

**H.R. 515, THE RADIOACTIVE IMPORT DETERRENCE
ACT**

HEARING
BEFORE THE
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

OCTOBER 16, 2009

Serial No. 111-73



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

74-844

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

HENRY A. WAXMAN, California, *Chairman*

JOHN D. DINGELL, Michigan
Chairman Emeritus
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
FRANK PALLONE, JR., New Jersey
BART GORDON, Tennessee
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
GENE GREEN, Texas
DIANA DEGETTE, Colorado
Vice Chairman
LOIS CAPPS, California
MICHAEL F. DOYLE, Pennsylvania
JANE HARMAN, California
TOM ALLEN, Maine
JANICE D. SCHAKOWSKY, Illinois
CHARLES A. GONZALEZ, Texas
JAY INSLEE, Washington
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas
ANTHONY D. WEINER, New York
JIM MATHESON, Utah
G.K. BUTTERFIELD, North Carolina
CHARLIE MELANCON, Louisiana
JOHN BARROW, Georgia
BARON P. HILL, Indiana
DORIS O. MATSUI, California
DONNA CHRISTENSEN, Virgin Islands
KATHY CASTOR, Florida
JOHN P. SARBANES, Maryland
CHRISTOPHER S. MURPHY, Connecticut
ZACHARY T. SPACE, Ohio
JERRY McNERNEY, California
BETTY SUTTON, Ohio
BRUCE BRALEY, Iowa
PETER WELCH, Vermont

JOE BARTON, Texas
Ranking Member
RALPH M. HALL, Texas
FRED UPTON, Michigan
CLIFF STEARNS, Florida
NATHAN DEAL, Georgia
ED WHITFIELD, Kentucky
JOHN SHIMKUS, Illinois
JOHN B. SHADEGG, Arizona
ROY BLUNT, Missouri
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
JOSEPH R. PITTS, Pennsylvania
MARY BONO MACK, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE ROGERS, Michigan
SUE WILKINS MYRICK, North Carolina
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee
PHIL GINGREY, Georgia
STEVE SCALISE, Louisiana

SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

EDWARD J. MARKEY, Massachusetts, *Chairman*

MICHAEL F. DOYLE, Pennsylvania	DENNIS HASTERT, Illinois
G.K. BUTTERFIELD, North Carolina	<i>Ranking Member</i>
CHARLIE MELANCON, Louisiana	RALPH M. HALL, Texas
BARON HILL, Indiana	FRED UPTON, Michigan
DORIS O. MATSUI, California	ED WHITFIELD, Kentucky
JERRY McNERNEY, California	JOHN SHIMKUS, Illinois
PETER WELCH, Vermont	HEATHER WILSON, New Mexico
JOHN D. DINGELL, Michigan	JOHN B. SHADEGG, Arizona
RICK BOUCHER, Virginia	CHARLES W. "CHIP" PICKERING,
FRANK PALLONE, New Jersey	Mississippi
ELIOT ENGEL, New York	STEVE BUYER, Indiana
GENE GREEN, Texas	GREG WALDEN, Oregon
LOIS CAPPS, California	SUE WILKINS MYRICK, North Carolina
JANE HARMAN, California	JOHN SULLIVAN, Oklahoma
CHARLES A. GONZALEZ, Texas	MICHAEL C. BURGESS, Texas
TAMMY BALDWIN, Wisconsin	
MIKE ROSS, Arkansas	
JIM MATHESON, Utah	
JOHN BARROW, Georgia	

CONTENTS

	Page
Hon. Edward J. Markey, a Representative in Congress from the Commonwealth of Massachusetts, opening statement	
Prepared statement	
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement	
Hon. Jim Matheson, a Representative in Congress from the State of Utah, opening statement	
Prepared statement	
Hon. Bart Gordon, a Representative in Congress from the State of Tennessee, prepared statement	
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement	

WITNESSES

Margaret M. Doane, Director, Office of International Programs, U.S. Nuclear Regulatory Commission	
Prepared statement	
Answers to submitted questions	
Leonard C. Slosky, Executive Director, Rocky Mountain Low-Level Waste Board	
Prepared statement	
Answers to submitted questions	
Val Christensen, President, Energysolutions	
Prepared statement	
Answers to submitted questions	

SUBMITTED MATERIAL

Discussion Draft H.R. 515	
Nuclear agreements between the United States and Italy, submitted by Mr. Upton	
Court ruling of Energysolutions LLC, submitted by Mr. Upton	

**H.R. 515, THE RADIOACTIVE IMPORT
DETERRENCE ACT
FRIDAY, OCTOBER 16, 2009**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in Room 2123, Rayburn House Office Building, Hon. Edward J. Markey [chairman of the subcommittee] presiding.

Present: Representatives Markey, Matheson, and Upton.

Also Present: Representative Gordon.

Staff Present: Jeff Baran, Counsel; Melissa Bez, Professional Staff Member; Caitlin Haberman, Special Assistant; David Kohn, Press Secretary; Earley Green, Chief Clerk; Matt Eisenberg, Staff Assistant; Mary Neumayr, Minority Counsel; Aaron Cutler, Minority Counsel; Andrea Spring, Minority Professional Staff Member; and Sam Costello, Minority Legislative Analyst.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. The Subcommittee on Energy and the Environment will come to order.

There are many Italian imports that I would welcome to U.S. soil: Lasagna, great. Ferrari, absolutely. Prosciutto, delicious. And let's not forget Prada, Versace, and Giorgio Armani. But Italian nuclear waste makes me say, *Mama mia*.

H.R. 515, the Radioactive Import Deterrence Act, was drafted in response to the proposed importation of 20,000 tons of Italian low-level radioactive waste into the United States to be processed in Tennessee and disposed of in Utah.

[The discussion draft follows:]***** INSERT 1-1 *****

Mr. MARKEY. Introduced by Congressmen Gordon, Terry, and Matheson, along with many other members of the Energy and Commerce Committee, this bipartisan bill would prevent the importation of low-level radioactive waste into this country.

The State of Utah, along with the Northwest Compact of which Utah is a member, said, no, we won't take the Italian waste. Today, a case is making its way through the courts to determine whether the States and the compacts have the right to say "no" to other countries' radioactive waste.

I have worked on low-level radioactive waste issues for many years. I was on the committee in 1980 when we established the compact system to deal with the issue. And in 1985, when I chaired the Subcommittee on Energy, long ago and far away, we passed the

amendments to the Act to both consent to a number of compacts and to ensure that States without disposal sites would be able to access those critical facilities.

Let me state very clearly that when we established the compact system we did so to ensure that low-level waste in this country would be able to be safely disposed of. In order to encourage new disposal facilities to be established, we allowed the States to enter into compacts to dispose of their waste regionally, and we further granted them authority to exclude waste from places outside of their respective compacts. The purpose of the compact system was to empower the States and not the compacts. But today some argue that the compacts do not have the authority to say "no" to waste from other countries.

To me, from a plain-language reading of the statute and the legislative history, this position is obviously incorrect. We did not intend for foreign waste to be allowed special privileges to be disposed of within the compacts even against the wishes of the compacts and the States.

The compact system, the result of a painstaking compromise, has provided access for critical low-level radioactive waste disposal for almost three decades. Today, I am very concerned that the compact system itself is under assault. I disagree with those who argue that this bill is antinuclear. In fact, this bill would actually preserve waste disposal capacity for domestic use.

Careful stewardship of our U.S. nuclear waste disposal capacity is more important than ever. In this context, it is important to examine the current state of low-level waste disposal in other countries. Do other countries allow importation and disposal of waste from, say, the United States? The answer, no. Not Germany, not Canada, not Switzerland, and, no, not Italy either. Not a one. No other nuclear waste-generating country allows low-level waste importation for disposal. In fact, many countries with nuclear programs do not even have disposal facilities for their own low-level waste. That includes Italy.

If the U.S. remains the one country that allows for the disposal of foreign waste, then nothing stops those other countries from using us as their nuclear dumping grounds. If we do not protect the low-level waste compact system, what were supposed to be the disposal sites for U.S. waste could be turned into global nuclear waste dumps. We could end up in a position where many States are unable or unwilling to participate in these compacts at all and companies could have nowhere to go to dispose of their radioactive waste. That would not be a good development for the nuclear industry or for the Nation.

[The prepared statement of Mr. Markey follows:]***** COMMITTEE INSERT *****

Mr. MARKEY. Now I would like to turn and recognize my good friend, the gentleman from Michigan, Mr. Upton, for an opening statement.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman.

Before I begin, I would like to put into the record two statements, the nuclear agreements that were signed just this month between Department of Energy Secretary Chu and the Italian Minister for Economic Development.

Mr. MARKEY. Without objection, so ordered.

[The information appears at the conclusion of the hearing]***** COMMITTEE INSERT *****

Mr. UPTON. It seems to me that any movement on the bill that we are looking at today would violate the spirit of those agreements, and I would like to submit that court ruling from the case EnergySolutions for Northwest Interstate Compact, and I thank you for allowing that to be entered into the record.

[The information appears at the conclusion of the hearing]***** COMMITTEE INSERT *****

Mr. UPTON. As a strong supporter of nuclear power, I hope today's hearing on importing low-level nuclear waste will lead to discussing the larger issues of long-term storage of spent nuclear fuel or nuclear fuel recycling as a whole. The issue of waste disposal in the new nuclear power plants are, in fact, directly related.

I see the bill that we are looking at today is anti nuclear power. This bill some would view as a political NIMBY issue.

Direct from the NRC's written testimony: "The regulatory authorities in both Tennessee and Utah have informed the NRC that the material can safely go to EnergySolutions' facilities in their respective States. The Southeast Compact Commission expressed no objection to this application. The executive branch expressed no objection to the application and provided the NRC with the Italian Government's views that the application is consistent with the joint convention obligations."

Also from the NRC: "There appears to be ample available disposal capacity for the foreseeable future, particularly at the EnergySolutions facility in Utah."

So why are we debating the bill? Well, a court has made a ruling, and the Appeals Court is reviewing the case. EnergySolutions has voluntarily agreed to limit the disposal of foreign-generated waste to no more than 5 percent of its licensed capacity or 10 years, whichever comes first. This is just 4.3 acres on a 640-acre site. And EnergySolutions has offered to make this a legally binding condition of its license.

Congress should not be interfering here. We should, instead, have hearings on building new nuclear power plants, recycling spent fuel, and what happens now that the administration has scrapped Yucca Mountain.

While I have great respect for my friends on the other side who introduced this legislation, I am concerned that it will be used by the opponents of nuclear power to delay new plants from coming online, causing further roadblocks to the recycling and safe disposal of spent fuel and low-level waste.

The bill is a continuation of the attacks on the nuclear industry. The first attack was on the disposal of spent fuel at Yucca. This bill is attacking the safe disposal of a small amount of low-level waste and is being used by those who would like to stop nuclear energy to attack the disposal of domestic-generated depleted uranium, or DU.

NRC has stated that the disposal of DU is safe. If we can't dispose of DU, then we can't enrich uranium for fuel. If we don't have the fuel, then we are unable to power the source of 70 percent of our Nation's zero-emission electricity generation.

Sponsors of the bill may not believe that it is antinuclear, but the antinuclear groups attempt to stop nuclear energy by attacking the waste, not the generation. Despite what the proponents of the legislation may claim, this isn't just about importing waste from Italy, what happens to be identical to the domestic waste safely being processed and disposed of today. This is the camel's nose under the tent, and that is shutting down all of our domestic processing and disposal capabilities and eventually mothballing all of our zero-emissions nuclear power plants.

Low-level radioactive material from nearly 104 domestic nuclear sites is sent to the Bear Creek facility for processing and on to the Clive facility in Utah for its safe disposal. We cannot compete on a global scale if we shut down our domestic facilities.

Members of this very subcommittee represent 18 different States that send waste to be processed and disposed of by EnergySolutions at their facilities. I have two nuclear power plants in my district, literally miles from my doorstep, that send their low-level nuclear waste across State lines for processing and disposal. These services are essential to the success of nuclear power.

Now I know that there are some concerns about importing Italian waste to the Clive, Utah, site and how it will impact the compact system. I don't believe that it will. The compact system remains unaffected. The court has already unequivocally ruled on the issue, and I expect that the Appeals Court will affirm the ruling. We should let the process move forward.

The judge's ruling in EnergySolutions v. Northwest stated that the Clive facility is not a regional disposal facility and not part of the Northwest Compact. Two quotes are important. Under the 1980 Act, Northwest would have no authority to exclude out-of-region waste from the Clive facility; and the second quote, the Clive facility is not a regional disposal facility as defined by the 85 'Act.

It is imperative that clean, safe nuclear power is at the forefront as we seek to solidify our Nation's energy supply and foster a new era of energy independence and reduced emissions. As applications for nearly 30 new nuclear plants are expected over the next couple of years, we are on our way to fulfilling our commitment to safe, clean nuclear power. Not only will our environment be better off for it, our national security will also be bolstered. Millions of households are powered by clean, zero-emission nuclear power, and our Nation's economy will be powered by nuclear as well. This is the right course, and we will be better for it.

I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Utah, Mr. Matheson.

**OPENING STATEMENT OF HON. JIM MATHESON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. MATHESON. Well, thank you, Chairman Markey, for holding this hearing.

As the committee knows, I have been working on this bipartisan legislation with my friends, Bart Gordon of Tennessee and Lee Terry of Nebraska, for the past 2 years. The subcommittee held a similar legislative hearing last year, and it was clear to those of us who attended that hearing that the policy for low-level radioactive waste in this country, as created by the Federal Government in the legislation in 1980 and 1985, has some gaps, and there are some questions, and Congress ought to relook at this policy, and that is why we are here today.

I would say that it is hard to see why the U.S. would ever want to import radioactive waste from other countries. Simply put, we have very few locations in this country where this waste can go.

Given the fact—and I agree with Mr. Upton—that we are facing a future with an additional amount of nuclear power in this country—and I support the creation of new nuclear power plants—it seems to me as we focus on carbon-free energy sources and nuclear power seems to grow in the U.S. Over the next few years that we would want to preserve the U.S. capacity for low-level radioactive waste.

Some have said this is an antinuclear bill, and nothing could be further from the truth, that this is a pro-domestic nuclear power bill. I challenge anyone to show me in this legislation what is going to inhibit the development of domestic nuclear power. So I want to get that on the record right away in this opening statement, because that just isn't the case.

Now, as we said, the compact system, which oversees the low-level radioactive waste, Utah's part of what is called the Northwest Compact, the compact says that while the Clive facility is authorized to take waste from outside compact States, the compact also said it had never considered or viewed the issue of adopting an arrangement that would provide low-level radioactive waste generated in foreign countries access to the region for disposal at the EnergySolutions facility in Clive, Utah.

As illustrated in the testimony of Mr. Slosky from the Rocky Mountain Compact, when EnergySolutions applied to the NRC for an import license for waste from Canada—because we have had some waste come into this country, some small amounts in the past—it was listed as only needing to be processed at the Bear Creek facility. In fact, the waste was processed, then it was redesignated as U.S. waste, and it was openly stored in Utah without the knowledge of the Northwest Compact or without the knowledge of the State of Utah.

So we can talk about some foreign waste that has coming in and stayed here. The compact and the State didn't even know it happened, and those were all pretty small amounts. Now we are talking about a lot and greater volume of radioactive waste.

You will hear some discussion in the hearing today about do we have enough capacity in this country. You will hear reference to a GAO study from 2004. We talked about this in the hearing last year. They took one data point and projected it out from there. It happened to be a low year.

You know, when I was a first-year MBA student, a professor tricked all of us with a case where he had us take some data, and we projected it out. Then he pointed out the other data, and we all

learned a good lesson. The GAO made that same first-year MBA mistake. I hope we don't when we look at the amount of capacity that we have got.

Again, I don't see a lot of other States lining to create new sites to take this waste. In last year's hearing, EnergySolutions just randomly came to the agreement to self-limit foreign waste to a storage capacity of 5 percent. But, at the same time, in the testimony from the company today, they are suggesting they want to increase the license capacity of the site when just 2 years ago they voluntarily said to our Governor, we won't apply for an application to increase our site. So these voluntary commitments may not have a lot of meaning.

Mr. Chairman, I know my time has expired. I have a written statement that I would like to submit for the record. I do thank you for the hearing, and I look forward to the questions.

[The prepared statement of Mr. Matheson follows:]*****
COMMITTEE INSERT *****

Mr. MARKEY. We thank the gentleman very much. His time has expired, and perhaps he could give the name of that professor so that we could send him over to the Congressional Budget Office so that they could have his insight as to how long-term projections are made.

By unanimous consent, I would request that the gentleman from Tennessee, who is cosponsor of the legislation with Mr. Matheson, Mr. Gordon, be allowed to participate in this hearing and to be recognized for making an opening statement.

Without objection, so ordered.

The gentleman is recognized for an opening statement.

OPENING STATEMENT OF HON. BART GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. GORDON. Thank you, Mr. Chairman, for that request and also thank you for having this hearing today.

When the Nuclear Power Waste Policy Act and the low-level waste policy amendments were passed in the 1980s, the United States was facing a critical problem: Where were we going to put low-level radioactive waste generated by our own nuclear power plants?

We established a compact system under which the States in each compact would be responsible for establishing disposal sites and taking care of their own waste. As the legislative history clearly shows, a witness from the NRC testified in a hearing before this subcommittee last year, no one anticipated that other countries would try to dump their radioactive waste in the United States.

The NRC stated when it drafted regulations allowing the importation of nuclear waste that it did not anticipate—and I quote—appreciable U.S. import or export traffic in low-level radioactive waste. And that was true for more than a decade until EnergySolutions applied for the NRC license in 2007 to import 20,000 tons of low-level radioactive waste from Italy for treatment in Tennessee and disposal at the site in Utah. Italy does not have a disposal site, nor has it been successful in obtaining public approval for a future site.

Italy is the not the only country that doesn't have a waste site or enough capacity for its waste. Britain is running out of room and looking for places to put its waste. Germany, Canada, Belgium, Switzerland, Mexico, and Denmark don't have sites either.

If I were a public official in Italy or Britain, I would jump at the chance to send my low-level waste to the United States and be rid of the responsibility. But no one can claim that this is in the best interest of the United States to take on decades of responsibility for another country's nuclear waste and also taking away the incentive for those countries to do the responsible thing by providing storage for their own waste. So we should ask why the United States needs Italy's waste, which has been safely stored on site for over 20 years and can safely be stored for another 20 years or more or the waste of any other country when EnergySolutions plans overseas disposal sites.

As it now stands, the NRC is powerless to prevent foreign import of waste even as space for our domestic waste dwindles. It is clear that only a legislative prohibition will stop the wholesale importation of foreign nuclear waste into the United States. The RID Act provides the prohibition, while allowing the President to make exceptions if it is in the national interest.

The United States is the only country in the world that allows imports and disposals of low-level radioactive waste from other countries. The fact is, we have limited space for this kind of waste; and it should be reserved for domestic industries that generate it—medical facilities, universities, research labs, and utilities.

There are 36 States with no other alternative but to ship their waste to Utah. Michigan, Texas, and 34 other States have no other place. That is what the RID Act will do.

By banning the importation of radioactive waste for disposal, we also send the world the right message. If you are going to produce low-level radioactive waste, you are going to have to build the necessary facility to dispose of it.

And, finally, with all due respect to my friend from Michigan, this is not an anti-nuclear waste bill by any means. It is a pro-domestic nuclear industry. Michigan, as you pointed out, those two facilities near you, if the facility in Utah runs out of capacity, there will be no place for them to send their waste.

Thank you, Mr. Chairman.

Mr. MARKEY. I thank the gentleman.

The gentleman's time has expired.

We will now turn to our witnesses.

STATEMENTS OF MARGARET M. DOANE, DIRECTOR, OFFICE OF INTERNATIONAL PROGRAMS, U.S. NUCLEAR REGULATORY COMMISSION; LEONARD C. SLOSKY, EXECUTIVE DIRECTOR, ROCKY MOUNTAIN LOW-LEVEL WASTE BOARD; AND VAL CHRISTENSEN, PRESIDENT, ENERGYSOLUTIONS

Mr. MARKEY. Our first witness is Margaret Doane, the Director of the Office of International Programs at the Nuclear Regulatory Commission. This office provides overall coordination for the NRC's international activities.

Ms. Doane, whenever you are ready, please begin.

STATEMENT OF MARGARET M. DOANE

Ms. DOANE. Good morning, Mr. Chairman and members of the subcommittee.

My office is responsible for reviewing import and export license applications and issuing licenses pursuant to the NRC's import and export licensing regulations. My focus today will be on the NRC's regulatory framework for licensing the import of low-level radioactive waste. I would like to thank you for providing the NRC with the opportunity today to discuss our import licensing process.

As requested, we provide prepared testimony for the record that describes in detail the NRC's regulatory framework for licensing the import of low-level radioactive waste. At this time, I will highlight key elements of that testimony.

The NRC reviews import and export license applications against the criteria defined in its regulations. Specifically, the NRC bases its licensing actions on the following three criteria: One, the proposed import will not be inimical to common defense and security; the import will not constitute an unreasonable risk to public health and safety; and an appropriate facility has agreed to accept the waste for management and disposal.

The NRC has exclusive jurisdiction within the United States for granting or denying licenses to import foreign radioactive waste. The NRC determines whether to issue an import license for radioactive waste based on its own health and safety and common defense and security evaluation.

The NRC's evaluation is formed after consulting with the executive branch through the Department of State, the applicable host State, and the applicable low-level radioactive waste compact and consideration of public comments. The NRC consults with the applicable host State regulatory officials for their health and safety views on the proposed import and to confirm that the proposed import of radioactive waste is consistent with the State-issued possession license for the disposal facility.

Likewise, the NRC consults with the applicable low-level radioactive waste compact commission to determine whether the compact will accept out-of-compact waste for disposal in a regional facility. To ensure that no radioactive waste imported into the United States becomes orphaned waste, the NRC will not grant an import license for waste intended for disposal unless it is clear from these consultations that the waste will be accepted at an applicable host agreement State and, where applicable, the low-level radioactive waste compact.

As requested by the subcommittee, I would like to turn to questions regarding disposal capacity for low-level waste in the United States.

In the short term, the NRC has not identified any capacity issues with regard to Class A disposal at EnergySolutions' Clive, Utah, facility. The agency as a regulator would have the authority to address future domestic disposal capacity issues if there were a public health and safety or common defense and security concern. There do not appear to be any such concerns about capacity for disposal of Class A material, which has been the classification for all waste import cases today.

In reviewing import licensing applications, our review focuses on whether there is an appropriate facility that has agreed to accept the waste for management or disposal. In making its determination, we obtain the views of the affected low-level waste compact States and the executive branch.

The pure policy question of whether, as a general matter, foreign waste should be permitted to take up space in U.S. disposal facilities would necessarily involve interests that are beyond the traditional role of a regulator to consider. These would include foreign and interstate commerce, entrepreneurial interests, the State's concerns and expectations under the Low-Level Radioactive Waste Policy Act. However, the NRC would be pleased to share its views on the effect of the proposed H.R. 515 on import and export licensing and contribute its technical expertise to those decision makers that are situated to decide the questions the draft legislation involves.

In conclusion, the NRC's role in evaluating a low-level waste import application is a regulatory one, limited to ensuring that the proposed import can be accomplished safely and securely and in accordance with all applicable legal requirements.

Mr. Chairman and members of the subcommittee, this concludes my statement; and I would be happy to answer your questions.

[The prepared statement of Ms. Doane follows:]***** INSERT
1-2 *****

Mr. MARKEY. Thank you, Ms. Doane, very much.

Our second witness is Leonard Slosky, the Executive Director of the Rocky Mountain Low-Level Radioactive Waste Board. This board is responsible for implementing the Rocky Mountain Low-Level Radioactive Waste Compact.

Mr. Slosky, welcome. Whenever you are ready, please begin.

STATEMENT OF LEONARD C. SLOSKY

Mr. SLOSKY. Thank you, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to present our views with you today.

On a personal note, I would like to note that it is nice to be back here, as I appeared before the chairman's subcommittee in 1985 when the compacts were first going through Congress. So I have been rejuvenated since then and am glad to return.

While I am officially representing the Rocky Mountain Board, I have discussed these issues with the Northwest Compact—

Mr. MARKEY. Were you a witness on this subject at that time?

Mr. SLOSKY. I am afraid so.

Mr. MARKEY. Unbelievable. So you and I—

Mr. SLOSKY. We go way back.

Mr. MARKEY. We go way back. Wow, yes. I remember those hearings.

Mr. SLOSKY. That won't count against my time?

Mr. MARKEY. No, it will not count.

Mr. SLOSKY. While I am officially representing the Rocky Mountain Compact today, I have discussed these issues with the Northwest Compact and they are in agreement with this testimony.

The primary message that I would like to leave with you is the importance of the compacts exclusionary authority. That is, the au-

thority of the compacts to control what waste can be brought into and taken out of the compact.

In 1979, the Governors of the three States of low-level waste disposal facilities stated that they no longer were willing to carry the entire burden of disposing of the Nation's low-level waste. To resolve this crisis and to keep the existing facilities open, the States proposed to Congress that they be responsible for low-level waste within their regions in exchange for the authority to exclude waste from outside their regions.

As you know, this led to the passage of the 1980 Act. The 1985 Federal Act embodied a compromise that allowed Congress to consent to the original seven compacts in return for the three sited States and compacts agreeing to keep their disposal facilities open for another 7 years. The consent of Congress was necessary for the compacts' authorities over interstate commerce to be effective.

One of the primary purposes of the 1980 and 1985 Acts was to achieve greater equity in low-level waste disposal. When compacts were drafted and during congressional consent, there was no expectation that foreign low-level waste would be disposed of in these sites. However, 10 compacts have been enacted as Federal law, and all contain exclusionary authority over outer region waste.

It is inconceivable to me that Congress intended to authorize the compacts to exclude waste from States outside their regions but not from foreign nations. It is the exclusionary authority of the compacts that allows the existing disposal facilities to continue to operate and enables new facilities such as the WCS facility in Texas, which has recently been licensed and will soon begin construction, to come about.

As no State is willing to host a disposal facility unless it has authority through a compact to ensure that it does not become the dumping ground for the Nation's or the world's low-level waste, the States and compacts do not object to foreign waste being imported for treatment or recycling so long as the resulting waste has a viable disposal pathway and is not reattributed as domestic waste. However, the threat of foreign waste disposal places the entire compact system and the existing and planned low-level waste disposal sites in jeopardy.

Utah would not have licensed the Clive facility if it did not believe that it had the ability through the compact to control out-of-region waste. Under the Northwest Compact, no facility located in a member State may accept out-of-region waste without prior approval of an arrangement by the Compact Committee. The Compact Committee adopted a clarifying resolution that the existing arrangement does not provide access for foreign waste but does provide access for waste from throughout the United States.

This is not a NIMBY issue. It is a matter of national importance. As stated by Utah in a hearing last year on similar legislation, the State of Utah has done its fair share and more in disposing of most of the Nation's low-level waste.

In terms of the litigation that is ongoing, the status has been briefly reported, I would note that the amicus briefs in support of the appellant's position have been filed and that this extraordinary coalition of compacts and States is due to the far-reaching implications of the district court's decision. While the litigation began over

the import of Italian waste, the decision is much broader and will affect every low-level waste compact. If the district court's decision stands, the compact system could be destroyed because of a very narrow interpretation of the compact.

It is interesting to note that eight of the ten low-level waste compacts in the Nation are either defendants or amici in this litigation in addition to the councils, State governments, and the State of New Mexico.

[The prepared statement of Mr. Slosky follows:]***** INSERT 1-3 *****

Mr. MARKEY. Thank you very much.

Who did you represent in 1985, Mr. Slosky?

Mr. SLOSKY. I represented the Rocky Mountain Compact, also.

Mr. MARKEY. That is unbelievable.

The third witness is Val Christensen. He is the President of EnergySolutions, a nuclear services company headquartered in Salt Lake City, Utah.

Mr. Christensen, welcome. Please begin.

STATEMENT OF VAL CHRISTENSEN

Mr. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am grateful for the opportunity to appear today to provide testimony on this very important issue.

As has been mentioned, EnergySolutions is headquartered in Salt Lake City, Utah. We are a world leader in environmental cleanup and providing a wide range of technical support services to the nuclear industry. We also provide critical nonproliferation services under the Global Threat Reduction Initiative.

I would like to address some of the concerns about safety, because that is the underlying concern when we talk about importing nuclear waste.

We have been safely disposing of Class A low-level nuclear materials from within the U.S. and from abroad, internationally, for over 9 years. These materials include shoe covers, lab coats, cleaning cloths, paper towels, and other kinds of materials that are used in areas where radioactive materials are present.

Class A low-level radioactive waste contains the lowest concentration of radiation in the low-level waste classification scheme. To put it in perspective, exit signs and smoke detectors that you find in your home have radioactive sources that are more radioactive than the Class A designation and are not allowed to be disposed of in our Clive facility.

Both the State and Federal regulators have concluded that the processing and disposal of Class A low-level radioactive waste poses no health or safety issues. It is important to note for Congressman Gordon from Tennessee that no internationally generated waste would ever be disposed of or orphaned in Tennessee. We have never processed international material in Tennessee that was non-conforming and had to be returned to the generating country.

We and others have been, as I mentioned, importing foreign waste for many years from countries such as Germany, the U.K., Mexico, Canada, and Taiwan. And I would note that the NRC has issued import licenses that specifically identify the Northwest Com-

compact disposal site in Richland, Washington, as the final resting place for some of that international waste; and I can provide examples to you off the record. There really is no domestic disposal capacity issue in the United States.

Reference was made to the GAO testimony. The GAO noted that Class A waste volumes have declined by two-thirds, principally because the DOE has completed several large cleanup projects. This wasn't a 1-year event. The trends are going down. Both commercial and Federal disposal volumes are decreasing. Additionally, since May of 2008, a license was issued for the construction of another waste disposal site in Texas.

Although the GAO and the NRC have testified that there is a domestic capacity issue with respect to Class B and Class C waste, they have concluded that there is no Class A disposal capacity issue. We need to remember that the Clive facility is licensed to take only Class A waste.

The final point I wish to make with respect to the capacity issue is that the 5 percent volunteer license amendment that we have presented publicly relates to 150 million cubic feet of remaining licensed capacity, and we have also made the 10-year limit publicly a part of our license amendment.

Now, with respect to the compact litigation, the court's ruling is very narrow. It simply concluded that the Clive facility, which was never constructed or intended to be a compact disposal facility outside of the compact scheme, but the court emphasized that compacts still have the authority to restrict waste coming domestically or internationally into their compact facility. The Clive facility is simply not a compact facility. It is privately owned, and there are no other facilities like it. So the precedent that people are concerned about from the court's ruling simply has no application on any other facility.

All compact facilities, according to the judge's ruling, continue to be able to exclude waste and control waste within the compact system. Again, there is ample disposal capacity. The court's ruling does not interfere with the compact system. It does not turn America into a dumping ground. It is hard to conceive that 4.3 acres in one location would turn the United States into the dumping ground for the world.

We are also concerned that this bill would violate the spirit of the administration's policy of nuclear cooperation as evidenced by the U.S.-Italian joint declaration referred to earlier, which was signed by Secretary Chu and his Italian counterpart, which advances cooperation in the nuclear sector, including advanced waste treatment and disposal technologies. We believe the proposed legislation would prevent American companies from playing an international role in the global nuclear industry largely based on perceptions rather than on facts and sound science.

I am happy to take any questions. Thank you.

[The prepared statement of Mr. Christensen follows:]***** INSERT 1-4 *****

Mr. MARKEY. Thank you, Mr. Christensen, very much.

Now we will turned to questions from the subcommittee.

Mr. Slosky, you are an expert on the compact system. You have spent your life working on it. Are you concerned that if Utah and

the Northwest Compact are forced to take the Italian waste that the compact system itself would be damaged?

Mr. SLOSKY. Yes, I am very much so concerned.

Mr. MARKEY. Could this lead to other States refusing to open low-level waste disposal sites?

Mr. SLOSKY. Yes, I believe it could. The ruling from the court—

And let me first give you a disclaimer. I am not an attorney; and since it is ongoing litigation, I am not going to discuss the merits of the case, but I am happy to discuss its implications. The implication is that there could be a very detrimental effect on the development of any new facilities in the U.S. because it will be uncertain under this ruling whether the compacts in which those facilities would be located would have exclusionary authority or not.

Mr. MARKEY. So this could send us back to 1980 before we passed the legislation out of this committee.

Mr. SLOSKY. Yes, sir.

Mr. MARKEY. Let me turn to you, Ms. Doane.

Has the NRC ever denied an import application for low-level waste because the importation would pose an unreasonable risk to the common defense and security?

Ms. DOANE. No. I don't believe we have ever denied an application because of common defense and security concerns.

Mr. MARKEY. You were listing the reasons that you could reject. So you have never rejected?

Ms. DOANE. We have not, no.

Mr. MARKEY. Has the NRC ever denied an import application for low-level waste because it would pose an unreasonable risk to the public health and safety?

Ms. DOANE. Yes. We have returned without action applications that have come in where they haven't been able to satisfy us that public health and safety would be protected.

Mr. MARKEY. Were those applications ultimately modified that made them acceptable? Or was it just a flat-out rejection?

Ms. DOANE. Some were modified, but others were, no, didn't submit them again. We raised a lot of questions, and they weren't re-submitted.

Mr. MARKEY. So how many applications have been denied over the years?

Ms. DOANE. We have returned without action I would say maybe five or so. There might be more, but offhand that is what I would say.

Mr. MARKEY. And how many actual denials have you ever issued?

Ms. DOANE. I don't believe we have actually denied them. Because, in those cases, that is the same effect. The return without action has the same effect. We return them with what they would have to do to put them back in, and they aren't returned. So if they can't meet the request that we had, we return them without action. So it has the exact same effect as a denial.

Mr. MARKEY. So it is rarely used, though?

Ms. DOANE. The return without action is rarely used?

Mr. MARKEY. Yes.

Ms. DOANE. It is more rare now. It was in the beginning. After the 1995 rule where we required licenses, it was more common. It

is getting less common as people start to understand the regulations. They don't come in where they know they are not going to meet them.

Mr. MARKEY. So if the regional compacts do not have the ability to say no and the NRC very rarely says no, then it is unlikely that there would be many instances where low-level nuclear waste would be blocked from coming into our country.

Ms. DOANE. The regional compacts can say no over the facilities that they have control. And, in fact, in one of the first cases that we had, the applicant was unable to show that Barnwell would accept the waste, and that was the reason for their return without action.

Mr. MARKEY. Now let me go over to you, Mr. Slosky. Do you agree with her that it will have no impact on the compact States?

Mr. SLOSKY. No, I do not agree with her.

Mr. MARKEY. Could you expound on your answer, please?

Mr. SLOSKY. Well, I think in looking at the NRC regs it is unclear to me what the role is of the States and compacts in the NRC decision making. It has a consultation provision, but it is not explicit in the regulations if the States and compacts, as in this case, comment back that the waste is not acceptable what the NRC does with that consultative information.

Mr. MARKEY. The Chair's time has expired. The gentleman from Michigan, Mr. Upton, is recognized.

Mr. UPTON. Thank you, Mr. Chairman.

The question that quickly comes to mind is, Mr. Slosky, how does the storage of only 4 acres—in this particular case, the Clive, Utah, has what, 640 acres, is that right, Mr. Christensen?

Mr. CHRISTENSEN. Yes, sir.

Mr. UPTON. How does an agreement to limit it to only 4.3 acres undermine the compacts across the rest of the country? Knowing that that is it. The stop sign is up. Put it in the amendment. The courts have said it is oK up to this point and waiting for an appeal which—see what happens.

Mr. SLOSKY. The reason it has large implications is the court's ruling goes well beyond 4 acres. The court's ruling undermines the fundamental authority of the compacts.

Mr. UPTON. But this is a private—I mean, this is a private facility, right?

Mr. Christensen, do you want to comment on that?

Mr. CHRISTENSEN. As I mentioned, the court's ruling is narrow. There aren't any other facilities in the United States like the Clive facility, and the court went on to emphasize that compacts retain their authority under the Low-Level Radioactive Waste Policy Act to exclude waste from the compact facilities and to control the waste within the compact borders.

Mr. SLOSKY. Can I respond?

Mr. UPTON. Sure.

Mr. SLOSKY. I would just point out that the WCS facility in Texas that recently received a license and is about to begin construction is also a privately owned and privately operated low-level waste site but is intended to serve the Texas compact. But, under the court's ruling, the exclusionary authority of the Texas compact over that facility could also be brought into question.

Mr. UPTON. Mr. Christensen, do you want to respond?

Mr. CHRISTENSEN. Yes. I am a lawyer by training, so I don't want to get into too much technicality on this. But the WCS facility is a compact facility and would be controlled by the compact board in the State of Texas, and the court ruling would have no impact whatsoever on the Texas compact authority over the WCS facility. There is no other facility like the Clive facility, which is outside of the compact system.

Mr. UPTON. Thank you.

Ms. Doane, how many waste import licenses has the NRC actually granted over the years?

Ms. DOANE. Fourteen.

Mr. MARKEY. And you have granted the import license to EnergySolutions, is that right?

Ms. DOANE. Other import licenses, yes.

Mr. UPTON. And are they currently importing waste pursuant to that license? Were you aware of any violations?

Ms. DOANE. No, we are not aware of any violations.

Mr. UPTON. Mr. Christensen, does the Clive facility have enough capacity to meet the disposal requirements in the domestic nuclear industry and other customers?

Mr. CHRISTENSEN. We do. We have remaining about 140 million cubic feet, which for our operational purposes is adequate and projected to go out to about 30 years. That includes using 5 percent of that capacity for international waste. We certainly have—we have other capacity that is not yet licensed that is accessible through the licensing process if capacity ever became a national issue.

Mr. UPTON. And there is no real difference, right, between Class A waste between different countries, right? It is, in essence, the same.

Mr. CHRISTENSEN. No, sir, there isn't. The NRC has concluded that there is no difference between Class A low-level waste coming from domestic sources and from international sources.

Mr. UPTON. And, Mr. Slosky, at least in your opinion, we haven't seen any violations, right, in the Clive facility. I mean, are you aware of any trouble that has been there at all?

Mr. SLOSKY. Well, there are, on occasion, regulatory violations that are assessed against the company by the State of Utah. But, for the most part, the facility is in compliance with the agreement of State regulations.

However, that is not the issue. The issue is a policy issue of whether it is appropriate to manage foreign nations' waste in this country. We know we have the technical capability. We know the disposal facilities can accept the waste from a technical standpoint. The issue is really a policy issue.

Mr. UPTON. I yield back. Thank you.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Utah, Mr. Matheson.

Mr. MATHESON. Thank you, Mr. Chairman.

I don't know if there was ever a citing of a violation. But when waste went to Bear Creek and then went to the Utah facility and neither the State of Utah nor the Northwest Compact were ever

made aware of it, I think that was a violation. Just for what that is worth.

Mr. CHRISTENSEN. Could I respond to that?

Mr. MATHESON. No, I have got only 5 minutes; and I am going to my questions.

Mr. Slosky, when the compact system was being drafted and created in the 1980s, was there any discussion of foreign waste importation and storage at low-level radioactive waste facilities?

Mr. SLOSKY. I can recall none, other than discussions with the Department of Defense in terms of returning to the U.S. U.S.-origin materials the Department of Defense utilized abroad.

Mr. MATHESON. And I would note that the legislation as drafted allows for foreign waste created at U.S. Department of Defense facilities overseas to return to this country. It has an exception for that type of waste.

Was there any expectation that foreign waste is considered out-of-region waste during that discussion?

Mr. SLOSKY. We always considered foreign waste to be out of region, yes.

Mr. MATHESON. Mr. Slosky, in your testimony, you said foreign waste disposal is one of the most serious threats to the compacts in its 25-year history. Can you explain that statement?

Mr. SLOSKY. Yes. The whole history of the compact system, going back to 1980 and really to 1979, was the State's desire to be able to control the flow of waste to their sites. So if you look at South Carolina, Washington State, Nevada at the time we had a disposal site there, and now Utah and Texas, the issue is being able to control the waste that goes to those sites. And if we lose control of foreign waste going to those sites, then the system is undermined, and it is very likely that all of those sites in time will close to all generators.

Mr. MATHESON. We have heard about the issue of the nuclear cooperation agreement with Italy. What would happen if we start importing waste from all the countries we have nuclear cooperation agreements with? We have agreements with India, Japan, United Arab Emirates, Jordan, most of Europe, China. It seems to me that there is a significant volume out there if you start expanding it out there to all those states. Is that a threat to the compact system?

Mr. SLOSKY. I believe it is.

Mr. MATHESON. Since the compact system was intended to allow States to self-manage low-level radioactive, do you think any State or compact would have authorized the creation of a new low-level radioactive waste site if the State thought it did not have the authority to regulate its site?

Mr. SLOSKY. No, they would not. In fact, Utah has stated that they would have licensed Clive for low-level waste if they did not believe they had the authority through the compact to control the flow of all out-of-region waste, including foreign waste.

Mr. MATHESON. Mr. Slosky, EnergySolutions has told us that, as a result of the district court ruling in Utah earlier this year, the company is not regulated by the Northwest Compact because it is not a regional disposal facility. In your testimony you said the district court completely disregarded explicit language in the North-

west Compact that was approved by Congress as Federal law. Can you expand on this point?

Mr. SLOSKY. Yes. The Northwest Compact does not use the term "regional facility". The Northwest Compact bars any facility and any of their member States from receiving low-level waste without the approval of the compact. That language was disregarded, and the court reverted to the much more narrow definition of regional disposal facility.

Mr. MATHESON. Mr. Slosky, 2 years ago, the Utah State legislature moved to enact legislation. They were working on enacting legislation that would have removed local government legislative and gubernatorial approval for expansion of the Clive site.

As was noted in the September, 2007, low-level radioactive waste management report, former Governor Huntsman threatened to notify the Northwest Compact to limit the volume of waste that can be disposed to the current levels. In response, Governor Huntsman and EnergySolutions reached an agreement that the company would withdraw its application for additional disposal capacity and the Governor agreed to refrain from seeking to limit disposal capacity at the facility. Two years later, it now seems, based on this court ruling, that EnergySolutions does not believe it is under the authority of the compact system. So what are your thoughts about this?

Mr. SLOSKY. Well, this has been a little bit of a surprise. Because for, I believe, 15 or 17 years EnergySolutions has been operating under the compact system, appearing at the compact meeting, submitting reports, coming to the committee and requesting approval to accept waste. Then suddenly, when this dispute arose, EnergySolutions took the position that they are not actually regulated by the compact.

Mr. MATHESON. Last question, Mr. Chairman. I know my time is running out.

Is this a question that they are saying, the Northwest Compact has the authority to regulate the disposal capacity but not the material which is disposed there? Is there a distinction they are making in that sense?

Mr. SLOSKY. Well, there is a distinction between what the agreement states the State the Utah regulates and what the compact regulates. The State of Utah regulates the health and safety and capacity of the site. The Northwest Compact regulates where waste can come from to the site.

Mr. MATHESON. Thank you, Mr. Chairman. My time has expired.

Mr. MATHESON. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Gordon, is recognized.

Mr. GORDON. Thank you, Mr. Chairman.

Mr. Christensen, going back to your statement, you started off by saying that the major issue here was safety. Yet I will point out that no one here has raised safety as an issue. One major issue, though, is the capacity. We might have different arguments about how long it can be there, but there can be no argument that capacity is finite.

Now also in your testimony you said that allowing Italian waste to be dumped in the U.S. would violate the spirit of the U.S.-Italian

joint declaration concerning industrial and commercial cooperation in the nuclear energy section.

Let me point out that the United States has a similar agreement with 40 other States. So by inference then you are saying that we would break our agreement in the spirit with 39 other countries. So, to me, that does two things: One, it opens a big door for those countries to ship their radioactive waste here; and, secondly, it sends a message to them that they don't have to be responsible, that they can build whatever they want and not look at taking care of it.

So here are my questions for you: Does EnergySolutions have an enforceable contract with the Italians to dispose of the waste or suffer damages regardless of whether it gets a license from the NRC?

Mr. CHRISTENSEN. No.

Mr. GORDON. Hmm. You say you are a lawyer, right?

Mr. CHRISTENSEN. I am.

Mr. GORDON. Are you a lawyer of the company?

Mr. CHRISTENSEN. I was formerly general counsel of the company and am currently president of the company.

Mr. GORDON. So were you general counsel on June 19?

Mr. CHRISTENSEN. Yes.

Mr. GORDON. All right. I am trying to understand this.

In a formal submission to the NRC on June 19, 2009, in response to the NRC's May 20, 2009, order for comment on how to proceed on your license application, EnergySolutions stated—and I assume this is what you wrote—EnergySolutions stated that a delay in issuing this license—and I quote—would cause EnergySolutions substantial economic harm because it is unable to perform work under its contracts for waste without the requested license.

Now can you sort of help me on this?

Mr. CHRISTENSEN. Well, your earlier question was whether we would be exposed to damages—

Mr. GORDON. No, my question was very specific. My question was this: Does EnergySolutions have an enforceable contract with the Italians to dispose of its waste or suffer damages regardless of whether it gets a license from the NRC? That was my question. Your answer was, as I recall, no.

Mr. CHRISTENSEN. That is correct. We don't have a contract concluded with the Italian Government or the Italian sources that would expose us to damages if it weren't fulfilled.

Mr. GORDON. Then why did you write to the NRC that if you did not get that license you would, and I quote, would cause EnergySolutions substantial economic harm because it is unable to perform under its contract for the waste without the requested license. Page 8 on June 19, 2009, submission to the NRC.

Mr. CHRISTENSEN. I would have to go back and look at it, but we would suffer economic harm by not being able to fulfill contracts that we are in the process of negotiating. We don't have signed final contracts—

Mr. GORDON. OK. So just help me here. Help me here. This is what you wrote to the NRC, a Federal agency, that if you did not get the license you would cause EnergySolutions substantial eco-

conomic harm because it is unable to perform work under its contracts for this waste without the requested license.

Mr. CHRISTENSEN. That is right.

Mr. GORDON. So did you have any contracts on June the 19th?

Mr. CHRISTENSEN. We didn't have any final, binding contracts.

Mr. GORDON. Then why would you tell a Federal agency—this is what he wrote to you. Were would you write to this lady in a Federal capacity that you did have contracts?

Mr. CHRISTENSEN. Because contract negotiations were under way, and the contracts we are referring to are the potential contracts with the Italian Government which we would not be able to secure or perform without the license.

Mr. GORDON. Well, I will let that go, but NRC may not.

Now, Mr. Slosky, let me ask you something. Is it true that when EnergySolutions said they were going to bring this Italian waste into Utah that the Governor said no and then EnergySolutions sued the State?

Mr. SLOSKY. Actually, what transpired is that the Governor of Utah instructed his member on the Northwest Compact to vote against bringing the waste in; and since Utah is the host State they have essentially a veto power over the compact's agreement to bring any waste in.

Mr. GORDON. So EnergySolutions sued them to be able to do this?

Mr. SLOSKY. Yes. Actually, shortly before the meeting in the Northwest Compact, EnergySolutions filed suit in Federal District Court.

Mr. GORDON. And, Ms. Doane, if I could, is it proper to summarize your testimony or portions of your testimony by saying that it really is a policy issue of whether radioactive waste should be brought into this country or not?

This is not NRC. You don't have the authority other than on the safety issues to say whether it can come in or not. So if we are going to allow the United States to be the only country in the world that would accept radioactive waste from other nations then a policy decision has to be made by the Congress.

Ms. DOANE. That is right.

Mr. GORDON. Thank you.

Mr. MARKEY. That completes the first round of questions from the subcommittee. Are there members seeking recognition for the purpose of asking questions on a second round?

The gentleman from Michigan.

Mr. UPTON. Let me just ask unanimous consent. We were originally going to have votes today, and they cancelled them yesterday afternoon. So that is one of the reasons there are only four of us here. I might just ask that all members of the subcommittee may have the opportunity to submit written questions within the next week or so and if you could respond in a timely basis. I am not sure what the chairman—

Mr. MARKEY. Without objection, so ordered.

Mr. UPTON. Thank you.

Mr. MARKEY. Other questions?

The gentleman from Utah is recognized.

Mr. MATHESON. I have just got a couple more questions I didn't get to ask.

Ms. Doane, I wanted to ask—one of the arguments made by EnergySolutions is the NRC has already issued import licenses to other companies and materials have been imported for several years. Has the NRC ever previously approved a license to allow for anything close to 20,000 tons of waste from a foreign country?

Ms. DOANE. No. Not this volume of ultimate disposal, no.

Mr. MATHESON. I saw the table you included with your testimony at the end of your testimony which lays out the volumes of what have been allowed to come into this country. I see five where the waste was ultimately disposed in this country. All the rest have been processed here and then returned back to the originating country; and all of them are quite small, from my view, in terms of the volume. Is that a fair statement?

Ms. DOANE. The ultimate disposal volume, right.

Mr. MATHESON. Last year when you testified before this committee, I expressed a concern about the lack of regulatory accountability for foreign-generated waste. At the time, you indicated that the NRC does not currently have the authority to prohibit the importation of nuclear waste, as you just had the discussion with Mr. Gordon. Or you weren't here. It was—

Ms. DOANE. Can I clarify that for the record?

Mr. MATHESON. Sure.

Ms. DOANE. We absolutely have the authority to reject waste that would pose a health and safety issue, a common defense and security issue.

Mr. MATHESON. Yes, that is a correct statement. The criteria you use to evaluate it are not whether or not it is foreign waste or not; it is the issues you—

Ms. DOANE. That is right.

Mr. MATHESON. Thank you.

We have also heard that the company believes that neither the State of Utah nor the Northwest Compact has the right to prohibit this material from coming into the United States, and you still believe you lack the authority to prohibit the waste from coming into the United States based on simply where it comes from.

Ms. DOANE. That is right. Just based on its foreignness, that is right.

Mr. MATHESON. So it seems to me that no one has the authority to make the call on whether or not foreign waste should come from a regulatory standpoint. It is really—to reiterate what Mr. Gordon said, this is a policy issue about whether or not this country is going to allow this to happen.

Ms. DOANE. Well, I won't speak for Mr. Slosky. I think the compacts believe they do have the authority to keep waste out because of its foreignness. So I won't speak to him. And if they have control of a facility, as happened with the Barnwell case, the very first case, and they say waste can't come in, we would not have the third criterion met, which is that an appropriate facility has agreed to accept the waste.

Mr. MATHESON. Has the NRC done any additional work to determine national disposal capacity for low-level radioactive waste?

Ms. DOANE. Not the—we haven't actually done the studies, no.

Mr. MATHESON. Is that an agenda item that is being considered at NRC? Would it make sense to make a decision about what our capacity is in terms of approving applications for waste?

Ms. DOANE. I probably shouldn't just hypothesize about that, but where capacity issues could raise a health and safety concern, then, yes, we look into them. But we look to the proper authorities that also make those decisions.

Mr. MATHESON. OK. Thanks, Mr. Chairman. I yield back.

Mr. UPTON. Can I ask one follow-up question?

Mr. MARKEY. The gentleman is recognized for that purpose.

Mr. UPTON. Since you all approved the import license—right?

Ms. DOANE. What import license?

Mr. UPTON. I mean, you all gave the license to the facility in Clive. Do you actually check with the State?

Ms. DOANE. Well, we haven't approved the Italian. I know that is not what you mean. But we haven't approved the Italian import license. We have approved licenses in the past; and, yes, we do check -

Mr. UPTON. And you do check— that is part of the checklist—

Ms. DOANE. Absolutely. The host States, the compacts, yes. And our process is very public. We also publish all materials, and we do get comments from other compacts that might be also interested. We take all of that into consideration.

Mr. UPTON. Thank you.

Mr. MARKEY. Are there other questions?

The gentleman from Tennessee.

Mr. GORDON. Just one last quick question to Ms. Doane.

Does EnergySolutions currently have pending import license applications to bring radioactive waste in from Brazil and Mexico?

Ms. DOANE. There are two pending applications for Brazil and Mexico. I know that one is of them is energy. The material will ultimately go to the Clive, Utah, site. I am not sure they are their applications.

Mr. GORDON. So that Mexico and Brazil have also asked to be able to export to us some radioactive waste. It would wind up in Utah; is that correct?

Ms. DOANE. Applicants in the United States have applied to get waste from, yes, Brazil and Mexico to ultimately have some material disposed of in Clive, Utah.

Mr. GORDON. Thank you.

Mr. MARKEY. The gentleman's time has expired.

Other questions from members?

What we will do then is give each one of the witnesses 1 minute to summarize their position to the committee. In reverse order from the original statements, we will begin with you, Mr. Christensen.

Mr. CHRISTENSEN. Thank you, Mr. Chairman.

Just to set the record straight with respect to the contract issue, the company had signed memoranda of understanding, which I don't—as a lawyer don't consider to be the final definitive agreement on these—on the Italian arrangement. There is no license and there is no contract at this point in time, obviously; and I just—

Mr. GORDON. So are you going to amend your submission to the NRC?

Mr. CHRISTENSEN. No. The submission to the NRC is accurate. The only other comment I want to make is that we have a legitimate business that is lawful, it is highly regulated. We deal with these materials safely, and it is critical to the nuclear industry in the United States. The opportunity to handle a small amount of international waste gives us an opportunity to play on a global stage.

What is at stake here is not just Italian waste to be disposed of in Utah. Helping them solve a small part of their Class A low-level waste issues allows us to deal with site selection and development in Italy and a lot of other technical areas. We are competing with other foreign companies to participate as a leader from America in the nuclear renaissance. And we have as our secret sauce, in attempting to compete with other world competitors, the ability to dispose of a small amount of their waste, and it is limited.

Now, the 4.3 acres in the private site doesn't bar all of the other compact facilities from excluding waste from their facilities. So there is a finite amount that would come into the United States. All the other compacts can exclude foreign waste under the court's ruling and under the compact law.

Mr. MARKEY. The gentleman's time has expired.

Mr. Slosky.

Mr. SLOSKY. Thank you.

There is one issue that came up that I would like to clarify. The implication was brought up that the compacts believe that they have the authority to control waste coming into the United States. That is not correct. The decision of whether waste comes into the United States is a Federal decision currently resting with the NRC. The compacts have the authority to control whether it comes into their compact regions. That is, I think, a very important distinction.

The other issue that we have touched on but may not have been adequately focused on, and that is that there has been foreign waste brought in in the past. It has been recycled or processed, which is just fine, but the States are very concerned, the compacts are concerned in cases where that foreign waste gets reattributed and disposed of as domestic waste and its foreign origin gets obscured.

The last thing I would like to say is that eight of the ten low-level waste compacts representing 34 States are involved in the EnergySolutions litigation, and I think that is ample proof of the potential broad-reaching implications of that lawsuit.

Mr. MARKEY. Thank you, Mr. Slosky.

And Ms. Doane.

Ms. DOANE. Thank you again for the opportunity to speak to you this morning.

I think I just want to make sure that it is clear that the third criterion that we consider about whether an appropriate facility has agreed to take the waste considers the views of the compacts and where that decision is left to rest and there is not a facility—so not like the case here where there is review going on—we would take that into consideration and would not permit the waste to come in, and we have done so in the past.

We do understand the roles and actually have a very good working relationship with both the States and the compacts. We depend on their advice on issues that they have—their responsibility—they are responsible for. We depend on their advice, and we do seek that out.

And I also want to point out we have a very public process that takes a very deliberate and very considerate view of all the technical, safety, common defense, and security issues that would come up with these waste imports.

Mr. MARKEY. Thank you, Ms. Doane.

We thank each of our witnesses very much.

I ask that the members be given 5 business days to submit any questions for the record.

Without objection, that will be ordered.

Again, we thank you. We welcome you back, Mr. Slosky. Good to see you again. See you in 25 more years, and I will still be here.

This hearing is adjourned. Thank you.

[Whereupon, at 10:45 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

