

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 OFFICE OF THE SECRETARY  
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5 MEETING ON THE STATUS OF THE FUEL CYCLE  
6 FACILITY OVERSIGHT PROGRAM REVISION  
7  
8

9 Nuclear Regulatory Commission  
10 One White Flint North  
11 11555 Rockville Pike  
12 Rockville, Maryland  
13

14 Wednesday, December 20, 2000  
15

16 The above-entitled meeting was commenced, pursuant  
17 to notice, at 9:30 a.m., the Honorable RICHARD A. MESERVE,  
18 Chairman of the Commission, presiding.  
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20 COMMISSIONERS PRESENT:

21 RICHARD A. MESERVE, Chairman  
22 GRETA J. DICUS, Member of the Commission  
23 EDWARD McGAFFIGAN, JR., Member of the Commission  
24 JEFFREY S. MERRIFIELD, Member of the Commission  
25

1 APPEARANCES:

- 2 DR. WILLIAM TRAVERS, NRC
- 3 MR. MICHAEL WEBER, NRC
- 4 MR. WALTER SCHWINK, NRC
- 5 MR. PATRICK CASTLEMAN, NRC
- 6 MR. MARVIN FERTEL, Nuclear Energy Institute
- 7 MR. DAVID LOCHBAUM, Union of Concerned Scientists
- 8 MR. RANDALL DEVAULT, Department of Energy
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## P R O C E E D I N G S

[9:30 a.m.]

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3 CHAIRMAN MESERVE: Good morning. Our session  
4 today is to have a meeting on the status of the fuel cycle  
5 facility oversight program revision.

6 As I'm sure everyone in the room is aware, we have  
7 had a very major activity in connection with revision of the  
8 oversight program in connection with reactors, in an effort  
9 to have a greater focus in our oversight program on  
10 risk-related issues, but also to improve both the  
11 objectivity and transparency of the program.

12 Our briefing today is on efforts to make progress  
13 in a similar fashion with regard to the fuels facilities.

14 We have two briefings this morning, two panels,  
15 and first we'll hear from the staff.

16 Dr. Travers?

17 DR. TRAVERS: Good morning, Mr. Chairman,  
18 Commissioners.

19 As you indicated, we're here to provide the  
20 Commission with the status of the ongoing work that the  
21 staff has been involved in to evaluate improvements to the  
22 oversight program for fuel cycle facilities.

23 As you know, there has been considerable activity  
24 in the fuel cycle program recently, most notably the  
25 promulgation of a revised Part 70.

1           Our efforts to develop a new oversight program for  
2 fuel cycle facilities is intended to build upon the new Part  
3 70 and the existing oversight program to provide a more  
4 risk-informed approach for our inspection and performance  
5 assessment activities.

6           While the existing oversight program is  
7 fundamentally sound, we believe -- we do think there are  
8 improvements which should be considered, and to do this, the  
9 staff has been meeting with NEI, industry representatives,  
10 and other stakeholders to develop an oversight program that  
11 is, in many ways, modeled after the recently implemented  
12 reactor oversight program.

13           As you will hear today, progress has been made in  
14 this effort, but more work is needed, we believe, and the  
15 staff intends to continue our efforts in concert with  
16 internal and external stakeholders.

17           With me at the table today are Carl Paperiello,  
18 Deputy Executive Director for Materials Research, State and  
19 Tribal Programs, and NMSS staff, including Mike Weber, who  
20 is the Director of the Division of Fuel Cycle Safety and  
21 Safeguards; Walt Schwink, who is the Section Chief in the  
22 Safety and Safeguards Support Branch; and, Pat Castleman,  
23 who is leading the NMSS effort in this area and who will be  
24 presenting today for th staff.

25           With that, I'd like to turn it over to Pat.

1 MR. CASTLEMAN: Good morning, Chairman Meserve,  
2 Commissioners. Before I get started on the presentation, I  
3 would like to recognize Walt Schwink, who is seated here to  
4 my left, for the tremendous job he has done in getting this  
5 project off the ground and shepherding it to where it is  
6 today.

7 Walt is now back in his full-time job as Chief of  
8 the Inspection Section and he is passing the baton, so to  
9 speak, for the oversight program revision to me.

10 I would also like to recognize two Regional Branch  
11 Chiefs, Ed McAlpine, of Region II, who is here today, and  
12 Pat Hyland, of Region III, who was not able to make it to  
13 the meeting.

14 These two gentlemen also made important  
15 contributions to the program revisions as team members,  
16 along with Walt.

17 The efforts of these gentlemen have laid a solid  
18 foundation for moving forward with improving the NRC's  
19 oversight of fuel cycle facilities.

20 Slide two, please. Next slide, please.

21 The fuel cycle oversight program revision is being  
22 conducted to comport with the agency's performance goals, as  
23 laid out in the NRC's strategic plan. Our highest priority  
24 is to maintain safety and common defense and security.

25 Our major focuses are increasing the

1 effectiveness, efficiency, and realism of our oversight  
2 processes, and increasing public confidence by making our  
3 processes more open and predictable.

4 Through these changes, we anticipate that there  
5 will be reductions in unnecessary regulatory burden.

6 Slide three, please.

7 There are several forces that are driving this  
8 project. First, the staff and our stakeholders have  
9 identified a number of benefits from revising the fuel cycle  
10 oversight program. These benefits are similar to those that  
11 arose from the recent revisions to the reactor oversight  
12 processes and include an improved focus of NRC and licensee  
13 resources on safety, a more efficient use of both licensee  
14 and NRC resources, moving the process in a more  
15 risk-informed direction consistent with the overall shift  
16 occurring in the agency, improvement of the licensee  
17 performance review or LPR process, and by sharpening the  
18 risk focus of our inspections, we will be able to identify  
19 and maintain an effective level of inspection expertise.

20 The evolving changes are in recognition that we  
21 are regulating a mature industry using mature technology and  
22 that industry-wide safety performance has been improving  
23 over the years.

24 This improvement in safety performance has  
25 provided an opportunity to examine our oversight processes

1 and take action to optimize them. At the same time, we  
2 remain aware that we still need to be able to identify and  
3 respond to degraded performance in a timely manner.

4 Finally, the oversight revision project, as Dr.  
5 Travers noted in his opening remarks, is closely tied to the  
6 implementation of the recent revisions to Part 70.

7 Slide four, please.

8 The revised oversight program will shift toward a  
9 more risk-informed and performance-based orientation. It  
10 will feature a baseline or core level of inspection at all  
11 licensees to verify that reasonable assurance of adequate  
12 protection is being maintained.

13 The core program will focus on the most safety and  
14 safeguards significant plant activities, hazards, risks,  
15 controls, and management measures.

16 As a result of the more risk-informed focus of the  
17 inspection program, we believe that NRC assessments of  
18 licensee performance will become more objective.

19 The revised oversight program will also feature a  
20 predictable and timely agency response to licensee  
21 performance. These features should further the consistency  
22 in the way we regulate, as well as enhance public confidence  
23 in the regulatory process.

24 The last bullet on this slide was intentionally  
25 set apart from the first four to emphasize the fundamental

1 importance of corrective actions and, also, to emphasize  
2 that corrective action programs belong to the licensees.

3 Robust licensee problem identification resolution  
4 and correction programs are essentially for the success of  
5 the revised oversight program, and, as we will discuss  
6 later, the revised program will recognize the cross-cutting  
7 nature of corrective action programs.

8 Slide five, please.

9 Slide five depicts a simplified version of the  
10 oversight framework diagram that was included as figure one  
11 of SECY-00-0222, which was forwarded to the Commission on  
12 November 27th of this year.

13 The framework shows a basic flowchart of how  
14 performance information will be gathered and processed. The  
15 sub-box in the lower left corner of the diagram shows the  
16 different types of inspections that we perform.

17 The baseline inspections box has a bold outline to  
18 emphasize that all facilities will receive a baseline set of  
19 inspections, regardless of their performance.

20 Findings resulting from any of the four types of  
21 inspections will be evaluated for risk significance using a  
22 significance determination process that will be based on the  
23 results of the integrated safety analyses that are being  
24 prepared by licensees under the revised Part 70.

25 The significance determination process will be



1 developed from the SDP, significant determination processes  
2 that are being implemented as part of the revised reactor  
3 oversight process, and will allow us to evaluate inspection  
4 findings and events in terms of risks.

5 Moving up to the top of the diagram, the next step  
6 in the process will be to assess licensee performance using  
7 an action matrix. Performance assessments will have two  
8 main purposes; to determine how the agency should respond to  
9 demonstrated performance and to communicate our views on  
10 performance to licensees, stakeholders, and the public at  
11 large.

12 Response options available to the NRC would  
13 include increasing or decreasing the amount and focus of  
14 inspection above the core level at a given facility; issuing  
15 inspection or assessment reports to licensees for corrective  
16 actions; conducting management meetings to discuss issues;  
17 taking enforcement actions; and, taking additional  
18 regulatory actions, such as issuing orders or confirmatory  
19 action letters and the like.

20 Communications options will include -- we're still  
21 on slide five. I was just flipping my notes.

22 Communication options will include assessment and  
23 inspection reports, inspection plans, and, if available,  
24 performance indicators.

25 This information will be made available through a

1 variety of means, including the NRC web site, ADAMS, press  
2 releases, and public meetings.

3 The feedback line going from the overall  
4 assessment process box to the inspection box represents  
5 changes to the level and, as appropriate, type of agency  
6 response to licensee performance.

7 As the framework chart shows, we still plan to  
8 maintain the capability to perform generic issue event  
9 response and special inspections under the revised programs,  
10 much as we do today.

11 The lower right-hand boxes show how licensee  
12 supplied performance indicator would be treated in the  
13 revised process. Much as in the reactor oversight process,  
14 performance indicators would compliment our core inspections  
15 and would allow us to reduce the scope of these inspections,  
16 thereby enhancing efficiency for both the NRC and the  
17 licensees.

18 The evaluations of performance indicator  
19 information would parallel the inspection finding  
20 significance determination process, and these evaluations  
21 would be factored into the overall assessment process.

22 The last feature of the framework that I would  
23 like to discuss is the smaller arrow going from the baseline  
24 inspections box at the bottom to the performance indicators  
25 box.

1           This arrow is meant to depict that as part of the  
2 baseline inspection program. We intend to inspect licensee  
3 processes for gathering and reporting performance indicator  
4 data to the NRC.

5           How to incorporate corrective actions into the  
6 revised oversight program is an issue that will continue to  
7 develop along with the implementation of the management  
8 measures required by the latest revisions to Part 70.

9           Slide six, please.

10          Slide six represents an update of where we are in  
11 reaching agreement on the cornerstones of fuel cycle  
12 facility performance.

13          As indicated, the darker shaded areas show that we  
14 and our stakeholders have reached agreement in the  
15 performance areas of facility operations safety and nuclear  
16 related hazard safety. We still have some additional  
17 interactions that will be required under the special nuclear  
18 material safeguards and classified information and materials  
19 safeguards areas.

20          Slide seven, please.

21          In implementing this project, the staff has  
22 incorporated lessons learned from other initiatives,  
23 particularly the reactor oversight process revisions and the  
24 changes to Part 70. We have had extensive interactions with  
25 our stakeholders, including seven public workshops

1           As we have discussed, there is support among  
2 stakeholders regarding the definition of the fuel cycle  
3 facility performance areas, the oversight framework, and the  
4 safety cornerstone.

5           Additionally, as this slide indicates, a  
6 stakeholder communications plan has been drafted and  
7 circulated among stakeholders.

8           The lead drafter for this plan was Neil Howie, of  
9 the Illinois Department of Nuclear Safety. Neil did an  
10 outstanding job in coordinating the development of this plan  
11 among the stakeholders, including the Union of Concerned  
12 Scientists and the NRC's Office of Public Affairs.

13           Slide eight, please.

14           Slide eight shows the tasks that remain before we  
15 can implement the revised process. I would like to  
16 highlight a couple of these bullets. As discussed earlier,  
17 the role of corrective action programs is evolving.

18           At this point, the staff envisions that this role  
19 will be reasonably consistent with the role of corrective  
20 action programs in the revised reactor oversight process,  
21 with due consideration for the differences in the governing  
22 regulations; that is, Part 50 versus Part 50, Parts 40, 70  
23 and 76.

24           Regarding performance indicators and associated  
25 thresholds, we recognize that there is some uncertainty

1 about licensee participation. As we move forward, we plan  
2 to keep the possibility open as a placeholder for future  
3 program developments.

4 One other thing to note is that similar to the  
5 process being used in regulating power reactors, we are  
6 considering employing a color scheme using green, white,  
7 yellow, and red performance bands to demarcate each  
8 performance threshold.

9 Slide nine, please.

10 The staff and stakeholders have many challenges  
11 ahead and as is common in anything that is risk-informed,  
12 uncertainty is a major challenge. Each of the challenges  
13 listed on this slide has a fair amount of uncertainty in  
14 terms of where we're going in the future associated with it.

15 The fundamental point that I need to keep in mind  
16 or that comes to my mind is that we are striving, in doing  
17 all these things, we are striving to optimize our oversight  
18 process and maintain safety.

19 The first challenge relates to the pace of program  
20 development and implementation. Although internal and  
21 external stakeholders generally agree on the importance of  
22 completing the oversight program revision, licensees have  
23 raised the concern that ongoing activities within NMSS,  
24 including the project we've discussed today and the  
25 implementation of the new Part 70, are competing for limited

1 resources.

2 The second challenge is fairly self-explanatory in  
3 the context of the agency's experiences in implementing  
4 risk-informed changes in other agency programs.

5 Our communications plan and continued outreach  
6 among stakeholders will go a long way towards meeting this  
7 challenge.

8 Corrective action programs are listed as a  
9 challenge because of the fundamental role they will play in  
10 the revised oversight process and because we are still in a  
11 fairly early stage of defining their role and structure.

12 Concerning risk and/or performance determination,  
13 there are currently no approved integrated safety analyses.  
14 As more information becomes available, the oversight program  
15 will evolve and the focus will continue to shift in a more  
16 risk-informed direction.

17 This completes my prepared presentation and we  
18 would be happy to respond to any questions you may have.

19 CHAIRMAN MESERVE: Thank you, Mr. Castleman. Let  
20 me turn first to Commissioner McGaffigan.

21 COMMISSIONER McGAFFIGAN: Thank you, Mr. Chairman.  
22 I want to commend the staff for where they have gotten on  
23 this. It is, as Mr. Castleman said, a major undertaking,  
24 while you're simultaneously trying to get ready to implement  
25 a new Part 70, and that has to be a major priority, as well.

1 In fact, I think you have the priorities just  
2 about right. Let's first get Part 70 in place and work  
3 with, say, Coulters to do that, and then let's  
4 simultaneously be working on this and hopefully it will come  
5 to fruition in the not distant future.

6 One of the points that Mr. Lochbaum, on the second  
7 panel, is going to make, and he compliments -- he'll  
8 compliment Mr. Schwink on the process that we went through  
9 to try to have broad participation in this effort.

10 But he basically -- and I guess this question goes  
11 to Mr. Travers or Mr. Paperiello, rather than to the staff  
12 who have been presenting.

13 He raises the issue of whether we can't do a  
14 better job along the lines of what Mr. Schwink did here in  
15 our communications with the public. This is not the first  
16 time this group, the materials group -- I remember when we  
17 were doing DOE external regulation, we got a lot of  
18 compliments for how we were interacting with the public when  
19 we were doing the pilots there.

20 West Valley, I think, has been a success story in  
21 terms of interacting with the public and taking public  
22 comments very, very seriously and involving them very  
23 actively.

24 But as Mr. Lochbaum states, we have a mixed  
25 success. In our policy, we had a memo from Dr. Travers on

1 October 26, the bottom line of which was that the staff did  
2 not see a need to change its current practice with regard to  
3 public participation.

4 I think Mr. Lochbaum is asking us to take another  
5 look at that.

6 So do you have any initial reactions to the  
7 testimony that we're going to hear a little later that was  
8 provided in advance? And I compliment Mr. Lochbaum and I'm  
9 sure Commissioner Merrifield would, as well, for getting it  
10 in so promptly and well in advance, so we all could read it  
11 and understand it.

12 Dr. Travers?

13 DR. TRAVERS: Well, I do have a reaction. As you  
14 know, public confidence is one of our major goals and  
15 certainly our interactions with the public and how we do  
16 that are fundamental to the assurance of public confidence  
17 in our processes.

18 We think we do a pretty darn good job, frankly,  
19 across the board. However, your question was can we do  
20 better.

21 COMMISSIONER McGAFFIGAN: Right.

22 DR. TRAVERS: And I think the answer to that  
23 clearly is yes and we intend to keep the dialogue open with  
24 Mr. Lochbaum and with other stakeholders to see if we can't  
25 identify areas for improvement.



1           As far as I'm concerned, we're willing to discuss  
2 the sorts of issues that have been raised or maybe will be  
3 raised shortly relative to some of the specifics of  
4 interactions with the public in the course of the different  
5 kinds of public meetings that we often host.

6           So can we do better? I think we can, but I will  
7 tell you, from my experience, that I think we are doing a  
8 rather good job right now.

9           COMMISSIONER McGAFFIGAN: I want to echo that.

10          DR. TRAVERS: I'm pretty proud of actually the way  
11 the staff conducts itself. We very often, even in meetings  
12 which I characterize as business meetings between our  
13 licensees and ourselves, which we need to conduct, but we  
14 conduct them very much or very frequently in observable  
15 meetings, we stay after those meetings to interact with  
16 people who may have a question or a concern with the staff.

17          So we have to balance, in our public interactions,  
18 the need to conduct agency business in an efficient way with  
19 this issue of assuring other stakeholders that they have a  
20 voice and are heard by the staff.

21          COMMISSIONER McGAFFIGAN: I want to echo you. I  
22 believe that we have made quantum strides forward, large  
23 strides forward in recent years in interacting with the  
24 public.

25          I think it's been a matter for several years now

1 where we have really tried. Nevertheless, we can do better  
2 and one place where I think -- we'll see what Mr. Lochbaum  
3 says a little later, but it's the notion -- it's one thing  
4 to sort of stay after the meeting and talk with folks and  
5 try to answer their questions.

6 I think what he is looking for is at the end of  
7 the meetings perhaps that the public be recognized while the  
8 public meeting record is still open and make comments and  
9 there might be some dialogue there.

10 But it's extra work. You would then, on the  
11 record, be responding or promising to respond on the record  
12 afterwards.

13 What seems to bother the public, and I'll use Mr.  
14 Lochbaum as an example, is when they make a comment and it  
15 drops into the sea and they don't ever really hear a  
16 response, and it's extra work for us.

17 I mean, it's clearly the efficiency and  
18 effectiveness goal of the agency is intentioned with the  
19 public confidence goal in some of this, because it's  
20 probably more efficient and effective to just conduct your  
21 business and get on with it.

22 But we lose public confidence if we're not  
23 responding.

24 So that, it strikes me, is where the nuance is.  
25 Does the public, at the end of these meetings, if they

1 attend them, get a chance to, having watched the business  
2 section, ask some questions, make some comments, and then  
3 have NRC respond to them, or is it done in the margins after  
4 the meeting, where it isn't clear quite what's going on,  
5 what happens to the comment.

6 DR. TRAVERS: Well, I think it's done in a variety  
7 of ways and we have been using staff judgment to gauge the  
8 level of interest in that.

9 But typically, as a minimum, we stay afterwards to  
10 address questions. We specifically try to respond to  
11 questions and we've recently made a change to our practice  
12 that doesn't exactly fit into the question you've raised  
13 relative to meetings, but where the NRC overtly requests  
14 input on matters that are posed in the Federal Register or  
15 in any other forum.

16 We have made a judgment that we need to express  
17 what the staff has done or is doing with those sorts of  
18 comments.

19 We haven't always done that in the past, except in  
20 very formal processes, like rulemaking.

21 So my own view is there is a balance to be struck.  
22 I think an interaction with the staff in the context of  
23 meetings at the end may be a reasonable approach to  
24 balancing effectiveness and public confidence. Others may  
25 disagree.

1 I am certainly willing to explore it and discuss  
2 it further.

3 COMMISSIONER MCGAFFIGAN: That's all I had, Mr.  
4 Chairman.

5 CHAIRMAN MESERVE: Commissioner Merrifield.

6 COMMISSIONER MERRIFIELD: Just as a follow-on to  
7 that comment. I also agree, I think the staff has done an  
8 excellent job of improving the way in which it interacts  
9 with the public. I think the Commission, as well, has also  
10 tried to improve its way of doing it.

11 I think one of the difficulties you can get into,  
12 and I know that you're struggling with this, is that there  
13 are some circumstances where the staff I think has tried to  
14 accommodate more and when you try to accommodate more,  
15 there's a rising level of expectations and then the question  
16 is laid out, well, do we need to have a standard.

17 But the problem is sometimes when you have a  
18 standard, sometimes that doesn't allow for the flexibility  
19 and more openness.

20 I recognize that it's a careful set of balances  
21 that the staff is going through and appreciate the  
22 difficulty you have going through it.

23 In the testimony that Mr. Fertel is going to talk  
24 about later on, he notes that there is a belief among the  
25 variety of licensees that we're addressing in this program,

1 the need for performance indicators and their belief that  
2 perhaps due to the wide range of variation between the  
3 facilities that would fall under this program, that we might  
4 not be able to get there as it relates to performance  
5 indicators.

6 I was wondering if I could get the response of the  
7 staff up front as to your own beliefs in that regard and are  
8 we able to bridge that gap.

9 MR. CASTLEMAN: At this point, in looking at the  
10 program and being a fresh set of eyes coming to this  
11 program, I believe that it's something that's worth  
12 pursuing, just in terms of making the process more open, and  
13 also allowing for continued efficiencies in our operations,  
14 as well as continued efficiencies in licensee operations.

15 One of the issues I think that Mr. Fertel is  
16 getting at is the notion that we could have a uniform set of  
17 indicators for these facilities and uniform set of  
18 thresholds. That may not be possible.

19 It may be there may be some, such as radiation  
20 exposure, for example, or effluent releases that could be  
21 applicable across the facilities, but obviously we're  
22 regulating, I think, four different types of facilities and  
23 there are only ten of them.

24 So we could probably come up with maybe groups of  
25 performance indicators that would apply, for example, to

1 gaseous diffusion plants or fuel fabrication facilities.

2 I do think it's worth pursuing and I think as we  
3 go down the road, licensees may continue to take a look at  
4 it and we could see -- we may be able to, I guess, get  
5 performance indicators to bear some fruit in this area.

6 MR. WEBER: If I could add to what Pat has shared.  
7 The process that we've gone through with the stakeholders  
8 meetings, early on, we focused extensively on the concept of  
9 performance indicators for the fuel facilities.

10 In fact, at one point, in response to the  
11 stakeholders, we kind of backtracked and realized we needed  
12 to do more work on setting the framework for the oversight  
13 process revisions before we got the point where we would be  
14 in a position to really engage on meaningful performance  
15 indicators and thresholds.

16 In our most recent workshop that we've had with  
17 the stakeholders back in September, a concern emerged on the  
18 part of the stakeholders that maybe performance indicators  
19 may not work or they wouldn't work in the way that they have  
20 been proposed in the reactor oversight program, for a  
21 variety of reasons.

22 I think we've been responsive to that concern to  
23 agree to look at the program; how might the oversight  
24 process work with and without performance indicators, and  
25 that gives us a considerable range of flexibility to

1 consider the merits of performance indicators or performance  
2 measures or some self assessment report card concept that  
3 the stakeholders may prefer.

4 But at this point, the concepts that Pat has  
5 outlined in the presentation really provide a vision for  
6 where we think we're evolving to or what we're trying to  
7 attain, and now we have to put in place the details as we  
8 continue forward in our stakeholder process.

9 COMMISSIONER MERRIFIELD: Looking back at slide  
10 eight, in terms of remaining tasks, I'm reminded somewhat of  
11 the old pictures of the iceberg, where the part you don't  
12 see is, in fact, larger than the part that you do.

13 There are some very significant tasks that you  
14 have here remaining before you.

15 I'd like for you to give a little greater  
16 expository in terms of how you're going to resolve these.  
17 Maybe I want to phrase it this way. How soon do you think  
18 you can resolve some of these and what are the milestones  
19 you're looking at to get beyond these and what role, if any  
20 -- is it useful to have the Commission come back at some  
21 point later on and opine perhaps and give you some direction  
22 about which way to go on various of these policies.

23 MR. CASTLEMAN: That's a real good question,  
24 Commissioner Merrifield.

25 COMMISSIONER MERRIFIELD: That's what I was

1 thinking.

2 MR. CASTLEMAN: And it's kind of daunting. Having  
3 just come on the scene in this program, I sort of felt like  
4 I was drinking water out of a fire hose.

5 We have a work plan that is now being circulated  
6 among stakeholders and this work plan lays out milestones  
7 for getting drafts of these documents out and available for  
8 review.

9 For example, we're looking at, on the common  
10 defense and security oversight cornerstones, we think by the  
11 end of next month we should have a basic structure or an  
12 outline out there for stakeholders to chew on and we can  
13 further refine from there.

14 Regarding problem identification, resolution and  
15 corrective action programs, we still need to have further  
16 discussions with licensees in particular on how we're going  
17 to evolve those.

18 Again, those need to be dovetailed with the  
19 implementation of Part 70, because Part 70 requires the  
20 implementation of management measures and corrective action  
21 programs are part of those.

22 So that one is a little bit to be determined right  
23 now.

24 Inspection finding significance determination, we  
25 believe that we can capitalize on the work that NRR has done



1 and leverage that into a workable process, not a final  
2 process, but a workable process sometime this spring. We're  
3 looking at a milestone date of February 23 for having the  
4 initial significance determination process put together.

5 And hopefully, by the end of April, we should have  
6 a process that will be good enough to use in the oversight,  
7 in assessment licensee performance.

8 In the inspection programs, we are going to begin  
9 developing the inspection procedures in February and these  
10 will be essentially taking existing procedures and revising  
11 them as necessary to be able to provide the inputs we need  
12 into our significance determination process, but also, more  
13 importantly, is to try and take the inspection procedures  
14 and focus them on directing our inspectors to those things  
15 in the facilities that are most risk-significant,  
16 safety-significant, and so forth.

17 COMMISSIONER MERRIFIELD: To get to the bottom  
18 line, when do you think you'd be coming back to the  
19 Commission with a nice hard deadline? I find hard deadlines  
20 make for clear choices.

21 Do we have any notion of that at this point?

22 MR. CASTLEMAN: At this point, we are looking at  
23 beginning implementation of the program in October of --  
24 well, at the beginning of the new fiscal year.

25 At what point we would come back to the Commission

1 and give another status report or seek Commission approval,  
2 I think I would have to defer to upper management on that.

3 DR. TRAVERS: Before October.

4 COMMISSIONER MERRIFIELD: You don't think I'm  
5 going to be satisfied with that answer, now, do you?

6 DR. TRAVERS: But we'll look for an opportunity --  
7 certainly well before -- well in advance of any proposal to  
8 implement the change, we'd need to come to the Commission  
9 and we recognize that.

10 I don't know that we've factored in a placeholder  
11 for that, but we should do that and should do it soon.

12 MR. WEBER: One thing to keep in mind, of course,  
13 with the outline of the steps and milestones that Pat has  
14 described, it's a function of the ability of the  
15 stakeholders to engage and participate.

16 We had originally started on a series of monthly  
17 meetings and we found that that was very intensive and  
18 required a lot of focus from the stakeholders, and that  
19 caused conflicts with some other priorities that are out  
20 there that the Commission is working on, as well as the  
21 stakeholders.

22 What we've done now is with the stakeholders, back  
23 in September, work out a series of these milestones,  
24 including the relative priority of the tasks based on where  
25 we presently are and where we need to evolve to.

1           So we now have that out for comment and we're  
2 looking forward to receiving comments from the stakeholders  
3 on that new work plan.

4           I should say one thing that you will hear shortly  
5 from Mr. Fertel is a desire to focus on the license  
6 performance review process, and that's a little different  
7 than what's currently in our work plan that's out for  
8 comment.

9           So we look forward to having further discussion  
10 with NEI and the stakeholders on that concept, because if  
11 you look at our present work plan, that falls pretty far  
12 down the queue in terms of things to get to and maybe if  
13 there is a desire and there is a consensus that we ought to  
14 move more in the direction of focusing on the licensee  
15 performance review process earlier, then we'd want to rework  
16 that into our work plan.

17           COMMISSIONER MERRIFIELD: Thank you.

18           CHAIRMAN MESERVE: I would like to pursue a matter  
19 that Commissioner Merrifield just raised. He observed that  
20 -- I think we've all observed that as a result of the  
21 reactor oversight program and the reaction to it, that  
22 there's been particular emphasis, maybe excessive emphasis  
23 on the performance indicators as being a key ingredient to  
24 that.

25           It's been the vehicle for assuring objectivity

1 across plants, to a certain extent, and has obviously been  
2 seized upon by the public and others as being a means of  
3 understanding what's going on at the plants.

4 I recognize the -- and if you want me to pick one  
5 feature of the oversight program that people think about,  
6 it's the performance indicators as being the radical change.

7 It may not be, and I believe it is not the most  
8 important part of it, but it's what people seize on.

9 It does seem to me, therefore, that -- I recognize  
10 the difficulty, given the different kinds of facilities that  
11 you're dealing with here, the problem of a limited number of  
12 sites, but that it does seem to me that we ought to think  
13 long and hard about whether a feature has been so important  
14 in the analogous areas, one that we can, to some extent,  
15 re-create, if possible, in this area, as well.

16 My question is, well, I have a little bit of a  
17 sense from the presentation the staff has given and then  
18 looking at what is coming that -- a certain sense of sort of  
19 ships passing in the night, to a certain extent, in that,  
20 for example, Mr. Fertel is going to make a substantial  
21 number of comments about how this program should be built on  
22 the modified licensee performance review.

23 I haven't heard anything that you've said, and  
24 maybe I misunderstood, as to whether that's an issue of  
25 conflict here, whether the staff disagrees with that and

1 whether there are disagreements or issues for us or for you  
2 that need to be resolved with regard to using the revised  
3 licensee performance review as sort of the foundation for  
4 this.

5 MR. CASTLEMAN: I think that actually the -- well,  
6 I think there is a lot of agreement, violent agreement, in  
7 fact, at least from my perspective, with Mr. Fertel's  
8 position on the LPR.

9 The LPR would be an integrated process or integral  
10 to this oversight process, and the real issue is how do we  
11 assess and report on licensee performance, not on the  
12 inspection report by inspection report basis, but on a  
13 little bit more long-term basis.

14 Right now, I guess, in looking at the LPR, it  
15 strikes me how similar it is to the old SALP process, which  
16 we've gone away from in the reactor side, and the important  
17 point for -- I think points that we need to move on in terms  
18 of assessing licensee performance is to make sure that  
19 they're accurate, they're predictable, they're objective,  
20 they're safety-focused, and I think timeliness is very  
21 important, being able to give that kind of timely feedback.

22 And this is where I think we have very strong  
23 agreement, at least from my perspective. This is just a  
24 very essential ingredient in revising our oversight -- our  
25 assessment process, is we've got to -- we have to make

1 strides there and I just don't see a conflict there. We  
2 have to work on the LPR process, as well.

3 CHAIRMAN MESERVE: Commissioner Dicus.

4 COMMISSIONER DICUS: Thank you. The first  
5 question, and I've got maybe half a dozen fairly quick and  
6 easy, I think.

7 The first issue has to do, though, with this  
8 public confidence and the public, and I do want to  
9 congratulate the staff. I think where we are today, the  
10 staff is today in dealing with the public and having public  
11 participation in the process is completely different than  
12 what it was when I came to the Commission.

13 Mr. Lochbaum will point out some shortcomings and  
14 I think Commissioner Merrifield, Commissioner McGaffigan may  
15 discuss those; to what extent do we really allow the public  
16 to truly comment for the record while the record is still  
17 open in a meeting, and, in fact, have a dialogue.

18 Sometimes it works, sometimes it does not work. I  
19 think in some public meetings, we have allowed it, in some  
20 we haven't, and maybe we need a consistency issue here that  
21 we haven't quite addressed yet.

22 It can be contentious. Having conducted public  
23 meetings, it was a contentious issue. It was siting a low  
24 level waste facility in a state that didn't really want it.  
25 So sometimes those meetings got kind of exciting, but we

1 always had public participation for the record, and  
2 sometimes we tried to answer the questions.

3 Some of them were rhetorical, some of them  
4 couldn't be answered, but I think it's an area.

5 I think the other area that Commissioner  
6 McGaffigan touched on and I agree with it, that when a  
7 member of the public, and I'm not talking about stakeholders  
8 now as licensees or associated industries, I'm talking about  
9 the public, make a comment, in writing or orally, they never  
10 know what happened to that comment.

11 And to the extent we can, it can be a little bit  
12 of a resource burden and we need to balance that, as well,  
13 we need to look at that.

14 And my specific question goes to, we've had a  
15 series of public meetings on this and the public has  
16 commented in writing and orally, I think, how have -- have  
17 public comments been factored into anything that you've done  
18 in revising this process specifically? Can you give me one  
19 example of a member of the public saying something that  
20 you've changed something?

21 MR. SCHWINK: I think I need to explain a little  
22 bit how we conducted the meetings that I think contributed  
23 to a success.

24 One is you're not allowed to sit in the audience  
25 silently. Someone will come with a microphone and sit down

1 next to you and ask you what you think.

2 Second, when a comment --

3 COMMISSIONER DICUS: Whether you want to comment  
4 or not.

5 MR. SCHWINK: Exactly. Well, the assumption is  
6 that if someone put the energy forth and the resource forth  
7 to come to the meeting, they have an interest, and I've  
8 found that folks have something to say that you can learn  
9 something from without exception.

10 The key is overcoming some bashfulness and going  
11 out and having a dialogue with them. For me, I like meeting  
12 people, so taking a microphone and sitting down next to  
13 someone in the audience and asking them what they think is a  
14 way to meet them and a way to start a dialogue. So I like  
15 that.

16 COMMISSIONER MCGAFFIGAN: Chip Cameron better  
17 watch out.

18 COMMISSIONER MERRIFIELD: Our very own Phil  
19 Donahue.

20 MR. SCHWINK: The issue of comments that are  
21 raised, rather than just take the comment and give an  
22 answer, we'll consider it, we actually address the comment  
23 right at the meeting and come to a resolution on the comment  
24 and the reasons for that resolution, either positive or  
25 negative, and the folks at the meeting actually see the



1 resolution and hear the resolution as it's evolving and  
2 participate in it.

3 The written comments that we receive typically are  
4 the same ones that are echoed at the public meetings and, as  
5 I say, we address those and at the very next public meeting,  
6 we address how any written comments that we receive were  
7 integrated into what we are thinking, and typically that's  
8 in the way of what I call a strawman presentation.

9 The reason I call that a strawman presentation is  
10 the old way of NRC business was to prepare a document, send  
11 it out for public comment, get the comments back and address  
12 them.

13 At these meetings, we really evolved the actual  
14 approach and the frameworks and the documents. We sat at a  
15 table and changed words on a strawman, and the strawman can  
16 come from us or it could come from any stakeholder that  
17 wants to raise a comment.

18 But I think the real success is right at the  
19 meeting, right when the comment is raised, we address it and  
20 involve those folks in the actual resolution, so they  
21 understand the way it came out and they had a part in  
22 shaping it.

23 COMMISSIONER DICUS: Did you have a specific  
24 example of something that was said that changed?

25 MR. SCHWINK: Everything.

1 COMMISSIONER DICUS: By the public.

2 MR. SCHWINK: In public.

3 COMMISSIONER DICUS: By the public.

4 MR. WEBER: How about the September workshop with  
5 the individual on the phone?

6 MR. SCHWINK: There is a good example. I found  
7 out there was a lady in South Carolina that had an interest.  
8 So I got a hold of her phone number and called her and  
9 overnight set up a conference call and literally had that  
10 conference call at the meeting, and she participated.

11 Somewhat of an interesting part was she had to  
12 stop so she could go check the meatloaf on the stove, and  
13 that, of course, helps lighten the meeting somewhat.

14 But if we can find someone, we'll go get them.  
15 Dave mentioned in his letter some very common things, but  
16 what he didn't mention is I told him I knew where his car  
17 was parked. So if he didn't come to the meeting, he could  
18 expect something to happen.

19 So that was the leverage. But the key is --

20 COMMISSIONER McGAFFIGAN: The Godfather had better  
21 watch out, too.

22 MR. SCHWINK: The key is really going after  
23 someone, because I do think they have something to add. My  
24 personality is such that I can't let someone sit in the  
25 audience without getting them to say something about why

1 they're there, their interests.

2 MR. WEBER: I think a specific example is the  
3 individual that was on the phone had a particular concern  
4 about communication and how is the public informed, and, as  
5 I recall, in part, in response to her comment and comments  
6 from the other participants in the meeting, we moved up the  
7 relative priority of coming to closure on the communications  
8 plan for the oversight process as part of our discussions in  
9 the September workshop.

10 So that's just one small example, but there are --  
11 I mean, we could elaborate.

12 COMMISSIONER DICUS: I just needed one to know  
13 that we really are responding.

14 MR. WEBER: Now, I should say that there were some  
15 logistical constraints associated with having somebody --

16 COMMISSIONER DICUS: There always are.

17 MR. WEBER: -- at a remote location on the phone  
18 and I think we've got to work on that. We've got to figure  
19 out a way to do that in an effective way that's responsive  
20 to all the stakeholders' needs.

21 COMMISSIONER DICUS: Let me go to reducing  
22 unnecessary regulatory burden.

23 I'm assuming that you have established a baseline  
24 of what the regulatory burdens were and that baseline is  
25 defined by the things you want to change.

1           You mentioned, I think over here on slide three, a  
2 variety of things and the expected benefits of driving  
3 forces.

4           The question that I have is that we're basically  
5 dealing with not one type of facility, but three different  
6 types of facilities, the conversion, uranium conversion,  
7 uranium enrichment, and then fuel fabs themselves, of a  
8 variety of natures, and within the fuel fabs, there are  
9 several different types.

10          Have you determined, in reducing regulatory  
11 burden, that there are generic reductions that would apply  
12 to all of the facilities and then you must have been  
13 identifying or are in the process of identifying specific  
14 burden reductions for a particular type of facility?

15          Where are we with that?

16          MR. SCHWINK: Let me answer that, because this was  
17 one of the things that we saw as an outcome for focusing on  
18 the risk significant performance.

19          I have to say this in somewhat of an instinctive  
20 fashion, because right now I have a vision for a future that  
21 doesn't exist yet.

22          There are areas that we think, I think there are  
23 concrete reductions in regulatory burden that are possible  
24 in the way that we change business, the way we do business  
25 and changing the way we do business.

1           The key to changing the way we do business is to  
2 eliminate those things that don't contribute to an  
3 understanding of risk or an improvement of risk, where that  
4 risk significant performance is either degrading or has  
5 degraded.

6           In doing that, I believe there are regulatory  
7 burden reductions that will be inherent in that.

8           One place that I want to look at is our collection  
9 of special nuclear material inventory information on a  
10 system that we call NEMISIS, which we have a contract with  
11 DOE.

12           That is an artifact of when we had 27 fuel  
13 facilities and DOE was actually operating facilities, and it  
14 was a system that was designed with much more transaction  
15 activity than what we currently have today, because we don't  
16 have that many fuel facilities.

17           The potential there, I believe, this year's cost  
18 is about a million and a half dollars to a contractor,  
19 which, of course, gets passed on as a fee to our licensees.

20           MR. WEBER: That's NRC's portion of the cost.

21           MR. SCHWINK: Right. The next area is in our  
22 response to events, if we have a risk significance  
23 determination process, I don't think we would run to the  
24 football as often as we do, because we would recognize the  
25 event for its true risk significance and the performance,

1 and where the licensee has a very robust corrective action  
2 program and they've identified it and they are resolving it,  
3 our value-added should judge how much response that we give  
4 to that.

5 Of course, if it's a serious event, we're always  
6 there to help, but a lot of events that are reported are due  
7 to a structure that is more oriented toward prescriptive  
8 regulation than it is based on the risk.

9 For example, a nuclear criticality safety report,  
10 91-01 is what we call it, for 15 grams of material is not  
11 what I would call a risk-significant event. It gets treated  
12 in regulatory space very similar.

13 I would envision a risk significant performance  
14 threshold matrix would help us decide how we're going to  
15 respond to that.

16 We don't have a lot of opportunity for regulatory  
17 burden reduction because our service fees are the reflection  
18 of a small number of inspectors, and the larger fee, of  
19 course, is the annual fee, which goes beyond the fee for  
20 service.

21 I do believe that there are going to be pay  
22 backs that will be recurring pay backs over the years.

23 COMMISSIONER DICUS: Because this is an issue I  
24 think NEI is interested in the approach.

25 What I'd like to do is -- Mr. Chairman, just a

1 couple more questions.

2 I'd like to -- maybe it's more of a comment on the  
3 inspection program, because we have a current inspection  
4 program. We're going to be transitioning to a different  
5 inspection program. Then ultimately with ISAs coming in,  
6 which may be about four years away til they're all in and  
7 all approved or any problems with them resolved.

8 So we're going to be, for the next at least four  
9 years, in a transitioning inspection program.

10 I'm concerned that something gets missed,  
11 something falls in a hole and how we're going to be able to  
12 transition year after year after year on different types of  
13 inspections and incorporate perhaps or not, as the case may  
14 be, the LPR that the industry is interested in looking in.

15 So just a word of caution, if nothing else, on  
16 some concerns that I have that we actually be sure we don't  
17 miss something.

18 I think the significance determination process, of  
19 course, is another NEI issue that they have a great deal of  
20 concern with, and I think the public would, as well.

21 You've talked about perhaps in April we would have  
22 the process put together for this. How are you going to  
23 resolve any discrepancies or difficulties that you have  
24 between where you are with significance determination and  
25 perhaps where these various types of facilities in the

1 industry are?

2 Do you have the criteria set up to resolve those  
3 differences yet?

4 MR. CASTLEMAN: At this point, Commissioner Dicus,  
5 we don't have any criteria set up specifically to resolve  
6 these kinds of differences.

7 I would say that the number one thing, of course,  
8 is to remain engaged with the facilities and also with the  
9 stakeholders on the significance determination process.

10 The fundamental point, from my perspective, is  
11 that we have to have a valid and reliable process that will  
12 give us a consistent answer for the same input data, if we  
13 get the same input data time after time. The significance  
14 determination process ought to be able to give us the same  
15 outputs.

16 So that is the reliability aspect, and, of course,  
17 it has to be valid. It has to be technically valid.

18 And I think if we focus on safety and we focus on  
19 technical accuracy and so forth, that will -- I guess those  
20 will be anchor points that will sort of serve to keep  
21 everybody in the same place in terms of us and our  
22 stakeholders.

23 DR. TRAVERS: We don't have that worked out yet,  
24 but --

25 COMMISSIONER DICUS: But you will have by April, I



1 assume.

2 DR. TRAVERS: Specifically to your question,  
3 though, I would envision a process not much different than  
4 the reactor oversight program, where there are in the  
5 process specific points that allow for engagement and a  
6 discussion of differences in input assumptions and so forth  
7 that could lead you to ultimately a different output from  
8 the significance determination process.

9 So in enforcement and the inspection program for  
10 reactors, we currently have, at different milestones in that  
11 process, an opportunity for interaction with the staff.

12 MR. SCHWINK: I'd like to give my view that we are  
13 really not as far apart as what you might read. For  
14 example, all the stakeholders agree that a lethal hazard  
15 needs to be controlled to some level of acceptable risk, and  
16 the Commission has been very gracious to state what its  
17 goals are across the agency, including the fuel cycle  
18 facilities.

19 And there is no disagreement in the context of  
20 there's a lethal hazard and you need to control it to  
21 protect people both on-site and off-site.

22 There is no disagreement that engineered and human  
23 performance are those controls. Where we differ is how many  
24 times should a control be inoperable before you declare it  
25 systemic as a problem of risk-significant performance,

1 because random error can happen, but systemic error is  
2 correctable.

3 And following that line of thinking, the places  
4 where we typically get into a different view, a very  
5 different view, is industry would offer that before you  
6 count something in terms of systemic performance, you should  
7 give us a time frame, first, to identify it; second, to  
8 resolve it and correct it, and we've talked about time  
9 frames as long as a shift and then for lethal hazards, that  
10 there is a significant inoperable control within hours.

11 We are wrestling with that, as the regulator, to  
12 ensure safety and, of course, the licensees are wrestling  
13 with it in terms of realistic operations.

14 Another area is initiating events. Industry has  
15 the view that earthquakes, tornados, things that they can't  
16 control should not be treated in the initiating events  
17 arena. Rather, we should look at the robustness of the  
18 controls that respond to that event happening.

19 Those are typically where we get into differences.  
20 There, of course, is always a debate of how safe is safe  
21 enough.

22 If one looks at the Part 70, it says highly  
23 unlikely for a significant consequence, and the SRP defines  
24 highly unlikely as events that are less than  
25 ten-to-the-minus-five. We're talking about criticality

1 events, for example.

2 And there is not necessarily agreement from an  
3 operational point of view that a facility with a 20 year  
4 life should be treated in ten-to-the-minus-five,  
5 ten-to-the-minus-six space, but rather ensuring that an  
6 event doesn't happen in the operating life of the facility.

7 This is the traditional DOE approach from the  
8 past. They talk about a 250 year earthquake and the key is  
9 not to have an event in the life of a DOE facility.

10 The licensees, of course, they capitalize a  
11 facility over a 20 to 40 year time frame and their concern  
12 is I don't want to have an event in the life of that  
13 facility.

14 Well, if you divide 40 into one, you wind up in  
15 ten-to-the-minus-two space for, quote, an acceptable level  
16 of safety, whereas we're looking for that highly unlikely  
17 level of high consequence, and that's a discussion.

18 Those are where we really deviate. It's not in  
19 the idea of how risks are controlled and the performance  
20 indications of losing the operability of those controls.  
21 It's more in the context of when do you start counting a  
22 systemic degraded or failing performance and where you treat  
23 their ability to control or fix that degraded performance,  
24 for example, the earthquake, should we treat it in  
25 initiating events or deal with what they can control, which

1 are the controls that respond.

2 Those are typically the differences that we get  
3 into.

4 COMMISSIONER DICUS: Thank you very much. Thank  
5 you, Mr. Chairman.

6 COMMISSIONER McGAFFIGAN: Mr. Chairman, could I do  
7 one quick follow-up? Again, it's to Dr. Travers.

8 The conversation about the woman in South Carolina  
9 reminded me of a letter that we got some time ago, I think  
10 it was Paul Gunter, with the Nuclear Information and  
11 Resources Service, talking about a woman, I believe, in  
12 Nebraska, who had asked to participate in a -- I think it  
13 was one of these meetings to have to discuss the  
14 significance of an inspection finding. It may have been  
15 Calloway or maybe it might have been a different state. And  
16 Region IV turned her down.

17 She wanted to be on the phone on a bridge line  
18 while the meeting took place, presumably at our headquarters  
19 in Region IV, and it was turned down because we didn't have  
20 a uniform policy.

21 It strikes me that I would have erred on the side  
22 of -- I can understand we don't have a uniform policy, but  
23 that's an example of a place where we can make an  
24 improvement fairly quickly. I mean, if we're doing it in  
25 one place and we're turning it down in the other, I would

1 have erred toward doing it in both places, provided it isn't  
2 going to cost us a fortune for the phone lines and all that.

3 But I think we have lots of lines and whatever, it  
4 doesn't cost a whole lot for an extra person to be  
5 monitoring the meeting.

6 She could have attended the meeting if she could  
7 have moved to Dallas to attend it, but she wanted to be able  
8 to attend it over the phone, and Paul wrote us a fairly  
9 thoughtful letter urging us to think about that.

10 DR. TRAVERS: And I agree we ought to have a  
11 policy and we're exploring what it should be, and I think  
12 there are a number of considerations that we're willing to  
13 explore, and let you know.

14 COMMISSIONER McGAFFIGAN: Okay.

15 CHAIRMAN MESERVE: I'd like to thank the staff.  
16 This has been a very helpful presentation and obviously a  
17 lot of progress has been made, and that's a great credit to  
18 the work you've done.

19 Let's now call on our second panel. Our second  
20 panel consists of Mr. Randall DeVault, who is a regulatory  
21 oversight manager for the Office of the Manager for Uranium  
22 and Engineering Services at the Department of Energy.

23 Mr. Marvin Fertel is the Senior Vice President for  
24 Nuclear Infrastructure Support and International Programs at  
25 the Nuclear Energy Institute.

1           Mr. David Lochbaum, who is a nuclear safety  
2 engineer for the Union of Concerned Scientists.

3           Mr. DeVault?

4           MR. DeVAULT: Good morning. My name is Randy  
5 DeVault. I work out of the DOE Oak Ridge Operations Office.  
6 My primary assignment or one of my primary assignments has  
7 been, for the last four or five years, as a regulatory  
8 oversight manager for interfaces with the United States  
9 Enrichment Corporation, both in the transition of the plants  
10 from DOE to the NRC and then following some other activities  
11 that have occurred on-site.

12           Just turn to the second slide.

13           One of the reasons that DOE has been interested in  
14 the proposed revision to your regulatory oversight program  
15 is that we do share regulatory responsibility for the  
16 Portsmouth and Paducah gaseous diffusion plants.

17           If you look at the sites, the NRC regulates the  
18 enriching operations and all of the auxiliary facilities  
19 which support that enriching operation according to 10 CFR  
20 Part 76.

21           DOE, on the other hand, has a lot of facilities on  
22 the site for which we're doing environmental remediation,  
23 and so we regulate those facilities, and there are a few  
24 other areas of the site that are regulated under a  
25 regulatory oversight agreement. That's an agreement between

1 USEC and the Department of Energy.

2 And if you look at the whole overall composition  
3 of the site, it's almost like a Swiss cheese effect, where  
4 the facilities are scattered among and between and around  
5 each other.

6 So that what happens in one area of the site  
7 certainly affects very, very closely the other area of the  
8 site, and so our regulatory interfaces are very, very many  
9 on the site.

10 And so we have very, very definite common areas of  
11 interest for both the worker and the public safety on the  
12 site, and those are not just limited to nuclear and chemical  
13 safety, because there are some hazardous chemicals on the  
14 site that do pose a threat to the workers, but also to the  
15 safeguards and security aspects of the site.

16 At one time, we had Category 1 materials on-site  
17 and you had a Category 3 licensee on the site.

18 So we do have a lot of interfaces, and we expect  
19 that to continue. We are definitely a stakeholder in this  
20 because we expect to be interfacing with the NRC in a  
21 regulatory capacity on those sites for many years to come,  
22 although recently the activities at Portsmouth may somewhat  
23 diminish the areas of that interface.

24 The reason I am here today basically is to provide  
25 DOE's perspective, and it's a somewhat limited perspective

1 because I've been involved in the facilities, the GDP  
2 facilities, which is just one of your fuel cycle facilities.

3 But it's at least a limited perspective in looking  
4 at what the overall goals of your revision to your  
5 regulatory oversight program.

6 Based upon what we have seen in the transition of  
7 the gaseous diffusion plants, it appears that the program  
8 that you're approaching and the approach that you've taken  
9 does provide a consistent assessment process for the safety  
10 and security of the site.

11 And one of the things that the proposed program  
12 does seem to do is focus on the greatest potential risk,  
13 rather than worry about verbatim compliance.

14 Verbatim compliance can at some times cause you to  
15 focus the resources on areas of safety which are much less  
16 significant than if the resources were focused on other  
17 areas.

18 And one of the things that we saw on the site  
19 during the transition and during which we had the regulatory  
20 oversight of the enrichment operations and were working to  
21 bring the plants into compliance with Part 76 was a series  
22 of violations where we were not seeing any progress toward  
23 coming into compliance with those regulations.

24 And as a result of that and working with the  
25 United States Enrichment Corporation, DOE asked that they



1 develop a means of measuring their performance in the  
2 various areas of safety on-site, and they developed a  
3 program called the Quality of Operations Programs.

4 That Quality of Operations Program that they  
5 developed is very, very similar to the risk significance  
6 performance thresholds, which I see in the program that the  
7 NRC is moving for oversight.

8 They had basically the colors green, yellow, and  
9 red. They had no white color on their charts, and then they  
10 had one additional feature that I think was significant,  
11 that they had an arrow indicating the trend in that  
12 particular performance area.

13 And it provided them, at the point that they  
14 implemented that and started looking at those performance  
15 areas, we did observe a noticeable improvement in their  
16 activities and their move toward coming into compliance with  
17 10 CFR 76.

18 So we think that, at least from our perspective  
19 and our experience in looking at a transition, the  
20 performance indicators did provide a very, very valuable  
21 means that they were able to use to come into compliance  
22 with 10 CFR 76 and to effect the transition to NRC  
23 regulation.

24 And these particular performance indicators that  
25 they used did give us a more objective performance measure.

1 We could look at what was happening on the site and see that  
2 when we discovered violations on the site, how they were  
3 responding to it, and it allowed them to shift their  
4 staffing and to concentrate on the areas that they needed to  
5 concentrate on to make improvements.

6 Basically, in looking at that particular --  
7 looking at your program as far as it relates to the  
8 experience that we achieved on the oversight program at the  
9 sites.

10 We think that it does appear to maintain a safety,  
11 safeguards and security, and it has a potential, we think,  
12 to increase public confidence; once the overall program is  
13 complete, that it does have a potential to increase public  
14 confidence in the oversight process.

15 We notice that on the site that USEC would -- the  
16 regulatee on the gaseous diffusion plant did post their  
17 performance indicators in the hallways and we saw the  
18 workers looking at those performance indicators, and it's  
19 very apparent, in looking at the way that the material was  
20 presented, the status of the facility and you could see the  
21 improvement from time to time as the trends were plotted.

22 It provided a very, very simple and direct means  
23 of communicating to the workers on the site how effectively  
24 that they were making the transition from the DOE oversight  
25 to the NRC oversight.

1           And at least from our perspective, we think that  
2 that's something that would provide the simple means to the  
3 public, where a lot of the public who don't have the time to  
4 sit down and read through the myriads of paperwork that come  
5 through, those graphs provide a very, very simple means of  
6 looking at a particular performance indicator and  
7 determining its status.

8           But there's a lot of work that still needs to be  
9 done in these areas. I know that the definition of the  
10 performance indicator -- in looking at where the program is  
11 at right now, the definition of those performance indicators  
12 is very, very difficult and, as I've heard, it will probably  
13 vary from facility to facility, although I think probably  
14 the GDPs have -- I think they monitor 32 performance  
15 indicators, last I heard. That number may have changed.  
16 But they monitor a lot of performance indicators.

17           But I think perhaps the most difficult thing about  
18 performance indicators is the assessment of the threshold  
19 values. The process that the program that's being proposed  
20 here has is it has the four colors and assigning the  
21 threshold values that trip you from one section and one  
22 level in those performance indicators to another is very  
23 difficult and certainly may vary from facility to facility.

24           So I think that as I said, that there's still a  
25 lot of work to be continued on this and DOE has certainly

1 been privileged to be involved in the process as a  
2 stakeholder, because certainly, as I said, we're going to  
3 remain the stakeholder on the site for a very, very long  
4 time.

5 And we think that the forum that you've provided,  
6 the seven public meetings, have certainly allowed us to  
7 effectively participate as a stakeholder and that has been  
8 very, very beneficial to DOE as a co-regulator on the GDP  
9 sites.

10 Thank you.

11 CHAIRMAN MESERVE: Thank you very much. Mr.  
12 Fertel?

13 MR. FERTEL: Thank you, Mr. Chairman, members of  
14 the Commission.

15 You obviously have all read the paper I submitted,  
16 so why don't I not read it to you.

17 COMMISSIONER DICUS: Thank you.

18 MR. FERTEL: And maybe address some of the things  
19 that I heard during the discussion with the staff.

20 First of all, the industry and the licensees are  
21 and will continue to be fully committed to trying to help  
22 the staff and the Commission implement the objectives of  
23 this program.

24 We agree with the intent and the objectives, there  
25 is no question there.

1 I think, Mr. Chairman, just to say if my statement  
2 made you think it's like ships passing in the night, that's  
3 probably not a correct depiction of what I was trying to do.  
4 I think that we probably aren't colliding, nor are we  
5 passing totally in the night.

6 I think that on the licensee side, the dialogue at  
7 these meetings has been useful. I think it's been  
8 informative.

9 The NEI folks have a better appreciation of the  
10 reactor oversight program changes than the fuel cycle  
11 licensees. And I think that what we've seen is that a lot  
12 of the good ideas that are being implemented on the reactor  
13 side, some of which I think even David agrees with, could be  
14 implemented on this side, on the fuel cycle side, but it  
15 could be implemented as part of the licensee performance  
16 review process, not, quote-unquote, a separate new template,  
17 looking just like the reactor side.

18 And that's kind of what we're saying now and I  
19 think that what I heard Mike and Walter say up here, and  
20 Pat, is that maybe as we look at their work plan, if we take  
21 -- we provide our comments and they take our comments into  
22 account, we may reorder some of the discussions we're going  
23 to have, which may bring us closer together in the thinking.

24 Having said that, let me just go through some of  
25 the details and let me raise one point. Commissioner

1 McGaffigan started off by saying that the challenge is  
2 striking the right priority between Part 70 implementation  
3 and moving into this oversight process, and Commissioner  
4 Dicus, at the end, pointed out that we're going to be  
5 submitting ISAs over the next four years.

6 One of the things we've pushed the staff on in  
7 this particular area was don't rush it. No one, at least to  
8 my knowledge, none of the stakeholders, including the  
9 licensees, are saying that the LPR process is broken.

10 Pat said you're looking to optimize, and we would  
11 agree. It can be improved dramatically, as can probably the  
12 public participation part, but it's not broke.

13 And our major concern and interest right now is to  
14 make sure that Part 70 implementation occurs effectively.  
15 The rule is effective. There's obligations on the  
16 licensees, there's obligations on the NRC staff, and there's  
17 expectations by the Commission.

18 And what we'd like to do is make sure that that  
19 rule gets implemented effectively and that the oversight  
20 process supports rule implementation down the road and  
21 doesn't impede effective rule implementation in the near  
22 term, and I think that's probably one thing we'll be  
23 commenting on as we look at the work plan and continue to  
24 talk to the staff in the public meetings.

25 So I think that's a very important aspect, in our

1 mind.

2           Looking at what we learned over the last seven  
3 meetings, what we're seeing is the intent to risk-inform,  
4 just like we did on the reactor side, the intent to use  
5 performance indications, and I think we would agree with the  
6 Chairman that if there is a way of using performance  
7 indicators, they do help the public understand what's going  
8 on, and to that degree, they're very valuable.

9           We don't seem them terribly valuable, at least we  
10 haven't been able to see them terribly valuable on the fuel  
11 cycle side yet for the other thing they do on the reactor  
12 side, which is modify the inspection program.

13           If we have good performance indicators on the  
14 reactor side, we're able to change our inspection program,  
15 because we have another way of understanding performance  
16 through the PIs.

17           We're not seeing that yet as a very valuable  
18 attribute of performance indicators for the fuel cycle side.  
19 We would agree, if we can do it right, doing something with  
20 PIs for the public would be useful and I think what you  
21 heard the staff say is probably true.

22           Our biggest heartache is there is not one set of  
23 performance indicators that handle all these facilities.  
24 There may be one set that you could come up with that could  
25 handle the GDPs. There may or may not be one set that

1 handles the fabricators, because they're different enough.  
2 There is only one converter, and maybe not for long.

3 So what we're seeing is a tough go on a common set  
4 of performance indicators.

5 The other aspect on the PI's was for the reactor  
6 program, we started off, the Commission started off with a  
7 set of indicators that didn't create new indicators, and I  
8 think we'd like to sort of follow that as a thesis as we  
9 enter this process, too.

10 Let's not create new indicators unless they  
11 really, really do add something of value. And as we  
12 implement Part 70, the new Part 70, there may be indicators  
13 that the licensees identify to deal with items relied on for  
14 safety that do become good measures of indicators that we  
15 want to use at the facilities, that also are very useful not  
16 only for the Commission, but for the public to understand.

17 We're just not there yet. So that would be the  
18 other encouragement on PI's.

19 I think the difference, if there is a difference  
20 in what we're saying in my statement about relying more on  
21 the licensee performance review process than the model, is  
22 that there is still some difference, as Walt pointed out and  
23 Pat pointed out, on what the building blocks are and we need  
24 to have more discussions on the safeguards ones and I think  
25 we can get to closure on those.



1 I think that the difference is do we include PI's  
2 exactly the same way we have for the reactor program, and I  
3 think right now we're saying you can't do it the same way as  
4 the reactor program.

5 Of course, there are not a common set of PI's.  
6 There may be PI's for every facility, like in radiation  
7 protection, like in environmental protection, and maybe some  
8 others that will come out of the Part 70 implementation, but  
9 they're probably maybe almost unique to a facility and I'm  
10 not sure -- in fact, I am sure we would not object to all  
11 that as public information anyway once it's submitted of  
12 building that into what gets made transparent to the public.

13 On the significance determination process, I think  
14 there's total agreement by the staff and the licensees that  
15 it's a very, very good component of an assessment process,  
16 particularly for looking at the significance of inspection  
17 findings.

18 I think the challenge is that, again, for the  
19 reactor program, a lot of it is built upon the fact that you  
20 have PSAs for the facilities, safety assessments. And while  
21 we will have ISAs, they're not exactly the same as PSAs.

22 So figuring out how you do that, while not  
23 impossible, isn't intuitively obvious right now. It's not a  
24 direct shift of the paradigm from a reactor to the fuel  
25 facilities.

1           But I think we are committed to working with the  
2 staff on how to do that. I think, in our minds, it's  
3 probably more a matter of timing and aspects rather than if  
4 you're going to have something like this.

5           I think we would like to have it. We see the  
6 value. It allows the staff to look at the things that are  
7 most safety-significant. It allows you to react with  
8 enforcement in the most safety-significant, safety-focused  
9 ways, and it relieves burden on the licensees when it isn't  
10 safety focused.

11           So I think we see real value there. It's just not  
12 clear what the end product looks like right now. I think  
13 April is probably very optimistic for the staff to get there  
14 and to be honest, October for implementation may be very  
15 optimistic.

16           I don't think, and I haven't talked to David about  
17 this, I'm not sure anybody on our side feels that the  
18 current process, again, as I said at the outset, is broke.

19           So I don't think that there is a loss. I think  
20 that what I've been hearing from the facilities is that the  
21 inspectors are currently, where ISAs exist, looking at the  
22 ISA to guide your inspection activities, which is allowing  
23 them to focus their attention on what appears to be the most  
24 safety-significant aspects.

25           We're encouraged by that. There's no ISA across

1 the board for all the processes in place at the facilities,  
2 but where they exist, they apparently are at least being  
3 looked at by the staff as they go out there and that's  
4 encouraging and beneficial, I think, from everybody's  
5 perspective.

6 I think Pat mentioned that one of the aspects of  
7 the LPR process is it's similar to the SALP process, and  
8 obviously the industry didn't like the SALP process and  
9 David didn't like the SALP process. Nobody liked the SALP  
10 process, except maybe the Wall Street guys who could  
11 numerically list the plants for a while.

12 I think we would advocate, as I did in my  
13 statement, that the process be more timely. Annual reviews,  
14 we think, would be useful and if they're safety focused,  
15 they would be not as burdensome. So while we see annual  
16 being more frequent than every 18 to 24 months, we think  
17 that in order to be consistent, we think the transparency  
18 with the reactor program of annual reports and all the  
19 facilities available is good.

20 These facilities are operating very safely and  
21 letting the public know that is good. And if they're not  
22 operating where they should be, we should fix it and we  
23 should let everybody know that's happening, too.

24 So we're willing to commit to that. We're willing  
25 to work with the staff on a corrective action program and a

1 self-assessment program that would at least have the same  
2 attributes and characteristics that you would expect to find  
3 applied to any facility, whether it's a fuels facility or a  
4 reactor facility, and move forward with programs like that.

5 So I don't think there is a great difference  
6 between intent between where the staff is and where the  
7 industry is. I think that I guess Walt's comment or Pat's  
8 comment was that we're in violent agreement maybe on the  
9 LPR. I'm not sure it's violent. I'm pretty sure there  
10 could be agreement, and I think that as we talk about it,  
11 we'll probably get to good agreement among all stakeholders  
12 on how to go forward on that.

13 I think the schedule is probably ambitious, going  
14 to Commissioner Merrifield's question of when will they be  
15 coming back with the final answers. What I would suggest  
16 is, I think they had a July date for something significant  
17 in their work plan and that might be a good time to report  
18 back to the Commission on where the whole process stands.

19 And the only thing I would encourage at that point  
20 is it might be a report back not just on oversight, but  
21 where do you stand on implementation of Part 70 of the  
22 revised rule, both from the licensee standpoint and from the  
23 staff's standpoint, because, in our mind, that's the most  
24 critical function now.

25 There was a lot of energy and a lot of thought and

1 work put into revising the rule. There's an awful lot of  
2 work into implementing the rule and that's where our fellows  
3 are putting a lot of their energy.

4 We know the staff is, and we're not saying that  
5 this is a diversion, this is very important, but we think  
6 that you need to look at the whole package and this is one  
7 important aspect of it.

8 CHAIRMAN MESERVE: Thank you very much. Mr.  
9 Lochbaum.

10 MR. LOCHBAUM: I believe -- I'm checking on this.  
11 I believe this is the first time that Kevin Costner has  
12 co-starred with Walt Schwink on a slide.

13 COMMISSIONER MCGAFFIGAN: Does Walt get royalties?

14 MR. LOCHBAUM: Not from me. I also need to thank  
15 Walt Schwink for getting me over my bashful period. He was  
16 very effective at that.

17 But the point I wanted to make with the first  
18 slide was that Walt Schwink definitely provided a forum for  
19 all stakeholders to participate in a meaningful way, and I  
20 know that from my own participation in the first few  
21 meetings that were held.

22 As Walt described earlier, everybody was treated  
23 the same, very fairly, in a very meaningful way.

24 Despite that, it was very difficult -- it was  
25 impossible to get any other NGO to attend these meetings.

1 Walt tried and I tried. I even tried horse trading. UCS  
2 would follow some issues that other groups wanted in return  
3 for them attending these meetings, and that could have been  
4 a reflection of the confidence in UCS's support, I don't  
5 know. But for whatever reason, we got no takers and I  
6 ultimately had to stop attending the meetings due to  
7 priorities.

8 But it's not because Walt didn't provide the  
9 mechanism. He provided a very good forum, but people just  
10 didn't want to come.

11 Slide three, please. I think the reason that  
12 various stakeholders didn't want to come is summarized on  
13 this slide, and I'm not willing to defend the order. We  
14 could debate whether I've got the order right, but I think  
15 we've captured the three elements that have seemed to get --  
16 in talking to the various stakeholders as to why they didn't  
17 want to come.

18 And I need to stress that this wasn't a lack of  
19 confidence in Walt or his staff. It was a broader lack of  
20 confidence that carried over into the work that Walt was  
21 trying to do.

22 Slide four, please.

23 I provided some circumstantial evidence to support  
24 why the public perceives or has this lack of confidence, and  
25 I think there are some more recent examples that came out

1 that are relevant to the earlier discussions today.

2 The staff did arrange a telephone call with the  
3 lady in South Carolina, turned down the lady in Missouri,  
4 even though she offered to pay for the call herself.

5 The staff preciously arranged a phone call to  
6 Barry Quigley on the worker fatigue issue back in September,  
7 that he was unable to attend, travel out here, and the staff  
8 arranged a patch and he was able to participate by phone.

9 So it has happened. This afternoon at 1:00,  
10 there's a video conference to a meeting down in Atlanta on  
11 the Summer pipe crack issue that is open to the public, I'm  
12 going to attend that.

13 So that there are opportunities, but it's not  
14 consistently done. I appreciate Commissioner Merrifield's  
15 thing about the standard and the need for flexibility, but  
16 sometimes if you're on -- depending on what side you're on,  
17 flexibility and arbitrary and capricious is a very fine line  
18 and if people don't understand why in some cases and why not  
19 in others, it can become a barrier.

20 So I guess all we're advocating is some consistent  
21 policy that everybody understands and knows why they can or  
22 cannot be given certain options.

23 We're not advocating that it be provided every  
24 single time. There just needs to be some policy that's  
25 clearly articulated to everybody and followed.

1 Slide five, please.

2 Basically, because of -- I wanted to step back in  
3 the other example, recent example.

4 As this meeting is going on, the steam generator  
5 task force is meeting with the NRC staff. Several weeks, if  
6 not months ago, Jim Riccio asked the NRC staff to be  
7 notified and put on the distribution for all issues related  
8 to NEI 9706.

9 The meeting today is to discuss 9706, but we  
10 didn't find out about the meeting until Paul Gunter was  
11 looking yesterday for an Oyster Creek meeting that's also  
12 going on today.

13 Mr. Riccio was never notified, was never  
14 contacted, despite his request, and the assurance at the  
15 time of the request that he was indeed going to be notified  
16 of all future meetings and put on correspondence for stuff.

17 The excuse he got yesterday was that there's been  
18 some turnover in staff and that promise was made by the  
19 person he talked to at the time and that's not the person in  
20 charge of it today, but he wasn't notified of the shift and  
21 change. He didn't know he had to re-get a promise pledge,  
22 or he would have done so.

23 There is a breakdown, and we continue to be on the  
24 short end of breakdowns, and that needs to be stopped.

25 Anyway, going to slide five. Based on these



1 events and whether the perception at the end is valid or not  
2 is somewhat immaterial at this point.

3 It is preventing the public stakeholders from  
4 participating in activities even when forms are perfectly  
5 open and perfectly fair, and I think that's doing everybody  
6 a disservice. I don't think it's doing us any good, I don't  
7 think it's doing the NRC any good, and ultimately I don't  
8 think it's doing safety at the plants and the facilities a  
9 good thing.

10 In slide five, I say the public is reluctant to  
11 trust the NRC staff to do the right thing, and I'm not --  
12 right thing in this context doesn't refer to the ultimate  
13 technical resolution issue. I'm talking mainly a process  
14 issue of the right thing being meaningful public  
15 participation. That's what I was referring to.

16 I didn't want to imply that we don't think the  
17 staff will get to the right end point.

18 Slide six.

19 And what we're advocating to address this problem,  
20 and I've outlined it more in the letter that supplemented  
21 these slides, was a series of meetings between public  
22 stakeholders and NRC staff to discuss the problems and come  
23 to some ultimate resolution, similar to the series of  
24 meetings that was conducted a couple years ago, led by Mr.  
25 Zimmerman.

1           Those series of meetings were very helpful in  
2 resolving a public access to information issue that was  
3 around in those days, and it allowed people to get together,  
4 find out what the problems were, what the various issues  
5 that the staff and the stakeholders had in dealing with some  
6 of these issues, what some of the inabilities to respond  
7 might be or what some of the hardships might be, and what  
8 the right fixes were.

9           So I think that was a very productive forum and I  
10 think that type of thing applied to this situation would be  
11 equally productive.

12           I think the biggest problem today is consistency.  
13 There clearly are times when people, the public can attend  
14 meetings and have their comments addressed and have  
15 meaningful public participation. So I'm not implying that  
16 that never happens. It does happen today and it's not -- I  
17 can't predict beforehand, when I go to a meeting, whether I  
18 will or will not be able to say anything.

19           I think the expectation or the policy needs to be  
20 clear and understood, and it's my decision; if I don't want  
21 to attend a meeting, I'm not going to be able to say  
22 anything, that's my choice, but right now that's not the way  
23 it is.

24           I mean, we have to depend on the good graces of  
25 the NRC staff conducting the meeting as to whether we get to

1 speak or not.

2 Again, I'm not saying that we need to open up  
3 every meeting, so that everybody who attends gets 15-20  
4 minutes. That's not at all what I'm saying. Whatever the  
5 policy is that the Commission wants, it needs to be clearly  
6 articulated and it needs to be followed, not just some of  
7 the times, not just occasionally, not just when it's being  
8 scored, but all the time.

9 I think I could agree with Dr. Travers when he  
10 says that most public meetings are conducted fairly, because  
11 most of the public meetings aren't attended by members of  
12 the public, and if you count all those in a scoring, then,  
13 yes, you'd probably get like an 80 percent.

14 But the ones that the public does attend, I don't  
15 think the scoring would be quite as good, no matter who was  
16 doing the rating.

17 But I think what we're advocating today isn't that  
18 we should get around to discuss what the grade is. I don't  
19 think that's material to the issue.

20 I think what we're advocating is that the various  
21 people get together, figure out where we want -- everybody  
22 wants to be down the road, forgetting what the grade is  
23 forward or today.

24 That may be of historical significance, but in the  
25 grand scheme of things, it doesn't mean a whole lot.

1 I think it would be good to get together, figure  
2 out what the problems are, what could realistically be done  
3 to address them, giving everybody's resource limitations and  
4 priorities, and get something that everybody can live with  
5 in the future.

6 I think we really need that today and sooner  
7 rather than later would help.

8 Having said that, going to slide seven, while I  
9 will agree with Marv that the safety oversight for the fuel  
10 cycle facilities isn't broken, I guess we'd characterize it  
11 as badly bent.

12 And having said that, we think it's very important  
13 that the fuel cycle facility oversight process revision be  
14 given high priority. I'm not going to say top priority, but  
15 at least high priority, because fuel cycle facilities have  
16 huge inventories hazardous materials that can cause massive  
17 destruction if they're not properly managed.

18 The limited involvement I had in the process so  
19 far was -- showed me that there were some concerns and there  
20 seemed to be some gaps in the program today.

21 For example, the biggest example, I think it was  
22 in the controls over toxic chemicals, nuclear criticality  
23 and issues like that seemed to be fairly well understood and  
24 the threats posed by criticality events and nuclear  
25 materials seemed to be fairly well addressed.

1 I didn't get that same assurance looking at  
2 controls over toxic chemicals, and they can kill people just  
3 as much as neutrons and radiation can and it seemed to be a  
4 shortfall.

5 I don't know enough to say that it's broken, but I  
6 think that it seems to be bent in that area.

7 In any event, the revised oversight process  
8 provides the best protection against both radiation and  
9 chemical hazards, including those posed by sabotage. So we  
10 think it's very important for the staff to continue working  
11 on this.

12 UCS personally thinks this is more important,  
13 because we're going to start getting more involved next  
14 year, we're going to get back into attending the meetings  
15 and participating.

16 I recently freed up some time from another area  
17 that I was working on and I will be able to attend the  
18 meeting in January and subsequent meetings.

19 Thank you.

20 CHAIRMAN MESERVE: Thank you very much. We  
21 appreciate your comments. Let me turn to Commissioner  
22 Merrifield.

23 COMMISSIONER MERRIFIELD: I'm somewhat struck. We  
24 had the comment from Mr. Schwink that we are not as far  
25 apart as you might believe. Then we had Mr. Fertel's

1 comment that the dialogue with the staff has been useful and  
2 informative.

3 I was reminded of strategic arms limitation talks.  
4 I'm not quite sure how to take some of that language.

5 I'm ever hopeful that we can come to resolution.

6 But I think I want to start out with layering on  
7 top of some things that the Chairman said.

8 I do think that there is some usefulness in terms  
9 of having performance indicators as a measure of increasing  
10 our public confidence. My observation of the indicators  
11 vis-a-vis our reactor program is that indeed there are many  
12 members of the public who are actively using our web site to  
13 look at those, and that our web site is frequently being  
14 cited in newspaper articles across the country as a  
15 mechanism for people to have access to that information.

16 I think that provides more timely and accurate  
17 information for the public, which hopefully increases the  
18 confidence in what we're doing, and, obviously, to the  
19 extent that there is good activities being undertaken by the  
20 licensees, would increase the confidence in their actions,  
21 as well.

22 So I recognize some of the differences and I don't  
23 think we need to go into any further detail, some of  
24 differences we may have there between one set of licensees  
25 versus another in this area.

1 I personally do think it's worthy of spending some  
2 time on.

3 Mr. Fertel, you talked a little bit in terms of  
4 your own views of the timing for which this program could  
5 move forward, and, again, I think consistent with what I  
6 just said, I think there is a value to enhancing this  
7 program, again, for increasing public confidence in the fact  
8 that we have a safety oversight program which has vibrancy  
9 to it.

10 Some of these big issues that we have before us,  
11 do you think we can get through them in the -- you say it  
12 may not be October where we could actually put this together  
13 and have -- and pull it out.

14 What, in your view, is a more appropriate time  
15 line in that regard?

16 MR. FERTEL: I'm not sure I have an answer for  
17 that right now. My gut reaction is that to do what you want  
18 to do right, with communicating to the public, you want to  
19 get it right when you go out on the web.

20 There was a lot of effort put it on the reactor  
21 program to make sure that what went on the web the first  
22 time had been piloted, worked. To the degree we all could  
23 understand it, we did, and it wasn't misleading.

24 It followed the characteristics you said. I think  
25 that we're not there yet. I think on the PI's, I could see

1 PI's that make good sense that are linked to facilities,  
2 that are stuff that shows that you've got adequate radiation  
3 protection, maybe there's something -- if David's view is  
4 that there's gaps in the chemical side, it may not even be  
5 an NRC issue.

6 It may be an EPA or OSHA issue and there may be  
7 things that somehow have to be explained better on those  
8 areas.

9 My guess is we're a year away from knowing that.  
10 It's probably not October. It's probably the next calendar  
11 year before you're beginning to get into really being able  
12 to put stuff on the web that's valuable.

13 It's not five years away.

14 COMMISSIONER MERRIFIELD: But you think there is a value, you mentioned this in  
your testimony -- you think there is a value in the Commission revisiting these issues and the  
implementation of Part 70 you said in July?

MR. FERTEL: I used July -- my recollection -- I look quickly at the work plan  
the staff put out and my recollection was that they had a July date for resolving a bunch of  
comments getting ready for an October implementation. They can probably correct me back there  
if I'm off, but if that was there time frame July - six months from now or so probably makes  
good sense to check the whole system and again what I'm saying is not just this but take a look  
at how are we and the staff doing going down the road on Part 70 implementation. It's going to  
provide the real gusto for what the oversight process can actually do. The reason the  
oversight process can be changed is we're risk informing what we do under Part 70 so you can go  
that way. We're identifying items relied on for safety in a much more rigorous way and you've  
got thresholds in Part 70 that may allow you come up with color bands. So, I think that you  
got to sort of have them integrally thought about as you go forward is at least the way I'm  
thinking. I'm not looking to delay and I think that if there are areas that David thinks are  
not being addressed adequately we either should convince David that they are being addressed  
adequately or take actions to make sure they are.

COMMISSIONER MERRIFIELD: Mr. Lochbaum, I think the comments that various have  
made this morning, I think obviously that there is a strong concern of the part of the  
Commission of making sure that we are appropriately responding to the public and incorporating  
stakeholders in the way we move forward in a deliberative way and a thoughtful way and a  
meaningful way so that their participation has some value both to them and to us. I just want  
to get a sense though -- you have painted a fairly strong picture here in your slides and your  
letter and I just want to get some sense -- sometimes you look at life as sort of a series of  
snapshots and are we better or worse than we were say two years ago -- I won't say four years  
ago -- are we better or worse than we were two years ago, number one, and number two, given  
some of your comments are you implying, and maybe you want to knock this one down, are you  
implying at all that any activities of the staff are deliberate in nature that we are  
specifically or intending to exclude the public or are they instead more unintentional in  
nature?

MR. LOCHBAUM: I'll address the second part first. I think it is  
unintentional because when I worked in the industry if I had been called before a court and  
asked to swear on a stack of Bibles that public had equal access I'd have said yes. I would  
have look at all the notices and the ability to attend meetings and all the other stuff and I  
would have said that without any reservation. However, now that I wear the shoes of a member  
of the public it is completely different. That wouldn't be my answer today. So I don't think  
the staff has the perspective -- puts themselves in the shoes of a member of the public -- so I  
don't think it is intentional. If they did I don't think that they would be doing what they  
are doing. Hope they wouldn't. So I don't think that's an element of it, whatever the  
motivations are, it is happening. As far as whether things are better today than they were two  
years ago, there has been some progress made in the last two years. There has been some back  
stepping too. ADAMS was a huge step backwards. It was all brought about to worry about Year  
2000. We stepped back into the dark ages with this system. So, we're much worse off on access  
to information. The local public document rooms have been closed. The Public Document Room  
has moved up here which made it harder for most people -- us to get to -- I don't know about  
most people, and ADAMS is just incredibly difficult to get documents from. We've lost ground  
in the last two years in that area. We've made progress in areas. There is, at some public  
meetings, there's the opportunity for the public to actually say things. Not all. I think  
that is bitter sweet at opportunities when the public does get to say things but at the  
meetings when you are not allowed to say anything at penalty of being removed it makes those



deeper frustrations, because yesterday I allowed to speak. So the progress has some unintended consequences of making the other moments that much worse because it could be different. It is different. So, I guess, adding up all the pluses and minuses, I know the frustration level on my part is much greater today than it was two years ago. And, I personally view that as bad.

COMMISSIONER MERRIFIELD: Is that principally focused on the ADAMS issues more so that the public meeting issues -- your personal frustrations?

MR. LOCHBAUM: It's less on ADAMS because it takes me a while but I can deal through the ADAMS system. If not, I can pick up the phone and the PDR staff is very helpful in ultimately getting me the document I want. So, effecting me personally that less of an issue than the public meeting standpoint and not having comments. I sometimes spend more than an hour developing a set of comments and when it doesn't look -- the difference in having those comments just shredded and not addressed -- I can't tell the difference. It makes it very frustrating. I don't think that we have made much progress today than we did two years ago on that issue and that bothers me a lot more than ADAMS.

COMMISSIONER MERRIFIELD: Thank you Mr. Chairman.

CHAIRMAN MESERVE: Mr. Fertel, I appreciate the timing issues that you have raised and the difficulties that are confronted by the diversity of the facilities. I am struck, however, by the fact that the industry criticism of the SALP process was one that it was -- differed so much from one facility to the next in the problems of consistency and there obviously were problems of timeliness. You have addressed that with this interim process, at least the modified license performance review, that timeliness issues could be addressed. But it seems to me that we are still in this problem about -- maybe it's inevitably the case that we have this problem of consistency in our evaluations of facilities and making such that we are applying the same standards one place and the other where appropriate to do so. Is it your sense that, at least in this program, that the problems were perceived to exist in the reactor area are not occurring?

MR. FERTEL: I don't think they are occurring to the same degree as we saw in the reactor area. I think in the reactor area one thing we saw was Regions doing things very differently. We saw old stuff in the SALP influencing what people were saying even if you had improved it. I think that here to be honest once the ISAs are in place and from what we are seeing to date, the inspectors and the licensees are focusing more on those things that are safety significant. That is a clear improvement. If we can create a significance determination process that allows you to somehow using an ISA or whatever is a baseline allows you look at inspection findings and your own self-assessment findings and everything else through some filter that either bins them by color or bins them by some degree of significance like Part 70 tried, I think that you help not only NRC but the licensees and the public understand what is going on and you create more consistency than you probably have today. The number of facilities that you are dealing with and their nature you probably have more consistency today than you had in the reactors only because there are fewer number of folks making the judgments. They may be making bad judgments, or good judgments, but they are probably more consistent because there are not as many facilities involved.

CHAIRMAN MESERVE: Ok, that is helpful. Mr. Lochbaum, I take your comments very seriously because the engagement of the public in our processes is really essential. I think everyone on the Commission gains great benefit from the input that you and others provide, and provide us insights on things that we might not otherwise get. I would like to pursue a little bit the facts surrounding this particular episode on this one that you had indicated that you had tried to arm twist and get some other NGOs to participate and nobody would. I would have presumed that, at least in this instance, you think that engagement with all the stakeholders was one that was honest and straightforward and equal and I presume you were telling them that look I participated in this -- is this the case. Is it possible and I may be struggling to find something here that engagement in this process by the NGOs was just not a high priority for them as it is for you. And that you participated but you indicated reluctantly and then you had to drop out because of other things.

MR. LOCHBAUM: I didn't get that sense from talking to folks. One of the things that I tried to encourage people to do was attend a workshop or public meeting or two. And determine for themselves whether there was meaningful participation opportunity or not and not just take my word for it. I thought that they would come away from that meeting and having Walt sit down next to them with the microphone with a positive impression. That that was something worth their while. The other thing that I tried to point out to them Walt ran open meetings. No matter what you concern was, it was not out of bounds so there are enough NGOs that are concerned with fuel cycle facilities, transportation, and issues that could be brought to that table that that was one of the better opportunities they had to voice those concerns. Even with those trappings I got no takers.

CHAIRMAN MESERVE: Well, let me say that if you are aware of NGOs that could

contribute to this process I would urge them to continue to try to get someone to participate because we get great benefit from it.

MR. LOCHBAUM: I'm going to try. I'm going to continue going and also try to get some others too because I don't know that I can continue to attend every meeting, so I am going to try to redouble the efforts to get other NGOs to attend.

CHAIRMAN MESERVE: You also have a suggestion for us that we might have some sort of a meeting in which we bring in groups that talk about the public participation process itself -- what the problems are. Would they come to that meeting? Is this so broken that we are not going to be able....

MR. LOCHBAUM: They would. I have talked to a number of individuals about whether they would attend, what format that would be, what kind of issues they would like to talk about, and they would like to talk. I noticed that Chip Cameron is in the office -- some other NGOs have talked with Chip also about such a meeting and how it would be conducted and what its purpose would be. I can't guarantee you a packed room but you will get some attendance.

CHAIRMAN MESERVE: Would the format -- do you think it should be a workshop sort of thing or what would you suggest as the appropriate format for such a meeting.

MR. LOCHBAUM: I thought the format that Mr. Zimmerman used a couple of years where they had anybody who wanted a seat at the table could sit at the table. If you wanted to sit in the audience but raise a comment during the meeting there were plenty of opportunities for that. At the end of that meeting and also at the end of the meetings that Walt chaired there was -- the senior staff, in the case of Mr. Zimmerman or Walt, would go through the issues that came up during the meeting and what actions the NRC was going to take and what actions items they came away from the table and at the beginning of the next meeting it would be here are the things we had open items we said we were going to do here's what's been done on those so there was good continuity between meetings.

CHAIRMAN MESERVE: You would see a series of meetings?

MR. LOCHBAUM: The way I envision the first meeting is just bringing the people together and talk about what are the issues, what are the things that need to be worked out. Not try to reach resolution of any item the first meeting and then agree on a schedule -- what are the priorities the various stakeholders have, staff and external, and how should we work all these off. I'm not envisioning everything needs to be worked off my March or April. Whatever everybody agrees to.

CHAIRMAN MESERVE: Good. Thank you very much.

COMMISSIONER MERRIFIELD: Mr. Chairman, if you would bear with me for an observation, I was sitting here listening to this engagement, we have our international counterparts that we deal with and many of whom I think would just as soon NGOs not exist let alone engage with them. If you sort of picture it, here we have a Commission with the Chairman imploring an NGO to seek their counterparts to come in to talk to us because we really want to listen. I think that's one of the things that hopefully sets us apart and continues to place us as a leader internationally in nuclear regulation. Thank you Mr. Chairman.

MR. LOCHBAUM: If I can, the way Walt brow beat me into coming to these meetings was he went to the workshop that the reactor side held in January to talk about the reactor oversight process and he cornered Jim Riccio, and it's hard to do to corner Jim Riccio and I in the hall, but he did it and he kept after it until I finally cracked and Jim held steadfast. Walt went out of his way to get what participation he had and that was beyond what he needed to do but he did do it and I commend him for doing it. I wish Jim had cracked first.

CHAIRMAN MESERVE: We know that's hard.

COMMISSIONER MERRIFIELD: We haven't found his car yet.

MR. LOCHBAUM: I thought he was going to wash my car.

COMMISSIONER DICUS: However, we're looking for it.

CHAIRMAN MESERVE: Commissioner Dicus.

COMMISSIONER DICUS: Mr. Devault, in the early part of this unique arrangement that took place between with the NRC taking over regulatory oversight of the gaseous diffusion plants and the interim place where there is DOE and NRC and now there is NRC and USEC and DOE with your activities on the site and DOE and USEC and so forth. In the beginning I am very much aware of the fact of the enormous inconsistencies that existed in the regulations and the oversight between us, between you and USEC, and what everyone was doing, and I know that has improved significantly. However, are there still inconsistencies, be they administrative or technical, or regulatory, that still exist in this unique arrangement that we have?

MR. DEVAULT: There are some inconsistencies and, in particular, one inconsistency that I know exists on site is the definition of a radiological area. We have a different definition between the NRC and between DOE as to what constitutes a radiological area. And the way the problem was solved is that -- and we knew that workers were working in

one side of the plant -- and the workers work part of the time they may work in USEC base, part of the time they may work in the DOE space. And so we knew that if one worker walked across one boundary and he was told I'm working in this area and it's a contaminated area and he went over here into another side of the plant and started working in the same type area and was told that it was not a contaminated area that would raise questions in his mind which regulatory scheme is correct. And which criteria is actually correct. So the way that problem was solved on site is they looked at both criteria and a program was developed that would encompass both the criteria so that one contaminated area in the NRC space would also be a contaminated area in DOE space. So we worked to look at the inconsistencies that occurred and tried to solve that by addressing it and developing procedures that would handle both common areas.

COMMISSIONER DICUS: So if other issues like this arise or ones you know of is it working up to defer to NRC or to defer to DOE?

MR. DEVAULT: That's a good question. As I said typically we have tried to encompass both in how we handled the activities. In general, the way the activities were scheduled on site is where the activity is at, if it's and NRC activity on site it defers to the NRC, if it's a DOE activity on site it defers to the DOE.

COMMISSIONER DICUS. Ok. Mr. Fertel I asked a question to the staff about significant determination process particularly if criteria had been developed to try to resolve differences when or should they arise any discrepancies in how they could be resolved and the staff is still working. That a work is progress to get those criteria together. Do you have any thoughts on that?

MR. FERTEL: I think it is a challenge relative to our experience. I think the staff did a marvelous job on the reactor side in coming up with the process that really does make sense. But there were a lot more tools available for doing that on the reactor side so I think that it is more of a challenge though it still has very significant benefits on the fuel side. I think that's where we really need to engage. We haven't had a lot of engagement on that issue per se. I think that is where there will be engagement over this year. And again I doubt we'll make April for a date when they will actually know what that process is. But I think that's really worth while for everybody for stakeholders from the Commission through the public with the licensees in the middle there. Everybody will benefit if we can come up with a process that works. It may be we have to wait until we fully implement it -- your comment about we're in a period of transition -- maybe you can't fully implement it until ISAs are in place for all the processes at facilities. But you can implement as you get ISA in process and you have baselines and other things. It's not clear yet, we just need to have that dialogue.

COMMISSIONER DICUS: Ok. Well, that is obviously going to be something that staff needs to work on going forward to get these sort of details worked out. And the second thing, does, as you mentioned that we are in a period of transition, and you heard my questions to the staff about the inspection program, current transitional into ISA, and how do we make sure that something doesn't fall into the cracks and we're making sure that everything is covered as we transition and that we don't get into a situation that personnel changes or something or the other. Do you have any comments you would like to make to that and in particular what do we do in the interim until we have these ISAs in place?

MR. FERTEL: I think that what we've seen when I've asked the licensees about the inspection process, what I'm getting back in general is they thought the inspection process, while it could always be better, one wasn't terribly burdensome was coming in and the staff was doing a pretty good job. The most encouraging thing was that people that have ISAs are telling me that the staff is actually the inspectors are looking at the ISA and using it to help guide more of their focus. And that's probably encouraging. I think that it's going to be honestly hard for the staff to "change" the inspection process even on a schedule they want to even if we wanted them to because you are not going to have all the material you want in place yet. I would encourage the staff, I know they're working on it, to review the ISAs they have and feedback to licensees as soon as possible their thoughts on the adequacy of the ISAs that have been done because there has been both a lot of time and money invested but also it's sort of a templates the facilities are using to look at future ISAs and to look at implementing both the SRP and the Part 70 requirements. So, I think it's a transition period which right now seems to be orderly. Again, I think that if over this year the thought was the whole inspection process would be "risk informed" can only be on these facilities risk informed to the degree the ISAs are available. And they will evolve over the next few years.

COMMISSIONER DISUS: Do you think it will take us four years to get them all in or can we maybe beat that?

MR. FERTEL: Well, a number of the facilities as part of their timely license renewal they committed to ISAs and a number of the facilities actually have ISAs fully going or some submitted. And, I think the real challenge now is for the staff to review them and say

yes this is OK or it's not OK and let's talk about how you make it OK. I think the big risk you have right now if there is no feedback is people will stop doing what they are doing because they are investing both personnel time and they're investing dollars and if they are not sure it's right and it not sure it's going to be acceptable to the NRC staff and they can't resolve whatever conflicts there are what they'll do is just stop and that will drag on the process. I mean I think right now you've got people that have engaged pretty pro-actively. The facilities are learning from doing the ISAs. I mean it's a good process. It kind of the value of probabilistic safety analysis on the reactors side isn't the number you get out of it it's the process of going through it and how you get much smarter on your systems. The number is very helpful for doing things like thresholds and getting color codes but the real value, at least from my perspective, is the intelligence, the understanding that the people at the plant get and that's what you're getting now when people are doing ISAs at these facilities. You're just getting smarter in the process.

COMMISSIONER DICUS: So, am I hearing you say that critical path is the staff review of the ISAs that have come in?

MR. FERTEL: I think that's a very important function, I'm not sure I would say it's the critical -- clearly it's on the critical path. I think that the staff appreciates that. I think the licensees are looking for the feedback.

COMMISSIONER DICUS: Mr. Lochbaum, I think you have heard from all the comments I think all of us have made about public participation and public trust in what we do is very high on this Commission's agenda and interest and the staff recognizes that as well. You have brought up several issues and we have listened to several others that have brought them up and if I could characterize at least one of the overarching issues seems to be one of consistency. And its consistency as to whether you can or can not speak at a meeting, we're not consistent there, feedback on comments, maybe you do and maybe you don't, and maybe they're generally addressed in a document that ultimately comes out. The notification of meetings, clearly the ball got dropped on the one occurring today and the issue of call-ins, can you or can you not participate. Have you other examples where we -- did I capture the primary ones on the consistency issue? ADAMS not withstanding.

MR. LOCHBAUM: I wasn't going to mention ADAMS again. We have noticed some things like just the public notices, the pages -- sometimes they're very -- they've gotten better, but sometimes they are very cryptic in what they say so it's very hard to determine whether it's a meeting you want to attend or not. Although now they are all available, the process has changed in the last couple of years so now they are more easily available. I think the other issue is the access of information during meetings. Region I is very good about if you attend a meeting in Region I the documentation that is the subject of that meeting will be available prior to or at least during the meeting. That's not consistent. Frequently the information is provided. The meetings that Mr. Tracy has conducted recently on security he's gone out of his way to make sure that all stakeholders got information at the same time in advance. But again that's not consistently done across the agency.

COMMISSIONER DICUS: Is consistency the issue or are there other issues?

MR. LOCHBAUM: I think the biggest concern is in consistency because if you look again, as I said before if I was to testify before I joined, if you look procedurally at all the things it touches everything that the public stakeholder would need, access to information, notification of meetings, it's the inconsistency that's robbing me and other stakeholders of those opportunities.

COMMISSIONER DICUS: Ok, well we have an opportunity here to begin to fix something. The consistency issue should not be a major issue. Occasionally something is going to fall by the wayside. But it should be on occasion -- it should be a strong exception because what we need to do with public confidence is one of our four major goals. It's very important that we get a handle on those issues. You state, finally as the last question, that you are uncomfortable with the proposed resource allocation of two FTE per year to deal with all of the things we are dealing with these types of facilities. Having heard what you heard today and based whatever interim from the time you put your comments together today, are you still uncomfortable with 2 FTE per year?

MR. LOCHBAUM: Yes. I think, again I compare it to the level of resources that Paul Gunther, Jim Riccio, and I have and when we can out resource the NRC that concerns me particularly on an issue we think is very important as this one is.

COMMISSIONER DICUS: Are you fee supported?

MR. LOCHBAUM: Yes.

COMMISSIONER DICUS: Yes, I thought so. What is the proper allocation of resources?

MR. LOCHBAUM: At least more than we can put on the table.

COMMISSIONER DICUS: So how many do you have on this?

MR. LOCHBAUM: Well, we have three FTEs but we're all applying them to this issue. I work as hard as a dog, that's seven FTE.

COMMISSIONER MCGAFFIGAN: That's seven dog years.

COMMISSIONER DICUS: That a fair answer. That's all I have.

CHAIRMAN MEXERVE: Commissioner McGaffigan

COMMISSIONER MERRIFIELD: Also the people who pay your fees are happy to pay your fees. We can't say the same for our fee payers.

MR. LOCHBAUM: He looks happy.

COMMISSIONER MCGAFFIGAN: Fertel always looks happy.

COMMISSIONER DICUS: But he doesn't have to pay fees.

COMMISSIONER MCGAFFIGAN: I'll just go in reverse order. The two FTE working on this, it strikes me as about right given where we are, and this is not the full amount of FTEs. We have lots of people inspecting these facilities while we are trying to design a new process just as we were doing in the revised reactor oversight process. We had lots of people out inspecting and writing -- I guess we suspended SALP but potentially writing SALP reports and all that while the other folks were trying to design it. Now, it was a larger group, but obviously NRR has larger resources and I wouldn't want anybody to get the impression that we are not right now pursuing an oversight process inspection assessment and enforcement process vis a vie these folks. So the question is how many resources do we put here and that the difficulty it strikes me we have discussed all morning is the -- we have Part 70, we're trying to implement it, that is a major undertaking for the licensees and for our limited staff. Both limited compared to reactors. On top of that we are trying to do a revised reactor oversight. It would have been like amending Part 50 and the day the amendment went through saying we are going to design a revised reactor oversight process at the same time we probably would have gotten a few yelps at that point. So the question is doing it in tandem -- I think we have also heard that the ISA is very important, at least in the eyes of the industry to designing the ESDP process, perhaps to designing performance indicators. I personally, again associate myself as Commissioner Merrifield did with the Chairman, I think the indicators are very important from the public. I think this is one place potentially where you all could get ahead of the reactor folks in designing site specific indicators. The ACRS wants us some day to have site specific, or reactor specific, indicators that are truly risk informed in their view. We're a ways from that in reactor space and that's a long term goal to have these risk informed performance indicators that might be site specific. But here I think we could get to site specific indicators once we had some ISAs. I sort of see listening to all this a phased approach the next several years where maybe you only have ten facilities we could sort of move one in if it's ISA is in good shape, if you've agreed on an STP process for that facility that make sense, or in the case of gaseous diffusion plants, I am going to say two but we may be one again. You could sort of do it in a phased approach, get something together and then you know in three or four years you would have a revised reactor oversight process for fuel facilities. That's one approach that maybe you all haven't talked about but I see it sort of coming. I see this dialogue we are having today about timeliness and about PIs and about STPs therefore, going back to the original plan I think two may be about the right number to sort of referee on this stuff in the margin as we continue to do all the other stuff that's pretty central. That wasn't a question, it was more a statement - my questions are often times a statement. I want to go back to the public involvement. I attended one of Mr. Zimmerman's meetings and I agree with Mr. Lochbaum they are well attended, well conducted, and there was a result that at least partly relieved pressure at the time. I think that where we may have missed it is we need to institutionalize this. I mean we are talking about another set of meetings and we'll have another set of meetings but maybe what you really should be asking for Mr. Lochbaum is that we have an institutionalized process where we sit down once a year with NGOs or more frequently, but at least once a year and at the senior staff level have a discussion about what is working and what isn't working. I think there are lots of things that are working well as I said to Dr. Garish, we didn't mention the web site. We get complimented and we're redoing it and I think were involving, I hope, some members of the public in our redesign of the Web site to make it easier to navigate. I go on the Web site all the time myself and I usually go on as an external person because I want to see what you are seeing. But I think the Web site has improved, I think, you mentioned lots of examples of people conducting good meetings. Chris Grimes is in your letter, etc. And, it doesn't get in the way. Chris Grimes is working on one of the most important things we're doing in the agency, license renewal, and conducting public meetings and giving you the sort of feedback you are looking for didn't seem to slow him down very much. So he is able to do something important. One suggestion I would make for this meeting when you have it, is you need to look again at our policy statement on staff meetings open to the public. That is the underlying document. The staff recently told us that they didn't see a need to change it more that it's been changed as a result of those previous

meetings with Mr. Zimmerman. And Management Directive 3.5 which you have cited in some of your previous letters. I think that we should also, and it's not clear to me that this October 26<sup>th</sup> memo was made public from Dr. Travers to us where the staff basically said let's stick with the Management Directive and Policy Statement as they exist today. Those are the underlying documents that are going to either provide for consistency or not and I think there should be a dialogue as to are those the right words and then we have to fix the other things as Commissioner Dicus said. I remember asking Paul Gunther, probably about January of 1999, we had a Y2K meeting and Paul and just before Christmas of 1998 had submitted three petitions for rulemaking and we were just frustrated. I was personally frustrated because one of them had to be in effect by January 15<sup>th</sup> to make sense. I said Paul how can you do this. He basically said we didn't feel very empowered and so this is our way of getting press attention and making a splash. I urged him to give us the list of meetings he wanted us to give him special notice on just as Jim thought he had special notice on steam generators. We tried to do that. We have put probably belt and suspenders on that process. You can't be dependent on a single staffer shifting jobs. There's got to be a place where we can make sure that any commitments we made to the NGOs that we're going to let them know that a meeting is going to occur that we carry that out. As Commissioner Dicus says -- it's never going to be perfect, but it would be a lot better if it were better than 50 percent or 333 batting average which is, I think, what you're suggesting at the moment. I, again any comment you want to make, but I do think that you need to focus, as you know in dealing with us, you need to focus on what is our process. Our process is the Policy Statement with the Management Directive that under girds it. You need to argue with the staff and ultimately bring competing proposals to us if there are competing proposals as to what words need to be changed in order to get the outcome that you want.

MR. LOCHBAUM: I'm familiar with Management Directive 3.5 and the Policy Statement and that's not what the staff is doing today. Even after discussion of the October 26<sup>th</sup> memo I've going to meetings since then that they're not following Management Directive 3.5 or the Policy Statement. For me to evaluate the correctness --

COMMISSIONER MCGAFFIGAN: I know, I understand. You are saying you'd like those changed probably in some ways to guarantee the public and all that. You're saying that as they are at the moment you don't believe that they are followed.

MR. LOCHBAUM: Sometimes, sometimes not.

COMMISSIONER MCGAFFIGAN: I think there is an opportunity for dialogue here and I think it shouldn't just be the pressure relief valve every couple of years. The Zimmerman meetings, if I recall, were in the 98 time frame weren't they.

MR. LOCHBAUM: 99, July and September of 1999. I can get the exact dates.

COMMISSIONER MCGAFFIGAN: July and September of 1999 so just a year ago.

MR. LOCHBAUM: I think it was just last year -- it might be 1998.

COMMISSIONER MCGAFFIGAN: I think it might have been 1998.

MR. LOCHBAUM: It was July and September, I don't know what year. The issue about the belts and suspenders and not relying on one staffer. The staffer changed but I was out in the lobby when the staff came down to get the people going to the steam generator task force meeting and it was filled with industry folks. Whoever was responsible for calling people -- there wasn't a breakdown there -- they all got notified.

COMMISSIONER MCGAFFIGAN: In industry you probably only have to call one person at NEI. NEI now has a weekly thing that they put out and the put out the list of upcoming meeting that they think are going to be of interest to their members. It's easier in some respects I suspect to do it with the industry. Although we are also making five phone calls, I don't know.

MR. FERTEL: David, you may want to check our Web page.

MR. LOCHBAUM: I'm just around the corner.

CHAIRMAN MESERVE: I would like to thank both the staff and the panel. It's been a very helpful and informative discussion and with that we stand adjourned.