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RPTR BAKER

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OVERSIGHT FAILURES BEHIND THE RADIOLOGICAL
INCIDENT AT DOE'S WASTE ISOLATION PILOT PLANT
FRIDAY, JUNE 12, 2015
House of Representatives,
Subcommittee on Oversight and Investigations,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:50 a.m., in Room 2322, Rayburn House Office Building, Hon. Tim Murphy [chairman of the subcommittee] presiding.

Present: Representatives Murphy, Burgess, Blackburn, Bucshon, Brooks, Mullin, Collins, Upton (ex officio), DeGette, Green, Welch, and Pallone (ex officio).

Also Present: Representative Lujan Grisham.

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Staff Present: Charles Ingebretson, Chief Counsel, O&I; John Ohly, Professional Staff, O&I; Chris Santini, Policy Coordinator, O&I; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Jessica Wilkerson, Oversight Associate, O&I; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Ryan Gottschall, Minority GAO Detailee; Chris Knauer, Minority Oversight Staff Director; Elizabeth Letter, Minority, Professional Staff Member; and Tim Robinson, Minority Chief Counsel.

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Mr. Murphy. All right. Good morning. I apologize for the delay, but we are here now. This is the hearing on the "Oversight Failures Behind the Radiological Incident at DOE's Waste Isolation Pilot Plant."

Today we will review a costly series of oversight failures at two important Department of Energy sites. These failures contributed to a radiological leak last year at one of the sites, the Waste Isolation Pilot Plant, known as WIPP, which serves to dispose in mined salt caverns certain types of radiological waste from our Nation's nuclear weapons programs.

This leak, along with a separate truck fire the week before, exposed management and oversight shortcomings both at WIPP and at one of the Nation's premier national laboratories, the Los Alamos National Laboratory. Los Alamos, it turns out, was the source of the radiological material and the errors that caused a reaction in the material that burst a container in WIPP's underground facility.

Since the incident, WIPP has been shut down, and the Department has embarked on remediation, training, and rebuilding that will cost taxpayers an estimated \$240 million just to restart limited operations next year. All told, it may ultimately cost more than \$500 million before full operations are estimated to commence in 2018, and there are reports of DOE fines or settlements of some \$73 million.

This was no small oversight failure, and the issues we will

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examine today raise broader questions about the state of the Department's oversight framework for operations and its various cleanup at nuclear sites.

The root cause of the radiological incident was established in a DOE report this past April. Basically, hundreds of containers were inappropriately packaged for WIPP disposal by workers at Los Alamos. They packaged waste mixtures with organic absorbants, which created reactive and ignitable waste forms.

The specific culprit was off-the-shelf organic kitty litter, and the use of this organic material was traced to someone writing down "organic" instead of "inorganic" -- a simple human error. But this is more than what happens when you don't pay attention in high school chemistry and spelling classes. This failure to catch an error reflected a much larger systemic failure.

Two years before the incident, Los Alamos actually stopped work that had been mixing waste with organics precisely because of the reactivity and ignition risks. The lab's so-called Difficult Waste Team, along with Federal site officials, directed a safety process change that would use inorganics as absorbants.

The problem was, over the next year and a half, no one in management or among Federal overseers made sure the new procedures were followed, so what they thought was fixed wasn't. And no one in management or at the Federal level reviewed the process to determine

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why workers had been creating dangerous mixtures in the first place -- a basic practice of an effective safety system.

As the Los Alamos Lab's own review noted, the fact that so many critical management, safety, and oversight mechanisms all failed simultaneously over an extended period of time are of significant concern.

Also of significant concern are patterns of oversight failure found to have occurred at the WIPP site. For example, at WIPP, both the contractor and Feds failed to identify or fix shortcomings in equipment and degraded conditions in the mine over a period of years. These errors led to the environmental release and added tens of millions to the cost of recovery operations.

The failures at these sites contribute to a long story of DOE struggles to conduct adequate oversight of its management and operating contractors, which are responsible for much of the core activities of the Department.

Just over 2 years ago, DOE and National Nuclear Security Administration, NNSA, officials came before this committee to explain security failures at the Y-12 National Security Site in Tennessee. The failures were notoriously exposed when several elderly peace activists penetrated the security perimeter of the most secure section of the site.

What was clear from that incident sounds very familiar today:

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What the Feds thought was working wasn't. Site officials trusted that contractors were doing what they were supposed to do without checking. Federal line oversight had failed.

We were told then that the successful reliance on department contractors depends on strong and clear lines of accountability and on meaningful and consistent measurement of contractor performance. We were promised that actions would be taken to address the shortcomings. Yet we have again learned from GAO that the DOE and NNSA have yet to make significant progress to make the necessary reforms with regard to measurement of contractor performance, and this is not acceptable.

Today we will hear from department officials and the GAO, all of whom can explain the costly oversight failures at WIPP and Los Alamos, what is being done, and what must be done to fix these problems at the sites and across the complex. I hope this hearing helps to identify what is necessary for DOE to develop an oversight system that can effectively identify, address safety issues and security issues before they become costly mistakes.

I now recognize the ranking member from Colorado, Ms. DeGette, for 5 minutes.

[The prepared statement of Mr. Murphy follows:]

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Ms. DeGette. Thank you very much, Mr. Chairman.

And, again, I want to thank you for your comity in holding the hearing till I got here. As you know, the President was briefing the Democratic caucus, and I felt like I owed him to listen to what he had to say.

And I am particularly glad you waited for me because when I heard your opening statement it was deja vu all over again to me, because I have been on this O&I panel for most, if not all, of the incidents that you discussed.

We have had over a dozen hearings since I have been here to examine oversight failures and contractor mismanagement at the DOE NNSA Nuclear Complex. A perusal of the GAO testimony today reveals a string of mishaps and management failures over the last decade involving these sites. And that is why, for years, DOE and NNSA have remained on the agency's high-risk list for Federal programs highly susceptible to mismanagement and waste.

The problems have been costly and disruptive. For example, in 2004, which was over a decade ago, there were so many incidents at Los Alamos that the lab director shut down the entire facility for several weeks to address them. A few years later, at a hearing on lab security, our beloved chairman emeritus, John Dingell, observed, quote, "I feel a little bit like this is the movie 'Groundhog Day.'" For some reason or another, DOE has proven itself incapable of managing this critical

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security and preventing recurring problems." That was in 2007.

Now, as you mentioned, in July 2012, the DOE NNSA complex was in the news again because these protestors with basic tools managed to cut the fence at Y-12 and gain access to the area surrounding a highly enriched uranium storage facility. This was supposed to be one of the most secure facilities in the country, but, as you said, a small group of aging activists, including an 82-year-old nun, were able to access the compound uninterrupted by security. And if you haven't seen those videos, just watch them. It is chilling.

As I said in a hearing about that incident, without good oversight, serious issues won't be identified and fixed, and the results could be disastrous. I can't think of any reason why we would want to decrease our oversight of these facilities, inhibit the ability of oversight to review site actions, or reduce accountability for those responsible for keeping the nuclear sites safe. That was in 2012.

Now, we quickly learned that the Y-12 fiasco was not an isolated event. Last year, a waste drum packed by a Los Alamos contractor managed to burst open and contaminate the Nation's only transuranic waste repository. Called the Waste Isolation Pilot Plant, or WIPP, this facility is supposed to house most of the Nation's low-level, cold-war-generated nuclear waste. This incident resulted in closing the facility perhaps for years. It will also cost the taxpayer millions of dollars to clean up.

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In the last several decades, we have seen the DOE use a range of strategies to oversee their contractors. And I do want to say I think the DOE has made some efforts. After concerns that hands-on oversight was burdensome and ineffective, DOE and NNSA adopted a less intrusive oversight strategy. The new model, which had reliance on contractor assurance systems, was supposed to let contractors assess performance and provide data for Federal oversight efforts.

Nonetheless, since the implementation of this strategy 5 years ago, we continue to have incidents that make me question this approach. I mentioned the security incident at Y-12. Y-12 was one of the first facilities NNSA affirmed as having in place an effective and mature contractor assurance system capable of identifying risks and weaknesses. But this system failed, and the committee had several hearings to see what went wrong. We received assurances from the DOE that they had learned lessons from the past and were committed to implementing the new management and performance measures. Nonetheless, the more recent incidents involving WIPP suggest this oversight framework is not where it needs to be.

So where are we now? I think it is safe to say this new oversight framework needs major retooling. Mr. Chairman, I don't know if we are back to square one. I certainly hope we are not. But, at a minimum, we need to establish a clear path forward. I hope DOE and NNSA will share some ideas so they can actually make progress in implementing

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the new framework. If excessive transactional oversight is not the answer and reliance on a contractor assurance system is not the answer, then what is the answer?

And we need to figure this out pronto, Mr. Chairman, not just because of these two incidents but because the missions at NNSA sites are critical to our Nation's security.

In response to the GAO report, NNSA outlined plans for a new corporate policy that will form a comprehensive framework for a contractor assurance system. I don't even know what that means, Mr. Chairman, but I hope we can get some answers today about how that new policy will result in significant and effective changes at the agency.

We have been going in circles, and we have to stop doing that. So I hope we can see some changes come out of the WIPP accident investigations and GAO's latest report. We are going to be vigilant, but I have to be honest, I am not overly optimistic.

Thanks, and I yield back.

[The prepared statement of Ms. DeGette follows:]

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Mr. Murphy. The gentlelady yields back.

I now recognize the gentlewoman from Tennessee and the vice chair of the full committee, Mrs. Blackburn, for 5 minutes.

Mrs. Blackburn. Thank you, Mr. Chairman.

And I am not going to take 5 minutes, and I will yield the time to whomever would like it. But I am going to pick up right where Ms. DeGette left off, talking about Y-12.

And as we conducted that hearing and the assurances that we were given that things were going to be more closely watched, and now we find ourselves, as Chairman Murphy said, looking at a hearing where someone either wasn't paying attention in spelling class or science class or didn't know the difference and went on to inappropriately use an organic kitty litter.

The problem for us is, not only is this expensive -- you are talking about \$551 billion being the estimate to clean this up, to clean it up, and to get the facility operational -- you also look at the impact that this has on nuclear-generated power and on storing that waste.

And in Tennessee, where Y-12 is located -- and I was up at Oak Ridge the week before last and over at TVA and out at the Watts Bar Plant. And the safe storage of that nuclear waste, as we bring the second Watts Bar reactor on line -- it is about 95 percent complete right now -- this is something of tremendous concern.

So we are looking for answers. And I think, more than just

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answers, we are looking for responsible action and a way to solve this so that best practices and protocols are in place and we are not finding ourselves back at a hearing saying, well, we learned a lesson, but we really didn't learn a lesson, and we took no actions from the lesson we were supposed to learn.

With that, Mr. Chairman, I will yield to the gentleman from Texas.

[The prepared statement of Mrs. Blackburn follows:]

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Mr. Burgess. I thank the gentlelady for yielding.

I have been on this subcommittee for over 10 years now. This has been a recurrent theme that comes up over and over again. So I want to echo what other members have said, that it is important to get this right and to get this solved. We are talking about the Nation's nuclear secrets. This should be the most closely guarded and where the greatest attention to detail should be placed to security issues, and we keep having to come here and discuss breaches.

I do want to acknowledge the help of the Government Accountability Office and, in particular, Allison Bawden, who is one of our witnesses today, who has been enormously helpful to our staff through this and other issues.

And, Mr. Chairman, I will yield back the balance of my time.

[The prepared statement of Mr. Burgess follows:]

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Mr. Murphy. The gentleman yields back.

We are waiting for the ranking member, Mr. Pallone, to come in, but while we are waiting for him, I thought I would at least take the time to introduce the witnesses, unless anybody else on this side wants the rest of his time? I suspect not.

All right. We will save some time here.

Today's panel is the Honorable Madelyn Creedon, the Principal Deputy Administrator for the National Nuclear Security Administration.

Welcome.

Mark Whitney, the Acting Assistant Secretary for the Office of Environmental Management at the Department of Energy.

Mr. Whitney is also accompanied by Theodore Wyka -- did I pronounce that correctly? -- the Chairperson of the Accident Investigation Board and the Chief Nuclear Officer in DOE's Office of Environmental Management.

We also have Allison Bawden, the Acting Director of the Natural Resources and Environment team at the Government Accountability Office.

Maybe I will just proceed, if that is okay with you, Ms. DeGette --

Ms. DeGette. Yeah.

Mr. Murphy. -- just to go ahead and start with the swearing in?

Ms. DeGette. Yeah.

Mr. Murphy. All right. So let's do that.

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So you are aware that the committee is holding an investigative hearing and, when doing so, has the practice of taking testimony under oath. Do any of you have an objection to testifying under oath?

Everyone agrees to do that.

The chair then advises you that, under the rules of the House and rules of the committee, you are entitled to be advised by counsel. Do any of you desire to be advised by counsel today?

All the witnesses say no.

In that case, if you will please rise and raise your right hand, and I will swear you in.

[Witnesses sworn.]

Mr. Murphy. The witnesses have answered "yes," so you are now under oath and subject to the penalties set forth in Title 18, section 1001 of the United States Code.

I will let our first witness start a 5-minute summary. At any point, we may have the ranking member then give -- so I will recognize you now, Ms. Creedon, for 5 minutes.

If you want to turn on the mic, pull it close, and watch the lights in front of you.

Thank you.

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STATEMENTS OF THE HON. MADELYN R. CREEDON, PRINCIPAL DEPUTY ADMINISTRATOR, NATIONAL NUCLEAR SECURITY ADMINISTRATION; MARK WHITNEY, ACTING ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY, ACCOMPANIED BY THEODORE A. WYKA, CHAIRPERSON, ACCIDENT INVESTIGATION BOARD, CHIEF NUCLEAR SAFETY OFFICER, OFFICE OF ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY; AND ALLISON B. BAWDEN, ACTING DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF THE HON. MADELYN CREEDON

Ms. Creedon. Thank you, Mr. Chairman, Ranking Member DeGette, and members of the subcommittee. I want to thank you for the opportunity today to discuss the radiological release at the Waste Isolation Pilot Plant, or WIPP.

I am pleased to be joint today by Mark Whitney, the Acting Assistant Secretary of Energy for Environmental Management. We have provided written testimony to the subcommittee and respectfully ask that it be submitted for the record.

On February 14, 2014, a radiological release occurred in the Waste Isolation Pilot Plant in New Mexico when a drum, which had been shipped from Los Alamos National Laboratory, experienced an exothermic

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reaction that led to overpressurization and breach, causing a release of a portion of the drum's contents.

The specifics of this radiological release at WIPP and the subsequent restart activities will be addressed by Mr. Whitney.

While the Department of Energy's National Nuclear Security Administration, NNSA, holds the overall management and operating contract for the Los Alamos National Laboratory, the Department of Energy's Office of Environmental Management is the program lead for legacy waste cleanup activities performed at LANL and for the operation of WIPP. NNSA is, however, responsible for the overall site operations.

That said, I want to assure you all that all of us at DOE take this unintentional release of radioactive material very seriously, as we do all significant events.

What is most troublesome about this event is that, as the accident investigation determined, it was preventable. It will also be costly to fix and has left us without a true waste repository for an indeterminate period of time. And this is simply unacceptable.

Today I will focus on the actions that the NNSA has taken since the event and highlight a few ongoing initiatives we are pursuing to improve the governance and oversight at NNSA sites.

NNSA and the Office of Environmental Management have taken corrective actions in response to the WIPP incident. This includes

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both long-term and short-term compensatory measures. These measures will address the underlying issues and problems that contributed to the errors in packaging the legacy waste.

NNSA and EM, working with the other components of the Department of Energy, have realigned the Federal program and oversight responsibility for legacy waste materials. The responsibility has been transferred from the local NNSA field office to a newly established environmental management field office.

We have also held our management and operating contractor at the Los Alamos National Laboratory responsible and accountable for their part in allowing conditions to develop that led to this event. The M&O's fee for operating the laboratory was reduced drastically. We did not grant a year of award term, and we took back a year of award term that has previously been awarded. Award term is a year of the contract. So we did not give them an additional year on the contract, and we took back a previously awarded additional year on their contract. We are also in the process of modifying this M&O contract to allow EM to have more direct control over their work at Los Alamos in the near term and then to modify their contracting strategy in the long term.

NNSA is also working on several fronts to improve our overall approach to site governance. We have kicked off two specific initiatives. The first is to examine our contracting strategy to ensure that we incentivize the right behaviors while also holding our

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labs and sites accountable. The second initiative is to better define the NNSA site governance model, with specific attention to identifying clear expectations regarding contract management and oversight and clarifying the roles and responsibilities between the NNSA field and headquarters elements and, in the case of Los Alamos, the Office of Environmental Management as well.

In conclusion, I want to assure you that the Department understands the seriousness of this event. We have taken numerous concrete and aggressive actions to address the specific events and are also looking at governance generally. These actions will help us ensure that we do not repeat the mistakes that gave rise to this incident and help improve operations across the entire NNSA enterprise.

With that, I thank you, and I look forward to your questions.

[The prepared statement of Ms. Creedon follows:]

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Mr. Murphy. Thank you.

Mr. Whitney, we will have you go next.

STATEMENT OF MARK WHITNEY

Mr. Whitney. Thank you, Mr. Chairman, Ranking Member DeGette, and distinguished members of the subcommittee. Thank you for the opportunity to share our commitment and vision on the Department of Energy's ongoing recovery of the Waste Isolation Pilot Plant.

Safe performance of work is our overriding priority, and the Department's first responsibility is to protect the workers, the public, and the environment. Safety first is the clear expectation behind all of our decisions and our activities. The Secretary and I continue to set the expectation for the EM workforce that safety is integral to accomplishing the mission.

WIPP's primary mission is to safely and permanently dispose of the Nation's defense-related transuranic waste, which is a byproduct of nuclear weapons research and production, facility dismantlement, and site cleanup.

On February 5, 2014, a vehicle used to transport salt caught fire in the WIPP underground. Workers were safely evacuated, and the underground portion of WIPP was shut down, but the fire resulted in minor smoke inhalation to six workers. It did not adversely, however,

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impact the public or the environment.

On February 14, 2014, a second unrelated event occurred when an air monitor measured airborne radioactivity close to the location where waste was being emplaced. No employees were underground at the time. The next day, low levels of airborne radioactive contamination were detected, the result of when a small amount of radioactivity leaked by the exhaust duct dampers through the unfiltered exhaust ducts and escaped aboveground.

As a result of these events, the WIPP repository is shut down and is currently not accepting waste shipments.

The Department established an Accident Investigation Board to fully investigate the event and understand the causes and factors that contributed to the radiological release. The AIB identified direct causes, root causes, and contributing causes to the radiological release.

While the investigation focused on the activities that contributed to the breached drum in the WIPP underground, the conclusions and analyses represent an opportunity to assess and benchmark all of our operations and apply lessons learned across the EM complex.

We have made considerable progress towards safely recovering WIPP over the last 16 months, including the immediate response to the incidents, our investigation to the incidents, the development of

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corrective action plans, and the issuance and implementation of the WIPP recovery plan.

We are strengthening safety management programs such as nuclear safety, fire protection, emergency management, and radiological control, reestablishing a bounding safety envelope, and responding to all of our oversight organizations' concerns.

Underground entries were necessarily limited in the weeks following the incidents, but they are now safely performed daily. Restoration of the underground includes radiological surveys, radiological buffers in noncontaminated areas, ground control stability inspections, roof bolting, and equipment maintenance.

Work is being performed also safely in contaminated areas. Adequate ventilation is required, however, for habitability of the underground, including dust removal during mining and removal of exhaust fumes during diesel engine operations. Increasing ventilation capacity is a principal requirement for the safe underground operations, and our plan is to increase ventilation over the next year to support resumption of operations and ultimately to increase the airflow back to pre-incident rates, although that will take several years.

EM has worked diligently to improve oversight at the headquarters and field level. To ensure continued health and safety to the workers, the public, and the environment, the Department must provide effective,

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comprehensive oversight of work at every phase and level. EM is committed to strengthening Federal and contractor oversight competencies. Many of these actions have already been implemented.

In summary, WIPP is an important national resource that we are working hard to recover. DOE will resume disposal operations at WIPP but only when it is safe to do so. The safety of workers, the public, and the environment is first and foremost. And we continue to keep the community and stakeholders, including Congress, informed of WIPP recovery in a transparent manner.

Thank you.

[The prepared statement of Mr. Whitney follows:]

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Mr. Murphy. Thank you.

Mr. Wyka, we understand you are not testifying today but you are going to be available to answer questions. Thank you.

Ms. Bawden, you are recognized for 5 minutes.

STATEMENT OF ALLISON B. BAWDEN

Ms. Bawden. Chairman Murphy, Ranking Member DeGette, and members of the subcommittee, thank you for inviting me today to discuss GAO's report on the framework established by the Department of Energy and its National Nuclear Security Administration for overseeing management and operating contractors. These M&O contractors are trusted by the government to achieve some of its most sensitive national security missions.

GAO has reported for decades on the management challenges DOE faces for contract administration and oversight. My testimony today highlights three findings from GAO's recently completed work on NNSA's framework for overseeing its M&O contractors, as well as preliminary observations from GAO's ongoing work that includes examining oversight of WIPP.

These findings from our work and the parallels drawn to oversight of WIPP are particularly important in light of two competing narratives about DOE oversight of M&O contractors.

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On the one hand, there are the series of safety and security incidents on which GAO and others have reported for years. Many of these incidents have indicated the need for better oversight, such as the 2012 security incident at Y-12, 2008 security performance issues at Livermore, and safety and security performance issues at Los Alamos in 2004 and 2006.

On the other hand, there is discussion of Federal micromanagement of M&O contractors and excessive and burdensome requirements that affect productivity.

DOE's current oversight framework, which was established in 2011 to bridge these two narratives, requires M&O contractors to develop assurance systems, or CAS, that provide data to help contractors drive continuous improvement in their operations and that can be leveraged, when appropriate, to improve the efficiency of Federal oversight by relying on the contractor-generated information from CAS.

A 2011 NNSA policy elaborates on DOE's framework by identifying assessments Federal overseers should conduct to determine when it is appropriate to leverage CAS for oversight. These are: the risk of an activity, the maturity of the contractor's CAS or a way of thinking about the reliability of the information provided by the contractor systems, and the contractor's past performance.

NNSA's policy describes balancing the oversight approaches that can result from these assessments. On one side is transaction-based

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oversight or direct oversight, such as inspections and performance testing, particularly for high-risk or high-hazard activities. And on the other side is system-based oversight, where NNSA can rely on contractor-generated information it receives from contractor systems.

In our recently completed work regarding NNSA's implementation of the framework for overseeing M&O contractors, we found the following:

First, NNSA has not fully established policy or guidance for implementing its framework to oversee M&O contractors. Specifically, at the headquarters level, NNSA does not have guidance to fully support conducting the three assessments required by its policy. While NNSA has some guidance for assessing risk, it has no policy or guidance for assessing the maturity of CAS or for evaluating past performance. We concluded that, without this policy or guidance, oversight approaches could over-rely or under-rely on information from CAS.

Second, NNSA field offices have developed their own procedures for conducting assessments of risk, CAS maturity, and contractor past performance; however, these procedures are not complete and differ among field offices. We concluded that differences among these procedures affect NNSA's understanding at the enterprise level of how oversight is conducted. For example, when field offices use different procedures for assessing CAS maturity, it is difficult to compare the maturity of these systems.

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Third, NNSA no longer uses the process it established in 2011 policy to review the effectiveness of oversight approaches in place at each contractor site and field office, including how CAS is being used for oversight. This process was discontinued after the Y-12 security incident and has not been replaced, in essence eliminating the one process NNSA had that would have allowed the agency to determine whether oversight approaches are consistently applied.

Regarding WIPP, our preliminary observations on oversight of WIPP underscore the importance of having clear guidance on when and how to rely on contractor information for oversight. Notably, according to DOE's Accident Investigation Board report, NNSA's Los Alamos field office, responsible for overseeing waste packaging, was over-reliant on CAS for environmental compliance oversight and that this reliance was not consistent with an NNSA review that observed CAS was still maturing.

Thank you again for having me today. I look forward to responding to your questions.

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[The prepared statement of Ms. Bawden follows:]

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Mr. Murphy. Thank you.

I now recognize the ranking member of the full committee, Mr. Pallone, for his opening statement of 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman, for letting me, you know, go a little late here.

Today's hearing obviously focuses on oversight failures at the Department of Energy's Waste Isolation Pilot Plant, or WIPP. And the incidents there raise broader questions about how to conduct effective oversight across the DOE and NNSA Nuclear Complex.

On this committee, there has long been bipartisan support for congressional oversight to ensure that DOE is effectively managing its contractors and keeping the nuclear complex safe. And DOE and NNSA have shown repeatedly that our continued oversight is needed.

For nearly two decades now, this committee, GAO, and DOE's inspector general have identified a wide array of safety and security issues facing DOE at NNSA sites. I was going to mention them. Some of them, perhaps all of them, have already been mentioned, but I did want to mention again.

In 2004, Los Alamos National Laboratory suspended operations after a student was partially blinded in a laser accident and classified information went missing. In 2006, a drug raid in a mobile-home park found a large number of classified documents that had been removed from an NNSA lab. In 2007, a GAO report revealed that NNSA weapons

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laboratory workers had faced nearly 60 serious accidents or near misses over the previous 7 years. In 2008, GAO found security and protection of weapons-grade nuclear material severely lacking at Lawrence Livermore National Laboratory due in part to NNSA's deficient oversight. And then, in 2012, three trespassers managed to gain access to a secure area directly adjacent to some of the Nation's critically important weapon-related facilities at Y-12 National Security Complex in Oak Ridge, Tennessee.

This committee has held a number of hearings on these topics to understand what went wrong and what DOE and NNSA were doing to ensure this didn't happen again in the future. But now we find ourselves dealing with today's topic, which has been mentioned already, in February 2014, when WIPP experienced both an underground truck fire and a radiological release from a nuclear waste drum within a 9-day period, and operations at WIPP were subsequently shut down. The facility obviously has not reopened, and it may cost over half a billion dollars to make it fully operational again.

I just think it is an alarming record. The DOE and NNSA facilities guard some of the Nation's most dangerous nuclear materials, and for too long the DOE and NNSA have allowed mismanagement and oversight failures to continue, and we need answers today about how that will change.

Effective contractor oversight is a key component of those

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changes. DOE and NNSA rely heavily on contractors to carry out their missions activities. In 2010, DOE changed its system for contractor oversight to be more hands off, and they planned to rely on the contractor assurance systems developed by the contractors themselves to catch problems and provide data for Federal oversight efforts.

In our 2012 hearing on the Y-12 incident, the committee concluded that DOE and NNSA needed to do a better job of overseeing their contractors. Yet here we are today with recent documentation from GAO and DOE's own accident investigation boards that contractor assurance systems across the DOE and NNSA complex may not be capable of identifying risks and weaknesses.

Obviously, we have heard the GAO, and I hope to hear concrete plans from DOE and NNSA for amending their systems for contractor oversight.

I just want to close by talking about how many billions of dollars we have spent to fix these repeated problems across the DOE. DOE's Office of Environmental Management and NNSA have been on GAO's high-risk list for a long time, largely due to their struggles to stay within cost and schedule estimates for most major projects.

Regarding what happened at WIPP, NNSA's written testimony today says, and I quote, "The release, which was subsequently determined to have been avoidable, will be costly to fix and has left us without a transuranic waste repository for an indeterminate period of time," unquote.

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The bottom line here is that, when these projects go off the rails, taxpayer dollars are at risk, and so are important projects that national security depends on. We need to make sure taxpayers' money is spent more wisely.

And I want to thank our witnesses and this panel.

You know, the committee spent decades doing oversight on these issues. Both of our chairmen and our Ranking Member DeGette have been involved in this for a long time, and we do intend to keep a close eye as we move forward. Thank you.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

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Mr. Murphy. Thank you.

The gentleman yields back.

I now recognize myself for 5 minutes of questions.

First of all, Mr. Wyka, you ran the Accident Investigation Board and determined that the radiological incident was preventable. Am I correct?

Mr. Wyka. Yes, sir.

Mr. Murphy. And you also determined the systemic root cause was that site offices, or the Feds, I think you said failed to ensure that Los Alamos adequately implemented hazard controls in waste packaging. Is that correct?

Mr. Wyka. Close. It's that they inadequately developed and implemented repackaging and treatment procedures that incorporated suitable hazard controls and included a rigorous review and approval process.

Mr. Murphy. Thank you.

And that contributing cause was failure of oversight from line officers at headquarters; is that correct?

Mr. Wyka. There were several contributing causes or what I would call missed opportunities. And those include in the characterization and certification program and process itself, in the land safety procedures that they use, the hazard identification and control mechanisms and processes that they used at the lab, as well as the

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training and qualification of both the workers and the first-level supervisors, the contractor assurance system, and oversight at all levels, including the Federal office and headquarters.

Mr. Murphy. So multiple levels of failures of oversight.

Mr. Wyka. Yes, sir.

Mr. Murphy. Thank you.

Ms. Creedon and Mr. Whitney, if you could answer this, too. Do either of you have any disagreements with the Department's Accident Investigation Board findings?

Ms. Creedon. No, sir.

Mr. Murphy. Mr. Whitney?

Mr. Whitney. No, sir.

Mr. Murphy. So you agree that this incident was preventable if handled differently?

Ms. Creedon. Yes, sir.

Mr. Whitney. Yes, sir.

Mr. Murphy. Thank you.

Now, Ms. Creedon, you were confirmed for your position last July 2014, but you actually have long experience with DOE and NNSA and are generally familiar with the Department's oversight challenge. Is that a fair statement?

Ms. Creedon. That's correct.

Mr. Murphy. Thank you.

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So testimony before this committee over the years has identified numerous security problems -- you heard that stated by multiple members up here -- but also safety process problems at Los Alamos which go back 15 years. And we heard a partial list in the GAO testimony this morning.

To take another example, in testimony just 2 years ago, we learned that the Los Alamos site office -- the Feds had closed half of 62 safety system corrective actions without adequate verifications.

So is it truly any surprise to you that Los Alamos Feds did not know that workers spent a year and a half incorrectly mixing hundreds of barrels of radiological waste?

Ms. Creedon. Mr. Chairman, one of the fundamental problems with this particular failure is that -- well, there are many, as the report indicated, but one of them is clearly the failure of the CAS approach and the CAS system at Los Alamos. So Los Alamos did not have a mature CAS system, and it had not picked up these issues.

One of the primary weaknesses in the CAS system, as we have now gone back and looked at it, was it was inadequate with respect to overseeing subcontractors. And this is a fundamental problem.

The other problem -- and this is a problem that we have begun to address already -- is that the lines of oversight at Los Alamos were not clear. So one of the Secretary's initial actions and responses was to clarify these lines of authority and responsibility for

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oversight at Los Alamos.

And the first action that we took was to take the Environmental Management personnel who were imbedded in the NNSA field office and Mr. Whitney, at the direction of the Secretary, established a standalone EM field office. And then I will let him go into the details of that particular field office.

But the other thing that we are doing is also changing the way that they oversee the contract itself so they will have more authority and responsibility so these lines will be clearer in the future.

Mr. Murphy. So, along those lines, let me probe a little bit deeper. So, from your experience, what is it that makes ensuring effective safety systems oversight so difficult to sustain at Los Alamos?

Ms. Creedon. So one of the things that I think we have to look at is ensuring that the contractors really do have in place for their own purposes an internal oversight capability.

The Department historically and NNSA historically has focused on those very high-hazard activities of the criticality, safety, and those are the ones that have had the focus and attention. NNSA historically has had to balance some of its oversight responsibilities. So we have about 75 people in the Los Alamos and NNSA field office, and there are on the order of 12,000 contractor employees at Los Alamos. So, with that ratio, we have to make sure that our initial focus, our most intense

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focus is associated with those high-hazard activities.

And these activities that were associated with the repackaging of this legacy waste in this overarching construct were considered to be low-hazard activities. So for that, we rely on the systematic approach at Los Alamos.

Mr. Murphy. So it being low -- well, I see I am out of time. I will follow up with that later on. Thank you.

Ms. DeGette, you are recognized for 5 minutes.

Ms. DeGette. I want to thank all of our witnesses for coming today. And this is an issue that we have been grappling with for many years, as you heard in my opening statement.

I wanted to ask you, Ms. Bawden -- I understand that DOE contract management, specifically EM and NNSA, have been on the high-risk list for a long time. Is that correct?

Ms. Bawden. Yes.

Ms. DeGette. Now, that is a list that GAO places agencies and programs on that are at increased risk for waste and mismanagement; is that right?

Ms. Bawden. That's right.

Ms. DeGette. Now, in 2010, the Department launched an effort to reform its approach to oversight. I know you are familiar with this memo, the 2010 memo from Deputy Secretary Poneman called "Department of Energy Safety and Security Reform Plan"; is that right?

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Ms. Bawden. Yes.

Ms. DeGette. Now, in the safety reform section, it states that DOE will provide contractors with, quote, "the flexibility to tailor and implement safety programs in light of their situation without excessive Federal oversight or overly prescriptive departmental requirements."

Are you familiar with that section?

Ms. Bawden. Yes.

Ms. DeGette. Now, it says the same thing for security reform. Is that right?

Ms. Bawden. Yes.

Ms. DeGette. Now, Ms. Bawden, under this new system, NNSA was supposed to be able to rely on information from contractor assurance systems put into place by the M&O contractors, correct?

Ms. Bawden. Yes.

Ms. DeGette. And the NNSA was supposed to affirm that the systems were mature and effective. Is that right?

Ms. Bawden. That's correct.

Ms. DeGette. Now, one of the first NNSA sites to receive that affirmation was the Y-12 facility in Tennessee, correct?

Ms. Bawden. Yes.

Ms. DeGette. Now, after that facility was affirmed, that is when we had the security fiasco where the nun and the other people were able

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to penetrate the compound. Is that right?

Ms. Bawden. Yes.

Ms. DeGette. So I understand that after that failure they scrapped the affirmation process, correct?

Ms. Bawden. Yes.

Ms. DeGette. And so, really, they had no way of affirming the maturity or usefulness of these systems.

Ms. Bawden. They do not have a current process in place.

Ms. DeGette. All right.

Now, let me talk to you for a minute about WIPP. I understand when the DOE conducted its accident investigation it found that the contractor assurance systems for the two M&O contractors affiliated with WIPP and Los Alamos failed to identify the risks associated with that disaster. Is that right?

Ms. Bawden. Yes.

Ms. DeGette. Now, your team just completed a comprehensive audit, and you found that the NNSA doesn't have the capability to evaluate which sites have viable contractor assurance systems capable of giving the agency the data that it needs to oversee the contractors that run these critical facilities, correct?

Ms. Bawden. They do not have policies in place. That's correct.

Ms. DeGette. Okay.

And the contractor systems at Y-12, Los Alamos, and WIPP all

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failed to prevent major security and safety incidents, correct?

Ms. Bawden. Yes.

Ms. DeGette. Now, you raised concerns about these contractor assurance systems across the entire NNSA complex, correct?

Ms. Bawden. Yes.

Ms. DeGette. So, at this point, what approach or system is NNSA using to conduct oversight at its sites, where literally billions of dollars are being spent?

Ms. Bawden. Thank you for the question.

NNSA is utilizing many different approaches at its sites across the spectrum of available transactional and systems-based options. What we found is that you really have to go to each individual site to figure out whatever site approaches they're taking, and information about oversight broadly was not available at the headquarters level

Ms. DeGette. So it is really just sort of, now, catch as catch can, whatever people think at the different sites. Would that be a fair --

Ms. Bawden. The field offices are making their decisions at each site.

Ms. DeGette. The field offices are making their decisions at each site.

Ms. Bawden. Uh-huh.

Ms. DeGette. So does that approach give you confidence the

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Federal Government is applying effective oversight over its M&O contractors?

Ms. Bawden. I think the recommendations that we made that were aimed at improving policy, consistency, and fully fleshing out this framework would help give us that confidence.

Ms. DeGette. Now, you know, Ms. Creedon, I know that you are all trying to grapple with this, and it has been a complex and difficult problem that people have been trying to grapple with, really, ever since I have been on this committee, which is 1997.

But I have to say that, since 2002, DOE policies and orders have required that all these contractors have these systems. But you hear Ms. Bawden say that the compliance is sort of catch as catch can among the different agencies.

What is your response to that?

Ms. Creedon. As Ms. Bawden said, when the Y-12 event occurred, the CAS system at Y-12 had been affirmed. And my understanding at the time was that NNSA then determined that, clearly, the approach that they had taken to affirming these contractor assurance systems was not working and they set it aside.

Since I started at the Department of Energy -- I was confirmed in July and started in August -- one of my responsibilities is as the fee-determining official, and part of that is to look at how all of these contractors are performing. So, among other things, we at the

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Department have changed some of the methodologies with respect to the contractor and the contract and have changed some of the performance criteria.

But what I have started to do, which in some respects is a compensatory measure for some of these differences, is I meet for an entire day with all of our field office managers every quarter, and we go through exactly what's going on --

Ms. DeGette. Okay. I don't mean to stop you, but my time has expired, and I think it would be really helpful if you could supplement your answers to deal exactly with this problem that we have of now no cohesion.

[The information follows:]

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Ms. DeGette. Thank you for your comity.

Mr. Murphy. We let you go because it was important questions you were asking.

Dr. Burgess, you are recognized for 5 minutes.

Mr. Burgess. Thank you, Mr. Chairman.

Mr. Wyka, I have here, I think, three accident investigation reports from the Department of Energy Office of Environmental Management, and in each one there is a judgment-of-need list at the end of the report. And I haven't added them up myself, but I am told by staff that there are 122 judgments of need in these three reports that the Department and the contractors will need to address.

So let's just ask the obvious question. This is 122 judgments of need. Is that a lot?

Mr. Wyka. It's a big number, but I actually don't go for a quota for a number. I look at the issues and develop the conclusions and judgment of needs based on what we find until we sort of resolve the problems.

A lot of those judgment of needs are more extensive than others. Some of them are extent of conditions rather than just looking at the event at Los Alamos. It's going to require, you know, the Department to look at it from a programmatic perspective as well as enterprise-wide.

Mr. Burgess. But, say, going back over the last 10 years, many

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of these things seem to be recurrent themes. Am I wrong to make that assumption?

Mr. Wyka. No, sir, you are correct. And that's what the board concluded in all three investigations, that a lot of these issues were brought up in other reviews and assessments, both internally and externally, and they weren't addressed as repeatable issues, which was another missed opportunity --

Mr. Burgess. Well, why not?

Mr. Wyka. -- in several functional areas.

Mr. Burgess. Why not? I mean, again, I have been on this subcommittee for 10 years. We have been dealing with these problems every year that I have been on the subcommittee. The obvious question is why not, or what is it going to take to get these things brought up to standards where we won't be reading these types of headlines and, quite honestly, putting our workers and contractors at risk?

So do we have an answer for that?

Please.

Mr. Whitney. If you don't mind, sir, I will answer that for the Office of Environmental Management.

Yes, Ted was exactly right. There were -- even with respect to the EM contractor at the WIPP site, there were assessments over the past years, corrective actions put in place, and they were not tracked accordingly.

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We are going to resolve that issue. Among many other things that we are doing with respect to oversight at headquarters, we have developed a more robust corrective action tracking system, a corrective action software hub, and we will assure the followthrough on all corrective actions.

We are also increasing resources in the oversight area for headquarters for our Safety, Security, and Quality Programs office that really did not have the staffing to implement a robust headquarters oversight program.

We have done the same at Carlsbad field office, increasing resources, but, just as importantly, we have reorganized the office there. The office previously had the production or the waste emplacement group, the folks that were responsible for the program, and the folks that were responsible for oversight in the same office. And, in fact, unfortunately, some folks wore two hats. They were responsible for emplacing the waste and for oversight of that activity, which is clearly not the right way to approach it.

So we have reorganized into an Office of Program Management and an Office of Oversight, ensure that all the position descriptions accurately reflect the oversight responsibilities. And those are being pulled into performance plans of the Federal employee.

We are doing this across the board at headquarters and revamping our oversight program in response to the AIB reports and part of our

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corrective action planning process to include really developing a more robust oversight arm. There will be a baseline program as well a program that looks at trends across the complex and ensures that when a trend develops --

Mr. Burgess. Yeah. If I can just interrupt you, because I am going to run out of time. This all sounds wonderful, and I have the transcript from the hearing we had after the Y-12 incident 2-1/2 years ago, and I think the same thing was said to us then. So, I mean, again, that is the question.

And, I mean, is Secretary Moniz satisfied with this? Does he think this is acceptable from your department, from the Department of Energy?

Mr. Whitney. Sir, I won't speak on behalf of the Secretary, but I believe, as Madelyn and I both endorse the recommendations from the AIB report and realize things need to be corrected, we are taking an approach that I know the Secretary is supportive of, which is ensuring that the recommendations, the findings from the Accident Investigation Board reports we are sharing across the complex with the EM folks.

We have worked directly -- Ted has -- with each site office to give individual briefings of the AIB findings, to talk about lessons learned, where there may be extent-of-condition issues at that site, as well. And then, later this month, we will have all of the field offices managers in to --

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Mr. Burgess. I don't mean to be rude, but I am going to interrupt, because they are going to cut me off here in a moment.

Acting Secretary Poneman, last time we had this discussion, over 2 years ago, he said: Our management principles say that we will only succeed by continuous improvement. That was part of the process, so it wouldn't just be mindlessly continuing to check the box, but it would be vigorous and aggressive. I am sorry. We missed the mark, and we need to do better.

Thank you, Mr. Chairman. I yield back.

Mr. Murphy. I thank the gentleman.

I now recognize Mr. Pallone for 5 minutes.

Mr. Pallone. Thank you.

Mr. Whitney and Administrator Creedon, since 2002, DOE policies and orders have required that each DOE M&O contractor have a contractor assurance system.

In 2011, DOE sought to increase its reliance on these systems for oversight purposes; is that correct?

Ms. Creedon. That's correct.

Mr. Pallone. Okay.

Now, let me just read from the WIPP accident investigation report. It says, and I quote, "Nuclear Waste Partnership, the contractor that packed the drum, has not fully developed an integrated contractor assurance system that provided assurance that workers perform

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compliantly, risks are identified, and control systems are effective and efficient."

And then, I quote, "The Los Alamos National Security Contractor Assurance System was not effective in identifying weaknesses," end of quote.

So, again, to both of you, why were valid risk systems not in place, and aren't they required to have them?

Mr. Whitney. Yes, sir. Thank you for the question.

One, just a correction. Nuclear Waste Partnership did not pack the drum. They operate the WIPP facility.

Mr. Pallone. Okay.

Mr. Whitney. But you're exactly right, and we agree with the AIB findings, which stated they did not have an adequate contractor assurance system in place.

Unfortunately --

Mr. Pallone. And they were required to have them?

Mr. Whitney. Yes, sir.

Mr. Pallone. Okay.

So let me ask Ms. Bawden, then, given these findings, the Accident Investigation Board made recommendations that M&O contractors, NNSA, and the Department put in place viable contractor assurance systems and improved field office and headquarters oversight of them. Your recent report, however, found that NNSA's efforts to do this across

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the nuclear complex has not been adequate or complete.

So if I could ask Ms. Bawden, weren't these contractors already supposed to have the contractor assurance systems in place?

Ms. Bawden. Yes. They were required.

Mr. Pallone. And what gives the GAO confidence that NNSA or EM, for that matter, can adopt the accident report recommendations on approved oversight, given the findings of your recent report?

Ms. Bawden. Our findings, similar to what the Accident Investigation Board report found, were that revisions to policies, improvements in policies are needed. And the proof is really going to be in the implementation of those policies once they're completed. And we will look at that as part of the followup on the recommendations that we've made.

Mr. Pallone. But what -- you know, so, again, I will ask Administrator Creedon and Mr. Whitney.

I mean, I guess you've, you know, been kind of answering this question already, but, you know, why should we have any confidence that, you know, things are going to change?

Ms. Creedon. You know, that's -- that is an extraordinarily difficult question. And it is certainly something that the Secretary is committed to, the Administrator is committed to, I am committed to, is trying to get this right.

It's pretty clear that the processes that were in place when this

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event happened weren't right. They didn't catch the events. The contractor assurance system didn't catch what was going on. We didn't catch what was going on.

And so now we've done a bit of a pause, and we are now in the process of once again trying to put in place these policies that will figure out how to ensure that this contractor assurance system is reliable.

One of the measures, I think, going forward is to see if we begin to agree with them. So, even in the last year, it's pretty clear that the contractor assurance systems at some sites are better than other sites. And it's putting these processes in place, which we've embarked on doing again. We hope we get it right this time.

Mr. Pallone. All right.

Let me just ask Mr. Whitney, you know, about the cost. I mentioned in my opening -- there's only a minute left here.

How much is it going to cost to make WIPP fully operational again? And when do we expect that to happen? And what are we losing by shutting down WIPP for several years? How much is that going to cost the Department?

Mr. Whitney. Yes, sir.

We anticipate the cost to resume operations -- which, initially, our target for that is by the end of March of 2016 -- will be approximately \$242 million.

To resume operations at the pre-incident pace will require

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additional ventilation, and that will require a capital construction project. And the rough order of magnitude of where we are in the planning process for that project is between \$77 million and \$310 million.

So I can't say exactly how much it will cost to get to the point where we were pre-incident, but it will take several years to get to that point.

Mr. Pallone. All right. Thank you.

Thank you, Mr. Chairman.

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[11:40 a.m.]

Mr. Murphy. Thank you. The gentleman yields back.

Now I recognize Mr. Bucshon for 5 minutes.

Mr. Bucshon. Thank you, Mr. Chairman.

Again, this is another instance, I think, that maybe a lot of good people are put in a bad spot. And I appreciate all your testimony and what you are trying to do to improve the situation.

From your testimony, Ms. Bawden, it appears that the oversight framework shifts from one administration to the other. This is not a criticism of any administration in general. My concern is that come a new administration, whomever that may be, that somebody may want to develop a whole new approach to oversight.

I fully understand that political appointees carry out policy issues of whatever administration is in place. However, it seems to me on critical issues like this that maybe there needs to be people in charge that span administrations, that don't have the ability to change policy every time something changes. That doesn't make any sense to me.

And the reason I say this, because across the government what happens is agencies wait you out. If the agency itself, as a whole,

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doesn't like what you are trying to do, they just wait you out until the next people come, and they sustain a problem that just keeps happening.

You have heard from many of the members who have been on this subcommittee for years, maybe decades, that this is a recurring theme. It is going continue to recur. We are going to be here probably 2 or 3 years from now, and people in your positions, who are from the next administration, are going to be, unfortunately, put in front of us trying to explain what an agency has been doing, literally, for decades that you can't change, and that is unfortunate.

So, Ms. Bawden, do you think this is wise, this is a wise way to run something as critical as this? I mean, is this wise?

Ms. Bawden. What we looked at in the course of our review was the policy that was in place and how it has been implemented. With respect to part of the question that you asked on sort of leadership and political leadership, the Mies-Augustine panel that was commissioned by Congress to review governance did look at that issue, but GAO has not.

Mr. Bucshon. Again, it is not a criticism of political appointees. This is a criticism of a system that may not be wise in certain critical areas of agencies. I get you are going to have a secretary of energy, I get you are going to have people appointed down the line, but certain areas, maybe, it is just not appropriate.

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I mean, Ms. Creedon, what do you think? First of all, you are a graduate of University of Evansville, which is in my hometown, so welcome.

What do you think?

Ms. Creedon. So I think one of the issues now is the NNSA has been the subject of a number of investigations over the last several years -- I mean, for decades actually, but a lot of them over the last several years -- and they are all very critical. And one of the things that we have been seeing is we do, the Federal Government does an annual Federal Employees Viewpoint Survey, and by and large the workforce at NNSA is very good. The workforce at our labs are --

Mr. Bucshon. And, again, I want to make it clear, I am not criticizing the workforce. It is the system, right?

Ms. Creedon. Exactly. They are very good. But part of the problem is, they are not very happy and they are not very happy with the state of affairs. So I am very hopeful this time that they want to get out of this hole. Everybody wants to get out of this hole.

Mr. Bucshon. And I am sure they do.

Ms. Creedon. So hopefully as we work towards it this time, we can get something in place that will be enduring and everybody gets out of this hole so that they are not continually the subject of very unflattering reports.

Mr. Bucshon. Understood.

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Mr. Whitney, do you have any comments on that?

Mr. Whitney. Only that I am a career employee.

Mr. Bucshon. Then you have a very good view of this, which you probably can't say here publicly, but I understand.

Mr. Whitney. I started this assignment in May of last year. My predecessor was also a career employee. We haven't had a confirmed assistant secretary for several years. But we do have a very dedicated, strong workforce, as you pointed out, that is competent.

Mr. Bucshon. Yes.

Mr. Whitney. And I completely agree, it is not the workforce. We have systemic issues that were brought out by the AIB report that we need to fix.

Mr. Bucshon. I think that is accurate.

One of the other things that frustrates me is you can never put your finger on who actually is responsible at the end of the day, right? And we need to hold people more responsible, whether that is career or political appointees.

Any time we try to ferret that out here in oversight hearings, at the end of the day, there is no one person that we can put our finger on, and that is very frustrating.

Quickly, the cost, \$70 million in contractor fines, half a billion dollars for the taxpayer potentially. I mean, is that a fair way to divvy that up? I mean, if we determine who is responsible, it seems

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to me if it is the agency responsible, then fine. If it is the contractor responsibility, then they should pay the whole thing. You can submit that answer for the record.

[The information follows:]

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Mr. Bucshon. I yield back, Mr. Chairman.

Mr. Murphy. The gentleman yields back now.

Now we recognize Mrs. Brooks for 5 minutes.

Mrs. Brooks. Thank you.

Continuing a bit on that line of questioning, I am a former U.S. attorney, and so I have led a Federal office where career prosecutors and career other staff, obviously, are there day in and day out through administrations, and different priorities come from different administrations and different leadership styles and so forth.

But I think that because those of you who are the career, Mr. Whitney and Mr. Wyka, both career people, this is a bit of an opportunity for you to -- and because I think other people of this panel -- I am new to this committee, so I have not been here time and time again asking these questions like our chair and our ranking member have been. And I think this is a great opportunity for you to share with us what you would like to see happen in the best-case scenario, what are the improvements that you believe need to be made.

For instance, looking at GAO's report and seeing what their recommendations have been and seeing that we just cannot seem to get this right, site after site and different sites, and I appreciate, Ms. Creedon, that you are spending days at each site now each quarter, but, yet, when you leave someday, how will that be institutionalized? And so while you might be really moving it in the right direction, how

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will we get to it being so systematic and so institutionalized that the oversight of this most critical infrastructure in our country is not left to random changes in how the oversight is conducted?

And so I would really like to hear from the career folks what you would like to see improved and what policies you would like to see in place with respect to the contractor oversight or whether or not there should be more direct oversight. And so I would like to get your thoughts in my now 2-1/2 minutes left from both of you what your -- and not that I don't appreciate what the others have to say, but this is an opportunity for career folks to tell us what needs to be fixed and how do we make sure these things don't happen again. What is it?

Mr. Whitney, start with you, and then Mr. Wyka.

Mr. Whitney. Yes, ma'am. Thank you.

I think, most importantly, for the EM program, we cannot treat this as an opportunity only to fix WIPP and the incident there. We have to use this as an opportunity to fix our oversight across the EM complex.

Mrs. Brooks. Agreed.

Mr. Whitney. We very much are focusing in that area and making sure that not only are we sharing lessons learned, engaging directly with all our site managers, all our Senior Executive Service folks in the field to go over the lessons learned, and thankfully Mr. Wyka has agreed to work with us on that and to really engage and look at lessons

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learned, but also the oversight function.

The contractor assurance system is one component of our overall oversight function. It is an important component. It is a contractor's component. But we have to make sure that as we move forward and we build a more robust oversight element at headquarters, that we are doing that in the field too and not just at WIPP, but at each of our field sites.

Mrs. Brooks. Mr. Wyka.

Thank you.

Mr. Wyka. Thank you for the question.

I think probably a key is to make sure that we have acceptance at all levels, not only at the senior level, but the mid-levels, as well as the worker level, that we have problems to fix, and to use this as an opportunity, as Mark mentioned, to almost look at ourselves in the rearview mirror and look at the analysis conclusions, the judgment of needs, the program processes, oversight breakdowns at all levels, look at our respective programs, no matter what they are, to sort of see if we are seeing those same type of precursor-type activities.

Mrs. Brooks. And how does that occur now when you need to do those evaluations at your sites? Is it just with the top level? Or how do those process improvements, self-examination exercises take place now?

Mr. Wyka. I think one way is to look at the way we look at our CAS systems. Rather than to look at them in terms of an affirmation

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or are they in place, the way we did it with the Accident Investigation Board -- we didn't do a CAS assessment, we looked at the event -- is to look at them in terms of the functional areas -- Radcon, work controls, nuclear safety -- and to look at the elements with respect to those functional areas, are they actually working effectively.

Mrs. Brooks. But then how is that shared with every single person in the facility?

Mr. Wyka. There is a lessons-learned program, and through what we are doing now and through debriefings and bringing our field managers together and having them required to read the documents and then we will discuss what are our corporate next-step options as an enterprise.

Mrs. Brooks. Thank you. My time is up.

I yield back.

Mr. Murphy. Thank you.

Now I recognize Mr. Collins for 5 minutes.

Mr. Collins. Thank you, Mr. Chairman.

I am new to this committee and shocked, I guess would be a good word, from what I am hearing. I come from the private sector. I am an ISO guy. I am an ISO 13485, my biotech. I run a select agent operation. We deal with all the bioterrorism agents. I deal with anthrax. We inactivate it. We make sure it is inactivated. My folks wear spacesuits. We have double airlocks. We don't make mistakes.

Why don't we make mistakes? Because we have people in charge who

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know what they are doing. Clearly, that can't be said for your agency.

Now, let me just state a fact. You can't defend the indefensible. But would any of you like to try, or should we move on?

So the next question is, who was fired over this, and how many people?

Ms. Creedon.

Ms. Creedon. The NNSA held responsible the contractors, the contractor operator.

Mr. Collins. Were they fired?

Ms. Creedon. So we did two things --

Mr. Collins. Did you fire them?

Ms. Creedon. We did not fire them, but what we did is we took all their fee and we did not --

Mr. Collins. Did you sue them?

Ms. Creedon. Well, we took all of their fee, and we took back a year of contract award that had been previously given.

Mr. Collins. Oh, my goodness. And you think that was good enough?

Ms. Creedon. It is all of their fee.

Mr. Collins. That is not enough. The taxpayer is on the hook for \$500 million. Did we sue them?

Ms. Creedon. The laboratory director also relieved the seven senior managers who were responsible for the work that was done at Los

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Alamos.

Mr. Collins. So he, obviously, wasn't involved or responsible because we didn't fire him? I am just saying, this is an example. I am somewhat surprised you are trying to defend this. You can't defend the indefensible.

In the private sector, you would probably be fired. The contractor would be relieved. The contractor would be sued for the \$500 million. We would put him into bankruptcy, if that is what it took, because I think what you are hearing me saying is through his incompetence and the incompetence of the people who didn't have the -- this is procedures.

Are you familiar with lockout-tagout? Well, when electricians, we would run the risk of them getting electrocuted if they are working on electrical equipment. It is fail-safe. You have keys. You have training. You can't be working on a live box with these procedures in place.

This is fundamental. I mean, I am new to this committee. I am just beyond any comprehension that this occurred, that anyone involved is still working there. And it rests with the person in charge, the Secretary, yourself and others, the contractor. In the private sector they would have been terminated, they would have been sued, two or three levels of people would have been fired, a fix would have been in place, an emergency SWAT team would have been put in.

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Industry operates, my business operates in areas of critical -- I mean, we are growing bioterrorism agents. We have people wearing spacesuits. We have to know nothing can go wrong. I mean, nothing can go wrong. And when people say, "Why don't you sleep well at night some nights?" that is some of the reasons.

But I hear this very nonchalant -- we took away -- I mean, do you realize how ludicrous it is that the organization in charge of this did what they did and cost the taxpayers \$500 million and they are still there? And you think that taking away a year of their extension works? I just don't know what world you guys live in other than the bureaucratic world the public gets so upset by. I just would not only expect more, but I am surprised you are still working there.

I mean, do you see where I am coming from? The taxpayers deserve more. And is there a reason we haven't sued the company to reclaim our \$500 million? Our government sure went after Toyota. We are going after GM for other things like that. Why aren't we going after this contractor?

Ms. Creedon. So on the Los Alamos operating contractor, we did everything that we can do under our contract with them. We took all of their fee, and we took back a previously awarded --

Mr. Collins. So we have a contract that doesn't state that they are responsible for something? When you breach a contract, and I would think this would be considered some breach of the contract, whatever

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the contract says is out the window. Taxpayers lost \$500 million. You are saying we have a contract that doesn't allow us to recover that, or we can't sue on another basis, of gross incompetence? I would think gross incompetence and negligence would allow you to move forward on a suit. Maybe you lose the lawsuit, but I guess what I am hearing, we didn't even bring it. Did we?

Ms. Creedon. No.

Mr. Collins. No.

I just find this whole thing unacceptable and would not only ask you to do better in the future, but somebody should be looking in mirrors and deciding, if they are not capable of doing the job, do us a favor and resign. If someone else is in charge and they are willing to put up with this level of incompetence within our own organization and the contractor, I think, again, they need to look in the mirror, and for the good of the Nation think about whether they should go to work tomorrow.

Anyway, my time is over. I yield back.

Mr. Murphy. The gentleman yields back.

Ms. Creedon, just to clarify, who was in charge at the time this last problem occurred? Who had your position as a Principal Deputy Administrator of NNSA?

Ms. Creedon. At the time that this event occurred, well, neither I nor the current Administrator were in place at that time. And I am

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trying to remember. I think at the time this was in place Tom D'Agostino was the Administrator and Neile Miller was the Principal Deputy Administrator. And they are, obviously, no longer in those positions.

Mr. Murphy. And, Mr. Whitney, who had your position at that time?

Ms. Creedon. Neile Miller.

Mr. Murphy. Oh, Neile Miller.

Ms. Creedon. Sorry.

Mr. Murphy. Okay.

Mr. Whitney, I just want to make sure I understand who was in charge. Because Mr. Collins is bringing up a question. I just want to know what was the chain of command at that time.

Ms. Creedon. I stand corrected. The previous Principal Deputy Administrator had already left at that point in time. And there was an Acting Administrator. Tom D'Agostino had also left at the time of this event. So at that point we had an Acting Administrator for NNSA, and there was no one in my position at the time of this event.

Mr. Murphy. And, Mr. Whitney, about your position?

Mr. Whitney. Yes, sir. We did not have a confirmed Assistant Secretary at the time. I believe the most senior person was a senior adviser for environmental management at the time.

Mr. Murphy. It doesn't sound like anybody was in charge at the

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time.

Mr. Green, you are recognized for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

I would like to talk about the effectiveness of DOE's oversight across various sites of the nuclear security complex and the reliability of related contractor assurance programs. Is it safe to say that the WIPP accident investigations prove that the Federal oversight and the contractor assurance systems were ineffective at WIPP and at LANL? The Y-12 security breach also demonstrated the ineffectiveness of oversight and contractor assurance.

For both our DOE witnesses, what do you know about the contractor assurance systems at the other nuclear weapons research facilities and cleanup sites? Are there any that you can point to that we can rightly say are effective for DOE oversight purposes?

Ms. Creedon. At the NNSA sites we have contractor assurance systems in place. We are looking at those again. We have been looking at those. They are a tool, as we look at how we evaluate our contractors. Right now we believe that some of them are actually pretty good and others clearly need work, like the one at Los Alamos.

Mr. Whitney. Yes, sir. For the environmental management program, we did conduct a review of the contractor assurance systems at our largest sites. This was prior to the WIPP incident. We looked at the elements, operational elements of the CAS system to see if they

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were there and to see if they were being implemented appropriately and if the field office is then providing that independent oversight. For those sites, we did find that they had effective systems in place, but now we are moving forward to reevaluate all of our sites' CAS.

Mr. Green. All of us would hope this would be an exception of the rule. So you are evaluating that now with your other sites to see if there has been any followup. I understand the GAO report, that NAP-21 established a process for NNSA headquarters to review the effectiveness of contractors' implementation of assurance systems and field offices' oversight approaches called affirmation. However, after the Y-12 security breach occurred at a facility whose contractor assurance system had been affirmed as effective, NNSA discontinued the process of affirmation reviews. Is that true?

Ms. Creedon. That is correct.

Mr. Green. If you don't like the answer, you don't review it?

Ms. Creedon. No. What happened was the contractor assurance system at Y-12 had been affirmed, and then it was shortly after that contractor assurance system had been affirmed we had the incident at Y-12. So it was clear that there was a fault in that affirmation process, and we discontinued that process.

Mr. Green. Okay. GAO has also recommended that NNSA establish a process of reviewing the effectiveness of field offices' oversight approaches, including the use of contractor assurance information.

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NNSA's response letter to the GAO report states that the new corporate policy and guidance will outline an approach for validating the effectiveness of the oversight approaches by March of 2016.

Administrator, does this mean that just the process will be established by March of 2016, not that the actual reviews will be conducted?

Ms. Creedon. So that is when the implementation guidance will be issued, and the process will actually be established sometime earlier. So we will have it implemented and up and running by then.

Mr. Green. Okay. So how long after that will it take to conduct and complete the actual effectiveness reviews?

Ms. Creedon. I don't know, because we haven't put those implementation processes in place yet. But even in this interim period, we still continue to look at our contractor assurance systems. We work with our field office managers in other ways to ensure that we have got adequate oversight and that these are providing us with reliable information.

Mr. Green. So you are actually looking at a range of facilities to make sure these effectiveness reviews are conducted hopefully as soon as possible.

Ms. Creedon. Yes.

Mr. Green. And will that be before March 16?

Ms. Creedon. So a formal process has not yet been reestablished.

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But even in advance of the reestablishment of a formal process, we are looking at whether or not these contractor assurance systems are providing us accurate and timely information.

Mr. Green. And this is a systematic, I guess, of all the sites?

Ms. Creedon. On the NNSA sites, yes. And I will let Mr. Whitney speak to his sites.

Mr. Green. Okay. On EM's effectiveness.

Mr. Whitney. Yes, sir. We believe that it is a systemic issue, and that is why we are revamping our oversight program at headquarters with a strong focus on all the oversight elements, including the contractor assurance system at all our sites and our field offices' oversight of those contractor assurance systems.

Mr. Green. So in your testimony, it is a systemic and not just an exception. But you are working to fix it, I hope.

Mr. Whitney. Yes, sir.

Mr. Green. Okay.

Thank you, Mr. Chairman. I know I am out of time.

Mr. Murphy. Thank you.

Now we welcome and recognize Mr. Lujan for 5 minutes.

Mr. Lujan. Mr. Chairman, thank you so very much. And I really appreciate, Mr. Chairman, you and the ranking member bringing us together for this important hearing pertaining to the Waste Isolation Pilot Plant and Los Alamos National Laboratory EM, as well as the NNSA.

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Mr. Whitney, as we work on these issues, I think it is important to remember that in executing the mission of these projects, as well as to Ms. Creedon, that we also work with these local communities. And, Mr. Whitney, are you committed to engaging and involving the surrounding local community in the prioritization and procurement of environmental cleanup efforts at Los Alamos National Laboratory?

Mr. Whitney. Yes, sir. I have had an opportunity actually to meet with the community on several occasions now. And now that we have formally stood up the EM field office, our senior manager there has also done that, and we are committed to continuing that relationship.

Mr. Lujan. And as you increase Federal oversight positions at LANL, what are you doing to ensure that the funding for cleanup efforts does not adversely impact it?

Mr. Whitney. As we move forward with EM, the transition from NNSA to EM, we are looking at the entire program. Of course you know the consent order with the State for the cleanup program was to be completed by the end of 2015, and that is not going to happen. So we are looking at the program, rebaselining the program, and also we will be working very closely with the State over the next several months, and we will assure that we have resources requested to do the cleanup work at the site based on that.

Mr. Lujan. And, Mr. Whitney, as conversations are had with various States around the country based on what we saw with the incident

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here, are we going to also take into consideration that the time lines that we are working with are going to ensure that the safest protocol associated with completing these projects is included?

Mr. Whitney. Yes, sir. Safety is our overriding priority, and that is, as the Secretary has said, that is an integral part of accomplishing our mission. That comes first, and then the mission will follow.

Mr. Lujan. I appreciate that very much.

And, Ms. Creedon, what is your agency's intent for CAS? Do you believe that CAS is still the right tool for the objective that we are talking about today?

Ms. Creedon. Yes, sir. Contractor assurance systems are an important element. They should provide the contractor, our M&O partners, with an opportunity to be able to have their own internal strong assessment program, which is an absolute essential element of effective management. And it, hopefully, if it is effective, will provide the same information to us.

Mr. Lujan. So in order to work with the contractors and with the leadership at the various laboratories in NNSA's case, does NNSA have a responsibility to make sure that proper policies and guidance are given for the implementation of the CAS systems?

Ms. Creedon. Yes, sir.

Mr. Lujan. And what is your response to GAO where one of the GAO

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reports includes that NNSA did not fully establish policies or guidance for using CAS information for oversight leading to inconsistency in oversight and GAO also stated that NNSA did not adequately monitor the effectiveness of the CAS process?

Ms. Creedon. So we agree with GAO. As we have discussed, the NAP-21 affirmation process was halted after the events at Y-12. And now that the Administrator, the new Administrator, Frank Klotz and I are both in place, we are taking a look at this again and trying to get all of us back on the right track.

Mr. Lujan. Very good. I would just note as well that in a separate GAO report, April 15, 2015, "Observations on Management Challenges and Steps Taken to Address Them," the report also, quote: "As noted in GAO's 2015 high risk report, NNSA has a long history of identifying corrective actions and declaring them successfully resolved, only to follow with the identification of additional actions. As GAO has reported, this suggests that NNSA does not have a full understanding of the root causes of its contract and project management challenges."

So I think it is critically important, as we look over the series of these, that we have to get this right. Above all, we also not only have national security responsibilities to all the workers, to all the communities that are in this space, to ensure their safety, as Mr. Whitney has as well, and we have to get this right.

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And with that being said, Mr. Chairman, I know that several of our members today have spoken about or asked questions about governance structure as well, and I know my office is reaching out to the majority staff and minority staff so we can have those conversations based on the Mies-Augustine report, the Academy of Sciences, various amendments that have come through the House and Senate in this structure. And I think that there is an important responsibility that we have in the committee, but also for those that are interested, I would certainly appreciate getting a chance to work with them.

And then also, as we noted, Mr. Chairman, as my time elapses, or has elapsed, with making sure that we are able to work with our Senate counterparts that through the process of making sure that we have the right people in the right jobs at the right time. As we saw, there was a lapse here with a lot of acting administrators and acting directors, acting secretaries in this space as well.

I don't think that is an excuse, though, Mr. Chairman, but every layer of oversight that we can work on to make more effective, I would certainly appreciate being able to work with anyone, and especially yourself and the ranking member on that.

Thank you again for allowing me the time to speak today, sir.

Mr. Murphy. Thank you. And I want to offer my gratitude not only for your offer, but your continued help for this subcommittee. We recognize your concern about your district there, as is the other

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members from the other districts which this covers.

And along those lines, Ms. DeGette, I would like to get on the record a request that we discussed as a sidebar, that this subcommittee continues to follow up. And we would ask the support of the Department of Energy not just in the hearing mode, but really we want to continue oversight and briefings with you and get some updates. We know your invoking a lot of changes, but we recognize these problems have gone on too long, too far.

We appreciate your candor. I will tell you, nothing goes better than having a committee hearing where people come in here and say: We have got a problem. That is helpful. And we recognize your motivation trying to fix this. We want to continue to work with you, so we would like to have further briefings in the future.

Ms. DeGette. If I may, I also want to add our thanks to GAO, which has really been bulldogging this for many, many years now.

Mr. Murphy. Thank you.

We do appreciate it. Let everybody know at GAO that we find your reports very valuable and pretty straightforward. So thank you.

Ms. Bawden. Thank you.

Mr. Murphy. Along those lines, too, I also ask unanimous consent of the contents of the document binder be introduced into the record and to authorize staff to make any appropriate redactions. And without objection, the documents will be entered into the record with any

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redaction the staff determines are appropriate.

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Mr. Murphy. In conclusion, I want to thank all the witnesses. Thank you so much for your participation in today's hearing. It has been very helpful.

And I remind members, they have 10 business days to submit questions for the record. And I ask all that the witnesses all agree to respond promptly to the questions.

[The information follows:]

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Mr. Murphy. And with that, this hearing is adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]