

NUCLEAR REGULATORY COMMISSION

Title: **COMMISSION MEETING**
MEETING WITH ORGANIZATION OF
AGREEMENT STATES (OAS) AND CRCPD

Docket Number: (not applicable)

Location: Rockville, Maryland

Date: Wednesday, August 15, 2001

Work Order No.: NRC-383

Pages 1-102

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

COMMISSIONERS MEETING

+ + + + +

WEDNESDAY

AUGUST 15, 2001

+ + + + +

ROCKVILLE, MARYLAND

+ + + + +

The Nuclear Regulatory Commission met at the Nuclear Regulatory Commission, One White Flint North, Commissioners' Conference Room, 11545 Rockville Pike, at 1:30 p.m., DR. RICHARD MESERVE, Chairman, presiding.

COMMISSION MEMBERS:

- DR. RICHARD MESERVE, Chairman
- DR. GRETA J. DICUS, Member
- MR. JEFFREY S. MERRIFIELD, Member
- DR. EDWARD MCGAFFIGAN, JR., Member

COMMISSION STAFF:

- KAREN D. CYR, ESQ., General Counsel
- ANNETTE L. VIETTI-COOK, Secretary

1 NRC INTERNATIONAL ACTIVITIES STAFF PRESENT:
2 MS. KATHY ALLEN, OAS Chair
3 MR. WILLIAM SINCLAIR, OAS Chair-Elect
4 MR. EDGAR BAILEY, OAS, Past Chair
5 DR. PAUL MERGES, CRCPD Chair
6 CYNTHIA CARDWELL, CRCPD Chair-Elect
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>AGENDA ITEM</u>	<u>PAGE</u>
Opening Remarks	4
Vote on Final Rule Amendments	4
<u>Presentation by CRCPD AND OAS</u>	
Kathy Allen, OAS Chair	6
William Sinclair, OAS Chair-Elect	17
Edgar Bailey, OAS, Past Chair	23
Paul Merges, CRCPD Chair	31
Cynthia Cardwell, CRCPD Chair-Elect	39
Discussion	47
Adjourn	102

P-R-O-C-E-E-D-I-N-G-S

(1:30 p.m.)

1
2
3 CHAIRMAN MESERVE: Good afternoon. We
4 started a new tradition before our meeting and it is
5 a pleasant one, going in and shaking hands. Before we
6 get started, we do have one other piece of business
7 that we need to take care of, which is an affirmation
8 matter. Madam Secretary.

9 SECRETARY VIETTI-COOK: The Commission is
10 being asked to act on a final rule amending 10 CFR
11 Parts 30, 70, 72, and 150. The amendments would allow
12 licensing for interim storage of power reactor
13 related, greater than Class C waste, in a manner that
14 is consistent with licensing, interim storage, of
15 spent fuel, and would maintain Federal jurisdiction
16 over the interim storage of reactor related, greater
17 than Class C, waste, either on or off the reactor
18 site.

19 These amendments provide an option that
20 would simplify and clarify the licensing process and
21 reduce the potential burden on licensees. The U.S.
22 Nuclear Regulatory Commission Agreement states with no
23 adverse affect on public health and safety or the
24 environment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The Commission has voted to approve the
2 publication and implementation of this final role with
3 the changes provided in the attachment. Would you
4 please affirm your votes.

5 CHAIRMAN MCGAFFIGAN: Aye.

6 CHAIRMAN MESERVE: Aye.

7 COMMISSIONER DICUS: Aye.

8 COMMISSIONER MERRIFIELD: Aye.

9 SECRETARY VIETTI-COOK: That's all I have.

10 CHAIRMAN MESERVE: Thank you, Madam
11 Secretary. And good afternoon to our guests. Our
12 commission meeting this afternoon is our periodic
13 briefing that we have with the Organization of
14 Agreement States, and with the Conference of Radiation
15 Control Program Directors.

16 I am very pleased to have this briefing
17 because it does afford an opportunity for us to
18 discuss common issues that are faced NRC and the
19 States in regulating nuclear materials.

20 It also provides an avenue to discuss ways
21 that we can continue to work together effectively to
22 carry out our joint responsibilities in this important
23 area.

24 We are joined this afternoon by Kathy
25 Allen, who is the Chair of the Organization of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Agreement States; by William Sinclair, who is the
2 Chair-Elect of the OAS; Edgar Bailey, who is the Past
3 Chair of the OAS; by Paul Merges, who is the Chair of
4 the Conference of Radiation Control Program Directors;
5 and Cynthia Cardwell, who is the Chair-Elect of the
6 CRCPD.

7 I would like to welcome you all, and we
8 very much look forward to this afternoon's briefing.
9 Let's see. I think that Kathy is up first.

10 MS. ALLEN: Great.

11 CHAIRMAN MESERVE: Let me turn to my
12 colleagues though and see if they would like to make
13 any opening comments. If not, why don't we proceed.

14 COMMISSIONER DICUS: Well, actually, just
15 very, very quickly. I appreciate the new tradition,
16 because we don't usually get to greet folks on the
17 other side of the table until after the presentations.
18 But I think that I was the only one that got hugs.

19 CHAIRMAN MESERVE: We noticed that, Greta.
20 We're jealous. We're jealous. All right. Kathy.

21 MS. ALLEN: Thank you very much. We would
22 first of all like to thank the Commission for the
23 opportunity to review, and if I speak too fast as
24 usual, just slow me down.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We would also like to thank you for the --
2 I would like to thank you for the times that you would
3 let me stop in and visit you this past year. I have
4 been here a lot for the Nuclear National Materials
5 Working Group, and I have appreciated the time that I
6 have been able to spend with you, and to stop in and
7 visit, and discuss issues throughout the year.

8 I would like to thank all the States for
9 listening in, and especially for you guys allowing us
10 to do this briefing in the afternoon so that the
11 people in the Western States don't have to wake up at
12 four in the morning to listen to the briefing. They
13 really appreciate that.

14 And also the NRC people that are here and
15 also listening in on bridge lines. I want to thank
16 them for their time in listening in on some of these
17 issues.

18 As you can tell by our handshakes to begin
19 the meeting, and for the most part all of the thanks,
20 we have really been working well, I think, with NRC
21 lately.

22 There are some very good people at the NRC
23 that we have been able to deal with, and work with on
24 different issues, and overall I think the whole
25 relationship between States and the NRC is actually a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very good one, especially in the area of
2 communication.

3 So I just wanted to compliment everybody
4 on both sides of the groups, the States and the NRC,
5 for communicating well together. I would like to put
6 in a plug for enhanced communications among States and
7 the NRC by way of Rad Rap.

8 That is a little E-mail thing that we have
9 set up that States have participated in, sending out
10 E-mails asking questions about things like hot
11 laundry, bomb squad x-rays, training videos,
12 reciprocity questions, questions regarding NORM,
13 naturally occurring or accelerated produced
14 radioactive material.

15 Different States have posted questions
16 just looking for feedback or information, and very
17 rarely do NRC staffers participate on Rad Rap, and we
18 would value some of their input on some of these
19 issues.

20 Questions about hot laundries, and have
21 you guys seen things, or had to respond to things
22 concerning nuclear medicine facilities, or inspection
23 type questions, or even questions about any
24 recommendations on what kinds of instruments or
25 materials should be in a response kit.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 These are types of questions that go out
2 on Rad Rap for different States looking for input.
3 Some of the working groups have been using Rad Rap.
4 Unfortunately, some of the NRC staff members didn't
5 feel comfortable using Rad Rap, and so they would send
6 me the questions, and I would pose them out on Rad Rap
7 for working groups.

8 And we would just sort of encourage the
9 NRC to use it if possible. It is not an OMB type
10 requirement. If the NRC asks questions, it is just
11 kind of like when you stand up at a meeting and say,
12 hey, does anybody have an opinion or idea, or have you
13 encountered this particular issue.

14 So that is sort of what Rad Rap is about,
15 and I just wanted to put in a plug for it. We
16 appreciate the increase in your request for State
17 participation on different issues.

18 We have noticed that States have been
19 invited to a bunch of briefings on risk-informed type
20 issues, and States are actually sought out to come to
21 the meetings. We think that is really good.

22 There seems to be an overall increase in
23 the understanding of State perspectives as we deal
24 with different members of the NRC, and different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 working groups that we are on, and different issues
2 that pop up and regulations.

3 And as we talk to the technical people,
4 they seem to have a better understanding of what
5 Agreement States are, and what we do, and I think that
6 is really good.

7 And some State people actually have a
8 better understanding and a better -- well, I think
9 there is overall more respect between the two groups
10 about the technical abilities on both sides, and I
11 think that is really very good.

12 The increased use of working groups I
13 think has brought us to this level. There are
14 currently 14 working groups that I know of. There are
15 a couple in the wings waiting to be formed. States
16 are participating on 11 of those working groups, and
17 there are three steering committees, and States are on
18 all three of those steering committees.

19
20 Those three steering committees are
21 actually steering groups for five working groups.
22 That is kind of weird math, but I think this
23 demonstrates a broad range of interests and expertise
24 in States and at the NRC.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And it is good that we are sharing
2 resources and working together on these issues on
3 regulations, on guidance, and just trying to come up
4 with even rule making plans for Part 40, for example.

5 These are good things for States and the
6 NRC to be working on together. The mix has changed
7 from the first working groups, from a single -- and I
8 will say token -- State rep, with mostly NRC workers,
9 to some working groups where there is actually an
10 equal mix of State and NRC folks.

11 And in some working groups, maybe with
12 more State reps than NRC reps, depending on the areas
13 of expertise, and the amount of resources available in
14 the organizations.

15 When the NRC comes to us, or the Office of
16 State Programs asks the Organization of Agreement
17 States for representatives on working groups, we have
18 sort of refined that process over time.

19 Now the NRC actually has a better idea of
20 the scope of the working group mission, and what kind
21 of product it should produce, and what kind of
22 experience or expertise is needed for that working
23 group, and about how long this process is going to
24 take.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And that has helped us refine volunteers,
2 and make sure that we get the right person for the
3 job. When we go out and look for volunteers, we also
4 try and keep in mind other CRCPD type of working
5 groups, or other initiatives being started out there
6 among the States, to get the right people, the right
7 mix of people on these working groups.

8 For example, if there is already a group
9 formed at the CRCPD, we try and get somebody from that
10 group to be on the working group to make sure that we
11 don't dilute our resources too much, but we try and
12 get more bang for our buck, and the right people at
13 the right time.

14 There have been some problems with some
15 working groups, kind of a mission creep as issues
16 arise. A working group may be working for a few
17 months and suddenly it's, hey, we have an issue that
18 we should discuss.

19 Well, that working group is working on it,
20 and suddenly the working group will never end its
21 original charge. So we have tried to rein this in
22 working with the Office of State Programs, and we are
23 now trying to actually establish the charter up front.

24 And now we are sort of working on a
25 procedure where the Chair of OAS and the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 State Programs actually sign off on the charter so
2 that it doesn't creep too far from what its intent
3 was, and to make sure that the product is actually
4 delivered.

5 If it is a big enough issue, or a good
6 enough idea, maybe that group can sort of regroup and
7 work on the issue separately, or we can amend the
8 charter, but at least other people aren't constantly
9 throwing ideas for this working group to work on.

10 The increase in working groups has also
11 created an increase in steering committees. These are
12 committees of managers that sort of oversee the
13 working groups. This is something that I think we are
14 a little bit cautious about.

15 Currently, over a third of the working
16 groups head steering committees, and I think we need
17 to look at when they are formed, and their role, and
18 if they are really accomplishing what they think they
19 are accomplishing.

20 Sometimes just a management rep, or a
21 resource rep for the working group, might be enough,
22 rather than dedicating a lot more resources to a
23 steering committee.

24 So these are things to just sort of keep
25 in mind as we move forward with more and more working

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 groups, and to better define the role for the steering
2 committees, and the need for the steering committees,
3 because sometimes you just end up with a lot of the
4 same people overseeing the same types of products.

5 And I am not necessarily sure that we are
6 actually getting what we want out of that. One of the
7 bigger working groups that comes to my mind happens to
8 be the National Materials Program Working Group, and
9 the National Materials Program Working Group report
10 was completed at the end of May, and went up to the
11 Commission.

12 And States are actually kind of anxious to
13 hear your feedback on some of the recommendations. I
14 know certainly our organization is interested.

15 The working group had four
16 recommendations. One is the creation of some sort of
17 alliance. More steps towards working cooperatively
18 with the States and the NRC. We are already working
19 that way anyway.

20 We are just looking for more formalized
21 steps or more areas we can branch into where we
22 actually share resources a little bit more. We are
23 curious to see or to hear what the Commission thinks
24 about the alliance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Is it feasible for the NRC to work under
2 some sort of an alliance concept type thing. Can we
3 jointly establish priorities. Are there things that
4 we can do now to work towards this without creating a
5 lot of procedures and a lot of changes of things.

6 Are there things that we can be doing now
7 more cooperatively, like we are with the working
8 groups. Are there other things that we can be working
9 towards or working on.

10 What are your opinions and viewpoints.
11 There are a lot of practices that States are used to
12 doing, like writing regulations and things, that might
13 be better under an alliance concept, and we are
14 anxiously awaiting any kind of comments that you may
15 have on that particular aspect of it.

16 There was a recommendation for the NRC to
17 regular NORM. States have asked for this in the past,
18 and the working group included that in their report,
19 although part of this goes hand-in-hand with the
20 alliance type concept.

21 Some States are concerned about NRC coming
22 in and trying to regulate something that they are not
23 necessarily fully familiar with. We would like
24 definitely to have a lot of State input on the NORM

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 issue, and if you end up taking over authority for
2 that, we are seeking authority for it.

3 And even if you just want to understand it
4 a little bit more, we will be happy to bring some
5 inspectors to accelerate your facilities or whatever,
6 and show what we know about the NORM that we have been
7 regulating for so many years.

8 One of the other recommendations was for
9 a standing compatibility committee. That is to sort
10 of ensure uniform assessment of compatibility
11 requirements from group to group, from different
12 groups as they write different regulations, and make
13 sure that everybody is looking at compatibility as
14 defined.

15 And it allows for a uniform evaluation of
16 regulations, even if it is written by a group of
17 States that may or may not have input from NRC on it.

18 There is a recommendation for continued
19 information infrastructure. The NRC has demonstrated
20 tremendous ability to put a lot of information out on
21 the website. They are a great resource.

22 We don't try and recreate your links to
23 State programs. We just include a link to your site,
24 and say you guys have it all. I think you have done
25 an excellent job with your website, especially things

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 like getting to sealed source and device evaluation
2 sheets.

3 There is a lot of information out there
4 and we really like being able to get to that
5 information, and we want to commend you on that, and
6 say we support your continued role in the information
7 infrastructure.

8 I think at this point, I am going to go
9 ahead and let Bill continue on with more working group
10 stuff.

11 MR. SINCLAIR: Thank you, Kathy. I am
12 glad to have this opportunity to appear before you
13 today, and I just want to continue with the
14 confirmation that our belief is that things are
15 working well.

16 And I know that it is kind of out of
17 character for me to say positive things, but I am
18 going to do so at this particular time. The first
19 thing that I would like to talk about, in terms of
20 things that are working well, is the IMPEP review
21 program.

22 And IMPEP is really unique in the co-
23 regulator world, and I would put it up as kind of a
24 poster child. I come from an agency that has, I
25 guess, the honor or privilege of doing a lot with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Environmental Protection Agency, and most of our
2 programs deal with that particular agency.

3 And when it comes to program reviews, we
4 find a much different situation in dealing with that
5 Federal Agency than we do with the NRC. For instance,
6 the program reviews are much more frequent.

7 When I was in the hazardous waste program,
8 we got program reviews on a semi-annual basis, and I
9 can tell you that the program reviews were much more
10 confrontational than they were collaborative.

11 So I can really appreciate working with
12 the NRC in this particular area. We also see that in
13 the EPA world that the regions are almost autonomous
14 from the headquarters, and it really creates a lot of
15 problems when you are dealing with programs, and you
16 get different interpretations from regions around the
17 country on licensing and enforcement actions.

18 And then you always have the presence, the
19 ever present threat of over-bow. If the EPA doesn't
20 like a decision that the State made, they can come in
21 and take independent enforcement action, and it
22 creates a lot of problems for us as an agency.

23 And in contrast, we have set up the IMPEP
24 program where you have a program review, where you
25 have input by the States, and where you actually have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 State members on your review team. This is unheard of
2 in EPA circles. They would have a cow if they knew
3 that was happening.

4 There is a frequency of a program review
5 based on performance. So if you are running a good
6 program, you get a less frequent review. That is also
7 a very good thing.

8 Also, the process for reaching a final
9 conclusion on the overall program review, and how it
10 comes out is good, because you have different levels
11 of review in the process.

12 And that if you have a disagreement with
13 the review team, you have the MRB that you can appeal
14 to, and I have found that very helpful in ferreting
15 out different ideas, in terms of was it really a
16 problem or not. And that is also unique.

17 As you may know, Utah was one of the
18 States that participated in the pilot program, along
19 with our colleagues from Illinois and New Hampshire.
20 And every time that I get a chance, and people ask,
21 well, what is one of your accomplishments as a
22 program, I put IMPEP up as one, because I think it has
23 had a real impact nationally on radiation control
24 programs.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We are looking forward to a new working
2 group called IMPEP, Lessons Learned, that has just
3 been formed. They are going to look at the IMPEP
4 review process again, and I think that this is
5 critical to make sure that we continue on a path of
6 having continuous improvement in that already good
7 process.

8 So I thank you for the IMPEP program. It
9 has been a very good program. Now, I would like to
10 talk just a minute about public participation. On
11 April 4th, which was my birthday by the way, I
12 participated in a conference call, where the NRC had
13 a public participation meeting.

14 Chip Cameron was the facilitator, and you
15 had a lot of diverse groups come in and give you
16 advice on how you should run your public participation
17 program.

18 And quite frankly at times I have not been
19 very happy myself with what I would term the stiff
20 regime that some people have to go through to express
21 their concerns on different issues.

22 But participating in this meeting really
23 opened my eyes to what you have to deal with, in terms
24 of just the volume of materials that you have to get
25 out there, in terms of allowing the public to see

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 them, and also the diversity of groups that you have
2 to work with.

3 And as issues were discussed from how you
4 notice meetings, to how you let groups participate in
5 enforcement procedures, I realized how really some
6 Agreement States are pretty insulated from this.

7
8 Now, I would not characterize my State as
9 being one of these, but I believe various insulation
10 by some Agreement States. You have to deal with a
11 number of issues. You have to deal with it on a
12 national basis.

13 You have to deal with issues that are
14 pretty simple to very complex issues, and you have to
15 deal with interest groups on a local, regional, and
16 national basis.

17 So I guess my message to you is to
18 continue to ask these groups and the States how to
19 improve your dialogue, in terms of public
20 participation.

21 And I really believe that the input that
22 you are getting -- and a lot of it is critical I
23 understand. But I wanted to give you some good
24 comments, and that I think that this is a good way of
25 moving this issue forward, because there is going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be a lot more public participation that Agreement
2 States and you as the Commission are going to have to
3 deal with.

4 And I also wanted to just echo Kathy's
5 comment about the availability of information on your
6 website. I found it very helpful, in terms of getting
7 quick access to documents that I need to look at.

8 And I really appreciate having that
9 opportunity, and I would ask also that you help OAS by
10 furthering the regulatory dialogue by the use of the
11 Rad Rap system that we have in place.

12 And then finally I would like to talk just
13 a minute about the working relationship between the
14 regions and Agreement States. I believe in general
15 that many Agreement States are pleased with the
16 working relationship that we have with the regions.

17 My own experience with Region 4 has been
18 very positive. I always get timely notification of
19 NRC staff coming into the State, and that is very
20 helpful to know that.

21 And we have to deal with a lot of joint
22 issues, such as allegations, and we have a good
23 working relationship in that area. Another Region 4
24 experience is between NRC and California, where they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have formed a partnership dealing with the
2 decommissioning of a facility in San Diego.

3 At this site, the NRC in California
4 reviewed each building and land area, and worked
5 together to designate a lead agency for each area to
6 be released.

7 And the end result of this has been that
8 it has avoided a duplication of effort, a streamline
9 of the decommissioning work, and yet protected public
10 health and safety.

11 We have another example of a report out of
12 Region 2, where the licensing staff are always willing
13 to discuss licensing matters with the State, and at
14 the State's invitation actually joined them for a
15 briefing by a medical device manufacturer.

16 In Region 1, I have an example of a
17 radiation control program that had been struggling to
18 rebuild its program, and the staff at Region 1 stepped
19 in, and made sure that they got the training that they
20 needed to get to, even bringing in to the regional
21 office to do some one-on-one training with the
22 licensing staff.

23 And finally in Region 3, I know that I
24 have had reported that one State believes that your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appointment of a new regional administrator has made
2 a lot of difference.

3 And there is a new proactive approach to
4 working with the States in that particular region, and
5 they wanted to say to please give them a big thumbs
6 up. So here is your thumbs up. I will now turn the
7 time over to Ed.

8 MR. BAILEY: Thank you, Bill. Mr.
9 Chairman, and Commissioners, I am happy to appear
10 before you again. Next year, you won't have to look
11 at my ugly face. So I know that will be pleasing to
12 you all.

13 I feel like that we are doing a good cop-
14 bad cop thing, and I am not sure how I drew that black
15 bean. But anyway I have some slides, and they are
16 very brief, and I just have a few points.

17 And these are essentially some issues that
18 I think we do need to do some more work on, and when
19 I say we, I truly mean we; the Agreement States and
20 the NRC.

21 I have got the next slide which lists just
22 all the issues, and so the third slide is really the
23 one that we start off going through each one. One of
24 the concerns that has been concerned by several States

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is the lack of concrete guidance on what can be
2 disposed of in uranium mill tailings ponds.

3 I have listed some of the items there.
4 The 11e(2) byproduct material, and the 11e(2) like
5 materials; the ways from processing source material
6 for other than its source material content.

7 Source material itself, NORM, and then we
8 have thrown in one which is really going to -- well,
9 potentially generate quite a bit of waste, and that is
10 radioactive waste resulting from EPA's new rule on
11 water or reducing radionuclides in drinking water.

12 Some of the highest projected radioactive
13 materials concentrations that we see in some of these
14 off-categories of waste disposals will come from that
15 process, where residents will be charged quite high.

16 Either in uranium, which then raises the
17 question at least to me is that a uranium recovery
18 facility that has to be licensed not only by an
19 Agreement State, but by NRC; or I think what is more
20 common across the United States is that there will be
21 mobilized radium that will be taken out.

22 But we do know of some locations where the
23 culprit will be uranium, and it is altogether possible
24 that you will be well above the magic exempt quantity
25 of .05 percent by weight.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, the real issue that we started with
2 was we just need guidance, I think, at a national
3 level, and I think that this is where NRC comes into
4 play. There will always be a need for national
5 standards and national requirements.

6 It would be very nice if there was a
7 single little document that says that it is okay to
8 dispose of these materials in a uranium mill tailors
9 site or it is not okay.

10 Right now it is handled on a case by case
11 basis. I find that very unsatisfactory, because it is
12 so much left up to the individual and the climate that
13 exists in that regulatory agency at that moment, and
14 it is not a consistent health protection standard.

15 Going to the next slide, this is one that
16 sort of got thrust upon us. The internet sales of
17 radioactive materials, and quite frankly my interest
18 in it came about as a result of an allegation that the
19 NRC forwarded to the State of California.

20
21 And the allegation in essence was that
22 there were radioactive materials that required a
23 license being offered on eBay for sale. I'm sorry
24 that Ebay happens to be based in California, but we do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not know at this moment whether the person selling the
2 material was in California or not.

3 We don't know whether the person who
4 bought it was in California or not. We are, I guess
5 you could say, negotiating with Ebay to get the name
6 of the buyer and the seller.

7 And we hope to in the next week be able to
8 further this, but it brings up a point that in these
9 days of the internet that we have been particularly
10 silent in how we are going to deal with sales and
11 transfers of radioactive material via this mechanism.

12 It is much easier now for a wide variety
13 of people to go to a wide variety of companies, both
14 in a single State or in multiple States, or even in
15 another company, and essentially buy materials.

16 I think there needs to be some looking at
17 how we propose to control the distribution and sale of
18 radioactive materials through the internet, and I
19 think that is probably one area where the NRC, and
20 certainly interstate commerce, and probably
21 international commerce.

22 And it is an area that I think that if you
23 are not already looking at, I would encourage you to
24 begin to at least explore what the possibilities are,
25 and the problems associated with it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Along those same lines, next slide, there
2 are a number of products that are manufactured as
3 exempt products, and I have two examples. In Canada
4 and the U.K., people buy them there, and they bring
5 them back here, and they are not included in the
6 products that are exempt in the United States.

7 I was called last week by a Canadian
8 manufacturer who distributes a light source. They
9 want to set up a plant in the United States. They
10 distribute it exempt in Canada, and they want to know
11 what they have to go through to distribute this same
12 product in the United States exempt.

13 And so I bounced the ball back to you all,
14 saying that exempt tritium products had to be licensed
15 by the Nuclear Regulatory Commission. But it brings
16 up another example of how as the world shrinks, we are
17 getting products brought in all the time from
18 overseas, and how those are going to be evaluated, and
19 it really calls I think for an harmonization of
20 standards around the world, and at least in the
21 industrialized countries.

22 And if we say that a product is exempt, it
23 should be acceptable in Canada, and if Canada says it
24 is exempt, it should be acceptable here. The next one
25 is the implementation of D&D standards, and I guess

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this is my staff's favorite one, and if I don't bring
2 it up, I will be tarred and feathered when I got back.

3
4 The 25 millirem D&D rule is a great rule.
5 The problem is that when you start to implement it, it
6 is very complicated. And again we get to the
7 situation where in many cases it is each individual
8 reviewer's opinion and philosophy about whether 25
9 millirems per year is an important dose number or not.

10 It also gets to how are we going to handle
11 restricted release. What factors can we modify about
12 a site and still go for unrestricted use. The problem
13 is right now that we don't have guidance. We don't
14 have clear guidance on how we are going to do it.

15 We also have a disconnect, I believe,
16 between some of the Part 40 licenses, and are people
17 that possess material under Part 40, and the D&D rule.

18 It is a big, big disconnect if you start
19 using the 25 millirem per year, with some Part 40
20 licenses, when they start cleaning up, you have got a
21 really big problem.

22 So what we would encourage is that we have
23 -- and particularly Commissioner Dicus may not believe
24 this, or may find it surprising, but I believe that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the NRC has to be very forceful and clear in guidance
2 on what is acceptable.

3 How far can you vary those parameters
4 before you are outside the ball park in your analysis.
5 We need to have an agreed upon dose evaluation
6 parameter variability.

7 In other words, we are looking at some
8 sites. What can we vary. I have sort of maintained
9 that we can accept the site specific meteorology. I
10 don't think it is going to change much in the next
11 hundred years.

12 The geology probably isn't going to change
13 a lot in the next hundred years. But other than that,
14 almost all bets are off on items that potentially
15 cannot change in the next hundred years, or a
16 thousand, or whatever.

17 And then following that, we really need to
18 have training on these policies and procedures. Not
19 just for Agreement States staff, but we need to have
20 the training which involves the NRC reviewers and
21 Agreement State reviewers, so that across the nation
22 we are evaluating these things the same way.

23 We are providing equal protection, whether
24 you live in Delaware, or California, or North Dakota,
25 or wherever. The last item that I have to talk about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is that I understand the energy and water
2 development's appropriation bill has in a report
3 attached to it essentially guidance to look at the
4 external regulation of DOE non-defense science
5 laboratories.

6 With the idea of eventually transferring
7 regulatory authority to the NRC over those labs, and
8 we would hope that you as the Commissioners would do
9 what you could to support that, and also support the
10 addition of just three little words, "and Agreement
11 States," under the regulation. Thank you very much.

12 COMMISSIONER MCGAFFIGAN: Mr. Chairman, if
13 I might just on that last point just tell Mr. Bailey
14 that that was stripped out of the bill. Congressman
15 Largent made a point of order against the provision
16 and it was dropped, and so it is not in play any
17 longer. It is not going to happen.

18 MR. BAILEY: I'm sorry to hear that.

19 MS. ALLEN: We are not done yet. We have
20 just one more thing from OAS. We wanted to put in a
21 little commercial for the Organization of Agreement
22 States meeting coming up in Sante Fe October 8th
23 through the 10th, with a tour of the Trinity site on
24 October 11th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I want to thank Chairman Meserve for
2 saying that he will come out, and speak at our
3 meeting, and we would encourage anybody else who would
4 like to come out to come and continue these dialogues
5 among the States and the NRC.

6 And now I will turn it over to Paul
7 Merges, who is Chair of the Conference of Radiation
8 Control Program Directors.

9 DR. MERGES: Good afternoon, Mr. Chairman,
10 and Commissioners. I am passing out a statement that
11 I am making this afternoon, plus the directory of the
12 Conference of Radiation Control Program Directors,
13 which is excellent resource material.

14 And I will be going in and discussing the
15 Conference of Radiation Control Program Directors, and
16 so I want to make sure that everyone has a clear
17 understanding of how broad a group it is.

18 And also a brochure on our orphan source,
19 our program which is becoming significant; and finally
20 the news brief of the conference, which is the last of
21 the printed news briefs. We are going to our website
22 in the future, starting at the end of this month.

23 My name is Paul Merges, and I am the Chair
24 of the Conference of Radiation Control Directors
25 Board, and I am also the Director of the Bureau of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Radiation and Hazardous Site management for the New
2 York State Department of Environmental Conservation.

3 And I have seen several of you at West
4 Valley periodically, especially in the last couple of
5 months. With me is Cindy Cardwell, and Cindy is the
6 Chair-Elect, and she is also with the Texas Department
7 of Health.

8 We are grateful that the Commission be
9 here this afternoon, and providing for the first time
10 our Chair-Elect an opportunity to participate. We
11 think that this will provide considerable continuity
12 in future meetings.

13 The Conference of Radiation Control
14 Directors is a family represented by the radiation
15 program directors of all of the Agreement States, and
16 non-Agreement State Program Directors, as well as
17 representatives of the territories and trusteeships of
18 the nation.

19 We have international members, associate
20 members, emeritus members, honorary members,
21 international members, as well as many affiliate
22 members. The conference has over a thousand members
23 in its organization, and it is a non-profit
24 organization established in 1968.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So we have been around before the NRC was
2 the NRC, and to see the evolution from the AEC to the
3 NRC, and before the OAS existed, and we like working
4 with both of you.

5 We have a strategic group, or a strategic
6 plan, which we have implemented, and one of the
7 actions in that which you will see over the next few
8 years is enhancement of the presence of the Conference
9 of Radiation Control Directors in the Washington D.C.
10 area.

11 Our current executive director is Charles
12 Hardin, who is retiring, and we are in the process of
13 filling Chuck's position, and shifting some of the
14 duties of that to the Washington, D.C. area.

15 So you can expect to see us on a more
16 regular basis in the future. We are funded by
17 umbrella grants from the EPA, FDA, DOE, FEMA, and of
18 course the NRC. Our executive offices are in
19 Frankfurt, Kentucky, the capital of the first
20 Agreement State.

21 And you are invited if you are in the
22 Frankfurt area, or if you wish to go directly there,
23 to meet with our executive office staff, and Chuck and
24 our deputy director, Pat Gorman, and the entire staff
25 of the Conference.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We appreciate the fiscal support of the
2 Nuclear Regulatory Commission, and the staff support
3 of the Nuclear Regulatory Commission, and we look
4 forward to a continued and harmonious working
5 relationship between the NRC and the CRCPD.

6 CRCPD works closely with a lot of other
7 professional organizations, such as the Health Physics
8 Society, American College of Radiology, the American
9 Association of Physicists in Medicine, the American
10 College of Medical Physics, and the National Council
11 on Radiation Protection and Measurements.

12 And we are enhancing our relationship with
13 ASTSWMO, and the International Atomic Energy Agency.
14 We would like to thank the State and Tribal group
15 there that Paul Lohaus runs, one of my co-workers of
16 the past.

17 And especially the members of his staff,
18 and the Commission that is providing to our resource
19 staff to all the different committees that we have.
20 We have over 55 committees, and the Commission
21 provides significant resources in assisting us on our
22 work groups.

23 A major issue that I would like to discuss
24 with the Commission is issues that many think may be
25 resolved here in Washington, or in some cases

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unresolved in Washington, and actually left to be
2 managed at the State level.

3 When a gap is created in regulatory
4 authority, the States are left to fill the gap as best
5 they can, often in very dissimilar ways. When Federal
6 Agencies disagree on issues, such as cleanup
7 standards, the States are left to seek a common ground
8 that our Federal partners did not reach. This applies
9 both to Agreement States and Non-Agreement States.

10 Regarding cleanup standards, the CRCPD
11 members would prefer clear guidance with one specific
12 standard being implemented uniformly by all Federal
13 Agencies.

14 However, when that does not occur, we, the
15 States, our lands and our licensees, are caught in the
16 middle as we try to bring our properties back into a
17 productive use for our society.

18 Our radiation regulatory programs would
19 prefer probably to see the license termination rule
20 criteria, but at the same time, we are aware that our
21 sister environmental regulatory agencies have adopted
22 EPA's Safe Drinking Water Act, MCLs, and the four
23 milliram dose criteria, so that we are left in a
24 situation similar to what the Federal Government is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 left in, which is having two agencies at times
2 implementing, or one agency in my case.

3 I happen to have the radiation program,
4 the cleanup criteria, in our department, as well as
5 another division having the responsibility for the
6 Safe Drinking Water Act for ground water contamination
7 issues.

8 On a similar issue, the Commission amended
9 its patient release criteria, and this is Reg Guide
10 8.39, done in 1997. While this action may have been
11 commendable for the release of patients for their
12 comfort, it did provide an additional burden on the
13 States.

14 And the States have seen significant
15 increases in radiation detections at landfills,
16 resource recovery facilities, mass transfer stations,
17 medical waste processing/treatment and disposal
18 facilities, and more recently we are even seeing it in
19 sludge disposal from sewerage treatment plants.

20 The increase in radiation detections
21 results from increased use of radiopharmaceuticals in
22 our society, but also an increase in the level in
23 which the patients have been released.

24 All these incidents require staff for our
25 department to investigate why radiation detection went

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 off, and assist in landfills and resource recovery
2 facilities, et cetera, and trying to establish a
3 reasonable program for the detection and the
4 calibration of their equipment, and how to respond to
5 those incidents.

6 I chose the cleanup criteria and patient
7 release criteria to illustrate that actions of the
8 Commission are implemented in a real world; each has
9 major impacts on radiation regulatory programs. These
10 programs are on the front line with the Federal
11 radiation protection decisions.

12 I raise this to point out the need for a
13 close working relationship between the NRC and the
14 CRCPD. Likewise, a mutual response relationship
15 should be extended to all Federal agencies to assure
16 that nationwide equity exists on radiation issues.

17 To reiterate, such actions of the
18 Commission impact not only Agreement States, but also
19 Non-Agreement States as well. On another issue, CRCPD
20 needs to raise a concern on the future of the
21 radiation safety and radiological science and
22 engineering in our society.

23 We strongly believe the Federal government
24 has an obligation to provide training for our State
25 radiation programs. The Commission has recently

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pointed out the aging of their own staff, and the
2 problems associated in this field.

3 And we feel that a concerted Federal
4 effort is needed to promote the radiological science
5 and engineering programs in our colleges and
6 universities.

7 And Fellowship Programs of the past need
8 to be reinstated, and without a national effort in
9 this regard, we will have a legacy of radiological
10 problems to be resolved by successors who may not be
11 as well trained as our current staff our and have
12 been.

13 Before I turn the discussion over to Cindy
14 to complete the CRCPD presentation, I would like to
15 invite each one of the Commissioners to our 34th
16 annual meeting in Madison, Wisconsin.

17 We had an exceptional meeting in
18 Anchorage, Alaska, this year, and appreciated the
19 Commission's participation in that, including Greta
20 Dicus' speech in it. And we are planning a wonderful
21 meeting in 2002, and look forward to all of you
22 participating in it if possible. Thank you.

23 MS. CARDWELL: Although I am the end of
24 the line, and it has already been done before, I, too,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 want to thank you for the opportunity to come talk to
2 you today.

3 And I am going to talk to you about issues
4 concerning several NRC and State partnership efforts.
5 The first one of those is the National Materials
6 Program Working Group recommendations.

7 The CRCPD is very interested in both the
8 group's recommendations, and your actions that you
9 take on those recommendations. We had representatives
10 as you well know who were extensively involved in the
11 development of those recommendations, as were all
12 members of that working group.

13 But we are particularly interested in any
14 recommended methods for development of regulations,
15 and one of the reasons is that last year we put
16 together a working group that was charged with looking
17 at and evaluating CRCPD's future role in the
18 development of regulations in the arena of a national
19 materials program.

20 We had several members of our working
21 group who are also a part of the national materials
22 program working group, and so there was a nice bridge
23 there.

24 But we also determined early on that any
25 charges and actions on those charges by our CRCPD

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 committee were highly dependent upon the actions taken
2 by the Commission. So I will echo what Kathy said
3 earlier.

4 We are anxiously awaiting action on those
5 recommendations, and which brings me to the SSR
6 process, the SSR standing for the Suggested State
7 Regulations to control the radiation. This is
8 probably our longest and most visible partnership
9 effort that we have with NRC.

10 And as I mentioned, we are poised to
11 evaluate the development process, and recommend
12 potential changes in that process in order for the
13 SSRs to be more proactive in meeting the need of the
14 States, and of those that we regulate for having
15 current updated regulations.

16 And I think that there are areas in which
17 we have fallen behind in them. Again, a lot of that
18 will -- what we do in terms of evaluating that process
19 will depend on where we might be headed in the
20 national materials program.

21 We again want to express our continued
22 appreciation for the support of the NRC staff and its
23 resources persons on all of our SSR committees, as
24 well as all the other ones, and Paul mentioned that we
25 had over 50 of them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Their effort is greatly appreciated, and
2 without it, we would not even be near a partnership
3 obviously. But we do want to mention that there is a
4 continued need for -- and an ongoing need for those
5 resource persons to be actively involved in CRCPD
6 activities in order to perpetuate that partnership.

7 So we appreciate the support that you give
8 those staff persons. We recently had made several
9 changes to committee chairs in the SSR group, and in
10 membership in those groups in order to recharge some
11 of the rule development efforts where they may be
12 lagging.

13 So we are hoping to get a bunch of newly
14 energized folks in there and make sure that they get
15 the job done. And we again appreciate you all's
16 decision to allow NRC pre-decisional documents on
17 regulations and guidance to be shared, not only with
18 the State, but with the CRCPD working groups.

19 That has been very helpful, and I
20 anticipate in the future that it will allow us to move
21 into that more proactive mode with the development of
22 the SSRs.

23 One of the things that we looked at, and
24 that we have been charged with looking at -- well, not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 charged with. We have to look at our resources, and
2 making the most efficient use of resources.

3 And in doing so we have asked our
4 committees to look at ways to decrease the expenses
5 while still getting the job done, as we are also aware
6 of having to do.

7 What we are now doing is encouraging our
8 committees, and this is the SSR committees, as well as
9 all the others, to use more conference calls in
10 conjunction with our on-line editing function of our
11 website.

12 Several of the groups have done this in
13 the near past, and it has proven to be very effective.
14 So we can use that instead of having all the meetings
15 be face to face meetings, which we all know costs a
16 great deal in both time and expense for getting there.

17 And so hopefully that is a means of
18 increasing our efficiency and effectiveNEss in rule
19 making. We see a continued need to utilize the
20 parallel rule making process to a much greater extent.

21 I think it was most successfully used in
22 the past with medical rules. We hope that it
23 continues in the future, and we see parallel rule
24 making as a good fit with many of the recommendations
25 made by the National Materials Program Working Group.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Other successful and recent partnership
2 efforts that I want to point out include the organ
3 source pilot project in Colorado. We feel that that
4 pilot project was a success, not only in the sources
5 that were deposited in Colorado, but in the lessons
6 learned.

7 I think we learned that time lines are
8 never as quickly or go as quickly as we think they
9 will. It always takes more time than what you
10 anticipate. There are liability issues, and maybe one
11 party can't envision when you get all parties
12 together, the liabilities grow.

13 And all it does is point out the intense
14 need for coordination among all involved when you deal
15 with something on this level. So we feel that it is
16 successful, particularly in those lessons learned.

17 And we want to remind you that we had
18 submitted to you a request for future funding of the
19 National Orphan Radioactive Material Disposition
20 Program.

21 We feel that it has a direct impact on
22 public health and safety by being able to allow
23 dispositioning of these sources, and of course
24 protection of public wealth and safety is the primary
25 goal of all of our other agencies.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So we appreciate your consideration of
2 that request. One of the other successes we think
3 that we need to point out is the expansion of the
4 nuclear materials event database that has been
5 happening over the last few years.

6 Both the training and the involvement in
7 the database itself, and by that I mean the
8 involvement of now non-agreement States, and non-AEA
9 materials.

10 We feel that it gives truly a truer
11 picture of what is going on with such events across
12 the nation. And lastly, successful recent partnership
13 efforts were with our working group on industrial
14 radiography, particularly industrial radiography
15 certification.

16 That CRCPD group has taken the lead in
17 coordinating a consistent approach to industrial
18 radiography certification programs across the country.

19 They have done so by developing evaluation
20 criteria, and this to be used, or can be used, and is
21 being used for certification entity. And using that
22 criteria to evaluate both some State programs who have
23 requested such, and the independent certifying entity,
24 the American Society of Non-Destructive Testing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The NRC resource person on that committee
2 was highly involved and we feel that was a true
3 partnership effort. One of the things that we are
4 looking at, and as Kevin mentioned earlier, is the NRC
5 working groups, and the future relationship with OAS
6 and CRCPD, and NRC on those working groups.

7 We are interested in working with OAS on
8 defining the future relationship between the two
9 organizations, especially in light of the national
10 material program working group recommendations, and
11 where we might be all headed in the future.

12 We appreciate the opportunity to provide
13 representation on that NRC working group, along with
14 the OAS. But we also realize the need for
15 coordination of this representation, because we have
16 got to ensure that the most effective use of our
17 limited resources, not that you will have that much
18 more, as our resources are truly limited.

19 And we knew that all of this should strive
20 for efficient and effective partnership as our roles
21 in whatever national materials program turns out to be
22 our potentially redefined.

23 And again I want to thank you. There is
24 one other issue, and it is an issue that involves a
25 partnership of a particular kind of a program

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 assigning a mentor. Not only do each new board member
2 at CRCPD, but to each new member at CRCPD.

3 Our intent is that it is going to
4 encourage active involvement in CRCPD activities, and
5 lead to information sharing, or a passing of the torch
6 if you will, between experienced members and new
7 members of the organization.

8 And I am kind of excited about it because
9 I think you can view it as a succession training. I
10 know that in Texas that we have just has legislation
11 recently passed that mandates that every State agency
12 have in place a plan for succession.

13 And so I am eager to see how this turns
14 out. As Paul mentioned earlier, he mentioned the
15 aging of the staff, I think, as more palatable, as the
16 maturing of the staff, and the numbers of years of
17 experience that are going to be leaving when those
18 staff leave the agency.

19 And we think that it is a valid way of the
20 one on one sharing of information and knowledge, and
21 that hopefully will be successful. So we will be
22 watching that and glad to share results and outcomes
23 of that particular program with you.

24 So in closing, again on behalf of the
25 Conference, thank you for allowing us the opportunity

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be here, and personally, thank you for allowing
2 material aid.

3 As Paul pointed out, it allows great
4 continuity, because I would have next year been going,
5 "now what do I do." So I appreciate that, and I think
6 it has been a valuable experience.

7 CHAIRMAN MESERVE: And I would like to
8 thank you all for joining with us this afternoon. I
9 am particularly pleased that so many of you wanted to
10 talk about successes and the interactions, and you
11 actually seemed to be sincere as well, and so that is
12 even better.

13 And let me say that it is obvious that to
14 have successful cooperation that it takes two sides to
15 be able to do that, and we very much appreciate the
16 efforts that you have put in to be able to make
17 various of these joint activities ones that have been
18 really, I think, productive for both of us, and I
19 think that is a tribute to your side of the table for
20 having made these successes as well.

21 That is not to say -- and you have raised
22 them, have raised a variety of issues that are
23 problems that we do have to confront, and now we are
24 committed to doing that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 One of the practices that we have at the
2 Commission is that we alternate the order in which we
3 start our questioning, and it is Commissioner
4 Merrifield's turn to go first this afternoon.

5 COMMISSIONER MERRIFIELD: Thank you very
6 much, Mr. Chairman. First of all, I would like to
7 mirror the Chairman's comments about the value of
8 interaction between yourselves and us, and our staff.

9 I agree with the Chairman as to the health
10 of that relationship, and, two, I appreciate the kudos
11 for the things that we are doing well, and also a
12 recitation of things where we need to be putting some
13 more tension, at least from your perspective.

14 And as a take away item obviously when we
15 go forward, we will have to ask our staff to respond
16 to some of those and see if there are some areas where
17 we need to put some extra effort, and perhaps money.

18 I want to first go to Kathy Allen. You
19 know, it is a fair question to ask us, and I hate to
20 leave things on the table, but how am I responding to
21 the proposal made by the working group relative to the
22 national materials program.

23 And at least for me, and I don't mean to
24 duck you this way, but I think for my part that those
25 are serious recommendations that were made and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 provides the Commission with a variety of
2 opportunities on which way to go.

3 Those suggestions will have an impact, and
4 can have a variety of impacts, depending on where we
5 go relative to staffing issues that we need to focus
6 on, where are our regions stand, vis a vis the States.

7 There is a lot of very good issues there,
8 but there is a lot of spill over effects, in terms of
9 how we manage our staff, and how we interact with the
10 States, and with Congress, and the President, and the
11 Executive Branch, which obviously we have to be
12 concerned with as well.

13 The bottom line is, at least for me, I am
14 still reviewing that report. I think that as a whole
15 the Commission has not opined on that, but it
16 obviously recognizes that there is a lot of
17 anxiousness there, and you would like to have us
18 decide and tell you where we are going.

19 And hopefully, at least from my part, I
20 hope to vote in the near future, and so that is as
21 about a direct an answer on that question that at
22 least that I can give.

23 I wanted to go back in terms of -- and I
24 guess I first want to talk to Paul and Cynthia in this
25 regard. One of the things that was raised, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 guess other things as well, we are all planning, in
2 terms of dealing with our work forces as they become
3 more mature.

4 And we have had an ongoing dialogue within
5 the agency, and outside of the agency, and
6 particularly with NEI, the Nuclear Energy Institute,
7 about how we can grapple with some of these issues.

8 Part of it is focused on where the
9 universities are, and how research reactor programs
10 are faring in the United States, and obviously
11 Congress has focused some attention on this, and
12 legislation is currently before the Hill.

13 And so I think that there is a general
14 recognition that that is an issue. I guess the
15 question I have coming out of this is that you all
16 obviously are a lot closer to the State institutions,
17 or at least the potential to be closer to the State
18 institutions, which are providing the resources for us
19 and for you to have a diverse, highly qualified staff.

20 And so I would like to sort of understand
21 from you has there been an effort on the part of
22 CRCPD, and the individual members of that, to
23 coordinate with principally, although not exclusively
24 with State educational institutions, to work with them
25 to identify and raise with them the notion that we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to have a shortfall that we need to fill, and
2 the role that those State institutions and other
3 educational institutions in States can play in meeting
4 those needs, not only in the States, the Federal
5 Government, and the NRC, and DOE, and utilities, and
6 others?

7 MS. CARDWELL: The short answer to your
8 question is no. The Conference has not up to date put
9 together a coordinated effort in reaching out to those
10 State institutions, educational institutions, and
11 asking what do we do in light of this problem.

12 I think individually on a State basis that
13 may be happening, and so Paul and I both have been
14 contacted recently by RSO, and after that I have gone
15 out and talked to several of ours, and particularly
16 the ones that deal with State educational research
17 facilities, labs, and what not, and ask about the
18 particular problem.

19 Some of the feedback that I get is the
20 very same thing. The pool is not out there, and I
21 think there is -- they go back to the vicious cycle of
22 if there is not enough candidates in a college
23 particularly to have a program, and it keeps
24 decreasing, and decreasing, the college cuts the
25 program.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So they are saying that you have got to go
2 back down to the high school level, and you need to do
3 more outreach in some way, form, or fashion, to junior
4 high and high school students to let them know that
5 the field exists, number one, and how you go about
6 getting an education in that.

7 While at the same time at the college
8 level, we are seeing a decrease in those programs. So
9 we are looking at what the Conference as an
10 organization can do in that regard.

11 DR. MERGES: And I would like to add that
12 if I look over the last 40 years, I see a significant
13 decrease in fellowships, and assistantships by the
14 Federal Government, DOE, EPA, NRC of the past, and it
15 is just too bad.

16 This was a field that evolved from the
17 weapons program of the late '40s and early '50s, and
18 the Federal Government put a lot of resources into
19 training of staff and educating our society, and
20 providing the resources.

21 And over that period of time, somewhere in
22 the late '70s I would say, it started to see
23 significant cutbacks to the point where a lot of the
24 programs are just gone totally.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BAILEY: Could I -- although I am a
2 member of the Conference, I am not speaking for them.
3 We have noted this problem, and in fact the University
4 of California system has contacted me and pointed out
5 that in the entire radiation protection system within
6 the UC system, which includes UCLA, UC Berkley, UC
7 Santa Cruz, UC San Diego, and on, and on, and on,
8 there is only one certified health physicist on their
9 staff.

10 We are trying to figure out a way, and in
11 the Bay Area in particular, where we have got three
12 national labs, 3 or 4 sort of good universities, to
13 put together some sort of program, and probably at the
14 Masters level, to try and encourage people to get
15 further training and help physics radiation
16 protection.

17 But it is going to be a long haul, because
18 there is a stigma associated with things radioactive,
19 and we have got to somehow overcome that to get people
20 interested to fight the interest and glamour of IT
21 now.

22 COMMISSIONER MERRIFIELD: Well, that is a
23 fair point, and I guess that part of the reason that
24 I raise the question is obviously in many instances
25 you are part of the same State family. We talk about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Federal family. You are part of the State family
2 relative to the universities and colleges within the
3 States.

4 And as always there is a supply and demand
5 issue, and I think that there is a lot of recognition
6 on both sides of the table, as well as others, that
7 there is either a demand or soon to be great demand
8 for those services, and I think that there is perhaps
9 a lack of recognition out there within the
10 universities that they need to be part of the supply
11 and that those are valuable jobs.

12 And in the case of this agency, and in
13 some of our counterparts in industry, very well paying
14 jobs. And so perhaps we need to -- you know, we are
15 working with NEI to the extent that we have shared
16 interests and perhaps we need to put the challenge to
17 our staff.

18 And I would put the staff to you that
19 perhaps we can be part of that same solution as well.
20 A question that I have, and this can go to either
21 side, there were some comments made about improving
22 the way in which we communicate with the public.

23 And I think there is strong recognition by
24 the Commission that we want to try to do what we can
25 to make those kinds of improvements. There is a level

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of expectation amongst some of our stakeholders as to
2 what they are going to get now, and that expectation
3 is being raised.

4 Bill, I think you mentioned that there is
5 some awareness on your part that there is some
6 emphasis out there, and perhaps there is not a
7 uniformity and consistency in terms of the approaches
8 States are conducting that regard, and I am wondering
9 to what extent, if any, OAS or CRCPD have focused on
10 coordinating amongst the States to increase your level
11 of public interaction in the same way.

12 MR. SINCLAIR: I don't think that we have
13 discussed that issue at all actually among the States,
14 because each State is pretty different in how they
15 approach the public participation issue.

16 I mean, our agency is an EPA agency, and
17 so we follow a lot of the EPA procedures when we go
18 into public participation. Some of those are very
19 intense, and some of them are not very good at all.

20 From my perspective, the frustration that
21 I see is that when we get into some of these arenas
22 where we have an NRC amendment request, and we have a
23 group that might want to protest it, or provide some
24 comments, they are used to dealing with an EPA
25 process, and they don't understand the NRC process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And they don't understand why they have to
2 go through a formal hearing process, and get standing,
3 and things like that; whereas, if they were dealing
4 with the EPA, they could submit comments, or go to the
5 public hearing and raise concerns, and things like
6 that.

7 That is a challenge that has been out
8 there for a long time, and I am not sure how to
9 overcome that. The way that we overcome it in our
10 State is that we act more like an EPA agency.

11 We hold hearings, and provide information,
12 and listen to people and their comments. Sometimes
13 that is not the best situation, but it is necessary.

14 COMMISSIONER MERRIFIELD: The last thing
15 that I want to mention, and I have this issue because
16 it is related to my home state of New Hampshire. We
17 were talking earlier about IMPEP, and New Hampshire is
18 the most recent one to have gone through that, and
19 there were some weaknesses that were identified by
20 ourselves and by the South Carolina participant who
21 was part of that IMPEP team.

22 I think in terms of the limited
23 understanding of the impact of the IMPEPs, in many
24 instances there is a recognition that the States are
25 doing a very good job, but the difficulties identified

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are related to resources, either through dollars, or
2 through staffing, and not having enough people.

3 And that, too, is a resource issue, and
4 that is indeed what is happening in my home State.
5 This seems to be rather cyclical. Is there anything
6 collectively that can be done?

7 Obviously, we don't have money to just
8 hand out, but is there any way to get beyond that, or
9 raise an awareness among the legislatures that indeed
10 the work that is being conducted within OAS is
11 important, and needs to be funded at a level to meet
12 the -- you know, to meet the responsibility which is
13 being placed on it by being given Agreement State
14 status.

15 MR. BAILEY: I would respond somewhat. We
16 have in the last year lost about 25 or 26 positions
17 out of a 180 roughly, not because we didn't have the
18 money to pay the salaries, or to do the training, or
19 whatever.

20 But simply because we did not have
21 applicants for the jobs, and in some cases -- and I
22 don't know that this is the total picture -- it may be
23 because the salaries are not adequate to attract them.

24 But I think that it is a bigger problem
25 than that. There is just simply not applicants out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there to apply for these jobs. It is a maturing
2 industry, with very, very, very few people entering
3 it. So that again is -- well, it goes back to if we
4 had a bunch of applicants, we could be full-staff, and
5 we would not have lost those positions.

6 DR. MERGES: I would like to comment on
7 that. I think the States have stepped up to the plate
8 when the NRC stopped funding training for the
9 Agreement State programs.

10 The States have continued to fund their
11 staff to go to the five week course and the other NRC-
12 sponsored courses down at Oak Ridge at considerable
13 expense to the States.

14 And I would like to add to that, too,
15 though, that New York being the fourth Agreement State
16 back in '62, I really believe that a lot of States
17 were encouraged to become Agreement States based on
18 the premise that there was going to be training and
19 travel provided for their staff by the AEC at the
20 time.

21 And while it wasn't actually spelled out
22 in each one of the agreements, it was really an
23 understood and unwritten agreement on the Agreement
24 States' program of the past, and I just look at it
25 from that perspective.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 That we really have stepped up to the
2 plate and done a lot of the training, and picking up
3 the training in the past that the Federal Government
4 has dropped.

5 And it is not just the NRC. EPA's whole
6 Fellowship Program has been abolished also. I got my
7 graduate degree through the EPA Fellowship Program in
8 the early '80s, and I feel for that one as well. But
9 it is a general across-the-board problem in the
10 Federal Agencies.

11 COMMISSIONER MERRIFIELD: Well, just to
12 respond to that one, at least in terms of that, they
13 are trying to bolster our own staff. We have approved
14 as a Commission efforts -- and OMB has signed off on
15 it for us to have an increased number of Fellowships
16 and provide other reimbursement of educational
17 expenses and things of that nature.

18 So I think that there is a recognition on
19 our part as well that hopefully that will help enhance
20 our getting some people, and that that may have a
21 spill over effect, and hopefully not too soon down the
22 road for you all.

23 But at the end, and this point about
24 training, at the end it still is having the money and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 people to do the work, and that I guess is something
2 that we are all are going to have to keep working on.

3 A I think you will see that there is a big
4 difference in the way that older Agreement States are
5 structured, as far as funding, and fee systems, versus
6 the newer Agreement States. The newer Agreement
7 States are going in recognizing that they need to
8 build up.

9 I mean, their fee structure is almost one
10 of the bigger portions of the regulations now. I
11 mean, it takes on a lot more importance because they
12 recognize that they have to be very self-sufficient,
13 versus older agreement States in the understood
14 agreements that existed back then.

15 MS. CARDWELL: And your comment earlier
16 about resources and the fact that it is cyclical it
17 seems to me, I think it is more in reality that I
18 think in many cases we are a victim of our own
19 efficiency.

20 If things are running fine, and you have
21 everything in place, and you don't have major
22 problems, then you, no matter how well you are doing,
23 and how justified your need for continued support, and
24 even an increase in support is, you may get lost, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in our case in children's health issues, and border
2 issues. It is just part of the legislative process.

3 And unfortunately I hope that we don't
4 have to get to the point where we can't fill positions
5 that we have funded because we don't have applicants,
6 and it results in some kind of decrease in efficiency,
7 and in public health and safety, or licensing, or
8 something that causes the legislature to take notice.
9 But it is a reality of the legislative session that we
10 run into time and time again.

11 COMMISSIONER MERRIFIELD: Thank you, Mr.
12 Chairman.

13 CHAIRMAN MESERVE: Thank you. I, like
14 Commissioner Merrifield, very much appreciate your
15 efforts in having put together the national CRCPD
16 report. I am in the process of evaluating it, and
17 weighing it myself.

18 I know that in connection with the
19 preparation for this meeting that we made that a
20 public document that is on our website. I am curious
21 whether any of you have had any feedback from your
22 members or others about the report that you would like
23 to share with us.

24 MS. ALLEN: Well, frankly, they have had
25 it less than a month, even though there were State

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 representatives on the working group. They could not
2 go out to the States until it was released by you
3 guys.

4 CHAIRMAN MESERVE: So you don't have much
5 yet?

6 MS. ALLEN: No. It is a fairly lengthy
7 two volume document, with a lot of information in it.
8 It is very well crafted.

9 CHAIRMAN MESERVE: I noticed all the
10 acknowledgements at the beginning for not only --

11 MS. ALLEN: Mostly our families.

12 CHAIRMAN MESERVE: Families. I noticed
13 that.

14 MS. CARDWELL: My daughter refers to the
15 working group as her other family. My other family.

16 MS. ALLEN: But it is a big document and
17 we have not actually polled the States to find out
18 what kind of reactions we have. But that is something
19 that we are looking at doing possibly at the
20 Organization of Agreement States meeting in October.

21 CHAIRMAN MESERVE: I am sure that we would
22 like the benefit of whatever insights you gather, and
23 maybe we will find a way to do that ourselves as well.

24 There was one other recommendation that
25 you mentioned in passing that I would like to probe a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 little bit on. There was a recommendation, at least
2 for certain of the six options, that there be a
3 legislative change to give the NRC the authority for
4 accelerated produced material.

5 And I would just ask the question,
6 although it may not be a politically doable thing, it
7 has always seemed to me that there is a certain sense
8 in which it would be desirable to bring all
9 radioactive materials under a unified statutory
10 scheme, with appropriate sharing of responsibilities
11 with the States.

12 But I think that many of the people that
13 we deal with would be quite surprised to learn that
14 there are many radioactive materials that we do
15 regulate that are completely outside of our
16 jurisdiction, and are not anything that we can touch.

17 And let me ask the question about -- well,
18 I was curious as having gone so far as to suggest that
19 accelerated related material ought to be brought
20 within the scheme, and why you didn't take the next
21 step and say everything?

22 MS. ALLEN: Well, actually, the working
23 group did, but we recognized that we are looking for
24 a rather drastic change in approach to things, and we
25 will take it one step at a time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Sure, if you guys want to regulate x-ray,
2 too, that would be kind of interesting. But at this
3 point, we figured since you deal with by-product
4 material, radioactive material was more closely
5 aligned with that, and we would just recommend a baby
6 step to begin with.

7 CHAIRMAN MESERVE: There are other
8 materials that I am thinking of, like various types of
9 NORM as an example.

10 MS. ALLEN: Yes, we did discuss NORM, and
11 at great length, also.

12 MS. CARDWELL: Well, I think that one of
13 the issues that we got some feedback on was that while
14 the States have historically supported all materials
15 be included in a national program, and have done so
16 through CRCPD resolutions --

17 MS. ALLEN: And OAS resolutions.

18 MS. CARDWELL: -- and OAS resolutions,
19 since that has not happened over time, and as Paul
20 mentioned earlier, the States have to respond. So
21 they have programs in place for NORM, and they have
22 programs in place for NORM and in many cases they vary
23 from one end of the spectrum to the other.

24 And I think the hesitation now at
25 something like that would be that while they all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 believe that is a good thing to do, now that those
2 programs have been set up, established, and in many
3 cases running quite well in different States for years
4 and years, they don't want at a Federal level someone
5 coming in and saying, okay, we are going to change the
6 way that we are doing things now. That is the fear.

7 MS. ALLEN: Yes, there is a great fear out
8 there.

9 CHAIRMAN MESERVE: I think that we are
10 working as cooperatively as we are able to do in the
11 materials that are subject to our capacity to work
12 together, and we have shown that we can do that, and
13 I would think it would be possible in other areas as
14 well.

15 But I am just sort of curious about why
16 you didn't take the next step, having the logical
17 conclusion I think of where you started was to suggest
18 that you might well have gone further, and I
19 appreciate why you stopped where you did.

20 MR. BAILEY: I would say that the opinion
21 they expressed is not necessarily the opinion of all
22 the Agreement States.

23 MS. ALLEN: Thank you, Ed.

24 CHAIRMAN MESERVE: Now I know when to stop
25 asking questions. Mr. Bailey, you have raised as the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bad-cop role here raised a number of areas where you
2 had concerns, and one of them had to do with disposal
3 of various wastes at the uranium mill sites.

4 And as you know the Commission has
5 recognized the logic of having materials that are
6 physically, chemically, and radiologically similar to
7 mill tailings, and able to be disposed of at mill
8 sites, and has given that sort of direction to the
9 staff.

10 I know that one of the areas that has
11 proven to be a problem is the issue of the long term
12 custodian of these sites, and that the Uranium Mill
13 Dealings Radiation Control Act provides that the
14 States would have that authority, or if they don't
15 take it, the Federal Government would.

16 And there have been concerns that perhaps
17 we are going to get worked out as to if there is non-
18 11e(2) material that ends up in the mill tailing site,
19 what sorts of obligations that might present for the
20 long term custodian if it was the Federal Government.

21 It seems to me that to the extent that
22 there is jurisdiction in the States over some of these
23 wider range of materials that you don't have that
24 problem, at least not to the same degree.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And it seems to me that one of the
2 barriers in this area has been whether the States are
3 prepared to take on the role of the long term
4 custodian, which they are authorized to do by statute.
5 I wondered if you had some views or comments on that.

6 MR. BAILEY: I have some views and some
7 comments, but probably no real stake in it since we
8 don't have uranium mill tailings of sites.

9 CHAIRMAN MESERVE: You are looking at Mr.
10 Sinclair.

11 MR. BAILEY: But I will say that when I
12 was with another State and we adopted, or had laws
13 enacted, to deal with uranium mill tailings, and the
14 Radiation Control Act, we did persuade our legislature
15 at that time to define 11e(2) by product to include
16 "and other tailings with similar radiological
17 characteristics."

18 And I believe that was later encouraged to
19 be removed by NRC as an inappropriate addition to a
20 basic definition, and I would have to let Ms. Cardwell
21 speak to that.

22 MS. CARDWELL: The reference of the State
23 that you used to be from, the other big State?

24 MR. BAILEY: Correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. CARDWELL: He is correct. That was
2 removed at the request multiple times upon every
3 review by the NRC, and it was removed from statutory
4 language.

5 COMMISSIONER MCGAFFIGAN: That is a
6 mistake.

7 MS. CARDWELL: We are questioned about it
8 to this day.

9 CHAIRMAN MESERVE: It is probably related
10 to this long term custodian issue about if the State
11 doesn't take the role, then to allow a definition to
12 be in place, where it then perhaps becomes a problem
13 for the Department of Energy, which would be the long
14 term custodian, and we appreciate the difficulty that
15 you create with an inconsistent definition.

16 MR. BAILEY: I don't think that was really
17 the issue, because I think that Texas intended to take
18 title, and it was not an issue at that time.

19 CHAIRMAN MESERVE: I wasn't here and I
20 can't comment on it.

21 MR. BAILEY: It is not your fault.

22 CHAIRMAN MESERVE: Well, I guess I wasn't
23 quite trying to say that.

24 MS. CARDWELL: I can update you though
25 that we are now trying -- well, one of our Title One

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sites have offered to give that back to DOE, and have
2 run into problems with that, logistical problems.

3 CHAIRMAN MESERVE: Well, I think that
4 these problems will work themselves out, but it is a
5 sort of complication that we have encountered in this
6 area that makes all of the problems of dealing with
7 waste that mill tailing sites have challenged.

8 MR. SINCLAIR: Mr. Chairman, I don't
9 believe any State in their right mind would take a
10 Title 2 uranium mill site.

11 COMMISSIONER MCGAFFIGAN: It's good to
12 hear a different view.

13 MR. SINCLAIR: I know that in our State
14 that we have at least two Title One sites that we have
15 transferred over to DOE, and that went very well.

16 But there wasn't any issue related to
17 other materials going into these sites as well, and we
18 do have a current mill that is receiving other
19 materials, and in my mind there is going to be a
20 question down the road in terms of long term
21 stewardship of that site.

22 MS. ALLEN: It wasn't that DOE agrees with
23 allowing those materials in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MESERVE: Well, I would hope that
2 it would get worked out, but we just are not there
3 yet. There was another --

4 MS. ALLEN: Bill keeps looking at me like
5 --

6 CHAIRMAN MESERVE: -- point that Mr. Bailey
7 made about the disconnect between Part 40 and the
8 license termination rule. I want to make sure that I
9 understand that. There is an obvious disconnect in
10 that the standard in Part 40 for cleanup is not a dose
11 based standard.

12 But legally there is a -- well, the
13 license termination rule doesn't apply to Part 40
14 sites, and so there is not a legal barrier. I mean,
15 there is a logical issue that I think exists. Have I
16 got the problem there correct?

17 MR. BAILEY: Right. If you choose to use
18 Part 40 material, you can leave a site more
19 contaminated than you can if you --

20 CHAIRMAN MESERVE: Right.

21 MR. BAILEY: And one of the ironies is
22 that the Part 40 site contamination tends to be in
23 general longer lived than the Part 20 site material.

24 CHAIRMAN MESERVE: I think at the time
25 that it reflected the practical difficulties of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cleaning up the lower levels, and it is natural
2 material, and you can have high levels that are
3 natural.

4 And we wanted to have some gap between the
5 levels and what the background might be in those
6 areas. I mean, there are lots of reasons that can
7 help explain that.

8 As a practical matter though, given that
9 there is this legal distinction between what the
10 license termination rule applies to and the Part 40
11 standards apply to, how does it create a problem for
12 the States?

13 It is a logical problem, but I just wanted
14 to know that as a legal matter is there a problem, a
15 practical problem?

16 MR. BAILEY: I think it is definitely a
17 perception issue. I think we are able to sort of bite
18 the bullet on uranium mill tailings, the concentration
19 limits and so forth, and the radon emanation rates,
20 and so forth.

21 But when we start looking at other
22 radioactive materials -- for instance, DU, or whatever
23 -- we really have difficulty understanding why they
24 should be different. Mill tailings we understand.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MESERVE: I understand. Well, in
2 order to give my colleagues some time, I am going to
3 turn to Commissioner Dicus.

4 COMMISSIONER DICUS: Thank you. One of
5 the advantages that we have of this rotation that we
6 do in asking questions is that mine have pretty well
7 all been asked.

8 CHAIRMAN MESERVE: I apologize.

9 COMMISSIONER DICUS: No, it is some of the
10 issues that you brought up. And even though Ed played
11 the role of the bad cop, believe me that he is getting
12 extremely mellow. I almost can't stand it. I
13 remember the other Ed.

14 MR. BAILEY: California will do that to
15 you.

16 COMMISSIONER DICUS: Is that it? That's
17 a good one. Well, that's what they say. One of the
18 things that I would mention on the education issue
19 that we discussed, is that you should be aware that at
20 -- and I learned this not too long ago, that at Texas
21 A&M, their nuclear engineering class almost doubled in
22 size last year, I think.

23 And the University has put out a report on
24 what they did, and things, and so obviously you know
25 about that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. CARDWELL: They have been very
2 proactive in going out in an outreach program in that
3 little university down the road.

4 COMMISSIONER DICUS: Right. But at any
5 rate, if CRCPD or OAS decides to do something along
6 these lines, I think you could use that as some
7 guidance, and I wanted to bring that up.

8 Ed, I want to talk to you a little bit
9 about this concern that you have about products that
10 are exempt in Canada and the United Kingdom that we
11 generally license here, and the issues that came up,
12 and you mentioned the Tritium light sources.

13 MR. BAILEY: Correct.

14 COMMISSIONER DICUS: And you said there
15 was some other. Are we too stringent, or are they
16 doing it? What is the issue here? I mean, what do we
17 do about this?

18 MR. BAILEY: I don't know. I think all of
19 us, and I think even the Commission, has recognized --
20 and I don't mean to be flippant, but that tritium is
21 not a big hazard, and I think you can look at the GL
22 device rule, where you essentially say we are going to
23 sort of pretend that they don't exist.

24 Although we do know of cases where the
25 tritium light sources have caused considerable

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contamination and much expense to clean up. We either
2 need to decide that they are exempt or they are
3 licensed.

4 Apparently, the U.K. and Canada have
5 decided that these things up to roughly -- the ones
6 that I am familiar -- up to almost five curies -- 4.6,
7 4.7 curies of tritium, should be exempt, and they are
8 being sold very similar to the 495 laser pins and
9 things.

10 I can remember the first laser pin that we
11 bought for around \$50 or something, and we thought it
12 was fantastic, and now you go down and the kids are
13 buying them for \$4.95.

14 We have to do something I think to at
15 least get the standards on products between those
16 countries who speak the same language at the same
17 levels.

18 Otherwise, we are going to continue to
19 have all these little problems crop up. When we got
20 the allegation, the first thing we did was that the
21 person who is in charge of our looking into our
22 enforcement inspections called the NRC and asked,
23 well, what would you do.

24 And I hate to say this, but basically the
25 response was -- and I think it probably would have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been ours if we had been asked -- that we don't do
2 anything unless it is brought to our attention.

3 I mean, we are not going to make a big
4 issue out of these little products that are out there,
5 but if they get some allegation that comes in, or some
6 complaint comes in, then we have to do something.

7 So I would much rather have a program that
8 identifies, hey, we are going to do something about
9 them, or we are going to treat them as exempt
10 products. So I didn't give you any answer at all.

11 COMMISSIONER DICUS: No, you didn't. Ed,
12 you are getting too mellow. I don't know if I can
13 deal with this. Okay. Then would a path forward be
14 through the IAEA, or what --

15 MR. BAILEY: Well, we did in
16 transportation. We tried to make sure that we have
17 our packages that are at least for the most part be
18 acceptable in international transportation. I think
19 we need to look at the products, too.

20 And truly these are for the most part of
21 small hazard to anyone, but we have had the
22 longstanding principle, if not regulation, that we are
23 not going to allow radioactive material to be
24 introduced into toys, cosmetics, or other trivial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 uses. Now, whether or not a light stick is a trivial
2 use is probably in the eye of the beholder.

3 COMMISSIONER DICUS: Does anyone else want
4 to comment on this?

5 MS. CARDWELL: It seems logical.

6 COMMISSIONER DICUS: Let me go a couple of
7 questions with the National Materials Working Group.
8 Do you have a time frame when you think the program,
9 whichever one we would go and see with the alliance
10 option, would be fully functional?

11 MS. ALLEN: Well, I think it is a multi-
12 year program. I mean, to implement something like
13 that, a change in direction, and a way of better
14 cooperating, it will require changes to the way that
15 OAS operates, and CRCPD, and the NRC, and maybe our
16 organizations change or cease to exist, or it is a
17 different combination of things.

18 There are a lot of attitudes to change and
19 a lot of questions about who is really in charge, and
20 I don't think that those are questions that can be
21 answered overnight.

22 They are generally from public
23 participation workshops that we held and general
24 information. Almost everybody agreed that there still

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 needs to be a national presence, and there needs to be
2 somebody somewhere that is in charge.

3 The question is to what degree do you or
4 are you in charge. Are you dictating things, or are
5 you making decisions, or concurring on
6 recommendations, or what level of agreement is there.
7 And how do you create these interactions, and how do
8 you make sure that these types of things go forward.

9 States may be very willing to participate.
10 I would be willing to bet that they would because of
11 the willingness to work on CRCPD working groups, and
12 OAS, and NRC working groups, and States have always
13 stepped up to the plate to cooperate, because we know
14 that if it is an issue that the NRC is grappling with,
15 we almost have to do it in your time frame.

16 And not necessarily ours, but we have to
17 say, well, we know that this will be an issue for us,
18 and we are not really ready to deal with it now, but
19 we are going to force ourselves to deal with it now
20 because the NRC is looking at it now.

21 And if we want to make comments two years
22 from now, it is too late. So I see this as a gradual
23 change, where we start --

24 COMMISSIONER DICUS: So we don't have a
25 time frame?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. ALLEN: I don't think so. But the
2 question is whether this is a direction that we want
3 to move. Do we want to maybe create some sort of --
4 well, what steps do we take next if philosophically we
5 want to get there.

6 COMMISSIONER DICUS: Okay. Let me do a
7 follow-up question then. If we went with this option,
8 the alliance option, and talking about the States
9 getting more involved in whatever kind of program we
10 ultimately come out with, is this going to put more of
11 a financial burden on the State programs, and in what
12 --

13 MS. ALLEN: I think overall we are hoping
14 that it would be a wash. It would help us better
15 prioritize what types of things that we need to work
16 on. Right now we have people on working groups, NRC
17 working groups, and CRCPD working groups, plus all
18 these little efforts in States trying to respond to
19 different types of issues.

20 The new cortis brache therapy, liquid
21 brache therapy device, and what good is brache
22 therapy. Well, yeah, it is. There are a lot of
23 issues with implementing this and allowing this to be
24 used that everybody is in sort of little pockets

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 trying to discuss and figure out ways to allow these
2 technologies to be used.

3 What we need is a better mechanism for
4 streamlining our efforts, and hopefully there would be
5 the taking of resources and the players that are out
6 here now and saying instead of holding off and
7 waiting, or trying to shove 8 or 10 things to be done
8 in a month or in a year, we would be better at
9 planning it.

10 And I think we can get more input from
11 other professional societies to create standards, or
12 to think that we can reference than instead of
13 creating them brand new.

14 MS. CARDWELL: And to piggyback on what
15 Kathy said, there are States who have always stepped
16 up to the plate, and taken a lead in many cases in
17 regulation development, whether it is new technology
18 that we basically had to deal with, and we just did
19 it.

20 I think that those States are going to
21 continue to do so. It is going to be at a cost, and
22 whether it is a dollar cost, or a contribution in kind
23 with staff time, which ultimately is a dollar cost,
24 but it doesn't come out on a spread sheet somewhere,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 again I think you are going to weigh the efforts of
2 the fact that the States are going to do it anyway.

3 And I think the working group was fully
4 aware that there are those States that have smaller
5 programs and truly, truly strained resources, that are
6 not just going to be able to, unless of course their
7 priority comes to the top.

8 And we are hoping that if that happens,
9 that that may prompt them to go ahead and participate.

10 COMMISSIONER DICUS: What about situations
11 that -- and I know it was one of the issues that we
12 discussed in Anchorage. And which by the way, the
13 California delegation -- and some of you may not know
14 this -- didn't get to go to the CRCPD meeting because
15 Alaska was considered foreign travel, and they were
16 not allowed to do foreign travel.

17 MR. BAILEY: Commissioner Dicus, we did
18 finally get approval to go to Alaska, but
19 unfortunately it was two months after the meeting was
20 over.

21 COMMISSIONER DICUS: Thank you for that
22 clarification. Foreign travel does take a while.

23 COMMISSIONER MERRIFIELD: I can say this
24 because my wife is a native Californian, and there are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some people on this coast that think that California
2 is but of a foreign travel as well.

3 COMMISSIONER DICUS: It takes too long to
4 get there. Gee, I forgot my question.

5 DR. MERGES: We will be inviting you to
6 the Anaheim meeting in two years.

7 COMMISSIONER DICUS: The issue that -- and
8 back to Anchorage, that we discussed out there, and
9 that several States brought up, is that their programs
10 are being divided up.

11 The radiation control programs are being
12 divided into various agencies, or divisions within an
13 agency, and it is happening a bit actually in Arkansas
14 as well. What impact does that have on this national
15 program, if any?

16 MS. ALLEN: I think they are still are
17 going to have to deal with the issues, whether -- I
18 mean, whether an inspection is now pulled off, they
19 are still are going to have to deal with these issues.

20 Now, setting priorities overall, it may
21 start moving some of these priorities lower and lower,
22 which goes back to the need for a very strong national
23 presence somewhere.

24 MS. CARDWELL: I can speak for a State
25 that has that system, for disposal of waste that was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 split into another agency, and in the case of NORM, a
2 trifurcated system between three State agencies.
3 Drilled oil and gas are special, and you go to a
4 different agency.

5 In terms of the agreement materials, the
6 State has the agreement, and not a particular agency,
7 and we view it that way. And we have in our agency
8 work groups that we have set up to coordinate those
9 types of issues.

10 And as Kathy said, there are still issues
11 that have to be dealt with, and so it is a matter of
12 the State coordinating -- it takes a little more
13 coordination if it is housed under different roofs, or
14 whether it is all under one.

15 COMMISSIONER DICUS: But you don't see
16 this in this national program, whichever direction we
17 might go, as this being a major problem?

18 MS. CARDWELL: In fact, I see it as a --
19 if it is an issue that one of the other agencies has
20 primary jurisdiction for, and speaking for my State,
21 they may be the ones that dedicate the resources to
22 that particular regulatory effort, versus our agency.

23 COMMISSIONER DICUS: One final question.
24 There has been discussion that the OAS would become
25 part of or join with, or whatever the appropriate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 terminology is, with CRCPD. Does anyone want to
2 address that? Are we still going there or what is
3 happening with that.

4 MS. CARDWELL: I think we would like -- we
5 are discussing it.

6 COMMISSIONER DICUS: Fair enough.

7 MS. CARDWELL: We are discussing it, and
8 what we would like to do is to -- and again so much
9 rests on where we are heading on a national basis as
10 to how the two agencies need to respond.

11 COMMISSIONER DICUS: Thank you, and I will
12 pass then.

13 CHAIRMAN MESERVE: Commissioner
14 McGaffigan.

15 COMMISSIONER MCGAFFIGAN: Thank you, Mr.
16 Chairman. As usual, I will make the same remark that
17 I made last year. I end up with far more questions by
18 the end of this meeting than I can possibly be allowed
19 to ask.

20 And I encourage that we continue to talk
21 outside the meeting, and I would welcome any of you to
22 my office during the coming year. But I will start
23 with the very last item, and you mentioned that there
24 are three State agencies in Texas that deal with NORM.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 What happens when you get the -- and
2 assuming the suggested State regulation on TNORM that
3 we just provided you our comments on gets passed by
4 the CRCPD, and then comes back to Texas. Does it get
5 adopted as a whole, or does it get adopted by one of
6 the three agencies, and the other two continue to have
7 different --

8 MS. CARDWELL: It is intended to get
9 started there. What we have done in terms of that is
10 the health department has jurisdiction over everything
11 up until disposal. If it is oil and gas on railways,
12 it is the Railroad Commission; and if it is any other
13 NORM ways, it is our EPA agency, TNRCC.

14 Again, as I mentioned, we have an
15 interagency working group that meets every other month
16 to discuss issues of concern to all of us. When it
17 came to doing rules by the Railroad Commission for oil
18 and gas NORM way disposal, they simply referenced
19 ours, and gave options for disposal.

20 Specifically, land farming use is an
21 option, and deep well injection and disposal is an
22 option, and they went with some of those. But in
23 terms of setting exemption levels, that is left by MOU
24 up to our agency, because we set the standards for
25 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The same thing is true of the TRCC, in
2 terms of other NORM ways disposal, in terms of our
3 agency is the one by MOU and by statute that has the
4 ability to set exemption levels.

5 They have not yet adopted rules. So there
6 is a hold. And they have been urged by our Texas
7 Radiation Advisory Board to close that hole and adopt
8 rules.

9 COMMISSIONER MCGAFFIGAN: Maybe I am going
10 down the wrong path here, but land farming, is that a
11 dilution over a large --

12 MS. CARDWELL: There are parameters --
13 there are levels they have to meet before that is
14 allowed.

15 COMMISSIONER MCGAFFIGAN: I know that oil
16 and gas is special. I just am always trying to figure
17 out -- and as our Chairman is the foremost spokesman,
18 it would be nice if all of this were rationalized.

19 And I certainly agree that it would be
20 nice, and I guess I also recognize, as your working
21 group did, that it is probably well near impossible,
22 although I think we should take small steps.

23 But let me go back to where I would have
24 started. In terms of our my personal reaction -- and
25 like everybody else, I have not voted, but I will use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this opportunity to sort of ask you a couple of
2 questions.

3 I read the report actually about a month
4 ago, and my initial reaction was somewhere between the
5 status quo and the alliance, and I want to take steps
6 towards it, but I don't quite understand how the
7 alliance would work, say, on rule making.

8 I can understand how it would work on guidance
9 if we start with a rule that we have, like the medical
10 device rule, that we are trying to finish. We finish
11 it and let's see if Congress will let us finish it.

12 But we have a provision there for how to
13 deal with new technologies, and we could work with the
14 States on guidance as to how to deal with new
15 technologies that come along in medicine, and do that
16 in a very joint way.

17 And I could see how that could work, but
18 on a rule, and it is partly what predicated my first
19 question, we have different processes. If a group of
20 people came together and came up with a rule in Area
21 X, and then it came back to us, we have to under the
22 Administrative Procedure Act treat that as a proposed
23 rule on which we can invite all sorts of comment.

24 And we can get significant comment that
25 could lead us in a different direction, and we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 want to go in that different direction, and then we
2 could adopt a rule at the national level that is
3 potentially different from what a working group on a
4 rule came up with.

5 And so as I said, I could see how it works
6 on guidance, and you can get some real uniformity once
7 you get the rules established. But on a rule, I think
8 you could have a good faith effort to sort of have a
9 discussion early on.

10 And I think we tried to do that today by
11 circulating as you said, we circulate the rules in
12 advance, and we have some discussion. But ultimately
13 we have this Administrative Procedure Act process that
14 we have to follow, and we could end up with something
15 different. And how do you think about that?

16 MS. ALLEN: Well, every State has the same
17 Administrative Procedures Act rule to follow.

18 COMMISSIONER MCGAFFIGAN: Right.

19 MS. ALLEN: So even though we have to wait
20 until your rule is final before we can implement or
21 even publish a rule for comment; and we may get
22 comments back saying, no, this won't work in Illinois,
23 and we have to say that is just too bad. It is
24 compatibility, and there is nothing that you can do
25 about it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MCGAFFIGAN: And you may come
2 back to us some day with a petition, or if you really
3 believe that, with a petition for rule making to make
4 an amendment to that, or just a letter into Paul
5 Lohaus saying --

6 MS. ALLEN: Or sometimes we just say
7 tough. We will fight the compatibility.

8 COMMISSIONER MCGAFFIGAN: And as I said,
9 I am somewhere between. I could see some real efforts
10 at joint guidance development, and I think there is a
11 lot of opportunities there.

12 And I know in the radiography area, and
13 whatever, and Texas has historically been a leader,
14 and we really have piggybacked off of that. So I
15 recognize that there are elements of alliance that
16 already exist.

17 But I am sort of stuck. I am trying to
18 decide how far you can go, and you have already told
19 Commissioner Dicus that it is a multi-year effort to
20 ever get to a full alliance functioning the way you
21 all perceive it.

22 But try to help me decide or think through
23 the status quo, versus alliance, because they are not
24 all that different in some ways in which they are
25 evolving.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. CARDWELL: Maybe I can help out. One
2 of the things that the group envisioned was that a
3 rule may not necessarily have to originate from the
4 NRC, meaning the NRC does not have to be the text
5 writer of the rule.

6 COMMISSIONER MCGAFFIGAN: Right.

7 MS. CARDWELL: And in fact, you have what
8 the report calls centers of expertise throughout the
9 country in different areas just because that is where
10 industry happens to be located.

11 COMMISSIONER MCGAFFIGAN: Right.

12 MS. CARDWELL: Our contention was that you
13 made yet a broader spectrum of input from the States
14 if the rule originated from a group that was working
15 on; not exclusive of NRC necessarily.

16 COMMISSIONER MCGAFFIGAN: Right.

17 MS. CARDWELL: But in that case, you would
18 get a broader let's use grass roots input on the
19 particular rule from an area of the country where
20 there is an industry that really does use that rule.

21 COMMISSIONER MCGAFFIGAN: Right.

22 MS. CARDWELL: And we understand under the
23 statute that you all have the responsibility to
24 determine adequacy and compatibility in adopting the
25 rules, and you have the same process that we do.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MCGAFFIGAN: I would hate to
2 have Texas originating rules with regard to the oil
3 and gas industries. And the Texas Railroad Commission
4 would probably deeply disagree, but sometimes when you
5 have the expertise, you also have the lobbying power
6 that goes with the industry being concentrated in a
7 State that could -- you know, it is just a practical
8 issue.

9 MS. ALLEN: There are other things that --
10 well, with the parallel rule making process that goes
11 on now with the SSCRs, for example, if you go back to
12 emergency planning regulations, you have certain
13 quantities of material that require an emergency plan.

14
15 There are no non-nuclides in that list.
16 Why didn't we do that up front to save everybody from
17 trying to go hire contractors to recreate these
18 numbers. I mean, if a lot of this stuff was done all
19 at once up front, then you could say that you agree
20 with the rule, and we agree with the rule.

21 COMMISSIONER MCGAFFIGAN: We would include
22 the NORM provisions in our case, but you go ahead and
23 do what you are going to do.

24 MS. ALLEN: But we would keep those parts
25 in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MCGAFFIGAN: Right.

2 MS. ALLEN: If there is some really big
3 sticking issues, maybe it goes back to a small
4 subcommittee to iron out things that everybody could
5 agree on. Fixes to address some of the comments,
6 especially if they are all published at the same time
7 for comment.

8 COMMISSIONER MCGAFFIGAN: Again, part of
9 my reaction, I think in terms of moving in a direction
10 that may make a lot of sense is that we need some
11 existence proofs, and to some degree we have them.

12
13 But sort of just talking out loud, but I
14 would lean towards doing some experiments in areas
15 where we have high probability of success, and maybe
16 take on a hard one, too. But take on some that are
17 easy, and then you are better able to make a decision.

18 It is sort of like a step-by-step approach
19 that you adopted with regard to NORM versus
20 everything, but that is just a first reaction so you
21 have one.

22 MS. ALLEN: Well, one of the things that
23 we want to avoid is what happened with the industrial
24 radiography certification regulation. Texas created
25 it, and a lot of States jumped on board.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The NRC jumped on board and adopted
2 something similar, but it was different enough that
3 made everybody who created the rule had to go back
4 several years later and change all their regulations
5 just because the NRC did it differently, and there
6 were compatibility issues.

7 So that is what we want to avoid, all of
8 this recreation of the rule over and over again over
9 a period of years.

10 COMMISSIONER MCGAFFIGAN: I can agree with
11 that.

12 MR. BAILEY: We have one very good example
13 in the regulations today, Part 39. Part 39 was
14 originally written by the States, and it was adopted
15 by several States.

16 The NRC sent a member to sit on the
17 committee when the States were doing it. We felt the
18 need for oil and gas, and I happened to be in Texas at
19 that time, and so we just went ahead and worked on
20 what we called Part W. Can you imagine where W came
21 from. It is for well logging.

22 Then the NRC took that almost verbatim and
23 adopted it into a rule. Now, they made some
24 improvements and they made some changes that were
25 improvements. But that was almost a seamless

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 transition from where the States actually wrote it and
2 gave it to the NRC.

3 MS. CARDWELL: And again that was based on
4 our priorities.

5 MR. BAILEY: And different from industrial
6 radiography, there was no existing NRC part to go with
7 it; whereas in radiography there was.

8 COMMISSIONER MCGAFFIGAN: One of the
9 things that I have learned today is that Texans or
10 former Texans are running the world --

11 MR. BAILEY: There is no such thing as a
12 former Texan. I told that to the Governor of
13 California.

14 MS. CARDWELL: And I was going to say and
15 we don't have power outages.

16 COMMISSIONER MCGAFFIGAN: And Utah thinks
17 that -- I think the exact quote is that the people
18 from Texas aren't in their right mind.

19 But let me go back to a couple of points.
20 There is one thing that I will say that Mr. Sinclair
21 talked about, is that the paper that resulted -- you
22 participated in that meeting in April, and the paper
23 that resulted from that meeting has been put on our
24 website.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 We have not voted on it. There is a
2 recommendation from the staff, and I think it is
3 SecE01137 that is on the website, and it is the
4 staff's recommendation as to how to deal with public
5 participation meetings.

6 They define three categories of meetings,
7 and three levels of public participation, depending on
8 it. And I think we put it on the website so we could
9 get feedback.

10 So if anybody wants to give us feedback as
11 to our approach to public participation, we welcome
12 it. Mr. Sinclair, and Mr. Bailey, this issue about
13 water treatment that you mentioned, the EPA December
14 7th rule of last year that defined uranium MCL, which
15 is of course being litigated as most EPA rules do, it
16 is -- walk me through that again.

17
18 I mean, how do you all plan to deal with
19 -- you know, you treat it, and you get it down to 35
20 at the tap, and so now you have collected a bunch of
21 uranium and other products, and whatever sister
22 products.

23 How is a State going to classify this
24 material? You have raised the issue and what is it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BAILEY: I would say that the specific
2 case that I have been asked to look at, we will be
3 refining or processing a material for minerals other
4 than its source material. But in the process of doing
5 that, we are creating source material.

6 COMMISSIONER MCGAFFIGAN: It is source
7 material?

8 MR. BAILEY: Yes, above the exempt level.
9 And as such, as I understand it, above .015 by weight,
10 and as such as I understand it, that material would be
11 low level waste. It would not be 11e(2) material.

12 It certainly would not be NORM as I
13 understand the Commission has interpreted NORM, to not
14 be allowed to include source material above the exempt
15 level.

16 So whether I like it or not, in the
17 prospect of getting into it, I think we have got a
18 source material producer there, and they may be
19 treating it as low level waste.

20 They would very much like not to, and they
21 would like to send it to a retrosite, or even
22 -- well, they would like to send it to a NORM site in
23 Utah, or even better, to a retrosite somewhere next
24 door.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But the way that I read my regulations,
2 which are terribly similar to yours, it looks like it
3 is source material.

4 DR. MERGES: Could I ask, Ed, if that
5 applies to pre-1978 material?

6 MR. BAILEY: This will all be post-'78
7 material.

8 COMMISSIONER MCGAFFIGAN: It is December
9 7th, 2000, I believe.

10 DR. MERGES: I think the word is that it
11 could be licensable.

12 COMMISSIONER MCGAFFIGAN: It is licensable
13 material, but it would have to be disposed of because
14 they are not going to want it, and then there is the
15 question of how you dispose of it comes up.

16 MR. BAILEY: And we have dodged the bullet
17 pretty much on those systems that were designed to
18 remove radium up until now. So I am afraid when we
19 get into source material it is going to be harder to
20 dodge the bullet without clear national guidance on
21 what this stuff is.

22 MS. ALLEN: And it was issuing radioactive
23 material special licenses to waste water treatment
24 facilities. That didn't go over well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BAILEY: We have considered briefly
2 simply making the water treatment processing itself a
3 generally licensed activity, with saying that they
4 must provide worker protection, and they must control
5 discharges within Part 20 equivalent, and they must
6 dispose of the waste at a licensed site.

7 That is similar to what we did in Texas
8 when we decided that we would make uranium mining a
9 general license, and the sole purpose of that was to
10 make them clean up ore truck turnover spills and water
11 discharges from the mines that contained elevated
12 levels.

13 COMMISSIONER MCGAFFIGAN: This may be an
14 issue primarily in Western States. I think that is
15 the uranium is or is it also elsewhere?

16 MR. BAILEY: The limit that the EPA set,
17 is it -- well, somebody said last night that the
18 number of facilities, with the change in the rule, it
19 would go from 50 to 150 in their State?

20 MS. CARDWELL: In our State, yes. It goes
21 from 30 public drinking water supplies to 130 that are
22 affected and potentially have a waste stream.

23 COMMISSIONER MERRIFIELD: I would like to
24 ask an add-on question, because this got raised to me
25 by a State environmental person, is that you are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 focusing on water treatment plants, and how they deal
2 with it, or water produced.

3 But what about home users of these types
4 of devices, filtering devices, because they are used
5 extensively. I know in my home State of New
6 Hampshire, there is a question about how you dispose
7 of those things.

8 MS. ALLEN: Keep your fingers crossed and
9 hope they don't set off the alarms when they dispose
10 of them.

11 COMMISSIONER MERRIFIELD: So that could be
12 another nuisance that you have to respond to.

13 MS. ALLEN: There are more and more
14 landfills with detectors, and if we are not dealing
15 with it now, it is going to keep coming up.

16 COMMISSIONER MCGAFFIGAN: And you raise a
17 very good point, Commissioner Merrifield, because
18 people are using these filters, and it is very
19 strongly encouraged in advertising and whatever, and
20 people do it as an extra protection.

21 And after 30 or 40 years of being on that
22 tap, or whatever amount of time people will actually
23 keep it. I don't know how long they are supposed to
24 be on a tap, as I don't have one yet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But I am sure that people keep them
2 longer, that is going to be fairly contaminated and
3 radioactively contaminated, but they are not going to
4 know it.

5 CHAIRMAN MESERVE: There will probably be
6 a bigger problem with the biological materials on
7 those also. But I presume you have a much bigger
8 problem though with basically just waste water sludge
9 in States that have high radium content in their
10 water.

11 You talk about the inconsistency between
12 Part 40 and the license termination rule, that is very
13 small change, as compared to waste water treatment
14 sludges to handle what our rules will allow. It isn't
15 subject to our jurisdiction.

16 MR. BAILEY: Right. Typically, these all
17 come from ground waters and the ground waters, since
18 I did some sanitary engineering in my past
19 regrettably, ground waters typically are not treated;
20 whereas, surface waters are treated so that you get
21 the full bleed through of the uranium, or radium, or
22 whatever.

23 And we have some historical data where you
24 can see as a town in the summer went through some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 additional wells that there was an increase in the
2 radioactivity in the sludge. So it is there.

3 COMMISSIONER MCGAFFIGAN: One last
4 question, and as I said, I could ask lots. But an
5 issue that comes up internationally, and we were
6 talking earlier about IEA perhaps being the place that
7 would help settle whether Canada or the U.K., or we
8 are right with regard to exemptions for tritium light
9 sources.

10 But an issue that comes up is that ICRP60
11 made some recommendations with regard to occupational
12 dose on this, 10 rem over 5 years, and no more than 5
13 rem in a year.

14 The European community is moving in that
15 direction, and in Korea, that rule fully takes effect
16 on January 1 of next year. Most other nations are
17 moving at least at some pace in that direction to
18 adopt the ICRP60 suggested occupational dose limits.

19 Do you all as professional health
20 regulators have any views as to whether we should
21 think about adopting -- and we have to be done with
22 DOE and EPA, because there would be different dose
23 limits in DOE's space, and our space, or whatever?

24 And more broadly there is the issue of the
25 ICRP60 methodologies, which are creeping into our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regulations through like Part 71, the transportation
2 rule, et cetera, and will sort of creep in more over
3 time.

4 But the occupational dose limit, do you
5 have any thoughts on that?

6 MS. ALLEN: I think doses in general are
7 going down. It may be doable, but there are certain
8 specialties, like fluoroscopy, where I am not
9 convinced that they would be able to meet the new
10 regulation. I don't know offhand.

11 COMMISSIONER MCGAFFIGAN: But how are they
12 doing it in Europe or Korea? Do they make less use of
13 fluoroscopy during medical procedures there?

14 MS. ALLEN: I really don't know.

15 MR. BAILEY: My gut reaction is I will
16 hear it repeated and repeated, and repeating that you
17 are lowering the dose limits again. You are proving
18 that radiation is more hazardous than it was.

19 COMMISSIONER MCGAFFIGAN: That's what I
20 hear sort of from the public, and the people that
21 appeared at all of our public hearings.

22 MR. BAILEY: I don't know that necessarily
23 the IAEA regs apply uniformly in this case to medical
24 X-ray use. I just don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MCGAFFIGAN: I don't know
2 what the practice is. It could well be that the
3 people are exempting fluoroscopy. It could be with
4 enough shielding that you can -- that with enough
5 aprons that you --

6 MS. ALLEN: You have to have lighter feet.

7 COMMISSIONER MCGAFFIGAN: Yes, I suppose
8 you wouldn't be able to move. Okay. Thank you very
9 much. As I said, I could sit here and ask a lot of
10 questions. I think Greta had a couple of years ago
11 when she was Chairman, she had a meeting on materials.

12 And I am not sure whether we did it right,
13 or whether it is just having this group for a longer
14 period of time, if we ever have a materials
15 stakeholder meeting again, whether we shouldn't just
16 sit for a longer period of time with a fixed agenda
17 and just sort of go through it.

18 Because when we walked in here today, in
19 all honesty, I wasn't quite sure what your agenda was.
20 I had some viewgraphs in advance, and if we had a
21 well-prepared meeting, we could make -- and I know
22 there are a lot of people listening in, but we could
23 have -- you would get more reaction from us than you
24 were able to get today perhaps in this limited period
25 of time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN MESERVE: Good. I would like to
2 thank you all for participating with us this
3 afternoon. I think that Commissioner McGaffigan has
4 put it very well, that we have had from our side of
5 the table I think a very fruitful exchange.

6 You have raised a lot of issues that were
7 of great interest to us, and it is an educational
8 experience for us to have this opportunity to interact
9 with you.

10 And again, I would like to thank you for
11 all of the areas of cooperation in which you have
12 engaged with us. I think we have gotten great benefit
13 from it, and I hope you have as well. And with that,
14 we are adjourned.

15 (Whereupon, the meeting was concluded at
16 3:34 p.m.)

17
18
19
20
21

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

COMMISSION MEETING SLIDES/EXHIBITS

**MEETING WITH ORGANIZATION
OF AGREEMENT STATES (OAS) AND CRCPD**

WEDNESDAY, AUGUST 15, 2001

8/8/2001

SCHEDULING NOTES

Title: Meeting with Organization of Agreement States (OAS) and
Conference of Radiation Control Program Directors (CRCPD)

Scheduled: 1:30 p.m. - Wednesday, August 15, 2001 (PUBLIC)

Duration: Approx. 2 hours

Participants: Panel (60 mins.*)

Organization of Agreement States:

- Chair Kathy Allen, Senior Project Manager
Office of Radiation Safety
Illinois Department of Nuclear Safety
- Chair-Elect William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
Utah
- Past Chair Edgar D. Bailey, C.H.P., Chief
Radiologic Health Branch
Division of Food, Drug & Radiation Safety
California Department of Health Services

- OAS Topics:
1. Communication
 2. Working Groups (participation, what is working and what needs to be tweaked)
 3. NMP WG Report (Recommendations and next steps - where do we go from here)
 4. IMPEP
 5. Public Participation
 6. Interactions with Regions
 7. Uranium Mills/Part 40
 8. Reconciliation of Part 40 with Part 20
 9. Rules and Guidance
 10. Invitation to upcoming OAS meeting in Santa Fe

Conference of Radiation Control Program Directors (CRCPD):

- Chair Paul J. Merges, Ph.D., Director
Bureau of Radiation & Hazardous Site Management
Division of Solid & Hazardous Material
NYS Department of Environmental Conservation

- Chair-Elect Cynthia Cardwell, Deputy Director
Regulations and Standards
Bureau of Radiation Control
Texas Department of Health

CRCPD Topics:

1. CRCPD Family
2. Impact of Federal Radiation Decisions on States
3. Future of Radiation Protection
4. Invitation to 34th Annual Meeting
5. NRC/State Partnerships
 - a. National Materials Program Working Group
Recommendations
 - b. Suggested State Regulations for the Control of
Radiation (SSRCR) Process
 - c. Successful Partnerships, i.e. Orphan Source Pilot
Project
 - d. NRC Working Groups and the Future Relationship of
OAS and CRCPD
6. Mentoring

* For presentation only and does not include time for Commission Q & A's.

**NRC Commission Briefing
August 15, 2001
by the
Conference of Radiation Control Program Directors, Inc.
Paul J. Merges, Ph.D., Chairman
Cynthia Cardwell, Chairperson-Elect**

Introduction

CRCPD Family

- Members
- Neighboring Nations Programs
- Recognition of NRC Support

Impact of Federal Radiation Decisions on States

- Cleanup Criteria
- Patient Release

Future of Radiation Protection

- Need for Federal Agency Support
- Fellowship Programs
- Impacts to States

Invitation to 34th Annual Meeting

- May 5-8, 2002
- Madison, Wisconsin

NRC/State Partnerships

National Materials Program Working Group Recommendations

- CRCPD is very interested in both the NMP Working Group recommendations and the Commission's actions on the recommendations.
- CRCPD representatives were extensively involved in development of the recommendations.
- CRCPD is particularly interested in any recommended methods for development of regulations.
- Charges and activities of S-5 Committee on the states' role in national radioactive materials regulation development.

SSRCR Process

- CRCPD poised to evaluate CRCPD SSRCR development process.
- CRCPD appreciates the continued support of NRC staff as resource persons.
- Continued need for NRC Resource Persons on CRCPD committees.
- CRCPD has made several changes to committee chairs and members.
- Commission agreement to allow NRC predecisional documents on rulemaking and guidance to be shared with the states is helpful to the SSR process.
- CRCPD committees are being encouraged to increase efficiencies in time and expenses.
- There is a continued need to utilize the parallel rulemaking process to greater extent.
- Parallel rulemaking fits with NMP Working Group recommendation.

Successful Partnerships

- Orphan Source Pilot Project in Colorado.
- CRCPD request for future funding of National Orphan Radioactive Material Disposition Program.
- NMED training in conjunction with G-34 orphan source project.
- G-34 efforts in IR certification.

NRC Working Groups and the Future Relationship of OAS/CRCPD

- Interested in working with OAS on defining the future relationship between the two organizations.
- CRCPD appreciates the opportunity to provide representation on NRC working groups along with OAS.
- CRCPD realizes the need for coordination of this representation.

Mentoring

- CRCPD has instituted a mentoring program.
- Our intent is that this will encourage active involvement in CRCPD.
- Program can be viewed as a "succession training".

Closing Comments

USNRC BRIEFING 2001

Edgar D. Bailey, P.E., CHP
California Radiologic Health
Branch

URANIUM REGULATIONS

- 11e.(2) Byproduct Materials
- "11e.(2) Like" Materials
- Wastes from Processing Source Material for Products Other Than Source Material
- Source Material
- NORM
- Water Treatment

ITEMS OF CONCERN

- Uranium Regulations
- Internet Sales of Radioactive Materials
- Harmonization of International Standards for Products
- Implementation of D&D Standards
- Energy & Water Development Appropriations Bill (H.R. 2311)

INTERNET SALES OF RADIOACTIVE MATERIALS

- eBay Sales
- Interstate and Transboundary Website Offerings

**HARMONIZATION OF INTERNATIONAL
STANDARDS FOR PRODUCTS**

- Products "Exempt" in Canada and United Kingdom that Are "Generally Licensed" in United States

H. R. 3211

- External Regulation of DOE Non-Defense Science Laboratories
- Include Agreement States

**IMPLEMENTATION OF D&D
STANDARDS**

- Forceful and Clear Guidance on "Acceptable" Implementation
- Agreed Upon Dose Evaluation Parameters Variability
- Training on Policies, Procedures, Evaluation, and Implementation