

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 MEETING WITH ORGANIZATION OF AGREEMENT STATES (OAS)
5 AND CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS (CRCPD)

6 ***

7 PUBLIC MEETING

8
9 Commission Conference Room
10 One White Flint
11 Rockville, Maryland
12 Tuesday, June 13, 2000

13
14 The Commission met in open session, pursuant to
15 notice, at 9:32 a.m., the Honorable RICHARD A. MESERVE,
16 Chairman of the Commission, presiding.

17
18 COMMISSIONERS PRESENT:

- 19 RICHARD A. MESERVE, Chairman of the Commission
- 20 GRETA J. DICUS, Member of the Commission
- 21 NILS J. DIAZ, Member of the Commission
- 22 EDWARD McGAFFIGAN, JR., Member of the Commission
- 23 JEFFREY S. MERRIFIELD, Member of the Commission

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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
2 PAUL SCHMIDT, Chair of the Conference of Radiation
3 Control Program Directors
4 EDGAR BAILEY, OAS Chair, California Department of
5 Health Services
6 KATHY ALLEN, OAS Chair-elect, Illinois Department
7 of Nuclear Safety
8 ALICE HAMILTON ROGERS, OAS Secretary-elect, Texas
9 Natural Resource Commission
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[9:32 a.m.]

CHAIRMAN MESERVE: Our Commission meeting this morning is to have a periodic briefing from the Organization of Agreement States and the Conference of Radiation Control Program Directors.

I'm very pleased to have this briefing, because we are both partners in crime, so to speak, in that we have responsibilities that we share dealing with nuclear materials and I know that we have cooperative interests and activities and the relationship that we have with you is a very important one for the NRC, one that we very much want to maintain.

We are joined this morning by Paul Schmidt, who is the Chair of the Conference of Radiation Control Program Directors; by Edgar Bailey, who is the OAS Chair from the California Department of Health Services; by Kathy Allen, who is the OAS Chair-elect from the Illinois Department of Nuclear Safety; and, by Alice Hamilton Rogers, who is the OAS Secretary-elect, from the Texas Natural Resource Conservation Commission.

I'd like to welcome you all very much.

Let me turn to my colleagues and see if they have an opening statement.

COMMISSIONER DICUS: I really don't have an

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1 opening statement, Mr. Chairman, but I would like to note
2 that I think the Organization of Agreement States is trying
3 to take some steps to be more pro-active and possibly try to
4 formalize, to a certain extent, their executive group,
5 chair-elect, secretary and so forth, and I encourage that.
6 I think that's a good move.

7 Thank you. That's all I have to say.

8 CHAIRMAN MESERVE: Thank you very much. Why don't
9 we proceed?

10 MR. SCHMIDT: Good morning, Chairman Meserve,
11 Commissioners. My name is Paul Schmidt and I am here as the
12 Chairman of the Conference of Radiation Control Program
13 Directors, commonly referred to as CRCPD.

14 I do thank you for the kind invitation to appear before you
15 this morning to discuss some issues of importance to CRCPD,
16 provide an update on a number of important initiatives
17 within our organization, and also highlight some noteworthy
18 efforts I think it's important to mention.

19 My comments reflect input from our Executive Board
20 and some of our, at least count, 55 committees and task
21 forces, that are addressing the wide variety of radiation
22 issues that impact the states.

23 I'd first like to express CRCPD's appreciation for
24 the support and interaction provided, first, by the Office
25 of State and Tribal Programs, as well as the Office of

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1 Nuclear Materials Safety and Safeguards.
2 At the headquarters level, the efforts of Paul Lohaus, who
3 is the NRC liaison to CRCPD; Fred Combs, Jim Myers, a number
4 of others from State and Tribal Programs, as well as Don
5 Cool and others from NMSS, who I think are instrumental in
6 helping to maintain a very positive working relationship
7 between CRCPD and the Nuclear Regulatory Commission.

8 I just also want to mention, by way of looking at
9 communications, the addition of RADRAP as the new method of
10 communicating primarily among the states, but some potential
11 for communicating between state and Federal level agencies,
12 as well.

13 And we're looking forward to better information,
14 better information sharing through use of the internet, as
15 well as a continued positive relationship with your agency.
16 And in addition, I'd also like to mention, in my other role
17 as Director of the Wisconsin Radiation Control Program, I'd
18 like to extend also my personal appreciation for the support
19 provided by the NRC to an official agreement state wannabe,
20 and I've seen firsthand how critical the support from State
21 and Tribal Programs and the NRC Regional Office also is to
22 developing an agreement state, and I hope this level of
23 national, as well as regional support to all the developing
24 agreement states can also continue into the future. It is
25 very, very important.

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1 My next comments focus on the partnership
2 activities of the CRCPD and I do have a slide that
3 specifically looks at that. In order to fulfill the CRCPD
4 mission to, first, promote consistency in addressing and
5 resolving radiation issues, to encourage high standards of
6 quality in radiation protection programs, and to provide
7 leadership in radiation safety and education, we recognize
8 the importance of developing active partnerships with
9 organizations and agencies involved in the many radiation
10 protection issues that impact the states.

11 Now, as indicated by the slide, we pursue every
12 opportunity to establish active partnerships with other
13 groups through liaisons and other means, and I would just
14 like to focus on that for a quick minute.

15 CRCPD's membership consists of state and local
16 radiation control program directors and staff, staff of
17 related Federal and international agencies, representatives
18 from the medical profession, academia and industry, as well
19 as others, totaling approximately 1,000 members at this
20 point.

21 The members provide the working energy for our 55
22 committees and task forces that I mentioned. There is an
23 also an Office of Executive Director in Frankfurt, Kentucky,
24 that provides the coordination and administrative support,
25 and there is obviously frequent interaction with the member

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1 radiation control programs through internet, meetings, news
2 briefs and a variety of other mechanisms.

3 Now, also, CRCPD, through cooperative agreements,
4 works closely with numerous Federal agencies, including Food
5 and Drug Administration, EPA, Department of Energy, FEMA,
6 Department of Transportation and others, in addition to our
7 activities with the Nuclear Regulatory Commission.

8 We also work closely with many professional
9 organizations, including the Health Physics Society,
10 American College of Radiology, Council of State Governments,
11 National Council on Radiation Protection and Measurements,
12 NCRP, and the International Atomic Energy Agency, also, and
13 some others, as well.

14 We also participate, whenever possible, in
15 national initiatives that are focused on improving specific
16 aspects of radiation protection, and some specific examples
17 I'd like to mention include, first, our participation in the
18 National Materials Program Working Group, as well as the
19 steering committee, as well, since the stated philosophy of
20 this group, to create a true partnership of the NRC and the
21 states and will ensure protection of public health, safety
22 and the environment is very consistent with our goals and
23 activities, and we're very pleased for the opportunity to
24 participate in this very important effort.

25 I'd also like to mention our recent participation

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1 in Cavalier Challenge, which is a joint NRC and FBI
2 emergency preparedness tabletop exercise, held last month in
3 Lynchburg, Virginia. And according to the Chairman of our
4 E-6 Committee on Emergency Preparedness and Planning, who
5 was fortunate to attend this event, the exercise provided
6 excellent interaction between the participants, and we
7 commend the NRC on jointly sponsoring this activity and
8 support further opportunities for interaction of Federal and
9 state emergency responders.

10 Every chance we get is always a good learning
11 experience, I think, for everyone involved.

12 We believe the -- the point of my mentioning all
13 this is we believe the CRCPD, through it's partnership
14 efforts, provides a unique forum for communication about the
15 radiation issues that can help us move forward in improving
16 radiation protection. It's a resource, in other words, and
17 I think that's a good resource that's out there.

18 Now, in the area of regulation development, I'd
19 like to make you aware of two initiatives going on within
20 CRCPD at this point. One is that during last year's
21 November Commission briefing, then Chairman Bob Hallisey, of
22 Massachusetts, informed you of a CRCPD initiative to create
23 a committee to examine the state's role in regulation
24 development due to the impact of an increasing number of
25 agreement states.

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1 I'm happy to report that in February of this year,
2 the CRCPD board created this group. It has the distinction
3 of having the longest name of any committee on CRCPD, and
4 it's called the S-5 Ad Hoc Committee on the State's Role in
5 National Radioactive Materials Regulation Development.

6 We view this committee as complimentary to the NRC
7 National Materials Program Working Group and we look forward
8 to interaction between the two groups. I think that's a
9 natural flow there.

10 The CRCPD board also recently evaluated the
11 performance and activities of the many committees that are
12 charged with developing portions of the suggested state
13 regulations for the control of radiation, generally known as
14 the SSRs, which is the template radiation control
15 regulations developed to encourage regulatory consistency
16 among the states and we've also implemented some changes
17 designed to improve performance of that effort, and we are
18 very keenly aware of the need to develop SSRs in an
19 expeditious manner, to reflect Federal regulations changes
20 as they occur, and we're very committed to continual
21 improvements in the SSR development process, and we do look
22 at those fairly routinely, as a matter of fact.

23 It's important to mention that a key component of
24 SSR development is Federal participation and we request that
25 the NRC continue to provide the financial and other support

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1 necessary for NRC resource staff to be involved in this SSR
2 process, and we do think that is a very important
3 interaction to occur.

4 Last month, the CRCP held its annual national
5 conference on radiation control in Tampa, Florida, and we
6 were very pleased to Commissioner Diaz attend and present
7 the keynote address to the conference. And two items worth
8 mentioning from this conference are, first, that CRCPD now
9 has a member-approved strategic plan that establishes clear
10 goals and priorities to help guide the future activities of
11 our organization.

12 I've provided the summary copy for your
13 information. And secondly, as an organization consisting
14 primarily of state regulators, we recognize the need to
15 establish and evaluate performance indicators for regulatory
16 processes, and the recent revision of the NRC reactor
17 oversight process we think it a good example of revisiting
18 performance indicators.

19 We request that NRC continue its outreach efforts
20 to inform the state regulatory community of this revised
21 reactor oversight process. I think there's still some
22 questions that need to be answered. We also offer our
23 assistance in any future redesign of either nuclear power
24 plant, as well as other regulatory processes. We're very
25 happy to help.

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1 Now, my next comments focus on radiological
2 emergency preparedness and radiation materials issues.
3 First, we want to convey our appreciation for the quality
4 training offered or available through the NRC to developing
5 and existing agreement states, as well as stress the
6 importance of NRC continuing its support of training as more
7 states pursue agreement state status and address staff
8 turnover issues due to retirement and a variety of other
9 issues.

10 Second, we empathize with the NRC as you
11 deliberate the use of potassium iodide as a protective
12 measure for the general public. This issue is of very
13 intense interest to the states.

14 If the final recommendation is for stockpiling of
15 potassium iodide for the public, we request that NRC
16 consider funding sources, as well as the development of
17 implementation guidance for the states in your deliberations
18 as you look at this issue.

19 Also, we continue to support the NRC's efforts to
20 reinvent the generally licensed sources and devices program
21 and address orphan sources, another big issue of concern for
22 the states, and there are many, many other issues that are
23 related to 10 CFR 35 and materials regulation that are very
24 important to CRCPD and the states.

25 I believe the Organization of Agreement States is
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1 prepared to address those issues in a little more detail and
2 I'll let them address those in their comments.

3 Then, finally, we would like to extend an
4 invitation to the Commission to attend and participate in
5 our next national conference on radiation control that will
6 be held from April 29 to May 2 next year in Anchorage,
7 Alaska. This conference provides a timely forum for
8 information sharing and discussion of the many radiation
9 issues affecting the states and always benefits from NRC
10 participation.

11 I'd like to thank you again for the opportunity to
12 speak to you this morning and I'd be happy to address any
13 questions that you have, at your convenience.

14 CHAIRMAN MESERVE: Thank you very much. Why don't
15 we proceed through the rest of the presentations and then
16 turn to the questions.

17 MR. BAILEY: Good morning, Mr. Chairman and
18 Commissioners. My name is Ed Bailey and I'm extremely
19 pleased to be able to be here with you all again this year.
20 This year, as the Chairman-elect, I had the opportunity to
21 appear before you.

22 The Organization of Agreement States is quite a
23 bit different from CRCPD. Although the members, for the
24 most part, are the same individuals, the Organization of
25 Agreement States is not a sub-unit of CRCPD or whatever.

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1 We are basically the states with whom you have a
2 signed agreement. We allow the wannabes to come in and
3 attend our meetings and we treat them pretty civilly most of
4 the time when they're there.

5 I would like to echo the words they were saying
6 about the cooperation and attitudes that we have seen
7 between the professional staffs of the agreement states and
8 NRC. I think those relationships are, from my viewpoint, at
9 a high point in my roughly 30 years of fooling around with
10 this.

11 We have noted that both Commissioner Dicus and
12 Commissioner Diaz have come to the agreement states meetings
13 and we have greatly appreciated that.

14 Not only have they come, they've hung around a
15 little bit and listened to some of the carrying on that we
16 do.

17 I've got some very basic slides and I think I'll
18 go through them pretty quickly, because the first slide has
19 a list of the agreement states, 31 of them. I think most of
20 you are familiar with the states that are agreement states,
21 so I won't go through each one of those individually.

22 The next is a list of what we understand are the
23 four formal wannabes. There are a lot of others that would
24 like to be, but these are the four wannabes right now and
25 with the recent notice on Oklahoma, I'm very pleased that

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1 the Commission is working very expeditiously to get that
2 agreement in place and we look forward to having Oklahoma
3 sitting at the table as a full member of the Organization of
4 Agreement States.

5 The Organization of Agreement States, as I said,
6 is different from CRCPD. We have no central office. We
7 receive no money from anybody, except what you graciously
8 give us from time to time to come to meetings and so forth.
9 It's entirely funded by the states, other than very minor
10 amounts, such as the court reporter at the annual meeting.

11 Right now, we have five officers. Officers are
12 generally elected for one year. I'm present Chairman,
13 Chairman-elect is Kathy Allen here, to my left; past
14 Chairman, Stan Marshall from Nevada; Secretary Richard
15 Ratliff from Texas, those two couldn't be with us; and then
16 the Secretary-elect Alice Hamilton Rogers, also from Texas.

17 The next slide, I've got some comparisons, because
18 we often, and rightly so, look up to the NRC for guidance,
19 for expertise and so on.

20 When we start to look at the number of states,
21 though, that NRC is the primary regulator in or the sole
22 regulator, 38 percent or 19 of them are within NRC
23 jurisdiction, whereas 31 are agreement states.
24 We look at the licenses, the actual number of licenses
25 issues. We've got about 75 percent of the materials

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1 licenses in the United States, and about 73 percent of the
2 nation's population is regulated in states, agreement
3 states.

4 When the four wannabes come on board, I think that
5 percentage of population will jump up to 82 percent. So we
6 do have a sizeable impact on radiation protection in the
7 United States.

8 The next few slides are some of our activities and
9 I think we often forget to mention these. As has been
10 mentioned, we, too, have an annual meeting and we have had
11 that every year since 1962, I believe. It has varied from
12 when it was held at AEC headquarters and a bomb couldn't
13 blast us out of there, to where we've now started going
14 around to various states to have the meetings, and NRC
15 always wants us to come back to Washington and we say we can
16 have such a lovely time someplace else and Washington is on
17 the east coast, for those of us who live west.

18 One of the things that I'm really proud of that
19 has occurred this year is the establishment of RADRAP and
20 RADRAP is, in large measure, due to Kathy Allen's work and
21 this is a mechanism whereby someone in the regulatory
22 agencies has a question or a concern, a comment, they put it
23 out, it goes to all of the other people who are signed up, I
24 think, what, 200 or so now.

25 MS. ALLEN: Over 200.

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1 MR. BAILEY: Over 200 people are actually signed
2 up. And we get back responses. Hopefully, we prevent
3 reinventing the wheel a lot. Someone may phone up and say
4 we're going to get our first gamma knife, what the devil do
5 we do. A state like California or a state like Texas or
6 Illinois or another state that has several gamma knives
7 already in operation and hopefully have a more mature
8 regulatory scheme for that device will get back to them and
9 say, hey, here's what we did, we'll send you a license. So
10 it has proved, I think, very beneficial in us helping each
11 other.

12 Another thing that has happened is we are now
13 having, as we have for a couple of years, monthly conference
14 calls with NRC staff and this year, again, due to the work
15 of these two ladies, we have notes that are actually put out
16 usually the same day, that go out to everybody on RADRAP
17 and, of course, the people at NRC that are on the calls.

18 This year we initiated an annual planning session.
19 Commissioner Dicus mentioned that we were trying to get a
20 little more active and a little more cohesive throughout the
21 year and that was one of the things we felt we needed was a
22 planning session, saying what are we going to do, actually
23 choosing the site of our annual meeting before the middle of
24 the summer, those kinds of things.

25 The next slide, the members of OAS participate on
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1 a number of NRC working groups and we look forward to doing
2 that. We think it's important that we work with the NRC
3 staff in the early stages of regs and policies that get
4 adopted by NRC.

5 I think all of us who have been in government have
6 a feeling that it's awfully hard to change something after
7 it's been written and published and out there. It's much
8 easier to affect change, good changes in the developmental
9 stages.

10 The other thing that the members of the
11 Organization of Agreement States do is participate as
12 agreement state personnel on the IMPEP review teams, both of
13 NRC regions and agreement states, and also as a liaison to
14 the management review boards following those reviews.

15 We have a few goals that we haven't quite made
16 yet, and one of them is establishing a virtual office. We
17 don't anticipate getting into big bucks of having it
18 established. We would like to establish essentially a
19 virtual office, so that if somebody plugs in agreement state
20 on the web, they would go to this place, they would have a
21 constant place that they can always go, and we think this
22 would be particularly important for Congress.

23 Right now, Congress, for the most part, has to
24 call up the NRC and say who are the agreement states and who
25 do we contact and so forth.

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1 We think this would be a good way to make the fact
2 known that we're out there, that we are co-regulators with
3 the NRC and would offer an opportunity for people to see
4 what we're doing and how we're doing it.

5 Eventually, because of several reasons, we hope
6 that we will incorporate the Organization of Agreement
7 States. There are a lot of advantages to being incorporated
8 and there are a lot of disadvantages to not being
9 incorporated, such as how do you keep the extra money from
10 meeting to meeting and so forth.

11 The next slide, this is one that we really hope
12 that we can do and one that we think that perhaps makes us a
13 little different from CRCPD. CRCPD really can't lobby, but
14 if my governor tells me to go talk to somebody in Congress,
15 I can go talk to that person in Congress, and I think that
16 that is a unique advantage that the Organization of
17 Agreement States can have.

18 We have not been very good, quite frankly, in
19 doing that. We, I think, unanimously voted at last year's
20 meeting to support all fee-based funding and write our
21 Congressmen. When I polled the states, I think I came up
22 with two that actually really managed to get a letter to
23 some members of the committee.

24 And another goal for us is increasing our support
25 to the NRC and its effort. I've mentioned a couple of times

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1 that we do have an annual meeting. This year's annual
2 meeting is October 2 through 4 in Charleston, South
3 Carolina, and we sincerely hope that one or all of you
4 Commissioners will be able to attend that meeting and you
5 will certainly be invited by OAS and we hope that you will
6 have some words for us at that meeting.

7 I have a couple of slides that are concerns and
8 I'm just -- I'm not going to dwell on any of these
9 particularly, except to mention them and the other speakers
10 will talk in more depth.

11 The first one I will talk a little bit more on in
12 some later slides, the harmonization of training, risk
13 management, and regulations and procedures. As Paul
14 mentioned, training, and I put in parentheses its funding,
15 is of concern to, I think, all of the agreement states.

16 The National Materials Program we definitely have
17 an interest in. The external regulation of DOE we will have
18 a concern in, and a lot of these programs are interwoven, in
19 our opinion anyway. The regulation of pre-1978 materials,
20 and I purposely said materials there rather than 11(e)(2)
21 like material, because I believe that some of those pre-
22 1978 materials are other than 11(e)(2) materials.

23 We will also be talking a little bit about 10 CFR
24 Part 35, and our concerns about that. The redo of source
25 material regulations, NORM and NARM regulation, Paul has

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1 alluded to the stockpiling of KI already, the D&D
2 regulations which are currently on the books and the
3 clearance rule regulations that are in some stage of
4 development now.

5 I'd like to spend the rest of my time talking
6 about harmonization and Commissioner Dicus, I believe, at
7 last year's HPS meeting, talked about harmonization of
8 regulations and standards. This year's HPS meeting will
9 have a whole session devoted to harmonization and I think
10 I've taken a little step further.

11 Most people simply think about regulations being
12 harmonious. I think there are other things that need to be
13 in harmony and I've listed three; training, risk management,
14 regulations and procedure.

15 The first one I'll elaborate a little bit on is
16 training. I think as agreement states and NRC, we need to
17 have some basic educational standards for our staffs. We
18 have, to some extent, had that with new states coming in.
19 We have looked at it during IMPEP reviews and all, but we
20 need to continue stressing that.

21 We are tending to see, I think, in the states, a
22 decrease in the radiation protection expertise of our
23 licensees' safety people. We're seeing more and more of
24 companies going to a generalist to be the radiation safety
25 officer, an industrial hygienist with maybe very little real

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1 radiation training.

2 In some cases, we're seeing an environmental
3 health office taking over radiation safety functions. My
4 master's degree is in environmental health engineering, so I
5 can't talk too much about these environmental health people,
6 but in some cases, they didn't take the few extra courses.

7 The other thing that we really want to continue,
8 and I think it's working well right now, are the joint
9 specialized training courses that NRC has provided over the
10 years and I think having both NRC staff and agreement state
11 staff in the courses at the same time is a very important -
12 - I don't want to use the word -- yes, I do -- bonding
13 between state regulators and the Federal regulators. I
14 think we come to appreciate each other more.

15 And then I think we need to have some continuing
16 education and refresher courses. We have people who have
17 been doing, say, licensing for 20 years and it wouldn't
18 hurt, I don't think, to once in a while get those people
19 sort of in a room together and formally go through what are
20 we still doing and what do we need to change and so forth.
21 So refresher courses are important.

22 Risk management, and here is where I think it all
23 sort of comes together, at the state level, we typically
24 regulate radioactive materials and we're not as particular
25 about where it comes from or how it was made, and so we get

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1 caught in a bind quite often because there is such
2 bifurcation or, if it's a word, trifurcation of regulations
3 and standards in the Federal Government.

4 The external regulation of DOE we think has got to
5 occur at some point. We continue to see DOE sitting there
6 doing things and not really responsible to anyone. I could
7 point out numerous examples of where we're spending a lot of
8 time working on DOE facilities in California, particularly
9 as they release stuff from those facilities, and this will
10 get into the clearance rule here in a minute.

11 The regulation of U.S. Army Corps of Engineers'
12 FUSRAP program, if NRC had DOE, then I think they could also
13 then regulate the FUSRAP program. California has been
14 impacted a great deal by it. Other states have also
15 expressed great concerns about the FUSRAP program.

16 One that most people don't talk about too much are
17 military base closures and cleanups. California had an
18 inordinate number of military bases close and they're being
19 converted to all kinds of uses. As we do look at the use
20 of radioactive materials on those bases, we find that almost
21 every base has some sort of radioactive waste disposal area
22 and it may be from radium dial from painting, it may be from
23 washing down airplanes that flew through atomic clouds, on
24 and on and on.

25 But there's really no one checking on that except,
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1 I think, in the states, some states are doing something
2 about it, but there needs to be standards for how those are
3 done.

4 The regulation of NORM and NARM, I think we've
5 pounded on those for years. We can't tell much difference
6 in the radiation from those than we can from materials that
7 the NRC regulates.

8 OSHA regulations are way out of date as far as
9 dose limits. So I would assume that someone working in an
10 NRC state would be subject to one radiation protection
11 standard for the agreement materials and a different one for
12 accelerator materials under the OSHA regulation.

13 D&D and clearance rule, we pray that they will be
14 in harmony when they come out. If something can be released
15 for unrestricted use, then we don't need somebody coming
16 back second-guessing whether you can dig that dirt up and
17 move it off-site, and we've got Senators writing us four
18 pages of questions about exactly that problem, where we've
19 free released a sodium burn pit and now they're questioning
20 how we can allow them to move this dirt off-site.

21 So as you develop those regulations, please work
22 to have them dovetail so that it's clear one way or the
23 other.

24 And on the regulations and procedures, we would
25 love to have all the same -- have the compatible regulations

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1 apply to all entities, including DOE, the Army Corps, OSHA,
2 and base closures. We would like the same standards or
3 regulations to apply to all radioactive materials,
4 regardless of whether they're NORM, NARM, source material or
5 pre-1978.

6 Then we would also like ideally to see the same
7 level of protection from one exempt device to another.

8 We would like to see the same cleanup standards
9 apply to byproduct source and special nuclear materials and
10 as you're aware, that is not necessarily the case now.

11 And as the D&D and clearance rules both get on the
12 books, we hope there's some sort of seamless transition from
13 one to the other.

14 And finally, we hope that as the IMPEP review
15 program is being looked at, that it will be modified to
16 ensure that in some of these areas where we're releasing
17 materials, where we're regulating things, that maybe the
18 Commission doesn't, that the standards are being applied
19 uniformly from state to state.

20 That pretty much concludes my prepared remarks,
21 and I'd be happy, as Paul indicated, to take any questions
22 or comments.

23 CHAIRMAN MESERVE: Proceed.

24 MR. BAILEY: If not, we'll go to Kathy next. I'm
25 sorry, we'll go to Alice next. Excuse me, Alice.

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1 MS. ROGERS: Good morning, Commissioners. Thank
2 you for allowing us to come and speak with you. My name is
3 Alice Rogers and I'm the Secretary-elect for the
4 Organization of Agreement States and I've worked for the
5 Texas Natural Resource Conservation Commission.

6 I'm going to talk about a few related issues. Ed
7 has already touched on them and I apologize for the
8 redundancy. Those are going to be 10 Code of Federal
9 Regulations Part 40, naturally occurring radioactive
10 material and the pre-1978 11(e)(2) byproduct materials.

11 Before I go into specifics about these, however,
12 I'd like to take a minute to explain our broader perspective
13 and before I say that, I want to also remind you that not
14 all of the agreement states agree. So this is not
15 necessarily everyone's opinion, but it does seem to be a
16 general consensus informally gained through various methods.

17 Each of these are radioactive materials that can
18 cause harm to human health or the environment and as state
19 radiation control program directors, we are mandated by our
20 respective legislatures to protect human health and the
21 environment from the harmful effects of radiation.

22 Unlike the Atomic Energy Act, most of our states'
23 enabling legislation gives us state authority over any
24 substance that emits radiation spontaneously, no matter what
25 its source.

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1 So in the case of materials such as NORM or pre-
2 1978 11.e.2, we use our state authority to regulate these,
3 since the NRC has no authority.

4 The good part of this is that we have some ability
5 to protect folks, but the bad part is that there is no
6 nationwide consistency. So the message we'd like you to get
7 from this part of our presentation is that NRC should use
8 its current authority or should seek Congressional approval
9 for such authority to regulate all radioactive substances.

10 We feel like if it looks like a duck and it quacks
11 like a duck, it should be regulated like a duck.

12 Next slide, please. Regarding Part 40, as I'm
13 sure you know, the Organization of Agreement States and the
14 State of Colorado have petitioned your agency for rulemaking
15 on this matter and there are many reasons that we should
16 revisit Part 40.

17 One is that the exempt source material provision
18 at 40.13(a) has recently been interpreted as a disposal
19 exemption level. It was never intended for that. It was
20 based on national security.

21 Another concern regards allowing what's called
22 alternate feed to be reprocessed at a uranium mill. So
23 regarding this rulemaking, we respectfully request that the
24 Nuclear Regulatory Commission first keep this rule a
25 priority and not let it get bogged down in the bureaucratic

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1 machinery; second, that it base any revisions on risk and
2 sound science; third, that it use the states' input; and,
3 fourth, that it be clear about what it means to be exempt.

4 For example, to some folks, free release means
5 that this material could be used in a sandbox in a
6 playground, but for others, it means that it has to be
7 disposed of in an industrial landfill.

8 Regarding naturally occurring radioactive
9 material, I just want to make the point, first, that NORM
10 wastes are very diverse and I know you guys know about NORM
11 waste, but I just made sort of a list of the different kinds
12 of waste we're talking about. And I added granite at the
13 end because in the states that have granite, it often emits
14 enough radiation that when a load of scrap metal gets to a
15 scrap metal facility, if it's in a gondola that used to have
16 granite in it, the rock dust in the bottom of the gondola
17 makes the alarms go off.

18 So I just want to say nobody ever really thinks
19 about those kinds of things, but it does cause a lot of work
20 and concern on people's part.

21 COMMISSIONER MERRIFIELD: Being a resident of the
22 Granite State, I'm very sensitive to that particular
23 concern.

24 MS. ROGERS: Right. Regulation of these
25 materials, which are not under the NRC's jurisdiction,
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1 technically they are under the EPA's jurisdiction, but EPA
2 hasn't established any standards for them. So that leaves
3 the states in the position of trying to regulate NORM in the
4 absence of Federal standards.

5 Only nine states have enacted NORM regulations to
6 date, but the CRCPD has developed some suggested state
7 regulations.

8 My next slide is intended just to show sort of the
9 differences in the way states are looking at these.

10 Louisiana allows the disposal of NORM up to 150 pico curies
11 per gram in a non-hazardous oil field waste landfill, that's
12 what NOW stands for, not, as Kathy said to me earlier, not
13 otherwise regulated.

14 Michigan allows disposal of up to 50 pico curies per gram in
15 a Type 2 municipal solid waste landfill. Minnesota is
16 processing applications for four low concentration NORM
17 waste landfills specifically for those wastes.

18 New Mexico allows underground injection in a
19 company's own wells. Texas allows permits of Class 2, those
20 are oil field related injection wells, for oil and gas NORM
21 disposal, but we don't have any rules for disposal of NORM
22 that's not from oil and gas production.

23 With the upcoming promulgation -- next slide,
24 please. With the upcoming promulgation of EPA's radon and
25 radium in drinking water standards, NORM will become an

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1 issue for public drinking water suppliers. Disposal of the
2 NORM contaminated drinking water treatment waste will become
3 a pressing problem for many of these small supply systems,
4 primarily, the smaller rural supply systems that can rely
5 only on ground water.

6 Next slide. We think that some Federal agencies
7 should seek Congressional authorization and appropriations
8 to regulate NORM and we think that NRC is a logical choice,
9 since NRC is the expert in radioactive material regulation.

10 Next slide. Regarding the pre-1978 11.e.2
11 material which is found at many of the FUSRAP sites, which
12 stands for formerly utilized sites remediation action plan,
13 the agreement states think that NRC should figure out some
14 way to regulate this and actually some of us think that NRC
15 may already have this authorization, and we base that,
16 because it's interesting to compare the NRC's opinion that
17 it can't regulate this material with EPA's opinion that it
18 can regulate hazardous wastes that were generated before
19 1981, which was the date of enactment of RCRA.

20 EPA considers that when a cleanup begins, the
21 waste is newly generated when it's dug up, and so handling
22 and disposal of this waste must meet the current standards.

23 It simply doesn't make sense since that the pre-1978
24 materials aren't subject to regulation when the sites are
25 cleaned up and contaminated material is disposed of.

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1 An example of how this is working right now is
2 pre-1978 material is excavated in New York and shipped by
3 rail as unregulated material to Utah, where it is
4 transferred to trucks as unregulated material, and then it
5 goes to uranium mill for reprocessing, where, after it's
6 processed, it regains its identity as 11.e.2 byproduct.

7 So if, after further examination, NRC still
8 doesn't believe it has authority, then we would urge you all
9 to seek such authority.

10 I will now turn this over to Kathy Allen,
11 Chairman-elect, from Illinois, to speak about the National
12 Materials Working Group.

13 Thank you very much.

14 MS. ALLEN: All on the same page now? Thanks,
15 Alice. As she said, I'm Kathy Allen, from Illinois, and I
16 also want to thank you for the opportunity to come before
17 you.

18 If I tend to speak too fast, you can tell me to
19 slow down. I have a habit of doing that. I'd like to talk
20 about a couple of issues, and the first one is the National
21 Materials Program.

22 As Ed indicated, the number of licensees in
23 agreement states far exceeds the number of licensees in NRC
24 areas, and the Nuclear Regulatory Commission sort of
25 recognized that this trend was reaching a point where most
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1 of the expertise and experience with regulating radioactive
2 materials users actually resides in the states, and this
3 trend actually began back in 1971-72, almost 30 years ago,
4 when the number of agreement state licensees surpassed the
5 number of NRC licensees.

6 So this has been going on for quite some time and
7 now we're all kind of realizing we've got to figure out a
8 better way of approaching the regulation of radioactive
9 materials.

10 So there was an establishment of a National
11 Materials Program Working Group. I'm co-chairing that
12 working group, along with Jim Myers from the Office of State
13 and Tribal Programs, and we have had some very, very intense
14 meetings so far.

15 I'd like to sort of bring you up to speed on some
16 of the things that we've been looking at, because most of
17 these issues are very important to the states. This is a
18 huge, gigantic task and I think the working group finds it
19 very exciting and intimidating all at the same time.

20 We wanted to figure out the best way to approach
21 this, so rather than coming up with a program where we could
22 approach it from the top down, we decided to establish what
23 is necessary in the radioactive materials program, what is
24 the foundation or the base of this.

25 So we took a look at IMPEP and the IMPEP criteria

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1 for a radioactive materials program and CRCPD also produced
2 a document called the criteria for an adequate radiation
3 control program.

4 So we used those basic elements to sort of
5 establish what needs to be covered and then we took a look
6 at are we doing a good job doing that, is there any way we
7 can improve upon this.

8 So we looked at all those different criteria and
9 we sort of brainstormed about different ways we could be
10 approaching licensing, inspection, writing regulations and
11 things like that. So we came up with a bunch of ideas for
12 all these different subjects and then we took a look at our
13 options that we had brainstormed and we compared the
14 proposals or other options to NRC's strategic plan.

15 We looked at the strategic goal of nuclear
16 materials safety in the strategic plan and if things did not
17 match, they were rejected. If there were any ideas that we
18 felt would certainly not contribute to public health and
19 safety, those ideas were knocked out.

20 So the remaining ideas we evaluated, or
21 suggestions, we evaluated those against the current process.

22 So for example, we looked at licensing or we
23 looked at writing regulations and came up with a bunch of
24 ideas on how to better write regulations or how to better -
25 - or just ideas on how it could be accomplished.

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1 So we then compared these suggestions or options
2 against what we're doing now and then we weighed with they
3 would be better or worse than what we're doing now and came
4 up with some recommendations for each one of the basic needs
5 of a radiation program.

6 We ended up evaluating those suggestions against
7 the working group philosophy. We took a look at the options
8 and said does this proposal optimize resources of Federal,
9 state, professional and industrial organizations; does this
10 option account for individual agency needs and abilities;
11 does it promote consensus on regulatory priorities; does it
12 promote consistent exchange of information; does the option
13 harmonize regulatory approaches and does it recognize the
14 need for state and Federal flexibility.

15 So after we evaluated all those, we ended up with
16 a bunch of recommendations for consideration and then we
17 stepped back and said, well, what did we create here, what
18 do we have here so far, and we found some very interesting
19 attributes that are common among most of the recommendations
20 that we've sort of built up-to-date.

21 The common attributes of what we would consider to
22 be a national program would be to develop priorities
23 cooperative; states and NRC sitting down figuring out what
24 needs to be done and where should we direct our resources.
25 Increasing horizontal communication, not one group dictating

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1 to the other, but actually cooperatively working and trying
2 to establish priorities and that means talking to each
3 other.

4 Creating centers of experience or centers of
5 expertise, recognizing that states have an awful lot of
6 licensees out there and we're dealing with an awful lot of
7 things; maybe recognizing that sometimes states might have
8 more experience in an area and then going to those centers
9 of expertise and asking them for assistance.

10 We don't want to lose sight of current successes
11 in the program, the relationship that we currently have with
12 NRC and the states. We would like to reduce duplication of
13 efforts, no need for everybody to independently research a
14 new technology, but start sharing some of our ideas and
15 that's been working out with RADRAP a lot.

16 When you talk about sharing, you have to talk
17 about sharing responsibilities and sharing resources. This
18 is going to start to be the tricky area. Another option
19 that we would like to continue to use is using alternative
20 resources, such as consensus standards that are already out
21 there, and use those more effectively.

22 So this sounds all good and happy. We're all
23 going to be working together and cooperating and things and
24 this is going to be great, but this is really going to be a
25 problem, I think, for people in states and the NRC, as well.

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1 We're looking at changing attitudes here. We have
2 to change approaches, maybe changing procedures, getting
3 people to step up and say yes, I've got something to offer
4 and I'm willing to share it and getting NRC to say, you
5 know, maybe they could take the lead on this and let them
6 go.

7 We're seeing a lot of that happening with things
8 like industrial radiography certification and some of the GL
9 device rules. NRC did not try and go out and re-create the
10 wheel with the GL rule. They came to the states and said so
11 what are you guys doing and gathered information and went
12 forward from there.

13 I think that kind of effort saves everybody a lot
14 of time and money and effort.

15 We are thinking of -- the National Materials
16 Program Working Group is suggesting that we create a mini
17 little pilot experiment that we're going to perform at the
18 Organization of Agreement States meeting in Charleston,
19 South Carolina in October. This is a plug.

20 We want to see if we can actually come to the
21 table together and work on an issue. So there will be a
22 small pilot discussion going on there and we will see how
23 things work.

24 So sine I'm talking about the National Materials
25 Program, I also get to talk about compatibility of

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1 regulations, because that is a big component of a national
2 program.

3 Everybody here knows that when rules are
4 established, there are compatibility levels, A, B, C, D, NRC
5 and then health and safety. States tend to review these
6 rules based on the level of compatibility that issued. We
7 have an awful lot of stuff that we review, just like you
8 guys do, and so we get the volumes of mail and documents
9 inside NRC reviewed all the time.

10 We read all this stuff and try and keep with
11 everybody and all the other Federal agencies and when it
12 comes to looking at rules, we take it and we kind of have to
13 do triage on it. We say what have we got here; oh, gee,
14 compatibility level A, better take a look at it; it's a B,
15 better take a look at it; mostly C's and D's, okay, if we
16 get a chance, we'll take a look at it.

17 The same thing within the context of a rule, there
18 could be several different levels of compatibility and we
19 tend to focus most our attention on A's and B's, because
20 that's where we have to make changes.

21 We may have comments on some things that are
22 compatibility level C, and we may decide that it's not
23 really worth the time or effort. We may make a phone call
24 and discuss it with the staffer that's working on it, or we
25 might just say, well, if we get a chance, we'll issue this

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1 letter.

2 Our letters do have to go through management, just
3 like your letters do, too. So we kind of have to weigh all
4 the things that are going on in your state and determine
5 whether or not we have the time and effort to get out a
6 letter.

7 The problem that we have is when a compatibility
8 level changes after the rule has been out for comment and
9 the comment period closes and then the rule comes out again
10 with a different compatibility level. You can go down,
11 that's okay, but when the compatibility level changes from a
12 C to a B, that's when we have some problems.

13 In states, when we write regulations and we have a
14 big enough change in our regulations and we switch some
15 requirement, we are required to republish that rule for
16 comment again.

17 It has to go out to all the affected parties and I
18 know it really delays our process, but one of the options
19 that we might need to consider here is when compatibility
20 levels become more restrictive on states, it might be worth
21 coming back and asking for another comment period on it.

22 We recognize that you will continue to get
23 comments during the comment period and you may need to make
24 changes, but as equal partners and people who are required
25 to adopt essentially equivalent regulations, we need the

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1 opportunity to present our point of view on that particular
2 issue.

3 Some of these changes have had or may cause a big
4 impact on states. Obviously, the GL rule changes were based
5 on comments from the outside.

6 So the compatibility level for portions of the GL
7 rule went from C to B, which may, in some circumstances,
8 require states to establish a tracking system, which
9 requires FTEs, which requires resources. Now, many states
10 already have such a system in place, so it's not going to
11 affect all the states, but there may be some states out
12 there that actually don't have a system in place and now
13 they'll have to turn around and devote resources to this,
14 when they really weren't anticipating that, when it was a
15 compatibility level C. So it does have an impact on the
16 states.

17 The other rule that was changed was the medical
18 rule, that the training for physicians was changed from a
19 compatibility level C to a B. Many states did not comment
20 on the training requirements because they were compatibility
21 level C, but when they changed from a C to a B, states took
22 a hard look at it and said, wait a minute, we don't agree
23 with those, we thought that we could be more restrictive to
24 begin with, which is why we didn't comment, and now we're
25 looking at training.

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1 The biggest issue we have is with the I-131. The
2 number of abnormal occurrence reports for I-131 are this
3 high and the training requirement is this high. It's 80
4 hours. On the other hand, the number of AO reports for
5 diagnostic use is very low, but the training is very high.

6 So there seems to be some sort of a disconnect
7 there, either the 80 hours is too low or the 700 hours for
8 diagnostic is too high, but in any case, if most of your
9 reports are from I-131, and that's where the dose is and
10 that's where the AOs are coming from, we feel you need to
11 take a look at the 80 hours and see if that's really
12 realistic.

13 Could increasing training bring down some of those
14 abnormal occurrences or maybe we're just way off base on the
15 other side of things. So for compatibility in general, we
16 need to either -- oh, another problem is that states tend to
17 sometimes actually try and meet the three-year deadline and
18 take the proposed rule and actually start moving it along in
19 their process. So when you change compatibility, it messes
20 up everything and you have to start all over.

21 So how do we fix this? Maybe we look at the way
22 the compatibility categories are assigned originally. Do we
23 need to better describe the compatibility categories? Do we
24 need to better describe what it means by trans-boundary
25 implications? There are many that believe that the iodine-

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1 131 is not really a trans-boundary issue.

2 Physicians need to be licensed in every state that
3 they practice in. It should be no different for using
4 radioactive material.

5 On the other hand, it certainly makes things a lot
6 more consistent and a lot easier to approve authorized --
7 visiting authorized users if everybody has the same kind of
8 training.

9 We recognize that some comments may change
10 compatibility levels, especially when the compatibilities
11 become more restrictive, so in those cases, maybe opening up
12 the rule for another comment period. We recognize that that
13 delays the process, but it gives everybody a fair chance to
14 reassess their priorities and take another look at the rule,
15 that they might have passed over it because of time
16 conflicts.

17 And we mostly just wanted you to be aware of the
18 implications and the reasons why we get so hot when the
19 compatibility level changes.

20 And I think that's it.

21 MR. BAILEY: I think that concludes what we had to
22 say and we'd be happy to address any questions or comments
23 you have.

24 CHAIRMAN MESERVE: I'd like to thank you all for
25 some very helpful and informative presentations. It's not
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1 too often that we have people across the table from us who
2 suggest that we should expand our jurisdiction. So it's a
3 pleasant change.

4 Commissioner Dicus has indicated to me that she may have to
5 leave early, so I'm going to turn to her first.

6 COMMISSIONER DICUS: Thank you, Mr. Chairman. I
7 want to thank all of you for very clear and succinct
8 presentations to us. We appreciate that. And for clipping
9 right on along, too. We're running ahead of schedule, which
10 is good.

11 I appreciate all of the comments you've made and
12 particularly the kind words that OAS has said to us. If
13 you're not careful, you're going to lose your nickname of
14 disagreement states.

15 MR. BAILEY: I forgot to mention that.

16 COMMISSIONER DICUS: Yes. I thought you did, Ed.
17 I thought you would bring that up, for sure. And as the
18 Chairman said, I'm surprised you want us to expand our
19 jurisdiction.

20 I also encourage you to -- this concept that you
21 have that you want to try to get more active with Congress,
22 we certainly appreciate the support and we've used the help.
23 So I appreciate your trying to go forward with that.

24 In this expansion of perhaps our jurisdiction, how
25 do you feel if we were to expand to radiation producing

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1 machines? Do you have any thoughts on that?

2 MR. BAILEY: There was a politician who said one
3 time, some of my friends are for that and some of my friends
4 are against it, and I'm with my friends.

5 I think, to me, that's a much bigger battle than
6 just changing a few words in the Atomic Energy Act to say
7 radioactive material. There is another agency that has
8 Federal performance standards and has mammography quality
9 standards and so forth and are actively working in that area
10 and fairly uniformly and consistently across the nation.

11 On the other hand, I don't know of any other
12 Federal agency that is uniform and consistent across the
13 nation in dealing with the radioactive materials you don't
14 regulate. And I guess I can say that EPA is terribly split
15 up, has different standards for different things and the
16 standards put out by Washington are not necessarily adhered
17 to by the regions and on and on and on, and their usual
18 excuse is they have many different laws.

19 I hope NRC will try to make their regulations
20 consistent under basically one umbrella of laws. So you
21 won't have the excuse you've got these different laws.

22 COMMISSIONER DICUS: I know the discussion of
23 radiation producing machines surfaced in the possible
24 oversight of the DOE facilities.

25 Let me just go with one other question, and this

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1 is to CRCPD, that you're wanting to expand the development
2 of CRCPD guidance documents, I think is one of the goals,
3 one of the issues that's been brought up.

4 We are trying to, at the Federal level, under a
5 public law, to use voluntary consensus standards to the
6 extent possible in lieu of spending staff effort to develop
7 our own guidance documents.

8 I guess my question to you, is this concept of
9 developing more guidance documents or guidance documents
10 that you think are needed, are you also considering the use
11 of consensus standards where there is already guidance
12 there, being able to adopt that?

13 MR. SCHMIDT: There has been some discussion of
14 that particular topic. One of the things in our strategic
15 plan that we developed was to take a look at how we do our
16 processes, how we do our business, the use of standards,
17 things like that.

18 Since that plan was just passed, that's still in
19 the developmental phase. So we've got the basic goals and
20 objectives set down and now our job is to expand that
21 further, and I think that would be a good issue to add that
22 as we look at this in more detail.

23 COMMISSIONER DICUS: Okay. I would certainly
24 encourage that possibility, but where we are, we are all on
25 the issue of doing more with less. So to the extent that

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1 you can use consensus guidance and standards, that would be
2 useful.

3 Thank you, Mr. Chairman.

4 CHAIRMAN MESERVE: Thank you, Commissioner.
5 Commissioner Diaz.

6 COMMISSIONER DIAZ: Yes, Mr. Chairman. I also
7 would like to express my appreciation for you being here and
8 to share your thoughts. I think that there are two issues
9 in here. One is to expand the regulations and also to make
10 us stick to our compatibility levels.

11 But since I've been in the Commission, I like to
12 know that the Commission is aware of making an effort to
13 establish better communications and relations and this works
14 both ways. We appreciate you occasionally agree with us and
15 so I would like to take it from there.

16 Let's see, a couple of things. The reactor
17 oversight program was mentioned by both and when I had the
18 pleasure of going to CRCPD, I suggested that it might be
19 more to the reactor oversight program that can be gained by
20 even a one week review, and I really made a suggestion,
21 which I think is a valuable one, to have someone from NRR
22 come and sit with CRCPD and review it.

23 I think the same thing should apply to agreement
24 states. The issue is one that it's very close to us right
25 now and it's ongoing and there are many angles to it and I

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1 keep insisting that we made this system to be more stringent
2 and to be better than the old system.

3 I think that needs to be understood, that there's
4 really not a relaxation. So I would encourage you to
5 consider doing the same, if you're going to do it.

6 I got always interested in training and I notice
7 that you had a problem with the training and the basic
8 standards and so forth. Of course, we participate with you
9 on this issue.

10 Do you have a specific recommendation on the area
11 of training, Mr. Schmidt and Mr. Bailey, something that can
12 come up and say we know you worry, but is there something
13 specific that you propose in the matter?

14 MR. BAILEY: As Alice said, we haven't taken votes
15 on this, so I'm expressing what I have observed as an
16 opinion, which may not necessarily be my own.

17 But the decrease in NRC funding, training, travel,
18 per diem, and tuition has impacted a lot of agreement states
19 negatively. I'm sort of on the opposite of that, just
20 because of circumstances. When you said you were going to
21 quit funding training, I was able to go to our legislature
22 and say mean old Federal Government has done it to us again
23 and they gave me money in my budget to send people for
24 training and as a result, I've been able to get more people
25 in training courses.

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1 But other states have not been as fortunate as we
2 have. So it is still a very pressing issue among us and
3 most of the states getting training.

4 We are an aging organization, too, and we have a
5 lot of people retiring. In my own program, I will have
6 three people under me who will have retired in the period of
7 a year. And I didn't run them off. I mean, I'm not that
8 hard to work for.

9 So it's just that they've been around for 30 years
10 or more and I think that's occurring in a lot of state
11 programs. There's going to be a lot of need for additional
12 training.

13 And as I'm sure the Commission is aware, there are
14 fewer and fewer health physics college programs, there are
15 fewer nuclear engineering programs, and we are concerned
16 about where we're going to get people of the same caliber
17 that we were able to get a few years ago.

18 COMMISSIONER DIAZ: Like Commissioner Dicus said,
19 I think 31 letters to the Congress, especially co-signed by
20 the governor, will have a tremendous impact on what the
21 general budget and the fee rule will be in the next few
22 years.

23 One question regarding the issue of compatibility.
24 I know this is an issue that comes in many different ways,
25 and the issue of the Part 35. I think you know that we

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1 didn't do this lightly and that we had many, many meetings.
2 The Commission was visited by every possible organization
3 and only 80 hour rule is just really based on those that use
4 a single isotope, have not had any misadministrations.

5 I mean, it is the multiple uses, that people who
6 have many, many, many types of isotopes, that have failed to
7 follow a procedure and those are the ones that essentially
8 we believe require the larger number of hours. But a single
9 user, with a single isotope is quite more capable of doing
10 the right thing with fewer number of hours.

11 Do you have any comments on that, Ms. Allen?

12 MS. ALLEN: Sorry. A lot of different things
13 going through my head right now. One of the problems is
14 that not -- you're right, the number of users that are
15 specifically only to iodine are much lower than users of all
16 different kinds of uses, but I believe the way that the
17 proposed rule states, it's not -- it's just any liquid
18 therapy. It's not necessarily -- you're not assuming that
19 those people also use other things.

20 The problem is the potential for damage is so
21 great with iodine and there's still a tremendous number of
22 abnormal occurrence reports with iodine, and it may not be
23 from endocrinologists.

24 COMMISSIONER DIAZ: No, they're not. They are all
25 from large medical centers. That's what I have been told by

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1 the staff. Does anybody correct me on that now? And I'm
2 sure that Commissioner McGaffigan is about ready to jump
3 into that, so I'm sure he's going to go right back at it.
4 We are very concerned with compatibility and it's
5 always an issue and we realize that you're doing our job out
6 there and, in fact, we encourage you to get larger and
7 bigger, do it better, we'll have less to do and
8 compatibility will be less of an issue.

9 I think I've used my time.

10 CHAIRMAN MESERVE: Thank you. Commissioner
11 McGaffigan.

12 COMMISSIONER McGAFFIGAN: I hope that we can have
13 some extra time, so we had this scheduled for longer, for a
14 couple rounds, because I have several lines of questioning
15 to go through, if that's possible, and we only get these
16 folks once a year.

17 Just to echo what Commissioner Diaz said, the
18 endocrinologists made a compelling case to us that they were
19 not the source of the abnormal occurrence events and that we
20 would be impacting the practice of medicine if we were to go
21 from 80 hours to 700 hours, whatever, for them.

22 On the more general issue of changing
23 compatibility, I can only warn you, I suspect, in your own
24 states, commissions occasionally surprise staff. But when
25 we put out a rule for comment with a proposed compatibility

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1 category, that doesn't mean it's going to be the final
2 compatibility category.

3 So if you feel desperately that something we
4 propose as C should stay C, you better dust off the pen and
5 get that down and tell us why.

6 In the case of the iodine-131, we had a discussion
7 last year which included the head of the CRCPD, the
8 Committee 6, I believe, and so we fully knew what at least
9 the chair of that committee felt and yet we went ahead and
10 came to a different conclusion.

11 So it wasn't that we didn't know what the state
12 position was in that particular instance.

13 The other thing, just to stay on medical for a
14 moment, I hope the folks who work on medical regulations
15 also saw, or at least the CRCPD, what is it, SR6 committee,
16 noted our SRM, because there were other areas, other than
17 iodine training, where we had some problems with what the
18 states were proposing and we believe we've gone through a
19 pretty darn good process justifying the rule that we will
20 propound later this year.

21 There were several cases other than training where
22 the -- disposal of waste, released patients, things like
23 that, that we thought you were on the wrong track. So I
24 think our SRM urged you to use a transparent process and any
25 adoption of SR6 broadly, because there will be other areas

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1 where going to a total different standard from Part 35 is
2 going to be -- is going to just lead to a mishmash around
3 the country.

4 Do you have any comments?

5 MR. SCHMIDT: That's why I mentioned about NRC
6 involvement in our suggested regulations development. I
7 think that's an area where that would be especially
8 critical, so I think as long as that involvement is
9 occurring, I think we'll have all perspectives on the table.

10 COMMISSIONER MCGAFFIGAN: The other area I want to
11 explore, and it really comes from Mr. Bailey's slides, and
12 Ms. Rogers, this area of different types of radioactive
13 material being dealt with differently.

14 There's just a myriad of issues there. If you
15 take Part 40, where you mention, and I don't know whether
16 you were the person we dealt with or we dealt with your
17 agency, when some FUSRAP material from the Metcoa site, that
18 EPA was trying to finalize, went to WCS. We thought that
19 was a rational thing to do and there were similar materials
20 that had gone from a different site, but it had been labeled
21 exempt NORM, that was the same stuff, essentially.

22 One was FUSRAP, one was exempt NORM, and they both
23 ended up at WCS in a RCRA Subtitle C site. We worked that
24 out, but it was a case where you had rules on exempt NORM,
25 or at least the state of Texas did, and you had rules on

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1 something that looked like pre-1978 11.e.2 material, and we
2 -- as I say, we worked it out, but it's the same material
3 and the critical issue in many of these places around the
4 country -- we talked about this last year, Mr. Bailey was
5 here.

6 Many of the RCRA Subtitle C sites use 2,000 pico
7 curies per gram, which comes from a Department of
8 Transportation regulation, as the definition of exempt NORM,
9 which is a lot higher. Your viewgraphs were about landfills
10 and what people are putting in landfills and 150 pico curies
11 per gram in one state, 50 in another.

12 But a lot of states use 2,000 pico curies per gram
13 as the definition of what can go into a RCRA Subtitle C
14 site.

15 So how do we rationalize all this? Some of this
16 stuff is -- and then we've got -- you have a long list of
17 materials, Ms. Allen, that are NORM, and you left out coal
18 ash, which I think, especially given the note that you also
19 mentioned I think the uranium and thorium and radium and
20 coal ash is going to get more attention once the EPA radon,
21 the groundwater standards change.

22 Again, rationalizing all this is almost
23 impossible, because there's different doses implied. The
24 bottom line of my question is there's different doses
25 implied in all of these things.

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1 You can go, in a worst case instance, calculate
2 hundreds of millirem per year in some NORM exposures. In
3 our 500 parts per million exception for source material, you
4 can calculate, in some circumstances, doses far higher than
5 100 millirems. Yet, if we go and lower that, we will have,
6 I suspect, vast members of the mining industry in this
7 country writing us saying what the heck are you doing,
8 you're suddenly defining source material to be the stuff
9 that I'm digging out of the ground for a totally different
10 purpose.

11 So do you have -- we're struggling with this
12 stuff, honestly, because we -- and in my vote on the Part 40
13 thing, I called this a Swiss cheese approach to regulating.

14 I'm not sure whether we should plug one hole in a
15 piece of Swiss cheese if all the other holes are still
16 there. So one question.

17 CHAIRMAN MESERVE: Federal Congressional action in
18 this area. Let me follow on. With the thought that there
19 should be a comprehensive Federal re-do that gives us
20 jurisdiction over all materials.

21 MR. BAILEY: Basically, we don't have that, and so
22 we continue to try to make rules. What I think most
23 agreement states would like to see is a law similar to what
24 most agreement states have, which simply defines radioactive
25 material, and then in the law itself, in many cases, it will

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1 exempt certain levels of radioactive material.
2 For instance --

3 COMMISSIONER MCGAFFIGAN: How different are those
4 exemptions around the country? Is that two-thirds of 2,000
5 pico curies per gram in DOT? How do you define it state by
6 state?

7 MR. BAILEY: For the most part, I think they're
8 pretty compatible, because they primarily came out of the
9 licensing part of the suggested regs.

10 So those standards are fairly consistent. What
11 has not been consistent is how those regulations have been
12 applied to the naturally occurring stuff. For instance, if
13 we read the licensing standards, a little bitty bit of
14 radium gets you into a license situation.

15 So people have had to fudge around that and then
16 they fudged on the five pico curies per gram, which, again,
17 is one of those things that won't give you your less than
18 100 millirem, if you model it correctly, or you can model it
19 so that it will give you more.

20 I think the -- we face this problem, too. Every
21 day somebody comes up with something new. My latest one was
22 the community that's upset because in building a dam, they
23 sunk some wells for water to keep the blowing dust down. It
24 turned out that the groundwater had more than 50 pico curies
25 per liter of uranium in it.

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1 So all of a sudden, these people are worried
2 about, hey, what standard applies, what are you allowed to
3 dump on the ground. This is above drinking water. We don't
4 really have standards there and so we're always -- I have a
5 letter here that I really wanted -- would love to get your
6 name on it, it's got EPA's and ours and DOE's, but you all
7 are the regulator.

8 But they're talking about when you release
9 something, free release something, or you say it can go to a
10 RCRA site, do you compare it to local background or do you
11 compare it to national background or what's the standard for
12 saying it can go to a RCRA site.

13 I think most of the agencies have sort of flown by
14 the seat of their pants to some extent. We have pretty much
15 consistently looked it that disposal will not result in
16 greater than one millirem a year. Then we think, hey,
17 that's pretty good.

18 COMMISSIONER McGAFFIGAN: To whom, to somebody
19 else?

20 MR. BAILEY: To the maximally exposed individual.

21 COMMISSIONER McGAFFIGAN: To the worker at the
22 site.

23 MR. BAILEY: To the worker or any groundwater
24 modeling or modeling.

25 COMMISSIONER McGAFFIGAN: If there is an oil field

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1 in California, does it require a license from the state of
2 California --

3 MR. BAILEY: No.

4 COMMISSIONER McGAFFIGAN: -- for the NORM it
5 produces?

6 MR. BAILEY: No, it does not.

7 COMMISSIONER McGAFFIGAN: But that material, if
8 they were -- if it was Atomic Energy Act material, they
9 would require a license.

10 MR. BAILEY: Yes.

11 COMMISSIONER McGAFFIGAN: And so when they dispose
12 of the material at Button Willow, it is below the 2,000 pico
13 curie per gram limit that is in the Button Willow RCRA
14 Subtitle C license, they can -- that remains outside of
15 radioactive material space from the moment it's created in
16 the slag to the moment it's disposed of.

17 MR. BAILEY: That is historically true.

18 COMMISSIONER McGAFFIGAN: Is that true in most of
19 the states?

20 MR. BAILEY: I think that it is true in most of
21 the states. The Button Willow site actually predates the
22 RCRA and all that because it was initially set up to receive
23 all waste. The 2,000 pico curies per gram, we're not sure
24 if it really came out of DOT or if it was a number that
25 applicants latched onto. It is not consistently used in

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1 California for all sites.

2 It is on a few permits. We are now working with
3 the Department of Toxic Substance Control to look at what
4 would be a more appropriate number, so that truly stuff that
5 is low can go to a site like that and stuff that's higher
6 won't go.

7 COMMISSIONER McGAFFIGAN: Right. It strikes me
8 that it would be wonderful if there were a national standard
9 where you could say this is what can go to landfills and
10 have a number or maybe radionuclide specific numbers and
11 here is what can go to RCRA Subtitle C sites and with a
12 number and here is what has to go to a low level waste site,
13 and presumably everything above what we decided the first
14 two, and here is what has to go to a high level waste site,
15 things that are not low level waste.

16 It would be wonderful if we could divide the
17 world, and I'm not sure that those are the right terms even.
18 We might just call it radioactive material of type X, type
19 one can go to one hazardous landfill, type two goes to RCRA
20 or Subtitle C, type three goes to low level waste sites,
21 type four goes to high level waste sites, and we go through
22 a national rulemaking and get that straightened away.

23 MR. BAILEY: I would vote for that several times.
24 That would answer about 90 percent of these four pages of
25 questions, if we had such a standard that said here is how

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1 we divide it up.

2 COMMISSIONER McGAFFIGAN: Because I am impressed,
3 from Ms. Allen's slide that states in trying to figure out
4 what can go to hazardous landfills or making different
5 decisions, we see that. We see Maine making one decision
6 with regard to what Maine Yankee can do and we see Michigan
7 making a different decision with regard to what Consumer
8 Energy and Big Rock Point can do, and God knows what
9 California will do.

10 So it's quite perplexing. I'll leave it at that.

11 CHAIRMAN MESERVE: Commissioner Merrifield.

12 COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman.

13 I think I share the thoughts of my fellow Commissioners
14 about this being a good opportunity for us to dialogue on
15 these issues. It's a good opportunity and I appreciate you
16 coming today.

17 The first comment I want to make would be to Mr.
18 Schmidt and that's regarding Cavalier Challenge. I had an
19 opportunity to participate in that exercise and I would want
20 to reflect the other side of it and appreciate the strong
21 participation of states in that tabletop exercise. It was
22 very instructive for me. I know a lot of the other
23 participants felt very good about the work that the state of
24 Virginia did and the other participants, so I appreciate
25 your comments in that regard.

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1 Obviously, it's very pleasing to hear from Mr.
2 Bailey and others the recognition that we have a level of
3 expertise in this agency and it should be given the
4 authority to do more in terms of having consistent national
5 regulation of radiological materials.

6 I know this agency has tried in some efforts and,
7 in fact, we have sought legislation as it relates to
8 Superfund sites, as it relates to cleanups in general, to
9 have greater authority and have uniform authority in that
10 regard. Unfortunately, Congress has not chosen at this
11 point to give us that level of authority, but perhaps with
12 greater involvement on the part of the states in encouraging
13 that, we can get some additional help in that regard.

14 I'd make a similar comment about external
15 regulation of DOE. I personally believe that the NRC could
16 play a role, if Congress chose, in regulating those
17 facilities and it would be a productive one and not
18 additionally burdensome, but, again, that is indeed yet
19 another area which Congress currently has chosen not to.

20 I wanted to -- I did want to touch briefly, I
21 know, Ms. Rogers, you spoke a little bit about the issue of
22 pre-1978 freezwrap material. This is an area which has
23 taken some attention of this Commission over the course of
24 the last year.

25 From my own personal position, having reviewed the
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1 legislative materials and the different briefs that have
2 been provided to us by the various parties on that matter,
3 from my own conclusion, I believe it's a clear legislative
4 record, Congress was aware of what it was doing at that
5 point, and chose not to give this agency the authority over
6 those materials.

7 Now, having had some experience with -- you
8 mentioned EPA and how they had somehow -- how they had been
9 able to carve out and put some teeth in an area that
10 Congress hadn't specified. Having dealt with your
11 counterparts at the states who deal more frequently with the
12 EPA than you do, I would argue that perhaps following EPA's
13 lead of carving out authority where perhaps it doesn't exist
14 isn't necessarily the right way to go.

15 From my own part, I feel clear that if Congress
16 has a desire for us to regulate in an area, that we do it.
17 If Congress doesn't specifically outline that or indeed in
18 this case, it has the clear recognition it shouldn't do it,
19 we shouldn't enter into that area.

20 That's an authority Congress wished to give us.
21 As I know the Chairman has said previously, that's one that
22 we will take on and do well, but from my personal
23 standpoint, I think the record is clear that we don't have
24 the authority nor do I think we should overreach for it.

25 Mr. Bailey, I was interested in engaging you a
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1 little bit. You talked about your efforts regarding a
2 virtual office for OAS. One of the things that we are
3 attempting to do right now is do additional work relative to
4 our web site and try to be more interactive, try to have
5 better connections with agreement state offices.

6 I was wondering if you had had an opportunity to
7 work on that and review any of our web efforts at this point
8 and do you have some ideas perhaps where we can enhance the
9 ability through our web site to allow users to have access
10 to your state programs, as well.

11 MR. BAILEY: One thing that -- and I'll have to -
12 - first, I'll say yes. I've used the web site and the e-
13 mail system is a great step forward in communications over
14 regular mail and so forth.

15 But I will have to profess ignorance. I don't
16 know if you have linked to the state program.

17 MS. ALLEN: Not yet.

18 MR. BAILEY: But that would be one way that it
19 could be done. And for people who want to go to work in
20 another state, for instance, some of your licensees or
21 agreement state licensees who are not quite sure whether
22 Delaware is an agreement state or whether it's NRC
23 jurisdiction, it would be nice probably to have those kind
24 of links, where it would go to your region or it would go to
25 the state as appropriate.

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1 I think that would help.

2 COMMISSIONER MERRIFIELD: Let me just interrupt
3 for a second. When we had a recent stakeholder meeting
4 regarding the materials program, as suggested by
5 Commissioner Dicus, one of the things that was brought up
6 was the notion that we should provide some links so that
7 materials users who have -- who are in a number of states
8 would be able to link from our site into the agreement
9 states, so that they would be able to make comparisons over
10 how they would be regulated on a material by material basis.

11 It strikes me right now that perhaps we ought to
12 perhaps go one step further and make it very clear that, for
13 example, in our Office of State Program portion of the web
14 site, maybe we should have some links with your states so
15 that people can go through our web site and directly hook
16 into whether it's California, Illinois or Texas or Wisconsin
17 or otherwise. That may be a good way for us to hook up and
18 that may be something we need to further coordinate through
19 you all.

20 MR. BAILEY: Not all states have highly developed
21 web sites. I'm embarrassed to say we don't have much of one
22 right now, but we're working on it. Other states do have
23 highly developed web sites that provide a lot of good
24 information and are very user-friendly.

25 COMMISSIONER MERRIFIELD: I'm shocked that the

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1 state of California would not have a good web site.

2 MR. BAILEY: Don't ever try to research
3 regulations in California on the web.

4 COMMISSIONER MERRIFIELD: Okay. I'll take that
5 one. One other question I want to direct towards Ms. Allen.
6 We have grappled a lot, as you have, with where we're going
7 to go with the national materials program, the fact that
8 there are more agreement states and fewer material licensees
9 that we have.

10 It strikes me, however, that when you look at the
11 language in the Atomic Energy Act, which calls for the
12 creation of the agreement state program, there was the
13 feeling there in Congress that there should be a baseline
14 national program, but there should be an opportunity to flow
15 through to the states through that.

16 We have -- and I'm very proud in saying this -- we
17 have a very talented group of people here and not to take
18 away from the tremendous talents that are available in the
19 states, as well. But in one place, we have more expertise
20 on materials uses than any other agency in the world in the
21 NRC.

22 So it would be a shame as we go down the road,
23 whether we're left with no materials licensees or maybe a
24 handful of states, to lose that expertise. So how do we --
25 looking with that kind of view in mind, how do we -- what

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1 are some of your views about how we evolve, assuming there
2 are going to be more agreement states, but still retain the
3 tremendous level of expertise and knowledge that we have
4 here at the agency, but yet take advantage of what the
5 states have, as well?

6 MS. ALLEN: That is a real challenge for you.
7 With Oklahoma going agreement, how many well logging
8 licensees would you have in the remaining states? Probably
9 not very many, maybe one or two left, if any. I mean once
10 Oklahoma signs their agreement.

11 So how do you -- the question is then how do you
12 maintain the level of expertise dealing with that particular
13 aspect of licensing, well logging, regulation, licensing,
14 inspection of those types of facilities. Without having any
15 jurisdiction, you don't go out and do the inspections, you
16 don't do the licensing.

17 So that part of your knowledge base will end up
18 atrophying. So either you maintain that level of expertise
19 by participating with those states that actually do have
20 those licensees and cooperatively writing those regulations.
21 For example, Texas may say we really have this issue that we
22 need to deal with and you step in and assist with that or
23 participate in it to maintain that level of expertise.

24 We talked about -- within the working group, we
25 talked about may some sort of sharing of resources for

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1 inspections or licensing, just because our state boundary
2 ends at the Mississippi River doesn't mean that maybe, if Ed
3 had a sealed source device that needed to be evaluated and
4 we had experience doing one of those, that he couldn't have
5 us, have the Illinois program, for example, do that review,
6 where they would still maintain the jurisdiction, but we had
7 the expertise in that particular device area.

8 The problem is trying to grasp a way to create a
9 partnership and a working relationship so that those
10 resources can actually be shared and it can't be we're
11 telling you what to do or you telling us what to do. It has
12 to be somehow all 32 states and also regions of NRC all kind
13 of sitting down saying who has what, who can help with what.

14 The problem is as you lose more and more
15 licensees, your role gets smaller and smaller in that
16 framework almost, because you don't have those types of
17 licensees anymore, so it's hard to keep up that level of
18 expertise.

19 We're looking for answers ourselves on the working
20 group, how to maintain that.

21 COMMISSIONER MERRIFIELD: You picked up Oklahoma
22 as an excellent example. The counter-example is obviously
23 with the medical uses, where we have significant
24 involvement. So it goes both ways. One of the ideas that
25 has been out there is perhaps we ought to think about

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1 collocating some of our staff at state offices.

2 That was an idea that was provided to me a while
3 back. Maybe rather than being solely here in D.C., maybe we
4 ought to think about putting some people out in the field
5 with your folks to gain some of that expertise, as well.

6 MS. ALLEN: There is one more suggestion. Should
7 NRC have jurisdiction over DOE or regulatory authority over
8 DOE? That opens a whole world of experience to you and you
9 can maintain your level of expertise that you've already
10 got.

11 MR. BAILEY: I would second that. I think the
12 last time I was here, I was very much for the states
13 regulating DOE and we could do it and we could do the
14 accelerator portion, which I'm sorry Commissioner Dicus
15 left.

16 But from a personal standpoint, I would be
17 willing, from my position or my state's position to be we
18 don't want to regulate DOE if NRC will do it, because it
19 would allow that big base of uses or radioactive material.

20 Hopefully they will continue to be somewhere on
21 the cutting edge of doing things and it would -- it opens up
22 a whole big area for your regulation. It would take a lot
23 of people to do it and we could all benefit from it.

24 We were talking about possibly regulating Lawrence
25 Livermore. Lawrence Livermore approached us about it and I
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1 said, well, you know, the first thing we'd have to do is we
2 would have to have a lot of training to regulate Lawrence
3 Livermore, because you all do things we don't see everyday.

4 But that we saw as a big benefit that we could
5 have people there who are getting training.

6 We're doing an internship program right now where
7 we send out our newly hired people to go to broad licensees
8 and work at those broad licensees, because we just want them
9 to sort of get their nose bloodied and maybe pick up another
10 rem on their film badge, which they probably won't do
11 working for us, and those kinds of things that we've got to
12 really do if we're going to continue to maintain the level
13 of expertise.

14 COMMISSIONER MERRIFIELD: I appreciate it. Mr.
15 Chairman, I, like Commissioner McGaffigan, I've got some
16 other issues I would like to come back to. I would say, as
17 a final comment on this round, I know we, with you, are
18 struggling with where are we going to go with our materials
19 program.

20 We've got qualified, great people. We know we
21 have a role. What is that going to look like in the future,
22 even if all states decided to become agreement states? I
23 think there is going to be a nucleus of a program there and
24 we view it that we all need to figure out what that is going
25 to look like.

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1 Mr. Chairman.

2 CHAIRMAN MESERVE: Thank you. I would like to
3 follow up on a couple of points that you've raised, as well.
4 You indicated that there is a problem that you're seeing on
5 the harmonization of the D&D rule with whatever efforts we
6 decide to undertake with regard to the clearance rule.
7 As I'm sure you know, our D&D rule would allow up to 25
8 millirem limit for an average member of the critical group
9 for unrestricted release, whereas the ANSI standard and some
10 of the international efforts with regard to clearance rule
11 are talking about a one millirem dose limit for release.

12 I'm curious as to when you say you want to have
13 them harmonized, do you think that those should be the same
14 number; if so, is there some other way they should be
15 harmonized? What exactly are you asking us to do?

16 MR. BAILEY: I wish I knew exactly what I was
17 asking you. What I'm seeing are situations where a facility
18 is cleared, in this particular case that I'm thinking of
19 right now, by agreement before the 25 millirem was adopted.
20 We went to 15 millirem for this facility and we released the
21 facility.

22 As soon as the facility then wants to take that
23 material off-site, which is perceived by some people then as
24 being too high a dose to go off site, and quite frankly,
25 it's getting wound into the clearance rule which is touted

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1 as a recycling rule.

2 Now, if there was some way that the recycling
3 element could be given one dose level and, as was suggested,
4 this -- some lower dose level, I mean, some higher dose
5 level than the one mentioned, to go for alternate methods of
6 disposal.

7 We have historically used these alternate methods
8 of disposal to get rid of a lot of low activity waste that
9 may contain other hazardous materials and we're at the point
10 now that there are groups out there that if there is
11 anything measurable above background coming out of a nuclear
12 facility, they don't want it to go anywhere, including to go
13 to a RCRA site.

14 So if you can, in doing clearance rule, make clear
15 what's for recycling and what you do with the stuff in
16 between the 25 millirem that you can leave on site and what
17 you can do with structural material, concrete is being
18 recycled to beat the band. It's one of the things that the
19 waste disposal sites can get credit on reducing the amount
20 of waste, because you can recycle concrete pretty easily.

21 Dirt, as Alice mentioned, releasing dirt at 25
22 millirem may not be acceptable if that dirt is going to be
23 recycled for school yard sandboxes.

24 So that's what I was trying to get at, is that
25 make it clear that, okay, this is released for unrestricted

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1 use and I think all of us have always felt that once you did
2 that, the owner or user could virtually do anything they
3 wanted to with that property or that equipment, and we're
4 seeing that changing now.

5 CHAIRMAN MESERVE: That's helpful. How frequently
6 are you seeing the situation, however, where somebody has
7 terminated a license for unrestricted release and then they
8 are subsequently coming in deciding, for one reason or
9 another, they want to move material for disposal? I don't
10 quite understand the context in which someone would want to
11 do that.

12 MR. BAILEY: I'll give you a very specific
13 example, and I think it will serve as something that could
14 occur. There are two areas where it occurs. This
15 particular one that we're involved in right now is a sodium
16 burn pit where they took the sodium out of the sodium cooled
17 reactor and burned it.

18 That wasn't the only thing that was burned there.
19 It was early '50s, late '40s. So that the dirt there is
20 contaminated with other hazardous materials.

21 We feel that the they have removed the radioactive
22 contaminated material, they still have dirt contaminated
23 with hazardous materials, and, yes, you can measure some
24 radioactivity in that dirt.

25 The other place that it occurs is where you have
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1 structural steel, where you release a building that meets
2 the 25 millirem dose modeling and then somebody wants to go
3 in and recycle that steel.

4 It may be this year, it may be immediately or it
5 may be year from now or five years from now, same thing
6 with concrete and wood debris.

7 We've run into it with portable buildings, where
8 they were surveyed out, they were hauled off site, given to
9 schools and this sort of thing, and DOE just paid \$120,000
10 to a school district to reimburse them for the costs that
11 they supposedly were out by accepting these free buildings.

12 And these stories go on and on, where it would
13 really be nice if I could walk into a meeting or you could
14 walk into a meeting and say this is the level that's set for
15 release and once, for this type of release and this is the
16 level set for another.

17 Then people can argue about it, well, is that dose
18 appropriate, but at least you've got something in
19 regulations, that a licensee and we as regulators can say
20 yes, we're meeting the regulation.

21 CHAIRMAN MESERVE: That creates, as I'm sure you
22 appreciate, a regulatory problem in that the whole point of
23 your releasing the site is to terminate the license, so
24 you've lost your legal grip on that licensee and what he
25 does subsequently and then to then go in and say for moving

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1 material, that now we're going to impose an additional
2 constraint on you.

3 That creates some problems for both of us.

4 MR. BAILEY: And it's even worse when it's DOE's
5 material on state licensed land that they just took out of
6 their jurisdiction and put it on land that was covered under
7 a state license and somebody measures it a few years later
8 and it's there, and it's still DOE's material.

9 CHAIRMAN MESERVE: Ms. Allen, I appreciated your
10 presentation. I would be curious as to when you anticipate
11 this working group is going to complete its work and whether
12 there will be a product for us, for all of you, as well.

13 MS. ALLEN: I think the SRM says that we have to
14 have our product to you a year from now.

15 CHAIRMAN MESERVE: Are you on schedule?

16 MS. ALLEN: We are working as hard as we can to
17 keep on schedule. We are anticipating to have something out
18 for public comment sometime around November-December
19 timeframe and then wrapping that up early 2001, so that the
20 suggestions can go to the Commission and meet your deadline.

21 I think we're pretty much on track. We have a lot
22 of good ideas. Now we're trying to actually figure out the
23 structure of this and the pros and cons and different
24 suggestions for structuring a national program and who
25 should play what role.

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1 CHAIRMAN MESERVE: Are you seeing differences
2 among the states on what approach to take? Is this
3 something that there is agreement among the disagreement
4 states on or is it too early to say?

5 MS. ALLEN: I think it's too early to say. We had
6 a poster session at the CRCPD meeting where we tried to get
7 people involved in the process. It was very difficult to
8 get concrete comments from people because we didn't have any
9 concrete stuff out there for them to look at.

10 At this point or up until now, it's been kind of
11 nebulous. There's supposed to be a national program. Well,
12 how does that affect me directly? We're to the point now
13 where we're starting to identify what kind of changes would
14 need to be made in procedures and thought processes and just
15 attitudes in general so that we want to start talking to
16 states and getting some more feedback from them, now that we
17 have something a little bit more concrete.

18 Actually, our first step is to meet with the
19 steering committee tomorrow and let them know sort of what's
20 been going on and hopefully they will be able to give us
21 some recommendations or suggestions on how best to approach
22 NRC and states and trying to start this buy-in process or
23 this understanding of where we're trying to go.

24 It's all motherhood and apple pie so far, you
25 know, we should work together, we should cooperatively

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1 develop things, but now we're to the point where we're
2 actually coming up with how this is supposed to be done and
3 now you're affecting resources and now the questions are
4 start being asked.

5 CHAIRMAN MESERVE: I have a follow-on question on
6 your comments that you made about compatibility. When you
7 were talking about the problems you confront with the range
8 of nuclear materials and the different authorities, there
9 was expressed the view that there is great benefit of there
10 being uniformity and that NRC having jurisdiction over that
11 materials and setting some common standards that would link
12 all these similar materials or those similar radiological
13 hazards with each other would be a helpful advance, and I
14 certainly think that's a logical point that's absolutely
15 clear that that would be a very significant advance and, no
16 doubt, a great procedural aid to all of us.

17 It seems to me that it would encourage us to be
18 more stringent in our compatibility requirements than we
19 have been in the past and I'm not sure that's the point you
20 wanted to make, but I would ask.

21 MS. ALLEN: I'm looking over my slides. I don't
22 see that on there.

23 CHAIRMAN MESERVE: That's a logical follow-on.

24 MS. ALLEN: We want to create more -- you're
25 right. You want things to be fairly uniform. I used to be
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1 a licensee, so I understand how difficult it is to keep up
2 with slightly different versions of the same regulation from
3 state to state. It's very difficult shipping
4 materials and making sure that we've met all the obligations
5 of the different states.

6 ON the other hand, now being from the state side,
7 there are some issues within states where we cannot adopt
8 exactly word for word the language that NRC provides. There
9 are other conflicting regulations within the state. There
10 are other programs within the state.

11 If you're looking at ways of ensuring patient
12 safety and for medical use of material, many states have
13 adopted a procedure where they or a process where they
14 regulate the technologists, make sure they are up to date
15 with the training and experience, because those are the
16 individuals actually administering the doses in most cases.

17 So we may say, well, we think that we're
18 addressing safety this way, you may not have the authority
19 or the ability to affect the same types of ways of
20 addressing the safety issues. So we're going to naturally
21 be different on some of those areas.

22 SI think the best way to try and get us to try and
23 be more uniform or harmonized is making everybody equal
24 partners at the table when the regulations are actually
25 developed, when they're discussed at the beginning.

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1 We're seeing a lot of it -- I mean, the Part 35
2 rulemaking process was great. It was a very good start. No
3 longer are the states waiting for an advanced draft of a
4 proposed rule, where we have 30 days to get our comments in
5 before it goes out for public comment.

6 You're bringing people in at the early process, at
7 the early stages, and actually sitting down and hashing
8 things out. With 31 or 32 agreement states and four
9 regions, we're never all going to agree on everything, but
10 this process of discussion and opening up the rulemaking
11 process helps a lot.

12 Flow things down, but I think it ends up -- and
13 it's also more expensive because of the public outreach
14 portion of it, but I think it actually makes for a better
15 rule in the end and part of the training is getting people
16 to understand you're not going to win them all, but we have
17 to figure out where to pick our fights.

18 CHAIRMAN MESERVE: I think we have time for a few
19 more questions. Commissioner Diaz.

20 COMMISSIONER DIAZ: Yes. Thank you, Mr. Chairman.
21 I think we have seen the interest of the Commission in
22 trying to see how we can work with you in resolving a few of
23 these outstanding issues that keep surfacing all the time.

24 Mr. Bailey, going to the slides that you labeled
25 regulations and procedures, I was quite taken by them and
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1 especially with the use of the word same.

2 MR. BAILEY: I've already been chastised for that.

3 COMMISSIONER DIAZ: At the risk of incurring the
4 ire of the staff, there is another way that you can get this
5 Commission to reply to issues and that is that a letter to
6 the Commission from the Organization of Agreement States
7 that clearly states what the problems that you see in
8 regulations and procedures are, and even when you have
9 consensus on suggested solutions, it would actually generate
10 a response which the Chairman would sign and we all would
11 take a look at it.

12 But it's another way in which the issue will be
13 refocused and I know there is correspondence, you have
14 statements on these issues, there are many things. But to
15 capture them maybe in a brief document that articulates what
16 you mean by these problems would definitely be of benefit
17 and I would encourage you to do so.

18 CHAIRMAN MESERVE: Commissioner McGaffigan.

19 COMMISSIONER McGAFFIGAN: Let me just go through a
20 couple things. Mr. Bailey, and if this is burdensome, don't
21 do it, but the definition of radioactive material state by
22 state, either you are CRCPD, could you sort of send out an
23 e-mail and get an answer as to what the differences are in
24 the definitions state by state?

25 MR. BAILEY: Yes. I don't think that it will be

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1 difficult, because I think, for the most part, they all use
2 the same one.

3 COMMISSIONER DIAZ: And include it in the letter.

4 COMMISSIONER McGAFFIGAN: The letter you mentioned
5 from EPA, they had an EPA signature, lots of signatures on
6 it, you were looking for ours. Do you want to get us a copy
7 of that for the record?

8 MR. BAILEY: It's actually from one of the U.S.
9 Senators. He is concerned about how we release things and
10 how we differentiate between recycling and on and on and on
11 and on. I would be more than happy to give it to you.

12 COMMISSIONER McGAFFIGAN: It's a letter to you and
13 EPA from a Senator rather than one --

14 MR. BAILEY: Right.

15 COMMISSIONER McGAFFIGAN: It happened to be not an
16 addressee. Why don't you keep that one? If we're outside
17 the radar screen.

18 MR. BAILEY: One of the things about helping NRC -

19 -

20 COMMISSIONER McGAFFIGAN: I was kind of interested
21 in the answer.

22 MR. BAILEY: We were going to help you with
23 visibility here, that you were left off.

24 COMMISSIONER McGAFFIGAN: Okay. Get serious. The
25 issue of you going through the sodium pit that you face, it

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1 strikes me that that sodium pit is unlikely to be much
2 hotter than some, say, coal ash piles that you have in your
3 state or oil and gas facilities that you have in your state,
4 and yet you don't get the same questions on those.

5 The recycle of concrete. Coal ash is encouraged
6 by EPA regulation to be used in Federal buildings and it's
7 rational, you know, compared to the granite, and I'm not
8 trying to run down the granite industry, compared to the
9 granite, it is relatively cool. It's high quality, highly
10 radioactive.

11 It's relatively cool. We have calculated that the
12 people who work in the Library of Congress get 100 millirems
13 a year because they live in a granite -- they work in a
14 granite-filled building. Why the difference? Why do they
15 bug you about the sodium pit and they don't bug you about
16 the coal ash? I assume you have some coal-fired plants in
17 California. They don't bug you about the coal ash.

18 MR. BAILEY: I don't think we have any coal-fired.
19

20 COMMISSIONER McGAFFIGAN: Well, we have them in
21 Illinois.

22 MR. BAILEY: We try to produce our energy, the
23 dirty energy outside the state and bring it in, and ship our
24 waste out, and I guess that's what really offended us about
25 the waste coming from New York.

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1 The reason is, in my opinion, that things nuclear
2 and things associated with the bomb spell out a very vocal
3 opposition. California was blessed or whatever with having
4 a large number of DOE labs and corporations that
5 historically have been involved in the nuclear energy,
6 General Atomics, . Rocketdyne, and GE Vallecitos, on and on
7 and on.

8 There is, I think, a very strong opposition to
9 those industries and to DOE.

10 COMMISSIONER MCGAFFIGAN: Let me mention one last
11 thing. It's a coming attraction where you all I think are
12 going to need to be involved. We have a paper that will
13 soon be public about the ST-1, our effort to work with the
14 Department of Transportation to develop transportation
15 regulations compatible with the IEAE ST-1 standard that came
16 out in '95. And it has a bunch of issues that we have to
17 grapple with, including a revised definition of radioactive
18 material, which, if DOT adopts, will have profound impact
19 for oil and gas sector, the coal sector, and not directly,
20 although even directly.

21 I mean, we've had a staffer testify to us that
22 coal meets the definition or coal before it's burned, before
23 it's concentrated and the carbon is burned off, coal could
24 meet this definition of radioactive material in the IAEA
25 radionuclide specific standards, radionuclide specific

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1 definition.

2 Yet there is a provision for the coal that says
3 you can go to up to ten times the standard in bulk quantity,
4 but it means that people are actually going to have to go
5 and measure am I -- where am I relative to the standard, if
6 it's adopted.

7 Now, we sent a letter in 1996, Jim Taylor, the former EDO,
8 expressing strong opposition on the part of the U.S. and I
9 understand states did play in the run-up to the ST-1
10 standard, at least some state agencies played, as DOT had
11 meetings, but it's a fairly profound rulemaking that we're
12 about to undertake and it's going to take a few years and
13 DOT is doing a parallel rulemaking.

14 But I think the one -- there's lots of things that
15 may be of interest to you, but the definition of radioactive
16 material that comes out of the ST-1 standard which will be
17 yet a new definition, to confuse and confound folks, is one
18 that you may want to pay close attention to.

19 MR. BAILEY: Thank you.

20 CHAIRMAN MESERVE: Commissioner Merrifield.

21 COMMISSIONER MERRIFIELD: Just a couple of
22 comments. One, Ms. Allen, Alaska isn't an agreement state
23 yet, so we still have plenty of oil and gas work we're doing
24 up there. So I think those skills will soon be honed.

25 But on a more serious note, as you all are going

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1 through your efforts, I worked up on Capitol Hill for some
2 years and spent a lot of time trying to devolve EPA
3 programs, not a successful as I or my boss would hope that
4 effort would have been, but there is -- I think we
5 collectively, the NRC and the agreement states, could sit
6 around a room and come up with some idea about what future
7 national materials program would look like. But I think we
8 all collectively need to recognize that Congress has a very
9 strong interest in that and that what we think around the
10 table might be the best idea, you might not necessarily have
11 the buy-in from the folks who oversee us in Congress.

12 So as you move forward with that, I know there's a
13 lot of -- I know the states have been very aggressive in
14 terrific programs in a variety of areas, Congress has not
15 always bought in on the level of authority that the states
16 would like to have.

17 I know relative to the Superfund program I used to
18 work on, we envision a program in which the states could be
19 authorized to run those programs. EPA and a number of their
20 supporters in Congress felt it should be a delegated program
21 and you all know the difference between the two is
22 significant.

23 There is an underlying interest, continuing strong
24 feeling within many in Congress as to the difference in the
25 need for strong Federal programs. So I think we all need to

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1 be mindful of that.

2 Mr. Bailey, you made a mention of an issue of
3 retirements of your personnel and replacement. I think this
4 is an area -- there's actually two areas I think where we
5 have a continuing mutual interest in working together, that
6 being one of them.

7 I think collectively we have a problem with future
8 staff, having individuals coming out of our nation's
9 schools to replace the quality workforce that we have now.
10 And I think to the extent that we can continue to work
11 together on that and working with the schools and others and
12 maybe perhaps trying to identify some solutions is an area I
13 think it would be productive for all of us to talk about.

14 The other one I would posit for you all to
15 consider, and as well as CRCPD, is the issue of
16 communication and education. We at this agency, and I've
17 commented on this previously, have a longstanding -- well,
18 we're sort of a Maytag repairman sometimes in terms of the
19 way in which we portray materials.

20 Because of our split from the Department of Energy
21 as a result of the 1975 act, typically we, in order -- we
22 avoid anything that even smacks of being promotional and I
23 think sometimes we have erred too much on the side of
24 caution in that regard.

25 I think there is, as you all mentioned, I think

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1 there is a lot of misunderstanding among many members of the
2 American public as to what these radioactive materials are,
3 how they're utilized, why they're important in our lives and
4 why we should understand them.

5 I think we as an agency, the same as you all,
6 collectively have a duty to be educational and I think
7 that's something we all ought to think about; are there
8 things, whether it's through our web sites or through other
9 publications or activities, are there ways in which we can
10 collectively provide accurate information to students or
11 general members of the public to let them know what these
12 materials are all about and what they really mean, because I
13 think we all collectively have not done as good a job on
14 that as we should and I think some of that public
15 misinformation out there is because we have failed to do the
16 duty that I think we have to provide greater communication
17 and education, truthful information to the American public.

18 But I'd leave -- I don't know if you have any
19 comments on that, but those are two areas I thought we could
20 collectively work on in the future.

21 MR. BAILEY: I would certainly agree with that and
22 when we go to public meetings, I think many of us who grew
23 up sort of in a scientific engineering type background are a
24 little taken with sort of the cavalier statements that are
25 made that we know are not true, and there are really no --

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1 there doesn't seem to be a way to counteract some of those
2 statements.

3 I, too, wish there was some way we could get
4 across to the public that - and I don't know and I think
5 there are a lot of people out there that are trying to do
6 that.

7 In that respect, I think it was too bad that AEC
8 was split up, because there was a lot of money that went out
9 to educational programs.

10 A lot of us, the first introduction were pamphlets
11 that we got from Oak Ridge that talked about radioisotopes
12 in agriculture, and I actually finally got to see it in
13 California, but there were a lot of those pamphlets, and
14 none of us do that anymore.

15 MS. ALLEN: There are some states that actually do
16 take a very active role in trying to educate the public and
17 the efforts of the Health Physics Society in trying to train
18 teachers, science teachers in radiation protection or health
19 physics in general. There are people out there or groups out
20 there trying to get this done and maybe it's just increasing
21 our awareness of their existence and supporting their
22 efforts might be of benefit.

23 The Health Physics Society has been trying to make
24 great strides in doing that.

25 COMMISSIONER MERRIFIELD: I think perhaps

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1 coordinating and sharing that information. I think it's
2 important that we not stray beyond the line of not being
3 promotional, but that doesn't mean we can't explain what a
4 nuclear power plant is and how it works. That doesn't mean
5 we can't explain what source materials are and what they do,
6 how they're used in the construction industry, the oil
7 industry or otherwise.

8 That's factual information that would be useful to
9 the public and it would demystify and perhaps clarify some
10 of the misperceptions out there of what these materials are
11 and what they mean.

12 MS. ALLEN: We'll be happy to share some of the
13 pamphlets that the Illinois Department of Nuclear Safety has
14 produced as far as public information on what radiation is.

15 MR. BAILEY: I think you sort of hit on something.
16 We tend to make this more complicated than it is. It's not
17 your fault, it's not anyone's fault, except some Congressmen
18 who were around a long time ago.

19 But why we ever had to come out with source,
20 special nuclear byproduct material and all of those things,
21 it just confuses people. Why the waste characterization is
22 like it is, it's a perfect thing for someone to latch onto.
23 Low level waste is everything that isn't this.

24 COMMISSIONER McGAFFIGAN: It wasn't the
25 Congressman or Senator. It was the staff.

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1 CHAIRMAN MESERVE: I just have one area I'd like
2 to follow up on and it's with some trepidation that I
3 mention it. It's that, Mr. Schmidt, you had indicated in
4 your comments, you empathize with the NRC as we deliberate
5 the use of KI. I guess I would understand and appreciate
6 that whatever activities are undertaken, that you would
7 believe that the NRC should provide funding contributions
8 to.

9 I guess the question I have is whether -- and
10 this, I think, may reflect history that I don't know,
11 because I wasn't on the Commission. Have the states taken a
12 position on whether they favor regional or local stockpiles?
13 If you don't know, that's fine.

14 MR. SCHMIDT: The states have varying positions.
15 I know looking at our position of our E-6 committee, just to
16 refer to one point of view, that really takes a position
17 that really argues against KI stockpiling at all. That's
18 really the position, this group feels that KI stockpiling is
19 not the most prudent approach for protection of the public,
20 that the more prudent approach is evacuation, possibly
21 sheltering, but not necessarily KI stockpiling.

22 So there is that view to deal with, but as to
23 actually states that might consider this in a more positive
24 manner, I don't know the answer to that specific one.

25 CHAIRMAN MESERVE: I understand. I think we've

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1 reached the end of our appointed time. I would like to
2 thank you very much for your participation. This is
3 extraordinarily helpful and we very much appreciated your
4 time you spent with us and it was informative for us.

5 MR. BAILEY: We appreciate your time and I think
6 this I can do on behalf of all four states without polling
7 them, that any time you're in our state, we'd be happy to
8 have you come by and see us.

9 CHAIRMAN MESERVE: Thank you very much. We're
10 adjourned.

11 [Whereupon, at 11:36 a.m., the meeting was
12 concluded.]
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