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Development for Uranium Recovery Industry

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BOARD OF COMMISSIONERS

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PUBLIC MEETING ON RULEMAKING AND GUIDANCE  
DEVELOPMENT FOR URANIUM RECOVERY INDUSTRY

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TUESDAY,

APRIL 10, 2001

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ROCKVILLE, MARYLAND

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The Commission met at the Nuclear  
Regulatory Commission, in The Secretary's Commission  
Meeting Room, White Flint One, 11555 Rockville Pike,  
at 10:30 a.m., Richard A. Meserve, Chairman,  
presiding.

PRESENT:

- |                        |              |
|------------------------|--------------|
| RICHARD A. MESERVE     | Chairman     |
| NILS J. DIAZ           | Commissioner |
| GRETТА DICUS           | Commissioner |
| EDWARD McGAFFIGAN, JR. | Commissioner |

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1       PRESENT: (cont'd)

2                   JEFFREY S. MERRIFIELD                   Commissioner

3                   ANNETTE L. VIETTI-COOK                   Secretary

4                   KAREN D. CYR, ESQ.                   General Counsel

5

6       ALSO PRESENT:

7                   JACK GERARD, President and CEO, National Mining  
8                   Association

9                   ALLEN HOWE, Division of Industrial and Medical  
10                  Nuclear Safety, NMSS

11                  MICHAEL LAYTON, Fuel Cycle Licensing Branch,  
12       NMSS

13                  FLETCHER NEWTON, President and CEO, Power  
14                  Resources, Inc.

15                  CARL PAPERIELLO, Deputy EDO

16                  KATIE SWEENEY, ESQ., Associate General Counsel,  
17                  National Mining Association

18                  ANTHONY THOMPSON, ESQ., Shaw, Pittman, Potts &  
19                  Trowbridge

20                  MARTIN VIRGILIO, Director, NMSS

21                  MICHAEL WEBER, Director, Division of Fuel Cycle  
22                  Safety and Safeguards, NMSS

23

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

(10:29 a.m.)

CHAIRMAN MESERVE: Good morning.

Actually, it's reasonably cool in here today. I was going to make a -- repeat a crack from Commissioner Merrifield yesterday about how we put our witnesses in the hot seat. It turns out the air conditioning has failed in this building, but with the fans, and so forth, we're doing reasonably well. We had a hot session yesterday, and I mean in terms of the room temperature.

(Laughter.)

The Commission, over the past year, has reached a variety of decisions relating to the uranium and thorium recovery industry, and we had contemplated a rulemaking to establish a new Part 41 to cover issues relating to that industry.

We have received communications from our licensees, and, as you know, there is a SECY paper that has been presented to us that provides a variety of different options as to whether or not and how we might proceed with a rulemaking.

Our session today is to deal with that issue, in part. We also have continuing concerns about issues relating to dual regulation and the fact

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1 that there are -- these types of licensees confront  
2 dual regulation both from the Environmental Protection  
3 Agency in the NRC and also from the states in certain  
4 areas.

5 And we have been concerned about ways in  
6 which some of that is maybe legally required. We're  
7 concerned about ways in which to minimize the impact  
8 of dual regulation. There are issues relating to fees  
9 that I know that are important to these licensees and  
10 for good reason, and there are a variety of other  
11 issues that are outgrowths of the quite active  
12 Commission work in the policy areas.

13 So we very much look forward to the  
14 sessions this morning to deal with that. Our first  
15 panel consists of Mr. Tony Thompson from Shaw Pittman,  
16 Ms. Katie Sweeney from NMA, Mr. Jack Gerard, who is  
17 President and CEO of NMA, and Mr. Fletcher Newton. We  
18 make you welcome. We much appreciate your being with  
19 us today. Why don't we proceed.

20 MR. GERARD: Great. Well, thank you, Mr.  
21 Chairman and members of the Commission. We appreciate  
22 the opportunity to be here today.

23 As mentioned earlier, I'm Jack Gerard, the  
24 new President and CEO of the National Mining  
25 Association. I've been in this capacity for probably

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1 a sum total of about three months now. So, of course,  
2 I'm a seasoned expert now on the uranium issue. We do  
3 appreciate the opportunity to be here today, and we  
4 appreciate the time that you've all taken to hear some  
5 of our concerns and let us express some of our views.

6 I will be very brief today and try to turn  
7 it over to some of the experts. But before beginning,  
8 if I may, let me just introduce the group that's with  
9 me. Obviously, Katie Sweeney, who is our Associate  
10 General Counsel at the National Mining Association,  
11 will give part of the presentation; Tony Thompson,  
12 whom many of you I think know from other work here  
13 with the Commission; and then, obviously, Fletcher  
14 Newton, who is the President and CEO of Power  
15 Resources, who will be part of that presentation.

16 And if we may, Mr. Chairman, we have some  
17 other uranium recovery licensees in the group, about  
18 a half a dozen. If we could quickly introduce them,  
19 if that is all right, a quick introduction --

20 CHAIRMAN MESERVE: Quick introduction. Go  
21 ahead.

22 MR. GERARD: -- we'd appreciate it.

23 (Whereupon, the uranium recovery  
24 licensees introduced themselves.)

25 MR. GERARD: Thank you, Mr. Chairman.

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1 CHAIRMAN MESERVE: You have about the  
2 whole industry here.

3 MR. GERARD: That's right. We've got them  
4 all here. The positive is there are a few of them, in  
5 the sense for introductions. The down side is,  
6 obviously, there's very few of them left in terms of  
7 uranium production in this country.

8 Very briefly, just let me say again thank  
9 you very much for hosting us today. As you know, at  
10 least from my perspective, we have perhaps a unique  
11 opportunity in this country now as we have the country  
12 focus on energy issues and policy debates.

13 And as we move forward now to look at the  
14 national energy policy from our perspective at the  
15 National Mining Association, not only representing  
16 major users in the terms of hard rock consumers,  
17 copper, silver, gold, and others, but producers in the  
18 sense of the coal producers in the country. And a key  
19 part of our group, obviously, is the uranium  
20 producers. And so we appreciate your willingness to  
21 take some time today.

22 With that, why don't I turn it over to  
23 Katie for part of our presentation.

24 MS. SWEENEY: Okay. As Chairman Meserve  
25 just said, and we all know, the staff developed a SECY

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1 paper presenting three alternatives, which include the  
2 National Materials Program pilot, continuing with the  
3 Part 41 rulemaking, or discontinuing the Part 41  
4 rulemaking.

5 National Mining Association's Uranium  
6 Committee met to discuss these options, and  
7 essentially we have some serious concerns with option  
8 one. We didn't dismiss it out of hand, especially  
9 because we have in the past asked to be involved early  
10 in scoping of regulations and guidance documents. But  
11 we think in this case the scoping has already  
12 happened.

13 There were scoping meetings on Part 41 in  
14 Denver, Casper, Albuquerque, and Austin, I think.  
15 States have submitted comments on the draft rulemaking  
16 plan, and we've had with the Commission a pretty  
17 thorough airing of NMA's white paper issues. So we  
18 don't think we need to have another scoping process  
19 here.

20 In addition, we have concerns about the  
21 cost and the timing of the pilot program. Because it  
22 is a new process, I don't think that anybody is sure  
23 how much it will cost or how long it will take. And  
24 then, what if it fails? Then, we would have to pay

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1 for some other procedure to go ahead, be it rulemaking  
2 or updating of guidance.

3 We also have concerns about whether the  
4 people involved would have the expertise needed to  
5 deal with these fairly complex legal and technical  
6 issues, issues that I think it would be probably quite  
7 difficult to get consensus on. People didn't  
8 understand those issues well.

9 For option two, continuing with the Part  
10 41 rulemaking, there are certainly some advantages to  
11 continuing with the rulemaking, I think one of the  
12 most important of which would be codification of the  
13 performance-based license concept.

14 Also, rulemaking does provide additional  
15 certainty over guidance, and I think that we -- that  
16 the industry and NRC have learned a lot over the past  
17 20-odd years dealing with the program, and we've  
18 learned things that we could incorporate into a Part  
19 41 rulemaking.

20 NMA itself, at the scoping meeting in  
21 Denver, provided kind of a laundry list of issues that  
22 could be addressed in the Part 41 rulemaking, from  
23 changes in the definition of byproduct material to  
24 small changes for some of the criterion to Appendix A.

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1           Despite the advantages of continuing with  
2 the Part 41 rulemaking, we can't support it at this  
3 time. We looked at the SECY paper discussion of  
4 resources where it's estimated that proceeding with  
5 the rulemaking would cost about \$300,000 over a three-  
6 year period. That's a lot of money and a lot of time,  
7 and the industry just can't afford it at this  
8 juncture.

9           Which brings us to option three, which is  
10 to discontinue the Part 41 rulemaking. That's NMA's  
11 preferred approach. We would like to go forward with  
12 updating the guidance documents. This option, we  
13 noted, would cost approximately \$100,000, but in the  
14 SECY paper there was no discussion of the timeframe  
15 involved. And I think we'd like to hear a little more  
16 hopefully from the staff on what that might entail.

17           NMA is interested in providing information  
18 that we think might be of some help in updating the  
19 guidance documents. But before I get into that, I'd  
20 like to note that we recently became aware of an NRC  
21 document, a regulatory information summary, which was  
22 RIS 2000-23. That document indicates that the  
23 alternate feed guidance and the non-11(e)(2) guidance  
24 have already been updated to some degree.

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1           We're not certain what the status of that  
2 document is or those revisions, because none of us  
3 officially received a copy of the document from NRC.  
4 So to the extent that NRC intends to move forward with  
5 that process, we'd like the opportunity to comment on  
6 those papers and meet with staff to discuss our  
7 concerns, because we did review that RIS paper and we  
8 do not think that the revisions there reflect the  
9 Commission's direction on the non-11(e)(2) and  
10 alternate feed guidance.

11           With updating the guidance documents, NMA  
12 will provide the NRC with information pertinent to  
13 updating the non-11(e)(2) guidance, and hopefully  
14 point NRC to some existing information that will help  
15 address the listed hazardous waste concern relating to  
16 the alternate feed guidance.

17           On the non-11(e)(2) guidance, NMA and the  
18 Fuel Cycle Facility Forum met last month and decided  
19 to develop generic criteria for acceptance of non-  
20 11(e)(2) material for disposal and tailings piles.  
21 Dave Culberson from the Fuel Cycle Facility Forum is  
22 here today in the audience if you have any questions  
23 about their participation in that effort.

24           We think it makes sense for these two  
25 groups to get together to do this, because we have the

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1 technical information on the suitable -- the candidate  
2 sites and the candidate materials. And we would try  
3 to develop criteria that ensure no greater health and  
4 safety concerns will be presented by the added  
5 materials, and also the criteria will identify  
6 potential jurisdictional hurdles that industry will  
7 have to address.

8 On the alternate feed guidance, we know  
9 that NRC has expressed concerns about listed hazardous  
10 waste and feed stock and how to ensure that they are  
11 not run through the mill. We know there's concerns  
12 about dual jurisdiction with EPA, and we believe the  
13 staff should review the protocol that the  
14 International Uranium Corporation has developed in  
15 conjunction with the State of Utah to address those  
16 types of concerns.

17 And Dave Frydenlund of International  
18 Uranium is actually here in the audience if you have  
19 questions about that protocol.

20 And now I will turn it over to Tony to  
21 deal with the dual regulation issues.

22 MR. THOMPSON: Yes. I'm going to talk  
23 about -- just briefly about the non-agreement  
24 state/NRC interface on the concurrent jurisdiction  
25 issue, and then talk a little bit about the

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1 jurisdictional issues and dual regulation issues  
2 related to ISL mining in particular.

3 There are some indications at least one  
4 non-agreement state does not believe that the  
5 Commission's decision on preemption with respect to  
6 non-11(e)(2) byproduct material is effective at this  
7 time. There are some indications that they believe  
8 that it is intended that that will be addressed in a  
9 Part 41 rulemaking proceeding.

10 NMA believes that our reading of the  
11 decision by the Commission was that the Commission  
12 changed -- issued a legal interpretation of the Atomic  
13 Energy Act, as amended by the Mill Tailings Act, and  
14 that that is, in effect, in effect now. And so it  
15 might be useful to clarify the status with relevant  
16 non-agreement states, such as New Mexico, Wyoming.

17 Now, turning to the dual regulation and  
18 the overlapping regulation in the in situ leach area,  
19 we understand, and we know the Commission understands,  
20 that there is some overlapping regulation as a result  
21 of the EPA UIC program. Indeed, before any kind of  
22 ISL mining can proceed, the proposed -- the applicant  
23 has to have both a UIC permit and an aquifer  
24 exemption, from EPA or from the appropriate delegated  
25 state.

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1           The aquifer exemption essentially says  
2           that a part of an aquifer -- and it's a very clearly  
3           defined part of an aquifer -- can be used for mining  
4           purposes because it contains recoverable minerals.  
5           You can't drink the water in that portion of the  
6           aquifer prior to mining because of the radionuclide  
7           content. You can have radionuclide radon levels of  
8           hundreds of millions -- or millions of picocuries per  
9           liter.

10           And you can't drink it after restoration  
11           is complete either because you still have high levels  
12           of radium, perhaps uranium, and certainly radon, in  
13           those restored aquifer areas. So you have to -- there  
14           is no way to avoid the UIC permitting and aquifer  
15           exemption process. And, certainly, NMA is not  
16           suggesting that it should.

17           Recognizing, then, that we do have some  
18           EPA controls on these kinds of issues, EPA doesn't  
19           require restoration. But if your activities in an  
20           exempted aquifer are going to have an adverse impact  
21           on some non-exempted portion of the aquifer, then EPA  
22           can require you to come in and clean it up.

23           The second sort of overlapping area is, of  
24           course, with NRC and the states. Some of the states  
25           have very extensive ISL regulatory programs. In fact,

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1 they are much -- delegated states, for example, have  
2 UIC authority from EPA, have regulatory programs that  
3 are specifically designed to address ISL operations.  
4

5 They go beyond just the delegated UIC  
6 authority of EPA, and, indeed, Wyoming and Nebraska  
7 are two such states. And those state regulations do  
8 require restoration of wellfields.

9 The Commission has suggested that the  
10 staff look at either MOUs or reliance on the state ISL  
11 program. This was discussed back at Riverton about  
12 five or six years ago, and the -- '97, I guess, okay  
13 -- and the staff was at that time looking at  
14 developing a chapter in NRC inspection manual to see  
15 if they could look at a particular state and look at  
16 what the state did to assess the regulatory issues for  
17 ISL mining. If the state covered all the issues NRC  
18 had to cover, then NRC could rely on the state. If  
19 there were deficiencies, they would take a look at it.  
20 That somehow went by the boards.

21 It's sort of like a standard review plan-  
22 like type of review that we're suggesting here. And  
23 indeed, and in fact, if you actually look at the draft  
24 standard review plan for ISL, NRC's draft, you'll --

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1 it virtually mirrors the Wyoming regulatory process  
2 for ISL operations.

3 So it would seem to us that there is no  
4 reason why, as in other areas, for example, historic  
5 preservation, issues like that where NRC lets other  
6 agencies sort of, in effect, do the work that they are  
7 closest to, have the most expertise in, NRC will then  
8 make sure its own requirements are satisfied, but will  
9 rely on the findings of the other agency, whether it's  
10 a federal agency -- and there's no reason why they  
11 can't rely on a state agency, in our view here.

12 The jurisdictional issues associated with  
13 ISL wellfields -- it is well-known I'm sure to the  
14 Commission at this point that in the view of NMA the  
15 whole set of complex legal and technical issues began  
16 when NRC asserted jurisdiction over the wellfields and  
17 ignoring, in effect, certain definitional things, such  
18 as licensable source material.

19 It has to be over .05 percent source  
20 material, or there shall be no licenses -- a mandatory  
21 provision, in our view, and in the view of the NRC  
22 General Counsel back in 1964, I guess.

23 Now, by changing the division between  
24 calling process wastes from ISL 11(e)(2) and now  
25 saying that all waste from ISL are 11(e)(2) has

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1 created additional regulatory problems and is going to  
2 cause all kinds of difficult legal gyrations.

3 It immediately puts licensees with NPDS  
4 permits in violation of those permits and in violation  
5 of the NPDS regulations, which do allow the discharge  
6 of restoration fluids if you meet the NPDS limits down  
7 the stream but which do not allow the discharge of  
8 process waste waters even if you meet the NPDS limits  
9 down the stream.

10 So by declaring restoration fluids and  
11 restoration waste as byproduct material, you have now,  
12 in effect, ex post facto if you will, you may have  
13 created liability for stuff that's gone down the creek  
14 that was under an NPDS permit and now it's 11(e)(2)  
15 byproduct material. And, indeed, at least one or two  
16 licensees have received letters from the staff  
17 suggesting that they have to go and evaluate whether  
18 they have to go down the creek and clean all of this  
19 up, because it's now, ex post facto, 11(e)(2)  
20 byproduct material.

21 The distinction between restoration fluids  
22 and process fluids is not an artificial one, as sort  
23 of is suggested in some of the SECY papers, because it  
24 has existed in the NPDS rule since the middle 1980s.  
25 One of the suggestions that the restoration fluids --

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1       although you are not -- when you are restoring, you  
2       are not producing uranium primarily for the source  
3       material content. You are pumping water to restore  
4       the ore body.

5               Now what you have when you've declared all  
6       of this as byproduct material, you're saying it's an  
7       integrated hole -- the restoration and the ISL. That  
8       was exactly the same circumstance as in 1978 before  
9       the definition of byproduct material came into being.

10              A mill tailings pile is part of an  
11       integrated hole with a mill, yet back in 1978 NRC  
12       said, "We don't have authority to regulate the  
13       tailings because it doesn't contain licensable levels  
14       of source material." And that's where the definition  
15       of byproduct material came from.

16              So by declaring restoration fluids and  
17       wastes as byproduct material, it seems to us you're  
18       violating the definition of byproduct material, which  
19       is producing primarily for the source material  
20       content. You are, in effect, creating -- you are, in  
21       effect, saying that the under -- the mine working  
22       which are in the regulations, defined not to be  
23       11(e)(2) byproduct material, are effectively byproduct  
24       material until restoration is completed.

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1           So you are restoring something that isn't  
2 11(e)(2) byproduct material, and the waste therefrom  
3 you're now saying is 11(e)(2). It's just gotten so  
4 that we -- I don't think we know which way we're  
5 coming and which way we're going. The depleted ore  
6 body is one of those problems.

7           So our suggestion for moving forward on  
8 this restoration issue is to go back to the  
9 distinction between restoration fluids being not  
10 11(e)(2) byproduct material, and presuming that NRC is  
11 going to continue to operate in the wellfields,  
12 treating the waste from processing as byproduct  
13 material.

14           MS. SWEENEY: Fletcher, that brings us to  
15 you.

16           MR. FLETCHER: Mr. Chairman, I want to  
17 thank you and the other members of the Commission for  
18 having this meeting today. I know that you, and  
19 particularly your staffs, have put a lot of time into  
20 this, and we appreciate the effort.

21           I apologize for being a little late this  
22 morning. I think I hit every single traffic light and  
23 every single traffic jam between here and the center  
24 of town.

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1           As we discussed earlier, I'm the President  
2 of Power Resources. I'm also the President of Crowe-  
3 Butte Resources. And between these two companies we  
4 are the largest producers of uranium in the United  
5 States. We produce more uranium together than anyone  
6 else. Crowe-Butte operates an in situ leach facility  
7 in Nebraska. Power Resources operates an in situ  
8 leach facility in Wyoming.

9           And what I wanted to do briefly is just  
10 give you a quick summary of where the industry stands  
11 right now domestically and how the fee structure as it  
12 currently is affects us, what impact that has on us,  
13 and then hopefully provide some solutions from a  
14 policy standpoint that can give us something to work  
15 towards going forward.

16           We use technology solution mining to  
17 extract uranium from ore bodies, and this is, I think  
18 without question, the most environmentally friendly,  
19 the safest, and the most efficient means of extracting  
20 uranium. We simply use water that occurs naturally  
21 together with the ore, and we pump that water through  
22 a system that extracts the uranium.

23           So as Tony pointed out, the water that  
24 exists in the sandstone where the ore occurs naturally  
25 has elevated levels of radionuclides, which makes the

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1 water unusable for drinking which is why we were able  
2 to get an aquifer exemption from the EPA in the first  
3 place. This is the natural state of things.

4 As we process the water, we naturally  
5 change the level of certain constituents in the water,  
6 and because of that, both in Wyoming and Nebraska,  
7 both states have extremely rigorous standards that we  
8 need to follow in order to comply with their standards  
9 and their definitions of restoration.

10 The current state I think, if you will see  
11 the next slide, I want to talk a little bit about the  
12 state of the industry, both with regards to the price  
13 of  $U_3O_8$  right now as well as the production. The  
14 price of uranium, natural uranium,  $U_3O_8$ , is lower  
15 today than it has ever been. In real dollars, it's at  
16 an absolute historical low. It was a little lower a  
17 few months ago. The spot market price has come back.  
18 But the current spot market price is \$8.20, \$8.25.  
19 The long-term spot market price -- or the long-term  
20 price is quoted currently at \$9.75.

21 At the same time, production of uranium in  
22 the United States has also dropped to its lowest point  
23 ever. Last year's production was about 3.7 million  
24 pounds. Of that, we produced about 1.7 million pounds

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1 between our two operations -- 800,000 pounds in  
2 Nebraska and 900,000 pounds in Wyoming.

3 As I said, the solution mining industry is  
4 extremely efficient. And we are trying to be more  
5 efficient every day. Unfortunately, the regulatory  
6 structure of fees is imposing a burden on us, a cost  
7 burden, that we're finding to be simply one that we  
8 can't continue to bear.

9 I think if you'll see the next  
10 slide you'll note that, as I said, the price is  
11 currently around \$8 a pound. Our fear is that, given  
12 the current fee structure, this is becoming a burden  
13 for us that will simply make the continued operation  
14 of our mines not possible.

15 The graph that you see as the next slide  
16 is just a quick summary of how prices have declined  
17 since 1996. At that time, they jumped up to a little  
18 bit over \$16 a pound, and they've consistently  
19 declined, as I said, to the level now which is around  
20 \$8.20.

21 The next chart is simply a numerical  
22 summary of what production has been in the United  
23 States since 1966. And as I said, last year's  
24 production was 3.7 -- almost 3.8 million pounds. The  
25 following chart is simply a breakdown of that

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1 production by quarter. And, again, you can see how  
2 that has decreased.

3 I should emphasize that ISL mining in the  
4 United States accounts for the vast majority of  
5 uranium production. There is still a small amount of  
6 production that comes from operations that are in  
7 restoration in Wyoming and New Mexico as well.

8 Now, we certainly understand -- and you  
9 can see in the next chart -- we certainly understand  
10 that the NRC is mandated to recover its fees. And we  
11 understand that the Commission is proposing a revised  
12 fee schedule. We've all read that, and we certainly  
13 appreciate the efforts that the Commission has made to  
14 reduce the annual fees next year.

15 Unfortunately, the hourly fees -- and  
16 these are the fees that are charged to us for the  
17 project managers as well as for the hourly fees that  
18 we incur for specific work directed at specific  
19 activities at our sites -- that fee is proposed to go  
20 up. And it's that fee that is really perhaps the  
21 biggest problem for us, particularly the project  
22 manager fees, because this is something over which we  
23 have absolutely no control.

24 We can't anticipate that. We have no idea  
25 what goes into that. And although the work that's

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1       been done is certainly I think done in good conscious,  
2       it's something that when we have to pay \$140 or \$144  
3       an hour, it becomes a prohibitive expense for us.

4               Just so you understand what these fees  
5       represent, I wanted to give you a quick analysis of  
6       how they affect operations. For example, for an  
7       operating ISL facility -- and the figures that are  
8       quoted here apply to the Smith Ranch facility, which  
9       is operated by Rio Algom Mining in Wyoming. Our costs  
10      and the impact of these fees on us would be similar.

11             Rio Algom, as I said, is the largest  
12      single operating facility currently in the United  
13      States, but you can see that the fees represent a  
14      significant portion of the total payroll. They  
15      represent a significant portion of the actual  
16      administrative costs for the site. They represent, in  
17      the case of Rio Algom, 25 cents per pound of their  
18      total costs. For us at Crowe-Butte and at Highland,  
19      that cost is higher, close to 50 cents per pound.

20             And you can see that it represents -- and  
21      this is I think maybe the most important point of all  
22      -- 7.8 -- almost eight full-time workers at that site.  
23      At a time when we've been forced to lay people off, I  
24      had to lay off last year 10 people. We closed our  
25      office in Casper. Again, the fees are imposing a

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1       burden on us, which is becoming simply cost  
2       prohibitive.

3               For a tailings site, in reclamation, you  
4       can see that, again, the fees represent a significant  
5       portion of their operating costs. And with the next  
6       slide you can see that for a mill -- we've got them  
7       reversed, actually, or I've got mine reversed, but the  
8       point here is that the fees represent a significant  
9       portion of the operating costs, both for a tailings  
10      site as well as for a mill.

11             If we go to the next slide, and I think  
12      you've probably all seen this chart, I sent this to  
13      you in a letter several months ago. And the following  
14      two slides are, again, a summary simply comparing  
15      price to the number of employees, the pounds produced,  
16      and how these have affected us.

17             The last slide here, which is one more I  
18      think after this, this particular slide is a bar  
19      chart. I think this gives perhaps the most graphic  
20      example of how fees have exploded. These are the fees  
21      for our operation in Nebraska at Crowe-Butte, and you  
22      can see that the hourly fees and the project manager  
23      fees have gotten out of control.

24             You will recall last August I was here,  
25      and I met with Commissioner Diaz, Commissioner

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1 Meserve, Commission McGaffigan. We talked about an  
2 issue we had facing us with regards to restoration of  
3 our mine unit number one at that time.

4 We are, unfortunately, still trying to get  
5 resolution of this issue. This is after several  
6 months and over \$100,000 in project manager fees that  
7 we've been charged for this.

8 Now, I want to emphasize that this is not  
9 the fault of the project managers. It's not the fault  
10 of the staff. It's not the fault of individuals at  
11 the NRC. In fact, the project managers we have at  
12 Crowe-Butte and Highland, these are extremely  
13 dedicated, hardworking, capable people who do, I  
14 think, an excellent job of working with us.

15 The problem lies with the regulatory  
16 environment in which the fees are being assessed, and  
17 that's I think what we have to address.

18 We certainly appreciate the effort that  
19 the Commission, as I said, has put into preparing for  
20 this meeting. We simply want to indicate that the  
21 uranium recovery industry in the United States is, I  
22 think without question, an extremely important  
23 industry. Obviously, it's under market pressure.  
24 These things happen in free markets. We're not  
25 concerned with that as much as we're concerned with

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1 the current fee structure that we face, which, as I  
2 said, puts us in a position of bearing a cost which we  
3 are now finding to be simply not bearable.

4 Thank you again for your time and for the  
5 chance to talk to you today.

6 MS. SWEENEY: Oscar, if you'd go to the  
7 last slide, I'll just cover that real quickly. It's  
8 just on -- moving forward on fees.

9 We think it's in the nation's best  
10 interest to have a strong domestic uranium recovery  
11 industry, but to achieve this we think something has  
12 got to give. That's why we're going to pursue any  
13 solutions that we think might be feasible. So we will  
14 be going to the Hill and coming to the Commission.  
15 We'll be going to the Hill to look for legislative  
16 solutions. We'll be coming to the Commission with a  
17 petition for rulemaking, for an exemption from fees,  
18 something akin to what the non-profits have.

19 We'd be more than willing to sit down and  
20 discuss the best ways to go about that or what should  
21 be included in those packages with any appropriate  
22 staff -- Karen Cyr perhaps or the CFO at NRC. We'd be  
23 more than willing to sit down with them and discuss  
24 how to move ahead on these.

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1           We are not asking for a permanent  
2 exclusion from fees. This would be a temporary  
3 measure until the price of uranium went up to a level  
4 where the industry can function again.

5           Of course, the outcome of the legislative  
6 or the rulemaking would be uncertain. So there are a  
7 couple of things that we think that NRC should be  
8 looking at now to help. And I think, as Fletcher  
9 indicated, one would be the project manager time and  
10 how their time is coded.

11           We know there have been some discussions  
12 about changing project manager designation to point of  
13 contact in some instances, and that might keep some of  
14 those costs down. Also, any place that we could  
15 eliminate unnecessary duplicative oversight to the  
16 minimum necessary would also reduce fees.

17           And, again, we thank you for your time  
18 today.

19           CHAIRMAN MESERVE: I'd like to thank you  
20 for a very interesting and helpful presentation.  
21 We'll go through our full cycle, but I think it's  
22 Commissioner Diaz's turn to go first.

23           COMMISSIONER DIAZ: Oh, it is? Well,  
24 thank you, Mr. Chairman. It must be something to do  
25 with the temperature of the room.

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1 (Laughter.)

2 I'm really pleased that the Commission is  
3 holding this meeting today. I believe it is an  
4 important meeting and brings out facts that are  
5 important to our nation. I think we have been making  
6 a lot of decisions, many of them very complex, and  
7 half of them I don't understand myself, which is good  
8 because normally it's three-quarters of the time.

9 (Laughter.)

10 But we really needed to pause at one time  
11 and take another look at what has been going on and  
12 what have people learned, and what have we learned on  
13 this process. And I really thank you for the  
14 opportunity to listen to your views, and I assure you  
15 that I personally think this is an important issue to  
16 our country, that deserves our best attention, and I  
17 personally -- I'm sure my colleagues, too -- intend to  
18 do that.

19 Having said that, and turning to the  
20 issues that have been presented in the SECY, I tried  
21 to understand and I will ask a question. It seems  
22 like the changes to Part 40 are not bad. The issue is  
23 an issue of, can you afford it or not? Do you want to  
24 elaborate on that? Will Part 40 -- let's assume that

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1 somebody has a magic wand. Maybe the Chairman has a  
2 magic wand.

3 (Laughter.)

4 CHAIRMAN MESERVE: I've been hiding it.

5 (Laughter.)

6 COMMISSIONER DIAZ: Yes. You know, I'm  
7 good at shifting responsibility to somebody else.

8 (Laughter.)

9 And fees could be, you know, ignored.  
10 Will Part 40 do what needs to be done, the revision to  
11 Part 40?

12 MS. SWEENEY: I think the industry would  
13 support going forward if fees were magically taken  
14 away and it wasn't going to cost the industry --

15 COMMISSIONER DIAZ: For a short period of  
16 time.

17 MS. SWEENEY: For a short period of time,  
18 yes.

19 COMMISSIONER DIAZ: Right. Okay. I think  
20 that's the only question that I have. Fundamentally,  
21 it's what I needed to know. Thank you so very much.

22 Thank you, Mr. Chairman.

23 CHAIRMAN MESERVE: Thank you.

24 Commissioner McGaffigan?

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1                   COMMISSIONER MCGAFFIGAN: Thank you, Mr.  
2 Chairman.

3                   I want to commend folks for the  
4 presentation they made. I agree with Commissioner  
5 Diaz that this is an area where something needs to be  
6 done, and, you know, clearly the end of the Cold War,  
7 the vast amounts of highly-enriched uranium that have  
8 become available, both in the United States and  
9 Russia, are a large part of why the industry -- why  
10 the price of  $U_3O_8$  -- the spot price is \$8 a pound.

11                  And I've noticed that the Congress has  
12 passed a lot of report language urging that we -- that  
13 the executive branch think about this issue. I think  
14 that a legislative solution could well make some  
15 sense. I mean, I support a legislative solution,  
16 basically, that would get your fees off the fee base  
17 for a period of time until the price of uranium was at  
18 a lower level.

19                  What is the level, Katie? I mean, if they  
20 are writing legislation here, in mark-up what is the  
21 price I put in where -- and what is the period of  
22 time? If the price of uranium -- is it spot, or is it  
23 the long-term price, and is it above what number?

24                  MS. SWEENEY: I think that we would  
25 probably need to get together and discuss that. But

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1 I think we were preliminarily discussing spot, and it  
2 would have to be at a certain price for at least a  
3 year.

4 COMMISSIONER MCGAFFIGAN: Okay. Well, I  
5 think you need -- we -- in some sense, we will be  
6 asked by Congress whether we agree with your  
7 legislative solution. But I think that's -- you all  
8 have to write it first.

9 MS. SWEENEY: Which is why we want to  
10 discuss it --

11 COMMISSIONER MCGAFFIGAN: Okay.

12 MS. SWEENEY: -- with the appropriate  
13 people here also.

14 COMMISSIONER MCGAFFIGAN: Well, you need  
15 to discuss it on the Hill, because they're the ones  
16 that are --

17 MS. SWEENEY: Yes.

18 COMMISSIONER MCGAFFIGAN: The amount of  
19 money is relatively modest. The total amount that  
20 would then go to the general fund is a relatively  
21 modest amount of money, as I understand it. And we  
22 can ask the staff later what that amount would be.

23 But the second option you mention is a  
24 rulemaking akin to the non-profits as a -- in case the  
25 legislation fails. In the case of the non-profits,

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1 there's a similar theory that the non-profit  
2 educational institutions provide the framework, the  
3 human capital for the industry as a whole, and,  
4 therefore, they deserve to be off the fee base. You  
5 provide the material capital for the industry as a  
6 whole, and I'm sure that's the theory you're going to  
7 be forwarding.

8 The trouble for you, given the  
9 presentation by Mr. Newton, is that the non-profits  
10 have an exemption from annual fees under that rubric,  
11 but I don't believe they have an exemption from hourly  
12 fees. And so I don't know what the legal -- whether  
13 -- I'm not a lawyer. I defer to Katie and Karen and  
14 Joe and other lawyers in the room as to whether you  
15 could come up with a theory for the hourly payments.

16 But I -- I think that might be more  
17 difficult. So I think the legislative solution may be  
18 the more attractive solution because it can be a more  
19 comprehensive one. And I'd suggest working with our  
20 staff and the Hill staff to try to deal with that.

21 The PM fees -- in all honesty, when we did  
22 that a couple of years ago, I will admit, as  
23 Commissioner Diaz has admitted, to not total  
24 knowledge. I will admit that the model I had in my  
25 head was the PM for, say, Dominion Power who covers

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1 North Anna and Surry, you know, four plants that  
2 probably make multi-hundreds of millions each per  
3 year, and not the notion -- we have a single PM, I  
4 believe, that covers them now. And not the notion of  
5 having a PM who might be costing \$100,000 a year for  
6 a concern where it's a very small entity.

7 I think we may need to consider that. I  
8 mean, we have a current rule out. You all presumably  
9 are going to comment on the current rule, consistent  
10 with some of what you've said previously. But I  
11 personally think that we need to consider whether the  
12 decision we made on PM fees, whereas the model I --  
13 I'll admit I had in my head were big licensee, big  
14 fuel cycle facilities, big reactor facilities. I did  
15 not see the unintended consequence on you all, so I --  
16 that's something that I will think about as we go  
17 forward.

18 And with regard to the issues, I think  
19 you've made your point. I personally am willing to  
20 reconsider the decision that we made on water, on  
21 waste water. I think that it's something that we do  
22 need to find a way to reconsider as we go forward.

23 I don't really -- I understand the points  
24 you're making. I'll have some questions for the staff  
25 later as to why those points aren't sound. But I --

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1 again, there's unintended consequences to a decision,  
2 and I just telegraph that I'm -- I'm heavily  
3 influenced by what you've said thus far.

4 That's all, Mr. Chairman.

5 CHAIRMAN MESERVE: Commissioner  
6 Merrifield?

7 COMMISSIONER MERRIFIELD: Thank you, Mr.  
8 Chairman.

9 I would agree with my two fellow  
10 Commissioners. I think this is a good opportunity for  
11 us to sit down and have a dialogue about the issues  
12 that we have between us. I have to admit, I think in  
13 the two and a half years I've been here on the  
14 Commission some of the issues associated with the  
15 mining industry have not gotten the sort of airing and  
16 opportunity for this kind of presentation before.

17 In a discussion I had with Mr. Gerard, we  
18 both agreed something like this would be helpful, and  
19 I'm glad the Commission has agreed to have this  
20 meeting.

21 I guess there's a variety of different  
22 issues we've discussed today. Commissioner McGaffigan  
23 just talked about the issue of restoration associated  
24 with in situ leach operations and how we go about  
25 regulating that. Again, coming -- I think I came to

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1 it originally when I cast my vote from a couple of  
2 perspectives. One is an eastern perspective on the  
3 issues of water, and the second one is as a result of  
4 the dialogue that I had had with EPA on RCRA and  
5 Superfund issues that I dealt with when I worked up on  
6 Capitol Hill.

7 It was unique for me to hear, and only  
8 after I cast my vote did I hear of the notion that EPA  
9 was willing to give exemptions for these aquifers.  
10 That is typically not an issue that we find when we  
11 interact with EPA at many other sites. And so I think  
12 that issue in and of itself highly colors where we may  
13 need to rethink where we went on that particular  
14 issue.

15 COMMISSIONER MCGAFFIGAN: It doesn't  
16 happen in Arlington or Rockville.

17 COMMISSIONER MERRIFIELD: It does not  
18 happen in Arlington or Rockville. That is exactly  
19 right.

20 (Laughter.)

21 So that -- I think that is an important  
22 one.

23 On the issue of PM costs, I wasn't here  
24 when that original decision was made. I have spoken

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1 with other members of the Commission. I think that's  
2 something that is of great concern.

3 We have to be mindful of a variety of  
4 burdens that we have. And to the extent that we are  
5 passing off such a large cost on a small licensee, I  
6 think it's something we need to be mindful of. So,  
7 again, I think that's something which is worth  
8 reassessment and reevaluation over.

9 I'm disturbed -- you know, I think we are  
10 caught here in a regulatory Catch 22. And  
11 Commissioner Diaz has alluded to it. We have a  
12 situation in which there is general agreement I think  
13 among our staff, in some of the comments we have heard  
14 today, about the benefits that we could receive from  
15 going forward with the Part 41 rulemaking, not only in  
16 terms of being more risk-informed about the  
17 regulations we do, but the possibility of reducing  
18 unnecessary regulatory burden, which is obviously one  
19 of the things that we, as a Commission, have been very  
20 interested in following.

21 Yet, at the same time, to the extent we  
22 try to achieve some of those benefits, both from  
23 greater health and safety and environmental benefits,  
24 yet reducing the burden, we can't do that because the  
25 costs are too large for the licensees who are

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1 associated with it. So you can't get the benefit  
2 because you can't pay for it, and I think that's not  
3 a good outcome in a regulatory atmosphere.

4 And like Commissioner McGaffigan, I would  
5 support legislative options up in Congress that would  
6 provide us some relief to provide you some relief in  
7 that respect.

8 I guess there is one area I do have a  
9 question about. We talked a little bit -- Mr.  
10 Thompson talked about the issue of concurrent  
11 jurisdiction relative to the states, dual regulations,  
12 as it results in our interactions with EPA. I  
13 understand better now how some of that overlap can  
14 occur.

15 At the same time, I'm also mindful of the  
16 fact that Congress clearly does not want us to simply  
17 turn tail and walk away from our regulatory  
18 requirements. I mean, we have an expectation up in  
19 Congress that we do the right thing.

20 What that may require, as you've  
21 suggested, is perhaps an MOU, with either EPA or other  
22 state agencies, to make sure that to the extent -- if  
23 we were to decide to step back somewhat, that the  
24 field would be covered. And I don't think we can

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1 merely do that without making sure that we're  
2 fulfilling our legislative responsibilities under law.

3 With that, too, however, also comes a  
4 cost. The cost of MOU is not small. We've been  
5 undergoing efforts to try to draft an MOU with EPA on  
6 other cleanup issues. That has taken extraordinary  
7 amounts of time and resources of our agency, and we  
8 have as of yet -- as of yet have not been able to  
9 fulfill that desire to meet that.

10 I hope you're cognizant that there's a  
11 cost associated with that and understand some of the  
12 burdens that we have. I don't know if you want to  
13 comment on either of those issues.

14 MR. THOMPSON: I would say that we do  
15 understand that. I think that the -- frankly, my  
16 personal opinion -- and others may disagree -- that  
17 the approach that makes the most sense is what the  
18 staff was looking at back at -- in 1997 at Riverton,  
19 which is -- is to look at you've got a draft standard  
20 review plan that pretty much mirrors the Wyoming  
21 approach.

22 Now, if you look at what Wyoming does, or  
23 Nebraska -- just pick one -- and if you are  
24 comfortable with the way they go about it, you can  
25 rely on what they find to an extent and fulfill your

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1 responsibilities by relying on what they provide you,  
2 the information they provide you, and that the  
3 licensee has provided to them. And where you find it  
4 deficient, then you can step in and go forward with  
5 the licensee to work out additional information.

6 That seems to me to make the most sense.  
7 That was what the staff was sort of working towards,  
8 and you almost have it in being with this draft  
9 standard review plan. You ought to be able to take  
10 that, size it up with Wyoming or Nebraska, and see  
11 where you think the rough edges are, and then work out  
12 some sort of an agreement with them. I don't think it  
13 would have to be anything too formalized that NRC --  
14 to the extent it -- it will review what the state  
15 provides, say, when restoration is completed and the  
16 wells are tapped and all this sort of thing.

17 And unless you have serious questions  
18 about it, you're prepared to accept what your fellow  
19 state regulators, you know, provide to you. That  
20 makes sense to me as an approach that might be  
21 workable without -- and the EPA thing, I don't really  
22 think we have as much of a -- I mean, we recognize  
23 that you have to have an aquifer exemption and a UIC  
24 permit.

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1           For example, if you apply for an NRC  
2 license to be an ISL mining operating, if you get your  
3 NRC license before you get those permits you can't  
4 start operating until you get them. I mean, they're  
5 a prerequisite to ISL mining. And we don't quarrel  
6 with that. We understand that. In fact, the aquifer  
7 exemption is what allows us to do that.

8           So we don't have a problem with that. So  
9 I don't think there's as much overlapping  
10 jurisdiction, frankly, between EPA and NRC on the UIC  
11 side of things. It's maybe more of a theoretical  
12 overlap. You have to have those things in place.

13           So I don't think that's our big problem.  
14 I think it's more with the states.

15           Fletcher, you maybe disagree with that I  
16 guess.

17           MR. FLETCHER: No. No, I would agree with  
18 that. As Tony pointed out, the EPA -- for purposes of  
19 our operations, the EPA is involved from the very  
20 beginning. And they grant us an aquifer exemption on  
21 the basis that, first of all, the water in that  
22 aquifer cannot be used as drinking water, and has  
23 never been used for drinking water ever. Number one.

24           Number two, that the aquifer contains a  
25 mineral that we can extract and essentially make money

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1 extracting it. And based on those two criteria, they  
2 then give us an exemption in perpetuity.

3 Now, in both Wyoming and Nebraska, the  
4 local state authorities were concerned, nonetheless,  
5 that they wanted to make sure once we completed our  
6 mining operations we did not create a problem down the  
7 road. And so both of those states have developed, as  
8 I said, a well-defined, rigorous set of laws that  
9 control the issue of restoration.

10 And the reason we're so frustrated in  
11 Nebraska, where we've submitted to the NRC our  
12 proposal for your consent that we've completed  
13 restoration in our first mine unit there, is that the  
14 State of Nebraska, which developed these rigorous  
15 standards many years ago, they have already signed off  
16 on that. They've agreed two years ago that we have  
17 completed restoration.

18 And we're answering the same questions and  
19 dealing with many of the same issues, as well as many  
20 new issues, at the NRC level. Now, again, I want to  
21 emphasize it's not -- you know, I'm not finding fault  
22 here with the project managers. I mean, the people  
23 doing this work I think are well-intended. They are  
24 trying to make sure that the NRC fulfills its mandate.  
25 These are conscientious, hardworking people.

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1           The problem is that, given the regulatory  
2 environment in which we work now, we are paying a  
3 tremendous amount of money and spending a tremendous  
4 amount of time and precious resources that we can't  
5 afford to spend. We're spending it answering issues  
6 and dealing with questions that have been dealt with  
7 years and years ago.

8           MR. THOMPSON: And one of the issues that  
9 was raised is, what happens if the restoration  
10 doesn't, in effect, hold over time? And as I pointed  
11 out before, the EPA UIC rules don't require  
12 restoration. But if you're going to impact a non-  
13 exempted aquifer, then you have to fix it. So if it  
14 didn't hold, you'd have to come back and fix it, I  
15 presume. I'm pretty sure the state, as a delegated  
16 authority, would require you to do that.

17           MR. FLETCHER: This is exactly something  
18 that the states are concerned with. And this is one  
19 of the reasons why the states have imposed extremely  
20 rigorous standards on us. They want to know what's  
21 going to happen in 50 years, 100 years, how fast is  
22 water in the aquifer moving, where is it going, and  
23 what's going to happen over time as that water moves.

24           And we've demonstrated to both the State  
25 of Nebraska as well as now in Wyoming -- in Wyoming

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1 we've used, actually, a computer model that tells us  
2 very clearly and very specifically what happens to  
3 that water as it moves through the ground over the  
4 next 100, 1,000, 10,000 years.

5 COMMISSIONER MERRIFIELD: Well, you've  
6 raised some interesting issues for us to think about  
7 some more, and I appreciate it.

8 For my part, I did have -- during my time  
9 on the Hill, I did have a variety of interactions with  
10 NMA and did have an opportunity to visit a number of  
11 the facilities of your members. I have not yet done  
12 so as a Commissioner at any of these facilities, but  
13 I intend to do so this summer. I will be visiting  
14 some of the mines out west and look forward to it.

15 MR. THOMPSON: We would be delighted to  
16 host you as well as all of the other Commissioners.  
17 Any time.

18 COMMISSIONER MERRIFIELD: Thank you, Mr.  
19 Chairman.

20 CHAIRMAN MESERVE: Thank you.

21 COMMISSIONER MCGAFFIGAN: Mr. Chairman,  
22 could I just get a brief -- Mr. Thompson, do I  
23 interpret your answer to say that we don't need MOUs?  
24 So the cost of negotiating them wouldn't be there?

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1 MR. THOMPSON: I'm not sure that you need  
2 an MOU. I think that -- yes, I mean --

3 COMMISSIONER McGAFFIGAN: I just wanted to  
4 clarify that.

5 MR. THOMPSON: I think the states have  
6 indicated that -- for example, Wyoming said, "Look,  
7 you know, we're willing to work in a cooperative  
8 manner. We're going to do this anyway, so we'll  
9 submit it to you. And if it satisfies you, then you  
10 can sign off."

11 COMMISSIONER McGAFFIGAN: Okay. I just  
12 wanted to clarify that.

13 MR. THOMPSON: Yes.

14 CHAIRMAN MESERVE: Thank you.

15 Let me say, like my fellow Commissioners,  
16 I am fully cognizant and agree with the importance of  
17 this industry, and recognize the difficult economic  
18 situation in which the industry finds itself and the  
19 problems that our fee rule -- fee obligations do  
20 present.

21 It does seem to me that the -- from our  
22 perspective, the easiest solution is one that's a  
23 legislative one, that finding a way through the  
24 thicket of our -- what we're required to do  
25 statutorily, to try to find a way -- that relief may

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1 be difficult, although I'm open to exploring whether  
2 there are some ways we can handle this.

3 I think that there are complexities there  
4 that may make that extraordinarily difficult to do,  
5 but we're -- we have definitely -- I think all of us  
6 have received the message that you've sent us about  
7 the problems on the fee rule and the fees, and we're  
8 all -- I'm sure all committed to try to find a way to  
9 try to deal with that problem.

10 I have just a few minor questions on more  
11 ancillary points. In one of your slides you had  
12 indicated that NMA and the Fuel Cycle Forum are  
13 working on generic guidance for disposal of non-  
14 11(e)(2) material and tailings piles. And I am  
15 curious as to whether the DOE -- there's been  
16 interactions with DOE on that issue.

17 I know that one of the concerns has been  
18 that DOE, of course, has to be the ultimate custodian  
19 of the site or state if they were to choose to do so.  
20 Probably it's going to be DOE for the tailing sites,  
21 and so they have got to be comfortable with the  
22 situation at the end of restoration.

23 I'm curious as to whether there has been  
24 any engagement by you with DOE on that issue.

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1 MS. SWEENEY: We have talked to some DOE  
2 personnel about this issue in the past. We haven't  
3 talked to them again since we have decided we wanted  
4 to move forward with this, with the Fuel Cycle  
5 Facility Forum, but we definitely intend to be talking  
6 to them about the jurisdictional issues and the hoops  
7 that industry might have to jump through to pursue  
8 going forward with putting non-11(e)(2) materials in  
9 tailings piles. We know that's a big issue.

10 CHAIRMAN MESERVE: So this process -- you  
11 don't have indication where DOE is on that issue?

12 MS. SWEENEY: I think we have gotten some  
13 conflicting messages from DOE.

14 CHAIRMAN MESERVE: Okay.

15 MS. SWEENEY: Depending on where they're  
16 located.

17 CHAIRMAN MESERVE: Mr. Thompson, I want to  
18 raise one question that you raised in your slides.  
19 You had made the point that our decisions with regard  
20 to the liquids resulting from ISL activities created  
21 a problem with violations of NPDS permits. I would  
22 have understood that if the liquids were defined as  
23 byproduct material they would be exempted under the  
24 Clean Water Act.

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1 I think the Dawn Mining case from the  
2 Ninth Circuit would -- holds that. So I think that  
3 you may have some unnecessary NPDS permits as to those  
4 liquids, to the extent that they are deemed to be  
5 byproduct material. But you wouldn't have a violation  
6 problem.

7 You might have a violation problem with us  
8 in terms of past releases that, because of the  
9 retroactive issue, presumably we can deal with that.  
10 But I don't understand the point about the violation  
11 with the -- of the NPDS permits.

12 MR. THOMPSON: Well, I think that I -- I  
13 understand your point about the Dawn Mining decision,  
14 and that the requirements are not applicable to  
15 byproduct material. But these NPDS permits and  
16 regulations were in place well before that decision  
17 happened. And while it may not be -- and, of course,  
18 the Commission's decision on the concurrent  
19 jurisdiction essentially reinforces that, as far as  
20 I'm concerned.

21 But it does raise the problem of  
22 technically being in violation of the rules and the  
23 permits, but the more important question is the  
24 liability. A much more important question is the  
25 liability for cleanup for something that's gone down

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1 the stream that was in -- in accordance with the  
2 regulatory limits.

3 And in some of these areas out there, as  
4 you well know, in the grants area where -- where some  
5 of these streams -- streams were coming from a variety  
6 of different mining sources, and there's no way to  
7 tell who put what in there and how much of it is yours  
8 and what's byproduct material and what's not. And so  
9 the liability issues are staggering, and it's already  
10 being pressed on these licensees by the staff as a  
11 result of that decision.

12 CHAIRMAN MESERVE: Let me make sure I  
13 understand. Is it -- I think that your answer is is  
14 that the problems as the liability are being created  
15 by the NRC --

16 MR. THOMPSON: Right.

17 CHAIRMAN MESERVE: -- in that materials  
18 that were released pursuant to an NPDS permit you  
19 thought you were authorized to do. Now the staff is  
20 coming back at you and saying, "Now, wait a minute.  
21 That's byproduct material, and you have to do  
22 restoration activities."

23 MR. THOMPSON: Right.

24 CHAIRMAN MESERVE: So it's an NRC --

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1 MR. THOMPSON: It's an NRC issue, and you  
2 have the situation, for example, in the grants area  
3 where people were pumping mine water, where you're  
4 running it through the IX and you're discharging it on  
5 an NPDS permit which is not the same thing as -- it is  
6 the same thing physically, chemically, and otherwise,  
7 as restoration fluids that are being pumped down the  
8 stream. So you have multiple of these things pumped  
9 down the stream.

10 Now, all of a sudden, some part of that is  
11 byproduct material. How do we tell whose is what, how  
12 much of it is yours, how much of it is somebody  
13 else's, and it's -- it is an NRC-created problem.  
14 That's right.

15 CHAIRMAN MESERVE: Don't you have that  
16 problem anyway with -- to the extent you have  
17 contributions to those streams that are not through  
18 the NPDS permit, non-point discharges, or groundwater  
19 contribution to the stream, which maybe you don't have  
20 in that area, or materials that have been windblown  
21 and have then been entrained in the stream?

22 MR. THOMPSON: I'm not sure I understand,  
23 Mr. Chairman.

24 CHAIRMAN MESERVE: I guess the question I  
25 have is you've indicated that part of the issue was

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1 the NPDS permit, that you had exempted releases and  
2 that this -- and that, therefore, there's a  
3 retroactive problem of going back and recapturing.

4 I'm just raising a question as to whether  
5 there isn't going to be some issue -- factual issue --  
6 as to the origins of the materials in the stream in  
7 any event, because some of the material that might be  
8 in the stream could well be argued got there through  
9 a mechanism other than an NPDS release.

10 MR. THOMPSON: I'm sure that's -- that's  
11 possible. That's possible, because these are not --  
12 you know, we're not talking about a room where  
13 everything is inside and we know what gets out. It's  
14 -- we're talking about out in the environment. That's  
15 possible.

16 But, certainly, if anybody thought that --  
17 that by releasing hundreds of thousands of gallons of  
18 water for 15 years down the stream was going to cause  
19 them to all of a sudden be subject to clean it up  
20 because it's now byproduct material, whether they  
21 would have done it is a serious question.

22 And I can't imagine that windblown  
23 tailings would be -- I mean, it might in a site-  
24 specific situation be blowing into a water course,  
25 but, you know, each mill is going to know more or less

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1 where their tailings are from the wind direction and  
2 all that sort of thing.

3 These are complicated. There's no  
4 question. The physical circumstances are complicated.  
5 That's a fair statement.

6 CHAIRMAN MESERVE: Thank you.

7 Commissioner Dicus?

8 COMMISSIONER DICUS: Thank you.

9 Let me apologize for being late. It  
10 wasn't so much the traffic lights from downtown. It  
11 wasn't even the traffic lights from out in the  
12 boondocks where I live. But it's -- I'm going to be  
13 out of town for a few days. It was getting the kids  
14 to the kennel, and they're starting to build my deck,  
15 and dealing with that, so I had a lot of things going  
16 this morning. I do apologize for being a few minutes  
17 late.

18 CHAIRMAN MESERVE: By "kids," she means  
19 dogs.

20 (Laughter.)

21 You said kennel. I --

22 COMMISSIONER DICUS: Yes. The kids are --  
23 my dogs are my kids. Okay?

24 (Laughter.)

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1 COMMISSIONER MCGAFFIGAN: Sometimes those  
2 of us with real kids are tempted.

3 (Laughter.)

4 COMMISSIONER DICUS: Anyway, the kids are  
5 at the kennel, the deck is doing well, and my neighbor  
6 has got everything under control. So I'm here.

7 My being late does not in any sense  
8 indicate my lack of interest in this, because, indeed,  
9 I think you know from the interactions that we've had  
10 over time I do have some -- I do have some issues and  
11 concerns. And I -- like my fellow Commissioners, we  
12 are all concerned about any kind of regulatory burden  
13 that impacts an industry.

14 But at the same time, obviously, we have  
15 a certain radiation safety and radiation protection  
16 mandate that we cannot back away from. So I think  
17 what we're trying to deal with here is, how do we  
18 marry these two, not conflicting issues but certainly  
19 less than easy issues to resolve?

20 Now, I want to talk about your legislative  
21 solution. I think you probably are aware that for  
22 some years now the Commission had worked very hard to  
23 get -- get some of our activities off the fee base,  
24 and it took years to do it, and only very recently  
25 have we been successful in that.

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1           And then that is going to take time to  
2 phase in. I think you're aware it's over a period of  
3 about six years. At a certain percentage per year, we  
4 will get something off the fee base.

5           How optimistic are you on a legislative  
6 solution, given obvious history that we have?

7           MR. GERARD: Is this the easy one, Katie?  
8 Is that --

9           MS. SWEENEY: This is your bailiwick.

10          MR. GERARD: My bailiwick. Oh.

11          In answer to that, Commissioner, I'm not  
12 sure right now. I think we've got to go up and do  
13 some preliminary pulsing, if you will, and some seated  
14 here on the Commission may have a better guesstimate  
15 than I would. But I think it's something, obviously,  
16 we feel strongly enough about, as I mentioned earlier  
17 in some of my opening remarks.

18          I think the climate has shifted a little  
19 bit to where there's going to be more sensitivity to  
20 these types of issues in light of what's going on  
21 around the country, just from an energy policy  
22 perspective. So I think our hope is that in that  
23 environment perhaps we'll have a few more listening  
24 ears and a chance to articulate our views or to make  
25 our case.

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1 Will that happen this year? I'm not sure.  
2 Will it happen this Congress? Not sure. I think  
3 after we begin to pulse a little bit, one of the  
4 reasons, obviously, we wanted to come as part of this  
5 presentation and let you know our thinking in that  
6 regard is we believe it's important that we do  
7 coordinate with you.

8 Having been in town for a little bit, we  
9 understand a lot of those first calls are going to  
10 come right here as to, what do you think about this?  
11 What's your reaction to what they're proposing? So  
12 our hope is let's work together. But to guess right  
13 now, our likelihood of success, not -- not sure.

14 COMMISSIONER DICUS: Okay. That's a fair  
15 answer. I appreciate that.

16 Then, let's take it to the next step, and  
17 assuming perhaps that there is not in the immediate  
18 foreseeable future a legislative solution, then you're  
19 going to pursue regulatory exemption from our fees,  
20 and along much in the same way as in the non-profits,  
21 which means that -- now, the base fees have to be  
22 shifted to someone else, just as they are for those  
23 who don't pay fees.

24 Now, I think we do have some -- and, you  
25 know, as I mentioned, I share with my fellow

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1 Commissioners some concerns about the fee situation  
2 here. And we probably have some efficiencies that we  
3 can get at, but we're looking -- I think all of us are  
4 looking closely at the PMs and whether or not there  
5 are some excesses there that we can control a little  
6 bit better.

7 But assuming whatever efficiencies we're  
8 able to do, assuming that we pursue the regulatory  
9 exemption -- and I don't mean to put you on the spot  
10 -- but somebody has to pay. There is a fundamental --  
11 who do you assume is going to pick up the difference  
12 in the fuel cycle? Or is it the end user?

13 MS. SWEENEY: No. I think it would have  
14 to be kind of spread out on -- amongst the rest of  
15 NRC's licensees. Is that fair? No. But if there is  
16 -- I mean, if the domestic uranium recovery industry  
17 goes away, it would be awful hard to start it back up.  
18 We'll lose it. We'll lose the expertise.

19 I just think that -- and that's why we're  
20 looking for a temporary exemption. No, it's not fair.  
21 Is OBRA fair? I don't think so. So we're going to  
22 try to work whatever solutions we can.

23 But, yes, we had the same concern as you  
24 did. We talked about this. We had a meeting

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1 yesterday, and we said, you know, "That question is  
2 going to come up. How do we feel about it?"

3 COMMISSIONER DICUS: Well, I'm glad I  
4 asked it. I wouldn't want you to be disappointed.

5 (Laughter.)

6 MS. SWEENEY: Well, that's true. Somebody  
7 else is going to have to pay for what we're not  
8 paying.

9 MR. FLETCHER: Commissioner Dicus, if I  
10 could just add -- one difference between us and, let's  
11 say, operators of a nuclear utility is that we're not  
12 able to pass our costs along directly to ratepayers.  
13 Now, I understand that not every nuclear utility today  
14 can do that. But I also think that utilities  
15 themselves are becoming more and more concerned with  
16 what they see as the tendency towards consolidation in  
17 the nuclear fuel cycle.

18 There are fewer producers, fewer  
19 enrichers, fewer converters, and fewer fuel  
20 fabricators today than ever before. And particularly  
21 when utilities are realizing that their nuclear assets  
22 are of tremendous value, the fuel for those assets is  
23 of concern to them.

24 Now, obviously, U<sub>3</sub>O<sub>8</sub> prices represent the  
25 smallest percentage of a utility's fuel operating

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1 costs. The amount of money that we're talking about  
2 here is not great relative to the other fees that are  
3 being paid and the total amount of money that would  
4 have to be shifted to other licensees.

5 Given that, our belief and our hope  
6 certainly is that the other licensees who would pay  
7 this, particularly the utilities, would recognize that  
8 ultimately it's in their best interest that the United  
9 States maintain its capacity to produce uranium  
10 domestically.

11 Because Katie is absolutely right -- when  
12 I lose people in Nebraska, when I lose people in  
13 Wyoming, when my electrician, as he did yesterday, at  
14 Highland quits to take a job in Rawlins, Wyoming,  
15 because we can't pay him enough, he's gone. And I  
16 lose that expertise, and I can't get it back.

17 The people who are in this room today  
18 represent a tremendous amount of experience, much as  
19 the staff people at the NRC do as well. When you lose  
20 those people, you've lost a tremendously valuable  
21 resource and you can't get it back.

22 COMMISSIONER DICUS: Okay. One final  
23 thing. And, Mr. Newton, this is to you. You  
24 mentioned the fact in your closure activities in

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1 Nebraska that the state had bought off on everything  
2 and approved --

3 MR. FLETCHER: Yes.

4 COMMISSIONER DICUS: -- but the NRC hasn't  
5 yet, or has been lagging. Of course, this becomes a  
6 cost and a fee issue. Did you submit the same  
7 material at the same time? And give me your view on  
8 why we're not as efficient as the State of Nebraska.

9 MR. FLETCHER: We actually submitted the  
10 -- submitted the plan, first of all, to the State of  
11 Nebraska. And there's a rather complicated chain of  
12 events here that I won't go into. But the project  
13 manager at that time, after we had received approval  
14 from the State of Nebraska, when we submitted it to  
15 the NRC --

16 COMMISSIONER DICUS: So you submitted it  
17 after you submitted --

18 MR. FLETCHER: Yes.

19 COMMISSIONER DICUS: -- to --

20 MR. FLETCHER: Yes, yes.

21 COMMISSIONER DICUS: And after you got  
22 approval from --

23 MR. FLETCHER: After we got approval.  
24 That's correct.

25 COMMISSIONER DICUS: Okay.

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1                   MR. FLETCHER: The project manager at that  
2 time was concerned that maybe the standards of the  
3 State of Nebraska weren't adequate to ensure public  
4 health and safety. I think he was genuinely concerned  
5 that, as a representative of the NRC, he wanted to  
6 make sure the Commission fulfilled its mandate to  
7 protect public health and safety and make sure that  
8 five or 10 or 15 years down the road we didn't have  
9 problems come up that were unanticipated.

10                   Now, of course, the people in Nebraska  
11 didn't quite cotton to that because they said, "Look,  
12 it's our water. It's our land. We know this as well  
13 as anybody. You don't need to tell us how to run our  
14 business." But I think the project manager at the  
15 time was well intended.

16                   Now, he was transferred. We have a new  
17 project manager, Mike Layton, who is an exceptionally  
18 bright guy, talented guy, hardworking. I've met him  
19 on two or three occasions. Obviously, there's a  
20 learning curve there. So he has to spend a certain  
21 amount of time to bring himself up to speed on what's  
22 going on. That's natural.

23                   And, obviously, because he's a dedicated  
24 guy who takes this stuff seriously, he's going to  
25 spend a certain amount of time with it.

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1           So as I say, I'm not -- and I want to be  
2 very clear on this. We're not blaming individual  
3 project managers. We're not putting the fault there  
4 at all, not in the least. It's simply the regulatory  
5 environment in which they work.

6           Before Mr. Layton I think is able to make  
7 an informed decision or an informed recommendation, he  
8 naturally wants to make sure he has covered all the  
9 bases. The problem is we're paying a tremendous  
10 amount of money for that.

11           COMMISSIONER DICUS: Are the values of the  
12 standards of the State of Nebraska not protective --

13           MR. FLETCHER: We think they are --

14           COMMISSIONER DICUS: -- with the water?

15           MR. FLETCHER: We think they are extremely  
16 protective. We've explained to the State of Nebraska  
17 how this works, what happens to this water. Much of  
18 what we're really talking about here is simply an  
19 education process, where an aquifer now has been used  
20 --

21           COMMISSIONER DICUS: Which aquifer is it?

22           MR. FLETCHER: Geologically?

23           COMMISSIONER DICUS: Yes.

24           MR. FLETCHER: I couldn't tell you off the  
25 top of my head.

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1                   COMMISSIONER DICUS: Is it a feedwater?  
2 I've forgotten the name of it.

3                   MR. FLETCHER: There are so many of them.

4                   COMMISSIONER DICUS: Okay.

5                   MR. FLETCHER: It's really --

6                   COMMISSIONER DICUS: It's a major one,  
7 though, that comes -- starts in the --

8                   MR. FLETCHER: Oh, no. No, this is not  
9 major at all.

10                  COMMISSIONER DICUS: Oh, it's a small one.

11                  MR. FLETCHER: Yes. You know, the term  
12 "aquifer" is a little misleading.

13                  MS. SWEENEY: Shadrin.

14                  MR. FLETCHER: Shadrin aquifer. Okay.  
15 What we're really talking about here is sandstone  
16 that's got water in it.

17                  COMMISSIONER DICUS: Okay. That's okay.  
18 It's not the big one.

19                  MR. FLETCHER: Yes. No, it's not the big  
20 one at all. And the point here is that we've now  
21 demonstrated to the State of Nebraska, and I think  
22 we'll be able to demonstrate to the NRC that nothing  
23 is going to happen years from now, decades from now,  
24 centuries from now, that could in any way harm the  
25 public health and safety.

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1                   COMMISSIONER DIAZ: Are you talking about  
2 radionuclides, or are you talking about sulphates and  
3 --

4                   MR. FLETCHER: Everything.

5                   COMMISSIONER DICUS: Okay.

6                   MR. FLETCHER: And, intuitively, you can  
7 understand that. I mean, these aquifers have been  
8 there for millions of years. The uranium has been  
9 there for millions of years. They haven't polluted  
10 other aquifers, and they won't.

11                  COMMISSIONER DICUS: Okay. I could go on  
12 a little bit on this, but I think in light of the time  
13 I'll pass at this point.

14                  Thank you, Mr. Chairman.

15                  CHAIRMAN MESERVE: Thank you.

16                  I'd like to express, on behalf of the  
17 Commission, our appreciation to all of you for a very  
18 helpful presentation. We now have an opportunity for  
19 a second panel from the NRC staff to address us.  
20 Thank you very much.

21                  COMMISSIONER McGAFFIGAN: Mr. Chairman,  
22 while they're coming to the table, I just want to --  
23 Karen Cyr clarified for me that the university  
24 exemption that we have in place at the moment covers  
25 both annual fees and hourly fees. So those with

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1 university research reactors pay zero fees, and I was  
2 wrong at that. So I just wanted to make that  
3 clarification.

4 CHAIRMAN MESERVE: Thank you.

5 We have a staff panel now to discuss the  
6 same issues. Dr. Paperiello, would you like to  
7 proceed?

8 DR. PAPERIELLO: Thank you, Mr. Chairman.

9 We appreciate the opportunity to brief the  
10 Commission today on the rulemaking and guidance  
11 development for the uranium recovery industry.  
12 Briefly, by way of background, in the staff  
13 requirements memorandum for SECY-99-011, the  
14 Commission approved the staff's recommendation of a  
15 new Part 41 dedicated to the regulation of uranium and  
16 thorium recovery facilities.

17 The Commission also directed the staff to  
18 be aware of the potential cost of such action and may  
19 -- and the fees that may be paid by the affected  
20 licensees.

21 After the Commission's directions on SECY-  
22 99-011, the staff received strong feedback that the  
23 potential cost of a full rulemaking would be  
24 exceedingly burdensome to an economically distressed  
25 uranium industry. The staff wanted the Commission to

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1 be aware of the industry's concerns, and also to  
2 examine appropriate alternatives to rulemaking that  
3 could clarify long-standing issues in the uranium  
4 recovery program.

5 Because of these concerns, the staff wrote  
6 SECY-01-026, Alternatives for Rulemaking, Domestic  
7 Licensing of Uranium and Thorium Recovery Facilities.  
8 The purpose of that paper was to solicit the  
9 Commission's direction on the best approach to take  
10 considering the broad range of desires and needs from  
11 the diverse group of stakeholders -- industry, states,  
12 DOE, EPA, etcetera -- involved in the uranium recovery  
13 industry.

14 Today, the National Mining Association,  
15 and now the NRC staff, will discuss several technical  
16 and diverse regulatory issues that have become the  
17 focus as a result of the work that has been ongoing  
18 since the issuance of the SRM for SECY-99-011.

19 In addition to all the papers that have  
20 been raised thus far, I think I'd like to emphasize  
21 one other point. No matter what alternative the staff  
22 is directed to implement, and whether we're talking  
23 about overlapping authority, surface water discharges,  
24 or some other issues that our stakeholders have

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1 discussed with us, these issues are still going to  
2 need to be worked through.

3 And whether rule or guidance, we're going  
4 to have to write down our policy, so it's understood  
5 by all and consistently implemented. And I expect, in  
6 accordance with the Commission's existing policy,  
7 stakeholders will be involved, and the final product  
8 will be reviewed and endorsed by the Commission to  
9 ensure Commission policy is met.

10 And this is all going to involve  
11 resources. And, in fact, if we do absolutely nothing,  
12 the individual licensing actions and uncertainty  
13 accompanying them, and potential litigation, will cost  
14 resources. So there is a resource implication no  
15 matter what we choose. It's just unavoidable.

16 And with me at the table today are Mr.  
17 Virgilio, Mr. Weber, Mr. Allen Howe of NMSS's  
18 Rulemaking Branch, and Mr. Mike Layton of the Fuel  
19 Cycle Branch. And a presentation will be made by Mr.  
20 Howe and Mr. Layton. At this point, I'll turn the  
21 meeting over to Mr. Howe.

22 MR. HOWE: Thank you, Dr. Paperiello, and  
23 Commissioners.

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1           A lot of the points that have been  
2 discussed today I will also cover as well, but I will  
3 try to be brief with my remarks.

4           With the first slide, just as an overview,  
5 I'll briefly discuss the draft rulemaking plan and the  
6 rulemaking options paper that was recently forwarded  
7 to the Commission. I'll then turn the discussion over  
8 to Mike Layton, who will present the status on other  
9 uranium recovery actions, resources, and stakeholder  
10 feedback.

11           On the next slide, we implemented the  
12 Commission direction in SRM to SECY-99-011 and  
13 incorporated guidance from three related SRMs. We  
14 developed a revised rulemaking plan and provided it to  
15 all of the states for comments last September. We did  
16 receive comments on the rulemaking plan from five  
17 states, from the Conference of Radiation Control  
18 Program Directors, or the CRCPD, and also from  
19 industry.

20           Colorado, New Mexico, Washington, Utah,  
21 and the CRCPD generally supported the need for a new  
22 Part 41 and the specific regulations for the in situ  
23 leach facilities. The comments also reflected four  
24 previous issues raised in the 1998 National Mining

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1 Association white paper as issues were discussed  
2 earlier.

3 The State of Wyoming, the National Mining  
4 Association, and the Rio Algom Company, were not in  
5 favor of the Part 41 rulemaking. In support of their  
6 position, these commenters cited the current economic  
7 status of the industry and that was covered earlier as  
8 well.

9 As a result of the potential economic  
10 burden on the industry, as a result of the planned  
11 rulemaking, and coupled with a proposal by the  
12 National Materials Working Group to consider a pilot  
13 process for interaction with NRC, we were led to  
14 revisit the rulemaking plan.

15 Next slide, please. We're a little bit  
16 ahead here. It should be SECY-01-026.

17 The staff recently provided the Commission  
18 with an options paper for proceeding. The three  
19 options in that paper -- I'll just briefly go through  
20 them. Option one was the National Materials Working  
21 Group option where a concept was proposed that we  
22 would work in conjunction with the agreements states  
23 in a leading role to consider revising the existing  
24 requirements.

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1           That three-step process would provide for  
2           developing a rulemaking outline similar to an NRC  
3           rulemaking plan, but it would also contain the  
4           mechanics for interactions, responsibilities, and  
5           decisionmaking. As with the rulemaking plan, this  
6           outline would have a new rulemaking alternative.

7           Assuming that -- as step two, assuming  
8           that rulemaking is the approved product, the working  
9           group would implement that Commission direction. And  
10          the final step on this would be NRC conversion of that  
11          product to a rule under the Administrative Procedure  
12          Act.

13          The staff believes that this option gives  
14          us an opportunity to clarify and consolidate the  
15          existing regulations using less NRC resources than  
16          would be in a standard rulemaking and also a chance to  
17          evaluate a new concept. As observed earlier by the  
18          NMA, the staff also recognizes that this option may  
19          include possible difficulties with reaching consensus  
20          amongst the stakeholders, and there may also be a  
21          longer time for completing such a process than you  
22          would have from some of the other options.

23          In option number two, the staff would  
24          proceed with the rulemaking to develop Part 41 as  
25          directed by the Commission. For brevity, I will not

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1 repeat the pro/con discussion that NMA presented  
2 earlier.

3 In option three, the NRC would stop  
4 current rulemaking and focus its resources on updating  
5 guidance documents. A pro for this option is that it  
6 would use fewer resources than in option two. This  
7 option would also implement Commission direction by  
8 updating the existing guidance documents.

9 However, this option would continue the  
10 current NRC licensing practices based on guidance and  
11 staff practice. As Dr. Paperiello observed, this  
12 could subject the NRC to hearing requests on future  
13 licensing activities.

14 To varying degrees, any of these options,  
15 if successful, would achieve the NRC's strategic goals  
16 of increasing public confidence, reducing unnecessary  
17 regulatory burden, and increasing effectiveness,  
18 efficiency, and realism, while maintaining safety.  
19 Because the stakeholder involvement is greater in  
20 options one and two, they are expected to achieve a  
21 greater level of public confidence than option three.

22 In addition, options one and two may  
23 achieve a greater level of effectiveness and  
24 efficiency than option three. Because of the lower  
25 amount of NRC resources involved, option three would

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1 result in an expected lower regulatory burden than  
2 options one and two.

3 As indicated in the options paper, the  
4 staff is seeking further Commission guidance before  
5 proceeding.

6 I'll now turn it over to Mike Layton, who  
7 will describe staff actions, uranium recovery actions,  
8 resources, and stakeholder feedback.

9 MR. LAYTON: Thank you, Allen.

10 In the interest of time, and, of course,  
11 with your permission, I'd just like to touch on the  
12 high points of the staff's actions in implementing the  
13 directions that the Commission gave us in the staff  
14 requirements memorandum for the four Commission  
15 papers, and then focus on discussions on some of the  
16 resource items and what we learned from other  
17 stakeholders.

18 The first action that staff took was to  
19 have two meetings with EPA on the issue of groundwater  
20 protection at in situ leach facilities. And the  
21 participants in these meetings were two offices from  
22 EPA headquarters and also representatives from Regions  
23 VI, VII, VIII, and IX by telephone.

24 And the focus of these meetings were to  
25 really explore the extent to which NRC staff can rely

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1 on the reviews performed by EPA or the EPA authorized  
2 states, in lieu of staff doing those reviews  
3 themselves and supporting the licensing actions.

4 And the feedback we received from EPA as  
5 a result of these meetings were that, at least at the  
6 federal level, EPA views that NRC's licensing program  
7 and the federal underground injection control program  
8 are really complementary of each other and not  
9 duplicative.

10 EPA also pointed out that some of the  
11 authorized states implement programs that are more  
12 stringent than the federal program. Consequently,  
13 really at the technical review level, the duplication  
14 between NRC and the underground injection control  
15 program really lies with the states and not with the  
16 EPA at the federal level.

17 EPA also encouraged us to meet directly  
18 with the affected states, and they offered to stay  
19 involved in the process not only from the standpoint  
20 of staying informed but also to assist us in  
21 understanding how the UIC program is implemented at  
22 the authorized state level. And I'd like to let the  
23 Commission know that our interactions with EPA on this  
24 issue have been very collegial and very mutually  
25 cooperative.

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1           For the remainder of the Commission's  
2 directions, we issued a generic communication which  
3 the representatives from NMA have mentioned, the  
4 regulatory issues summary. And that was issued on  
5 November 30th of 2000. It was addressed to the  
6 uranium recovery licensees, and it was sent to the  
7 agreement states and non-agreement states. And it's  
8 also available on NRC's web page.

9           It encompassed, really, the four -- four  
10 items that were in SECY -- the Commission papers 99-  
11 013, 99-012, and also 99-277.

12           The first item that was covered in the  
13 regulatory issues summary was, what constituted  
14 11(e)(2) byproduct material at in situ leach  
15 facilities? It also encompassed the revised criteria  
16 for the direct disposal of materials other than  
17 11(e)(2) byproduct material in uranium mill tailings  
18 facilities.

19           It addressed the revised criteria for the  
20 acceptability of using alternate feed materials for  
21 the processing at uranium mills. And, lastly, it  
22 covered the concurrent jurisdiction with non-agreement  
23 states under the Atomic Energy Act.

24           In addition, there are two items items  
25 that we are continuing to proceed with and work on.

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1 As I mentioned previously in discussions with our  
2 meetings with the EPA, the overlapping authority of  
3 the Atomic Energy Act and the Safe Drinking Water Act  
4 is one issue that we are currently pursuing, primarily  
5 in the area of groundwater protection at the in situ  
6 leach facilities. Also, the surface water discharges  
7 from some in situ leach facilities and uranium mills.

8 As NMA described, previously this dealt  
9 with the non-processed wastewaters, discharges that  
10 came from the facilities where the states had issued  
11 their discharge permits for both radiological and non-  
12 radiological constituents.

13 Now the facilities have been informed that  
14 some work needs to be done to assure that those  
15 discharges can conform and comply with the Part 20  
16 regulatory requirements.

17 On the item of resources, I would like to  
18 first go over some of the efficiencies and  
19 streamlining measures that staff has taken, really  
20 within the limited scope of influence that we have on  
21 these areas.

22 I think the representatives from NMA will  
23 affirm that we have been working with them quite  
24 diligently over the last few years in trying to find

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1 ways in which we can gain efficiencies in our  
2 regulatory process.

3 Some examples of this are that early on,  
4 we completed staff guidance in draft and final form  
5 for the standard review plans which we use in our  
6 license reviews that helps focus our review efforts.  
7 We have also implemented the performance-based license  
8 condition which is modeled after the 5059 provisions  
9 for the reactor licenses.

10 We have also worked with Region IV, who  
11 carries the inspection program for the uranium  
12 recovery area in streamlining the inspections, where  
13 based on past performance of licensees, some  
14 inspections may be reduced or spread out over time as  
15 opposed to the past very regimented inspection  
16 schedules. Also, in a couple of instances, the  
17 inspection frequencies have increased because of the  
18 past performance of these facilities.

19 Currently, as a continuing process, we are  
20 looking at ways where we can really change our daily  
21 practices, like drafting early review -- or not review  
22 plans, but technical evaluation reviews. It helps  
23 focus us in doing the detailed reviews for the  
24 licensing actions. We are trying to achieve a goal of  
25 really looking at trying to do one round of requests

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1 for additional information as we go through our review  
2 process. If the information we receive from our  
3 licensees will support that goal.

4 In addition, we have reduced staff  
5 resources in the uranium recovery program for Fiscal  
6 Year 2001. This is reflected in the proposed fee rule  
7 that's now up for comment.

8 Lastly, what we have learned from other  
9 stakeholders. In addition to the feedback we receive  
10 from EPA in our meetings with the in situ leach  
11 facilities, there were two other items that EPA has  
12 recently brought to our attention. One deals with the  
13 disposal of material that are not similar to uranium  
14 mill tailings in the uranium mill tailings facilities.  
15 EPA has identified this as a potential issue of  
16 concern with EPA and the states. That is primarily  
17 the materials that are covered by the Toxic Substances  
18 Control Act, CERCLA and some of the recra materials,  
19 which contain primarily organic constituents that have  
20 different mobilities than the constituents in uranium  
21 mill tailings.

22 EPA has also informed us that we really  
23 need to face particular attention to the need for full  
24 consultation and coordination with the states in  
25 dealing with the approvals for alternate fee requests.

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1 Primarily not only where the materials originate, the  
2 states in which they originate, but also where they  
3 are processed and potentially transported through to  
4 the final processing.

5 The item or the issue that is of concern  
6 with this is that these materials may be subject to  
7 recra use and re-use regulations regardless of their  
8 source material content.

9 From the non-agreement states, we have  
10 heard primarily two main concerns from them. The one  
11 is the preemption of the non-radiological constituents  
12 for groundwater protection at mills. This is the  
13 concurrent jurisdiction decision.

14 At least one state has significant  
15 concerns with this. The feedback we have received  
16 from the states is that in their view the NRC program  
17 lacks protection. Also, NRC's program does not  
18 address the groundwater degradation concerns with non-  
19 hazardous constituents that affect the aesthetic  
20 quality and potential use of the groundwater resource.

21 The second item that we have heard from  
22 the non-agreement states deals with the overlapping  
23 groundwater regulations at in situ leach facilities.  
24 They have identified that this does create a  
25 regulatory burden for the industry. The states views

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1 are that they have programs in place, and that really  
2 NRC's oversight is really not needed.

3 From the agreement states, we have heard  
4 four items. The first item has to deal with an issue  
5 that was really not addressed in the previous  
6 presentations, either by us or NMA. It has to deal  
7 with the confusion over how to regulate the pre-1978  
8 uranium mill tailings based on the director's decision  
9 that was issued earlier this year.

10 A second issue that came up, and this one  
11 actually was quite surprising to me when I heard it,  
12 that we at NRC need to be very clear about our  
13 regulation of groundwater protection at ISLs.

14 This comes from the State of Texas, which  
15 identified that curiously they have a similar problem  
16 that the NRC has with the non-agreement states in  
17 overlapping authorities with the Safe Drinking Water  
18 Act and the Atomic Energy Act. However, their problem  
19 deals with differences in state agencies. It's a  
20 similar overlapping authority problem that we are  
21 facing with the non-agreement states.

22 Also we heard from the State of  
23 Washington, who recommended an alternate approach to  
24 Part 41. They asked the Commission to consider using  
25 the existing framework in the CRCPD as a mechanism for

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1 perhaps developing a Part 41 regulation. Currently  
2 they are working on suggested state regulations as a  
3 Part U that could serve as a vehicle for Part 41.

4 Also, another issue that came up from the  
5 agreement states that we have not heard of or that  
6 hasn't been presented in the previous discussions  
7 deals with the license termination of agreement state  
8 licenses, and that NRC really needs to have clear  
9 expectations about what process and procedures we go  
10 through in terminating those agreement state licenses.

11 As an aside for the Commission's  
12 information, we are working with the agreement states  
13 on revising and clarifying our existing guidance. We  
14 have developed a workshop that will occur with the NMA  
15 and the NRC meeting in June, where we will continue to  
16 work through that issue.

17 Finally, with industry, there are some  
18 members who are not -- or some licensees who are not  
19 members of NMA. DOE and other stakeholders like the  
20 public and Congress, we do receive feedback from those  
21 stakeholders on a regular basis, and do incorporate  
22 that feedback in our decision process.

23 With that, this concludes our presentation  
24 of the findings that we've come up with through the

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1 preparation for this Commission meeting. We thank you  
2 for your time.

3 CHAIRMAN MESERVE: Does that complete the  
4 staff? Good. Thank you very much. Very helpful  
5 presentation.

6 Commissioner McGriffgan?

7 COMMISSIONER MCGRIFFGAN: Let me ask a  
8 question about the reg issue summary that you  
9 mentioned. I thought I heard the first panel say that  
10 they felt that there were parts the reg issue summary  
11 that were not consistent with their reading of what we  
12 said in our SRMNR. Our SRMs can be Talmudic  
13 documents. It can bring a subject to multiple  
14 interpretations. But how deep are the differences,  
15 and what's your process for trying to resolve those  
16 differences?

17 MR. LAYTON: Well, to be quite honest, we  
18 have not really explored what the differences are with  
19 NMA at this point. We do have the workshop planned,  
20 and we do have preparations in which we are going  
21 through with that. We do work with NMA.

22 COMMISSIONER MCGRIFFGAN: The issue in the  
23 Nebraska aquifer, and as I understand aquifer in this  
24 case is not like we normally think of aquifer. It's  
25 a bunch of sandstone that happens to have some water

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1 in it that is very non -- it doesn't move, over  
2 centuries.

3 But in that case, my recollection of the  
4 factual situation, and Mr. Layton you are the PM in  
5 addition to handling the rulemaking I guess, the  
6 factual situation there was that there may have been  
7 some license condition referring to some NRC document  
8 that implied that they would clean up to a higher  
9 standard. They are arguing now, I think perhaps  
10 appropriately, that they have met the Nebraska  
11 standard, that this is an exempt aquifer, and that  
12 radium alone is going to prevent this water from being  
13 used for human consumption essentially forever. So  
14 some of those previous things are unnecessary  
15 regulatory burdens in our current parlance.

16 Why does it take so long to sort of -- I  
17 know you -- they have already apologized for you are  
18 on a learning curve. You are trying to get on top of  
19 it. But in some sense, is it risk-informed to be  
20 spending as much time on this decision, given the  
21 factual circumstance?

22 I understand there is a legal issue. But  
23 then on the technical side, it didn't look that, based  
24 on my limited knowledge, it didn't look very  
25 ambiguous. Why does that take so long?

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1 MR. LAYTON: Really the best answer I can  
2 put forward to that is that given that the original  
3 review looked at it in the NEPA context, really as  
4 accumulative impacts for both the restoration to the  
5 pre-mining water use and also restoration to a  
6 standard that was much less stringent, that was really  
7 evaluated more like I said as the cumulative impacts.

8 When the license was originally issued in  
9 the late 1980s, the condition was placed in the  
10 license for restoration to the background standard, to  
11 the pre-mining water use. So I don't think that we  
12 were able to carte blanche do it as a license  
13 evaluation.

14 In addition, as the Commission is aware,  
15 we have been embroiled in a hearing with another in  
16 situ facility for quite some time, where many of these  
17 same issues have been brought to bear through the  
18 course of the hearing.

19 Part of the concern at the time in doing  
20 this evaluation is that the recognition that this may  
21 have some broad-reaching policy implications.

22 COMMISSIONER MCGRIFFGAN: It strikes me  
23 that the decision, that it's the 1988, if that's the  
24 year decision that may be the problematic decision.  
25 We have got to figure out a way to get out of that

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1 because we were making in some sense inconsistent  
2 decisions then compared to the state regulator. It's  
3 not surprising that 13 years later, we are still  
4 making inconsistent decisions.

5 The total amount of funds in this area, if  
6 the funds like for the universities were off the fee  
7 base -- not off the fee base. If the funds for the  
8 universities -- there's two options. One, they are  
9 off the fee base and they are in the general fund.  
10 That's the legislative option.

11 Second is they are given an exemption like  
12 the universities and the grounds like the universities  
13 that they are part of the infrastructure, and they  
14 react to licensees as Commissioner Dicus points out,  
15 will pay the bill, should be willing to pay because  
16 just as they want to have the human capital available,  
17 they want to have a diverse industry available.

18 What is the total amount of money we're  
19 talking about here? Do we know? Is it \$3 million, \$4  
20 million?

21 DR. PAPERIELLO: I think the CFO has a  
22 representative here.

23 MR. TURDIC: It's between \$4 and \$5  
24 million

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1                   COMMISSIONER MCGRIFFGAN: Between \$4 and  
2 \$5 million dollars, okay. For the microphones, I'll  
3 repeat that. Four and five million dollars if doing  
4 a quick calculation, dividing by 100, that would be  
5 about is it \$40,000 per reactor licensee if we were to  
6 take the exemption approach until the price of U-308  
7 is above a number that Katie Sweeney is going to  
8 reveal later. But we'll choose \$13 or something like  
9 that, just looking at her chart, U-308 spot price  
10 above that for a year.

11                   Do you have any staff reaction to the  
12 exemption approach, the university approach? Not the  
13 CFO. I'm asking the staff first. The CFO is always  
14 opposed to all exemptions, so I understand that.

15                   DR. PAPERIELLO: I am going to give my  
16 personal reactions, part of the issue of fees and all,  
17 how we proceed here.

18                   Anything with the amount -- and Karen can  
19 probably correct me, but my perception is that for the  
20 size of the area, we're involved in a lot of  
21 litigation. If rulemaking would reduce the litigation  
22 and the specific cost and also that would help us meet  
23 timeliness goals and the like, does that promote the  
24 common good? If it promotes the common good, I think  
25 there is an intellectual justification for.

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1                   COMMISSIONER MCGRIFFGAN: You are raising  
2 a different approach. You are saying that if we could  
3 solve the fee issue, then we can do what is  
4 everybody's preferred option, which is to proceed with  
5 rulemaking. What's preventing the rulemaking is the  
6 cost. If the cost is solved, then we can do the  
7 rulemaking. Then that has even more benefits because  
8 it will drive down costs for both us and licensees in  
9 terms of litigation because we'll have had a  
10 rulemaking.

11                   DR. PAPERIELLO: And settle issues.

12                   COMMISSIONER MCGRIFFGAN: And we'll settle  
13 issues. So you are saying that there's a long-term  
14 economic benefit to both licensees and NRC if we could  
15 put this package together where for a period of time,  
16 while the price of U-308 is below a number, they are  
17 off the fee base. Therefore, we could do a  
18 rulemaking. We have to factor that in. Instead of \$4  
19 million, it's maybe \$5 million.

20                   But there is a nice package there, where  
21 everybody wins, except for the reactor guys. They  
22 have to decide whether it's worth \$40,000 a year or  
23 whether they can stomach that, or you know, the  
24 preferred option of everybody is legislative solution.

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1 That would put it into the general fund and we can  
2 take it that way.

3 But I think that's what we're talking  
4 about. I think it's an interesting challenge for us  
5 as we go forward.

6 I defer with that, Mr. Chairman.

7 CHAIRMAN MESERVE: Commissioner  
8 Merrifield?

9 COMMISSIONER MERRIFIELD: Thank you very  
10 much, Mr. Chairman.

11 I want to start off by saying everything  
12 that I have heard today and everything I heard  
13 beforehand leads me to believe that in fact the staff  
14 is doing a good job. So I wouldn't want anyone to  
15 take anything away that we don't believe that. I  
16 believe they are. I believe they are fulfilling the  
17 desires of the Commission in that respect.

18 What seems clear to me today is obviously  
19 there are other people that we can talk to. We have  
20 heard today from NMA. We need to have a continuing  
21 dialogue with the states, both agreement and non-  
22 agreement states. We need to talk to other members of  
23 our Federal family and other stakeholders who are  
24 concerned about whatever direction the Commission may

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1 take. I, for one, certainly am willing to continue  
2 that dialogue.

3 Many of the issues that we talked about  
4 today certainly revolve around the issues of cost.  
5 Commissioner McGriffgan has spoken quite extensively  
6 about legislative or non-legislative options and what  
7 may or may not be available for the Commission to do  
8 in this respect. But clearly, as Carl pointed out to  
9 us at the very beginning, none of this comes without  
10 costs somewhere. No matter what option we take there  
11 are resource implications to that. We need to be  
12 mindful and I'm glad that Carl repeated that obvious  
13 fact.

14 I guess one question I do want to ask. We  
15 had some discussion earlier, and Mr. Layton had talked  
16 a little bit about some states that may have  
17 regulations that exceed the level of protection we  
18 have. What is the ease or difficulty of getting into  
19 it, whether it's a formal MOU, a simple MOU or some  
20 other type of agreement with those entities?

21 If we decide to go down that road and we  
22 wanted to defer, either to other Federal agencies or  
23 to other states, in various elements, how difficult  
24 would that be for the staff to engage in?

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1                   MR. LAYTON: As far as difficulty, in my  
2 view it is not really going to be that difficult of a  
3 process. It may be time consuming because there are  
4 so many different parties that we have to coordinate  
5 with. They are spread out over quite a large area.

6                   We have been in communication with the  
7 states in broaching these ideas already. We do plan  
8 to continue trying to find the means and the mechanism  
9 where we can actually meet face to face and talk from  
10 the same level of knowledge, and see where we can go  
11 from there.

12                  MR. WEBER: Commissioner, if I may, the  
13 Commission may recall that the staff at the  
14 Commission's direction embarked on negotiating an MOU  
15 with other Federal agencies and states and some  
16 private concerns to provide the basis for EPA  
17 rescinding its Clean Air Act requirements. I believe  
18 Tony was part of that negotiation process.

19                  As I recall, we spent nine months or so  
20 negotiating that MOU. Again, it seemed relatively  
21 straight-forward at the beginning of that process.  
22 Everybody was more or less in agreement that there was  
23 a solution out there. Although because of the number  
24 of parties involved and their interests, it took some

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1 time to come to closure on what the framework should  
2 be to resolve that issue.

3 COMMISSIONER MERRIFIELD: Well, I can say  
4 this. Any time you get more than two of us in a room,  
5 it's going to be more difficult rather than less. But  
6 okay, that's fair.

7 I guess my takeaway from the presentation  
8 today is there are a lot of things to think about and  
9 some more reassessment we can certainly make.

10 Mr. Chairman, as a final comment,  
11 unfortunately I have to leave. So I apologize to the  
12 other Commissioners for not being able to listen to  
13 your final questions. But I certainly will ask my  
14 staff to get me the transcript so I can review those  
15 later on. Thank you.

16 CHAIRMAN MESERVE: Thank you very much.

17 I would like to follow up on something.  
18 Carl made an important point at the beginning. The  
19 theme of this was that regardless of whether we were  
20 to deal with these issues by way of a rulemaking or by  
21 way of a guidance, it is going to take a lot of staff  
22 time. Issues have to be thought through, that there  
23 has to be interaction with stakeholders. The message  
24 I'm hearing from that, I think, would be that gee,  
25 there's not a big difference.

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1 I look at the SECY paper, however, and I  
2 see that alternative two, which is the rulemaking  
3 approach, here at \$300,000 and three FTE. Whereas  
4 alternative three, which is the guidance approach, is  
5 in at \$100,000 for contractual support and half an  
6 FTE. It's these costs considerations which drove the  
7 NMA to say look, don't do rulemaking.

8 But you made a point that either way is  
9 going to be expensive in terms of staff resources.  
10 Are you walking away from the SECY paper or  
11 reconsidering it? Or where are we?

12 MR. WEBER: Not in any way. We're not  
13 walking away from the SECY paper.

14 I think in part Carl's remarks apply to  
15 the whole area, because it's not just the Part 41  
16 rulemaking that's on the table. It is all these other  
17 issues that were out there and we're working to  
18 resolve.

19 The point is that regardless of which way  
20 we go, whether it's all going to be encompassed in one  
21 solitary effort or are we going to deal with it in a  
22 more fragmented manner, it's still going to take  
23 resources to work.

24 The uranium recovery licensees are one of  
25 the more active stakeholders as we've known from the

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1 past experience that we've had. That's very much to  
2 their credit because it's helpful for the staff to  
3 know what are the concerns that the uranium recovery  
4 industry has, and what are the alternatives available  
5 out there.

6 I am pleased to hear that they are working  
7 on their own solutions for the fuel cycle facility  
8 forum for how they might best address a non-11E2  
9 byproduct material disposal. So that's an evidence of  
10 their willingness to take creative and innovative  
11 approaches to solve some of the problems.

12 But it still takes, as Carl mentioned,  
13 staff effort at some point, and consultation with the  
14 Commission, to bring some of these things to closure.

15 COMMISSIONER DIAZ: The differential  
16 between the rulemaking and the other alternatives,  
17 it's \$150,000, \$200,000, it's not \$4 or \$5 million.

18 MR. WEBER: Plus the FTE.

19 CHAIRMAN MESERVE: Plus two-and-a-half  
20 FTE. That's where the money is. It sounds to me the  
21 way you've described it, is you see that it's going to  
22 take a lot of staff resources going either way. I  
23 mean you left the impression that you were saying this  
24 is a wash.

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1 DR. PAPERIELLO: Then let me correct  
2 myself. I don't consider all -- in other words, it  
3 won't be equal. Guidance is clearly easier to do than  
4 all of the formality of a rulemaking, at least at the  
5 first cut.

6 Whether or not because it's not a rule and  
7 it's guidance, which means there's always alternative  
8 proposals, it is going to result in more litigation  
9 and more actual implementation costs down the line, is  
10 something that concerns me. Not doing anything and  
11 leaving it in somewhat of an uncertainty right now  
12 concerns me because of the amount of litigation in  
13 this area.

14 The other thing is if, from what I hear  
15 today, there is a decision on the waters, changes,  
16 that means we are going to have to work that one. I  
17 don't oppose that. I am just saying that could -- you  
18 could put additional requirements on us. I am not  
19 objecting. I am just saying anything you do,  
20 including this meeting, costs -- you know, has a  
21 resource cost which the way we do fees, gets passed  
22 onto the people we regulate. So that's the only point  
23 I was trying to make. Nothing is really free.

24 CHAIRMAN MESERVE: There was a point that  
25 was --

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1                   MR. HOWE: Excuse me. I just want to add  
2 one thing. One of the assumptions that went into the  
3 calculation or the estimates that were done here was  
4 just basically what it would cost to get to an end-  
5 point product based on what we laid out in the option.  
6 We did not look at potential uncertainties such as a  
7 litigation or implementation efforts and things like  
8 that. It was just to get a product out, a completed  
9 product out.

10                   CHAIRMAN MESERVE: I was intrigued by one  
11 of the comments you had gotten from the agreement  
12 states, which was the CRCPD, it sounded like was  
13 developing its counterpart of Part 41, if I understood  
14 you correctly.

15                   MR. WEBER: Right.

16                   CHAIRMAN MESERVE: That's not one of the  
17 options that you have mentioned. It seems to me that  
18 you have underway someone who is trying to develop the  
19 rule, if I understood you correctly. Is there some  
20 opportunity for us there, to piggyback on the CRCPD  
21 work?

22                   MR. WEBER: As I recall, that is being  
23 offered as another alternative to the three  
24 alternatives that are laid out in the paper. I'm not  
25 aware --

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1 CHAIRMAN MESERVE: It's not that it's  
2 underway?

3 MR. WEBER: I don't believe, and Mike,  
4 correct me if I'm wrong, is CRCPD right now writing a  
5 suggested regulation that would implement the  
6 objectives that the NRC identified for Part 41?

7 MR. LAYTON: Yes. The information I  
8 received is that yes, they are currently working on  
9 it. But really, I don't know how far along it is in  
10 the process or how far along it has to go.

11 COMMISSIONER MCGRIFFGAN: Mr. Chairman,  
12 the norm regulation that CRCPD worked on I think was  
13 two decades or approximately. So it is a somewhat  
14 slow process if they are at the very beginning stages,  
15 which it sounds like they may be.

16 CHAIRMAN MESERVE: Well, that may well be.  
17 It may not be a real option, but it sounds to me like  
18 there is a counterpart for the NRC.

19 MR. HOWSTEIN: Paul Howstein, Travel  
20 Programs.

21 Chairman, I believe that the Committee is  
22 addressing amendment to the suggested state  
23 regulations to address some of the earlier changes  
24 that NRC had made to its uranium recovery regulations.  
25 They have explored the issue or the concept of maybe

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1 working in parallel with NRC if we were to go forward  
2 with the Part 41 rule. But I believe that they've  
3 really not started any kind of extensive effort.

4 But what we can do is check and verify,  
5 and see where they are in this process. But I know  
6 one of the things we've tried to explore with them is  
7 this concept of maybe working in parallel so we'd have  
8 a suggested state regulation, at the same time, we'd  
9 have our regulation, to try to facilitate the process.

10 But it is certainly an option. It is  
11 certainly another option that's similar to the first  
12 option, which is the alliance option, using the states  
13 as a mechanism to help develop the regulatory base.

14 CHAIRMAN MESERVE: Thank you, Paul.

15 On slide 5, you have a discussion of your  
16 actions and interactions with EPA and I think some  
17 states. If I understood the main theme of this is  
18 that not only is it legally required that there be an  
19 EPA counterpart program, but they are not duplicative  
20 of one another, at least in EPA's view. Our program  
21 is not duplicative of theirs.

22 There is I think the argument that NMA has  
23 made to us today, that there is duplication with the  
24 states, and that we therefore can rely on the states.  
25 I mean the argument would be that then we could reduce

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1 our effort by relying on the states because in some  
2 sense it may even be more comprehensive than us.

3 Does the staff have any view on that  
4 issue?

5 MR. LAYTON: That is certainly our goal,  
6 is to see whether we can indeed rely on those reviews  
7 from the states.

8 The one thing that we have learned in  
9 talking with the states is that although each  
10 individual state says that their programs are  
11 comprehensive and protective, we do notice that there  
12 are subtle differences among the states. The  
13 difficulty then comes to us of which of these subtle  
14 differences do we adopt and which ones do we not adopt  
15 in a broader scope.

16 CHAIRMAN MESERVE: I don't think it's a  
17 problem if the states are more stringent than we are,  
18 then obviously they comply. The issue would be where  
19 there are areas where they fall short.

20 MR. LAYTON: That's correct, yes.

21 CHAIRMAN MESERVE: And how significant  
22 those are.

23 MR. LAYTON: We identified one or two  
24 items where the states are less stringent than we are.

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1 CHAIRMAN MESERVE: But isn't the answer to  
2 that, I think NMA would advocate, is rely on them  
3 where they are at least equal or more stringent. If  
4 there's some items that you need to scrutinize because  
5 we are different from the states, that we just focus  
6 on those areas.

7 MR. LAYTON: Agreed.

8 CHAIRMAN MESERVE: How are we going to  
9 explore this? I mean how is this going to move  
10 forward?

11 MR. LAYTON: What I had planned in working  
12 with these states was initially making the contacts  
13 with the cognizant individuals in the states, and  
14 letting them know that we were embarking on this  
15 process. At least in the interim, conveying a lot of  
16 information through the Internet and email and through  
17 phone conversations, and try to get all of this really  
18 up to the same level of knowledge.

19 Then hopefully, in the June workshop,  
20 where a lot of these state representatives will likely  
21 be in attendance, that we could finally meet face-to-  
22 face and discuss some of these issues, then see where  
23 we can proceed from there.

24 MR. WEBER: It's important to point out,  
25 the staff has ongoing contact with their state

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1 equivalence, because as Mike has alluded to before in  
2 the Crow-Butte review, we worked with the state to  
3 understand what requirement they are imposing and how  
4 do they interpret their own programs and so forth. So  
5 there is already a rapport with the state  
6 counterparts.

7 Now what we need to do is explore that,  
8 and try to develop it into the way to see to what  
9 extent can we rely on state regulation in lieu of NRC  
10 review.

11 One of the complications that has come out  
12 though, and I think Mike discovered this in his  
13 discussions with some of the contacts, is that if NRC  
14 were to do that and then something were to go to  
15 hearing, one of the logistical constraints would be we  
16 may then have to call on the state to participate in  
17 that hearing. That's something that we need to  
18 explore because it's not always apparent to us that  
19 they operate in the same sort of regulatory domain  
20 that NRC is accustomed to under our rules and  
21 procedures.

22 CHAIRMAN MESERVE: On your slide 7, which  
23 has to do with the status of actions, you have  
24 indicated that you are pursuing issues as to surface

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1 water discharges for in situ leach facilities. What  
2 exactly are you doing?

3 MR. LAYTON: At this point, it's been an  
4 issue that's raised as -- well, you are aware of the  
5 letters that have come into you. We have yet to  
6 really develop a firm action plan of how we plan to  
7 interface with the state of New Mexico and the  
8 licensees. But we do know that that is an area where  
9 we do have to work on some coordination and pursue  
10 this.

11 CHAIRMAN MESERVE: This is basically a  
12 coordination issue, is what you are focusing on?

13 MR. LAYTON: Right now, yes.

14 CHAIRMAN MESERVE: Good. Thank you very  
15 much.

16 Commissioner Dicus had indicated to me  
17 that she apologized for the fact that she had to  
18 leave. I had not realized that beforehand or I would  
19 have called on her first. So for the record, I  
20 apologize to her. She did express her regrets that  
21 she would not have an opportunity to ask questions.  
22 There may be some follow-up that she may want to have  
23 with you upon reviewing the matter.

24 Commissioner Diaz?

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1                   COMMISSIONER DIAZ: Yes, thank you, Mr.  
2 Chairman. Actually I have a series of very specific  
3 questions to the staff. But in deference to the  
4 excellent job of my fellow Commissioners have done in  
5 exploring all the issues, I will task my staff to get  
6 with you and resolve those. Therefore, I have no  
7 further questions.

8                   CHAIRMAN MESERVE: Good. I would like to  
9 thank both panels for what has been a very helpful  
10 exchange today. You have brought a variety of issues  
11 to our attention. They are important to us, and they  
12 are ones that we'll be addressing.

13                   So thank you very much. With that, we're  
14 adjourned.

15                   (Whereupon, at 12:34 p.m., the proceedings  
16 were concluded.)

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