, as high-level radioactive waste, had to be disposed of in an NRC licensed geologic depository. The States of South Carolina, New York, Washington, and Idaho, the States where the waste is stored, and other States, filed friend-of-the-court briefs on behalf of the Natural Resources Defense Council. The Federal district court in Idaho ruled in favor of the States and against the Department of Energy. The Department of Energy has appealed that decision.

The Department of Energy, in an effort to force States to accept the notion that it should be allowed to reclassify waste, has determined in its budget request to hold hostage the funds that were to be used to pump the liquid waste from the tanks until the States resolved the lawsuit in the DOE's favor or that there would be legislation giving the DOE the authority to reclassify the high-level radioactive waste.

Senator CANTWELL's amendment would strike the section in the bill that would allow the Department of Energy to ignore the law. The law says it is high-level radioactive waste.

Section 3116 in the bill has many important provisions, but there are not six more important words in this section than the words ''notwithstanding any other provision of law.'' What that means is that notwithstanding the Nuclear Waste Policy Act or perhaps a number of other environmental laws, the Department of Energy is allowed to enter into contracts and agreements such as they have with the State of South Carolina.

Now, one can quibble as to whether that is an amendment of the law. I believe it has been argued on the floor of the Senate today that this language in 3116 does not amend the Nuclear Waste Policy Act. One can perhaps argue that, but it is a quibble because the law or the section we are talking about by its very words allows the Department of Energy to ignore the Nuclear Waste Policy Act. Whether that constitutes an amendment is not the point. It is an effective amendment of the law for another law to come along and say one can ignore the first law. That is what this language does. It says:

> Notwithstanding any other provision of law, with respect to material stored at a Department of Energy site at which activities are regulated by the State pursuant to approved closure plans or permits issued by the State, high-level radioactive waste does not include radioactive material resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy determines . . .

Then they go 1, 2, 3, 4, which obviously the Secretary of Energy has already determined. That is what the issue is all about. It is whether we are going to maintain language in the bill which says that the law which exists as to what constitutes high-level nuclear waste can be ignored and that the Department of Energy is authorized to spend all the money in this bill—$350 million—in carrying out activities which would be in violation of the Nuclear Waste Policy Act, except for the fact that section 3116 says, ''notwithstanding any other provision of law.''

The heart of this matter is that this language in the bill, unless it is stricken, authorizes the Department of Energy to spend all of the money we provide on activities which are inconsistent with the Nuclear Waste Policy Act. We should not be authorizing the Department of Energy to ignore the Nuclear Waste Policy Act by spending money pursuant to an agreement with South Carolina which is inconsistent with the Nuclear Waste Policy Act, activities which are not allowed by the Nuclear Waste Policy Act.

So those words, which sound awfully legalistic—and I guess they are—''notwithstanding any other provision of law,'' tell the Department of Energy they are hereby authorized to ignore the law that Congress wrote.

The Department of Energy and its predecessor tried to get the very authority that it now would have by contract if we approve that contract, notwithstanding the provision of the Nuclear Waste Policy Act which this Congress adopted and adopted very consciously to make sure that the waste—sludge—was included in high-level nuclear waste.

Finally, this language was debated quite heatedly in our markup at committee. There were a couple of close votes that were cast. In my judgment, the Senate Armed Services Committee is not the place where we either should be amending the Nuclear Waste Policy Act or authorizing the Department of Energy to ignore the Nuclear Waste Policy Act. I, therefore, support the Cantwell amendment and hope that this Senate adopts the amendment.

Mr. WARNER. Mr. President, on May 20, 2004, there was some question whether the Senate Armed Services Committee was the correct committee of jurisdiction to consider the matter of cleaning up and closing tanks filled with defense nuclear waste.

During the discussion on May 20, 2004, there were to have been printed in the RECORD materials including the President's budget request, appropriations acts, and authorization acts, which prove, irrefutably, that the funds for the cleanup and closure of the nuclear waste tanks at the Hanford Site in Washington, Idaho National Engineering and Environmental Laboratory, and the Savannah River Site in South Carolina, are appropriately within the jurisdiction of the Senate Armed Services Committee.

I will ask that this material be printed in the RECORD, today.

Additionally, I am including the pertinent portions of the Standing Rules of the Senate regarding committee jurisdiction. Listed under the section on the Committee on Armed Services it expressly includes ''the national security aspects of nuclear energy;'' under the section on the Committee on Energy and Natural Resources it expressly includes ''nonmilitary development of nuclear energy;'' and under the Committee on Environment and Public Works it expressly includes ''nonmilitary environmental regulation and control of nuclear energy.'' I believe these Rules show clearly and unambiguously that the Senate Armed Services Committee is the proper committee to consider defense nuclear waste cleanup issues.

Finally, it is worth noting that, in 1982, the portion of the Nuclear Waste Policy Act dealing with defense nuclear waste was sent to the Senate Armed Services Committee for consideration.

For all of these reasons, I assert that the Senate Armed Services Committee is the correct committee to consider cleanup and closure activities concerning defense nuclear waste.

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

STANDING RULES OF THE SENATE

(c)(1) Committee on Armed Services, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Aeronautical and space activities peculiar to or primarily associated with the development of weapons systems or military operations.

2. Common defense.

3. Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, generally.

4. Maintenance and operation of the Panama Canal, including administration, sanitation, and government of the Canal Zone.

5. Military research and development.

6. National security aspects of nuclear energy.

7. Naval petroleum reserves, except those in Alaska.

8. Pay, promotion, retirement, and other benefits and privileges of members of the Armed Forces, including overseas education of civilian and military dependents.
9. Selective service system.
10. Strategic and critical materials necessary for the common defense.
(2) Such committee shall also study and review, on a comprehensive basis, matters relating to the common defense policy of the United States, and report thereon from time to time.
(g)(1) Committee on Energy and Natural Resources, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
1. Coal production, distribution, and utilization.
2. Energy policy.
3. Energy regulation and conservation.
4. Energy related aspects of deepwater ports.
5. Energy research and development.
6. Extraction of minerals from oceans and Outer Continental Shelf lands.
7. Hydroelectric power, irrigation, and reclamation.
8. Mining education and research.
9. Mining, mineral lands, mining claims, and mineral conservation.
10. National parks, recreation areas, wilderness areas, wild and scenic rivers, historical sites, military parks and battlefields, and on the public domain, preservation of prehistoric ruins and objects of interest.
11. Naval petroleum reserves in Alaska.
12. Nonmilitary development of nuclear energy.
13. Oil and gas production and distribution.
14. Public lands and forests, including farming and grazing thereon, and mineral extraction therefrom.
15. Solar energy systems.
16. Territorial possessions of the United States, including trusteeships.
(2) Such committee shall also study and review, on a comprehensive basis, matters relating to energy and resources development, and report thereon from time to time.
(h)(1) Committee on Environment and Public Works, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
1. Air pollution.
2. Construction and maintenance of highways.
3. Environmental aspects of Outer Continental Shelf lands.
4. Environmental effects of toxic substances, other than pesticides.
5. Environmental policy.
6. Environmental research and development.
7. Fisheries and wildlife.
8. Flood control and improvements of rivers and harbors, including environmental aspects of deepwater ports.
9. Noise pollution.
10. Nonmilitary environmental regulation and control of nuclear energy.
11. Ocean dumping.
12. Public buildings and improved grounds of the United States generally, including Federal buildings in the District of Columbia.
13. Public works, bridges, and dams.
14. Regional economic development.
15. Solid waste disposal and recycling.
16. Water pollution.
17. Water resources.
(2) Such committee shall also study and review, on a comprehensive basis, matters relating to environmental protection and resource utilization and conservation, and report thereon from time to time.

DEPARTMENT OF ENERGY FY 2005 CONGRESSIONAL BUDGET REQUEST

PROPOSED APPROPRIATION LANGUAGE

For the Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense site acceleration completion activities and classified activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; [$5,651,062,000] *$5,620,837,000*, to remain available until expended[; Provided that the Secretary of Energy is directed to use $1,000,000 of the funds provided for regulatory and technical assistance to the State of New Mexico, to amend the existing Waste Isolation Pilot Plant Hazardous Waste Permit to comply with the Provision of section 310 of the Act]. (Energy and Water Development Appropriations Act 2004.)

EXPLANATION OF CHANGE

None.

FUNDING PROFILE BY PROGRAM

	FY 2003 comparable appropriation	FY 2004 original appropriation	FY 2004 adjustments	FY 2004 comparable appropriation	FY 2005 request
Defense Site acceleration Completion:					
2006 Accelerated Completions	1,234,037	1,248,453	−9,435	1,239,018	1,251,799
2012 Accelerated Completions	2,102,613	2,236,252	−36,914	2,199,338	2,150,641
2035 Accelerated Completions	1,811,563	1,929,536	−11,161	1,918,375	1,893,339

This PBS supports the mission of the high-level waste program, at the Savannah River Site, to safely and efficiently treat, stabilize, and dispose of approximately 37 million gallons of legacy highly radioactive waste. This waste is stored in 49 underground storage tanks (approximately 33.1 million gallons of radioactive salt waste and 3.9 million gallons of radioactive sludge waste). In addition, the Savannah River Site will: reduce the volume of high-level waste by evaporation to ensure that storage tank space is available to receive additional legacy waste volume from on-going nuclear material stabilization and waste processing activities; pretreat the high-level waste by segregating the waste into sludge, low curie salt, low curie salt with higher actinide content, and high curie salt with higher actinide content allowing less costly treatment methods to be used on the waste containing lower curie levels (radioactivity) and shorter lived radionuclides; vitrify sludge and high curie/high actinide high-level waste into canisters and then store and ship the canisters to the Federal Repository for final disposal; treat and dispose the low-level waste fraction resulting from high-level waste pretreatment as Saltstone grout; treat and discharge evaporator overheads through the effluent treat facility; empty and permanently close in place using grout all high-level waste tanks and support systems; and ensure that risks to the environment and human health and safety from high-level waste operations are eliminated or reduced to acceptable levels.

The end-state of this project will result in the permanent disposal of all the liquid high-level waste currently stored at the Savannah River Site as well as all legacy high-level waste from planned nuclear materials stabilization activities by FY 2019. It will also result in the permanent closure of the remaining 49 underground storage tanks by FY 2020 (two of the original 51 tanks have already been closed in place in FY 1997 using grout).

Because of uncertainties associated with a recent court ruling that finds the Department's plans to reclassify some high-level waste (Waste Incidental to Reprocessing) in violation of the Nuclear Waste Policy Act, the Department believes it is inadvisable to proceed with certain planned FY 2005 activities at this time. Therefore, those activities that are impacted by the court decision are presented in the High-Level Waste Proposal under the Defense Site Acceleration Completion appropriation including both the design and initial construction of the Salt Waste Processing Facility. Funding for this project will be requested only at such time as the legal issue is resolved.

In FY 2003 and FY 2004 this PBS included appropriations of $4,842,000 and $51,196,000, respectively, for design of the Salt Waste Processing Facility under line-item 03–D–414, Project Engineering and Design. Additionally, $20,139,000 was appropriated in FY 2004 and $43,827,000 is requested in FY 2005 for the construction of the Glass Waste Storage Building #2, line-item 04–D–408.

In FY 2005, the following activities are planned to support the accelerated cleanup of the Savannah River Site.

Fill 250 canisters with vitrified waste, complete fabrication of Melter Number 3, and place procurement contracts for Melter Number 4 at the Defense Waste Processing Facility.

Continue preparation of Sludge Batch 4 with the removal of bulk waste from three High-Level Waste tanks.

In support of the High-Level Waste system, continue capacity-based operation of the H and F Tank Farm Disposition and Effluent Treatment Projects.

Continue construction of an additional high-level waste canister storage facility (Glass Waste Storage Building II) in support of accelerated Defense Waste Processing Facility production.

Metrics	FY 2003	FY 2004	FY 2005	Cumulative complete FY 2005	Life-cycle quantity	FY 2005 complete (percent)
Liquid Waste in Inventory Eliminated (thousands of gallons)	0	1,300	1,900	3,200	33,100	10
Liquid Waste Tanks Closed (Number of Tanks)	0	2	0	4	51	8
High-Level Waste Packaged for Final Disposition (Number of Containers)	115	250	250	1,952	5,060	39

Key Accomplishments (FY 2003)/Planned Milestones (FY 2004/FY 2005).

Completed installation of Tank 18 bulk waste removal equipment (FY 2003).

Completed D&R of the neutralization dike and tanks at the 2H Evaporator and returned Tank 37 to service as a concentrate receipt tank for the 3H Evaporator (FY 2003).

Completed Tank 51 receipt of americium/curium material from F-Canyon (FY 2003).

Replaced the Defense Waste Processing Facility Glass Melter, and returned the Defense Waste Processing Facility to canister production (FY 2003).

Implemented the 10 CFR 830 Documented Safety Analysis for the High-Level Waste Tank Farms (FY 2003).

Restored Building 512S to operability (FY 2003).

Produced 115 canisters of vitrified high-level waste (FY 2003).

Regulatory close two high-level waste tanks (Tanks 18 and 19), which completes the closure of the first tank grouping (September 2004).

Produce 250 canisters of vitrified high-level waste (September 2004).

Prepare and feed Sludge Batch 3 to the Defense Waste Processing Facility (September 2004).

Complete 512–S modifications necessary to support Actinide Removal Salt Processing and begin hot operations with salt solutions (September 2004).

Complete the conceptual design for an optimal scale Salt Waste Processing Facility (September 2004).

Complete the Tank II Waste Removal Project and Bulk Waste Removal from Tank II to accelerate the preparation of Sludge Batch 4 (September 2004).

Complete the dissolution of low curie salt in Tank 41 (September 2004).

Pretreat and process 1,300,000 gallons of low-level radioactive salt waste into saltstone grout (September 2004).

Initiate construction of an additional high-level waste canister storage facility (Glass Waste Storage Building II) (September 2004).

Initiate dissolution of low curie salt in Tank 29 (September 2004).

Produce 250 canisters of vitrified high-level waste (September 2005).

Begin preparing tanks 4 and 6 for bulk waste removal (September 2005).

Complete bulk waste removal in Tank 5 (September 2005).

Prepare Sludge Batch 4 and initiate preparation of Sludge Batch 5 (September 2005).

FISCAL YEAR 2005 APPENDIX OF THE U.S. GOVERNMENT—DEPARTMENT OF ENERGY

DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense site acceleration completion activities, and classified activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; [$5,651,062,000] $5,620,837,000, to remain available until expended[: Provided, That the Secretary of Energy is directed to use $1,000,000 of the funds provided for regulatory and technical assistance to the State of New Mexico, to amend the existing WIPP Hazardous Waste Permit to comply with the provisions of section 310 of this Act]. (Energy and Water Development Appropriations Act, 2004.)

2006 Accelerated Completions.—Provides funding for completing cleanup and closing down facilities contaminated as a result of nuclear weapons production. This account includes all geographic sites with an accelerated cleanup plan closure date of 2006 or earlier (such as Rocky Flats, Fernald and Mound). In addition, this account provides funding for Environmental Management (EM) sites where overall site cleanup will not be complete by 2006 but cleanup projects within a site (for example, spent fuel removal, all transuranic (TRU) waste shipped off-site) will be complete by 2006.

2012 Accelerated Completions.—Provides funding for completing cleanup and closing down facilities contaminated as a result of nuclear weapons production. This account includes all geographic sites with an accelerated cleanup plan closure date of 2007 through 2012 (such as Pantex and Lawrence Livermore National Laboratory—Site 300). In addition, this account provides funding for EM sites where overall site cleanup will not be complete by 2012 but cleanup projects within a site (for example, spent fuel removal and TRU waste shipped off-site) will be complete by 2012.

2035 Accelerated Completions.—Provides funding for completing cleanup and closing down facilities contaminated as a result of nuclear weapons production. This account provides funding for site closures and site specific cleanup and closure projects that are expected to be completed after 2012. EM has established a goal of completing cleanup at all its sites by 2035.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004

DEFENSE ENVIRONMENTAL MANAGEMENT (SEC. 3102)

The House bill contained a provision (sec. 3102) that would authorize $6.8 billion for the Department of Energy for defense environmental management (EM) activities for fiscal year 2004, including funds for defense site acceleration completion and defense environmental services.

The Senate amendment contained a similar provision (sec. 3102) that would authorize $6.8 billion for defense environmental activities.

The conferees agree to authorize $6.8 billion for defense environmental management, the amounts of the budget request, including $5.8 billion for defense site acceleration completion and $995.2 million for defense environmental services.

The conferees support the continuing efforts of the Department of Energy to accelerate cleanup at all of the environmental management (EM) sites, which will result in reducing risk to the environment, workers, and the community, shortening cleanup schedules, and saving tens of billions of dollars across the EM complex. The conferees also support a policy that would take funds made available due to the cleanup completion of Fernald, Mound, Rocky Flats and other sites, and roll them into the remaining EM sites to help accelerate their completion even sooner, if possible.

MAKING APPROPRIATIONS FOR ENERGY AND WATER DEVELOPMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2004, AND FOR OTHER PURPOSES—CONFERENCE REPORT—ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL MANAGEMENT

The conference agreement provides a total of $6,626,877,000 for Defense Environmental Management instead of $6,748,457,000 as proposed by the House and $6,743,045,000 as proposed by the Senate. This funding is provided in two separate appropriations: $5,651,062,000 for Defense Site acceleration Completion and $991,144,000 for Defense Environmental Services, and also includes a rescission of $15,329,000 from the Defense Environmental Management Privatization account.

DEFENSE SITE ACCELERATION COMPLETION

The conference agreement provides $5,651,062,000 for defense site acceleration completion, instead of $5,758,278,000 as proposed by the House and $5,770,695,000 as proposed by the Senate.

Accelerated Completions 2006.—The conference agreement provides $1,248,453,000, an increase of $3,282,000 over the request to reflect the adjustment for accelerated Oak Ridge cleanup activities.

Accelerated Completions 2012.—The conference agreement provides $2,236,252,000, an increase of $7,938,000 over the request to reflect the adjustment for accelerated Oak Ridge cleanup activities.

Accelerated Completions 2035.—The conference agreement provides $1,929,536,000, a reduction of $49,061,000 from the budget request to reflect the adjustment for accelerated Oak Ridge cleanup activities.

From within available funds, the conferees direct the Department to provide a total of $6,000,000 for worker training programs and supporting communications infrastructure, oversight, and management activities at the Hazardous Materials Management and Emergency Response Training and Education Center. The conferees direct the Department to provide $8,500,000 for the Hazardous Waste Worker Training Program from within available funds. The conference agreement provides $750,000 from within available funds to the State of Oregon for its oversight activities related to the Hanford cleanup.

The conferees direct the Department to pay its title V air permitting fees at the Idaho National Laboratory consistent with prior year levels, and to bring the Pit 9 litigation to an end as expeditiously as possible. The conference agreement includes the budget request of $1,356,000 for activities at Amchitka Island, Alaska.

Waste Isolation Pilot Plant.—The Department's activities at the Waste Isolation Pilot Plant (WIPP) are primarily funded under the Accelerated Completions 2035 subaccount within the Defense Site Acceleration Completion account. From within available funds for Accelerated Completions 2035, the conferees direct the Department to provide an additional $3,500,000 to the Carlsbad community for educational support, infrastructure improvements, and related initiatives to address the impacts of accelerated operations at WIPP and an additional $1,500,000 to consolidate at Carlsbad all record archives relevant to the operations of WIPP and the transuranic waste in WIPP.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield 8 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 8 minutes.

Mr. GRAHAM of South Carolina. I thank the Senator for yielding.

The long and short of this is that all three States—South Carolina, Idaho, and Washington—have been negotiating to define waste classification standards in their States for a long time.

On January 26, 2004, Congressman HASTINGS, Senator MURRAY, and Senator CANTWELL sent a letter to Governor Locke and Secretary Abraham that asked them to work together to resolve the ongoing dispute over waste classification. Please listen to what I

just said. There has been a process in place in Washington since January 26 to try to find a way to reach an agreement with the Department of Energy to classify waste in that State so cleanup can move forward.

The letter did not say, call LINDSEY GRAHAM from South Carolina and see if you can get his permission. It did not say, call LARRY CRAIG and MIKE CRAPO. It said, call Spence Abraham and see if you all can work together.

The Governor wrote back to the Deputy Secretary of Energy and said that the Governor's chief of staff would be the point of contact for negotiations February 12, 2004. From mid-February to April 13, they have been sending drafts back and forth about how to define cleanup and what is clean in Hanford. They have been doing the same thing in Idaho. We have been doing the same thing in South Carolina. All of us have one thing in common: We oppose the Department of Energy's efforts to unilaterally determine what ''clean'' is and walk away.

That is why we had the lawsuit. That is why South Carolina joined as a friend of the court. The letters my friend from Washington read, about South Carolina objecting to DOE's moving forward, was an objection to a unilateral process where DOE would have the final say about how to clean up the tanks and remove waste.

All of us in all three States believe we should be involved. But it has never been the policy or the process where all three States have to agree to the same standard because, Members of the Senate, that is impossible to achieve because the waste scenario and the waste stream problems in Idaho are completely different.

The film we are trying to leave behind in South Carolina, that inch and a quarter of film that will be left in South Carolina and not sent to Yucca Mountain, doesn't exist in the tanks in Idaho, and the tanks in Washington have a totally different design.

Three States have been working in the defense arena to find a common ground with DOE to make sure the States don't get left holding the bag, and we also made sure no State can take over defining ''high-level radioactive waste.'' That stays with the Federal Government. But the agreement we have achieved said the State of South Carolina has the final permitting authority and you cannot leave those tanks in a condition that will hurt South Carolina.

They are trying to do the same thing in Washington and Idaho. I hope they get there. But if they do get there, they are going to have to do the same thing I am doing today. They are going to need legislative language blessing that agreement. There will be an amendment of the Waste Policy Act. That is going to have to happen. In 1995, legislative language was brought to the Senate to bless an agreement Idaho achieved regarding another waste stream. That is going to have to happen. I hope I will be man enough, Senator enough, not to stand in the way. If the Governor of Idaho, the Governor of Washington, the attorney general, the environmental regulators, the chamber of commerce, the mayor of the Hanford community, the communities involved in Idaho—if they say we have a deal that doesn't affect or prejudice my State or change nuclear policy in any significant way, I hope I will say: Go forward; God bless you; I am glad you were able to reach an agreement to clean up your States because you fought very hard to win the cold war.

For those who are worried about the safety issue in my State, I appreciate the concern. I did not make up this scenario. I am reacting to input from my State. I have been involved in the negotiations. They called me. They drafted the language and they have told me, and sent letters—the Governor and the environmental regulators: We have a deal, LINDSEY, that we can live with. We have already closed up two tanks of the 51. So we know in South Carolina, unlike the other two sites, we can extract the liquid waste, grout the tank, and have it not affect the ground water because we have done it twice and we are trying to move forward at a faster rate.

They are telling me: LINDSEY, we have a deal that will allow us to clean up the tanks and get the liquid waste out 23 years ahead of schedule and save $16 billion.

I say to my colleagues, I cannot make that happen unless you allow it to happen. If it does happen in Idaho and it does happen in Washington, and I believe it will one day, you are going to have to do the same thing for those States.

To my friends in New York, the waste stream you are discussing and that you talked about on the floor is not remotely similar to the waste stream we are talking about here. This is defense waste.

To my friends in Maine who have spent nuclear fuel, it is covered under a whole different section. Here is what you have to understand. If you have spent fuel rods in your State, defense waste has priority in Yucca Mountain. If we are going to insist the cleanup standards be beyond what good science says and we are going to take that extra 23 years and spend that extra $23 billion, you are going to run out of space in Yucca Mountain to send your spent fuel.

I say to my friend Senator ENZI, thank you. Every State has an obligation to help where it can. South Carolina can retain the film on the bottom of these tanks in a safe and sound manner, and it is not necessary to extract it, take 23 years, and spend $16 billion to send it to Nevada. We can safely take care of it in South Carolina. We have done it twice and we want to do it more so we can get this waste out of the tanks, because the biggest threat to my State and to all the States is seepage and leakage of the waste.

Washington has a problem. Of all the States, Washington needs to reach agreement to make these tanks dry. I don't want to be a Washington. I don't want to look back 10 years from now and have this process slowed down to a crawl and my ground water get contaminated.

The NRC has said this is safe and that what is left in the tank is no longer high-level waste; it meets the definition of low-level waste. About hearings, Senators ALLARD, INHOFE, DOMENICI, have been talking about the plans to clean up the tanks in three States for well over 4 years. The Department of Energy has been working with each State with a separate cleanup plan for a long time. They have been negotiating with Washington since January. We have discussed how you would treat South Carolina, Idaho, and Washington through hearings in an exhaustive manner.

If you make us have more hearings, I am going to be right back here asking you to bless this agreement because the agreement has been a collaborative process that has been going on for 2 years and all you are going to do is throw us in chaos because if we can veto each other, then we will never clean up. If you are insisting on a standard that fits all of these sites, it will never be reached.

Mr. President, I commend to my colleagues the transcripts from the Armed Services hearing of February 25, 2004—what we talked about, the waste cleanup process; Senator DOMENICI's Energy and Water Subcommittee hearing of March 31, 2004, same topics discussed; and pages 1 through 47 of the EPW committee hearing of July 25, 2000.

My colleagues, I need your help. I want to make sure the tanks don't leak. We have a sound plan that will not affect your States. It will only help mine. I want to help you. Please help me.

The PRESIDING OFFICER (Mr. SUNUNU). Who yields time?

Mr. LEVIN. Mr. President, how much time do both sides have?

The PRESIDING OFFICER. The proponents control 22½ minutes. The opponents of the amendment control 1 minute. Who yields time? The Senator from Washington.

Ms. CANTWELL. Mr. President, I appreciate my colleague's characterization of this issue. I think we have had somewhat of a debate this morning. I think probably for most people, including my colleagues, what we have done is shown that this is a very complex issue, a very complicated issue, and that it needs more discussion than a few hours on the Senate floor, because what is at stake here is the lives of individuals who are living in these communities, whose ground water may be contaminated, whose safe drinking water in the future may be contaminated at levels that are not sustainable in these areas.

Let's recap for a second where we have been in this debate, because I will

have printed in the RECORD, for my colleagues to understand, the 1989 agreement between Washington State and DOE, and the 1995 agreement between the State of Idaho and DOE on cleanup.

Let me point out, we have agreements. We have agreements with the Department of Energy on cleanup. They are agreements that basically say: DOE, keep making progress on cleanup and please continue to follow the Federal statute. The issue at hand is that somehow my colleague from South Carolina has been persuaded by the Department of Energy—an argument the State of Washington refused to buy, I might add, an argument the State of Idaho refused to buy—that somehow cleanup means we have to reclassify waste.

So, yes, States in this country have continued to push DOE on agreement. We had agreements on the books. It is unfortunate that DOE has not been able to be trusted to get cleanup done in a timely fashion. That is why States have continued to push them.

Agreements are in place. And our State continues, as Idaho and South Carolina admit in a court filing that they do not trust DOE and that DOE should move forward and it doesn't need the sledge hammer of this legislation. That is South Carolina's own testimony in court and its own testimony to the Department of Energy in a letter.

Why are we having this discussion then? We are having this discussion because, even though agreements are already in place and DOE is failing to live up to cleanup, DOE would like to now change the rules of the game and change the definition of high-level waste.

If you think about it, the point of the Senator from South Carolina is that his State should have the right to agree with DOE to clean things up, and that he is not changing current law.

If that were the case, why are we here arguing today? The Senator from South Carolina and DOE should just go and proceed. The reason they do not is because the Senator from South Carolina knows all too well that his language is changing current law and that he needs that change if DOE wants to leave high-level waste in the ground.

The point is for all Americans to understand that nuclear waste in States such as Washington, Idaho, and South Carolina only have the authority to argue these issues about cleanup within the framework of a Federal statute. That Federal statute is the Nuclear Waste Policy Act.

What the Senator from South Carolina is doing in the underlying bill is threatening the rights of States, including his own State, to protect itself from DOE as DOE reclassifies waste. It leaves our States at jeopardy. It leaves all States where there are nuclear facilities in jeopardy because of DOE's insistence that the nuclear waste policy definition of spent nuclear fuel does not have to meet the standard of high-level waste. It leaves all of these States with a debate with DOE that DOE can say this waste is no longer high level. We can transport it. We can do whatever we want with it. We can fill tanks with grout. It is a very dangerous precedent.

The Senator is getting rid of the Federal framework. No State has the ability to negotiate on its own a Federal cleanup standard. Imagine if the State of Michigan discussed with EPA this is what the clean air standard should be for the State of Michigan? What if Florida and the EPA decided what safe drinking water standards are for the State of Florida? We have never operated that way.

The Senator from South Carolina refuses to address that his State can only deal with leaving tank waste in the ground, which he is proposing we do, by changing the Federal standard. The Department of Defense authorization bill changes the definition of high-level waste. It is changing the Federal standard. It is then leaving those States subject to DOE's whim on how much ground waste and water pollution will be there in those tanks at Hanford, at Savannah River, and in Idaho.

The Senator talks about contaminated ground water. His ground water in Savannah River is already contaminated. The ground water in Washington State at Hanford is already contaminated. There are other parts of the country with high-level contaminated waste.

The question is, What are we going to do to hold DOE's feet to the fire to make sure they get this waste cleaned up? This body, for the last 3 years, has seen various changes at this administration level try to undermine current environmental standards and environmental law. The current environmental law of the day regarding nuclear waste is the Nuclear Waste Policy Act. The Senator's language in the underlying bill threatens that language.

Washington State agreements, which have been fighting DOE to live up to the Nuclear Waste Policy Act, will no longer be able to argue that effectively, nor will Idaho, unless we pass my amendment.

My amendment specifically says we are not changing the definition of high-level waste but the Department of Energy needs to have dollars appropriated, which this bill authorizes, for $350 million of cleanup, and the DOE must spend that money on cleanup. We actually crafted that language with Senator LEVIN with the help and support of Governor Kempthorne of Idaho. We put the Kempthorne language in our amendment. Why did we do that? Because we wanted to be clear with the Kempthorne language that we were not going to be held hostage; Idaho, Washington, and even Savannah River were not going to be blackmailed by DOE to saying, they only get the cleanup dollars if, in fact, they agree to a lesser standard which allows us to leave more pollution in the ground water in your State. We refused to agree to this policy and be held hostage by DOE.

The Senators from Idaho do not need any other language. They want their State protected on this issue. They want their dollars for cleanup protected. The Cantwell amendment protects the State of Idaho. I am sure that is what the response will be from the State of Idaho and the State of Washington and others as they look at this policy. It corrects onerous activities that happened when the Defense authorization bill moved through the Senate Armed Services Committee and marked up policy changes to environmental policy of which that committee does not have oversight.

My colleagues can say we have had lots of debate about cleanup and lots of budget discussions. I don't think anyone can seriously stand in the Senate and say the change in definition of hazardous nuclear waste is the jurisdiction of the Senate Armed Services Committee. It is not. The Parliamentarian has already ruled on that. That is the jurisdiction of the Energy Committee.

My colleagues on the other side of the aisle are ignoring the hard facts. This is not about individual States having agreement; it is about changing the Federal standard for nuclear waste cleanup.

This administration and DOE ought to be embarrassed. They are trying this sneaky process behind closed doors and putting language in that now we all have to come to the Senate and fight to take out.

What Member wants to vote against the Defense authorization bill that has this language in it? What does this language have to do with troops in Afghanistan or troops in Iraq? What does it have to do with giving men and women the support they deserve to fight for our country? It is creating a controversy around change to a Federal policy that has not been debated.

There is no Lindsey Graham bill or bill by any of my other colleagues that has the Graham language in it that was brought before the Energy and Natural Resources Committee and debated. My colleagues are wrong on this.

Let's see what the rest of America is saying about this because I guarantee this debate will not end today. It is very important the third parties that have looked at this issue have validated exactly what my colleagues on this side of the aisle are saying about this issue.

In fact, the Savannah Morning News says:

> It's good for the government to save billions of dollars and to clean up nuclear waste. But a money-saving plan that does a poor job of tidying up is no bargain.

The Minneapolis Star Tribune said:

> Quicker and cheaper can be valid considerations . . . but only after the highest level of safety has been guaranteed. And those guarantees must satisfy national standards, not the terms of a side deal.

That is exactly what this is, a side deal between a State and an agency

that has neglected its cleanup responsibilities for years. The court said they needed to move forward but not by changing the definition of high-level waste that they did not have, but move forward on the plans they have in place. This is a side deal.

The Boston Globe said:

If the Senate isn't careful, it could vote this week to allow the Department of Energy to cover some of the nation's most hazardous nuclear waste with grout instead of treating it properly. . . . The Senate should strip the defense spending bill of this toxic measure.

The Oregonian, from another part of the country that is greatly impacted by this issue because of the Columbia River and the huge impact that river has, already with that plutonium leaked into the river, said:

It's remotely possible that [this] policy is worth debating, but this sneaky approach suggests the Department of Energy isn't interested in a public discussion of the issue.

What did the Seattle Times say? In our State, we have been battling DOE for years because they always want to take a shortcut. They always want to take a shortcut and say we can do it quicker. What are the Washington agreements about? The Washington agreements are about forcing DOE to live up to Federal cleanup standards. That is what the agreements are. In fact, they always try to get out of it. The Seattle Times wrote:

The Senate should slap down a sneaky ploy . . . that would give the Department of Energy the right to single-handedly change the rules about how it handles highly radioactive waste.

The Washington Post took a look at this situation and said:

. . . a situation in which states compete to reach private agreements with the Energy Department and then rush to put them into legislation is untenable.

What did the Atlanta Journal Constitution say? It is a State that is affected by the Savannah River which flows into their State. The Savannah River already has pollution problems with radionuclides affecting fish and affecting safe drinking water conditions. It said:

. . . words do matter, and some semantic contortions can be dangerous. Recent efforts by the U.S. Department of Energy to circumvent the 1982 Nuclear Waste Policy Act by slipping through a linguistic wormhole are an outrageous case in point.

What about the Omaha-World Herald? They know a little bit about this issue. They have debated the nuclear waste issue. They said:

We hope Congress will listen to commonsense views . . . and yank this terrible idea back out of the bill. It's not merely wrongheaded; it would result in a hazard to the public well-being.

And there are newspapers in my State weighing in on this issue. The Tri-City Herald, which is in the heart of this cleanup effort at Hanford, the largest tank waste cleanup in the country, where we already have 1 million gallons of tank waste leaking in a plume that is an 80-square-mile area that is going to the Columbia River, said:

Senators considering [this issue] should ask themselves this: If reclassification really is such a great and worthy idea, why isn't the Energy Department making the argument in the light of day?

If they really thought reclassifying waste was such a great idea, why don't they put a bill before this legislative body saying so, driving it through the normal channels and the normal process of legislation? They know they do not have this authority. They tried by their own executive administrative order to do it, and the courts told them they did not have the ability to do it. But instead of coming through the proper channels with a bill and legislation, they have chosen, instead, to sneak language into the Defense authorization bill—probably one of the most unpatriotic things I can think to do.

These men and women gave a serious amount of their lives to fighting in World War II and the cold war by producing plutonium and giving us a tool to win in those areas. They did that in record time. Now they expect this country, just like businesses all across America, to clean up their waste. We expect the Federal Government to clean up their waste. We do not expect a short-end process where they say you can simply grout over nuclear radioactive waste and put sand and gravel on top of it and somehow stabilize the situation.

So the Tri-City Herald said Senators should ask themselves this: If reclassification is such a great idea, why don't they make the argument in the light of day?

What did the Idaho Statesman say? The Idaho Statesman said:

The Energy Department's shameful record on this issue—

Why would a paper like the Idaho Statesman say it is a ''shameful record''? Because it is true. DOE fails to live up, time and time again, to the process of moving forward, and so States have had to enter into agreements that comply with Federal law—not circumvent Federal law, but comply with Federal law—and hold DOE's feet to the fire and say: DOE, you must meet the Federal standard and move forward. So the Idaho Statesman said:

The Energy Department's shameful record on this issue is even more troubling. Remember recent history . . . Suggesting there's no precedent—and no potential effect on Idaho—is politically naive.

That is from the Idaho Statesman.

What did the Bangor Daily News say? Well, the Bangor Daily News said:

The long-term implications of such an important change in waste-storage policy are too serious to give the issue a free ride in a spending bill.

So we have heard from over 20 newspapers across America. My colleague from New York submitted editorials from both the New York Times and the Buffalo News. I talked about the Minneapolis Star earlier and their comments on this issue.

Show me a newspaper in America that is saying this is a good policy. In the limited amount of time we have had to get this debate in front of the public, the public has basically, in these editorials and letters to the editors, raised serious questions about this policy, serious questions about why the Senate would be moving forward on this issue.

As my colleague, the senior Senator from Washington, mentioned earlier, the House of Representatives, when posed with this question, figured it out and said: Listen, if this is such a good idea, let's have a study. Let's have a study and analysis of this issue and see exactly what people can come up with as far as science. Well, that is what is in the House version of this legislation—a study—because my colleagues over there understood that this was a change to Federal policy.

So what about the underlying effects of this legislation if the Cantwell amendment is not adopted? The Cantwell amendment says two things: We are not changing the definition of what is high-level waste and the definition of spent nuclear fuel. We are leaving that the same. But we are giving the authorization and requiring that DOE spend $350 million on cleanup in Washington, in Savannah River, and in Idaho. So we are pushing them ahead. So there is no holdup on cleanup, no issue. DOE, get back to your job of taking the waste out of the tanks and putting it into a glassification and storage process. Why are we spending billions of dollars on a glassification process—that is, the process of taking this spent fuel and turning it into glass logs and moving it into storage—if we are going to leave so much of it in the ground in these tanks? Why would we be spending so much money on it?

As my colleagues are trying to paint a picture that somehow our language does not take care of the blackmail clause, we are simply not—in Washington or in Idaho—going to be blackmailed by DOE into sneaking in language or having our funds held up. As my colleague from Washington said, we have successfully, as a caucus, fought these efforts in the past and have not been peeled off by DOE, that likes to play a switch-and-run game, just because OMB or somebody says we don't have the money in the budget to do the cleanup.

Well, nuclear waste cleanup costs money. The plume in our State already has 1 million gallons of ground water leakage; I will point out to my colleagues, these tanks started leaking years ago. This is not a recent phenomenon. So the fact that these tanks were built, and that DOE knew they were leaking. We all became aware of this; I know this body changes, you have turnover in membership, but my colleagues knew these tanks were leaking. The thing we should have done is continued to push DOE, just as Washington has, just as Idaho has, and just as Savannah River has in legal documents.

I have, again, great respect for the junior Senator of South Carolina, but

he is wrong as it relates to his State's history. His State has said, on numerous occasions, that DOE is wrong on this issue. Now, I get that they have an advocate in the Senate today to make a different point for them, but why do they spend the taxpayers' money in South Carolina arguing in a Federal court case that DOE was wrong to try to change this policy and send letters to Spencer Abraham, the Secretary of Energy, saying he was dead wrong on this policy? Why did they spend the money of the taxpayers in South Carolina fighting this battle, along with Washington and along with Idaho, if they did not believe in it?

I know. Because the State of South Carolina does believe that Federal cleanup policy should be preserved, that the States can only be protected by having a Federal statute, that negotiating cleanup policy standards is not the prerogative of individual States. It is something that is designated under the Nuclear Waste Policy Act. If that law is to be changed, then it ought to be done in the broad daylight of this body and this organization.

So what are we left with today? I think some people at home, who may have been watching this debate, are asking themselves this question. I hope the Cantwell amendment is adopted because it will remove this debate from this bill that we need to move forward with to protect our troops, to continue to give them the resources they need, and move the nuclear waste debate off of something that is so important for us to get done.

But if the Cantwell amendment is not adopted, what we will leave the people with is legislation that basically says the Department of Energy can grout these tanks and can leave this waste in the ground. I do not want safe drinking water affected. I do not want ground water contamination. I want the Senate to do its job and uphold the Federal standard.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield 10 seconds to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Augusta Chronicle, which is the major newspaper at the Savannah River site, supporting my efforts with this amendment.

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

[From the Augusta Chronicle, May 15, 2004]

RESCUING SRS CLEANUP

A way apparently has been found that will get the accelerated cleanup project at Savannah River Site back on track.

The project was dealt a severe setback last summer, when a federal judge ruled that the Department of Energy's plan to reclassify residual sludge in tanks at SRS and other nuclear weapons sites from high-level radioactive nuclear waste to low-level waste violated the 1982 Nuclear Waste Policy Act.

That act requires nuclear facilities to route all their high-level N-waste to the permanent storage facility approved, but not yet built, at Yucca Mountain, Nev. The energy agency is charged with removing strontium-90, plutonium, uranium and other highly radioactive wastes from tanks that have held the nuclear bomb making substances for nearly five decades during the Cold War.

That highly radioactive waste is extremely expensive and difficult to remove. Reclassifying it and treating it on site would save $16 billion in cleanup costs and shorten SRS cleanup time by 23 years, according to the energy agency that sought the reclassification.

But the federal court said no, the agency cannot arbitrarily reclassify nuclear waste to suit its convenience.

The ruling made sense, but it wreaked havoc with the accelerated cleanup plan. DOE is trying, so far unsuccessfully, to get Congress to change the law to allow the agency to reclassify the contaminated waste.

More successful is U.S. Sen. Lindsey Graham's proposal, which he got included in the defense bill approved last week by the Senate Armed Services Committee. Although the measure applies only to the Savannah River Site, it could serve as model legislation for other states concerned about residual liquid radioactive waste left in DOE facilities.

The South Carolina senator's plan would allow DOE to leave in place the highly radioactive sludge that lines the tank's sides and bottom, but it would have to be diluted with grout, thus turning it into ''low level'' nuclear waste in accordance with the state's Department of Health and Environmental Control.

The provision, said Graham, still ''allows South Carolina and DOE to define high-level waste in a very reasonable manner. There's nothing going to be left behind . . . that will not be secured through environmental remediating to protect South Carolina.''

The next move is to make sure the Graham plan stays in the defense bill as it works its way through the rest of Congress. The stakes are high. DOE was planning to withhold cleanup funds if it couldn't move ahead on its accelerated cleanup project. The Graham plan would put the agency back in business.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself the remainder of our time.

I happen to believe that the sooner you clean up a nuclear waste site the better. And you do it within the guidelines of the Nuclear Regulatory Commission. That is what we are trying to do with the WIR project. That is what the Department of Energy is trying to do. I think quicker is better because it means less seepage throughout the ground, less pollution.

And there is a cost. If we stay with the original plan that was drawn out, we do not get cleaned up until 2065. It is going to cost well over $138 billion. With rapid cleanup, we save $86 billion and we help clean up the environment quicker, which means less pollution. I think it is better for the citizens of these States.

I ask my colleagues to join Senator WARNER, myself, the Senator from Idaho, Mr. CRAPO, and the Senator from South Carolina, Mr. GRAHAM, in voting no on the Cantwell amendment.

The PRESIDING OFFICER (Mr. ALEXANDER). The assistant Democratic leader.

Mr. REID. Mr. President, do we have 1 minute on each side between votes on the judges?

The PRESIDING OFFICER. That order has not been entered.

Mr. REID. I ask unanimous consent that prior to the judges, there be 1 minute to speak in relation to those judges.

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

The Senator from Washington.

Ms. CANTWELL. Mr. President, I ask unanimous consent to print in the RECORD a letter from the National Congress of American Indians. And I commend to my colleagues the 1995 Idaho settlement agreement and the Washington Tri-Party Agreement.

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

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, DC, June 3, 2004.

To: Members of the United States Senate.
Re Tribal Support of Cantwell-Hollings Amendment to Defense Authorization.

DEAR SENATOR: On behalf of the over 250 member tribes of the National Congress of American Indians—the oldest and largest intertribal organization in the US—I write this letter to urge you to support the Cantwell-Hollings amendment to the Defense Authorization Act that will prevent the Department of Energy (DOE) from leaving hazardous and harmful nuclear waste in underground tanks to contaminate our soil and water. The health and environmental hazards of this practice notwithstanding, many tribes believe that the Earth is our Mother, and that these leaking tanks are a wound to her that must be healed.

DOE's high-level waste (HLW) remains dangerous for hundreds or thousands of years. For this reason, they must be disposed in a geological repository along with nuclear power spent fuel. Under the NWPA, the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) regulate the geologic disposal of HLW—and decide what is (and what is not) HLW. The Graham amendment eliminates NRC and EPA legal protections and gives DOE sole authority to transform these lethal materials into ''waste incidental to reprocessing.''

These provisions establish a dangerous precedent for the country. They would allow DOE to redefine about 70 percent of the total radioactivity of all the nation's defense high level wastes stored at the Savannah River site, while preventing access to necessary funds for other states that support the existing, more protective legal framework as Washington and Oregon do for the Hanford site—which is very important to our member tribes in the Northwest.

We urge you to support efforts by Senators Cantwell and Hollings to strike these provisions. The costs of cleaning up DOE sites are expensive. However, the costs of allowing DOE to regulate itself in terms of our nation's natural resources are incalculable. The Indian people of the United States—because we are so dependent on the Earth—will suffer mightily if DOE is able to shirk its responsibilities relative to cleaning up nuclear waste sites.

Please consider NCAI's resolute support for the Cantwell-Hollings amendment as you determine how you will vote on the amendment. If you have any questions, please contact NCAI at 202.466.7767.

Thank you for your work for Indian Country, and thank you for your support on this issue.

Sincerely,

TEX HALL,
President, NCAI.

Mr. REID. Mr. President, the staff indicates we have 10 minutes prior to the vote on the judges. That should be more than enough to talk about the three judges. I ask unanimous consent that the 1 minute between the judges, which is unnecessary, be rescinded.

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

Mr. REID. Have the yeas and nays on the Cantwell amendment been ordered?

The PRESIDING OFFICER. No, they have not.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to amendment No. 3261. The clerk will call the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 48, nays 48, as follows:

[Rollcall Vote No. 107 Leg.]

YEAS—48

Akaka	Durbin	Lincoln
Bayh	Feingold	McCain
Biden	Feinstein	Mikulski
Bingaman	Graham (FL)	Murray
Boxer	Harkin	Nelson (FL)
Breaux	Hollings	Nelson (NE)
Byrd	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Clinton	Kennedy	Rockefeller
Conrad	Kohl	Sarbanes
Corzine	Landrieu	Schumer
Daschle	Lautenberg	Smith
Dayton	Leahy	Specter
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden

NAYS—48

Alexander	DeWine	Lugar
Allard	Dole	McConnell
Allen	Domenici	Miller
Bennett	Ensign	Murkowski
Bond	Enzi	Nickles
Brownback	Fitzgerald	Roberts
Bunning	Frist	Santorum
Burns	Graham (SC)	Sessions
Chafee	Grassley	Shelby
Chambliss	Gregg	Snowe
Cochran	Hagel	Stevens
Coleman	Hatch	Sununu
Collins	Hutchison	Talent
Cornyn	Inhofe	Thomas
Craig	Kyl	Voinovich
Crapo	Lott	Warner

NOT VOTING—4

Baucus	Edwards
Campbell	Kerry

The amendment (No. 3261) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. MCCONNELL. I ask the next vote be a 10-minute vote.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, could we make all of them 10-minute votes?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. The next vote will be a 10-minute vote.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, I ask unanimous consent that the next votes all be 10 minutes.

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

EXECUTIVE SESSION

NOMINATION OF SANDRA L. TOWNES TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session for the consideration of three nominees. The clerk will report.

The assistant legislative clerk read the nomination of Sandra L. Townes, of New York, to be United States District Judge for the Eastern District of New York.

The PRESIDING OFFICER. Under the previous order, there will be 10 minutes equally divided between the two leaders or their designees prior to three consecutive votes.

Mr. HATCH. Mr. President, I am pleased today to speak in support of Justice Sandra Townes, who has been nominated to the United States District Court for the Eastern District of New York.

Justice Townes comes to us with an impressive record of public service and accomplishment. She left a successful teaching career to attend Syracuse University College of Law. Following her graduation, she went to work in the Onondaga County District Attorney's Office, where she had a long and successful career as prosecutor. She left the district attorney's office in 1987, when she was elected judge of the Syracuse City Court—becoming the first African American woman to do so. She made history again in 1999, when she became the first African American to be elected locally to the New York State Supreme Court. Two years later, Gov. George Pataki appointed her to associate justice of the Appellate Division of that court, where she now sits.

I applaud President Bush for his nomination of Justice Townes and am confident that she will continue her outstanding record of public service on the Federal bench in the Eastern District of New York.

I yield the floor.

Mr. LEAHY. Mr. President, today the Senate is proceeding to confirm Sandra Lynn Townes to the U.S. District Court for the Eastern District of New York. Justice Townes is currently an associate justice of the New York State Supreme Court, Appellate Division, where she has served for several years. She previously served as a judge in the Fifth Judicial District of the New York State Supreme Court. According to press reports, Justice Townes is the first African-American woman to serve on the appellate bench in New York and the first African-American Judge elected to the New York Supreme Court in the Fifth District. She was also a judge of the City Court of Syracuse from 1988 to 1999.

Her extensive record of judicial experience commends her for this lifetime appointment, and I am pleased to join her home-State Senators in support of her nomination.

Today's confirmation will make the 178th judicial nominee to be confirmed for this President. With 78 judicial confirmations in just the past year and a half alone, the Senate has confirmed more Federal judges than were confirmed during all of 1995 and 1996, when Republicans controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total for the last Congress of the Clinton administration, when Republicans were in the Senate majority. We have already exceeded the totals for the last two Congresses leading up to presidential elections.

When Democrats controlled the Senate for 17 months in 2001 and 2002, we worked diligently to confirm 100 of President Bush's judicial nominees. We are now confirming the 78th in the other 24 months that have transpired during this most divisive presidency. With 178 total judicial confirmations in 3½ years, the Senate has confirmed more lifetime judicial appointees of this President than were allowed to be confirmed in President Clinton's entire term from 1997 through 2000. We have already surpassed the number of judicial confirmations during President Reagan's entire term from 1981 through 1984, and he is acknowledged to have appointed more Federal judges than any other president in our history.

The Republican Senate leadership has again chosen to avoid debate of the nomination of J. Leon Holmes and Judge Dora Irizarry. Just so that there is no confusion, it is the choice of the Republican Senate leadership to skip those nominations.

The Holmes nomination will take some significant debate. The nomination was sent by the Judiciary Committee to the floor without recommendation, a highly unusual circumstance. That means that there was not a majority vote in committee to report the nomination favorably. The committee disserved the Senate by not doing its job of fully vetting the nomination and reaching a consensus or even a vote on the merits.

It is also the decision of the Republican leadership to skip the nomination