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UPDATE ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ISSUES

WEDNESDAY, OCTOBER 28, 2015

House of Representatives,

Subcommittee on Environment and the Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in Room 2322 Rayburn House Office Building, Hon. John Shimkus [chairman of the subcommittee] presiding.

Members present: Representatives Shimkus, Harper, Whitfield, Pitts, Murphy, Latta, McKinley, Johnson, Bucshon, Flores, Upton (ex officio), Tonko, Schrader, Green, McNerney, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Will Batson, Legislative Clerk; David Bell, Staff Assistant; Jerry Couri,

Senior Environmental Policy Advisor; A.T. Johnston, Senior Policy Advisor; David McCarthy, Chief Counsel, Environment and Economy; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Andy Zach, Counsel, Environment and Economy; Christine Brennan, Press Secretary; Jeff Carroll, Staff Director; Ashley Jones, Director of Communications, Member Services and Outreach; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; Debbie Letter, Staff Assistant; and Alexander Ratner, Policy Analyst.

Mr. Shimkus. The hearing will come to order and I will recognize myself for 5 minutes for an opening statement.

Today's hearing on the disposal of low-level radioactive waste continues our detailed examination of what it takes to manage, store, and dispose of nuclear material.

Nuclear science and technologies take advantage of radiation and nuclear properties of the atom to perform many useful activities such as improving food safety, protecting our homeland, and providing for precise industrial production.

However, these invaluable technologies generate low-level radioactive waste which must be carefully managed and transported for disposal, even though it has a lower level of radioactivity and a shorter decay time than spent fuel from a nuclear power plant.

Additionally, as our fleet of nuclear power plants ages, more reactors must go through the decommissioning process. For example, the decommissioning plan for the Vermont Yankee plant will outlast the license for the West Texas facility where the low-level waste is currently planned to be sent.

Over 35 years ago, Congress passed the Low-Level Radioactive Waste Policy Act of 1980 to establish a system by which states would form regional compacts to have a consent-based siting process for low-level waste disposal facilities.

In 1985, after limited success in implementing the act,

Congress had to amend the law to provide greater authority to host states. Ten compacts are in place today, 6 of which do not have an active disposal site, including the Central Midwest Compact, which is comprised of Illinois and Kentucky.

Eight states and the District of Columbia are not affiliated with a compact. Prior to 2008, the 6 compacts without a disposal site and the unaffiliated states had access to the Barnwell, South Carolina facility for Class B and C waste.

However, starting in 2008, the South Carolina legislature made a political decision and opted to allow access only to members of the Atlantic Compact. As we will hear today, that left a significant portion of the country without a disposal pathway for Class B and C waste until 2012, when the Texas Compact opened for business, the only facility to open as a result of the Low-Level Waste Policy Act.

While Texas is currently filling a national need, political considerations could once again shift and force states to store material onsite until a new facility is located, licensed, and accepting waste.

It is important for Congress to provide oversight of low-level waste policy to make sure states have uninterrupted access to a disposal site. While compacts must address commercially generated low-level waste, the Department of Energy must manage the low-level waste generated by its research

activities and the nuclear enterprise. DOE works with the communities around the nation to assure safe management and permanent disposal.

Today we will hear how DOE can improve its engagement to assure those communities are heard and a part of the process. Additionally, the federal government is responsible for disposing of Greater Than Class C waste, or GTCC, which is more hazardous than other classes of low-level waste.

The Nuclear Regulatory Commission requires that GTCC waste be disposed of in a geologic repository. In 2005, Congress directed DOE to examine disposal options for GTCC waste and to make recommendations to Congress.

Congress has not yet received any GTCC recommendations. However, DOE walked away from the most practical disposal pathway for GTCC waste when President Obama quit work on the Yucca Mountain project.

The longer DOE puts off its recommendation, the longer this material must remain onsite in temporary storage instead of in a permanent disposal repository.

The sole geologic repository that has been in operation for the federal government to dispose of radioactive waste is the Waste Isolation Pilot Project, or WIPP.

In 2014, WIPP experienced an incident that closed the facility. I am interested in hearing from DOE how this incident

has had repercussions in the federal government's waste management strategy.

Today's hearing will inform this committee's efforts to advance a comprehensive policy to manage spent nuclear fuel and high-level waste.

Let us look closely at the experience of siting low-level waste repositories and how the federal government engages states and local communities in the decision making process.

The Department of Energy carefully and constructively engaged with the State of Nevada to provide for a mixed level waste disposal site at the Nevada National Security Site adjacent to Yucca Mountain.

We should consider how these conversations between the federal government and Nevada can continue to advance the development of a deep, geologic repository for used fuel.

Thank you again to our witnesses and I look forward to your testimony this morning. I now recognize the ranking member, Mr. Tonko, for his opening statement.

Mr. Tonko. Thank you, Mr. Chair, and thank you to our witnesses and good morning.

We are here this morning to hear about the status of facilities and programs to dispose of low-level radioactive waste. Low-level radioactive waste includes a wide variety of materials that have become radioactive or that were contaminated

by exposure to radioactive substances.

It includes cleaning items, protective equipment and medical waste, materials used in research and equipment and tools, among various other items.

The amounts of waste generated vary considerably from year to year but the volumes are significant. These materials are disposed of at three commercially operated sites here in the United States. The sites are regulated by the Nuclear Regulatory Commission.

States are responsible for the waste generated within their borders. However, groups of states have entered into compacts or other agreements that allow some to dispose of waste in one of the three existing facilities.

These are not the sites that can or will accept spent fuel from nuclear reactors. We have benefitted from our research and applications in nuclear medicine and nuclear power but these have come at a high cost.

Projections for many of the DOE-managed sites are that it will be decades before cleanup and decontamination are completed at costs in the billions of dollars.

We are fortunate to have Mark Whitney of the Department of Energy and Michael Weber of the Nuclear Regulatory Commission here with us this morning on the first panel. Again, welcome.

Thank you both for being here this morning to testify on the

important work that you are doing to ensure these materials are handled and disposed of properly. We also have an excellent group of witnesses on our second panel.

On our second panel, we will hear from Mr. Chuck Smith, the chair of the Energy Communities Alliance. Mr. Smith represents the communities that live nearby contaminated sites and deal with the issues of nuclear waste cleanup and disposal on a daily basis.

Mr. Smith offers some interesting ideas for speeding cleanups and reducing cleanup costs. I agree that we should be looking at all options for nuclear waste disposal in an effort to find the safest and most cost effective ways to move forward.

We must recognize and deal with both the technical and political challenges of disposing of all classes of nuclear waste.

In addition to Mr. Smith, we will have the benefit of testimony from Ms. Leigh Ing and Ms. Jennifer Opila to provide perspectives of different state organizations responsible for these issues.

More than 60 years after beginning and expanding our use of nuclear materials, nuclear waste disposal remains a difficult and expensive problem.

The large volumes of waste generated, the high cost of treatment and disposal and the limited locations willing to host disposal facilities for any type of waste generated considerable or generate considerable an ongoing public concern and

resistance.

Until we find better solutions for this problem, further development of nuclear power will be seriously constrained. So I thank you all for your participation this morning at the hearing. I look forward to your testimony and further discussion of these important issues.

With that, I yield back, Mr. Chair.

Mr. Shimkus. Chairman yields back his time.

Chair now recognizes the chairman of the full committee, Mr. Upton, for 5 minutes.

The. Chairman. Thank you, Mr. Chairman.

Nuclear technology is deployed throughout our economy in a variety of different ways. For example, radioactive monitors accurately map subsurface geology to assist the U.S. efforts to capitalize on the oil and gas renaissance.

Nuclear medicine provides medical treatments that save thousands and thousands of lives and this technology will only grow and advance with the research and innovation that the 21st Century Cures Act will spawn.

However, all of these activities generate low-level radioactive waste, which must be properly managed, transported and disposed. Congress provided this responsibility to the states, which were to form interstate compacts to collaborate to site a disposal facility.

However, not all states joined compacts, including my home state of Michigan. There is currently only one available disposal site, located in Texas, for non-compact states.

I am pleased to welcome the Texas Low-Level Radioactive Waste Disposal Compact Commission this morning to understand how this compact is operating and to learn how they intend to dispose of the nation's low-level waste.

In the years since Congress passed the Low-Level Radioactive Waste Policy Act of 1980, we have struggled to develop the system that Congress envisioned. Today, Canada, our neighbor in the Great Lakes region, is facing a similar challenge.

Our experience addressing permanent disposal of nuclear material may offer some lessons learned from Canada. I am hopeful that today's hearing will serve to inform this committee about ongoing challenges and opportunities in managing nuclear waste.

I also want to briefly comment on the markup that we are going to have immediately following the hearing. At last week's hearing, members discussed moving S. 611 without amendment so that we can put it on a fast track to enactment.

By unanimously passing S. 611, the Senate has given us a rare opportunity. We can do our part to help this reauthorization become law if we can all agree to approve the bill exactly as it passed the Senate so that if the House passes it, it will go directly to the president for signature.

Many smaller and rural communities across the U.S. including many in Michigan face significant challenges in replacing, maintaining and upgrading their aging water infrastructure. It is in every community.

It is also clear that many of our constituents responsible for managing small rural drinking systems do support S. 611 as well.

Many of us have discussed various ideas to improve the Safe Drinking Water Act, from addressing the State Revolving Fund to developing statutory flexibility for small systems to meet the growing technical challenges of complying with changing drinking water standards.

The bill before us today would help communities across Michigan and across the country manage increased costs and the burden of meeting complex regulatory requirements under the Safe Water Drinking Act.

So we want to make law in this area. Our best chance to do it is to take this bill, pass it without any hitches. I urge all members to support it.

I yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you.

Unfortunately, there is a great deal of low-level nuclear waste generated in this country from a variety of source and those sources include not just activities at commercial nuclear reactors but also manufacturing plants, academic institutions and medical facilities and, of course, it also comes from government activities including the cleanup of Department of Energy sites.

So having a number of safe, secure and environmentally sound options for disposal of low-level radioactive waste is important to a lot of stakeholders.

But it is also critically important for our local communities that once hosted facilities central to our national security yet continue to live with low-level and other radioactive waste even after those facilities close their doors.

The Low-Level Radioactive Waste Policy Amendment Acts of 1985 gave each state responsibility for disposing of low-level radioactive waste generated within its borders.

In doing so, it encouraged states to enter into interstate compacts so that a group of states could agree to develop a common site to dispose of their waste and to date 10 regional compacts have been formed while 8 states, Puerto Rico and the District of Columbia remain unaffiliated.

Unfortunately, however, the track record of these sites hasn't been entirely successful. Environmental justice concerns halted a number of early efforts to site facilities in poor

communities that did not desire to have them.

And so while numerous compacts were formed, only 4 are home to disposal facilities and as a result those facilities have become the de facto sites now accepting waste from a variety of other compacts in individual states.

And while that solution is currently working, I believe we need a more rational predictable policy going forward and we need to do that in a way that addresses the concerns of the communities that are home to radioactive waste generated as a result of activities that benefit us all.

So I am -- Mr. Chairman, I am very interested to learn more about DOE's efforts to clean up and dispose of waste generated from its activities, particularly with regard to disposal of the most dangerous low-level radioactive waste, the greater than Class C waste.

I understand that the department is working to complete a final evaluation of the potential environmental impacts associated with the proposed development of a disposal facility or facilities for greater than Class C and other similar waste.

I am also interested in hearing about the Nuclear Regulatory Commission's recent activities in this area. It is my understanding that NRC is currently in the process of updating its regulations regarding the disposal of low-level waste to a more risk-based system that will better align disposal

requirements with current health and safety standards.

I also would like to learn more about the July 2015 NRC staff paper recommending that the commission allow the state of Texas to license the disposal of greater than Class C waste.

While I take no position on the Texas issue, I do think that the NRC process is important. If the commissioners are confident that Texas can license and manage a program that includes the most dangerous low-level waste then this opens up a real potential for benefit to communities around the country and it would also serve as a step on the road to considering the siting of facilities to dispose of material that pose risks greater than low-level waste.

I would like to yield the balance of my time, Mr. Chairman, to Mr. McNerney.

Mr. McNerney. I thank the ranking member and I thank the chairman for holding this important hearing.

Low-level nuclear waste may not be as dangerous as high-level nuclear waste but it is still a risk and people are justifiably concerned about that risk.

There are engineering solutions that would allow us to find disposal sites, to transport nuclear materials for those disposal sites and there is an urgency to this problem.

But the real challenge is the politics. In order to get this accepted we have to be transparent. We have to let the public know what the risks are and what benefits there might be to local

communities.

We need to let them buy into it because if we try to enforce nuclear waste on any communities it is not going to work. So I urge that we develop a system that is very transparent, that is very public friendly and I think if we do that we will be able to find a solution.

So with that, I will yield back.

Mr. Shimkus. Gentleman yields back his time.

So we want to welcome our witnesses today and first, I would like to recognize for his opening statement Mr. Mark Whitney, principal deputy assistant secretary for environmental management with the Department of Energy.

Your full statement is in the record and you have 5 minutes. Welcome.

STATEMENTS OF MARK WHITNEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, DEPARTMENT OF ENERGY; MICHAEL WEBER, DEPUTY EXECUTIVE DIRECTOR OF OPERATIONS FOR MATERIALS, WASTE, RESEARCH, STATE AND COMPLIANCE PROGRAMS, NUCLEAR REGULATORY COMMISSION

STATEMENT OF MARK WHITNEY

Mr. Whitney. Thank you, sir.

Good morning, Chairman Shimkus, Ranking Member Tonko and members of the subcommittee. I do appreciate the opportunity to be here with you today to discuss the Office of Environmental Management's activities to safely and properly dispose of DOE-generated low-level radioactive waste and our ongoing planning efforts for disposal of greater than Class C low-level radioactive waste.

First, let me state that safe performance of our work is our overarching priority. The department's first responsibility is to protect our workers, the public and environment during our cleanup mission.

Safety first is the clear expectation for every activity that we undertake in implementing that mission. The Department of Energy is the largest generator of low-level radioactive waste by volume in the nation with most waste derived from the Office of Environmental Management's cleanup efforts.

Since 2005, the department has safely disposed of over 330 million cubic feet of low-level radioactive waste. The overwhelming majority of the department's low-level radioactive waste is disposed of on the site where generated.

In fiscal year 2014, 23 million cubic feet of mixed and low-level radioactive waste were disposed of at the site where generated.

The department sites that have the capability to dispose of all or a portion of their onsite-generated waste include the Hanford site, the Idaho site, the Los Alamos National Laboratory, which has limited capability, the Nevada National Security site, Savannah River site and the Oak Ridge Reservation.

In fiscal year 2015, a decision was made to construct a future new disposal facility for decommissioning and remediation waste at the Portsmouth Gaseous Diffusion Plant and similarly the department is continuing to evaluate options for similar waste disposal onsite at the Paducah Gaseous Diffusion Plant.

The Department of Energy sites without an onsite disposal facility mixed and low-level radioactive waste may be disposed of at the department's regional disposal site.

At present time, the Nevada national security site remains the department's only regional disposal site available to serve the needs of the department's cleanup complex.

Commercial firms also provide each of the department sites

with options for mixed and low-level radioactive waste disposal. The department's policy is generally not to utilize the commercial disposal facilities operated by the regional disposal compacts.

However, when compliant, cost effective and in the best interest of the government and after formal approval process the department may utilize commercial disposal firms.

Finally, I would like to provide you with an update on where the Department of Energy is with the disposal of greater than Class C low-level radioactive waste, GTTC.

The department is currently finalizing the final environmental impact statement for the disposal of GTCC waste and GTCC like waste.

The final environmental EIS will evaluate the potential impacts associated with the proposed development, operation and long-term management of a disposal facility or facilities for GTCC low-level radioactive waste and GTCC-like waste.

GTCC waste is radioactive waste that is owned or generated -- excuse me, GTCC-like waste is radioactive waste that is owned or generated by DOE and has characteristics similar to those of GTCC waste such that a common disposal approach may be appropriate.

The department plans to identify a preferred alternative in the final environmental impact statement. In developing the final EIS, the department will have considered public comments

on the draft GTCC EIS, human health, disposal methods and waste types.

The department anticipates publication of the final environmental impact statement within the next quarter. After the publication of the final environmental impact statement the department will submit a report to Congress as required by the Energy Policy Act of 2005.

The report to Congress will include a description of the disposal alternatives considered in the final environmental impact statement and must await action by Congress.

Congressional action would enable the department to proceed with issuing a record decision on greater than Class C low-level radioactive waste disposal.

The department is eager to work with members of Congress on the path forward for GTCC low-level radioactive waste and GTCC-like waste disposal.

Thank you again for the opportunity to discuss the department's low-level radioactive waste disposal activities.

[The prepared statement of Mr. Whitney follows:]

**********INSERT 1 **********

Mr. Shimkus. Thank you very much.

Now, I will turn to Mr. Michael Weber, deputy executive director of operations for materials, waste, research date and compliance program with the Nuclear Regulatory Commission.

Again, your full statement is in the record. You have 5 minutes. Welcome.

STATEMENT OF MICHAEL WEBER

Mr. Weber. Good morning, Chairman Shimkus, Vice Chairman Harper and Ranking Member Tonko and distinguished members of the subcommittee and the committee.

I appreciate the opportunity to testify this morning on the U.S. Nuclear Regulatory Commission's regulation of low-level radioactive waste.

In my testimony I will highlight, one, NRC's regulatory role working in partnership with the states, two, the current regulatory framework, and three, two current regulatory improvement initiatives.

Since the Congress established the Nuclear Regulatory Commission in 1975, the agency has worked with our state partners to ensure protection of the public health and safety associated with low-level waste management.

This waste is generated by thousands of industrial, academic, medical and government licensees across the United States. Disposal of the waste is permitted in 4 operating facilities and the importance of the safe management of commercial low-level waste has long been a matter of congressional interest.

In 1980, the Congress enacted the Low-Level Radioactive Waste Policy Act and amended it in 1985. Under the Atomic Energy Act of 1954, the NRC regulates the safety and security of the

generation, storage, transportation and disposal of commercial low-level waste.

Pursuant to the law, the NRC has relinquished its licensing and enforcement authority over most nuclear materials in 37 states that have entered an agreement with the NRC -- so-called agreement states.

An agreement state conducts the regulatory programs that are adequate and compatible with the NRC regulatory requirements and oversees agreement state programs.

The four commercial low-level waste disposal facilities and more than 85 percent of the licensees that generate low-level waste are regulated by the agreement states.

The NRC and agreement states have established a comprehensive regulatory framework that ensures the safety of low-level waste management.

Among the regulations the NRC has established, 10 CFR Part 61 contains the primary regulations governing the disposal of low-level waste.

The promulgation of Part 61 in 1982 was driven by some of the same factors that prompted the Congress to enact the Low-Level Radioactive Waste Policy Act of 1980, including the need to establish a stable regulatory regime to govern safe disposal of the waste.

The NRC is currently working to improve the regulations and

the regulatory framework. Several years ago, the commission initiated development of a rule making proposal to improve Part 61 with respect to waste streams that were not contemplated at the time of the initial development of the rule in the late 1970s such as the disposal of significant quantities of depleted uranium waste.

On March 26th of this year, the commission published for public comment a proposed rule and associated draft guide and NRC solicited comments from the public and also conducted five public meetings in the vicinity of the operating disposal facilities.

The comment period for this proposed rule closed last month, September 21st. The NRC staff is currently analyzing public comments.

As we develop the final rule, we will continue to work closely with the agreement states and we expect to provide a draft rule for commission consideration in 2016.

The second initiative is the disposal of greater than Class C waste. This waste has concentration of radio nuclides that exceed the limits established by the NRC for Class C waste and is generally not therefore suitable for near surface disposal.

Congress assigned the responsibility for the disposal of this waste to the federal government and required that the waste be disposed of in a facility licensed by the Nuclear Regulatory Commission.

In 1989, the commission amended its regulations in Part 61 to require such waste be disposed of in a geologic repository or in an alternative disposal facility approved by the commission.

On January 30th, 2015, the state of Texas sent a letter to the NRC enquiring whether a state, as an agreement state, can regulate the disposal of this waste.

In July 2015, the NRC staff provided the commission with an analysis of the associated issues along with options and a recommendation that the NRC allow the state of Texas to regulate the disposal of the waste.

NRC also recommended that NRC conduct a rule making to establish regulatory requirements covering this waste and on August 13th, 2015 the commission held a public meeting with the staff, the state of Texas and stakeholders to discuss the issue and the commission is currently considering how best to proceed.

NRC believes its regulatory program adequately protects the public health and safety. We work with our agreement state partners to accomplish the safety mission.

I want to thank you for the opportunity to testify before you today and I would be pleased to respond to your questions.

[The prepared statement of Mr. Weber follows:]

**********INSERT 2 **********

Mr. Shimkus. Thank you very much. Now I will recognize myself 5 minutes to start the round of questioning and I would start with Mr. Whitney first.

The Nevada National Security site currently serves as a disposal site for DOE-mixed waste. I understand that there was extensive conversations between the department and the governor in order to come to an agreement on the type and amount of material to be disposed there.

Will you please describe the process and the lessons learned from DOE's engagement with the state of Nevada to agree on the memorandum of understanding?

Mr. Whitney. Thank you, Mr. Shimkus.

Yes, the memorandum of understanding between the department and the state of Nevada was really the culmination of over a year of really close collaboration, regular meetings with the state at fairly senior levels with both the DOE and the state of Nevada and it covered a wide range of issues, not just a low-level radioactive waste disposal, the Nevada National Security site, which the limits for what we can put into that facility are really governed by the waste acceptance criteria.

The discussions did not go into that technical detail but they were -- they were broad discussions on general areas where our interests overlap and they are significant and great. And so I think at the end of the day, the MOU really kind of solidified

our agreements to date and our path forward on many areas in addition to low-level radioactive waste.

Mr. Shimkus. So when you say broad discussions on numerous things, can you give us some examples?

Mr. Whitney. Yes. The site, of course, has a national security mission so there was discussion of the NSA mission, other potential missions that may happen in NSS.

Protocols for how we communicate, how we work with not just the state of Nevada but the surrounding communities and we exercise a lot of those already and for various reasons.

Mr. Shimkus. Transportation discussions?

Mr. Whitney. Transportation.

Mr. Shimkus. Are part of the protocols?

Mr. Whitney. Yes, sir.

Mr. Shimkus. Okay. Good. Thank you.

Mr. Weber, the proposed revision to Part 61 standards include a provision that, and I quote, defense in depth is considered.

Will you please describe how defense in depth is intended to be implemented for a facility that has very limited operating component?

Mr. Weber. Yes, I would be pleased to.

In fact, there are multiple barriers that are required as part of a low-level waste disposal facility. So the very design of a facility is intended to provide defense in depth to accomplish

the safety of the operation and the long-term protection of the environment from the waste.

These are site characteristics, engineered features, barriers that are incorporated in the disposal facility, waste characteristics.

These all contribute to the defense in depth, and defense in depth is one of the fundamental principles of nuclear safety and it is applied not just for disposal facilities but also for nuclear power plants and other facilities.

Mr. Shimkus. And that would also -- you use that same theory in high-level waste disposal?

Mr. Weber. Absolutely.

Mr. Shimkus. Thank you.

Again, Mr. Weber, in its proposed changes to Part 61 requirements the NRC has concluded that a back fit analysis is not required.

Given the potential for disruption to existing low-level waste disposal facilities and for entities like the nation's uranium enrichment facility that must dispose of depleted uranium would the NRC consider or reconsider the decision to conduct a cost benefit analysis?

Mr. Weber. We did a cost benefit analysis as part of the regularity analysis to support the proposed rule and we got comment on that.

One of the principal areas of public comment that we received is on this whole topic of retrospective application of those requirements.

So it will be one of the key issues the commission will consider in finalizing the rule.

Mr. Shimkus. Great. Thank you, and I will try to get this last one done.

Current regulations require the disposal of greater than Class C and transuranic waste in a geological repository. However, NRC staff recently recommended that the commission delegate authority to the state of Texas to develop disposal criteria for a near surface facility.

Has the NRC established limits on how much greater than Class C or transuranic waste could safely be disposed in a near surface site and if not would limits need to be established as part of any rule making process?

Mr. Weber. We have not established those limits and that is one of the issues that currently is pending before the commission.

Mr. Shimkus. Is NRC contemplating allowing the state of Texas to establish these limits or would they just be considering granting a license that complies with NRC limits?

Mr. Weber. We offered several options for the commission's consideration and until the commission makes its decision we don't

have a final position on it.

Mr. Shimkus. Based on your knowledge of greater than Class C and transuranic material, do you expect the limits would be necessary prior to licensing such a facility?

Mr. Weber. Yes.

Mr. Shimkus. Thank you very much, and I will turn to the ranking member, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair, and Chuck Smith of the -- and I will direct this to both of you gentlemen.

Chuck Smith of the Energy Community Alliance's statement recommends the NRC and DOE work together to change the way that the United States classifies waste for disposal, citing the International Atomic Energy Agency's more risk-based approach according to the, and I quote, "intrinsic qualities of the material."

There seems to be a movement to a more risk-based approach to low-level waste disposal on both your parts including an assessment of what constitutes low-level waste. Is that a correct interpretation by me?

Mr. Whitney. Yes, sir.

I would say for the Department of Energy for our -- the environmental management, our low-level waste management, we do use a risk-based approach. It is based on performance assessments site specific.

So it is very quantitative and, like I said, specific to the site where the disposal facility would be located.

Mr. Tonko. Thank you.

Mr. Weber. Categories of radioactive waste that are managed in the United States are established in statute. So it would require legal changes to afford that kind of an approach.

Now, NRC actually explored the merits of this back in the 1980s through a notice and comment rule making and the conclusion of that rule making was such that the commission decided to continue with adherence to the existing statutory definitions.

Mr. Tonko. Mm-hmm. If we were to assume this risk-based, would that include assessing the actual radiological content and activity of these wastes?

Mr. Whitney. Sir, I am not real familiar with the ECA proposal. I did read Mr. Smith's testimony and we work closely with ECA and they are a great partner in a lot of things.

And so we are interested in hearing more about that as we do a range of other issues, sitting down with them and talking to them. Always open to listening to their concerns.

Mr. Tonko. Right. Now, I hear Mr. Weber saying that you would need legislative authority to move in that direction.

Mr. Whitney, would that be the case for -- you obviously are dealing with it in somewhat of a risk-based scenario.

Mr. Whitney. Yes. On our low-level waste we are and I think

the -- Mr. Smith is proposing potentially a reclassification for how we classify waste including high-level waste and so, again, I am not real familiar with the details of their proposal but interested in sitting down with them.

My understanding is it would require a -- the Atomic Energy Act clearly defines what is high-level waste, true waste, spent nuclear fuel and byproduct material and if it doesn't fit into one of those categories it is low-level waste.

Mr. Tonko. And does DOE need NRC to take any action to aid in the disposal of greater than Class C waste or greater than Class C-like waste?

Mr. Whitney. The GTCC environmental impact statement, the final EIS, we anticipate issuing that within the next quarter. Once that is issued, depending on the preferred alternative it could potentially need NRC action, particularly with respect to the near surface disposal.

Mr. Tonko. And are you engaged in discussions on these actions? You both are?

Mr. Whitney. Yes, sir.

Mr. Tonko. Both agencies. And have you and will you involve public stakeholders in deliberations on reclassification of waste?

Mr. Whitney. We are not looking at -- you know, we don't have any formal review for reclassifying waste right now within

the Department of Energy. So I don't know if there would be a public participation process for that for us.

Mr. Weber. If I could respond.

From NRC's perspective that was a subject of the proposed rule that we put out for public comment. So we have discussed and engaged members of the public stakeholders in both public meetings and in consideration of their comments on the proposed rule.

Mr. Tonko. And are there other waste streams that can be considered for a more risk-based approach to disposal?

Mr. Weber. I would say from NRC's perspective, actually our disposal requirements dating back to 1982 were one of the earliest risk-informed performance-based regulations that the NRC issued.

While you can always refine that as we learn through experience and also the development of enhanced analytical techniques, that is part of why we continually review our regulations to ensure that they are delivering on the safety and protection of the environment while not imposing an undue burden on the parties that we regulate.

Mr. Tonko. Mr. Whitney, any further comment on that or -- okay.

With that, I yield back, Mr. Chair.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the gentleman from Mississippi, Mr.

Harper, for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman, and thanks to each of you for being here. This is an issue that is very important.

Obviously, we made -- sometimes in the public when you hear low-level you let your guard down and don't realize that these are issues that are -- have to be addressed and certainly we expect to figure out a way to cooperate and work together to achieve those goals, both with DOE and with the NRC.

And first, for you, Mr. Weber, if I could, the NRC, I know, is evaluating changes to its regulations affecting LLW disposal including Part 61 regulations -- how low-level waste is classified and greater than Class C disposal pathways.

There appear to be areas of overlap and a precedence among these various initiatives.

Has the NRC conducted a high-level analysis to determine whether there should be more -- a more comprehensive rule making or at least greater coordination of seemingly disparate activities? If not, why not?

Mr. Weber. Okay. NRC -- the rule that I mentioned previously back in the 1980s we did consider whether there should be an overarching framework regulation established to ensure that there is consistency and coherency to the National Radioactive Waste Management framework.

The conclusion of that rule at that time was that such an

overarching framework was not necessary. Now, having said that, the initial development of these regulations dates back to the 1970s and there was a high-level Interagency group that established the basic foundations of the way that we manage radioactive waste in the United States today.

Mr. Harper. Okay. And the -- in March of 2015 it was -- the proposed rule was released for public comment. What type of responses have you been getting?

Mr. Weber. We received about a hundred separate distinct comment letters, many very thoughtful comments. We also received a large number of form responses.

So we have our work cut out for us to go through the range of issues that we heard comments on.

Mr. Harper. And that public comment period is still ongoing?

Mr. Weber. No, it closed in late September.

Mr. Harper. Okay. Great. Thank you.

Mr. Whitney, the federal government is responsible for the permanent disposal of greater than Class C waste which the NRC determines is not suitable for a near surface disposable facility.

In addition to commercially generated GTCC, the Department of Energy has an inventory of GTCC waste, which must be stored until Congress approves the disposal facility.

So, Mr. Whitney, what is the current inventory of GTCC waste owned by the Department of Energy?

Mr. Whitney. Thank you, sir.

So the department doesn't formally have a classification greater than Class C and we do, for the purpose of the environmental impact statement, call it GTCC like and it consists of the low-level radioactive waste that might have a characteristic similar to the GTCC waste as classified by NRC as well as some of our transuranic wastes that don't have a disposal pathway.

But the EIS evaluated about 12,000 cubic meters of waste and about a quarter of that -- the GTCC and about a quarter of that, that is present and future, is owned by the department.

Mr. Harper. Got it. Congress directed DOE to recommend a disposal pathway for GTC or, I guess, GTC like waste in 2005. When do you expect DOE will provide the final report to Congress and what are the costs and risks of delay?

Mr. Whitney. So we anticipate issuing that final EIS within the next quarter and then we will submit the report to Congress that outlines the disposal alternatives, the options, the preferred alternative and some of the things associated with cost, who pays, how we can ensure the safety.

We will follow that and we will, of course, await congressional action prior to issuing a decision.

Mr. Harper. So when you say next quarter, you don't mean the quarter that we are in -- you mean the first quarter of 2016?

Mr. Whitney. Yes, sir.

Mr. Harper. Okay. I believe my time will expire before I can get an answer here so I will yield back.

Mr. Shimkus. Aren't we in the first quarter of 2016 so you mean the second quarter? Is that right?

Mr. Whitney. The fiscal. Yes. By the end of the next quarter so by the end of March. We are going through, like, the formal DOE review process so we are at the very late stages of the process by now.

Mr. Shimkus. Thank you for clearing that up.

Very good. Now I would like to recognize the gentleman from Texas for 5 minutes, Mr. Green.

Mr. Green. Thank you, Mr. Chairman, you and ranking member, for holding the hearings on low-level radioactive waste.

I would like to thank all our panelists for being here. I share concerns of many of the subcommittee that the federal government needs to move forward to find a suitable site for greater than Class C radioactive waste.

It is my hope that Department of Energy and NRC are taking all safe options under strong consideration in working with private sector and local communities to find a solution that is the best interest of all the impacted stakeholders.

Mr. Weber, on January 30th of 2015, the Texas Commission on Environmental Quality sent a letter to the NRC requesting

responses to questions concerning the state of Texas' authority to license of disposal cell for the greater than Class C GTCC like and transuranic waste.

I understand that in July in a paper to the commission the NRC developed three options and recommended one of these options, Option two, in allowing the state of Texas to license and regulate the disposal of GTCC waste.

Is this correct?

Mr. Weber. That is correct.

Mr. Green. I know the NRC has yet to vote on this. But can you talk a bit more about the proposal and why the staff recommended allowing Texas to license and regulate the disposal of the GTCC waste?

Mr. Weber. Some of the commissioners have voted but until they all complete their votes there won't be a decision from --

Mr. Green. Is there a time frame for that?

Mr. Weber. They try to do it as expeditiously as they see fit. In terms of your request on the alternatives, the staff recommended alternative two, which would allow the state of Texas to license the disposal of it.

But they would require the commission to move forward and develop the criteria upon which that decision would be based so that the commission could fulfill its responsibilities under the low-level radioactive waste policy act of approving the disposal

of the greater than Class C waste.

And the other options NRC could issue the license. That is not very appealing from the NRC's perspective -- the staff's perspective as laid out in the paper for a variety of reasons.

And the final option is the do nothing or the no action alternative. That is also not very appealing, given that the waste exists and the commission's obligation is to fulfil its mission, which is protecting the public health and safety.

Given that, disposal of that waste is a prudent approach.

Mr. Green. Is there any guidance from the NRC on if the commission decides to go forward with it and develop it is there any guidance from NRC? Do you work with the commission in Texas? Has this happened before with any other state the NRC is working with?

Mr. Weber. Only on a very limited basis. After the Congress enacted the legislation, the Low-Level Radioactive Waste Policy Amendments Act in 1985 there were a handful of instances where the operating disposal facilities, the states, came to the NRC and said we would like permission to dispose of this small quantity of waste and so NRC did work with the states.

Clearly, if the commission moves forward on the options that were presented to it by the NRC staff, we would be working quite closely with the state of Texas.

Mr. Green. Our committee, obviously, has jurisdiction --

the subcommittee and the full committee over the NRC and we have had innumerable hearings over the last few years about what we are going to do with not only the low-level but also ultimately the high-level.

And so I just hope that the NRC would work with our Texas commission because if this is the first location in the country that would be able to accept this GTCC waste, it could be a prototype, I would hope, because the rest of the country needs to also develop their own waste sites because west Texas is a big place but I don't know if it is that big.

So, Mr. Chairman, I have no other questions and thank you. I yield back.

Mr. Shimkus. Oh, it is that big. It is that big. It is the first time I have heard a Texan say it is not that big. Now, I don't know what is going on here. If you don't mind, I will correct the record. It is that big.

Mr. Green. Okay. Well, Bill, you are closer to west Texas than I am.

Mr. Shimkus. The chair now recognizes the gentleman from Indiana, Mr. Bucshon, for 5 minutes.

Mr. Bucshon. Thank you, Mr. Chairman.

Mr. Whitney, the USEC Privatization Act assigned responsibility to the Department of Energy to dispose of depleted uranium, a byproduct of uranium enrichment.

Has the NRC worked with the DOE to develop a disposal pathway for depleted uranium?

Mr. Whitney. Sir, I believe those discussions are ongoing. We have had discussions and they are ongoing.

Mr. Bucshon. Okay. I don't have the date here. When was the privatization act? When were you first directed to that?

Mr. Whitney. And I don't know either. I would have to get back with you on that.

Mr. Bucshon. It is always surprising me in hearings where Congress has said to do things, like, 10 years before and we are still talking about it. But this may not be one of those instances.

Will the NRC's current Part 61 rule making affect the DOE's plans to dispose of depleted uranium at commercial disposal sites?

Mr. Whitney. I don't believe it would.

Mr. Bucshon. Okay. And what would the effect of the DOE's disposal plans for depleted uranium -- effect on the DOE's disposal plans for depleted uranium if the NRC decides to incorporate greater than Class C and transuranic waste as part of their Part 61 rule making?

Mr. Whitney. It is unclear to me at this point, sir.

One, it would depend on the ultimate disposal pathway for the depleted uranium, of course, and then what the final rule making is.

Mr. Bucshon. Okay.

Mr. Whitney. I am just unaware of any direct implications. I apologize.

Mr. Bucshon. Okay. Thank you, Mr. Chairman. I yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the gentleman from Texas, Mr. Flores, for 5 minute.

Mr. Flores. Thank you, Mr. Chairman.

I believe that Mr. Green asked most of my questions so I will pass at this point.

Mr. Shimkus. Okay. The chair now recognizes the gentleman from Pennsylvania. Do you have any questions, Joe?

Mr. Pitts. Mr. Weber, as a part of the public comment process for NRC's revisions to Part 61 regulations -- the governmental low-level waste disposal facility -- the agreement states requested that NRC revise the compatibility requirements from what is known as compatibility B, which require agreement states to have the same regulatory standards as NRC, to compatibility C, which permit agreement states to have more stringent regulatory standards than NRC regs.

Will the NRC staff address this issue as part of the rule making process prior to providing the rule to the commission for approval?

Mr. Weber. Absolutely, sir.

That is part of our process. The staff will formulate a recommendation. We will also work with the agreement states in formulating the recommendations to go back to the commission.

So there will be lots of discussion on that topic. It did get a lot of comments.

Mr. Pitts. Mr. Whitney, has the NRC solicited DOE input on the matter of revising the current Part 61 rule making as opposed to initiating a new rule making after this one is completed to include the disposal of greater than Class C and transuranic waste?

Mr. Whitney. I believe discussions did occur, sir, yes, between DOE and NRC.

Mr. Pitts. Would a DOE site to dispose of greater than Class C waste have to be licensed by the NRC?

Mr. Whitney. For -- so the Department of Energy does not have the classification of GTCC -- we have GTCC like waste which is regulated by the Department of Energy.

So if we -- if a preferred alternative was a DOE site and our GTCC like waste went there we would not need an NRC license.

Mr. Pitts. Given the need to dispose of GTCC NTRU waste, is it reasonable to delay the current rule making to include GTCC NTRU waste?

Mr. Weber. I believe that is a topic that is currently under

commission consideration.

Mr. Pitts. What would be the effects on the DOE if the current Part 61 rule making is delayed?

Mr. Weber. Do you want to answer that?

Mr. Whitney. I am not aware of any direct implications of a delay in the rule making. We are, of course, moving forward with the environmental impact statement, which will outline the alternatives and the preferred alternative. And so at this point, I don't see any implications or impacts to delaying the rule making.

Mr. Pitts. Okay. And I am not sure which one to ask this but did the Yucca Mountain license application include the option of disposing of greater than Class C material in the repository?

Mr. Whitney. Yes.

Mr. Pitts. In light of the fact that the department previously submitted a license for the disposal of GTCC waste at Yucca Mountain, if the NRC issues the Yucca Mountain license, will that site be considered as part of the process for DOE to recommend a disposal pathway?

Mr. Whitney. I am sorry. Can you repeat the question, sir? I apologize.

Mr. Pitts. Yes. In light of the fact that the department previously submitted a license for the disposal of GTCC waste at Yucca Mountain, if the NRC issues the Yucca Mountain license will

that site be considered as part of the process for DOE to recommend a disposal pathway?

Mr. Whitney. So the Yucca Mountain was not considered an alternative since the administration deemed it an unworkable solution and so it was not considered and has not been considered in the GTCC siting process.

Mr. Pitts. Well, Mr. Weber, as part of the developing recommendation on providing Texas authority to license GTCC facility, did NRC staff consider proceeding with the Yucca Mountain license application as an alternative disposal pathway? If not, why not?

Mr. Weber. The staff completed the safety evaluation report for Yucca Mountain and we are currently working on the supplement to the environmental impact statement on Yucca Mountain.

And when we conclude that, we will have largely exhausted the congressionally appropriated funds for NRC licensing work on Yucca Mountain.

What we considered in formulating our recommendations to the commission on greater than Class C waste is a response to the state of Texas proposal as an alternative to what is required today in Part 61. That would be something other than a geologic repository.

So the advice -- the recommendations we provided to the commission was the consideration of near surface or sub near

surface disposal as an alternative for geologic repository disposal of greater than Class C waste.

Mr. Pitts. Thank you.

My time has expired.

Mr. Shimkus. Gentleman's time has expired.

The chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I guess I can ask both of you this question. Earlier this month, there was a serious incident at a closed down low-level waste disposal site in Nevada that involved an explosion and fire and the successor to that company that operated that site currently manages one of the low-level waste sites currently in operation.

Meanwhile, in February, the nation's only facility for disposal of transuranic, or TRU waste, generated by DOE activities was shut down indefinitely as a result of a series of incidents there.

So given these recent disturbing developments can each of you tell us why the public should have confidence in DOE's ability or NRC's or the state's ability to safely regulate the sites?

I think we can -- I think we can but I just think the public needs to be reassured. We will start with Mr. Whitney, I guess.

Mr. Whitney. I thank you, sir.

The incident in Nevada was at a non-DOE owned facility. I believe it was in or near Beatty, Nevada. We did provide -- the department did provide some technical assistance on the emergency response side.

I believe we are still trying to understand what happened and work with them because we would like to make sure we learn any lessons from that just like we would like to learn from any incidents that might occur at DOE facilities.

With respect to the waste isolation pilot plant that did shut down in February of 2014 as a result of a couple of incidents there and we had some significant failures in many areas with respect to our operation of a facility there, with respect to packaging of the generator site where -- in the processing where the repackaging occurred before it got to WIPP.

And we are taking those lessons learned and not just applying them at WIPP. A tremendous amount of work has happened in the last year and a half to ensure the safety of that facility and when we recover and resume operations that we are able to do so in a safe manner but also across the complex, taking those lessons learned to make sure that we don't repeat those at all our sites, whether they are generator sites, generate transuranic waste that will go to WIPP or any of our sites where there might be issues that we can apply whether they are true waste generators or not.

I believe that the public should and hope the public will

have confidence in DOE's ability to manage its low-level and transuranic waste.

Mr. Pallone. Thank you. Mr. Weber.

Mr. Weber. I would like to add to what my colleague offered. We are working with the state of Nevada to understand what happened at the Beatty low-level radioactive waste disposal facility.

The part of the facility that was affected by the explosion and fire. I understand there is a trench that was -- -waste was placed into and the -- around 1972, perhaps '69 to 1973 time frame, far predating the requirements that we put in place in 1982, and those regulations were put in place in Part 61 specifically to enhance the level of protection associated with the safe management of the radioactive waste -- things like waste characteristics, waste forms that did not exist at that time. So we are trying to learn with the state about what happened.

My understanding is that there were no elevated levels of radiation associated with the fire and the explosion. So while it is not something that is desired to occur at a disposal facility.

The public is safe in the vicinity of that facility.

Mr. Pallone. All right. Thank you both. I have another question here. I don't know if I have time to go through this but let me try.

Mr. Whitney, in your testimony, you discuss the different

classifications of radioactive waste and you mentioned some of the facilities that accept particular classes of it like Energy Solutions Utah, which accepts Class A mixed and low-level waste and the waste control specialist facility in Anderson, Texas, which accepts Class
A, B and C waste.

And as we have heard today, greater than Class C waste, or GTCC storage, is treated as a separate issue altogether.

Can you explain what it is about the unique storage needs of, say, Class A versus Class C versus GTCC waste that makes them require unique regulatory approaches and how prepared would current low-level waste storage facilities be to accept GTCC waste if that licensing became an option? You have 27 seconds.

Mr. Whitney. And if you don't mind, I will turn to my colleagues. That is an NRC classification scheme.

Mr. Pallone. Sure.

Mr. Weber. The greater than Class C waste contains higher concentrations of longer lived radionuclides and thus the disposal of that waste requires higher barriers so that the public is protected over a long period of time and that is the focus of the state of Texas their review and so would also be the focus of the NRC and working with the state of Texas.

Mr. Pallone. All right. I am going to leave -- did you want to add something? Okay. Thank you.

Mr. Shimkus. Gentleman's time has expired.

The chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman, and gentlemen, thank you for being with us today.

Mr. Whitney, I want to build upon the conversation that we began last time you testified in September.

As you might remember, we discussed the importance of the decontamination and the decommissioning work at the former Gaseous Diffusion Plant at Piketon, Ohio.

Astonishingly, DOE has recently decided to terminate funding for the American Centrifuge Project also located at Piketon.

If DOE doesn't soon reverse its decision, we are about to add to the price tag of that DND work because that facility there will have to be dealt with, which DOE already attempts to under fund year after year.

So that DND work is -- it is a battle each and every year, it seems, to get DOE to put the appropriate amount of money towards it.

DOE's own analysis has confirmed that the ACPs -- AC100 centrifuge technology will be needed to meet our national security enrichment needs in as little as ten years.

So allowing the ACP, currently our only domestic enrichment capability to shutter its operations now only require -- only to

require its inevitable remobilisation shortly thereafter seems to me is a severe mismanagement of federal resources and an ill-advised decision because rehiring of this uniquely skilled workforce and its overall remobilisation will prove costly.

So the national security optics and consequences of the ACP closure are both very troubling. So, Mr. Whitney, some questions.

Was the DMV costs to dismantle the current Piketon AC100 facility -- was that taken into consideration when DOE decided to cease ACP funding? Do you know if they contacted anyone in your department about that?

Mr. Whitney. I am not aware that they did. We have a process of transferring excess facilities from one program to the other. So there is a formal process that we would go through once the decision were taken.

It is a programmatic decision that didn't necessarily need to involve EM. But there would be a process then for transfer of the facility when it happens and things of that nature.

Mr. Johnson. Okay. Let us assume for a second that the closure continues and goes forward and that there is a DND cleanup effort there on the current ACP facility as well.

What impact could that closure have on the current DND cleanup time line there in Piketon?

Mr. Whitney. And I don't know. I won't be able to provide

specifics just because we would go through that process when the -- when the facilities became owned by EM and we would bring into our life cycle base line and we would sequence out the work and see. But it would certainly add DND costs and cleanup costs and --

Mr. Johnson. Is it safe to say, certainly, given the amount of time that we have already spent on the DND cleanup for the gaseous diffusion facility, is it safe to say that that cost and time line implications would be significant?

Mr. Whitney. I can't say that, sir, because I am not -- I am just not sure.

Mr. Johnson. Okay. Do you know if the Office of Environmental Management was consulted before this decision was made? Did anyone talk to you guys about this?

Mr. Whitney. We were not involved in the decision making process because it was a different program --

Mr. Johnson. All right.

We understand that the American Centrifuge program shares utility and overhead costs to the tune of about $9 to $10 million with the Portsmouth Gaseous Diffusion DND program and that shuttering the ACP will shift all of those costs to the DND budget.

Did they consult with you and have you folks given any consideration as to how you will pay for this increase in new costs?

Mr. Whitney. We have given consideration to that and we have reached out to the -- to our colleagues in the other programs formally to start that discussion on how those costs will be covered.

Mr. Johnson. Okay. But no decisions have been made?

Mr. Whitney. No, sir.

Mr. Johnson. Okay. And finally, do you have any -- and I think you have already answered this but just to be sure, if the Department of Energy does press forward with the closure of the American Centrifuge project facility, do you have any idea what its cleanup costs would be?

Mr. Whitney. No, sir. At this point, I don't. But that would be part of our process is we take over owner --

Mr. Johnson. How long will it take you to -- how long will it take you to go through that type of analysis to determine what the cleanup costs would be, from start to finish?

Mr. Whitney. Generally, once we have ownership of the facility it would not take a long time because we have a lot of precedent at other facilities. It might be similar at other sites.

Mr. Johnson. Are we talking weeks, months?

Mr. Whitney. Probably months. Not many months.

Mr. Johnson. Okay. All right.

Well, thank you very much. Mr. Chairman, I yield back.

Mr. Shimkus. Chairman yields back his time.

Seeing no other members present, we would like to thank you for being here and answering our questions and your testimony, and with that we will excuse the first panel and seat the second.

So we will begin with the second panel. Thank you for coming. I will do similar as I did at first. I will just introduce you when it is your time and we want to welcome you here.

So first to speak to us is Ms. Jennifer Opila. Is that -- Opila. All right.

Ms. Jennifer Opila, director, Organization of Agreement States. Thank you. Your full statement is in the record. You have 5 minutes.

STATEMENTS OF JENNIFER OPILA, DIRECTOR, ORGANIZATION OF AGREEMENT STATES, LEIGH ING, EXECUTIVE DIRECTOR, TEXAS LOW LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION; CHUCK SMITH, COUNCIL MEMBER, AIKEN COUNTY, SOUTH CAROLINA, CHAIRMAN, ENERGY COMMUNITIES ALLIANCE

STATEMENT OF JENNIFER OPILA

Ms. Opila. Thank you very much, Chairman, and Ranking Member Tonko and distinguished members of the subcommittee.

I appreciate the opportunity to represent the Organization of Agreement States and discuss the OAS' views on low-level radioactive waste management with you.

The membership of OAS consists of state radiation control directors and staff from the 37 agreement states, who are responsible for the implementation of their respective agreement state programs.

Agreement states are those states that have entered into an effective regulatory discontinuance agreement with the Nuclear Regulatory Commission under subsection 274(b) of the Atomic Energy Act, the AEA.

The role of the agreement states is to regulate most types of radioactive material in accordance with the compatibility requirements, the AEA.

Under its own internal practices, the NRC periodically

reviews the performance of each agreement state to assure compatibility with the NRC's regulatory standards.

The purpose of the OAS is to provide a mechanism for these agreement states to work with each other and with the NRC on regulatory issues associated with their respective agreements.

Throughout the years, both agreement states and nonagreement states have had the responsibility for implementing the Low-Level Radioactive Waste Policy Act.

As a result of the Low-Level Radioactive Waste Policy Act, states have formed compacts that have facilitated the safe disposal of radioactive waste.

At times, the compact system has been criticized because it has resulted in many states not having access to disposal facilities.

However, with the recent establishment of the Waste Control Specialist Facility in Texas, the establishment of the Texas Vermont Compact and that compact allowing access to the WCS facility from out of compact facilities, this situation has been largely resolved and that all states now have access to a waste disposal facility.

Additionally, the WCS facility has added much needed capacity to the overall low-level waste disposal inventory. The OAS board believes that the compact system should be maintained so that states can control the import and export of low-level

radioactive waste within their jurisdiction.

Agreement states play a vital role in the regulation of low-level radioactive waste disposal in the United States. All four active low-level waste sites operate in the agreement states of Texas, Utah, South Carolina and Washington.

It is these states, not the NRC, who have decades of experience in regulating low-level waste disposal. These states brought this experience to the recent discussions of changes to 10 CFR Part 61, the federal rule regarding low-level radioactive waste disposal.

The purpose of this rule change was to consider the impacts resulting from the disposal of unique waste streams such as significant quantities of depleted uranium from the operation of a commercial uranium enrichment facility.

The OAS board has two primary objections to the current proposed amendments to Part 61. First, the board objects to redoing a sites performance assessment unless that site opts to take significant quantities of long-lived alpha emitters such as depleted uranium.

Sites that are not going to be accepting these unique waste streams do not need to conform to a performance assessment process that is designed specifically for those unique waste streams.

Importantly, performance assessments addressing the disposal of significant quantities of depleted uranium for two

of the existing low-level waste disposal facilities have either been completed or will soon be completed.

Second, the board proposes compatibility C designation instead of compatibility B designation, as currently proposed by the NRC for the new requirements of Part 61.

Many states that regulate low-level radioactive waste sites currently have state standards that are more stringent than the requirements in the proposed rule.

These states should not be forced to weaken their standards to conform to the new NRC rules. Compatibility C designation would allow these states to implement standards that are acceptable to the state and the communities that host these disposal facilities as long as those standards are at least as stringent as the NRC standards.

Thank you very much.

[The prepared statement of Ms. Opila follows:]

**********INSERT 3 **********

Mr. Shimkus. Thank you very much.

Next, I would like to turn to Ms. Leigh Ing, executive director of Texas Low-Level Radioactive Waste Disposal Compact Commission.

You are recognized for 5 minutes.

STATEMENT OF LEIGH ING

Ms. Ing. Thank you very much and thank you for the opportunity to provide testimony, Chairman Shimkus and Ranking Member Tonko. I will be providing testimony today on low-level radioactive waste compacts, in particularly my compact, Texas and Vermont.

As you are well aware, low-level compacts are agreements between two or more states in which one of the states becomes the host state by providing a disposal facility.

The remaining states in that compact are guaranteed access to low-level radioactive waste to that disposal facility. Currently, we have ten compacts that have been established in this country, three of which have disposal facilities.

We have the Richland facility in the northwest compact that includes the states around Washington as well as Hawaii and Alaska, and that facility can take Class A, B and C waste.

We also have the Clive facility in Utah which is open to all states but it can take only Class A. We also have the Barnwell facility in South Carolina that can take waste from South Carolina, New Jersey and Connecticut.

And then we have my compact, the Texas and Vermont compact, which includes only the state of Texas and Vermont, which guarantees access to all low-level waste generated in Texas and

in Vermont.

One of the things unique about my compact is that -- and there is the map that has all of the compacts and you can see where I have -- we have a facility in the corner of Texas and there are stars where there are facilities that can take low-level radioactive waste in our compact.

One of the things that is unique about my compact is that the state of Texas has passed a statute which allows our compact to accept imports from all the other states, the District of Columbia and territories up to a limit of 275,000 curies per year.

The role -- the very important role of my compact which is composed of eight voting members and one alternative, six of those members are put in place by the governor of Texas. Two, in the alternate, are put in place by the governor of Vermont.

One of my Texas commissioners by my compact law is required to be a representative of the local community. What that commission does is we take a look at all generators or brokers who may choose to import to our facility and make sure that the applications to import meet all of the criteria for import into our compact.

We also work with the state of Texas to ensure that the waste coming in is acceptable to the owner of the site, the state of Texas. We meet about -- approximately every six weeks to approve all of these that we deem are approvable. To date, we have

approved almost a hundred import applications that represent imports from 40 states and from Puerto Rico as well as from the District of Columbia.

Overall, we regard what we have been doing has been very successful. It has been a learning process for us. We are the first compact that takes imports this way and learning how generators and brokers work and how our fellow compacts work is that we can work collegiately with our compacts had been a very good process.

But we have been learning and tweaking our process as we learn more.

I would say there are three very important points to make that we have learned through this process. One, because of our facility in the Andrews area, we now have access -- in concert with our other facilities we have access to all 50 states, the District of Columbia and territories in this country for low-level radioactive waste as a result of the compact system as put forth by the Low-Level Waste Policy Act.

Although it may not have been implemented exactly as intended, we do now have waste capacity for everywhere in the United States. The other thing that I think is important to point out is that one of the reasons we have this is because the compacts can exclude waste outside of the compact if it chooses to do so, as was done by the Atlantic compact and was done by the Northwest

compact. That can also be done in ours.

But currently, given how imports assist the country and assist the viability of our facility, and the state of Texas and locals also get fees from that, there is not direction that has been put forward to limit that at this time.

The third and final point I will make is that my commissioners unanimously believe it is important to have a disposal pathway and to do everything in our process and working with generators and brokers to make that pathway available so that as opposed to being stored it is disposed of up to 275,000 curies per year at the facility.

And that concludes my remarks. Thank you very much for allowing me to provide testimony today.

[The prepared statement of Ms. Ing follows:]

**********INSERT 4 **********

Mr. Shimkus. You are welcome. We are happy to have you here.

Next, I would like to turn to Mr. Chuck Smith, council member of Aiken County -- I visited in Aiken County just last spring -- South Carolina, chairman of the Energy Community Alliance.

So welcome. You are recognized for 5 minutes.

STATEMENT OF CHUCK SMITH

Mr. Smith. Thank you, Chairman Shimkus, Ranking Member Tonko and members of the subcommittee. Thank you for inviting me to testify today.

Again, I am Chuck Smith, council member from Aiken County, South Carolina. I am a board member of the Savannah River site community reuse organization and chairman of Energy Communities Alliance, the association of local communities that are adjacent to, impacted by or supporting DOE activities.

Our communities have long played a key role in supporting the country's national security efforts, hosting these facilities with the understanding that the waste would ultimately be disposed of in a safe and timely manner.

ECA understands that nuclear waste disposition presents many challenges, often more political than technical, and as you are well aware the development of a geological repository has not proceeded as planned and which is currently receiving waste.

Therefore, there are waste streams in our communities that still have no clear disposal path and we remain de factor nuclear waste storage sites.

Today, I would like to make three recommendations. First, ECA urges Congress to consider feasible alternatives to move waste out of our community safely, beginning with classifying waste

based on its composition, not just by where it originated.

This would allow the country to move forward properly, safely and scientifically to dispose of radioactive waste and save taxpayers millions of dollars and we think it just makes sense.

ECA believes that changing the way the United States classifies waste can provide additional safe publically acceptable disposable alternatives, leading to lower federal and taxpayers cost for storage and less risk to human health and the environment.

Our radioactive waste classification system currently relies primarily on point of origin rather than composition, with specific hazards posed by its disposal.

This approach has many deficiencies. It can be misleading. Some waste classified as low-level waste can be more long lived and pose a higher risk than others labelled high-level or transuranic.

It could be inconsistent. Low-level waste is defined by exclusion whereas high-level waste is defined by its source. It can also be vague as is the case with the existing definition for high-level waste, which states the waste must contain fission products in sufficient concentrations.

This does not adequately address the current state of defense high-level waste, some of which could technically qualify as transuranic waste if based on its radioactive material content.

Only the U.S. classifies nuclear waste this way.

ECA recommends that NRC and DOE work together to consider this option. Many stakeholders feel that NRC and DOE already have the existing authority to make the change.

ECA is looking to Congress to implement a change immediately through legislation. ECA's multi community task force has drafted proposed language for congressional consideration and we have shared this with your staff.

For greater than Class C waste disposal in a geologic repository is the only method currently approved by the NRC. In its absence, greater than Class C and greater than Class C like waste which includes waste from DOE cleanup programs, has no disposal path.

As the Savannah River site community reuse organization specifically noted in a 2011 letter to DOE, this waste is considered orphaned and they do not support Savannah River site as a potential candidate for its disposal.

As a board member of the SRS CRO, we follow the community's guiding principle which is no waste or excess material shall be brought into South Carolina unless and improved and funded pathway exists for processing a shipment to either a customer or a out of state waste disposal facility and clarifying waste definitions would be helpful in identifying those disposal paths.

Number two, ECA recommends that full consideration be given

-- support be given to communities and states interested in providing alternative storage and disposal options as part of a consent-based process.

Greater than Class C and greater than Class C like waste is essentially the same as remote handled transuranic waste from the defense sector, which is already exposed of at WIPP near Carlsbad, New Mexico.

The local communities there are knowledgeable on these issues and supportive of the cleanup efforts. If DOE and NRC determine this alternative is safe, secure and reliable, if legislation is passed to allow WIPP to accept the commercial waste as well as the defense waste it already takes, if the necessary regulatory changes are made and resources are provided for outreach and education to ensure the impacted communities in the state understand the potential risk and benefits and approve, WIPP could take appropriate classified transuranic waste as well as a small amount of commercial greater than Class C waste.

This could result in more room for high-level waste and spent nuclear fuel in Yucca Mountain or any other geological repository.

As you are well aware, Yucca Mountain is considered full before it even opens. I should also mention the efforts by the state of Texas to license a disposal cell for greater thank Class C and greater than Class C like waste or transuranic waste.

Waste control specialists has a proven track record for safe

disposal of low-level waste in Texas. They work closely with the surrounding communities and they too are interested in taking the waste.

Nye County also supports the inclusion of Yucca Mountain as an alternative for disposal of greater than Class C waste. However, DOE took it off the table in its draft EIS prior to the resolution of the regulatory and legal issues.

This was due in large part to the administration's determination that Yucca Mountain is not a workable option and suspension of its licensing activities with the NRC.

And lastly, the public must have the opportunity to formally comment on any preferred alternative in pursuit of a consent-based process.

ECA looks forward to reviewing DOE's final greater than Class C EIS when it is released. However, as impacted communities we stress that the public must have an opportunity to formally comment on DOE's preferred alternative, especially as we move towards implementing a consent-based process.

This needs to happen even if DOE will have to delay its recommendation to Congress and any record of decision while they take public input into account.

In closing, there are options and the federal government needs to give serious consideration to all safe alternatives. Doing so may allow us to overcome stalemates, build momentum and

implement a comprehensive strategy that will get waste moving out of our communities as safely and expeditiously as possible.

Again, I want to thank you for the opportunity to present this testimony to you today.

[The prepared statement of Mr. Smith follows:]

**********INSERT 5 **********

Mr. Shimkus. Thank you, Mr. Smith, and I will recognize myself five minutes for opening for the round of questioning and just say to start is that the whole idea of having these hearings is to get that input as we try to move on legislation. So we appreciate that.

Let me start with Ms. Ing. Your testimony notes that starting in 2008 states which were not a part of an interstate compact with a host facility were left stranded without a disposal option.

This was the result of the state of South Carolina choosing to exclude non-Atlantic compact commission states from having access to the Bardwell site. Is that correct?

Ms. Ing. That is correct.

Mr. Shimkus. To your knowledge, was that decision the result of any technical or legal issues or was it a policy change as a result of a political process?

Ms. Ing. I know that part of the reason was a policy change as a result of a political process. To the extent there were technical issues as well I would not be aware of those.

Mr. Shimkus. Due to the nature of low-level waste compacts, will host state governments always have the ability to modify acceptance criteria depending on political and policy preferences?

Ms. Ing. I believe that would depend on how that compact

is set up and to what extent the state legislature would impact that compact. I know in the state of Texas that would be allowed to happen for its host facility in the Texas Vermont compact.

Mr. Shimkus. The -- and again, Mr. Smith, you have already mentioned the definition of waste and dealt with the transuranic. That was going to be one of my questions but you covered that.

So your testimony also notes that the Department of Energy successfully engaged with the state of Nevada to dispose of DOE-owned mixed waste at the Nevada National Security site.

In your view, what were the key steps that enabled DOE and Nevada to come together in an understanding for how to dispose of the nuclear material.

Mr. Smith. Well, I can't speak to Nevada's thought process on that. But I believe it is probably coordination with the state and the community and trying to move things forward.

Mr. Shimkus. Okay. There is a -- is there a common thread through the local communities represented by the energy community's association?

Mr. Smith. Well, there is, and I think the common thread is is we want to help solve these problems and make a positive impact and we think we have got some solutions but you have got to bring those to the community and the leadership in those communities to be able to get our ideas and impacts that we could have on helping you move these processes forward.

Mr. Shimkus. And some of them might be evaluation of legislation that is proposed and being engaged and helping us craft that.

Mr. Smith. Absolutely. We certainly want input into that.

Mr. Shimkus. Very good. Thank you.

Ms. Opila, many of the types of radioactive material are discussed -- are disused radioactive sources. Disuse sources are sealed sources of radioactive material that is not currently being utilized and will never be utilized again for the intended purposes.

According to the disused sources working group, there are approximately 2 million sealed sources and tens of thousands of disused sources in the United States.

How are agreement states currently managing disused sources?

Ms. Opila. Thank you, Chairman.

Disused sources are just like any other radioactive source that is licensed at a facility under an agreement state's authority.

And therefore those licenses require those facilities to safely and securely manage those sources just as they would any other sources.

The agreement states under their authority periodically inspect these facilities to ensure that the facilities are managing those sources, both disused and used, in a safe and secure

manner.

Mr. Shimkus. Is the NRC working with agreement states to track and dispose of disuse sources?

Ms. Opila. Yes.

Mr. Shimkus. If so, are there additional actions the NRC could undertake to improve the handling of these sources?

Ms. Opila. I believe that there are options that are being considered, one of which is for category one and category two sources, perhaps tracking the status of the source, whether or not it is used or disused in the national source tracking system.

Mr. Shimkus. Great. That is the end of my questions and I now -- I will yield back my time and yield to the ranking member, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

Mr. Smith, in your testimony you urged DOE and NRC to work together to change the way that the United States classifies its waste to a risk-based approach, not just for low-level waste but for other types of nuclear waste.

Is there support among other communities for moving in this direction?

Mr. Smith. Yes. Most of all our communities in the Energy Communities Alliance are supportive of this effort.

Mr. Tonko. And Ms. Opila, your reaction to that?

Ms. Opila. I am sorry, sir.

Mr. Tonko. Your reaction to the recommendation by Mr. Smith. Is there support amongst communities to move to this risk-based approach?

Ms. Opila. The organization doesn't have an opinion on that particular question.

Mr. Tonko. And Ms. Ing, is there any opinion you can share with us for -- from your perspective?

Ms. Ing. I can say that we -- that with the licensing of the facility, the TCEQ, engaged with the facility operator with the risk-based approach. But I can only speak to that facility.

Mr. Tonko. Okay. Thank you.

And Mr. Smith, again, are you seeing support from DOE and NRC with regard to reclassification?

Mr. Smith. Well, we had discussions with DOE but there has been no commitment from the Department of Energy. We think that the easiest solution would have -- would be for Congress to change the language to composition as opposed to origin and that would give us the ability to look at a number of waste streams to be able to move quickly out of our communities and have immediate impact.

Mr. Tonko. Thank you.

Do you believe that those agencies currently have the legal authority you are saying that there would be statutory change that you would recommend we do? But do you believe they have the

authority to make this change or do you see that the legislation is absolutely necessary?

Mr. Smith. Well, I don't think that I am qualified to answer that question. But I do think that legislative assistance with this would get the process moving very quickly.

Mr. Tonko. Thank you.

And Mr. Smith, you also stated in your testimony support for looking at all options for nuclear waste disposal. Regardless of the status of the Yucca Mountain disposal site, it has been very difficult to site even the low-level waste facilities but we do have several operating.

What gives you confidence that a consent-based approach to siting facilities for high-level waste can yield a better outcome?

Mr. Smith. Well, something has got to be better than where we have been. So I think that anytime we can get together and you involve the communities we can give you ideas and opportunities that you may not see.

For instance, we have identified over 2,300 canister or high-level waste that with this reclassification could possibly be considered transuranic waste and be disposed of in a different route than a geologic repository.

Mr. Tonko. And do communities living near the facilities where cleanups are underway believe they are consulted adequately about the status and plans for ongoing activities at these sites?

Mr. Smith. I think there is good dialogue although there is probably mixed results for your question. There could always be more. I do think we need to be engaged more, yes.

Mr. Tonko. And could DOE and NRC or the facility operators be doing more to foster good community relationships?

Mr. Smith. I guess it depends on who you ask that question. They think they are. Sometimes we think there should be, you know, more community involvement and assistance with the communities, you know, with the level of risk that we are having to take on behalf of the Department of Energy.

Mr. Tonko. Can you cite some specifics from your own personal interactions with --

Mr. Smith. Well, it doesn't involve cleanup but, again, you know, the MOX facility is something that came to South Carolina with the promise that that was going to be completed and that those waste streams had a disposition path out and, again, as you see it has certainly taken on the same characteristics of Yucca Mountain.

You know, that gives us pause for, you know, what we are being told by the Department of Energy and, you know, the administration. So yeah, we have serious concerns in all of our communities and we all have issues like that.

Mr. Tonko. Mm-hmm. And are there practices in other countries or recommended practices by the International Atomic

Energy Agency that we should look to for new ideas on how to deal with waste safely and more quickly than we are currently doing?

Mr. Smith. Well, I am probably not the one to answer that question so I would like to consult with staff and get back with you on an answer -- a written answer to that question.

Mr. Tonko. Do any of our other witnesses have recommendations in that regard?

If not, that concludes my questioning, Mr. Chair, and I yield back.

Mr. Shimkus. Gentleman yields back his time.

Chair now recognizes the gentleman from Texas, Mr. Flores, for 5 minutes.

Mr. Flores. Thank you. Thank you, Mr. Chairman.

Ms. Ing, you highlighted in your testimony that compact is still learning from the first three years of operation.

Will you tell us the most pressing issues that must be addressed by both the commission as well as the state of Texas when you look forward?

Ms. Ing. Yes. What we feel is the most pressing issue is ensuring -- the state of Texas has made it clear to our compact that they will allow 275,000 curies per year into the facility.

It is important for us to understand how our generators and brokers work, who would use the facility and how we can engage in a process with them that will allow as much as up to 275,000

curies into that facility as possible.

There are a number of challenges to generators such as predicting curie values, finding transportation for low-level radioactive waste to the facility, et cetera. We do not want our process to be in any way more cumbersome to that.

So ensuring that we understand the needs of the folks who would use the facility and being able to adapt our process to that is the most pressing issue that we have.

Mr. Flores. Okay. And the second question for you is this. The WCS site in Andrews County opened in 2012 and it is the only facility that is opened as a result of the low-level waste policy act.

The facility has had some challenges along the way and I was wondering if you could tell us about some of those challenges that the facility has encountered and also how long did it take for the facility to be licensed by the TCEQ?

Ms. Ing. I don't know exactly how long it took the facility to be licensed and I am sorry I don't have that answer. I could get it. A lot of people know it.

It took several years. I do know that. I don't know exactly. With regard -- I don't want to go too far. The facility could give you a better answer of some of their specific challenges to getting the facility up and going. I think I can speak from my discussions with them that some of the difficulties

have been similar to ours.

We are the first compact and they are the first facility to take imports and ensuring -- knowing all the different processes that each state, the unaffiliated states and the compacts have.

For instance, some compacts -- the Southwestern compact, the Central compact and the Rocky Mountain compact require exportation.

We cannot take it until they export it, and every compact has a different way to export. And so learning the nuances of all the different players is one of the challenges I know we have worked with the facility operator, WCS, on.

Mr. Flores. Okay.

If you don't mind, if you could ask the facility to give us the time line for the licensing that would helpful.

Ms. Ing. I would be very happy to provide you that.

Mr. Flores. And you can provide that supplementally. Go ahead.

Mr. Shimkus. Are you going to yield back?

Mr. Flores. I will yield to you.

Mr. Shimkus. Yes, thank you.

I just want to -- Mr. Smith, in part of these discussions I have always tried to figure out what the word local communities mean.

What is your definition of local communities?

Mr. Smith. Well, I serve on our council. I serve on a CRO.

Mr. Shimkus. With respect to your association and --

Mr. Smith. The leadership of the community that helps focus the ideas and opportunities that are going to

Mr. Shimkus. Savannah River is in the county of Aiken, South Carolina so that is kind of a good definition. Is the country next to Aiken part of the association?

Mr. Smith. Well, we have a five regional area that consists of five different counties that have access or have, you know, input into what takes place on the site.

So we live right on the Savannah River and you cross the Savannah River to Georgia they have a third of work force over in Georgia and, clearly, they are impacted as well so --

Mr. Shimkus. So what about the county that is to the east of Aiken County?

Mr. Smith. Okay. So that five-county area all has input into this process.

Mr. Shimkus. Are they all bordering Savannah?

Mr. Smith. They are all bordering Savannah River site except for the Georgia side of the compact.

Mr. Shimkus. Because of the river?

Mr. Smith. Because of the river.

Mr. Shimkus. So they all border the --

Mr. Smith. That is correct. That is correct.

Mr. Shimkus. So a county that is one time removed probably isn't a local community?

Mr. Smith. No, it is not a local community.

Mr. Shimkus. The only point I raise is because especially it kind of pertains to even Mr. Tonko's comment on the European model.

There is a definition of -- I would argue that especially at in Nevada, the local community, especially when you are talking about Yucca Mountain, the local community is federal government.

BLM land, DOE land, all that, and then some of my friends who are 90 miles away -- an hour and a half away -- aren't really part of the local community in this debate. So that is kind of why I raised that question.

Mr. Smith. Well, from Aiken County's standpoint, again, we recognize five counties as players or participants in the process for Aiken County and Savannah River site. And so that is the input that we want to have on behalf of what takes place here.

Mr. Shimkus. Very good. Thank you.

I want to thank my colleagues for giving me this time and I will now yield to the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I want to ask Ms. Ing, I want to better understand from your perspective what is happening with the Texas compact and the

recent request to NRC to consider allowing Texas to license a facility to handle GTCC waste.

Are you satisfied with the handling of your request by the NRC? Well, I will start with that.

Ms. Ing. For clarification, my compact did not make that request. That was made by the Texas commission on environmental quality. Since we deal with low-level radioactive waste and greater than Class C as we currently understand that definition does not fall within the purview of our compact.

We haven't developed and haven't seen a need to develop a position on that.

Mr. Pallone. Okay. And I guess there is no one else we could ask about if -- all right. Thanks a lot.

Mr. Shimkus. The chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. Pitts. Thank you. Maybe each of you can respond to this question.

With all of the scientific work that has been done over the last 20 years, to appropriately characterize waste, do you have any recommendations for how Congress can improve the disposal of low-level radioactive waste?

We will start with you, Ms. Opila.

Ms. Opila. No, the organization does not have any recommendations for how Congress can improve. We believe the

compact system is working well. We believe the compact system is working well.

We believe that the states that regulate the facilities do a good job of regulating these facilities and so we do not have any recommendations at this time.

Mr. Pitts. Ms. Ing.

Ms. Ing. We do not have any recommendations to improve it either. Our facility has been up and operating just since April of 2012. We are still learning. We still have access and can maintain capacity for all the 50 states and D.C. and territories.

Mr. Pitts. Mr. Smith.

Mr. Smith. Again, you know, I am not an expert on this but if we were to change the language in the Nuclear Waste Policy Act to reflect composition of the waste we think that are other alternatives for some of the waste that we currently have at Savannah River site. So we do see alternatives for that.

Mr. Pitts. Ms. Opila, you -- in 2008 the state of South Carolina restricted access to the Barnwell disposal facility to members of the Atlantic compact commission, essentially leaving the majority of the country without a site to dispose of Class B and C waste, and I understand that Colorado is part of the Rocky Mountain compact which has an agreement to send low-level waste to Richland, Washington.

But will you describe how other states managed Class B and

C waste prior to the opening of the site in Andrews County, Texas?

Ms. Opila. Yes, sir.

Most of the facilities that generated low-level waste in states that did not have access to a facility during that time period between when the Atlantic compact closed to out of compact waste and when the WCS facility was open to out of compact waste, those facilities were required to basically store their waste on site until they could have access to a disposal facility.

Mr. Pitts. And your testimony notes that the organization for agreement states objects to NRC requiring a site to redo its performance assessment unless the site plans to accept new material.

Will you please describe this issue in greater detail?

Ms. Opila. Sure.

Essentially, the way we understand the proposed requirements of Part 61 that they would require all facilities, current facilities to redo their performance assessments and for facilities that are not going to be taking these unique waste streams there is no need for that and the cost that would be incurred by the facility to do this very detailed performance assessment as well as the cost incurred to the agreement state to evaluate the performance assessment could be significant.

And those costs would not -- or redoing these performance assessments would not enhance the safety of, you know, disposal

waste at those facilities if they are not going to be taking these unique waste streams.

Mr. Pitts. What might be some potential implications if NRC's requirement forces existing sites to adjust their performance standards?

Ms. Opila. Again, our concern is that the costs that would be incurred by the facilities and the states to redo those performance assessments and evaluate them could be significant and we don't, again, feel that that would be necessary and would not enhance any safety of disposal waste at those facilities.

Mr. Pitts. All right.

Ms. Ing, the federal government still must address how to dispose of depleted uranium as a result of enrichment. Currently, there is a significant amount of depleted uranium located at the Urenco facility just across the Texas-New Mexico border.

Has the Texas compact considered whether and how it would treat an authorization request to dispose of depleted uranium at the Andrews County facility?

Ms. Ing. The compact would defer to the host state, Texas, on that matter. Currently, we will allot 275,000 curies per year as per Texas law into that facility. We do not distinguish if the curies come from depleted uranium or another source material.

And all of the authorizations are looked at and reviewed by

the Texas Commission on Environmental Quality.

To the extent through that review or statute they change that position, we would defer to that as a compact.

Mr. Pitts. My time has expired.

Mr. Shimkus. Gentleman's time has expired.

We want to thank the second panel for testifying and just remind the first and second panel we are glad to see the NRC stayed. We appreciate that.

We will note that the DOE did leave, though. So having said that, the hearing record will be open for 10 legislative days for us maybe to receive questions and then get them to you, if you would respond when you can I would appreciate that.

And the hearing stands adjourned.

[Whereupon, at 12:03 p.m., the committee was adjourned.]