come together. It is a place of consensus.

I tend to believe in a strong and muscular foreign policy. I think the war on terror is real. But by being so blind to the realities of the world, those who are hawks should be more angry at some of the things that have been done, as my colleague from Delaware outlined, than those who are doves because we are going to need strength and fortitude to continue this war for decades.

I thank both my colleagues. I was privileged to listen to their erudite and illuminating explanation.

Over the last few days, we have been discussing the question: Are we better off than 4 years ago? We have been discussing mainly domestic issues the last few days. Today we are discussing it on national security; are we better off than we were 4 years ago. I guess this means our safety. And there are pluses and minuses.

Certainly in the wake of September 11 and the horrible attacks—and now that the September 11 Commission was in my city yesterday, I am living them all over again and it shakes my insides to remember what happened, to remember going the day after with my colleague, Senator CLINTON and Mayor Guiliani and the Governor, and seeing what happened—certainly we have responded. It is good we have responded. Some do not want to respond or find every response wrong, and you get caught in a quagmire of no response, which would be the worst response, in my opinion.

Having said that, I focus on two areas where we should be a lot better off than we were 4 years ago, where there is a large deficiency. One I will touch on is Iraq. Again, as somebody who supported the President going into Iraq and supported the $87 billion, I am troubled, deeply troubled, by the lack of planning, not just in the prisons but in the whole way the peace has been managed.

No one knows what is going to happen on June 30. We set a June 30 deadline and then we have to fill in the blanks. What do we want to do? How long does it take? The lack of planning has been troubling. It is taking the great military victory we had in Iraq, a justified victory, and turning it into certainly less than a complete success in terms of what happened afterward.

So this inadequate planning, the ''go it alone'' attitude which my colleagues discussed, means we should be a lot better off than we were.

The place I want to focus on in my remaining few minutes is homeland security. It is a truism that has been stated before, but it is not irrelevant still. To win a war, to win a game, you need a good offense and a good defense. My colleagues talked about some of the problems on our team's offense. Let me talk about our problems on our team's defense. We are better off than we were 4 years ago in terms of homeland security. No question. Our guard was down, we know that. But we are not close to where we should be.

What has happened is basically this: While this administration is willing to fully fund the war on terror overseas—and we will get repeated requests for more dollars, which we will support, provided they are planned out and we see what they are doing with the money—we are totally short on homeland security. There are so many areas where we are weak: Port security, rail security, computer technology, the borders, who is coming in and who is not.

What is frustrating is, we can solve all these problems. They are not technologically beyond our reach. We can have foreigners cross our borders free and clear and yet keep bad people out if we have the right computer systems and the right cards that we can give to foreigners before they come in.

We can make our rail and our ports far more secure. We can develop devices that can detect explosives and biological and chemical weapons. We can detect nuclear devices so, God forbid, if one is sent over here, we will get it at the borders.

And why is the pace so slow? I will tell you why. Somehow the priorities in the White House are not to spend money on homeland security. It is to talk about it. It is to do some photo opportunities. Let me share with the American people somebody who has been deeply concerned and ahead of our task force on this side on homeland security. Every time we ask for the dollars that are needed to tighten one area—we say $10 is needed, and they say, We will give you $1.50.

An example, shoulder-held missiles. We know the terrorists have them. God forbid, they smuggle 10 of them into this country, and on a given moment take down a plane in New York, Chicago, Los Angeles, Houston, Seattle, Denver, Boston, Miami. The mayhem. Of course, all the progress we are trying to make on the economy would go right down the drain. No one would fly for 6 months or a year.

We can arm every one of our commercial planes so they can avoid these shoulder-held missiles. Our military planes have them. Air Force One has them. People on their own private jets, wealthy people, have them. We are not doing it on our commercial planes. It is a slow walk.

We said take $8 billion to do the whole thing in 2 years out of the $80 billion we are spending on the missile defense system—which was designed to fight Russia and now Russia, thank God, or the Communist Soviet Union, is no longer our enemy. And they said no. They do not say let's not do it, but they say let's spend $50 million and study it.

We know what is going on. I have spoken to people in the White House who will talk to me privately and say they will not spend a nickel on homeland security. Between the military and the idea of cutting taxes, cutting taxes, cutting taxes, you cannot do it all. And it seems to me homeland security should be just as high a priority as helping our troops overseas fight the wars in Iraq and Afghanistan. Yet there is nothing.

It hurts our localities. It is not just New York City, my city, where, obviously, we have a real problem. In Buffalo, Rochester, and smaller places, Watertown, Jamestown, talk to the police and fire departments, and they are trying to do their job. They do not have the dollars to do it. So they stretch and do their best. But it is not being done right.

In place after place after place, we are only inspecting 2 percent of the containers that come in on our ships. Two percent? Do you want there to be a 2-percent chance that we stop someone from smuggling in something terrible? We have the technology to do it. It costs dollars. We cannot do homeland security without the necessary resources to make it happen.

And every single time, the one place where we have done a good job is on air security, to prevent people from smuggling weapons on the planes. Even there we are not doing enough, but we have done better.

I give credit in one other place: In the biological area, we are doing a B. It is not an A—it should be an A—but we are doing B. In almost every one of the other areas we are at C's, D's, and F's.

Who in America would not spend dollars to make us safe so that, God forbid, another September 11 does not happen? No one. But, once again, it is the ideologues in the White House who say they hate spending money on domestic things. It is not just education or health care, it is homeland security.

So we are not as well off, we are not close to as well off as we should be. We can do a lot better.

The bottom line is this: In area after area we should be far more secure than we are. We have taken some steps in every area, but who wants to wake up one morning and say: What if? God forbid, there was a terrorist incident the day before, and we say: What if we had put the detectors on the cranes and ports to avoid nuclear? What if we had made our ports secure?

Mr. President, I hope the administration will change its view on homeland security and spend the dollars that are necessary.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

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

The legislative clerk read as follows:

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

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I understand Senator WARNER is on his way to the floor. I thought, in the meantime, I would make a few comments on a very important section of the Defense authorization bill. Then the plan is to recognize Senator GRAHAM of South Carolina. I believe he has an amendment he is working on.

As chairman of the Strategic Subcommittee of the Armed Services Committee, I have the responsibility of overseeing a lot of nuclear programs, one of the most important of which is nuclear cleanup. The Department of Energy is facing the potential collapse of its plan to accelerate risk reduction and cleanup of this Nation's nuclear weapons production legacy. I think we must act responsibly to give the Department the clarification it needs to complete cleanup of the sites in our lifetime.

In 1997, the Rocky Flats cleanup was expected to take until 2045, at a cost of $17.1 billion. Now, working together, the State Government of Colorado and the Department of Energy have developed a plan under which closure is expected in 2006, at a cost of $7.1 billion. Key to our success was the collaboration between the State and the Department of Energy in devising the path forward.

The initiative to accelerate cleanup of the tank farms was proceeding on a similar path in other States. The DOE had been working with each of the various host States to develop strategies for acceleration and closure plans in the States of Washington and Idaho, as well as South Carolina.

We were so very successful in getting cleanup at Rocky Flats in Colorado and saving billions upon billions of dollars for the taxpayers that I was hoping we could put together a plan that would be working well in cleanup efforts in those three States which still have considerable challenges ahead of them.

Last year, the Idaho District Court threw a monkey wrench in those plans. The court interpreted the Nuclear Waste Policy Act to prevent the plans that DOE and the States have agreed on from going forward, by striking down a cornerstone of these plans, which was DOE's approach to classifying the waste in the tanks.

It is not just the accelerated cleanup plans that were called into question, it is also the base plans that the Department of Energy had in place for years. Now in South Carolina and Washington, since the 1980s, it has been clear that the cleanup plans have called for less radioactive tank waste being treated and disposed of onsite. Unless the law is clarified, these plans will not be able to proceed, and it will be impossible to devise new ones.

It is our responsibility in the Congress and as members of the Armed Services Committee to clarify the law so as to allow the plans agreed upon by DOE and the States to proceed. I am convinced if we work together we can achieve the same kind of results on complex issues such as we achieved at Rocky Flats, where we accelerated cleanup by 40 years at Rocky Flats, significantly reducing risks to the public and workers and saving the taxpayers $10 billion.

If we do not get this problem solved at the nuclear sites in Idaho and Washington and South Carolina, what we are going to end up with is a possible increase in additional costs of $86 billion. We simply cannot deal with those kinds of costs. And consider the stress that is in the Armed Services right now. So it means you just do not move forward with cleanup.

The Senators from those three States, I know, have been spending a good deal of time trying to work out an agreement. It is called the WIR issue. In committee, we fenced off $350 million that was set aside to deal with cleanup in those three sites and other parts of the country. We did that so it would not get used in other parts of the bill because if you allow that money to go out, that means there is less money for cleanup. And those of us who have been pushing cleanup for years in the Senate would not want to lose that $350 million because it would be just hanging out there. So we fenced it off.

We adopted an amendment in committee that was proposed by Senator GRAHAM to kind of get us out of committee and give the delegations from those States an opportunity to negotiate and see if they could work out some better provisions than what we left with out of committee. We simply have to work out something. If we cannot get an agreement, maybe we will have to step in to just work with those three States and see what other provisions we can move forward so the cleanup, at least, can move forward.

I am very concerned that we do not stop cleanup. Cleanup is very important. It is something we need to move forward. The plan DOE had in mind was a plan that would have met performance standards that have been specified by the Nuclear Regulatory Commission. They are the ones who have oversight for disposal of low-level waste. And the debate over whether the grout used to stabilize residue should be included in concentration areas is basically a red herring because the bottom line is, what we are doing here meets the requirements of the Nuclear Regulatory Commission.

So I am hopeful that on the floor of the Senate we can get this problem further resolved than what we did in committee.

I understand Senator GRAHAM might have an amendment he wants to bring forward.

Mr. President, I recognize the Senator from South Carolina.

The PRESIDING OFFICER. The Senator cannot recognize other Senators.

The Senator from South Carolina.

AMENDMENT NO. 3170

Mr. GRAHAM of South Carolina. Mr. President, I call up amendment No. 3170.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from South Carolina [Mr. GRAHAM] proposes an amendment numbered 3170.

The PRESIDING OFFICER. Without objection, reading of the amendment is dispensed with.

The amendment is as follows:

(Purpose: To provide for the treatment by the Department of Energy of waste material)

Strike section 3119 and insert the following:

SEC. 3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

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

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

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

(3) The Hanford Site, Richland, Washington.

Mr. GRAHAM of Florida. Mr. President, I ask unanimous consent that Senators ALLARD and CRAPO be added as cosponsors.

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

Mr. GRAHAM of South Carolina. Mr. President, I appreciate Senator ALLARD's comments. I will try to explain this amendment the best I can and as briefly as I can.

Several States played a very key role in winning the cold war by making sure we had a strong and effective nuclear deterrent. South Carolina is one of them, as are Idaho and Washington. They are States that have cold-war legacy materials.

As Senator ALLARD suggested, the Federal Government has been working with these sites for decades now. We spent billions of dollars—billions and billions and billions of dollars—to clean up the cold-war legacy that exists at the Savannah River site and other sites. To be honest with you, we have spent a lot of money and have

done very little cleanup. From a taxpayer point of view, from an environmental point of view, the longer you put this off, the more it costs, and the more damage that can be done.

I have an amendment that would allow $350 million that has been put on the table by the Department of Energy to accelerate cleanup—$350 million has been put on the table in, I think, a very creative fashion to accelerate cleanup at these sites, putting new money on the table.

Here is a little history about what has gone on in terms of how DOE and the sites have been dealing with each other. There are 50-plus tanks of high-level waste in South Carolina as a direct result of winning the cold war, cold war legacy materials. The State of Washington has certainly done its share in helping win the cold war. They have a waste tank problem. Idaho has waste. These three States have a problem. It is now time to create an environment to fix the problem for each State.

Two years ago the State of Idaho entered into a cleanup agreement with the Department of Energy, setting standards that the State of Idaho would agree to help remediate the environment and clean up the sites in Idaho so that we could move forward to have a new day in Idaho.

Washington has been negotiating with the Department of Energy to come up with acceptable standards for cleanup of the waste in tanks and other areas, and there are ongoing negotiations.

South Carolina, for over a year, has been negotiating with the Department of Energy about how to clean up 51 tanks that contain high-level nuclear waste. People in South Carolina want the waste cleaned up. They want it done in an environmentally sound manner, and people in South Carolina want it done sooner rather than later. They are conscious of the cost to the taxpayer.

All three States at some stage have negotiated with the Department of Energy about waste in their particular States and how they can find agreement between the Department of Energy and the State to remediate the site.

I am here to say, thankfully, that the Department of Energy and the State regulators in South Carolina have come up with a plan that will allow these 51 tanks, 2 of which have already been cleaned up, to be cleaned up and to close them, that is environmentally sound, in my opinion.

But it is just not my opinion. The people responsible for the groundwater and the environmental safety of South Carolina, in conjunction with the Governor's office and the Department of Energy, have come up with an agreement to allow these tanks to be closed. The tanks will be cleaned up in a manner that will save $16 billion compared to the old plan, and it will allow the tanks to be closed up 23 years ahead of schedule.

The issue is what is environmentally sound cleanup for the State of South Carolina and any other State that has this legacy material. No. 1, no State should be forced to accept standards that they find unacceptable for the State in terms of their environmental needs. The amendment I have authored and that is part of the base Defense authorization bill ratifies the agreement that South Carolina has achieved with the Department of Energy. Under that agreement, my State regulators tell me that the permitting process of how you close up a tank and when you close up a tank and when a tank can be closed up is a collaborative process between the State and the Department of Energy. They feel they are protected. They have reached an agreement that the last 1.5 inches of waste that is in the bottom of these rather large tanks can be environmentally remediated in a manner safe for South Carolina that would prevent people from unnecessarily risking their lives to go get that last inch and a half and save $16 billion.

What does it mean? It means that some things that were going to go to Yucca Mountain don't have to go because to send them to Yucca Mountain is not environmentally necessary and it is not financially sensible. I hope other States can find a way to get there. I know Washington is talking. I know Idaho had an agreement 2 years ago. All I am asking is that South Carolina be allowed to execute this agreement that is good for South Carolina and the Nation and will move forward and clean up in a sound manner.

The amendment I am offering today doesn't deal with that issue. It deals with the idea that the $350 million to clean up sites in Washington and Idaho, that the money due to Washington and Idaho shall be spent on cleanup, that the Department of Energy cannot require either one of those States to enter into an agreement to get this cleanup money like we have in South Carolina.

My goal has been to do two things: that my State could reach a sound agreement with the Department of Energy to get it ratified for the best interests of South Carolina—and the Nation—and not do anything in South Carolina that is going to harm any other State's ability to negotiate on their terms and to reach an agreement that is sound for their State, and not to change any standards of what would leave South Carolina going to Yucca Mountain or any other repository. So this language requires the Department of Energy to spend money to treat the waste in South Carolina, Idaho, and Washington. It also allows the agreement to be financed in South Carolina.

I know there is some disagreement on this issue. I welcome the debate. That is what the Senate is all about, having two sides of every story. But this is not something we just came into lightly; this is something that has been going on between the Department of Energy and South Carolina for a very long time. Similar processes are going on now in Idaho and Washington.

I am asking this body to join with me to make sure that the Department of Energy spends the money to treat the waste in these three sites, and that we not bind any site by the agreement in South Carolina but we allow the agreement between South Carolina and the Department of Energy to be ratified. Not only is it good for my State, it is good for this Nation if we can clean up these tanks in an environmentally sound manner 23 years ahead of schedule and save $16 billion. That is my hope.

As to what is left behind, the Nuclear Regulatory Commission has looked at the 1.5 inches of material left in the bottom of the tank and has classified it as waste incidental to reprocessing, which is a separate category from high-level waste. The people in South Carolina who regulate our environment and have an obligation to protect the State's groundwater and other environmental obligations have said that this waste that is left can be dealt with in a sound manner, and to get the 1.5 inches totally out would risk people's lives and would take unnecessary time and expense, and that we are going to secure these tanks in a way over which South Carolina would have control.

I didn't come to Washington to tell my State it is not a player in controlling its waste. I hope Washington will allow us who have these sites to work in a sound manner for the benefit of the taxpayers in the State and the Nation and for the environmental needs of our State.

That is what this is about. If we stay the old course and we never allow anybody to do anything other than the most extreme groups out there in terms of what this is all about—and there is politics in every issue, and there should be. There are some people who have an agenda that is not about the groundwater in South Carolina because they don't live there. Some of them are very well motivated, but some of them have an agenda to make cleaning up these sites very difficult, to the point that they don't care what it costs, and they are not trying to get a fair standard. They want to make it take as long as it takes and spend as much money as is necessary and send everything to Yucca Mountain and other repositories because they have an agenda that we don't want to produce any more nuclear power and run out of places to store fuel rods.

I don't want to be part of that agenda. I want to be a part of an agenda that allows each State that has these waste materials to be able to control their destiny, do it in a way that is safe for the State and makes sense for the Nation. That is exactly what we have accomplished.

Idaho and Washington have tried to do the same thing we are doing. They have tried to work with the Department of Energy to get an agreement.

We have been successful. I will never, as a Senator, leverage one of my sister States here to have to agree to something to which they don't want to agree. That is not my goal.

I hope the Senate and the Congress will allow an agreement that has been negotiated to its full term to be approved and to help South Carolina save some money. I am ready to agree on a small time agreement, a large one, or whatever time agreement we can have on this amendment, and have a vote.

Mr. ALLARD. If the Senator from South Carolina will yield, I wish to enter into a colloquy with him to make sure we have laid out this debate.

First, we had a plan by the DOE to expedite cleanups of sites in South Carolina, Washington, and Idaho. Then we had a court case that was litigated in the district court in Idaho. As a result of that, that case is going to definitely be appealed to the Federal court of appeals and may even go as far as the U.S. Supreme Court. In the meantime, we have some cleanup needs in these various States.

As I understand what the Senator's amendment would provide, we are going to keep our $350 million for cycling, which is vital, and it is going to say that the money is going to be available for treatment. But we are not going to have any removal or anything from a contaminated site, except for South Carolina. South Carolina has a plan that has been worked out with the State. The State is very comfortable with it. It is a State-driven plan. We are trying to work out something where we don't create a problem among the various States. We don't want this process to tie up South Carolina and, obviously, we want to see cleanup move ahead in Idaho and Washington.

My concern, as chairman of the subcommittee, is that I don't want to see taxpayer dollars wasted on a huge white elephant out there that will add something like $86 billion to the cleanup budget, which we don't have.

I hope we can work this out, and you are trying to work it out among yourselves. I hope I characterized it properly.

Mr. GRAHAM of South Carolina. The Senator has done a good job characterizing it.

No. 1, this amendment makes the money flow for treatment. There is the $350 million in committee with regard to the argument that there is a fence built around it. If there is any concern about it, this amendment knocks that fence down. The money has to be spent on treatment of waste. There is a lot of waste to be treated. But it also allows for a disposal plan agreed to between South Carolina and DOE.

Other States, the Senator is right, have been negotiating and trying to find a disposal plan. We have just been successful, that is all. Other States have different needs and tank problems. We don't have tanks leaking as they do in Washington. Washington has different needs and concerns. I don't want to wait 23 years and allow these things to leak as we try to clean up the last inch and a half; I think that does more damage than good.

This is where we do agree. DOE, by order 43.5, I think it is, tried to issue an internal order allowing them to unilaterally go into these States and say: Here are the cleanup standards, take it or leave it.

Then you had a court case in Idaho where South Carolina joined as a friend of the court, with an amicus brief, saying, no, we don't want the DOE unilaterally telling a State to take it or leave it. That is why we joined as a friend of the court. We think that is a bad policy.

What we want to do, and what all three States have tried to do, is make sure cleanup occurs in an environmentally sound manner, where the States are involved. What we have been able to do in South Carolina is reach that agreement to have the waste stream cleaned up. What is left in the bottom of the tank we believe we can handle in an environmentally sound manner. Some people don't want us to do that. That is not their agenda to accomplish that. It is my agenda that we accomplish that when and how we can.

We are not going to let the DOE unilaterally decide. That is what this amendment is about. It doesn't allow the Department of Energy to take money away from a site. They have to let the $350 million go. The language in the bill, which Senator ALLARD helped me write and get passed, ensures that South Carolina is protected. Now we need language to ratify that agreement.

Mr. ALLARD. Mr. President, I thank the Senator for his hard work and diligence. Certainly, I am glad he is a member of the Armed Services Committee. It has been a pleasure to work with him on many issues.

I know there is a good deal of frustration on this particular issue. I recognize, in a public way, his dedication and hard work on this issue in trying to clean up this area. It is very important to his State and, hopefully, we can reach some kind of agreement in the ensuing few hours on this debate.

Mr. GRAHAM of South Carolina. I say to Senator ALLARD, he has been a very responsible subcommittee chairman here. This is a big deal for the country, to South Carolina, Idaho, and Washington, and any other State. It is a huge deal. We need to make sure these sites are remediated and the environment of each State is protected and that we get on with it and not give DOE unilateral authority to tell us what to do, and do it in a collaborative way.

We have achieved that in South Carolina. I think it would be inappropriate if Washington or Idaho could reach an agreement between DOE, and Idaho and Washington ran it by the NRC and they say, yes, we like this agreement, we think it protects us, we would like to do it, and then somebody else says no, or they make up a reason of telling us no, which would prevent this from ever happening.

Now, we are going to disagree over some aspects of this. But here is where we do not disagree. The States are going to get the money, whether or not they reach an agreement with DOE. We are not going to let them do it unilaterally. We want to make sure every State has a right to negotiate an agreement on their own terms.

There is nothing in this amendment that is going to prejudice another State in terms of their ability to reach an agreement with DOE on their terms, if they can. I think this is a very important concept.

This is a pivotal time in our effort to clean up these sites. I say to my friend from Nevada and all those folks at Yucca Mountain, if I were in Nevada, I would have the same concerns. I totally understand that. But the rest of us have an obligation, too. I don't think it is fair just to make Nevada be the only one on the receiving end of what is fair and appropriate. If we can, in our individual States, in an environmentally sound manner, deal with some of this waste—an inch and a half—not to send it to Yucca Mountain, not spend $16 billion and take 23 years, I think we have some obligation to be part of the solution.

Let it be said that South Carolina, from the regulator's side—their view is we have reached that agreement. I hope we can pass this amendment.

Mr. ALLARD. Mr. President, I have a letter from the Defense Nuclear Facilities Safety Board to the Secretary of Energy. It addresses the disposal of waste as contemplated in section 3116. The last paragraph reads:

> The Board believes that disposal of wastes as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste. The Board, under its statutory safety oversight mandate, will continue to follow DOE's actions to ensure that activities related to disposal of such waste are conducted safely.

I ask unanimous consent that the letter be printed in the RECORD.

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

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

DEAR SECRETARY ABRAHAM: This is in response to the letter of May 13, 2004, from the Assistant Secretary for Environmental Management regarding the nuclear safety consequences of proposed Section 3116 of the National Defense Authorization Act for Fiscal Year 2005 (S. 2400). Section 3116 would permit certain radioactive residual materials to remain in a facility (including a tank) at the Savannah River Site.

Safe disposal of radioactive waste is essential to preserving public health and safety. In 1994, the Board issued Recommendation 94–2, Conformance with Safety Standards at Department of Energy Low-Level Nuclear Waste and Disposal Sites, which identified the importance of performance assessments for ensuring safe disposal of radioactive materials in shallow land burial grounds. Department of Energy (DOE) subsequently

issued Order 435.1, Radioactive Waste Management, which defines an acceptable process for conducting the required performance assessments for DOE onsite waste disposal activities.

During the period 1996 to 1997, the DOE at the Savannah River Site undertook the closure of two high level waste tanks. At that time, The Defense Nuclear Facilities Safety Board (Board) closely observed the undertakings and saw no basis to determine that the remaining residual material constituted a danger to the public. The closure process involved transport modeling of the residual material left in the tanks.

When conducted with appropriate rigor, a performance assessment can provide a conservative estimate of potential safety and health consequences. When these estimates meet acceptable safety standards (i.e., DOE Order 435.1 or 10 CFR Part 61 subpart C, Performance Objectives), it is reasonable to conclude that the disposal action adequately protects public health and safety.

The Board believes that disposal of wastes as contemplated in Section 3116 can be accomplished safely and should enable efficient disposition of the radioactive waste. The Board, under its statutory safety oversight mandate, will continue to follow DOE's actions to ensure that activities related to disposal of such wastes are conducted safely.

Sincerely,

JOHN T. CONWAY,
Chairman.

Mr. ALLARD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina, Mr. HOLLINGS, is recognized.

Mr. HOLLINGS. Mr. President, I have not had the opportunity to work with my distinguished colleague. We have worked very closely together on many matters, and I have the highest respect for him. It has really been a pleasure for this Senator to work with him as he has come over to the Senate.

Only yesterday on our way to a vote, I asked him about this issue because I heard about it from our colleague from the State of Washington, Senator CANTWELL. He said he had a letter from the Environmental Control Division of the State of South Carolina.

I thereupon got in touch with the director of the DHEC of South Carolina, the Department of Health and Environmental Control. Mr. Hunter said: Oh, no, we adamantly oppose any kind of reclassification of high-level to low-level.

I said: That is exactly what is being done.

He said: That is not what we understand. We know that Senator GRAHAM has been working with the Department of Energy, and we were led to believe we would have a signoff on it and his amendment would give us any kind of collaborative agreement, as characterized by the distinguished Senator, that was worked out, and we could sign off on it.

On page 2 of the amendment, he refers to subsection A and subsection B—rather subsection A shall not apply to any other material otherwise covered by that subsection that is transported from the State. Then down in section D, in this section, the term ''State'' means the State of South Carolina. So referring to that particular section, what we have is not a preemption, but really the preemption is invalid. That language is, ''any such action may be completed pursuant to the terms of the closure plan of the State-issued permit notwithstanding the final criteria adopted by the rulemaking pursuant to subsection A.''

We had this in the Kentucky case with respect to the supremacy clause. We know this has already been taken to the 6th Circuit Court. That does not protect the State of South Carolina at all. I know my distinguished colleague wants to protect the State of South Carolina, but I think he even knows now that language does not protect the State.

I asked: Where in the world did this all come from anyway?

He said: Oh, Senator, we have been working on it.

We have a brief filed on March 25, a certificate of a brief in the case of the National Resources Defense Council v. Spencer Abraham. We won the case, and it is up on appeal. On this appeal, we have signed that brief, Samuel L. Finckley III, South Carolina Department of Health and Environmental Control—that was just a few weeks ago—stating the Department's position.

I have nothing from the Governor. I know Governor Sanford extremely well. We traveled back and forth for 6 years when he was in Congress. I know the one thing he is known for and that is protecting the environment. Governor Sanford does not approve of this. I understand informally he told my distinguished colleague: If you can work out an agreement that protects the State of South Carolina, then we will go along with it. That is not what is occurring with this amendment.

I have been in this game for 50 years. In 1955, I was the chairman of the Regional Advisory Council on Nuclear Energy. We called it RACNE then. It was a 17-State compact. We had all the dangers of nuclear emissions. We looked for places for permanent storage. At that time, in the early fifties, they said—at that time, I was Lieutenant Governor—they said: Governor, don't worry about it. This Savannah River site we are developing is twofold very dangerous for any kind of permanent storage. One reason is this site is over the Tuscaloosa aquifer water supply that comes down below Aiken County. More than anything else, there is an earthquake fault from Calhoun, Orangeburg, into Aiken County. He said: We are not going to have anything stored here for over 2 years.

Two years became 4, 4 became 8, 8 became 16, 16 became 32, and now it is some 50 years. It has been some 50 years and that problem has yet to be solved.

We worked on the financial end of the problem, and we exacted 1/10th of one cent on a kilowatt of power sold by the various energy companies engaged in nuclear power, and that fund has some $13 billion in it. We are not worried about money. The Department of Energy went around—and that is the case to which I am referring. They ran around and surreptitiously said we are going to reclassify and call it low-level waste, and that means we can save a lot of money and bother and use the money maybe on tax cuts. Don't worry about that fund because the power companies have sued on the particular fund. Otherwise, that fund has been built up, and there is plenty of money.

It is just not cleaning it up. They were trying to empty out the waste and throw some sand and concrete on top of it. We found out in expert hearings back in 1982, when we classified it as high-level waste—the finest of experts came in, and that is where the classification came, and that, my dear friends, is what should occur here.

If there is some reason to reclassify, then let's come before the Environment Committee and the Energy Committee and let's have a hearing as has been provided for by my colleague, the distinguished Congressman from the 5th District, Congressman JOHN SPRATT, whereby on the House side they said, let's refer to the National Academy of Sciences, and we will go about it in a deliberate way, and if the Energy Department wants it reclassified and has some authoritative source that will support their particular position, maybe the Congress itself will reclassify. But this has been classified by us, upheld in the courts, now on appeal, and here they come around in a fancy little surreptitious way on a Defense authorization bill and get the Graham language in the bill that would not hold up in the State legislature where general provision would say it is unconstitutional.

When I heard about this going on, I looked to see if maybe this was unconstitutional, but it is not.

That can be done, and it has been done already. So there has been precedent set for this. I can say categorically, the State in the last 48 hours is in an uproar over this particular measure. They did not know of any kind of special provision that was going to be put on for one State in a Defense authorization bill. They resent it, they resist it, and they have asked me by advertisement and telephone calls to please ''adamantly oppose,'' is the expression they have used.

This is all in the offing. We can see what my colleague has done. He has put language on here so that when the deal is made with the Energy Department where apparently the State still would have a signoff—under the supremacy clause, the Federal Government has got it—and it means absolutely nothing, but it allows them to get the deal and lock the State in, and then we will start all the legal proceedings all over again.

So I implore my colleagues on both sides of the aisle, this is no way to legislate high-level waste in the United States. I have worked with the Department of Energy. We have the facility

down when Secretary Richardson—now the Governor of New Mexico—was in, and I have brought every particular benefit that I could possibly bring to this particular facility, but apparently the contractors want to move ahead and certainly the Department of Energy wants to move ahead and not have to pay out the full sums. If they can get a precedent set for the reclassification in a surreptitious fashion of this kind called low-level waste, then it will set a precedent for the other States and we have an environmental disaster in the offing because we will not be here.

That is about the attitude around here, that if it can be handled in a day's time, then let us forget about the future. This is a highly dangerous procedure. It is wrong for the State of South Carolina. It is wrong for the Nation. It is wrong for the Department of Energy.

I had misgivings when the Secretary of Energy came up for nomination. I remembered very clearly my debate with Spencer Abraham. He wanted to abolish the Department of Energy and abolish the Department of Commerce. I can see him over on that side of the floor right now. We had a debate about that. I was sort of shocked that he would want to be Secretary of a Department that he wanted to abolish, but he is a good fellow. I got along with him, and I said, all right, I will cast a vote and keep my fingers crossed. But this is monkeyshines. We cannot go along with this one.

If they want a reclassification—this is not a money problem, this is a reclassification problem—then let us reclassify it in the orderly fashion in which we made the classification back some 22 years ago in the Congress.

The House of Representatives says let us handle it that way, so let us handle it that way over in the Senate. If we want to give permission to have hearings and then change that law, that is fine business, let us do it in that fashion, but do not put a rider that says this is for the interest of the State of South Carolina because it is not. It is not in the interest of the United States of America.

I do not know how else we can solve this. I know the other States are involved. The Senator from Michigan on the Defense appropriations has been very alert on this particular measure. I am just a Johnny-come-lately to it, but it affects my State, and it affects an area that I have been vitally interested in for over 50 years now. I have worked with every particular facet that one can think of. Never has this Senator been contacted about this deal. I know the Governor, I know his position on the environment, and I know he will not approve of this one.

I can tell my colleagues right now that reclassifying high level as low level, saying that we protect the State of South Carolina when we know the legalistic wording is just that, legalistic wording, has already been found ineffective by the highest court of the land.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Virginia.

ORDER FOR RECESS

Mr. WARNER. I ask unanimous consent that the Senate stand in recess at the hour of 12:45 to accommodate the Secretary of Defense, who will be briefing us, and resume at 2:15.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I think the two managers are very wise, offering the opportunity for everyone to go to hear the Secretary of Defense and the three generals who testified yesterday. It is commendable. It speaks well of the management of the Senate floor because there would be nothing happening here anyway. Everyone needs to go there. So I commend the two managers of this bill.

Has the Senator offered a unanimous consent that we would be out from 12:45 to 2:15?

Mr. WARNER. That is correct. It is essential that Senator LEVIN and I be present with the Secretary.

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

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CRAIG). Without objection, it is so ordered.

RECESS

Mr. WARNER. Mr. President, the distinguished Senator from Michigan and I, together with the distinguished Senator from Nevada, are doing our very best to try to arrange the debate on the pending amendment to accommodate both sides. It is not likely we are going to achieve that in the next few minutes, so I ask unanimous consent the pending unanimous consent request for 12:45 be revised to reflect that the recess start now and terminate at 2:15.

There being no objection, the Senate, at 12:37 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ALEXANDER].

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

AMENDMENT NO. 3226 TO AMENDMENT NO. 3170

Mr. CRAPO. Mr. President, I call up amendment No. 3226.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAPO] proposes an amendment numbered 3226 to amendment No. 3170.

Mr. CRAPO. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the first word of the matter proposed to be inserted and insert the following:

3119. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

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

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

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

(3) The Hanford Site, Richland, Washington.

(c) This section shall become effective 1 day after enactment.

Mr. CRAPO. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I came to the floor with the understanding that we are in a moment where we haven't been able to move forward legislatively as far as the schedule goes. I wanted to take a few minutes of leader time to comment on a number of specific issues.

PAUL WELLSTONE MENTAL HEALTH EQUITABLE TREATMENT ACT

Mr. DASCHLE. Yesterday I spoke about the Paul Wellstone Mental Health Equitable Treatment Act. This is a critical piece of health care legislation. One in five Americans today suffers from a mental illness every year. Many are now denied health care they need because of legal discrimination by their health insurers. Such discrimination often takes a terrible toll on people with mental illness, their families, and all of us.